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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 155849. August 31, 2011]

LORENZO SHIPPING CORPORATION, OCEANIC CONTAINER LINES, INC., SOLID SHIPPING LINES CORPORATION, SULPICIO LINES, INC., *ET AL.*, *petitioners, vs.* **DISTRIBUTION MANAGEMENT ASSOCIATION OF THE PHILIPPINES, LORENZO CINCO, and CORA CURAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; CONCEPT.— Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase *contempt of court* is generic, embracing within its legal signification a variety of different acts. The power to punish for contempt is inherent in all courts, and need not be specifically granted by statute. It lies at the core of the administration of a judicial system. Indeed, there ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful

mandates, and to preserve themselves and their officers from the approach and insults of pollution. The power to punish for contempt essentially exists for the preservation of order in judicial proceedings and for the enforcement of judgments, orders, and mandates of the courts, and, consequently, for the due administration of justice. The reason behind the power to punish for contempt is that respect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation.

2. ID.; ID.; ID.; DIRECT AND INDIRECT CONTEMPT OF COURT, DISTINGUISHED AND EXPLAINED.— Contempt of court is of two kinds, namely: direct contempt, which is committed in the presence of or so near the judge as to obstruct him in the administration of justice; and constructive or indirect contempt, which consists of willful disobedience of the lawful process or order of the court. The punishment for the first is generally summary and immediate, and no process or evidence is necessary because the act is committed *in facie curiae*. The inherent power of courts to punish contempt of court committed in the presence of the courts without further proof of facts and without aid of a trial is not open to question, considering that this power is essential to preserve their authority and to prevent the administration of justice from falling into disrepute; such summary conviction and punishment accord with due process of law. There is authority for the view, however, that an act, to constitute direct contempt punishable by summary proceeding, need not be committed in the immediate presence of the court, if it tends to obstruct justice or to interfere with the actions of the court in the courtroom itself. Also, contemptuous acts committed out of the presence of the court, if admitted by the contemnor in open court, may be punished summarily as a direct contempt, although it is advisable to proceed by requiring the person charged to appear and show cause why he should not be punished when the judge is without personal knowledge of the misbehavior and is informed of it only by a confession of the contemnor or by testimony under oath of other persons. In contrast, the second usually requires proceedings less summary than the first. The proceedings for the punishment of the contumacious act committed outside the personal knowledge of the judge generally need the observance of all the elements of due process of law, that is,

notice, written charges, and an opportunity to deny and to defend such charges before guilt is adjudged and sentence imposed.

3. ID.; ID.; ID.; TWO CLASSES OF CONTEMPT PROCEEDINGS; CRIMINAL CONTEMPT AND CIVIL CONTEMPT, EXPLAINED.— Proceedings for contempt are *sui generis*, in nature criminal, but may be resorted to in civil as well as criminal actions, and independently of any action. They are of two classes, the criminal or punitive, and the civil or remedial. A *criminal contempt* consists in conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting the authority and dignity of the court or judge, or in doing a duly forbidden act. A *civil contempt* consists in the failure to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein. It is at times difficult to determine whether the proceedings are civil or criminal. In general, the character of the contempt of whether it is criminal or civil is determined by the nature of the contempt involved, regardless of the cause in which the contempt arose, and by the relief sought or dominant purpose. The proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial. Where the dominant purpose is to enforce compliance with an order of a court for the benefit of a party in whose favor the order runs, the contempt is civil; where the dominant purpose is to vindicate the dignity and authority of the court, and to protect the interests of the general public, the contempt is criminal. Indeed, the criminal proceedings vindicate the dignity of the courts, but the civil proceedings protect, preserve, and enforce the rights of private parties and compel obedience to orders, judgments and decrees made to enforce such rights.

4. ID.; ID.; ID.; MISBEHAVIOR AND OTHER ACTS CONSTITUTING INDIRECT CONTEMPT, EXPLAINED.— Misbehavior means something more than adverse comment or disrespect. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence

or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.

5. ID.; ID.; ID.; INDIRECT CONTEMPT, NOT A CASE OF.— Contrary to the petitioners' urging that such phrases be considered as "scurrilous, malicious, tasteless and baseless innuendo" and as indicative that "the Court allowed itself to be influenced by the petitioners" or that "the point that respondents wanted to convey was crystal clear: 'defy the decision, for it was based on technicalities, and the Supreme Court was influenced!'", we find the phrases as not critical of the Court and how fast the resolutions in G.R. No. 152914 were issued, or as inciting DMAP's members to defy the resolutions. The unmistakable intent behind the phrases was to inform DMAP's members of the developments in the case, and on the taking of the next viable move of going back to MARINA on the issues, as the ruling of the Court of Appeals instructed. We have long recognized and respected the right of a lawyer, or of any other person, for that matter, to be critical of the courts and their judges as long as the criticism is made in respectful terms and through legitimate channels. We have no cause or reason to depart from such recognition and respect x x x The test for criticizing a judge's decision is, therefore, whether or not the criticism is *bona fide* or done in good faith, and does not spill over the walls of decency and propriety. Viewed through the prism of the test, the *Sea Transport Update* was not disrespectful, abusive, or slanderous, and did not spill over the walls of decency and propriety. Thereby, the respondents were *not guilty* of indirect contempt of court.

APPEARANCES OF COUNSEL

Arthur D. Lim Law Office for petitioners.
Chua & Associates Law Office for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The petitioners filed this petition to charge the respondents with indirect contempt of court for including allegedly contemptuous statements in their so-called *Sea Transport Update* concerning the Court's resolutions dated June 5, 2002 and August 12, 2002 issued in G.R. No. 152914 entitled *Distribution Management Association of the Philippines, et al. v. Administrator Oscar Sevilla, Maritime Industry Authority, et al*.

Antecedents

On June 4, 2001, the Maritime Industry Authority (MARINA) issued a Letter-Resolution,[1] advising respondent Distribution Management Association of the Philippines (DMAP) that a computation of the required freight rate adjustment by MARINA was no longer required for freight rates officially considered or declared deregulated in accordance with MARINA Memorandum Circular No. 153 (MC 153).

For clarity, MARINA issued MC 153 pursuant to Executive Order No. 213 (EO 213) entitled *Deregulating Domestic Shipping Rates* promulgated by President Fidel V. Ramos on November 24, 1994.[2]

On July 2, 2001, in order to challenge the constitutionality of EO 213, MC 153, and the Letter-Resolution dated June 4, 2001, DMAP commenced in the Court of Appeals (CA) a special civil action for *certiorari* and prohibition, with prayer for preliminary mandatory injunction or temporary restraining order (CA-G.R. SP No. 65463). On November 29, 2001,[3] however, the CA dismissed the petition for *certiorari* and prohibition and upheld the constitutionality of EO 213, MC 153, and the

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[1] *Rollo,* p. 20.

[2] *Id.,* pp. 6-7.

[3] *Id.,* pp. 22-40.

Letter-Resolution dated June 4, 2001.[4] Later, on April 10, 2002, the CA denied DMAP's motion for reconsideration.[5]

DMAP appealed to the Court (G.R. No. 152914), but on June 5, 2002,[6] the Court denied DMAP's petition for review on *certiorari* "for petitioners' failure to: (*a*) take the appeal within the reglementary period of fifteen (15) days in accordance with Section 2, Rule 45 in relation to Section 5(a), Rule 56, in view of the foregoing denial of petitioners' motion for extension of time to file the petition; and (*b*) pay the deposit for sheriff's fee and clerk's commission in the total amount of ₱202.00 in accordance with Sections 2 and 3, Rule 45 in relation to Section [c], Rule 56 and paragraph 1 of Revised Circular No. 1-88 of this Court."

On August 12, 2002,[7] the Court denied with finality DMAP's motion for reconsideration.

In October 2002, DMAP held a general membership meeting (GMM) on the occasion of which DMAP, acting through its co-respondents Lorenzo Cinco, its President, and Cora Curay, a consultant/adviser to Cinco, publicly circulated the *Sea Transport Update*,[8] which is reproduced as follows:

SEA TRANSPORT UPDATE
Oct. 2002 GMM

20% GRI RATE INCREASE ISSUE

1. **The Motion for Reconsideration filed with the Supreme Court was denied based on technicalities and not on the legal issue DMAP presented.**

Small technical matter which should not be a cause for denial (like the amount of filing fee lacking & failure to indicate date of receipt of court resolution)

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

[5] *Id.*, pp. 42-43.

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

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

[8] *Id.*, pp. 48-51.

> Some technical matters that could cause denial

- Failure to file on time and to file necessary pleadings
- Failure to provide copies to respondents.

> Legal issue DMAP presented

- Public Service Act
- Regulated or Deregulated
- MC 153
- **Supreme Court ruling issued in one month only, normal leadtime is at least 3 to 6 months.**

WHAT TO EXPECT?

1. Liners will pressure members to pay the 20% GRI

WHAT TO DO?

1. As advised by DMAP counsel, use the following arguments:

- DMAP case was denied based on technicalities and not on merits of the case

- Court of Appeals has ruled that computation of reasonableness of freight is not under their jurisdiction but with MARINA

- DSA's argument that DMAP's case prematurely (sic) file (sic) as there is a pending case filed before MARINA.

- Therefore, DSA & DMAP will be going back to MARINA for resolution

2. Meantime, DMAP members enjoined not to pay until resolved by MARINA

3. However, continue collaboration with liners so shipping service may not suffer

NEXT MOVE

Another group (most likely consumers) or any party will file the same case and may be using the same arguments. (emphasis supplied)

Thereupon, the petitioners brought this special civil action for contempt against the respondents, insisting that the publication of the *Sea Transport Update* constituted indirect contempt of court for patently, unjustly and baselessly insinuating that the

petitioners were privy to some illegal act, and, worse, that the publication unfairly debased the Supreme Court by making "scurrilous, malicious, tasteless, and baseless innuendo"[9] to the effect that the Supreme Court had allowed itself to be influenced by the petitioners as to lead the respondents to conclude that the "Supreme Court ruling issued in one month only, normal lead time is at least 3 to 6 months."[10] They averred that the respondents' purpose, taken in the context of the entire publication, was to "defy the decision, for it was based on technicalities, and the Supreme Court was influenced!"[11]

In their comment dated January 20, 2003,[12] the respondents denied any intention to malign, discredit, or criticize the Court.[13] They explained that their statement that the "Supreme Court ruling issued in one month time only, normal lead time is at least three to six months"[14] was not *per se* contemptuous, because the normal and appropriate time frame for the resolution of petitions by the Court was either less than a month, if the petition was to be denied on technicality, and more or less from three to six months, if the petition was to be given due course; that what made the petitioners describe the statement as contemptuous was not the real or actual intention of the author but rather the petitioners' false, malicious, scurrilous and tasteless insinuations and interpretation; and that the petitioners, not being themselves present during the GMM, had no basis to assert that the DMAP's presentor, the author of the material, or any of the speakers during the GMM had any evil intention or made any malicious insinuations.[15]

The respondents further stated that the term *time frame* was layman's parlance to explain to DMAP members that the petition

[9] *Id.*, p. 13.

[10] *Ibid.*

[11] *Ibid.*

[12] *Id.*, pp. 56-64.

[13] *Id.*, p. 58.

[14] *Id.*

[15] *Id.*, p. 59.

had been dismissed due to a technicality, considering that the appeals process in the case before the Court had taken only a month instead of the expected three to six months;[16] that the term *lead time*, although not the proper legal term to describe the process that the respondents' petition had undergone in the Court, was common parlance in the business sector in which the respondents belonged; that the discussions during the presentation focused on the legal options of DMAP with respect to the 20% increase, *i.e.*, to go back to MARINA for the resolution of the propriety and reasonableness of the 20% increase;[17] that a *lead time* was indicated in the presentation material simply to tell DMAP members that the lead time to go back to MARINA had been cut short in view of the denial of the petition for review; and that, on the other hand, had the Court given due course to the petition, the expected time for the Court to resolve the appeal on the merits would have been from three to six months, a normal expectation.[18]

Lastly, the respondents submitted that a serious study and analysis of the decision of the CA, which the Court affirmed, revealed that the decision of the CA centered only on the constitutionality of the assailed executive issuances, and did not include any determination of the reasonableness and propriety of the 20% increase; that, accordingly, the discussion of the recourse with respect to the 20% increase, which was to go back to MARINA for the resolution on the matter, could not be considered as a defiance of the order of the Court because the CA itself decreed that the propriety and reasonableness of the 20% increase should be brought to and resolved by MARINA;[19] and that considering that there was yet no entry of judgment in relation to the denial of the petition at the time of the GMM on October 17, 2002, the respondents were not defying any final order or writ of the Court and thereby commit any act of indirect contempt.[20]

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[16] *Id.*

[17] *Id.*, pp. 60-61.

[18] *Id.*, p. 61.

[19] *Id.*

[20] *Id.*, p. 62.

Issue

Did the statements contained in the *Sea Transport Update* constitute or amount to indirect contempt of court?

Ruling

We dismiss the petition.

I
Contempt of Court: Concept and Classes

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.[21] The phrase *contempt of court* is generic, embracing within its legal signification a variety of different acts.[22]

The power to punish for contempt is inherent in all courts,[23] and need not be specifically granted by statute.[24] It lies at the core of the administration of a judicial system.[25] Indeed, there ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful mandates, and to preserve themselves and their officers from the approach and insults of pollution.[26] The power to punish for contempt essentially

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[21] 17 CJS, *Contempt*, § 1.

[22] *Id.*, § 2.

[23] *In Re Kelly*, 35 Phil. 944.

[24] *In Re Sotto*, 82 Phil. 595.

[25] *Juidice v. Vail*, 430 US 327.

[26] *Re Robinson*, 19 Wall 505; *Re Terry*, 128 US 289; *Bessette v. M.B. Conkey Co.*, 194 US 324; *Michaelson v. US ex rel. Chicago, St. P.M. & O. R. Co.*, 266 US 42; *Anderson v. Dunn*, 6 Wheat 204.

exists for the preservation of order in judicial proceedings and for the enforcement of judgments, orders, and mandates of the courts, and, consequently, for the due administration of justice.[27] The reason behind the power to punish for contempt is that respect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation.[28]

Contempt of court is of two kinds, namely: direct contempt, which is committed in the presence of or so near the judge as to obstruct him in the administration of justice; and constructive or indirect contempt, which consists of willful disobedience of the lawful process or order of the court.[29]

The punishment for the first is generally summary and immediate, and no process or evidence is necessary because the act is committed *in facie curiae*.[30] The inherent power of courts to punish contempt of court committed in the presence of the courts without further proof of facts and without aid of a trial is not open to question, considering that this power is essential to preserve their authority and to prevent the administration of justice from falling into disrepute; such summary

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[27] *Perkins v. Director of Prisons*, 58 Phil. 271. See *Ex parte Hudgings*, 249 US 378 (the only purpose of the power to punish for contempt is to secure judicial authority from obstruction in the performance of a duty in the end that means appropriated for the preservation and enforcement of the constitution may be secured); and *Re Debs*, 158 US 564 (the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the courts).

[28] *Cornejo v. Tan,* 85 Phil. 772.

[29] *Narcida v. Bowen*, 22 Phil. 365.

[30] I *Bouvier's Law Dictionary*, (Rawle's Third Revision) Eighth Edition, p. 651, citing *Wasserman v. United States,* 161 Fed. 722, 88 C.C.A. 582; *Garrigan v. United States*, 163 Fed. 16, 89 C.C.A. 494, 23 L.R.A. (N.S.) 1295. *In facie curiae* literally means *in the face of the court,* that is, in the presence of the court. There ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful mandates, and to preserve themselves and their officers from the approach and insults of pollution (*Anderson v. Dunn*, 6 Wheat 204).

conviction and punishment accord with due process of law.[31] There is authority for the view, however, that an act, to constitute direct contempt punishable by summary proceeding, need not be committed in the immediate presence of the court, if it tends to obstruct justice or to interfere with the actions of the court in the courtroom itself.[32] Also, contemptuous acts committed out of the presence of the court, if admitted by the contemnor in open court, may be punished summarily as a direct contempt,[33] although it is advisable to proceed by requiring the person charged to appear and show cause why he should not be punished when the judge is without personal knowledge of the misbehavior and is informed of it only by a confession of the contemnor or by testimony under oath of other persons.[34]

In contrast, the second usually requires proceedings less summary than the first. The proceedings for the punishment of the contumacious act committed outside the personal knowledge of the judge generally need the observance of all the elements of due process of law, that is, notice, written charges, and an opportunity to deny and to defend such charges before guilt is adjudged and sentence imposed.[35]

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[31] *Fisher v. Pace*, 336 US 155. See also *Yates v. United States*, 355 US 66 (the summary contempt power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their function; without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them).

[32] *In re Wright's Estate*, 133 N.E. 2d. 250, 165 Ohio St. 15; *Univis Lens Co. v. United Electric, Radio & Machine Workers of America*, 89 N.E. 2d 658.

[33] *People v. Gholson*, 106 N.E. 2d 333; *People v. Hagopian*, 37 N.E. 2d 782, 408 Ill. 618; *People v. Pomeroy*, 90 N.E. 2d 102, 405 Ill. 175.

[34] *Re Savin*, 131 US 267.

[35] *Provenzale v. Provenzale*, 90 N.E. 2d 115, 339 Ill. App. 345; *People ex rel. Andrews v. Hassakis*, 129 N.E. 2d 9, 6 Ill. 2d 463; *Van Sweringen v. Van Sweringen*, 126 A. 2d 334, 22 N.J. 440, 64 A.L.R. 2d 593; *Ex parte Niklaus*, 13 N.W. 2d 655, 144 Neb. 503; *People ex rel. Clarke v. Truesdell*, 79 N.Y.S. 2d 413.

Plainly, therefore, the word *summary* with respect to the punishment for contempt refers not to the timing of the action with reference to the offense but to the procedure that dispenses with the formality, delay, and digression that result from the issuance of process, service of complaint and answer, holding hearings, taking evidence, listening to arguments, awaiting briefs, submission of findings, and all that goes with a conventional court trial.[36]

A distinction between *in-court* contempts, which disrupt court proceedings and for which a hearing and formal presentation of evidence are dispensed with, and *out-of-court* contempts, which require normal adversary procedures, is drawn for the purpose of prescribing what procedures must attend the exercise of a court's authority to deal with contempt. The distinction does not limit the ability of courts to initiate contempt prosecutions to the summary punishment of *in-court* contempts that interfere with the judicial process.[37]

The court may proceed upon its own knowledge of the facts without further proof and without issue or trial in any form to punish a contempt committed directly under its eye or within its view.[38] But there must be adequate facts to support a summary order for contempt in the presence of the court.[39] The exercise of the summary power to imprison for contempt is a delicate one and care is needed to avoid arbitrary or oppressive conclusions.[40] The reason for the extraordinary power to punish

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[36] *Sacher v. United States*, N.Y., 72 S. Ct. 451, 343 US 1.

[37] *Young v. United States*, 481 US 787.

[38] *Re Savin*, 131 US 267. See also *Harris v. United States*, 382 US 162 (summary procedure in disposing of charges of contempt committed in the presence of the court is designed to fill the need for immediate penal vindication of the dignity of the court); *Johnson v. Mississippi*, 403 US 212 (instant action to punish for contempt is proper where the misbehavior occurs in the presence of the judge and is known to him, and where immediate corrective steps are needed to restore order and maintain the dignity and authority of the court).

[39] *Fisher v. Pace*, 336 US 155.

[40] *Bloom v. Illinois*, 391 US 194.

criminal contempt in summary proceedings is that the necessities of the administration of justice require such summary dealing with obstructions to it, being a mode of vindicating the majesty of the law, in its active manifestation, against obstruction and outrage.[41]

Proceedings for contempt are *sui generis*, in nature criminal, but may be resorted to in civil as well as criminal actions, and independently of any action.[42] They are of two classes, the criminal or punitive, and the civil or remedial. A *criminal contempt* consists in conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting the authority and dignity of the court or judge, or in doing a duly forbidden act. A *civil contempt* consists in the failure to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein.[43] It is at times difficult to determine whether the proceedings are civil or criminal. In general, the character of the contempt of whether it is criminal or civil is determined by the nature of the contempt involved, regardless of the cause in which the contempt arose, and by the relief sought or dominant purpose.[44] The proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose

[41] *Offutt v. United States*, 348 US 11.

[42] *Bessette v. M.B. Conkey Co.*, 194 US 324.

[43] *Perkins v. Director of Prisons*, 58 Phil. 271.

[44] *Lamb v. Cramer*, 285 US 217 (the purpose of the punishment rather than the character of the act punished determines whether the proceeding to punish is for a civil or a criminal contempt); *McCrone v. United States*, 307 US 61 (a contempt is considered civil when the punishment is wholly remedial, serves only the purpose of the complainant, and is not intended as a deterrent to offenses against the public); *Hicks v. Feiock*, 485 US 624 (in a proceeding for civil contempt, the punishment is remedial and for the benefit of the complainant, while in a proceeding for criminal contempt, the sentence is punitive and for the vindication of the court's authority; conclusions about the purposes for which relief is imposed are properly drawn from an examination of the character of the relief itself; if the relief provided is a fine, it is remedial when it paid to the complainant or where it can be avoided by performing an affirmative act required by the court's order, but is punitive when it is paid to the court).

is primarily compensatory or remedial.[45] Where the dominant purpose is to enforce compliance with an order of a court for the benefit of a party in whose favor the order runs, the contempt is civil; where the dominant purpose is to vindicate the dignity and authority of the court, and to protect the interests of the general public, the contempt is criminal.[46] Indeed, the criminal proceedings vindicate the dignity of the courts, but the civil proceedings protect, preserve, and enforce the rights of private parties and compel obedience to orders, judgments and decrees made to enforce such rights.[47]

Indirect contempt is defined by and punished under Section 3, Rule 71 of the *Rules of Court*, which provides:

Section 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

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[45] 17 CJS, Contempt, §62 (4).

[46] *Philadelphia Marine Trade Association v. International Longshoremen's Association, Local Union No. 1291*, 140 A.2d 814, 392 Pa. 500.

[47] I *Bouvier's Law Dictionary*, (Rawle's Third Revision) Eighth Edition, p. 653, citing *Wasserman v. United States*, 161 Fed. 722, 88 C.C.A. 582; *Garrigan v. United States*, 163 Fed. 16, 89 C.C.A. 494, 23 L.R.A. (N.S.) 1295.

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

Misbehavior means something more than adverse comment or disrespect.[48] There is no question that in contempt the intent goes to the gravamen of the offense.[49] Thus, the good faith, or lack of it, of the alleged contemnor should be considered.[50] Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character.[51] A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights.[52] To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[53]

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[48] Justice Holmes in *Toledo Newspaper Co. v. United States*, 247 US 402, 423.

[49] *In Re People in the Interest of Murley*, 239 P. 2d 706; 124 Colo. 581.

[50] *Hoffmeister v. Tod*, 349 S. W. 2d 5.

[51] *N. L. R. B. v. Whittier Mills Co.*, C. C. A. 5, 123 F. 2d 725; *In Re Cottingham*, 182 P. 2, 66 Colo. 335.

[52] *Bender v. Young*, 252 S.W. 691, 693.

[53] *General Motors Corporation v. United Elec. Radio & Mach. Workers of America*, C.I.O., Local 717, 17 Ohio Supp. 19.

Unfounded accusations or allegations or words tending to embarrass the court or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose. On the contrary, they constitute direct contempt of court or contempt *in facie curiae* and, when committed by a lawyer, a violation of the lawyer's oath and a transgression of the *Code of Professional Responsibility*.

II.
Utterances in *Sea Transport Update*, Not Contemptuous

The petitioners did not sufficiently show how the respondents' publication of the *Sea Transport Update* constituted any of the acts punishable as indirect contempt of court under Section 3 of Rule 71, *supra*.

The petitioners' mere allegation, that "*said publication unfairly debases the Supreme Court because of the scurrilous, malicious, tasteless, and baseless innuendo therein that the Court allowed itself to be influenced by the petitioners as concocted in the evil minds of the respondents thus leading said respondents to unjustly conclude: Supreme Court ruling issued in one month only, normal lead time is at least 3 to 6 months*,"[54] was insufficient, without more, to sustain the charge of indirect contempt.

Nor do we consider contemptuous either the phrase contained in the *Sea Transport Update* stating: "*The Motion for Reconsideration filed with the Supreme Court was denied based on technicalities and not on the legal issue DMAP presented,*"[55] or the phrase in the *Sea Transport Update* reading "*Supreme Court ruling issued in one month only, normal leadtime is at least 3 to 6 months.*" Contrary to the petitioners' urging that such phrases be considered as "scurrilous, malicious, tasteless and baseless innuendo"[56] and as indicative that "the Court

[54] *Rollo*, p. 13.

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

[56] *Id.*, p. 13.

allowed itself to be influenced by the petitioners"[57] or that "the point that respondents wanted to convey was crystal clear: 'defy the decision, for it was based on technicalities, and the Supreme Court was influenced!'",[58] we find the phrases as not critical of the Court and how fast the resolutions in G.R. No. 152914 were issued, or as inciting DMAP's members to defy the resolutions. The unmistakable intent behind the phrases was to inform DMAP's members of the developments in the case, and on the taking of the next viable move of going back to MARINA on the issues, as the ruling of the Court of Appeals instructed.

We have long recognized and respected the right of a lawyer, or of any other person, for that matter, to be critical of the courts and their judges as long as the criticism is made in respectful terms and through legitimate channels. We have no cause or reason to depart from such recognition and respect, for the Court has long adhered to the sentiment aptly given expression to in the leading case of *In re: Almacen*:[59]

> **xxx every citizen has the right to comment upon and criticize the actuations of public officers. This right is not diminished by the fact that the criticism is aimed at a judicial authority, or that it is articulated by a lawyer. Such right is especially recognized where the criticism concerns a concluded litigation, because then the court's actuation are thrown open to public consumption**.
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> **Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizens whom it is expected to serve.**

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[57] *Ibid.*

[58] *Ibid.*

[59] G.R. No. L-27654, February 18, 1970, 31 SCRA 562.

Well-recognized therefore is the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges.xxx

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Hence, as a citizen and as officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he "professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen." xxx

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But it is the cardinal condition of all such criticism that it shall be *bona fide,* and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action. (bold emphasis supplied)[60]

The test for criticizing a judge's decision is, therefore, whether or not the criticism is *bona fide* or done in good faith, and does not spill over the walls of decency and propriety. Viewed through the prism of the test, the *Sea Transport Update* was not disrespectful, abusive, or slanderous, and did not spill over the walls of decency and propriety. Thereby, the respondents were *not guilty* of indirect contempt of court. In this regard, then, we need to remind that the power to punish for contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.[61] As judges we ought to exercise our power to punish contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the

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[60] *Id.*, pp. 576-580.

[61] *Villavicencio v. Lukban*, 39 Phil. 778.

power for the correction and preservation of the dignity of the Court, not for retaliation or vindictiveness.[62]

WHEREFORE, the petition for indirect contempt is *DISMISSED.*

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.

FIRST DIVISION

[G.R. No. 165025. August 31, 2011]

FEDMAN DEVELOPMENT CORPORATION, *petitioner, vs.* **FEDERICO AGCAOILI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DOCKET FEES; RULES IN CASE OF INSUFFICIENT PAYMENT THEREOF; APPLICATION. — If the amount of docket fees paid is insufficient in relation to the amounts being sought, the clerk of court or his duly authorized deputy has the responsibility of making a deficiency assessment, and the plaintiff will be required to pay the deficiency. The non-specification of the amounts of damages does not immediately divest the trial court of its jurisdiction over the case, provided there is no bad faith or intent to defraud the Government on the part of the plaintiff. The prevailing rule is that if the correct amount of docket fees are not paid *at the time of filing,* the

[62] *Ruiz v. Judge How,* A.M. No. RTJ-03-1805, October 14, 2003, 413 SCRA 333.

trial court still acquires jurisdiction upon full payment of the fees *within a reasonable time* as the court may grant, *barring prescription*. The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in every case the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the *Civil Code*, the principal law on prescription of actions. In *Rivera v. Del Rosario*, the Court, resolving the issue of the failure to pay the correct amount of docket fees due to the inadequate assessment by the clerk of court, ruled that jurisdiction over the complaint was still validly acquired upon the full payment of the docket fees assessed by the Clerk of Court. Relying on *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, the Court opined that the filing of the complaint or appropriate initiatory pleading *and* the payment of the prescribed docket fees vested a trial court with jurisdiction over the claim, and although the docket fees paid were insufficient in relation to the amount of the claim, the clerk of court or his duly authorized deputy retained the responsibility of making a *deficiency* assessment, and the party filing the action could be required to pay the deficiency, *without jurisdiction being automatically lost*. Even where the clerk of court fails to make a *deficiency assessment*, and the deficiency is not paid as a result, the trial court nonetheless *continues* to have jurisdiction over the complaint, unless the party liable is guilty of a fraud in that regard, considering that the deficiency will be collected as a fee in lien within the contemplation of Section 2, Rule 141 (as revised by A.M. No. 00-2-01-SC). The reason is that to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith. Herein, the docket fees paid by Agcaoili were insufficient considering that the complaint did not specify the amounts of moral damages, exemplary damages and attorney's fees. Nonetheless, it is not disputed that Agcaoili paid the *assessed* docket fees. Such payment negated bad faith or intent to defraud the Government. Nonetheless, Agcaoili must remit any docket fee deficiency to the RTC's clerk of court.

2. REMEDIAL LAW; COURTS; JURISDICTION; WHERE A PARTY IS BARRED FROM ASSERTING THE JURISDICTION OF ANOTHER TRIBUNAL. — FDC is now barred from asserting that the HLURB, not the RTC, had

jurisdiction over the case. x x x FDC invoked HLURB's authority only on September 10, 1990, or more than five years from the time the prior case was commenced on February 28, 1985, and after the RTC granted Agcaoili's motion to enjoin FDC from cancelling the contract to sell. The principle of estoppel, which is based on equity and public policy, dictates that FDC's active participation in both RTC proceedings and its seeking therein affirmative reliefs now precluded it from denying the RTC's jurisdiction. Its acknowledgment of the RTC's jurisdiction and its subsequent denial of such jurisdiction only after an unfavorable judgment were inappropriate and intolerable. The Court abhors the practice of any litigant of submitting a case for decision in the trial court, and then accepting the judgment only if favorable, but attacking the judgment for lack of jurisdiction if it is not.

3. CIVIL LAW; DAMAGES; A CONDOMINIUM DEVELOPER WHICH FAILED TO PERFORM ITS OBLIGATIONS TO UNIT OWNERS IS LIABLE FOR DAMAGES. — Among the obligations of FDC and FSCC to the unit owners or purchasers of FSB's units was the duty to provide a centralized air-conditioning unit, lighting, electricity, and water; and to maintain adequate fire exit, elevators, and cleanliness in each floor of the common areas of FSB. But FDC and FSCC failed to repair the centralized air-conditioning unit of the fourth floor of FSB despite repeated demands from Agcaoili. To alleviate the physical discomfort and adverse effects on his work as a practicing attorney brought about by the breakdown of the air-conditioning unit, he installed two window-type air-conditioners at his own expense. Also, FDC and FSCC failed to provide water supply to the comfort room and to clean the corridors. The fire exit and elevator were also defective. These defects, among other circumstances, rightly compelled Agcaoili to suspend the payment of his monthly amortizations and condominium dues. Instead of addressing his valid complaints, FDC disconnected the electric supply of his Unit 411 and unilaterally increased the interest rate without justification. Clearly, FDC was liable for damages. Article 1171 of the *Civil Code* provides that those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof are liable for damages.

APPEARANCES OF COUNSEL

E.G. Ferry Law Offices for petitioner.
K.V. & Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The non-payment of the prescribed filing fees at the time of the filing of the complaint or other initiatory pleading fails to vest jurisdiction over the case in the trial court. Yet, where the plaintiff has paid the amount of filing fees assessed by the clerk of court, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment.

Fedman Development Corporation (FDC) appeals the decision promulgated on August 20, 2004, [1] whereby the Court of Appeals (CA) affirmed the judgment rendered on August 28, 1998 by the Regional Trial Court (RTC), Branch 150, Makati City, in favor of the respondent.[2]

Antecedents

FDC was the owner and developer of a condominium project known as Fedman Suites Building (FSB) located on Salcedo Street, Legazpi Village, Makati City. On June 18, 1975, Interchem Laboratories Incorporated (Interchem) purchased FSB's Unit 411 under a contract to sell. On March 31, 1977, FDC executed a *Master Deed with Declaration of Restrictions*,[3] and formed the Fedman Suite Condominium Corporation (FSCC) to manage FSB and hold title over its common areas.[4]

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[1] *Rollo*, pp. 31-41; penned by Associate Justice Eloy R. Bello, Jr. (retired) and concurred in by Associate Justice Regalado E. Maambong (retired and already deceased) and Associate Justice Lucenito N. Tagle (retired).

[2] Original records, Volume II, pp. 1116-1128.

[3] *Id.*, pp. 12-31.

[4] *Id.*, p. 21.

On October 10, 1980, Interchem, with FDC's consent, transferred all its rights in Unit 411 to respondent Federico Agcaoili (Agcaoili), a practicing attorney who was then also a member of the Provincial Board of Quezon Province.[5] As consideration for the transfer, Agcaoili agreed: (*a*) to pay Interchem ₱150,000.00 upon signing of the deed of transfer; (*b*) to update the account by paying to FDC the amount of ₱15,473.17 through a 90 day-postdated check; and (*c*) to deliver to FDC the balance of ₱137,286.83 in 135 equal monthly installments of ₱1,857.24 effective October 1980, inclusive of 12% interest *per annum* on the diminishing balance. The obligations Agcaoili assumed totaled ₱302,760.00.[6]

In December 1983, the centralized air-conditioning unit of FSB's fourth floor broke down.[7] On January 3, 1984, Agcaoili, being thereby adversely affected, wrote to Eduardo X. Genato (Genato), vice-president and board member of FSCC, demanding the repair of the air-conditioning unit.[8] Not getting any immediate response, Agcaoili sent follow-up letters to FSCC reiterating the demand, but the letters went unheeded. He then informed FDC and FSCC that he was suspending the payment of his condominium dues and monthly amortizations.[9]

On August 30, 1984, FDC cancelled the contract to sell involving Unit 411 and cut off the electric supply to the unit. Agcaoili was thus prompted to sue FDC and FSCC in the RTC, Makati City, Branch 144 for injunction and damages.[10] The parties later executed a compromise agreement that the RTC approved through its decision of August 26, 1985. As stipulated in the compromise agreement, Agcaoili paid FDC the sum of ₱39,002.04 as amortizations for the period from November 1983

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[5] *Id.*, pp. 9-11.

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

[7] *Id.*, pp. 2-3 and 63.

[8] *Id.*, p. 32.

[9] *Id.*, pp. 33-45.

[10] *Id.*, pp. 4-5 and 63-64.

to July 1985; and also paid FSCC an amount of ₱17,858.37 for accrued condominium dues, realty taxes, electric bills, and surcharges as of March 1985. As a result, FDC reinstated the contract to sell and allowed Agcaoili to temporarily install two window-type air-conditioners in Unit 411.[11]

On April 22, 1986, FDC again disconnected the electric supply of Unit 411.[12] Agcaoili thus moved for the execution of the RTC decision dated August 26, 1985.[13] On July 17, 1986, the RTC issued an order temporarily allowing Agcaoili to obtain his electric supply from the other units in the fourth floor of FSB until the main meter was restored.[14]

On March 6, 1987, Agcaoili lodged a complaint for damages against FDC and FSCC in the RTC, which was raffled to Branch 150 in Makati City. He alleged that the disconnection of the electric supply of Unit 411 on April 22, 1986 had unjustly deprived him of the use and enjoyment of the unit; that the disconnection had seriously affected his law practice and had caused him sufferings, inconvenience and embarrassment; that FDC and FSCC violated the compromise agreement; that he was entitled to actual damages amounting to ₱21,626.60, as well as to moral and exemplary damages, and attorney's fees as might be proven during the trial; that the payment of interest sought by FDC and FSCC under the contract to sell was illegal; and that FDC and FSCC were one and the same corporation. He also prayed that FDC and FSCC be directed to return the excessive amounts collected for real estate taxes.[15]

In its answer, FDC contended that it had a personality separate from that of FSCC; that it had no obligation or liability in favor of Agcaoili; that FSCC, being the manager of FSB and the title-holder over its common areas, was in charge of maintaining all

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[11] *Id.*, pp. 46-48.

[12] *Id.*, pp. 6 and 64.

[13] *Id.*, pp. 6 and 64.

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

[15] *Id.*, pp. 1-8.

central and appurtenant equipment and installations for utility services (like air-conditioning unit, elevator, light and others); that Agcaoili failed to comply with the terms of the contract to sell; that despite demands, Agcaoili did not pay the amortizations due from November 1983 to March 1985 and the surcharges, the total amount of which was ₱376,539.09; that due to the non-payment, FDC cancelled the contract to sell and forfeited the amount of ₱219,063.97 paid by Agcaoili, applying the amount to the payment of liquidated damages, agent's commission, and interest; that it demanded that Agcaoili vacate Unit 411, but its demand was not heeded; that Agcaoili did not pay his monthly amortizations of ₱1,883.84 from October 1985 to May 1986, resulting in FSCC being unable to pay the electric bills on time to the Manila Electric Company resulting in the disconnection of the electric supply of FSB; that it allowed Agcaoili to obtain electric supply from other units because Agcaoili promised to settle his accounts but he reneged on his promise; that Agcaoili's total obligation was ₱55,106.40; that Agcaoili's complaint for damages was baseless and was intended to cover up his delinquencies; that the interest increase from 12% to 24% *per annum* was authorized under the contract to sell in view of the adverse economic conditions then prevailing in the country; and that the complaint for damages was barred by the principle of *res judicata* because the issues raised therein were covered by the RTC decision dated August 26, 1985.

As compulsory counterclaim, FDC prayed for an award of moral and exemplary damages each amounting to ₱1,000,000.00, attorney's fees amounting to ₱100,000.00 and costs of suit.[16]

On its part, FSCC filed an answer, admitting that the electric supply of Unit 411 was disconnected for the second time on April 22, 1986, but averring that the disconnection was justified because of Agcaoili's failure to pay the monthly amortizations and condominium dues despite repeated demands. It averred that it did not repair the air-conditioning unit because of dwindling collections caused by the failure of some unit holders to pay their obligations on time; that the unit holders were notified of

[16] *Id.*, pp. 63-70.

the electricity disconnection; and that the electric supply of Unit 411 could not be restored until Agcaoili paid his condominium dues totaling ₱14,701.16 as of April 1987. [17]

By way of counterclaim, FSCC sought moral damages and attorney's fees of ₱100,000.00 and ₱50,000.00, respectively, and cost of suit.[18]

On August 28, 1998, the RTC rendered judgment in favor of Agcaoili, holding that his complaint for damages was not barred by *res judicata*; that he was justified in suspending the payment of his monthly amortizations; that FDC's cancellation of the contract to sell was improper; that FDC and FSCC had no separate personalities; and that Agcaoili was entitled to damages. The RTC disposed thuswise:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and as against both defendants, declaring the increased rates sought by defendants to be illegal, and ordering defendant FDC/FSCC to reinstate the contract to sell, as well as to provide/restore the air-conditioning services/electric supply to plaintiff's unit. Both defendants are likewise ordered to pay plaintiff:
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> a. The amount of ₱21,626.60 as actual damages;
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> b. ₱500,000.00 as moral damages;
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> c. ₱50,000.00 as exemplary damages; and
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> d. ₱50,000.00 as and for attorney's fees.
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> and to return to plaintiff the excess amount collected from him for real estate taxes.
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> SO ORDERED.[19]

FDC appealed, but the CA affirmed the RTC.[20] Hence, FDC comes to us on further appeal.[21]

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[17] *Id.*, pp. 78-80.

[18] *Id.*, pp. 78-80.

[19] RTC records, Volume II, pp. 1116-1128.

[20] *Rollo*, pp. 31-41.

[21] *Id.*, pp. 6-29.

Issues

FDC claims that there was a failure to pay the correct amount of docket fee herein because the complaint did not specify the amounts of moral damages, exemplary damages, and attorney's fees; that the payment of the prescribed docket fee by Agcaoili was necessary for the RTC to acquire jurisdiction over the case; and that, consequently, the RTC did not acquire jurisdiction over this case.

FDC also claims that the proceedings in the RTC were void because the jurisdiction over the subject matter of the action pertained to the Housing and Land Use Regulatory Board (HLURB); and that both the RTC and the CA erred in ruling: (*a*) that Agcaoili had the right to suspend payment of his monthly amortizations; (*b*) that FDC had no right to cancel the contract to sell; and (*c*) that FDC and FSCC were one and same corporation, and as such were solidarily liable to Agcaoili for damages.[22]

Ruling

The petition has no merit.

I

The filing of the complaint or other initiatory pleading *and* the payment of the prescribed docket fee are the acts that vest a trial court with jurisdiction over the claim.[23] In an action where the reliefs sought are purely for sums of money and damages, the docket fees are assessed on the basis of the aggregate amount being claimed.[24] Ideally, therefore, the complaint or similar pleading must specify the sums of money to be recovered and the damages being sought in order that the clerk of court may be put in a position to compute the correct amount of docket fees.

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[22] *Id.*, p. 13.

[23] *Sun Insurance Office, Ltd., (SIOL) vs. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

[24] *Tacay vs. Regional Trial Court of Tagum, Davao Del Norte*, G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433, 443.

If the amount of docket fees paid is insufficient in relation to the amounts being sought, the clerk of court or his duly authorized deputy has the responsibility of making a deficiency assessment, and the plaintiff will be required to pay the deficiency.[25] The non-specification of the amounts of damages does not immediately divest the trial court of its jurisdiction over the case, provided there is no bad faith or intent to defraud the Government on the part of the plaintiff.[26]

The prevailing rule is that if the correct amount of docket fees are not paid *at the time of filing*, the trial court still acquires jurisdiction upon full payment of the fees *within a reasonable time* as the court may grant, *barring prescription*.[27] The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in every case the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the *Civil Code*, the principal law on prescription of actions.[28]

In *Rivera v. Del Rosario*,[29] the Court, resolving the issue of the failure to pay the correct amount of docket fees due to the inadequate assessment by the clerk of court, ruled that jurisdiction over the complaint was still validly acquired upon the full payment of the docket fees assessed by the Clerk of Court. Relying on

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[25] *Rivera vs. Del Rosario*, G.R. No. 144934, January 15, 2004, 419 SCRA 626, 635.

[26] *Lu vs. Lu Ym, Sr., et al*, G.R. No. 153690, February 15, 2011*; Intercontinental Broadcasting Corporation vs. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339, 350.

[27] *Ballatan v. Court of Appeals*, G.R. No. 125683, March 2, 1999, 304 SCRA 34; citing *Tacay v. RTC of Tagum, Davao del Norte*, G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433, 444; *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

[28] *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 88353, May 8, 1992, 208 SCRA 652; *Pantranco North Express, Inc. v. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477.

[29] G.R. No. 144934, January 15, 2004, 419 SCRA 626, 634-635.

Sun Insurance Office, Ltd., (SIOL) v. Asuncion,[30] the Court opined that the filing of the complaint or appropriate initiatory pleading *and* the payment of the prescribed docket fees vested a trial court with jurisdiction over the claim, and although the docket fees paid were insufficient in relation to the amount of the claim, the clerk of court or his duly authorized deputy retained the responsibility of making a *deficiency* assessment, and the party filing the action could be required to pay the deficiency, *without jurisdiction being automatically lost*.

Even where the clerk of court fails to make a *deficiency assessment*, and the deficiency is not paid as a result, the trial court nonetheless *continues* to have jurisdiction over the complaint, unless the party liable is guilty of a fraud in that regard, considering that the deficiency will be collected as a fee in lien within the contemplation of Section 2,[31] Rule 141 (as revised by A.M. No. 00-2-01-SC).[32] The reason is that to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith.

Herein, the docket fees paid by Agcaoili were insufficient considering that the complaint did not specify the amounts of moral damages, exemplary damages and attorney's fees. Nonetheless, it is not disputed that Agcaoili paid the *assessed* docket fees. Such payment negated bad faith or intent to defraud the Government.[33] Nonetheless, Agcaoili must remit any docket fee deficiency to the RTC's clerk of court.

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[30] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

[31] Section 2. *Fees in lien*. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. (n)

[32] *Resolution Amending Rule 141 (Legal Fees) of the Rules of Court*; effective March 1, 2000.

[33] *Intercontinental Broadcasting Corporation vs. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339, 350.

II

FDC is now barred from asserting that the HLURB, not the RTC, had jurisdiction over the case. As already stated, Agcaoili filed a complaint against FDC in the RTC on February 28, 1985 after FDC disconnected the electric supply of Unit 411. Agcaoili and FDC executed a compromise agreement on August 16, 1985. The RTC approved the compromise agreement through its decision of August 26, 1985. In all that time, FDC never challenged the RTC's jurisdiction nor invoked the HLURB's authority. On the contrary, FDC apparently recognized the RTC's jurisdiction by its voluntary submission of the compromise agreement to the RTC for approval. Also, FDC did not assert the HLURB's jurisdiction in its answer to Agcaoili's second complaint (filed on March 6, 1987). Instead, it even averred in that answer that the decision of August 26, 1985 approving the compromise agreement already barred Agcaoili from filing the second complaint under the doctrine of *res judicata*. FDC also thereby sought affirmative relief from the RTC through its counterclaim.

FDC invoked HLURB's authority only on September 10, 1990,[34] or more than five years from the time the prior case was commenced on February 28, 1985, and after the RTC granted Agcaoili's motion to enjoin FDC from cancelling the contract to sell.[35]

The principle of estoppel, which is based on equity and public policy,[36] dictates that FDC's active participation in both RTC proceedings and its seeking therein affirmative reliefs now precluded it from denying the RTC's jurisdiction. Its acknowledgment of the RTC's jurisdiction and its subsequent denial of such jurisdiction only after an unfavorable judgment were inappropriate and intolerable. The Court abhors the practice of any litigant of submitting a case for decision in the trial court, and then accepting

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[34] Original records, Volume I, pp. 367-369.

[35] *Id.*, pp. 308-311.

[36] *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 793.

the judgment only if favorable, but attacking the judgment for lack of jurisdiction if it is not.[37]

III

In upholding Agcaoili's right to suspend the payment of his monthly amortizations due to the increased interest rates imposed by FDC, and because he found FDC's cancellation of the contract to sell as improper, the CA found and ruled as follows:

> It is the contention of the appellee that he has the right to suspend payments since the increase in interest rate imposed by defendant-appellant FDC is not valid and therefore cannot be given legal effect. Although Section II, paragraph d of the Contract to Sell entered into by the parties states that, "should there be an increase in bank interest rate for loans and/or other financial accommodations, the rate of interest provided for in this contract shall be automatically amended to equal the said increased bank interest rate, the date of said amendment to coincide with the date of said increase in interest rate," the said increase still needs to [be] accompanied by valid proofs and not one of the parties must unilaterally alter what was originally agreed upon. However, FDC failed to substantiate the alleged increase with sufficient proof, thus we quote with approval the findings of the lower court, to wit:
>
> "In the instant case, defendant FDC failed to show by evidence that it incurred loans and /or other financial accommodations to pay interest for its loans in developing the property. Thus, the increased interest rates said defendant is imposing on plaintiff is not justified, and to allow the same is tantamount to unilaterally altering the terms of the contract which the law proscribes. Article 1308 of the Civil Code provides:
>
> Art. 1308 – The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."
>
> For this reason, the court sees no valid reason for defendant FDC to cancel the contract to sell on ground of default or non-payment of monthly amortizations." (RTC *rollo*, pp. 79-80)

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[37] *Bank of the Philippine Islands v. ALS Management & Development Corporation*, G.R. No. 151821, April 14, 2004, 564, 575.

It was also grave error on the part of the FDC to cancel the contract to sell for non-payment of the monthly amortizations without taking into consideration Republic Act 6552, otherwise known as the Maceda Law. The policy of law, as embodied in its title, is "to provide protection to buyers of real estate on installment payments." As clearly specified in Section 3, the declared public policy espoused by Republic Act No. 6552 is "to protect buyers of real estate on installment payments against onerous and oppressive conditions." Thus, in order for FDC to have validly cancelled the existing contract to sell, it must have first complied with Section 3 (b) of RA 6552. FDC should have refund the appellee the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made. At this point, we, find no error on the part of the lower court when it ruled that:

> "There is nothing in the record to show that the aforementioned requisites for a valid cancellation of a contract where complied with by defendant FDC. Hence, the contract to sell which defendant FDC cancelled as per its letter dated August 17, 1987 remains valid and subsisting. Defendant FDC cannot by its own forfeit the payments already made by the plaintiff which as of the same date amounts to ₱263,637.73."(RTC *rollo*, p. 81)[38]

We sustain the aforequoted findings and ruling of the CA, which were supported by the records and relevant laws, and were consistent with the findings and ruling of the RTC. Factual findings and rulings of the CA are binding and conclusive upon this Court if they are supported by the records and coincided with those made by the trial court.[39]

FDC's claim that it was distinct in personality from FSCC is unworthy of consideration due to its being a question of fact that cannot be reviewed under Rule 45.[40]

Among the obligations of FDC and FSCC to the unit owners or purchasers of FSB's units was the duty to provide a centralized

[38] *Rollo*, pp. 37-38.

[39] *W-Red Construction and Development Corp. vs. Court of Appeals*, G.R. No. 122648, August 17, 2000, 338 SCRA 341, 345.

[40] *Durano vs. Uy*, G.R. No. 136456, October 24, 2000; *Mirasol vs. Court of Appeals*, G.R. No. 128448, February 1, 2001.

air-conditioning unit, lighting, electricity, and water; and to maintain adequate fire exit, elevators, and cleanliness in each floor of the common areas of FSB.[41] But FDC and FSCC failed to repair the centralized air-conditioning unit of the fourth floor of FSB despite repeated demands from Agcaoili.[42] To alleviate the physical discomfort and adverse effects on his work as a practicing attorney brought about by the breakdown of the air-conditioning unit, he installed two window-type air-conditioners at his own expense.[43] Also, FDC and FSCC failed to provide water supply to the comfort room and to clean the corridors.[44] The fire exit and elevator were also defective.[45] These defects, among other circumstances, rightly compelled Agcaoili to suspend the payment of his monthly amortizations and condominium dues. Instead of addressing his valid complaints, FDC disconnected the electric supply of his Unit 411 and unilaterally increased the interest rate without justification.[46]

Clearly, FDC was liable for damages. Article 1171 of the *Civil Code* provides that those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof are liable for damages.

WHEREFORE, we *DENY* the petition for review; *AFFIRM* the decision of the Court of Appeals; and *DIRECT* the Clerk of Court of the Regional Trial Court, Makati City, Branch 150, or his duly authorized deputy to assess and collect the additional docket fees from the respondent as fees in lien in accordance with Section 2, Rule 141 of the *Rules of Court*.

SO ORDERED.

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

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[41] TSN, September 5, 1994, pp. 6-8.

[42] Original records, Volume I, pp. 32-45.

[43] TSN, September 5, 1994, pp. 10 and 21.

[44] TSN, November 4, 1994, p. 24.

[45] TSN, February 15, 1995, p. 10.

[46] Original records, Volume I, pp. 4-6 and 63-70.

FIRST DIVISION

[G.R. No. 170728. August 31, 2011]

D.M. WENCESLAO AND ASSOCIATES, INC., *petitioner, vs.* **CITY OF PARAÑAQUE, PARAÑAQUE CITY ASSESSOR, PARAÑAQUE CITY TREASURER and PARAÑAQUE CITY COUNCIL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DOCKET FEES; FAILURE TO PAY CORRECT APPELLATE DOCKET FEES WITHIN THE PRESCRIBED PERIOD WARRANTS DISMISSAL OF THE APPEAL. — It bears stressing that payment of docket and other fees within this period is mandatory for the perfection of the appeal. Otherwise, the right to appeal is lost. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court. The payment of appellate docket fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from becomes final and executory as if no appeal was filed. We held in one case that the CA correctly dismissed the appeal where the docket fees were not paid in full within the prescribed period of fifteen (15) days but were paid forty-one (41) days late due to inadvertence, oversight, and pressure of work. In another case, we ruled that no appeal was perfected where half of the appellate docket fee was paid within the prescribed period, while the other half was tendered after the period within which payment should have been made. Evidently, where the appellate docket fee is not paid in full within the reglementary period, the decision of the trial court becomes final and no longer susceptible to an appeal. For once a decision becomes final, the appellate court is without jurisdiction to entertain the appeal. Moreover, pursuant to Section 1, Rule 50 of the 1997 Rules of Civil Procedure, as amended, the CA, on its own motion or that of the appellee, may dismiss the appeal on the ground that appellant failed to pay the docket and other lawful fees.

2. ID.; ID.; ID.; ID.; FAILURE TO PAY DOCKET FEES ON TIME DUE TO COUNSEL'S HEAVY WORKLOAD DOES NOT JUSTIFY RELAXATION OF THE RULES. — With regard to petitioner's plea for a liberal treatment of the rules in order to promote substantial justice, the Court finds the same to be without merit. It is true that the rules may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures. However, it must be stressed that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed. In this case, petitioner has not shown any reason such as fraud, accident, mistake, excusable negligence, or a similar supervening casualty which should justify the relaxation of the rules. The explanation advanced by petitioner's counsel that the failure to pay the appellate docket and other legal fees within the prescribed period was due to his extremely heavy workload and by excusable inadvertence does not convince us.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda Law Offices for petitioner.

Kyan John B. Sioco & Roderick B. Morales for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Challenged in this petition for review on *certiorari* are the October 15, 2004 and November 24, 2005 Resolutions[1] of the Court of Appeals (CA) in CA-G.R. CV UDK No. 9532-D. The CA dismissed the appeal of D.M. Wenceslao and Associates, Inc. from the Order[2] of the Regional Trial Court (RTC) of

[1] *Rollo*, pp. 22, 24-26. Penned by Associate Justice Santiago Javier Ranada with Associate Justices Marina L. Buzon and Mario L. Guariña III concurring.

[2] *Id.* At 80-82. Penned by Judge Fortunito L. Madrona.

Parañaque City in Civil Case No. 03-048 for nonpayment of docket and other lawful fees.

The facts are as follows:

Petitioner D.M. Wenceslao and Associates, Inc. is a domestic corporation engaged in the construction business. It is the registered owner of more than 200,000 square meters of reclaimed land in Barangay Tambo, Parañaque City, now known as the Aseana Business Park.

In 1996, the City of Parañaque passed Ordinance No. 96-16, providing for the market values of the properties within its jurisdiction as basis for assessment and real property taxation. The ordinance also provided for a discount of 70% of the base value of the developed lots in the area, for low, sunken and undeveloped parcels of land, such as the lots reclaimed and owned by petitioner.

The City Assessor of Parañaque, however, assessed petitioner's lots based on the rates applicable to Barangay Baclaran, which rates were higher than those applicable to properties in Barangay Tambo. Petitioner informed the City Assessor of the wrongful assessment in 1998; hence, starting on the 3rd quarter of 1998, the Tambo rates were used, although petitioner claimed that the discount provision in the ordinance was still not applied.

Subsequently, the City Treasurer declared petitioner's properties delinquent and included them in the auction sale scheduled on February 7, 2003. On February 4, 2003, petitioner filed with the RTC of Parañaque City a Complaint[3] for collection of excess real property taxes and damages with prayer for the issuance of a temporary restraining order and/or preliminary injunction seeking to restrain respondents from enforcing the foreclosure sale. The RTC denied petitioner's prayer for the issuance of a writ of preliminary injunction. Thus, to prevent its properties from being auctioned, petitioner paid under protest the amount of ₱101,422,581.75 on February 7, 2003.[4] Said payment brought

[3] Docketed as Civil Case No. 03-048.

[4] *Rollo,* pp. 78-79.

the total amount of real property taxes paid by petitioner to ₱111,424,157.10 for the taxable years 1995 to 2002.

On March 20, 2003[5] petitioner amended its complaint. Essentially, petitioner argued that had the correct assessment been made, it should have paid only ₱6,172,979.51[6] instead of ₱111,424,157.10[7] to the City of Parañaque. Petitioner argued

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[5] *Id.* at 30-75.

[6] *Id.* at 52, 55.

TCT No.	**Amount** (1995 to 1999)	**Amount** (2001-2002)	
134310	₱223,898.44		
104641	256,255.11		
134311	145,913.96		
99880	530,124.33		
95325	199,614.24		
100815	194,040.00		
100816	194,040.00		
100817	194,040.00		
100818	149,798.88		
104639	198,151.29		
104640	198,659.33		
104642	318,252.85		
104643	198,941.57		
101006	1,191,491.84		
146915		988,149.77	
146916		991,607.90	
Total	₱4,193,221.84	₱1,979,757.67	**₱6,172,979.51**

[7] *Id.* at 48, 53.

TCT No.	**Amount** (1995 to 1999)	**Amount** (2001-2002)
134310	₱5,140,525.50	
104641	5,883,408.00	
134311	3,350,065.50	
99880	12,171,222.00	
95325	4,582,980.00	
100815	4,455,000.00	
100816	4,455,000.00	
100817	4,455,000.00	
100818	3,439,260.00	
104639	4,549,392.00	

that pursuant to Ordinance No. 96-16, the properties located in Barangay Tambo should have been assessed based on the market value of ₱3,000.00 for the years 1995 to 1996 and ₱4,000.00 for the years 1997 to 1999. However, the City Assessor used the market value applicable to properties located in Barangay Baclaran, which were subject to a higher rate. Petitioner also pointed out that the ordinance provided that undeveloped parcels of land shall have 70% of the base value of the nearest developed or improved lots located in that area. Thus, petitioner claimed that the City of Parañaque is liable to return the excess realty taxes under the principle of *solutio indebiti*.

Respondents filed a motion to dismiss based on the following grounds: (1) the cause of action is barred by prior judgment or by the statute of limitations; (2) the court has no jurisdiction over the subject matter of the claim; and (3) the complaint is filed in violation of the rule on forum shopping. Respondents contended that petitioner's cause of action based on *solutio indebiti* is in reality a smoke screen to its real intention which is to claim for tax refund. As such, petitioner's action has already prescribed pursuant to the provisions of the Local Government Code.

On November 20, 2003, the RTC issued an Order granting the motion to dismiss. It found that petitioner's cause of action was really based on Section 253[8] of the Local Government

104640	4,561,056.00		
104642	7,306,825.50		
104643	4,567,536.00		
101006	27,355,680.00		
146915		₱ 7,562,370.60	
146916		7,588,836.00	
Total	₱96,272,950.50	₱ 15,151,206.60	**₱111,424,157.10**

[8] SEC. 253. *Repayment of Excessive Collections*.–When an assessment of basic real property tax or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

x x x x x x x x x

Code. As such, petitioner's cause of action had already prescribed inasmuch as the allegations in the complaint show that the alleged overpayment of real property tax occurred in 1995-1999 and 2001-2002 while the complaint was only filed in February 4, 2003. Moreover, the RTC ruled that the action to undo the alleged wrong tax assessments and collections in order to ask for refund would make the court do a technical job reserved for special administrative bodies like the Local Board of Assessment Appeals and the Central Board of Assessment Appeals.

Petitioner sought reconsideration of the order, but its motion was denied by the RTC on May 4, 2004.[9]

On May 17, 2004, petitioner filed a Notice of Appeal,[10] which was approved by the RTC on May 24, 2004.[11] Accordingly, the Branch Clerk of Court was directed to transmit the entire records of the case to the CA.

As earlier mentioned, the CA dismissed petitioner's appeal in a Resolution dated October 15, 2004, to wit:

> For failure of plaintiff-appellant to pay the required docketing fees, the appeal interposed in this case is deemed abandoned and is accordingly DISMISSED.
>
> SO ORDERED.[12]

Petitioner filed a motion for reconsideration[13] alleging that it never intended to abandon its appeal. It explained that because of extremely heavy workload and by excusable inadvertence, petitioner's counsel overlooked the fact that the required appeal fee was not paid at the time of the filing of the notice of appeal. Petitioner also informed the CA that its counsel had already paid the appeal fee of ₱3,000 on October 20, 2004.

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[9] *Rollo*, p. 83.

[10] *Id.* at 84-85.

[11] *Id.* at 86.

[12] *Id.* at 22.

[13] *Id.* at 90-97.

In a Resolution dated November 24, 2005, the CA denied petitioner's motion for reconsideration, thus:

> WHEREFORE, plaintiff-appellant's motion for reconsideration is DENIED for lack of sufficient merit.
>
> SO ORDERED.[14]

The CA held that it could no longer reconsider the October 15, 2004 Resolution considering that the appealed dismissal order of the trial court has become final and executory due to petitioner's failure to perfect the appeal by paying the docket fees on time. It explained that although there are recognized circumstances that warrant the relaxation of the rules on payment of docket fees, such as fraud, accident, mistake, excusable negligence, or a similar supervening casualty, the heavy workload and inadvertence of counsel are not among them. The CA also noted that in this case, petitioner was delayed in the payment of the docket fees for five months counted from the filing of the notice of appeal. Finding no justifiable reason for such delay, the CA ruled that it can no longer accept such payment.

Undaunted, petitioner filed the instant petition before this Court.

The sole issue for our resolution is whether the CA erred in dismissing petitioner's appeal for late payment of docket fees.

Petitioner contends that it immediately paid the appeal fee of ₱3,000 on October 20, 2004 after having been advised of its nonpayment, and such action negates the theory that it intended to abandon its appeal. Petitioner adds that it would not abandon its case to recover the amount of ₱105,251,177.59 especially after it had paid ₱2,111,914.30 in docket and other legal fees. Petitioner argues that the court, in the exercise of its equity jurisdiction and liberally applying the rules of procedure, may give due course to the appeal despite its failure to pay the docket fees within the reglementary period.

On the other hand, respondents counter that petitioner failed to perfect its appeal. They stress that under Section 4, Rule 41

[14] *Id.* at 26.

of the 1997 Rules of Civil Procedure, as amended, petitioner should have paid the appellate docket fees within the period to appeal or within fifteen (15) days from notice of the judgment appealed from. Moreover, the payment of appellate docket and other legal fees within the prescribed period is both mandatory and jurisdictional. Since the payment of the docket fees was made more than one-hundred fifty (150) days after the expiration of the period for the perfection of an appeal, the CA did not acquire jurisdiction over the case except to order its dismissal.

We agree with respondents' contention.

The rule that appellate court docket and other lawful fees must be paid within the period for taking an appeal is stated in Section 4, Rule 41 of the 1997 Rules of Civil Procedure, as amended:

> 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.

Likewise, Section 3, Rule 41, of the same Rules state:

> SEC. 3. *Period of ordinary appeal, x x x.* - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x
>
> x x x x x x x x x

In this case, petitioner received a copy of the trial court's Order on May 14, 2004. Thus, pursuant to Section 3, Rule 41, in relation to Section 1,[15] Rule 22, it had until May 31, 2004

[15] SECTION 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

within which to perfect its appeal by filing within that period the notice of appeal and paying the appellate docket and other legal fees. On May 17, 2004, petitioner filed its notice of appeal within the reglementary period. We note, however, that it paid the required docket fees only on October 20, 2004, or late by almost five months.

It bears stressing that payment of docket and other fees within this period is mandatory for the perfection of the appeal. Otherwise, the right to appeal is lost. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court. The payment of appellate docket fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from becomes final and executory as if no appeal was filed.[16]

We held in one case that the CA correctly dismissed the appeal where the docket fees were not paid in full within the prescribed period of fifteen (15) days but were paid forty-one (41) days late due to inadvertence, oversight, and pressure of work.[17] In another case, we ruled that no appeal was perfected where half of the appellate docket fee was paid within the prescribed period, while the other half was tendered after the period within which payment should have been made.[18]

Evidently, where the appellate docket fee is not paid in full within the reglementary period, the decision of the trial court becomes final and no longer susceptible to an appeal. For once a decision becomes final, the appellate court is without jurisdiction to entertain the appeal.[19]

[16] *Caspe v. Court of Appeals*, G.R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[17] *Guevarra v. Court of Appeals*, No. L-43714, January 15, 1988, 157 SCRA 32.

[18] *Lee v. Republic*, No. L-15027, January 31, 1964, 10 SCRA 65, 67.

[19] *Province of Camarines Sur v. Heirs of Agustin Pato*, G.R. No. 151084, July 2, 2010, 622 SCRA 644, 652, citing *M.A. Santander Construction, Inc. v. Villanueva*, 484 Phil. 500, 505 (2004).

Moreover, pursuant to Section 1, Rule 50 of the 1997 Rules of Civil Procedure, as amended, the CA, on its own motion or that of the appellee, may dismiss the appeal on the ground that appellant failed to pay the docket and other lawful fees.[20] Section 1(c), Rule 50 of the Rules provides that:

> Section 1. *Grounds for dismissal of appeal*.–An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
>
> x x x x x x x x x
>
> (c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 4 of Rule 41;
>
> x x x x x x x x x

Pertinently, this Court's ruling in *Cu-Unjieng v. Court of Appeals*[21] is instructive:

> With the reality obtaining in this case that payment of the appellate docket fees was belatedly made four (4) months after the lapse of the period for appeal, it appears clear to us that the CA did not acquire jurisdiction over petitioner's appeal except to order its dismissal, as it rightfully did. Thus, the September 1, 1998 decision of the RTC has passed to the realm of finality and became executory by operation of law. (Underscoring ours.)

The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.

With regard to petitioner's plea for a liberal treatment of the rules in order to promote substantial justice, the Court finds the same to be without merit. It is true that the rules may be relaxed for persuasive and weighty reasons to relieve a litigant

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[20] See *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000, 330 SCRA 208, 210.

[21] G.R. No. 139596, January 24, 2006, 479 SCRA 594, 603-604.

from an injustice commensurate with his failure to comply with the prescribed procedures.[22] However, it must be stressed that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed.[23]

In this case, petitioner has not shown any reason such as fraud, accident, mistake, excusable negligence, or a similar supervening casualty which should justify the relaxation of the rules.[24] The explanation advanced by petitioner's counsel that the failure to pay the appellate docket and other legal fees within the prescribed period was due to his extremely heavy workload and by excusable inadvertence does not convince us.

WHEREFORE, the petition is *DENIED*. The Resolutions dated October 15, 2004 and November 24, 2005 of the Court of Appeals in CA-G.R. CV UDK 9532-D are hereby *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[22] *Navarro v. Metropolitan Bank and Trust Co.*, G.R. No. 138031, May 27, 2004, 429 SCRA 439, 446.

[23] *Meatmasters International Corporation v. Lelis Integrated Development Corporation*, G.R. No. 163022, February 28, 2005, 452 SCRA 626, 633, citing *Lazaro v. Court of Appeals, supra* note 20 at 214.

[24] See *Yambao v. Court of Appeals*, G.R. No. 140894, November 27, 2000, 346 SCRA 141, 147.

[*] Designated additional member per Raffle dated August 24, 2011 vice Associate Justice Mariano C. Del Castillo who recused himself from the case due to close relation to one of the parties.

FIRST DIVISION

[G.R. No. 173792. August 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSARIO "ROSE" OCHOA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042); ILLEGAL RECRUITMENT; REQUISITE, PRESENT. — It is well-settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that she had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed. All eight private complainants herein consistently declared that Ochoa offered and promised them employment overseas. Ochoa required private complainants to submit their bio-data, birth certificates, and passports, which private complainants did. Private complainants also gave various amounts to Ochoa as payment for placement and medical fees as evidenced by the receipts Ochoa issued to Gubat, Cesar, and Agustin. Despite private complainants' compliance with all the requirements Ochoa specified, they were not able to leave for work abroad. Private complainants pleaded that Ochoa return their hard-earned money, but Ochoa failed to do so.

2. ID.; ID.; ID.; THAT THE ACCUSED IS UNLICENSED TO RECRUIT MAY BE PROVED BY POEA CERTIFICATION. — In the case at bar, the POEA certification was signed by Dir. Mateo of the POEA Licensing Branch. Although Dir. Mateo himself did not testify before the RTC, the prosecution still presented Cory, Dir. Mateo's subordinate at the POEA Licensing Branch, to verify Dir. Mateo's signature.

3. ID.; ID.; ID.; AN ACCUSED, WHETHER LICENSED OR NOT, MAY STILL BE LIABLE FOR ILLEGAL RECRUITMENT FOR FAILURE TO REIMBURSE EXPENSES INCURRED BY THE WORKER WHERE DEPLOYMENT DOES NOT ACTUALLY TAKE PLACE. — Ochoa could still be convicted of illegal recruitment even if we disregard the POEA

certification, for regardless of whether or not Ochoa was a licensee or holder of authority, she could still have committed illegal recruitment. Section 6 of Republic Act No. 8042 clearly provides that any person, **whether a non-licensee, non-holder, licensee or holder of authority** may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault." Ochoa committed illegal recruitment as described in the said provision by receiving placement and medical fees from private complainants, evidenced by the receipts issued by her, and failing to reimburse the private complainants the amounts they had paid when they were not able to leave for Taiwan and Saudi Arabia, through no fault of their own.

4. ID.; ID.; ID.; ILLEGAL RECRUITMENT CONSTITUTING ECONOMIC SABOTAGE, COMMITTED; PENALTY. — Under the last paragraph of Section 6 of Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group. Here, there are eight private complainants who convincingly testified on Ochoa's acts of illegal recruitment. In view of the overwhelming evidence presented by the prosecution, we uphold the verdict of the RTC, as affirmed by the Court of Appeals, that Ochoa is guilty of illegal recruitment constituting economic sabotage. Section 7(b) of Republic Act No. 8042 provides that the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 shall be imposed when the illegal recruitment constitutes economic sabotage.

5. ID.; ID.; RA 8042 IN RELATION TO LABOR CODE AND REVISED PENAL CODE; A PERSON MAY BE CONVICTED SEPARATELY OF ILLEGAL RECRUITMENT AND ESTAFA; ELEMENTS OF ESTAFA, PRESENT. — It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042, in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code. x x x The elements of

estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Both elements are present in Criminal Case Nos. 98-77301, 98-77302, and 98-77303. Ochoa's deceit was evident in her false representation to private complainants Gubat, Cesar, and Agustin that she possessed the authority and capability to send said private complainants to Taiwan/Saudi Arabia for employment as early as one to two weeks from completion of the requirements, among which were the payment of placement fees and submission of a medical examination report. Ochoa promised that there were already existing job vacancies overseas for private complainants, even quoting the corresponding salaries. Ochoa carried on the deceit by receiving application documents from the private complainants, accompanying them to the clinic for medical examination, and/or making them go to the offices of certain recruitment/placement agencies to which Ochoa had actually no connection at all. Clearly deceived by Ochoa's words and actions, private complainants Gubat, Cesar, and Aquino were persuaded to hand over their money to Ochoa to pay for their placement and medical fees. Sadly, private complainants Gubat, Cesar, and Aquino were never able to leave for work abroad, nor recover their money.

6. ID.; ID.; ID.; ID.; PENALTY FOR ESTAFA DEPENDS ON THE AMOUNT OF DEFRAUDATION. — It was established by evidence that in Criminal Case No. 98-77301, Gubat was defrauded by Ochoa in the amount of ₱15,000.00; in Criminal Case No. 77-98302, Cesar paid Ochoa the sum of ₱17,000.00; and in Criminal Case No. 77-98303, Agustin handed over to Ochoa a total of ₱28,000.00. The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of the fraud is over ₱12,000.00 but not exceeding ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum (*i.e.*, from 4 years, 2 months and 1 day to 8 years). If the amount of fraud exceeds ₱22,000.00, the aforementioned penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Francis M. Egenias for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For Our consideration is an appeal from the Decision[1] dated March 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00888, which affirmed with modification the Decision[2] dated April 17, 2000 of the Regional Trial Court (RTC), Quezon City, Branch 104, in Criminal Case Nos. 98-77300 to 98-77303. The RTC found accused-appellant Rosario "Rose" Ochoa (Ochoa) guilty of illegal recruitment in large scale, as defined and penalized under Article II, Section 6 in relation to Section 7(b) of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," in Criminal Case No. 98-77300; and of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, in Criminal Case Nos. 98-77301, 98-77302, and 98-77303.

The Information filed before the RTC and docketed as Criminal Case No. 98-77300, charged Ochoa with illegal recruitment in large scale, allegedly committed as follows:

That on or about the period covering the months of February 1997 up to April 1998 or immediately before or subsequent thereto in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above name accused, did then and there willfully, unlawfully and feloniously recruit **Robert Gubat, Junior Agustin, Cesar Aquino, Richard Luciano, Fernando Rivera, Mariano R. Mislang, Helen B. Palogo, Joebert Decolongon, Corazon S. Austria, Cristopher A. Bermejo, Letecia D. Londonio, Alma Borromeo, Francisco Pascual, Raymundo A. Bermejo and Rosemarie A.**

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[1] *Rollo*, pp. 3-24; penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Fernanda Lampas Peralta and Arturo G. Tayag, concurring.

[2] CA *rollo*, pp. 26-60; penned by Judge Thelma A. Ponferrada.

Bermejo for a consideration ranging from **₱2,000.00** to **₱32,000.00** or a total amount of **₱124,000.00** as placement fee which the complainants paid to herein accused without the accused having secured the necessary license from the Department of Labor and Employment.[3] (Emphases supplied.)

Three other Informations were filed before the RTC and docketed as Criminal Case Nos. 98-77301, 98-77302, and 98-77303, this time charging Ochoa with three counts of estafa, committed separately upon three private complainants Robert Gubat (Gubat), Cesar Aquino (Cesar), and Junior Agustin (Agustin), respectively. The Information in Criminal Case No. 98-77301 accuses Ochoa of the following acts constituting estafa:

That on or about March 3, 1998 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above name accused did then and there willfully, unlawfully and feloniously recruit and promise employment in Taiwan to one **ROBERT GUBAT** for a consideration of **₱18,800.00** as placement fee, knowing that she has no power, capacity or lawful authority whatsoever and with no intention to fulfill her said promise, but merely as pretext, scheme or excuse to get and exact money from said complainant, as she did in fact collect and received the amount of ₱18,800.00 from said Robert Gubat, to his damage and prejudice.[4] (Emphases supplied.)

The two other Informations for estafa were similarly worded as the aforequoted Information, except as to the name of the private complainants and the amount purportedly collected by Ochoa from them, particularly:

Docket No.	**Private Complainant**	**Amount Collected**
Criminal Case No. 98-77302[5]	Cesar Aquino	₱19.000.00
Criminal Case No. 98-77303[6]	Junior Agustin	₱32,000.00

[3] *Id.* at 5.

[4] *Id.* at 7.

[5] *Id.* at 9.

[6] *Id.* at 11.

As prayed for by the State Prosecutor, all four criminal cases against Ochoa before the RTC were consolidated. When arraigned, Ochoa pleaded not guilty. Thereafter, joint trial of the four criminal cases ensued.

The prosecution presented as witnesses Cory Aquino (Cory) of the Philippine Overseas Employment Agency (POEA) and private complainants Gubat, Agustin, Francisco Pascual (Pascual), Rosemarie Bermejo (Rosemarie), Cesar, Christopher Bermejo (Christopher), Joebert Decolongon (Decolongon), and Fernando Rivera (Rivera).

According to private complainants, they were recruited by Ochoa from January to March 1998 for various jobs in either Taiwan or Saudi Arabia, under the following circumstances:

1. In the second week of February 1998, Ochoa was introduced to Robert Gubat, a licensed electrical engineer and a resident of Pulang Lupa, Las Piñas, through a certain Nila, Gubat's neighbor, who had a pending application for work abroad with Ochoa.Ochoa talked to Gubat on the telephone, and during their conversation, Ochoa told Gubat that one of her applicants was already leaving for Taiwan. Per Ochoa's instruction, Gubat met with Francisco Pascual, who accompanied him to Ochoa's house in San Bartolome, Novaliches, Quezon City, and personally introduced Gubat to Ochoa. Gubat submitted his résumé to Ochoa, which Ochoa would bring to Axil International Agency where Ochoa was working as a recruiter. Right after browsing through Gubat's résumé, Ochoa informed Gubat that as an engineer, Gubat was qualified to work as a factory supervisor and could leave for Taiwan in two weeks or in March 1998. Ochoa also told Gubat that the total application expenses would amount to ₱100,000.00, and the downpayment was ₱50,000.00. Gubat was able to actually pay Ochoa ₱18,800.00 as reservation fee at the agency; processing fee for Gubat's papers at the Department of Foreign Affairs (DFA), Malacañang, and Embassy of Taiwan; and medical examination fee.Ochoa, however, only issued to Gubat three receipts, dated March 3, March 31, and April 6, all in the year 1998, in the amount of ₱5,000.00 each or a total of ₱15,000.00.Gubat started to worry when he was not able to

leave for abroad as Ochoa promised and when she failed to show up at their arranged meetings. When Gubat was finally able to talk to Ochoa, Ochoa again promised him that he would be leaving for abroad soon. Despite Ochoa's renewed promise, Gubat was still not able to leave the country. Gubat then demanded that Ochoa return his documents and money.When Ochoa failed to comply with his demand, Gubat filed a report against Ochoa at Barangay (Brgy.) San Bartolome, Novaliches, Quezon City. On May 21, 1998, he met the other private complainants[7] who had similar complaints against Ochoa. When nothing came out of the confrontation with Ochoa at Brgy. San Bartolome, Gubat and the other private complainants filed a joint complaint against Ochoa before the National Bureau of Investigation (NBI).[8]

2. The paths of Junior Agustin and Ochoa crossed on February 2, 1998. Agustin, a farmer, was staying at the home of Pascual, his cousin, at No. 4 Gulod, Novaliches, Quezon City. When Ochoa arrived at Pascual's home, Pascual introduced Ochoa to Agustin as a recruiter for overseas workers in Taiwan. Interested in working abroad, Agustin submitted his bio-data to Ochoa at the latter's residence at Phase 1, Lot 3, San Bartolome, Novaliches, Quezon City. Ochoa promised Agustin that he would be fielded as a factory worker in Taiwan for three years, earning a monthly salary of ₱18,000.00. Ochoa then informed Agustin that the total placement fee for Taiwan is ₱80,000.00. Agustin initially paid Ochoa the sum of ₱28,000.00 as processing fee. Ochoa then promised that Agustin could leave for Taiwan in two months. However, the two months passed, but there was still no overseas employment for Agustin. Agustin was compelled to file a complaint against Ochoa at Brgy. San Bartolome, Novaliches, Quezon City.Agustin met the other private complainants during the *barangay* hearing on May 21, 1998. Ochoa was also present at said hearing. Given the unsuccessful

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[7] Robert Gubat, Cesar Aquino, Richard Luciano, Fernando Rivera, Mariano Mislang, Helen Palogo, Joebert Decolongon, Corazon Austria, Christopher Bermejo, Leticia Londonio, Alma Borromeo, Francisco Pascual, Reynaldo Bermejo and Rosemarie Bermejo. (TSN, September 21, 1998, pp. 11-12.)

[8] TSN, July 14, 1998, pp. 10-50; TSN, September 21, 1998, pp. 2-24.

barangay hearing, Agustin and the other private complainants lodged a complaint against Ochoa before the NBI.[9]

3. Francisco Pascual, presently jobless and a resident of Gulod, Novaliches, Quezon City, learned from a neighbor of one Mrs. Bermejo that her son was being helped by Ochoa, a recruiter, to find a job abroad. Pascual went to Mrs. Bermejo's house in January 1998, and met Ochoa for the first time. Ochoa invited Pascual to apply for a job abroad, saying that the latter could leave within two weeks. During Pascual's visit at Ochoa's house at Blk. 1, Lot 1, San Bartolome, Novaliches, Quezon City, Ochoa promised Pascual employment as a driver salesman in Saudi Arabia, with a monthly salary of ₱18,000.00. Ochoa told Pascual that the placement fee would be ₱7,000.00 and that Pascual should already have his medical examination so that the position in Saudi Arabia could be reserved for him. Since his visa had not yet arrived, Pascual did not pay any placement fee to Ochoa. Pascual did undergo medical examination at St. Peter Medical Clinic in Ermita, Manila, for which he paid ₱2,600.00 to Ochoa. Pascual though did not receive the results of his medical examination because according to Ochoa, the same was withheld by the clinic. Despite Ochoa's promises, Pascual was not able to leave for Saudi Arabia. At that time, Pascual was still employed as a Field Coordinator with Selecta, but because of his frequent absences, spent following-up on his application for work abroad, he was fired. Pascual filed a complaint against Ochoa at Brgy. San Bartolome, Novaliches, Quezon City. As nothing happened during the confrontation with Ochoa at the *barangay* hearing on May 21, 1998, Pascual and the other private complainants filed a complaint before the NBI.[10]

4. Rosemarie Bermejo came to know of Ochoa through Rivera, a friend of Rosemarie's mother. Rosemarie first met Ochoa at the latter's home in Quezon City sometime in January 1998. Rosemarie was promised by Ochoa employment for three years in Saudi Arabia as clerk/typist, earning US$400.00. Rosemarie was also instructed by Ochoa to have a medical

[9] TSN, September 21, 1998, pp. 25-43.

[10] TSN, September 28, 1998, pp. 2-14.

examination and secure a passport and NBI clearance. Rosemarie and her brothers, who also applied for jobs abroad, were accompanied by Ochoa to the St. Peter Medical Clinic in Malate, Manila for their medical examination on February 27, 1998. Rosemarie and her brother each handed over to Ochoa ₱2,600.00 for their medical examinations, and it was Ochoa who gave the payment to the clinic. Rosemarie and her brothers then spent ₱55.00 each to secure NBI clearances for travel abroad. In addition, Rosemarie gave Ochoa ₱5,500.00 on April 17, 1998; and although not secured by a receipt, said payment was witnessed by Rosemarie's mother and Imelda Panuga, the landlord of Rosemarie's mother, who lent Rosemarie the ₱5,500.00. During their initial meeting in January 1998, Ochoa said that Rosemarie could already leave for abroad in two weeks. Since Rosemarie was not able to complete the requirements, her departure for Saudi Arabia was moved to April 19, 1998. On April 19, 1998, Ochoa requested Rosemarie to go to the office of Al Arab Agency located at Jalandoni Building, Ermita, Manila, to which Ochoa was purportedly connected. Rosemarie waited at the Al Arab Agency until noon, but no one came to pick her up. Later, at the same day, Ochoa invited Rosemarie to her house for the birthday celebration of her father.There, Ochoa explained that Rosemarie was unable to leave for Saudi Arabia because the Al Arab Agency has yet to secure Rosemarie's Overseas Employment Certificate (OEC).Ochoa advised Rosemarie to stay at the rented apartment of Rosemarie's mother because it was close to Ochoa's house and would be more convenient as Rosemarie could leave for abroad any day soon.When none of Ochoa's promises came to fruition, Rosemarie, together with the other private complainants, first sought redress from Brgy. San Bartolome, Novaliches, Quezon City, and then from the NBI.[11]

5. It was Pascual who introduced Cesar Aquino, a resident of Cubao, to Ochoa at the latter's residence in San Bartolome, Novaliches, Quezon City, sometime in February 1998. When Cesar directly asked Ochoa if she was a recruiter, the latter answered in the affirmative. Cesar applied to work as a factory

[11] TSN, October 5, 1998, pp. 2-11.

worker in Taiwan. Ochoa told Cesar that as a factory worker, he could earn at least ₱15,000.00 a month. On March 13, 1998, Cesar handed over ₱17,000.00 to Ochoa to cover his processing fee and medical examination. On the same day, Cesar had his medical examination at St. Peter Medical Clinic. Ochoa then promised that Cesar could leave two weeks thereafter. When two weeks had passed and he was not able to leave for Taiwan, Cesar demanded that Ochoa return his money. Ochoa failed to comply with Cesar's demand, and Cesar instituted a complaint against Ochoa at Brgy. San Bartolome, Novaliches, Quezon City. At the hearing attended by Ochoa, Cesar, and the other private complainants before the *Barangay Lupon*, Ochoa signed a *Kasunduan*, agreeing to return the money to private complainants. Again, Ochoa failed to fulfill her promise to return the money paid by Cesar, thus, the latter, together with the other complainants, filed a complaint with the NBI.[12]

6. Christopher Bermejo met Ochoa at the house of his mother in Novaliches, Quezon City in January 1998. Also present at the house were Fernando Bermejo, Christopher's brother, and Richard Luciano. Ochoa promised that after a week, Christopher would already be deployed to Saudi Arabia as an accountant, earning 250-350 Saudi Riyals. As a result, Christopher immediately resigned from his job at the Development Bank of the Philippines (DBP). Christopher's mother paid Ochoa ₱5,000.00 as processing fee for Christopher's application. A week passed and Ochoa failed to send Christopher to Saudi Arabia for work. When Rosemarie and Raymundo Bermejo (Raymundo), Christopher's sister and brother, respectively, also failed to leave for work abroad as promised by Ochoa, Christopher, Rosemarie, and their mother went to see Ochoa at an office at the Jalandoni Building, Ermita, Manila. Ochoa explained that Christopher and his siblings could not leave yet because there are other documents that still need to be accomplished. Ochoa said that she would just notify Christopher and his siblings of their scheduled departure. When they still did not receive any notification from Ochoa, Rosemarie, Raymundo, and their mother returned to the office at the Jalandoni Building

[12] TSN, October 26, 1998, pp. 6-14.

and found out that their placement fees were not given to said office. Christopher joined the other private complainants in filing a complaint against Ochoa before the NBI.[13]

7. Joebert Decolongon is a resident of Sta. Maxima, Gulod, Novaliches, Quezon City, and works as a bus conductor. Decolongon was introduced to Ochoa by Rivera, Decolongon's friend, at Rivera's house on Villareal Street, Gulod, Novaliches. Ochoa informed Decolongon that there was a vacancy for the position of janitor in Saudi Arabia, with a monthly salary of 800 Saudi Riyals. Decolongon submitted his application, birth certificate, and passport to Ochoa. Ochoa also went to Decolongon's house and collected from Decolongon's wife the initial amount of ₱2,000.00 as placement fee. The rest of Decolongon's placement fees would be paid by one-month salary deduction. Trusting Ochoa, neither Decolongon nor his wife demanded a receipt. When Ochoa failed to deploy Decolongon for employment abroad, Decolongon too filed a complaint against Ochoa before Brgy. San Bartolome, Novaliches, Quezon City. Without a successful resolution at the *barangay* level, Decolongon joined the private complainants in filing a complaint against Ochoa before the NBI.[14]

8. Sometime in January 1998, Ochoa was accompanied by a certain Amy to Fernando Rivera's residence at 27 Villareal Street, Novaliches, Quezon City. Ochoa first talked to Rivera's mother who had previously worked abroad. Ochoa then also offered work to Rivera, either as tea boy or janitor in the army in Riyadh, Saudi Arabia. Rivera chose to work as a tea boy, with a salary of 800 to 1,000 Saudi Riyals. Ochoa said that Rivera would be deployed in the first week of February 1998. Ochoa required Rivera to submit NBI clearance, passport, and pictures, but Rivera submitted only his NBI clearance. In January 1998, Rivera paid Ochoa ₱2,000.00 as she would be the one to secure Rivera's passport. In March 1998, Rivera handed over his ring and necklace, worth of ₱10,000.00, to Ochoa to cover his processing and medical examination fees. Rivera did not

[13] TSN, February 16, 1999, pp. 4-16.

[14] TSN, April 12, 1999, pp. 2-10.

require a receipt from Ochoa because he trusted Ochoa, who was his mother's friend. When Rivera failed to leave in February 1998, Ochoa explained that Rivera's departure was postponed until March 1998 due to *Ramadan*. After the period of *Ramadan*, Rivera was still not able to leave for Saudi Arabia. Rivera then filed a complaint against Ochoa before Brgy. San Bartolome, Novaliches, Quezon City. Ochoa promised to return to Rivera his jewelries and ₱2,000.00, but Ochoa did not appear at the *barangay* hearing set on April 30, 1998. Thus, Rivera and the other private complainants proceeded to file a complaint against Ochoa before the NBI.[15]

Cory C. Aquino of the POEA authenticated the Certification dated June 3, 1998, issued by Hermogenes C. Mateo (Mateo), Director, Licensing Branch of the POEA, that Ochoa, in her personal capacity, is neither licensed nor authorized by the POEA to recruit workers for overseas employment. Cory identified Director Mateo's signature on the Certification, being familiar with the same. The Certification was issued after a check of the POEA records pursuant to a request for certification from the NBI. Cory, however, admitted that she did not participate in the preparation of the Certification, as the NBI's request for certification was through a counter transaction, and another person was in charge of verification of counter transactions.[16]

Ochoa testified on her own behalf.

Ochoa stated under oath that she was employed by AXIL International Services and Consultant (AXIL) as recruiter on December 20, 1997. AXIL had a temporary license to recruit Filipino workers for overseas employment. Ochoa worked at AXIL from 8:00 a.m. to 5:00 p.m. and was paid on a commission basis. She admitted recruiting private complainants and receiving from them the following amounts as placement and medical fees:

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[15] TSN, May 5, 1999, pp. 2-15.

[16] TSN, October 26, 1998, pp. 2-5.

Private Complainant	Amounts Collected
Robert Gubat	₱18,000.00 for placement and medical fees[17]
Junior Agustin	₱22,000.00 for placement and medical fees[18]
Francisco Pascual	₱ 2,000.00 for medical fee[19]
Rosemarie Bermejo	₱ 2,600.00 for medical fee[20]
Cesar Aquino	₱ 19,000.00 for placement and medical fees[21]
Christopher Bermejo	₱ 2,600.00 for medical fee[22]
Joebert Decolongon	₱ 6,000.00 for medical fee[23]
Fernando Rivera	₱ 2,000.00 for medical fee[24]

Ochoa claimed though that she remitted private complainants' money to a person named Mercy, the manager of AXIL, but AXIL failed to issue receipts because the private complainants did not pay in full.[25]

On April 17, 2000, the RTC rendered a Decision finding Ochoa guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale (Criminal Case No. 98-77300) and three counts of estafa (Criminal Case Nos. 98-77301, 98-77302, 98-77303). The dispositive portion of said Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 98-77300, the Court finds the accused, ROSARIO "ROSE" OCHOA, guilty beyond reasonable doubt as principal of ILLEGAL RECRUITMENT IN LARGE SCALE, defined

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[17] TSN, January 17, 2000, p. 5.

[18] *Id.*

[19] *Id.* at 6.

[20] *Id.*

[21] *Id.* at 5.

[22] *Id.* at 6.

[23] *Id.* at 6-7.

[24] *Id.* at 7.

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

and penalized in Section 6 in relation to Section 7 (b) of Republic Act No. 8042, and sentences her to life imprisonment and a fine of One Million Pesos.

2. In Criminal Case No. 98-77301, the Court finds the accused, ROSARIO "ROSE" OCHOA, guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of *prision correccional* as minimum to six (6) years, eight (8) months and twenty (20) days of *prision mayor*, as maximum, and to indemnify complainant Robert Gubat in the amount of Eighteen Thousand Eight Hundred (₱18,800.00) Pesos.

3. In Criminal Case No. 98-77302, the Court finds the accused, ROSARIO "ROSE" OCHOA, guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of *prision correccional* as minimum to six (6) years, eight (8) months and twenty (20) days of *prision mayor* as maximum, and to indemnify the complainant Cesar Aquino in the amount of Seventeen Thousand (₱17,000.00) Pesos.

4. In Criminal Case No. 98-77303, the Court finds the accused, ROSARIO "ROSE" OCHOA, guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of *prision correccional* as minimum to six (6) years, eight (8) months and twenty-one (21) days of *prision mayor* as maximum, and to indemnify complainant Junior Agustin in the amount of Twenty-Eight Thousand (₱28,000.00) Pesos.[26]

Ochoa filed a Notice of Appeal[27] in which she stated her intention to appeal the RTC judgment of conviction and prayed that the records of her case be forwarded to the Court of Appeals. Ochoa's appeal was docketed as CA-G.R. CR. No. 24147 before the Court of Appeals.

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[26] CA *rollo*, pp. 59-60.

[27] *Id.* at 63.

In a Resolution[28] dated August 8, 2000, the Court of Appeals granted Ochoa's First Motion for Extension of Time to file her brief.

Ochoa filed her Appellant's Brief on September 4, 2000[29] while the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief on March 1, 2001.[30]

The Special Fourteenth Division of the Court of Appeals promulgated its Decision[31] dated June 17, 2002 affirming the appealed RTC decision dated April 17, 2000. Ochoa filed a Motion for Reconsideration,[32] which the People opposed for being bereft of merit.[33]

In its Resolution[34] dated August 6, 2003, the Court of Appeals declared that it had no jurisdiction over Ochoa's appeal, ratiocinating thus:

> We affirmed this judgment on 17 June 2002. While neither the accused-appellant nor the Office of the Solicitor General representing the people ever raised the issue of jurisdiction, our second look at the suit proved worthwhile because we came to realize that we mistakenly assumed jurisdiction over this case where it does not obtain.
>
> It was error to consider accused-appellant's appeal from a trial court judgment imposing life imprisonment in Criminal Case No. Q-98-77300 for illegal recruitment in a large scale. Consequently, the judgment we rendered dated 17 June 2002 is null and void. No less than Article VIII, §5(2)(d) of the Constitution proscribes us from taking jurisdiction—
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> SECTION 5. The Supreme Court shall have the following powers:

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[28] *Id.* at 70.

[29] *Id.* at 71-78.

[30] *Id.* at 125-137.

[31] *Id.* at 142-158.

[32] *Id.* at 165-168.

[33] *Id.* at 170-173.

[34] *Id.* at 176-183.

x x x x x x x x x x x x

(2)Review, revise, reverse, modify or affirm on appeal or *certiorari* as the law or Rules of Court may provide, final judgments and orders of the lower court in:

x x x x x x x x x x x x

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher…

§17(1) of the Judiciary Act of 1948 reiterates –

SECTION 17. Jurisdiction of the Supreme Court.

The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in—

(1) All criminal cases involving offenses for which the penalty imposed is life imprisonment; and those involving offenses which, although not so punished, arose out of the same occurrences or which may have been committed by the accused on the same occasion as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately; x x x.

§3 of Rule 122 of the Revised Rules of Criminal Procedure likewise declares –

SEC. 3. How appeal taken. –

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is impose[d], shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

Even if only in Criminal Case No. Q-98-77300 was the penalty of life imprisonment meted out, we still cannot consider the appeal of

the verdict in Criminal Case Nos. 98-77301 to 98-77303 for as the Supreme Court clearly clarified—

> An appeal of a single decision cannot be split between two courts. The splitting of appeals is not conclusive to the orderly administration of justice and invites possible conflict of dispositions between the reviewing courts. Specifically, the Court of Appeals has no jurisdiction to review an appeal of a judgment imposing an indeterminate sentence, if the same ruling also imposes *reclusion perpetua*, life imprisonment and death for crimes arising out of the same facts. In other words, the Supreme Court has exclusive jurisdiction over appeals of criminal cases in which the penalty imposed below is *reclusion perpetua*, life imprisonment or death, even if the same decision orders, in addition, a lesser penalty or penalties for crimes arising out of the same occurrence or facts.

It will be seen that Robert Gubat, private complainant in Criminal Case No. Q-98-77301, Cesar Aquino, private complainant in Criminal Case No. Q-98-77302 and Junior Agustin, private complainant in Criminal Case No. Q-98-77303 were also the private complainant in the illegal recruitment in a large scale suit, docketed as Criminal Case No. Q-98-77300. As gleaned from the charges, the estafa cases were intimately related to or arose from the facts and occurrences of the alleged illegal recruitment. Clearly, we have no recourse but to refuse cognizance over the estafa cases as well.[35]

Despite its lack of jurisdiction over Ochoa's appeal, the Court of Appeals did not dismiss the same and merely ordered its transfer to us:

While the Supreme Court Circular No. 2-90 directs the dismissal of appeals filed before the wrong court, the Supreme Court has in practice allowed the transfer of records from this Court to the highest court. In which case, we shall subscribe to this practice in the interest of substantial justice.

WHEREFORE, premises considered, our decision is declared **NULL and VOID**. We order the **TRANSFER** of the records of Criminal Cases Nos. 98-77300 to 98-77303 to the Supreme Court for proper action.[36]

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[35] *Id.* at 180-182.

[36] *Id.* at 182.

In the Resolution[37] dated September 17, 2003, we accepted Ochoa's appeal and informed both Ochoa and the OSG to file their respective additional briefs. Ochoa's appeal was then docketed as G.R. No. 159252.

On August 17, 2004, Ochoa's counsel filed an explanation stating that he had nothing more to add since he had already written and filed all necessary pleadings, complete with all the necessary research and arguments.[38]

In the meantime, *People v. Mateo*[39] was promulgated on July 7, 2004, where we held that an appeal from the decisions of the RTC, sentencing the accused to life imprisonment or *reclusion perpetua*, should be made to the Court of Appeals. Thus, in our Resolution[40] dated March 11, 2005, the Court ordered the transfer of the records of G.R. No. 159252 to the Court of Appeals for a decision on the merit. We likewise directed the Court of Appeals to raffle the said case to any of its regular divisions.

When Ochoa's appeal was before the Court of Appeals a second time, it was docketed as CA-G.R. CR.-H.C. No. 00888. The Court of Appeals, in a Decision dated March 2, 2006, affirmed with modification the RTC Decision dated April 17, 2000. The appellate court essentially affirmed the findings of fact and law of the RTC, but reduced the award of damages in Criminal Case No. 98-77301 and increased the prison sentence in Criminal Case No. 98-77303. The decretal portion of said Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

l. The judgment of the trial court in Criminal Case No. 98-77300 finding appellant Rosario Ochoa guilty beyond reasonable doubt of Illegal Recruitment in Large Scale constituting economic sabotage under Sec. 6 (l) and (m) in relation to Sec. 7(b) of R.A. No. 8042

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[37] *Id.* at 193.

[38] *Id.* at 201.

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

[40] CA *rollo*, pp. 207-213.

and sentencing her to life imprisonment and a fine of One Million Pesos (₱1,000,000.00) is AFFIRMED.

ll. The judgment in Criminal Case No. 98-77301, finding appellant guilty beyond reasonable doubt of estafa is MODIFIED. Appellant is, hereby, ordered to indemnify Robert Gubat in the amount of ₱15,000.00 only as and by way of actual damages.

lll. The judgment in Criminal Case No. 98-77302, finding appellant guilty beyond reasonable doubt of estafa is AFFIRMED.

IV. The judgment in Criminal Case No. 98-77303, finding appellant guilty beyond reasonable doubt of estafa is MODIFIED. Appellant is, hereby, sentenced to an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as minimum, to EIGHT (8) YEARS OF *prision mayor* as maximum.[41]

Ochoa's appeal is anchored on the following assignment of errors:

The lower court erred:

a. In admitting Exhibit "A" – the POEA Certification – when it was already excluded during the bail hearing

b. In shifting the burden of the accused to prove that there was no illegal recruitment

c. In finding that there was estafa

d. By not limiting liability of the accused to civil liability only[42]

We find no reversible error in the assailed Court of Appeals decision.

Illegal recruitment in large scale

Ochoa was charged with violation of Section 6 of Republic Act No. 8042. Said provision broadens the concept of illegal recruitment under the Labor Code[43] and provides stiffer penalties,

[41] *Rollo*, pp. 22-23.

[42] CA *rollo*, p. 71.

[43] Article 13 x x x

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes

especially for those that constitute economic sabotage, *i.e.*, illegal recruitment in large scale and illegal recruitment committed by a syndicate.

Section 6 of Republic Act No. 8042 defines illegal recruitment as follows:

> SEC. 6. *Definition*. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:
>
> x x x x x x x x x
>
> (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.
>
> Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

It is well-settled that to prove illegal recruitment, it must be shown that appellant gave complainants the distinct impression that she had the power or ability to send complainants abroad for work such that the latter were convinced to part with their

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referrals, contract services, promising for advertising for employment locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

money in order to be employed.[44] All eight private complainants herein consistently declared that Ochoa offered and promised them employment overseas. Ochoa required private complainants to submit their bio-data, birth certificates, and passports, which private complainants did. Private complainants also gave various amounts to Ochoa as payment for placement and medical fees as evidenced by the receipts Ochoa issued to Gubat,[45] Cesar,[46] and Agustin.[47] Despite private complainants' compliance with all the requirements Ochoa specified, they were not able to leave for work abroad. Private complainants pleaded that Ochoa return their hard-earned money, but Ochoa failed to do so.

Ochoa contends that Exhibit "A", the POEA certification – which states that Ochoa, in her personal capacity, is neither licensed nor authorized to recruit workers for overseas employment – was already rejected by the RTC during the hearings on bail for being hearsay, and should not have been admitted by the RTC after the trial on the merits of the criminal cases. Inadmissible evidence during bail hearings do not become admissible evidence after formal offer. Without the POEA certification, the prosecution had no proof that Ochoa is unlicensed to recruit and, thus, she should be acquitted.

Ochoa's contention is without merit.

We refer to the following ruling in *Fullero v. People*,[48] wherein we rejected a similar argument raised by petitioner therein against a certification issued by an officer of the Professional Regulation Commission:

> Regarding the third issue, petitioner contended that the prosecution's documentary evidence, consisting of Exhibits "A", "C", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q" and "R" and their sub-markings, are inadmissible in evidence based on the following reasons:

[44] *People v. Gasacao*, 511 Phil. 435, 444-445 (2005).

[45] Folder of Exhibits, Exhibits "C", "D", and "E".

[46] *Id.*, Exhibit "G".

[47] *Id.*, Exhibit "L".

[48] G.R. No. 170583, September 12, 2007, 533 SCRA 97.

(1) Exhibit "A", which is the Certification of the PRC dated 17 January 1998, confirming that petitioner's name does not appear in the registry books of licensed civil engineers, was not properly identified during the trial. The proper person to identify the certification should have been the signatory therein which was PRC Director II Jose A. Arriola, or in his absence, a person who actually witnessed the execution of the certification. Prosecution witness Atayza, who was not present when the certification was executed, had identified the certification during the trial. Thus, the contents of the certification are mere hearsay; x x x.

x x x x x x x x x

Section 36, Rule 130 of the Revised Rules on Evidence, states that a witness can testify only to those facts which he knows of or comes from his personal knowledge, that is, which are derived from his perception. A witness, therefore, may not testify as to what he merely learned from others either because he was told, or he read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. This is known as the hearsay rule.

The law, however, provides for specific exceptions to the hearsay rule. One of the exceptions is the entries in official records made in the performance of duty by a public officer. In other words, official entries are admissible in evidence regardless of whether the officer or person who made them was presented and testified in court, since these entries are considered *prima facie* evidence of the facts stated therein. Other recognized reasons for this exception are necessity and trustworthiness. The necessity consists in the inconvenience and difficulty of requiring the official's attendance as a witness to testify to innumerable transactions in the course of his duty. This will also unduly hamper public business. The trustworthiness consists in the presumption of regularity of performance of official duty by a public officer.

Exhibit "A", or the Certification of the PRC dated 17 January 1998, was signed by Arriola, Director II of the PRC, Manila. Although Arriola was not presented in court or did not testify during the trial to verify the said certification, such certification is considered as *prima facie* evidence of the facts stated therein and is therefore presumed to be truthful, because petitioner did not present any plausible proof to rebut its truthfulness. Exhibit A is therefore admissible in evidence.[49]

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[49] *Id.* at 118-120.

In the case at bar, the POEA certification was signed by Dir. Mateo of the POEA Licensing Branch. Although Dir. Mateo himself did not testify before the RTC, the prosecution still presented Cory, Dir. Mateo's subordinate at the POEA Licensing Branch, to verify Dir. Mateo's signature.

Also worth re-stating is the justification provided by the Court of Appeals for the admissibility of the POEA certification, *viz*:

> The certificate is admissible. It is true that the trial court, during the bail hearings, rejected the certification for being hearsay because at that stage of the proceedings, nobody testified yet on the document. However, as the trial progressed, an officer of the POEA, specifically in its licensing branch, had testified on the document. It does not follow, then, as appellant would want this court to assume, that evidence rejected during bail hearings could not be admissible during the formal offer of evidence.
>
> This court admits that Ms. Cory Aquino was not the signatory of the document. Nevertheless, she could testify on the veracity of the document because she is one of the officers of the licensing branch of the POEA. Being so, she could testify whether a certain person holds a license or not. It bears stressing that Ms. Aquino is familiar with the signature of Mr. Mateo because the latter is her superior. Moreover, as testified to by Ms. Aquino, that as a policy in her office, before a certification is made, the office checks first whether the name of the person requested to be verified is a reported personnel of any licensed agency by checking their index and computer files.
>
> As found in the office's records, appellant, in her personal capacity, is neither licensed nor authorized to recruit workers for overseas employment. It bears stressing, too, that this is not a case where a certification is rendered inadmissible because the one who prepared it was not presented during the trial. To reiterate, an officer of the licensing branch of the POEA, in the person of Ms. Aquino, testified on the document. Hence, its execution could be properly determined and the veracity of the statements stated therein could be ascertained.[50]

More importantly, Ochoa could still be convicted of illegal recruitment even if we disregard the POEA certification, for

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[50] *Rollo*, pp. 14-15.

regardless of whether or not Ochoa was a licensee or holder of authority, she could still have committed illegal recruitment. Section 6 of Republic Act No. 8042 clearly provides that any person, **whether a non-licensee, non-holder, licensee or holder of authority** may be held liable for illegal recruitment for certain acts as enumerated in paragraphs (a) to (m) thereof. Among such acts, under Section 6(m) of Republic Act No. 8042, is the "[f]ailure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault." Ochoa committed illegal recruitment as described in the said provision by receiving placement and medical fees from private complainants, evidenced by the receipts issued by her, and failing to reimburse the private complainants the amounts they had paid when they were not able to leave for Taiwan and Saudi Arabia, through no fault of their own.

Ochoa further argues in her defense that she should not be found personally and criminally liable for illegal recruitment because she was a mere employee of AXIL and that she had turned over the money she received from private complainants to AXIL.

We are not convinced. Ochoa's claim was not supported by any corroborating evidence. The POEA verification dated September 23, 1998, also signed by Dir. Mateo, and presented by Ochoa during trial, pertains only to the status of AXIL as a placement agency with a "limited temporary authority" which had already expired. Said verification did not show whether or not Ochoa was employed by AXIL. Strangely, for an alleged employee of AXIL, Ochoa was not able to present the most basic evidence of employment, such as appointment papers, identification card (ID), and/or payslips. The receipts presented by some of the private complainants were issued and signed by Ochoa herself, and did not contain any indication that Ochoa issued and signed the same on behalf of AXIL. Also, Ochoa was not able to present any proof that private complainants' money were actually turned over to or received by AXIL.

There is no reason for us to disturb the weight and credence accorded by the RTC to the evidence of the prosecution, over that of the defense. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[51] Likewise, factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the Court of Appeals affirmed such findings. After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses. The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.[52] Moreover, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.[53]

Under the last paragraph of Section 6 of Republic Act No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in a large scale, that is, committed against three or more persons individually or as a group. Here, there are eight private complainants who convincingly testified on Ochoa's acts of illegal recruitment.

In view of the overwhelming evidence presented by the prosecution, we uphold the verdict of the RTC, as affirmed by the Court of Appeals, that Ochoa is guilty of illegal recruitment constituting economic sabotage.

Section 7(b) of Republic Act No. 8042 provides that the penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000.000.00 shall be imposed

[51] *People v. Gharbia*, 369 Phil. 942, 953 (1999).

[52] *People v. Nogra*, G.R. No. 170834, August 29, 2008, 563 SCRA 723, 735.

[53] *People v. Saulo*, 398 Phil. 544, 554 (2000).

when the illegal recruitment constitutes economic sabotage. Thus:

> Sec. 7. Penalties. –
>
> (a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).
>
> (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Since the penalty of life imprisonment and a fine of ₱1,000,000.00 imposed on Ochoa by the RTC, and affirmed by the Court of Appeals, are in accord with the law, we similarly sustain the same.

Estafa

We affirm as well the conviction of Ochoa for estafa committed against three private complainants in Criminal Case Nos. 98-77301, 98-77302, and 98-77303. The very same evidence proving Ochoa's criminal liability for illegal recruitment also established her criminal liability for estafa.

It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042, in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code. We explicated in *People v. Cortez and Yabut*[54] that:

> In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is

[54] 374 Phil. 575 (1999).

not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa*.[55]

Article 315, paragraph 2(a) of the Revised Penal Code defines estafa as:

> Art. 315. *Swindling* (*estafa*). - Any person who shall defraud another by any of the means mentioned hereinbelow x x x:
>
> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[56] Both elements are present in Criminal Case Nos. 98-77301, 98-77302, and 98-77303. Ochoa's deceit was evident in her false representation to private complainants Gubat, Cesar, and Agustin that she possessed the authority and capability to send said private complainants to Taiwan/Saudi Arabia for employment as early as one to two weeks from completion of the requirements, among which were the payment of placement fees and submission of a medical examination report. Ochoa promised that there were already existing job vacancies overseas for private complainants, even quoting the corresponding salaries. Ochoa carried on the

[55] *Id.* at 586.

[56] *People v. Ballesteros*, 435 Phil. 205, 228 (2002).

deceit by receiving application documents from the private complainants, accompanying them to the clinic for medical examination, and/or making them go to the offices of certain recruitment/placement agencies to which Ochoa had actually no connection at all. Clearly deceived by Ochoa's words and actions, private complainants Gubat, Cesar, and Aquino were persuaded to hand over their money to Ochoa to pay for their placement and medical fees. Sadly, private complainants Gubat, Cesar, and Aquino were never able to leave for work abroad, nor recover their money.

The penalty for estafa depends on the amount of defraudation. According to Article 315 of the Revised Penal Code:

> Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

It was established by evidence that in Criminal Case No. 98-77301, Gubat was defrauded by Ochoa in the amount of ₱15,000.00; in Criminal Case No. 77-98302, Cesar paid Ochoa the sum of ₱17,000.00; and in Criminal Case No. 77-98303, Agustin handed over to Ochoa a total of ₱28,000.00.

The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of the fraud is over ₱12,000.00 but not exceeding ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum (*i.e.*, from 4 years, 2 months and 1 day to 8 years). If the amount of fraud exceeds ₱22,000.00, the aforementioned penalty shall be imposed in its

maximum period, adding one year for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years.

Under the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months).[57] Consequently, the minimum terms in Criminal Case Nos. 98-77301 and 98-77302 were correctly fixed by the RTC and affirmed by the Court of Appeals at 2 years, 11 months, and 11 days of *prision correccional*. While the minimum term in Criminal Case No. 98-77303 was increased by the Court of Appeals to 4 years and 2 months of *prision correccional*, it is still within the range of the penalty next lower to that prescribed by Section 315 of the Revised Penal Code.

The maximum term under the Indeterminate Sentence Law shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. To compute the minimum, medium, and maximum periods of the prescribed penalty for estafa when the amount of fraud exceeds ₱12,000.00, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the minimum period for *prision correccional* maximum to *prision mayor* minimum is from 4 years, 2 months, and 1 day to 5 years, 5 months, and 10 days; the medium period is from 5 years, 5 months, and 11 days to 6 years, 8 months, and 20 days; and the maximum period is from 6 years, 8 months, and 21 days to 8 years. Any incremental penalty (*i.e.*, 1 year for every ₱10,000.00 in excess of ₱22,000.) shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court, provided that the total penalty does not exceed 20 years.[58]

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[57] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.

[58] *Id*.

In Criminal Case Nos. 98-77301 and 98-77302, the amounts of fraud were more than ₱12,00.00 but not exceeding ₱22,000.00, and in the absence of any mitigating or aggravating circumstance, the maximum term shall be taken from the medium period of the penalty prescribed (*i.e.*, 5 years, 5 months, and 11 days to 6 years, 8 months, and 20 days). Thus, the maximum terms of 6 years, 8 months, and 20 days actually imposed by the RTC and affirmed by the Court of Appeals in Criminal Case Nos. 98-77301 and 98-77302 are proper.

As for determining the maximum term in Criminal Case No. 98-77303, we take into consideration that the amount of fraud was ₱28,000.00. Since the amount of fraud exceeded ₱22,000.00, the maximum term shall be taken from the maximum period of the prescribed penalty, which is 6 years, 8 months, and 21 days to 8 years; but since the amount of fraud exceeded ₱22,000.00 by only ₱6,000.00 (less than ₱10,000.00), no incremental penalty shall be imposed. Considering that the maximum term of 8 years fixed by the Court of Appeals in Criminal Case No. 98-77303 is within the maximum period of the proscribed penalty, we see no reason for disturbing the same.

WHEREFORE, we *DENY* the present appeal for lack of merit and *AFFIRM* the Decision dated March 2, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00888, affirming with modification the Decision dated April 17, 2000 of the Regional Trial Court, Quezon City, Branch 104, in Criminal Case Nos. 98-77300 to 98-77303, to read as follows:

1. In Criminal Case No. 98-77300, accused-appellant Rosario "Rose" Ochoa is found *GUILTY* beyond reasonable doubt of illegal recruitment in large scale, constituting economic sabotage, as defined and penalized in Section 6(l) and (m), in relation to Section 7(b), of Republic Act No. 8042, and is sentenced to life imprisonment and a fine of One Million Pesos (₱1,000.000.00);

2. In Criminal Case No. 98-77301, accused-appellant Rosario "Rose" Ochoa is found *GUILTY* beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, and is sentenced to an

indeterminate penalty of two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and twenty (20) days of *prision mayor*, as maximum, and to indemnify private complainant Robert Gubat in the amount of Fifteen Thousand Pesos (₱15,000.00) as actual damages;

3. In Criminal Case No. 98-77302, accused-appellant Rosario "Rose" Ochoa is found *GUILTY* beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, and is sentenced to an indeterminate penalty of two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months, and twenty (20) days of *prision mayor*, as maximum, and to indemnify private complainant Cesar Aquino in the amount of Seventeen Thousand Pesos (₱17,000.00); and

4. In Criminal Case No. 98-77303, accused-appellant Rosario "Rose" Ochoa is found *GUILTY* beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, and is sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, and to indemnify private complainant Junior Agustin in the amount of Twenty-Eight Thousand Pesos (₱28,000.00).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174774. August 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO S. DELOS REYES, *alias* "Botong," and RAYMUNDO G. REYES, *alias* "Mac-Mac,"** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; WHERE THE EVIDENCE PRESENTED FAILED TO MEET THE TEST OF MORAL CERTAINTY FOR CONVICTION. — Guided by the settled rule that "where the inculpatory facts admit of several interpretations, one consistent with accused's innocence and another with his guilt, the evidence thus adduced fail[ed] to meet the test of moral certainty," we find that the findings and conclusion of the RTC in its subsequent Order dated January 12, 2004 (in which it acquitted Emmanuel de Claro) is more in keeping with the evidence on record in this case. It bears to stress that the very same evidence were presented against Emmanuel de Claro and accused-appellants; if the evidence is insufficient to convict the former, then it is also insufficient to convict the latter.

2. ID.; ID.; WHERE THE DEFENSE'S EVIDENCE IS CLEAR AND CONVINCING TO OVERTHROW THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY THE POLICE OFFICERS. — In contrast, accused-appellants presented clear and convincing evidence in support of their defenses, which the prosecution failed to rebut. Specifically, accused-appellant Rolando delos Reyes testified that he was illegally arrested without warrant at Buenas Market, Cainta, Rizal, not at Shangri-La Plaza in Mandaluyong City; and that he and Marlon David were coerced to incriminate themselves for possession of *shabu*. His claims were corroborated by Marlon David's testimony and Navarro's *Sinumpaang Salaysay* dated March 14, 2000. Also, Emmanuel de Claro, Lantion-Tom, and Roberto de Claro consistently testified that they were at Shangri-La Plaza to meet Milan, Lantion-Tom's accountant, regarding documents for a business permit (photocopies of the said

documents were presented during trial); and that they were illegally arrested without warrant and forced to admit criminal liability for possession of *shabu*. These pieces of evidence are overwhelmingly adequate to overthrow the presumption of regularity in the performance by the arresting police officers of their official duties and raise reasonable doubt in accused-appellants' favor.

3. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; LAWFUL ARREST IS REQUIRED BEFORE A VALID SEARCH MAY BE EFFECTED; INSTANCES OF PERMISSIBLE WARRANTLESS ARREST. — The first exception (search incidental to a lawful arrest) includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest which must precede the search. In this instance, the law requires that there be first a lawful arrest before a search can be made — the process cannot be reversed. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes permissible warrantless arrests. Thus, a peace officer or a private person may, without warrant, arrest a person: (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (arrest *in flagrante delicto*); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners).

4. ID.; ID.; ID.; THE CIRCUMSTANCES IN CASE AT BAR HARDLY CONSTITUTE OVERT ACTS INDICATIVE OF A FELONIOUS ENTERPRISE TO JUSTIFY WARRANTLESS ARREST. — [T]here is a dearth of evidence in this case to justify the *in flagrante delicto* arrests of accused-appellants and search of their persons incidental to the arrests. x x x [T]he police officers arrested accused-appellants and searched the latter's persons without a warrant after seeing Rolando delos Reyes and Emmanuel de Claro momentarily conversing in the restaurant, and witnessing the white plastic bag with a box or carton inside

being passed from Lantion-Tom to Emmanuel de Claro, to accused-appellant Rolando delos Reyes, and finally, to accused-appellant Reyes. These circumstances, however, hardly constitute overt acts "indicative of a felonious enterprise." SPO1 Lectura, PO3 Santiago, and PO3 Yumul had no prior knowledge of the suspects' identities, and they completely relied on their confidential informant to actually identify the suspects. None of the police officers actually saw what was inside that box. There is also no evidence that the confidential informant himself knew that the box contained *shabu*. No effort at all was taken to confirm that the arrested suspects actually knew that the box or carton inside the white plastic bag, seized from their possession, contained *shabu*. The police officers were unable to establish a cogent fact or circumstance that would have reasonably invited their attention, as officers of the law, to suspect that accused-appellants, Emmanuel de Claro, and Lantion-Tom "has just committed, is actually committing, or is attempting to commit" a crime, particularly, an illegal drug deal.

5. ID.; ID.; ID; WHERE THE *IN FLAGRANTE DELICTO* ARREST OF THE ACCUSED IS INVALID, THE SEARCH IS ALSO CONSIDERED UNLAWFUL AND THE EVIDENCE SEIZED THEREIN IS INADMISSIBLE. — Without valid justification for the *in flagrante delicto* arrests of accused-appellants, the search of accused-appellants' persons incidental to said arrests, and the eventual seizure of the *shabu* from accused-appellants' possession, are also considered unlawful and, thus, the seized *shabu* is excluded in evidence as fruit of a poisonous tree. Without the *corpus delicti* for the crime charged, then the acquittal of accused-appellants is inevitable.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated July 12, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01733, which affirmed with modification the Decision[2] dated September 23, 2003 of Branch 214 of the Regional Trial Court (RTC) of Mandaluyong City in Criminal Case No. MC-00-2375-D. The Court of Appeals found accused-appellants Rolando S. delos Reyes and Raymundo G. Reyes (Reyes) guilty beyond reasonable doubt of violation of Section 21 of Article IV, in relation to Section 16 of Article III, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, and imposing upon them the penalty of *reclusion perpetua*.

The following antecedent facts are culled from the records:

On February 17, 2000, accused-appellants Rolando S. delos Reyes and Raymundo G. Reyes, Emmanuel de Claro, and Mary Jane Lantion-Tom (Lantion-Tom) were all arrested for illegal possession, sale, delivery, distribution, and/or transportation of Methamphetamine Hydrochloride, a regulated drug commonly known as *shabu*. The Office of the City Prosecutor of Mandaluyong City, in its Resolution dated March 3, 2000, found probable cause to indict accused-appellants, together with Emmanuel de Claro, for violation of Republic Act No. 6425, and resolved to continue the preliminary investigation in so far as Lantion-Tom was concerned. The criminal information against accused-appellants and Emmanuel de Claro, filed with the RTC, reads:

The undersigned 2nd Asst. City Prosecutor accuses ROLANDO DELOS REYES *y* SANTOS @ BOTONG, RAYMUNDO REYES *y* GUINZON @ MAC-MAC and EMMANUEL DE CLARO *y* ENRIQUEZ @ COCOY of the crime of VIOLATION OF SEC. 21 ART. IV IN REL.

[1] *Rollo*, pp. 4-13; penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose C. Mendoza (now a member of this Court) and Arturo G. Tayag, concurring.

[2] CA *rollo*, pp. 43-53; penned by Judge Edwin D. Sorongon.

TO SEC. 16 ART. III OF R.A. 6425 AS AMENDED, committed in the manner herein narrated as follows:

> That on or about the 17th day of February, 2000, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any regulated drug, conspiring and confederating together and mutually helping and aiding one another, commit to sell, deliver, distribute and/or transport a carton of ten (10) heat-sealed transparent plastic bags containing white crystalline substance with the following grams, to wit: 99.2, 94.9, 99.6, 93.5, 98.3, 99.5, 99.6, 99.5, 98.4 and 98.4 grams or a total of 980.9 grams, which substance when submitted for drug examination, were found positive to the test for Methamphetamine Hydrochloride, commonly known as "*shabu*," a regulated drug, without the corresponding license and prescription.[3]

On March 7, 2000, accused-appellant Rolando delos Reyes, Emmanuel de Claro, and Lantion-Tom, insisting on their innocence, moved for a reinvestigation of their case before the RTC, which said trial court granted in an Order[4] dated March 15, 2000.

After the reinvestigation, the Office of the City Prosecutor issued a Resolution dated April 3, 2000, recommending that the RTC proceed with the indictment of accused-appellant Reyes and Emmanuel de Claro, and dismiss the charges against accused-appellant Rolando delos Reyes and Lantion-Tom. The Office of the City Prosecutor considered the different versions of events presented by the parties during the preliminary investigation and reinvestigation (except accused-appellant Reyes who did not participate in the proceedings), which it summarized as follows:

> In their Joint Affidavit of Arrest, the arresting officers, members of the Intelligence and Investigation of the Regional Mobile Group (RMG) of the National Capital Region Police Office (NCRPO) claims that on 17 February 2000 a confidential informant called up relative to a narcotics drug deal to commence at the vicinity of the parking

[3] Records, Vol. I, p. 1.

[4] *Id.* at 65.

area of Shangrila Plaza Hotel, Mandaluyong City; that they were dispatched to verify the reports and conduct police operations; that about 2:00 p.m. after meeting with the confidential agent, they strategically positioned themselves at the vicinity parking area of said hotel; that about 10:00 p.m., accused/respondent Reyes *a.k.a.* Mac-Mac, on board a white Toyota Corolla, and accused/respondent [Rolando] delos Reyes, *a.k.a.* "Botong," on board a red Toyota Corolla, arrived with accused/respondent Reyes subsequently proceeding inside Whistletop Bar and Restaurant, and accused/respondent [Rolando] delos Reyes calling accused/respondent [Emmanuel] de Claro through his cellular phone; that accused/respondent [Rolando] delos Reyes and [Emmanuel] de Claro then proceeded to the latter's parked Mazda car where respondent Lantion-Tom was waiting; from the parked car, a box in transparent plastic bag was taken, which accused/respondent [Emmanuel] de Claro handed-over to accused/respondent [Rolando] delos Reyes; accused/respondent [Rolando] delos Reyes in turn handed the box in a plastic bag to accused/respondent Reyes; that the arresting officers accosted the accused/respondents who according to the arresting officers admitted having in their possession illegal drugs; that the recovered items containing ten (10) pcs. of heat sealed transparent plastic bags of white crystalline substance with a total weight of 980.9 grams turned positive to the test for methylamphetamine hydrochloride or *shabu*, a regulated drug.

In his "*Sinumpaang Kontra-Salaysay*," accused/respondent [Rolando] delos Reyes claims that on 17 February 2000, he went to Buenas Market, Manggahan, Pasig City, together with a neighbor, one Marlon David, to talk to Raymundo Reyes who was to pay his indebtedness; that while looking for a parking space, several men with firearms suddenly appeared, with one shouting, "*buksan mo ang pintuan ng sasakyan at kung hindi babasagin ko ito*"; that he and Marlon David were forced out of their vehicle with one of the armed men bringing out a plastic shopping bag of Shoe Mart, asking where the said bag allegedly containing "*shabu*" came from; that accused/respondent [Rolando] delos Reyes answered "*hindi ko alam*," that he and Marlon David were blindfolded when forcibly taken to the group's vehicle and continuously asked who the source of the *shabu* was, with respondent/accused [Rolando] delos Reyes replying, "*hindi ko alam at wala akong kinalaman diyan*;" that Marlon David was separated from accused/respondent [Rolando] delos Reyes and later released on 18 February 2000; that when accused/respondent [Rolando] delos Reyes' blindfold was removed, he found himself at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila.

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To confirm respondent/accused [Rolando] delos Reyes' claim, that he was arrested in Brgy. Manggahan, Pasig City, and not in the vicinity of Whistletop Bar and Restaurant in Mandaluyong City, respondent/accused [Emmanuel] de Claro's spouse submitted a certified true xerox copy of *barangay* blotter of Barangay Manggahan, Pasig City, reflecting the entry on 19 February 2000 made by Mrs. Delos Reyes, on the incident reported to by Marlon David thus:

"BLOTTER"

"*Dumulog po rito sa himpilan ng Punong Barangay si* Gng. Virginia Delos Reyes, *upang ipagbigay alam ang pagkawala ng kanyang asawa na si* Mr. Rolando delos Reyes, *nuong petsa* 17 *ng Pebrero taong dalawang libo* (2000) *na ayon sa batang pamangkin na* si Marlon David, *ay hinuli ng mga hindi kilalang lalaki* sa Buenas Market, Manggahan, Pasig City *nais niyang alamin kung ang nasabing insidente ay* coordinated *dito sa himpilan o tanggapan ng Barangay*."

(Sgd) Virginia delos Reyes
Nagpapahayag"

The blotter was apparently made after Marlon David informed Mrs. [Virginia] Delos Reyes of the incident upon his release on 18 February 2000. Another witness, one Joel Navarro, claims having seen the actual incident confirming the events as narrated to by accused/respondent [Rolando] delos Reyes and Marlon David.

Accused/respondent [Emmanuel] de Claro and his common law wife, respondent Lantion-Tom, submitted their separate Counter-Affidavits jointly denying the charges and claiming that they were at the Whistlestop Bar and Restaurant to talk to respondent Lantion-Tom's accountant Ms. Daisy Milan regarding the Mayor's Permit, Business Location Clearance issued by the Office of the *Barangay* Captain, insurance documents, BIR Certificate of Registration of her business; that they were with accused/respondent [Emmanuel] de Claro's brother, Roberto and a friend, James, with the two remaining outside the restaurant; that respondent Lantion-Tom went to accompany Ms. Milan, while accused/respondent [Emmanuel] de Claro was left inside; that after Ms. Milan left, respondent Lantion-Tom was suddenly surrounded by men who introduced themselves

as police officers and were arresting them for being the source of "*shabu*" in a drug deal; that all of them, accused/respondent [Emmanuel] de Claro, Roberto and James were likewise arrested and continuously questioned on their complicity in the drug deal; that they were taken to Camp Bagong Diwa, Taguig, Metro Manila and subjected to further investigation; that Roberto and James were released the following day. Both respondents maintain that the allegations of the arresting officers as to the circumstances on the alleged "drug deal" leading to their arrest are unfounded and purely fabricated.

During the preliminary investigation proceedings on 21 March 2000, the arresting officers manifested that they are going to submit reply-affidavit on 29 March 2000. However, no such reply-affidavit was submitted.[5]

The Office of the City Prosecutor pointed out that the arresting police officers failed to refute accused-appellant Rolando delos Reyes' counter-allegation that he was not arrested at Shangri-La Plaza in Mandaluyong City, but he was illegally arrested without warrant at Buenas Market in Cainta, Rizal, as corroborated by Marlon David and Joel Navarro (Navarro) in their respective sworn statements (*Sinumpaang Salaysay*) dated March 14, 2000. The Office of the City Prosecutor also observed that Lantion-Tom was "merely in the company of the other respondents without performing any overt act showing her to be part of the illicit transaction" and her drug test revealed negative results. On the other hand, it considered the conflicting claims of Emmanuel de Claro (*i.e.*, that he was illegally arrested and that the drug deal was a mere fabrication) and the arresting officers (*i.e.*, that Emmanuel de Claro was the seller/pusher in the drug deal and the *shabu* was seized from his vehicle) would be best ventilated during the trial on the merits.

In accordance with the foregoing resolution, the prosecution filed with the RTC a motion with leave of court to admit amended information.

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[5] *Id.* at 103-109.

In its Order[6] dated April 4, 2000, the RTC denied the prosecution's motion. Contrary to the finding of the Office of the City Prosecutor, the RTC adjudged that probable cause exists not only against accused-appellant Reyes and Emmanuel de Claro, but accused-appellant Rolando delos Reyes as well.

Accused-appellants were arraigned on May 23, 2000,[7] while Emmanuel de Claro was arraigned on July 12, 2000.[8] All three pleaded not guilty. After the pre-trial conference, trial ensued.

The prosecution presented in evidence the testimonies of **Police Officer (PO) 3 Virgilio Santiago,**[9] **Senior Police Officer (SPO) 1 Eraldo Lectura,**[10] **PO3 Angel Yumul,**[11] and **SPO1 Benjamin David**,[12] members of the Regional Mobile Group (RMG) of the Philippine National Police (PNP) National Capital Regional Police Office (NCRPO) who apprehended and/or investigated the case against accused-appellants, Emmanuel de Claro, and Lantion-Tom; and **P/Insp. Benjamin Cruto, Jr.**[13] (Cruto), the forensic chemist of the PNP Crime Laboratory.

PO3 Santiago was one of the police officers who arrested Emmanuel de Claro and Lantion-Tom on February 17, 2000. He testified that at around 10:30 a.m., their operation chief, Major Arnold Aguilar, received information from a confidential informant regarding an illegal drug deal that would take place between *Botong* and *Mac-Mac* at the parking lot of Shangri-La Plaza in Madaluyong City. *Botong* and *Mac-Mac* were identified during the investigation as accused-appellants Rolando delos Reyes and Reyes, respectively.

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[6] *Id.* at 110.

[7] *Id.* at 262.

[8] *Id.* at 349.

[9] TSN, July 12, 2000 and August 23, 2000.

[10] TSN, August 23, 2000.

[11] TSN, December 13, 2000.

[12] TSN, February 21, 2001.

[13] TSN, June 8, 2000.

As narrated by PO3 Santiago, a team to bust the illegal drug deal was organized by Major Aguilar, composed of PO3 Santiago himself, SPO1 Lectura, and PO3 Yumul, along with PO3 Elmer Corbe, PO3 Marcelo Arcancia, Jr., PO3 Randy Fuentes, PO3 Dennis Padpad, and PO3 Edwin dela Cruz. At around 1:00 p.m. of the same day, the police team was dispatched, using four vehicles, to the location of the drug deal and upon arrival, they waited for the confidential informant to arrive. When the confidential informant arrived at around 3:30 p.m., he told the police team that the drug deal would possibly take place between 6:00 p.m. and 11:00 p.m., and that the suspects would utilize a red Toyota Corolla with plate number TRP-868 and a white Toyota Corolla with plate number ULF-706. The police team then positioned their cars strategically in such a way that they could see the vehicles coming from St. Francis Street and EDSA.

PO3 Santiago further recounted that at around 10:00 p.m., the suspected vehicles arrived, both stopping along the driveway of Shangri-La Plaza. The drivers of the vehicles alighted and talked to each other. The confidential informant recognized the driver of the white Toyota car as *Mac-Mac* and the driver of the red Toyota car as *Botong*. After a few minutes, *Botong* made a call on his cellular phone and then proceeded inside Whistle Stop Restaurant, leaving *Mac-Mac* behind. Inside the restaurant, *Botong* talked to another person, who was identified during the investigation as Emmanuel de Claro *alias Cocoy*. PO3 Santiago was about three to five meters away. Thereafter, *Botong* and *Cocoy* went out of the restaurant and approached a car parked right outside. The person at the back seat of the car, later on identified as Lantion-Tom, handed to *Cocoy* a white plastic bag containing a box. *Cocoy* gave the bag to *Botong*, who, in turn, handed the same bag to *Mac-Mac*. In the meantime, *Cocoy* went back inside the restaurant.

PO3 Santiago related that their team leader "sensed" that the drug deal had already been consummated, so the police team immediately effected the arrest of the suspected drug dealers. PO3 Santiago and PO3 Yumul arrested *Cocoy* and Lantion-Tom, while SPO1 Lectura and the remaining police team members arrested *Botong* and *Mac-Mac*. The plastic bag containing the

box was seized from *Mac-Mac*. The arrested suspects were brought to the police office for investigation. The plastic bag, the box, and the 10 heat-sealed sachets of white crystalline substance inside the box, were marked for identification and physical examination at the police office.

According to PO3 Santiago, the physical examination of the contents of each of the 10 heat-sealed sachets yielded positive test results for methamphetamine hydrochloride or *shabu*. PO3 Santiago then signed a Joint Affidavit of Arrest dated February 18, 2000 together with the other arresting police officers, namely, SPO1 Lectura, PO3 Corbe, PO3 Arcancia, PO3 Fuentes, and PO3 Nelson Gene Javier.

On cross-examination, PO3 Santiago admitted that he did not actually see what was inside the plastic bag and that he did not even see *Botong* hand over such plastic bag to *Mac-Mac*. From PO3 Santiago's position, he could not conclude that the suspects were committing an illegal drug deal as he had no prior knowledge of the contents of the plastic bag, and that he and the other arresting officers just relied on the information relayed by the confidential informant. Also, the police team did not recover any money from the arrested suspects. The confidential informant merely informed the police the following morning that the money for the illegal drugs was already deposited in the bank. The police, however, failed to make further queries from the confidential informant about the bank.

SPO1 Lectura related that their office received a telephone call from a confidential informant about an illegal drug deal involving *Cocoy*, *Botong*, and *Mac-Mac* in the vicinity of Shangri-La Plaza in Mandaluyong City on February 17, 2000. SPO1 Lectura was designated as the leader of the team that will bust said illegal drug deal. After the briefing, SPO1 Lectura's team proceeded to the subject location.

The confidential informant arrived and met SPO1 Lectura's team at around 3:30 p.m. SPO1 Lectura conducted a short briefing then positioned his team strategically within the vicinity. The confidential informant told the police team that the drug deal would take place between 6:00 p.m. and 11:00 p.m. At

around 10:00 p.m., the confidential informant identified the suspected drug dealers *Botong* and *Mac-Mac*, who were arriving in two cars. After conversing for a moment with *Mac-Mac*, *Botong* went inside Whistle Stop Restaurant to talk to *Cocoy*. *Botong* and *Cocoy* then went outside the restaurant and approached another car. *Cocoy* took a white plastic bag from the car, which he handed to *Botong*. Thereafter, *Cocoy* went back inside the restaurant, while "[*Botong*] proceeded to his car near [*Mac-Mac*]." SPO1 Lectura was positioned at the other lane of the road, approximately 10 to 15 meters away from the suspects. At that moment, SPO1 Lectura "sensed" that the drug deal had been consummated, so he decided to already arrest the suspects. SPO1 Lectura arrested *Mac-Mac*, from whom he seized the white plastic bag. PO3 Yumul and PO3 Padpad arrested *Botong*; and PO3 Santiago apprehended *Cocoy*. The police team brought the arrested suspects to the police office for investigation.

SPO1 Lectura submitted to SPO1 David the white plastic bag containing a box with 10 heat-sealed plastic sachets inside. In front of SPO1 Lectura, SPO1 David marked the said articles with his initials. After physical and chemical examinations revealed that the contents of the sachets were *shabu*, SPO1 Lectura signed the Joint Affidavit of Arrest dated February 18, 2000.

During cross-examination, SPO1 Lectura initially denied that Marlon David was with *Botong* when the latter was arrested, but he later admitted that the police also arrested Marlon David. Marlon David was brought to Camp Bagong Diwa, Taguig, together with the other arrested suspects, for "verification," and was released the following day. SPO1 Lectura also admitted that during the preliminary investigation, he and PO3 Corbe, PO3 Arcancia, and PO3 Javier, answered that it was PO3 Santiago who seized the *shabu* from *Mac-Mac*; but SPO1 Lectura explained that what the investigating prosecutor actually asked during preliminary investigation was who saw where the *shabu* came from and that he signed the minutes of the preliminary investigation without reading the same. SPO1 Lectura maintained that it was he who recovered the *shabu* from *Mac-Mac*. Lastly, SPO1 Lectura acknowledged that his team heavily relied on the

information given by the confidential informant in identifying the suspects in the illegal drug deal, who were eventually arrested.

PO3 Yumul substantially narrated the same version of events as that of PO3 Santiago and SPO1 Lectura. On February 17, 2000, he was assigned at the Intelligence Investigation Division of the RMG based in Camp Bagong Diwa, Bicutan, Taguig. He was with SPO1 Lectura, PO3 Santiago, PO3 Fuentes, PO3 Padpad, and several other police officers at the vicinity of Shangri-La Plaza in Mandaluyong City, conducting surveillance operation regarding the tipped-off illegal drug deal. He was with SPO1 Lectura and PO3 Padpad in the car parked in front of Shangri-La Plaza, while PO3 Fuentes, PO3 Dela Cruz, and their confidential informant were in another car also parked along the driveway of Shangri-La Plaza. PO3 Santiago, PO3 Arcancia, and PO3 Corbe were in the car stationed in front of Whistle Stop Restaurant. PO3 Yumul could not recall where the other members of the team were located.

At around 10:00 p.m., the suspects *Botong* and *Mac-Mac* arrived in separate cars, stopping in front of Shangri-La Plaza. *Botong* and *Mac-Mac* alighted from their cars and talked to each other. At that time, PO3 Yumul was about five meters away from the two suspects. Moments later, *Botong* called someone on his cellular phone, and then went inside Whistle Stop Restaurant, leaving *Mac-Mac* behind. PO3 Yumul followed *Botong* inside the restaurant and saw the latter talking to *Cocoy*. PO3 Yumul though did not hear the conversation between *Botong* and *Cocoy*. Afterwards, *Botong* and *Cocoy* went out of the restaurant and approached a parked car. From his position about three meters away, PO3 Yumul saw the passenger at the back seat of the car, Lantion-Tom, opening the window and handing over "a white plastic bag with carton inside" to *Cocoy*, who, in turn, gave the plastic bag to *Botong*. *Cocoy* then returned inside the restaurant and "[*Botong*] went back to [*Mac-Mac*]." PO3 Yumul followed *Cocoy* inside the restaurant. A few minutes later, PO3 Santiago also went inside the restaurant informing PO3 Yumul that they would be arresting *Cocoy*, and that *Botong* and *Mac-Mac* were already arrested outside the restaurant. PO3 Santiago, assisted by PO3 Yumul, approached *Cocoy* and arrested

him. The police team proceeded to the police office with all the arrested suspects for further investigation. PO3 Yumul, however, failed to join the other arresting officers in signing the Joint Affidavit of Arrest dated February 18, 2000.

SPO1 David was an investigator at the Intelligence and Investigation Section of the RMG at Camp Bagong Diwa, Bicutan, Taguig, assigned to the instant case following the arrests of accused-appellants, Emmanuel de Claro and Lantion-Tom. He also referred the case for inquest to the Office of the City Prosecutor.

SPO1 David testified that on February 17, 2000, he received from SPO1 Lectura a plastic bag containing a box with 10 heat-sealed sachets of suspected *shabu* inside. SPO1 Lectura told SPO1 David that the articles were seized from the suspected drug dealers. SPO1 David marked his initials "BSD" on the confiscated articles, then prepared a request to the PNP Crime Laboratory for examination of the specimens. SPO1 David disclosed that he prepared the Affidavit of Arrest of the arresting officers.

The last witness for the prosecution was **P/Insp. Cruto** of the PNP Crime Laboratory. P/Insp. Cruto was the forensic chemist who conducted the physical, chemical, and confirmatory examinations of the contents of the 10 heat-sealed plastic sachets submitted by the RMG-NCRPO on February 18, 2000.

P/Insp. Cruto conducted the physical examination by weighing the contents of each sachet, revealing that two sachets weighed 99.6 grams each; two sachets, 99.5 grams each; one sachet, 99.2 grams; two sachets, 98.4 grams each; one sachet, 98.3 grams; one sachet, 94.9 grams; and one sachet, 93.5 grams. P/Insp. Cruto then took a representative sample from each plastic sachet and proceeded with his chemical and confirmatory examinations. The contents of the 10 heat-sealed plastic sachets all tested positive for methamphetamine hydrochloride, otherwise known as *shabu*. P/Insp. Cruto recorded the result of the examinations in his Physical Sciences Report No. D-097-2000.[14]

[14] Records, Vol. II, pp. 659-660.

The prosecution submitted the following object and documentary evidence: the Joint Affidavit of Arrest[15] dated February 18, 2000 signed by SPO1 Lectura, PO3 Santiago, PO3 Corbe, PO3 Arcancia, PO3 Dela Cruz and PO3 Javier; the Sketch prepared in open court by SPO1 Lectura;[16] the 10 heat-sealed plastic sachets recovered from the possession of accused-appellants;[17] the PNP-RMG Request for Laboratory Examination of the contents of the 10 heat-sealed plastic sachets;[18] the PNP Crime Laboratory Physical Sciences Report No. D-097-2000 dated February 18, 2000 which revealed that the contents of the 10 heat-sealed plastic sachets positively tested for methamphetamine hydrochloride;[19] and the Letter (Referral of the case to the Office of the City Prosecutor)[20] dated February 18, 2000. The RTC admitted all the aforementioned evidence for the prosecution in its Order[21] dated March 1, 2001.

The defense, on the other hand, presented the testimonies of **Marlon David**,[22] accused-appellant **Rolando delos Reyes**,[23] **Emmanuel de Claro**,[24] **Roberto de Claro**,[25] and **Mary Jane Lantion-Tom**.[26] Accused-appellant Reyes did not testify.

Marlon David was 17 years old and a fourth year high school student of Rizal High School in Pasig City. He recalled that on February 17, 2000, at about 1:00 p.m., he accompanied

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[15] *Id.* at 656-658.

[16] *Id.* at 663.

[17] Exhibits D-2 to D-11.

[18] Records, Vol. II, pp. 661-662.

[19] *Id.* at 659-660.

[20] *Id.* at 664-665.

[21] *Id.* at 652.

[22] TSN, April 25, 2001 and May 23, 2001.

[23] TSN, July 31, 2001 and September 5, 2001.

[24] TSN, December 12, 2001 and March 6, 2002.

[25] TSN, March 13, 2002.

[26] TSN, July 31, 2002.

accused-appellant Rolando delos Reyes, whom he referred to as *Kuya Botong*, to the Buenas Market in Cainta, Rizal, to collect some money.

While accused-appellant Rolando delos Reyes and Marlon David were inside their car at the parking area of said market, another car suddenly arrived, from which an armed male passenger alighted and approached them. Four other armed men followed and poked their guns at accused-appellant Rolando delos Reyes and Marlon David. The armed men, in civilian attire, were carrying an SM plastic shopping bag and questioned accused-appellant Rolando delos Reyes if he knew the owner of said plastic bag. Accused-appellant Rolando delos Reyes denied any knowledge about the plastic bag. Marlon David was also asked and he answered that he knew nothing about the plastic bag.

Thereafter, the armed men, who later introduced themselves as police officers, pulled accused-appellant Rolando delos Reyes from the driver seat of the latter's car, transferred him and Marlon David to the back seat of said car, and blindfolded both of them. Two of the armed men sat in the front seats of the car, while one of them sat at the back, beside accused-appellant Rolando delos Reyes and Marlon David. The armed men drove the car around (*paikot-ikot*). The armed men then separated accused-appellant Rolando delos Reyes from Marlon David. They ordered Marlon David to alight from the car and transfer to another vehicle. While in the other car, the armed men boxed and mauled Marlon David to force him to admit to be the source of the plastic bag. Each question was accompanied with one punch. Marlon David remained blindfolded until they arrived at the police camp in Bicutan, Taguig, where he again saw accused-appellant Rolando delos Reyes. Marlon David was released the following morning, leaving accused-appellant Rolando delos Reyes behind at the police camp. Marlon David went home and told Virginia delos Reyes, the wife of accused-appellant Rolando delos Reyes, about the incident.

Marlon David, during his cross examination, denied knowing any person with the name *Mac-Mac*. Marlon David additionally

relayed that he was told by accused-appellant Rolando delos Reyes that the latter was likewise mauled by the armed men.

Accused-appellant **Rolando delos Reyes** or *Botong* gave a similar account of the incident that took place at 1:00 p.m. on February 17, 2000, while he and Marlon David were at the Buenas Market in Cainta, Rizal. Their car was surrounded by four armed men. The armed men poked their guns at him and Marlon David, shouting at them to open the car doors. He lowered the car window and the armed men opened the car door. The armed men forced him and Marlon David to get down from the front seats of the car and to transfer to the back seat, blindfolded them, and asked them who were the owners of the SM plastic bag. After they left Buenas Market, he noticed that they were just driving around. The car stopped only when Marlon David was taken out and transferred to another car. It was already late in the evening when the car finally stopped. He then realized, after his blindfold had been removed, that he was at Camp Bagong Diwa in Bicutan, Taguig.

Accused-appellant Rolando delos Reyes denied the accusation of the police that he was selling or delivering *shabu* to anyone. He asserted that he was not arrested at Whistle Stop restaurant in Mandaluyong City, rather, he was illegally arrested at Buenas Market in Cainta, Rizal. Accused-appellant Reyes or *Mac-Mac* was his friend who owed him money. He and accused-appellant Reyes agreed to meet at Buenas Market for the settlement of the latter's loan, but the meeting did not take place because the armed men arrived. He further claimed that he only met Emmanuel de Claro at Camp Bagong Diwa in Bicutan, Taguig. He never knew Emmanuel de Claro before that time, and he found out the latter's name only when they were already detained at the Mandaluyong City Jail.

Emmanuel de Claro or *Cocoy* testified that on February 17, 2000 at around 10:00 a.m., he was at the Department of Trade and Industry in Buendia, Makati City, with his common-law wife Mary Jane Lantion-Tom to follow up their application for business permit. At around 1:00 p.m., they had lunch at Glorietta. Emmanuel de Claro was no longer feeling well so he

and Lantion-Tom passed by the house of his brother Roberto de Claro to request the latter to drive for them. James, Roberto de Claro's friend, also went with them.

The vehicle driven by Emmanuel de Claro was a rented car because his own car was in the auto shop. Emmanuel de Claro, Lantion-Tom, Roberto de Claro, and James first went to Las Piñas City to check on Emmanuel de Claro's car at the auto shop. From there, they proceeded to Libertad in Pasay City and ate dinner at the Duty Free Philippines. Afterwards, the group made their way to Mandaluyong City where Lantion-Tom had a scheduled appointment with Daisy Milan (Milan), her accountant. Emmanuel de Claro and Lantion-Tom met Milan at Whistle Stop Restaurant located at Shangri-La Plaza in Mandaluyong City. Milan and Lantion-Tom discussed matters pertaining to the business permit. Emmanuel de Claro stepped outside the restaurant for a moment to smoke a cigarette, then, returned inside to wait for the meeting between Lantion-Tom and Milan to finish. After their meeting, Lantion-Tom walked Milan outside the restaurant, while Emmanuel de Claro waited for Lantion-Tom inside.

Three male persons suddenly approached Emmanuel de Claro and introduced themselves as police officers. They warned Emmanuel de Claro not to make a scene and just go with them peacefully. Emmanuel de Claro obeyed. He was brought outside the restaurant and was forced to get into a waiting car. For about three hours inside the car, he was punched, handcuffed, blindfolded, and told to bow down his head. He was likewise being forced to admit something about the *shabu*, but he denied knowing anything about it. He heard from the radio inside the car that the police officers were waiting for another car. After three hours of traveling, the car finally stopped and when his blindfold was removed, he learned that they were already at Camp Bagong Diwa in Bicutan, Taguig.

Emmanuel de Claro was placed in one room where he stayed for almost an hour, until he was called into another room where he met his co-accused for the first time. He later saw Lantion-Tom at the office of one of the police officers. They were

interrogated by the police and being forced to admit that the drugs being shown to them belonged to them. They asked for a lawyer but their plea was ignored. The police told Emmanuel de Claro and Lantion-Tom that somebody should be held responsible for the *shabu* so they were made to choose whether both of them or only one of them would be charged. Emmanuel de Claro was compelled to choose the latter option.

Roberto de Claro corroborated Emmanuel de Claro's testimony. On February 17, 2000, Roberto de Claro was at home playing video games when his brother Emmanuel de Claro and the latter's wife, Lantion-Tom, arrived and requested him to drive their car because Emmanuel was not feeling well. James, Roberto de Claro's friend, rode with them. They first went to Las Piñas City to check on Emmanuel de Claro's car at the auto shop, then they proceeded to Libertad, Pasay City, where they had dinner at Duty Free Philippines. They next drove to Whistle Stop Restaurant at Shangri-La Plaza in Mandaluyong City to meet "Ms. Milan." Only Emmanuel de Claro and Lantion-Tom went inside the restaurant. Roberto de Claro and James stayed in the car.

Two hours later, Roberto de Claro saw Lantion-Tom and "Ms. Milan" walking towards them. As the two women were approaching, armed men suddenly appeared, surrounded their car, and pointed guns at them. Roberto de Claro got terrified. It was as if an armed robbery ("hold-up") was taking place. The armed men knocked at the car window. Out of fear, Roberto de Claro opened the window, then the door of the car. Roberto de Claro, James, and Lantion-Tom were made to sit at the back seat of the car. Two of the armed men sat on the front seats of the car, while one sat at the back with Roberto de Claro, James, and Lantion-Tom. The armed men introduced themselves as police officers.

Inside the car, the police officers mauled (*siniko, sinuntok sa ulo*) Roberto de Claro, James, and Lantion-Tom, all the while ordering them to keep their heads bowed down. The police officers drove the car for two hours, stopping at a gas station for about five minutes. At this moment, Roberto de

Claro was able to raise his head but was immediately told to bow down his head again. Roberto de Claro also heard from the police officers' radio that they were still waiting for somebody. They travelled again for quite a long time and stopped in a dark place. The police officers took Roberto de Claro's wallet containing ₱7,000.00 cash. Early in the following morning, they arrived at the police station where Roberto de Claro saw his brother Emmanuel de Claro once more. They stayed in one room until Roberto de Claro and James were released by the police the next day.

When **Lantion-Tom** was called to testify, the prosecution and the defense agreed to consider her Counter Affidavit dated March 23, 2000 and Supplemental Affidavit dated March 29, 2000 as her direct examination.

On cross-examination, Lantion-Tom confirmed that she was among those arrested on February 17, 2000 at the vicinity of Shangri-La Plaza in Mandaluyong City for her alleged involvement in an illegal drug deal. At the time of the arrest, she was with Emmanuel de Claro, Roberto de Claro, and James. She was also brought to Camp Bagong Diwa in Taguig where she was interrogated without a lawyer. She was shown a box containing *shabu* which she had never seen before. Lantion-Tom insisted that she was in Mandaluyong City to meet her accountant, Milan, regarding her application for a business permit. Lantion-Tom pointed out that the charge against her was eventually dismissed.

The documentary evidence for the defense consisted of Emmanuel de Claro's Counter Affidavit dated March 23, 2000,[27] Lantion-Tom's Counter Affidavit dated March 23, 2000,[28] Emmanuel de Claro and Lantion-Tom's Supplemental Affidavit dated March 29, 2000,[29] Roberto de Claro's Witness Affidavit dated March 29, 2000,[30] Marlon David's *Sinumpaang Salaysay*

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[27] Records, Vol. II, pp. 888-911.

[28] *Id.* at 917-920.

[29] *Id.* at 912-913.

[30] *Id.* at 914-916.

dated March 14, 2000,[31] Virginia delos Reyes' *Sinumpaang Salaysay* dated March 14, 2000,[32] Navarro's *Sinumpaang Salaysay* dated March 14, 2000,[33] accused-appellant Rolando delos Reyes' *Sinumpaang Kontra Salaysay* dated March 14, 2000,[34] and a *Barangay* Blotter dated February 19, 2000 by Virginia delos Reyes.[35] The RTC admitted all these documentary evidence for the defense in its Order[36] dated September 13, 2002.

In its Decision dated September 23, 2003, the RTC found accused-appellants and Emmanuel de Claro guilty beyond reasonable doubt of the crime charged, and decreed:

> WHEREFORE, the prosecution having successfully proved the guilt of the accused beyond reasonable doubt for unlawfully possessing/selling, delivering, transporting and distributing methamphetamine hydrochloride otherwise known as *shabu*, a regulated drug, without lawful authority in violation of Sections 15 and 16 of Article III in relation to Section 21 of Article IV of R.A. No. 6425, as amended, they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱20,000.00 each and the costs of suit.
>
> Further, all the methamphetamine hydrochloride (*shabu*) taken and seized from the accused during the aforesaid operation are forfeited and confiscated in favor of the government shall be turned over to the PDEA pursuant to law for proper disposal without delay.[37]

Emmanuel de Claro filed his notice of appeal[38] on October 23, 2003. Accused-appellants Roberto delos Reyes and Reyes

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[31] *Id.* at 922-923.

[32] *Id.* at 924-925.

[33] *Id.* at 926.

[34] *Id.* at 927-929.

[35] *Id.* at 930.

[36] *Id.* at 934.

[37] CA *rollo*, p. 53.

[38] Records, Vol. III, p. 1083.

each filed his notice of appeal[39] on October 29, 2003 and December 30, 2003, respectively.

Emmanuel de Claro, however, subsequently moved to withdraw his notice of appeal,[40] instead, filing before the RTC an Omnibus Motion for Reconsideration and to Re-Open Proceedings Pursuant [to] Section 24, Rule 119 of the Rules of Court[41] on October 30, 2003, and a Supplemental Motion for Reconsideration[42] on November 3, 2003. Emmanuel de Claro asked the RTC to review its judgment of conviction based on the following grounds:

I. THE HONORABLE COURT GRAVELY ERRED IN RULING THAT THE ACCUSED DEFENSE OF FRAME-UP IS A MERE ALIBI AND HAS THUS ERRED IN ADOPTING THE THEORY OF THE PROSECUTION THAT ALL THE THREE (3) ACCUSED WERE PICKED-UP AT THE VICINITY OF EDSA SHANGRI-LA PLAZA HOTEL.

II. THAT THE HONORABLE COURT GRAVELY ERRED IN RULING THAT THE WARRANTLESS ARREST WAS LAWFUL SINCE THE ACCUSED WERE CAUGHT *IN FLAGRANTE DELICTO.*

III. THE HONORABLE COURT GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY AMONG THE THREE (3) ACCUSED IN THE ALLEGED COMMISSION OF THE CRIME OF UNLAWFUL SALE, DELIVERY AND TRANSPORTATION OF THE PROHIBITED DRUG.

IV. THE HONORABLE COURT GRAVELY ERRED IN FINDING BOTH ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED IN THE INFORMATION ON THE BASIS MAINLY OF A DISPUTABLE PRESUMPTION OF LACK OF IMPROPER MOTIVE ON THE PART OF THE POLICE OFFICERS.

V. THAT THE HONORABLE COURT GRAVELY ERRED IN ITS FAILURE TO CONSIDER THE FACT THAT ACCUSED

[39] *Id.* at 1095 and 1194.

[40] *Id.* at 1104-1105.

[41] *Id.* at 1097-1103.

[42] *Id.* at 1115-1137.

EMMANUEL DE CLARO WAS NOT AFFORDED HIS CONSTITUTIONAL RIGHTS DURING CUSTODIAL INVESTIGATION.[43]

Emmanuel de Claro principally contended that the accusation that he was engaging in an illegal drug deal, levied against him by prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul was suspicious, if not incredible. Emmanuel de Claro pointed out that although these police officers testified that Lantion-Tom, from the car, handed to him the plastic bag containing the box with sachets of *shabu*, the prosecution still dropped the criminal charges against Lantion-Tom. Emmanuel de Claro also strongly argued that the prosecution failed to contradict his well-supported alibi that he, his wife, and his brother went to Shangri-La Plaza in Mandaluyong City to meet his wife's accountant, so they could attend to several documents pertaining to a business permit. Emmanuel de Claro further insisted that the RTC should have highly regarded accused-appellant Rolando delos Reyes' testimony which directly contradicted the police officers' statements.

In its Order[44] dated November 11, 2003, the RTC granted Emmanuel de Claro's motion to withdraw his notice of appeal and required the prosecution to comment to his motions for reconsideration.

The prosecution filed its Comment/Opposition[45] on December 19, 2003, objecting to Emmanuel de Claro's motions for reconsideration and maintaining that its police-witnesses' categorical, consistent, and straight-forward testimonies were sufficient to convict Emmanuel de Claro.

In a complete turnabout from its previous findings and conclusion, the RTC, in its Order[46] dated January 12, 2004, acquitted Emmanuel de Claro of the crime charged. The RTC explicitly admitted that it erred in giving full faith and credit to

[43] *Id.* at 1121-1122.

[44] *Id.* at 1162.

[45] *Id.* at 1181-1183.

[46] *Id.* at 1198-1208.

the testimonies of prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul, and in entirely rejecting the alibi of the defense. Thus, the RTC disposed:

> WHEREFORE, the motion of accused-movant Emmanuel De Claro is hereby GRANTED and a new one entered, ACQUITTING him of the crime charged. Consequently, his immediate release from detention is hereby ordered unless he is detained for other cause or causes.[47]

Nevertheless, in view of the pending notices of appeal of accused-appellants, the RTC forwarded the complete records of the case to us on March 29, 2004, and we gave due course to the said appeals in our Resolution[48] dated June 21, 2004.

Accused-appellant Rolando delos Reyes filed his Appellant's Brief[49] on September 15, 2004, while accused-appellant Reyes filed his Appellant's Brief[50] on November 26, 2004. Pursuant to our pronouncement in *People v. Mateo*,[51] we transferred the case to the Court of Appeals for appropriate action and disposition.[52] Accordingly, the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed before the appellate court its Consolidated Brief[53] on January 21, 2005.

The Court of Appeals, in its Decision dated July 12, 2006, sustained the conviction of accused-appellants, and merely modified the penalty imposed upon them, from life imprisonment to *reclusion perpetua*. According to the appellate court, the police officers' testimonies deserve credence than accused-appellants' defenses of denial and alibi, there being no evidence to rebut the presumption that the police officers regularly performed their official duties.

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[47] *Id.* at 1208.

[48] CA *rollo*, pp. 69-70.

[49] *Id.* at 82-100.

[50] *Id.* at 127-140.

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

[52] CA *rollo*, pp. 160-A and B.

[53] *Id.* at 179-211.

The case was then elevated to us for final review. In our Resolution[54] dated January 31, 2007, we required the parties to submit their supplemental briefs. Plaintiff-appellee and accused-appellants Rolando delos Reyes and Reyes filed their manifestations[55] on March 14, 2007, April 10, 2007, and April 13, 2007, respectively, opting to stand by the briefs they had already filed before the Court of Appeals.

In his Appellant's Brief, accused-appellant Rolando delos Reyes assigned the following errors of the RTC:

I. THE COURT *A QUO* ERRED IN FAILING TO RESOLVE THE CONTRADICTORY TESTIMONY AS TO THE PLACE OF THE ARREST IN FAVOR OF THE ACCUSED.

II. THE COURT *A QUO* ERRED IN FINDING [THE] TESTIMONIES OF PO3 VIRGILIO SANTIAGO CREDIBLE.

III. THE COURT *A QUO* ERRED IN FAILING TO APPRECIATE THE PROSECUTION'S EVIDENCE WHICH WAS PREVIOUSLY CATEGORIZE[D] AS WEAK WHEN THE COURT *A QUO* GRANTED BAIL TO THE ACCUSED.[56]

Accused-appellant Reyes cited these errors in his Appellant's Brief:

I. THE TRIAL COURT ERRED IN NOT FINDING THE WARRANTLESS ARREST OF ACCUSED-APPELLANT RAYMUNDO REYES AS UNLAWFUL.

II. ASSUMING *ARGUENDO* THAT THE WARRANTLESS ARREST WAS VALID, ACCUSED-APPELLANT RAYMUNDO REYES CANNOT BE CONVICTED FOR VIOLATION OF R.A. 6425.[57]

Accused-appellants essentially assert that the charge of illegal drug deal lodged against them by the police is a complete fabrication and frame-up. Accused-appellants called attention

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[54] *Rollo*, p. 11.

[55] *Id.* at 16-23.

[56] CA *rollo*, p. 83.

[57] *Id.* at 129.

to the material inconsistencies in the prosecution's evidence. PO3 Santiago testified during direct examination that accused-appellant Rolando delos Reyes handed the "plastic bag with box inside" to accused-appellant Reyes, but he admitted during cross-examination that he did not see such transfer. The prosecution was unable to present any evidence to prove the source of the plastic bag containing the box with sachets of *shabu*, and the money paid as consideration for the illegal drugs. The prosecution likewise failed to rebut accused-appellant Rolando delos Reyes' straightforward, coherent, and truthful narration, corroborated by Marlon David, that he was illegally arrested at Buenas Market in Cainta, Rizal, and not at Shangri-la Plaza in Mandaluyong City.

Accused-appellants additionally argued that even the prosecution's version of the arrests of the suspects and seizure of the *shabu* shows that the same were effected in violation of accused-appellants' fundamental rights. The arrests were executed without any warrant or any of the exceptional circumstances to justify a warrantless arrest. The suspects, including accused-appellants, were arrested without warrants based on a mere tip from a confidential informant and not because of any apparent criminal activity. A tip does not constitute probable cause for a warrantless arrest or search and seizure incidental thereto. Thus, the *shabu* allegedly seized from accused-appellants is inadmissible in evidence.

Plaintiff-appellee, on the other hand, stand by the convictions of accused-appellants, maintaining that:

I. THE POSITIVE AND CREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES HAVE ESTABLISHED THE GUILT OF APPELLANTS BEYOND REASONABLE DOUBT.

II. THE WARRANTLESS ARREST CONDUCTED BY THE POLICE IS VALID SINCE IT FALLS SQUARELY UNDER RULE 113, SECTION 5(A) OF THE REVISED RULES ON CRIMINAL PROCEDURE.

II. THE EVIDENCE PRESENTED BY THE PROSECUTION MORE THAN SUFFICE TO CONVICT APPELLANTS OF THE CRIME CHARGED.

IV. CONSPIRACY ATTENDED THE COMMISSION OF THE OFFENSE.

V. MERE DENIAL AND "*HULIDAP*," WITHOUT MORE, CANNOT EXCULPATE APPELLANTS FROM CRIMINAL LIABILITY.

VI. THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY UNDER SECTION 3(M) OF RULE 131 OF THE REVISED RULES OF COURT HAD NOT BEEN OVERCOME BY DEFENSE EVIDENCE.

VII. CONCLUSION OF THE TRIAL JUDGE REGARDING THE CREDIBILITY OF WITNESSES COMMANDS GREAT RESPECT AND CONSIDERATION.[58]

Plaintiff-appellee avers that the inconsistencies in the police officers' statements, as pointed out by accused-appellants, are trivial and do not affect the weight of their testimonies; while accused-appellants' defenses of denial and frame-up could be easily concocted and, thus, should be looked upon with disfavor. Moreover, there is no need for proof of consideration for the illegal drug deal, since consideration is not an element of the crime charged.

Plaintiff-appellee avows that accused-appellants were caught while in the commission of a crime or *in flagrante delicto*, which justifies their warrantless arrests under Section 5(a), Rule 113 of the Rules of Court. Accused-appellants were arrested while in possession and in the act of distributing, without legal authority, a total of 980.9 grams of methamphetamine hydrochloride or *shabu*, on the night of February 17, 2000 at the parking area of Shangri-La Plaza in Mandaluyong City. In addition, in the absence of satisfactory proof to the contrary, the warrantless arrests executed by the police officers enjoy the presumption that "official duty has been regularly performed."

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

We grant the appeal and reverse the assailed decision of the Court of Appeals.

At the outset, we observe that the prosecutors and the RTC both displayed uncertainty as to the facts surrounding accused-appellants' arrest on the night of February 17, 2000.

The Office of the City Prosecutor of Mandaluyong City, after preliminary investigation and reinvestigation, recommended that the RTC drop accused-appellant Rolando delos Reyes and Lantion-Tom from the criminal charge. The RTC only partially adopted the recommendations of the Office of the City Prosecutor: dropping the criminal charge against Lantion-Tom, but still finding probable cause against accused-appellant Rolando delos Reyes.[59]

Even after trial, the RTC wavered in its findings and conclusion. In its Decision[60] dated September 23, 2003, the RTC initially convicted accused-appellants and Emmanuel de Claro, but acting on Emmanuel de Claro's motions for reconsideration, said trial court, in its Order[61] dated January 12, 2004, totally reversed itself and acquitted Emmanuel de Claro. This time, the RTC gave more weight to the evidence presented by the defense.

The Court of Appeals, on appeal, refused to consider the subsequent acquittal of Emmanuel de Claro by the RTC. Instead, the appellate court upheld the earlier ruling of the RTC giving absolute credence to the testimonies of the prosecution witnesses and convicted accused-appellants of the crime charged. Despite the varying judgments of the RTC, the Court of Appeals speciously ratiocinated in its assailed decision that "when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight."[62]

Guided by the settled rule that "where the inculpatory facts admit of several interpretations, one consistent with accused's innocence and another with his guilt, the evidence thus adduced

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[59] Records, Vol. I, p. 107.

[60] CA *rollo*, pp. 43-53.

[61] *Id.* at 69-70.

[62] *Rollo*, p. 8.

fail[ed] to meet the test of moral certainty,"[63] we find that the findings and conclusion of the RTC in its subsequent Order[64] dated January 12, 2004 (in which it acquitted Emmanuel de Claro) is more in keeping with the evidence on record in this case. It bears to stress that the very same evidence were presented against Emmanuel de Claro and accused-appellants; if the evidence is insufficient to convict the former, then it is also insufficient to convict the latter.

Indeed, the testimonies of prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul are unreliable and suspiciously fabricated. In its Order dated January 12, 2004, the RTC correctly observed that:

> Viewed *vis-à-vis* the peculiar factual milieu of this case, not to say the insistence by the accused-movant [Emmanuel de Claro] that a reevaluation or reassessment of the evidence by the prosecution be considered, this court has decided to revisit the evidence put forward by the prosecution through the crucible of a severe testing by taking a more than casual consideration of every circumstance of the case.
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> It is noted that the testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other. While this court had already made its conclusion that the testimonies of prosecution witnesses PO3 Santiago, SPO1 Lectura and PO3 Yumul are given full faith and credit and reject the frame-up and alibi story of the accused-movant [Emmanuel de Claro], nonetheless, upon reassessment of the same it appears that the court erred.
>
> In sum, the conveniently dovetailing accounts of the prosecution eyewitnesses, all of them police officers, with regard to the material facts of how the crime was allegedly committed engenders doubt as to their credibility. **Firstly, the court noted that these police officers gave identical testimonies of the events that happened from the moment they arrived at 2 o'clock in the afternoon until the arrest of the accused at 10:30 o'clock in the evening at the EDSA Shangri-La premises. This uniform account given by these witnesses cannot but generate the suspicion that the material circumstances**

[63] *People v. Mariano*, 412 Phil. 252, 258 (2001).

[64] Records, Vol. III, pp. 1198-1208.

testified to by them were integral parts of a well thought-out and prefabricated story. Because of the close camaraderie of these witnesses who belong to the same police force it is not difficult for them to make the same story. Furthermore, their testimonies are so general which shows only too clearly that they testified uniformly only as to material facts but have not given the particulars and the details having relation with the principal facts. While they testified that they were at Shangri-La from 2 in the afternoon to 10 in the evening, they were not able to tell the court how their group positioned strategically at the premises without being noticed by their target. They could not also gave *(sic)* **an explanation how their confidential informant was able to obtain information regarding the drug deal that was supposed to take place on that date involving several personalities. Except for their bare allegation that they have that information regarding the drug deal they were not able to present any proof of such report, say, entry in their logbook of such confidential report and a spot report. Even their operation is not recorded as no documentary evidence was presented.** Worth remembering in this regard is *People v. Alviar*, 59 SCRA 136, where it is said that: . . . "[i]t often happens with fabricated stories that minute particulars have not been thought of." It has also been said that "an honest witness, who has sufficient memory to state one fact, and that fact a material one, cannot be safely relied upon as such weakness of memory not only leaves the case incomplete, but throws doubt upon the accuracy of the statements made. Such a witness may be honest, but his testimony is not reliable."[65] (Emphasis supplied.)

There are also material inconsistencies between the police-witnesses' sworn statements following accused-appellants' arrest and their testimonies before the RTC. The police officers attested in their Joint Affidavit of Arrest dated February 18, 2000 that "upon sensing suspicious transactions being undertaken thereat, team leader thru hand signaled immediately accosted the suspects and introduced themselves as 'Police Officers' and after that, subject persons deliberately admitted that they have in their possession illegal drugs and thereafter showed the same to the herein undersigned arresting officers thus they were placed under

[65] *Id.* at 1200-1201.

arrest."[66] Yet, during trial before the RTC, the police officers uniformly testified that they brought accused-appellants, Emmanuel de Claro and Lantion-Tom to the police office after arresting the four suspects *in flagrante delicto*, without mention at all of the suspects' purported admission.

We also consider the fact that Lantion-Tom was never charged with any criminal involvement even when, according to the prosecution's version of events, she was the first person to deliver the *shabu*. This seriously dents the prosecution's sequence of events on the night of February 17, 2000.

In contrast, accused-appellants presented clear and convincing evidence in support of their defenses, which the prosecution failed to rebut. Specifically, accused-appellant Rolando delos Reyes testified that he was illegally arrested without warrant at Buenas Market, Cainta, Rizal, not at Shangri-La Plaza in Mandaluyong City; and that he and Marlon David were coerced to incriminate themselves for possession of *shabu*. His claims were corroborated by Marlon David's testimony and Navarro's *Sinumpaang Salaysay* dated March 14, 2000. Also, Emmanuel de Claro, Lantion-Tom, and Roberto de Claro consistently testified that they were at Shangri-La Plaza to meet Milan, Lantion-Tom's accountant, regarding documents for a business permit (photocopies of the said documents were presented during trial); and that they were illegally arrested without warrant and forced to admit criminal liability for possession of *shabu*. These pieces of evidence are overwhelmingly adequate to overthrow the presumption of regularity in the performance by the arresting police officers of their official duties and raise reasonable doubt in accused-appellants' favor.

Furthermore, even assuming that the prosecution's version of the events that took place on the night of February 17, 2000 were true, it still failed to establish probable cause to justify the *in flagrante delicto* arrests of accused-appellants and search of accused-appellants' persons, incidental to their arrests, resulting in the seizure of the *shabu* in accused-appellants' possession.

[66] Records, Vol. II, p. 657.

Section 2, Article III of the Constitution provides:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Complementary to the above provision is the exclusionary rule enshrined in Section 3, paragraph 2 of Article III of the Constitution, which solidifies the protection against unreasonable searches and seizures, thus:

> **Section 3.** (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> **(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding**. (Emphases supplied.)

The foregoing constitutional proscription is not without exceptions. Search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; and (6) stop and frisk situations.[67]

The first exception (search incidental to a lawful arrest) includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest which must precede the search. In this instance, the law requires that there be first a lawful arrest before a search can be made — the process cannot be reversed. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes

[67] *People v. Molina*, 404 Phil. 797, 808 (2001).

permissible warrantless arrests. Thus, a peace officer or a private person may, without warrant, arrest a person: (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (arrest *in flagrante delicto*); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners).[68]

In *People v. Molina*,[69] we cited several cases involving *in flagrante delicto* arrests preceding the search and seizure that were held illegal, to wit:

> In *People v. Chua Ho San*, the Court held that in cases of *in flagrante delicto* arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting officer, therefore, must have personal knowledge of such fact or, as recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*, probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.
>
> **As applied to *in flagrante delicto* arrests, it is settled that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting**

[68] *Id.* at 808-809.

[69] *Id.*

officers, are not sufficient to constitute probable cause that would justify an *in flagrante delicto* arrest. Thus, in *People v. Aminnudin*, it was held that "the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."

Likewise, in *People v. Mengote*, the Court did not consider "eyes . . . darting from side to side . . . [while] holding . . . [one's] abdomen," in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. According to the Court, "[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers'] presence." So also, in *People v. Encinada*, the Court ruled that no probable cause is gleanable from the act of riding a *motorela* while holding two plastic baby chairs.

Then, too, in *Malacat v. Court of Appeals*, the trial court concluded that petitioner was attempting to commit a crime as he was "'standing at the corner of Plaza Miranda and Quezon Boulevard' with his eyes 'moving very fast' and 'looking at every person that come (sic) nearer (sic) to them."' In declaring the warrantless arrest therein illegal, the Court said:

> Here, there could have been no valid *in flagrante delicto* ... arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.

It went on to state that —

> Second, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast" — an observation which leaves us incredulous since Yu and his teammates were

> nowhere near petitioner and it was already 6:30 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble . . .
>
> Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front waistline" of petitioner, and from all indications as to the distance between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu.
>
> **Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer**.[70] (Emphases supplied.)

Similar to the above-cited cases in *Molina*, there is a dearth of evidence in this case to justify the *in flagrante delicto* arrests of accused-appellants and search of their persons incidental to the arrests.

A close examination of the testimonies of SPO1 Lectura, PO3 Santiago, and PO3 Yumul reveal that they simply relied on the information provided by their confidential informant that an illegal drug deal was to take place on the night of February 17, 2000 at Shangri-la Plaza in Mandaluyong City. Without any other independent information, and by simply seeing the suspects pass from one to another a white plastic bag with a box or carton inside, the police team was already able to conclude that the box contained *shabu* and "sensed" that an illegal drug deal took place.

SPO1 Lectura testified on direct examination as follows:

> Q: **What was the information gathered by your informant?**
> A: **That there will be a drug deal between 6 to 11 in the evening, sir.**

---

[70] *Id.* at 809-812.

Q: You were there as early as 2:00 p.m.?
A: Yes, sir.

Q: What did you do after briefing?
A: We positioned ourselves strategically, we waited for the arrival of the subject, sir.

x x x x x x x x x

Q: When you are already positioned in your respective area at the vicinity of Shangri-La Plaza, what happened next, if any?
A: At around 10:00 p.m. two (2) cars arrived and they were identified by the informant that they were the personalities involved.

x x x x x x x x x

Q: When this two (2) cars arrive what happened next?
A: They talked for a while after few minutes Botong entered, sir.

x x x x x x x x x

Q: Do you know this Botong prior this incident?
A: No, sir.

Q: How did you come to know that he is Botong?
A: Through our informant, sir.

Q: When Botong went to the Whistle Stop, what happened next?
A: According to my other companion he talked to another person then after that they went out, sir.

x x x x x x x x x

Q: How long did Botong stay in Whistle Stop Restaurant?
A: One (1) minute, sir.

x x x x x x x x x

Q: When you say they who is the companion?
A: Cocoy, sir.

xxx x x x xxx

Q: What happened next after they went out to the car?
A: They went to another car and Cocoy got something from his car and handed to Botong, sir.

xxx x x x xxx

Q: **Did you see that something that was taken inside that car?**
A: **White plastic bag, sir.**

Q: What happened after that?
A: Cocoy went inside the Whistle Stop, sir.

Q: With the bag?
A: No, it was left with Botong, sir.

Q: What happened next after that?
A: Botong proceeded to his car near Mac-Mac, sir.

Q: **What happened next after that?**
A: **We already *sensed* that drug deal has transpired, sir. We accosted him.**

xxx x x x xxx

Q: What did you do?

A: I arrested Mac-Mac, sir.

xxx x x x xxx

Q: Who of your companion apprehended Botong or Rolando delos Reyes?

A: Botong was arrested by Yumul and Padpad, sir.

Q: How about De Claro?

A: Arrested by Santiago, sir.

xxx x x x xxx

Q: **Then what did you do after apprehending these people?**

A: **We brought them to our office for investigation, sir**.[71] (Emphases supplied.)

PO3 Santiago's testimony also did not offer much justification for the warrantless arrest of accused-appellants and search of their persons:

Q: **When these two (2) persons went out of the restaurant and went to the place where blue Mazda car was parked, what happened next?**

---

[71] TSN, August 23, 2000, pp. 31-38.

A: **The person inside the Mazda car, from the backseat, handed a white plastic bag with a box inside to Emmanuel de Claro [Cocoy], sir. Then, Emmanuel de Claro [Cocoy] gave it to Rolando Delos Reyes [Botong], sir.**

Q: You mentioned about somebody handling box to De Claro [Cocoy] from inside that Mazda car?

A: Yes, sir.

Q: **Who was this somebody handling that box?**

A: **It was Mary Jane Lantion, sir.**

x x x x x x x x x

Q: When you see De Claro [Cocoy] handling the box to Botong, what happened after that?

A: Botong proceeded to the place of Mac-Mac and Emmanuel De Claro [Cocoy] returned back inside the said restaurant, sir.

Q: Where was Mac-Mac then at that time?

A: Near their car, sir. He was waiting for Botong.

Q: **After that what happened next?**

A: **When Botong returned to Mac-Mac, he gave white plastic bag with box inside to Mac-Mac, sir.**

Q: **What happened after that?**

A: **Our team leader, *sensing* that the drug deal have been consummated, we apprehended them, sir.**

Q: **How did you come to know that there was a drug deal at that particular place and time?**

A: **Because of the information given to us by the informant, sir.**

Q: **Are you aware of the contents of that box at that time?**

A: **No, sir.**

Q: **How did you come to know that there was a consummation of a drug deal?**

A: **Because of the information given to us by the informant that there will be a drug-deal, sir.**

x x x x x x x x x

Q: **Then what did you do?**

A: **We brought them to our office for proper investigation, sir.**

Q: At your office, what else did you do?

A: We confiscated the evidence, marked them and a request for laboratory examination was made and other pertaining papers regarding the arrest of the accused.

Q: You mentioned about the confiscated evidence. What is that confiscated evidence that you are saying?

A: Ten (10) pieces of white plastic transparent plastic bag with white crystalline substance suspected to be methamphetamine hydrochloride, sir.

Q: How were these evidences confiscated by your group?

A: They were confiscated from Mac-Mac, sir.

Q: **In what condition were they at that time that they were confiscated from Mac-Mac?**

A: **They were placed inside the box, sir**.[72] (Emphases supplied.)

PO3 Yumul's narration of events was not any different from those of SPO1 Lectura and PO3 Santiago:

Q: When did you meet the confidential informant?

A: At the vicinity of EDSA Shangri-La Plaza, sir.

Q: And what was the information that was relayed to you by the confidential informant?

A: The identities of the persons, sir.

Q: What did he particularly tells you in that particular time you meet the confidential informant at the vicinity of EDSA Shangri-La Plaza?

A: That there will be a drug-deal and the people involved will arrived together with their car, sir.

x x x x x x x x x

Q: And what happened after the confidential informant relayed to you the information?

---

[72] TSN, July 12, 2000, pp. 15-20.

A: After we were brief by the confidential informant, we strategically positioned ourselves in the place where the drug-deal will occur, sir.

x x x x x x x x x

Q: So what did you do after positioning yourselves in that place of EDSA Shangri-La Plaza and Whistle Stop restaurant, what happened next after that?

A: At around 10:00, one car arrived, a white Toyota corolla . . .

Q: 10:00 what? In the morning or in the evening?

A: In the evening, sir, of February 17, 2000, sir.

Q: And you stated that two vehicles arrived?

A: Yes, sir.

x x x x x x x x x

Q: So what happened when this vehicle arrived?

A: The red Toyota corolla follows, sir.

x x x x x x x x x

Q: Then what happened? What did you do, if any?

A: Our confidential informant told us that, that is our subject, sir.

x x x x x x x x x

Q: What happened next, if any, were they alighted from the car?

A: Yes, sir.

x x x x x x x x x

Q: Then, what happened next, if any?

A: They talked after they alighted from their car, sir.

Q: When you say "*nag-usap sila*" to whom are you referring?

A: To Mac-Mac and Botong, sir.

x x x x x x x x x

Q: What happened next after you see them talking to each other?

A: When they talk Mac-Mac called through cellphone, sir.

Q: By the way, did you hear the conversation of this two?
A: No, sir.

x x x x x x x x x

Q: How about the one calling over the cellphone, did you hear also what was the subject of their conversation?

A: No, sir.

Q: So what happened next after seeing them having a conversation with each other?

A: Botong immediately walked and proceeding to the Whistle Stop, sir.

x x x x x x x x x

Q: Then what happened when Botong went to Whistle Stop?

A: He talked to somebody inside, sir.

x x x x x x x x x

Q: And did you hear what was the subject of their conversation?

A: No, sir.

Q: Then what happened next when Botong talked to somebody inside the Whistle Stop?

A: The companion stood up and they went outside and both of them went to the side of Whistle Stop in front of the blue car, sir.

x x x x x x x x x

Q: **What did you do then?**

A: **Somebody opened the window in back of the blue car, sir.**

Q: **And then what happened next, if any?**

A: **A white plastic bag was handed to him with carton inside, sir.**

x x x x x x x x x

Q: And who received that item or article from the car?

A: Cocoy, sir.

x x x x x x x x x

Q: Were you able to know the person inside that car and who handed to Cocoy the white plastic bag?

A: Yes, sir.

Q: Who was that person?

A: Mary Jane Lantion, sir.

xxx x x x xxx

Q: And when this white plastic bag with carton placed inside handed to Cocoy, what did you do?

A: It was first handed by Cocoy to Botong, the plastic bag and then they walked in different direction, Cocoy went back inside the Whistle Stop and then Botong went back to Mac-Mac, sir.

xxx x x x xxx

Q: And then what happened next after that?

A: I followed Cocoy inside the Whistle Stop, sir.

xxx x x x xxx

Q: **So what did you do then?**

A: **I observed him inside but after a few minutes PO3 Virgilio Santiago went inside and told me that we will going to get them, sir.**

Q: **Why are you going to get them?**

A: **Because the two were already arrested outside the Whistle Stop, Mac-Mac and Botong, sir.**

xxx x x x xxx

Q: **So what did you do when PO3 Santiago told you that?**

A: **PO3 Santiago approached Cocoy and I am just assisting him, PO3 Santiago to avoid commotion, sir.**

Q: **Then what did you do next after that?**

A: **We were able to get Cocoy and we went outside, sir.**

Q: **And then what did you do, if any?**

A: **After arresting them we boarded to the car and we went to the office, sir**.[73] (Emphases supplied.)

[73] TSN, December 13, 2000, pp. 6-21.

Evident from the foregoing excerpts that the police officers arrested accused-appellants and searched the latter's persons without a warrant after seeing Rolando delos Reyes and Emmanuel de Claro momentarily conversing in the restaurant, and witnessing the white plastic bag with a box or carton inside being passed from Lantion-Tom to Emmanuel de Claro, to accused-appellant Rolando delos Reyes, and finally, to accused-appellant Reyes. These circumstances, however, hardly constitute overt acts "indicative of a felonious enterprise." SPO1 Lectura, PO3 Santiago, and PO3 Yumul had no prior knowledge of the suspects' identities, and they completely relied on their confidential informant to actually identify the suspects.None of the police officers actually saw what was inside that box. There is also no evidence that the confidential informant himself knew that the box contained *shabu*. No effort at all was taken to confirm that the arrested suspects actually knew that the box or carton inside the white plastic bag, seized from their possession, contained *shabu*. The police officers were unable to establish a cogent fact or circumstance that would have reasonably invited their attention, as officers of the law, to suspect that accused-appellants, Emmanuel de Claro, and Lantion-Tom "has just committed, is actually committing, or is attempting to commit" a crime, particularly, an illegal drug deal.

Finally, from their own account of the events, the police officers had compromised the integrity of the *shabu* purportedly seized from accused-appellants.

In *People v. Sy Chua*,[74] we questioned whether the *shabu* seized from the accused was the same one presented at the trial because of the failure of the police to mark the drugs at the place where it was taken, to wit:

Furthermore, we entertain doubts whether the items allegedly seized from accused-appellant were the very same items presented at the trial of this case. The record shows that the initial field test where the items seized were identified as *shabu*, was only conducted at the PNP headquarters of Angeles City. The items were therefore not marked at the place where they were taken. **In *People v. Casimiro*, we struck down with disbelief the reliability of the identity of the**

[74] 444 Phil. 757 (2003).

confiscated items since they were not marked at the place where they were seized, thus:

> The narcotics field test, which initially identified the seized item as *marijuana*, was likewise not conducted at the scene of the crime, but only at the narcotics office. There is thus reasonable doubt as to whether the item allegedly seized from accused-appellant is the same brick of *marijuana* marked by the policemen in their headquarters and given by them to the crime laboratory.[75] (Emphases supplied.)

In the instant case, SPO1 Lectura, PO3 Santiago, and PO3 Yumul uniformly testified before the RTC that they brought the arrested suspects to the police office for investigation. SPO1 Lectura and PO3 Santiago were vague as to how they ascertained as *shabu* the contents of the box inside the white plastic bag, immediately after seizing the same from accused-appellant Reyes and before proceeding to the police office; while PO3 Yumul explicitly testified on cross-examination[76] that he saw the *shabu* for the first time at the police office. At any rate, all three police officers recounted that the *shabu* was marked by SPO1 Benjamin David only at the police office.

Without valid justification for the *in flagrante delicto* arrests of accused-appellants, the search of accused-appellants' persons incidental to said arrests, and the eventual seizure of the *shabu* from accused-appellants' possession, are also considered unlawful and, thus, the seized *shabu* is excluded in evidence as fruit of a poisonous tree. Without the *corpus delicti* for the crime charged, then the acquittal of accused-appellants is inevitable.

As we aptly held in *People v. Sy Chua*[77]:

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[75] *Id.* at 776-777.

[76] Q: This afternoon you are going to tell this court that the first time that you saw Exhibits D-1 to D-10, the alleged *shabu*, was inside your office, correct?

A: Yes, sir.

Q: You're under oath that the first time you [saw] this was in your office, correct?

A: Yes, sir. (TSN, December 13, 2000, p. 33.)

[77] *Supra* at note 74.

All told, the absence of ill-motive on the part of the arresting team cannot simply validate, much more cure, the illegality of the arrest and consequent warrantless search of accused-appellant. Neither can the presumption of regularity of performance of function be invoked by an officer in aid of the process when he undertakes to justify an encroachment of rights secured by the Constitution. In *People v. Nubla*, we clearly stated that:

> The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, first, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.
>
> x x x x x x x x x

The government's drive against illegal drugs needs the support of every citizen. But it should not undermine the fundamental rights of every citizen as enshrined in the Constitution. The constitutional guarantee against warrantless arrests and unreasonable searches and seizures cannot be so carelessly disregarded as overzealous police officers are sometimes wont to do. Fealty to the constitution and the rights it guarantees should be paramount in their minds, otherwise their good intentions will remain as such simply because they have blundered. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.[78]

WHEREFORE, the Decision dated July 12, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01733 is hereby *REVERSED* and *SET ASIDE*. Accused-appellants Rolando delos Reyes and Raymundo Reyes are *ACQUITTED* on the ground of reasonable doubt and they are *ORDERED* forthwith released from custody, unless they are being lawfully held for another crime.

SO ORDERED.

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

[78] *Id.* at 776-777.

FIRST DIVISION

[G.R. No. 174980. August 31, 2011]

RADITO AURELIO *y* REYES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In a prosecution for the illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is crucial to the prosecution for illegal sale of dangerous drugs is evidence of the transaction, as well as the presentation in court of the *corpus delicti*.

2. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — [I]n a prosecution for illegal possession of a dangerous drug, there must be proof that "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON GENERALLY DESERVES GREAT WEIGHT ON APPEAL. — "When it comes to the credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence." The trial court is in the best position to evaluate testimonial evidence properly because it has the full opportunity to observe directly the witnesses' deportment and manner of testifying. This rule finds an even more stringent application where said findings are affirmed by the appellate court.

4. ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES THAT REFER TO TRIVIAL AND INSIGNIFICANT DETAILS. — Inconsistencies in the testimonies of witnesses that refer to trivial and insignificant details do not destroy their credibility. Moreover, minor

inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase any suspicion that the testimonies have been rehearsed thereby negating any misgiving that the same were perjured. Testimonies of witnesses need only to corroborate each other on important and relevant details concerning the principal occurrence. "Besides, it is to be expected that the testimony of witnesses regarding the same incident may be inconsistent in some aspects because different persons may have different impressions or recollection of the same incident."

5. ID.; ID.; DENIAL AND FRAME-UP; MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE TO PROSPER AS DEFENSES. — We view with disfavor the defenses of denial and frame-up. Like the defense of alibi, said defenses can easily be concocted and are common and standard defenses employed in prosecutions for violations of the Dangerous Drug Act. For these defenses to prosper there must be clear and convincing evidence. In this case, petitioner failed to adduce sufficient proof in support of his defenses. There is simply no evidence to bolster his defenses other than his self-serving assertions. Moreover, we note that the petitioner did not file any complaint for frame-up or extortion against the buy-bust team. Such inaction belies his claim of frame-up and that the police officers were extorting money from him. His allegations therefore are simply implausible.

6. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; PREVAILS IN THE ABSENCE OF EVIDENCE OF ANY ILL-MOTIVE ON THE PART OF THE POLICE OFFICERS WHO APPREHENDED THE ACCUSED. — In the absence of evidence of any ill-motive on the part of the police officers who apprehended the petitioner, the presumption of regularity in the performance of official duty prevails. The presumption that official duty has been regularly performed was not overcome since there was no proof showing that SPO2 Bacero and PO1 Jacuba were impelled by improper motive. "There is, therefore, no basis to suspect the veracity of their testimonies."

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); UNAUTHORIZED SALE OF *SHABU*; PENALTY IN CASE AT BAR. — Under Section 5, Article II of R.A. No. 9165, the penalty

prescribed for unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱1 million. There being no circumstance which would aggravate petitioner's criminal liability, the CA therefore correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case No. MC-02-6019-D.

8. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; PENALTY IN CASE AT BAR. — Under Section 11(3), Article II of R.A. No. 9165, on the other hand, the penalty prescribed for illegal possession of less than five grams of *shabu* or methamphetamine hydrochloride is imprisonment of twelve (12) years and one (1) day to twenty (20) years, plus a fine ranging from ₱300,000.00 to ₱400,000.00. The petitioner was charged with and found guilty of illegal possession of 0.12 gram of *shabu* in Criminal Case No. MC-02-6020-D. Hence, the CA correctly imposed the indeterminate prison term of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and a fine of ₱300,000.00 in Criminal Case No. MC-02-6020-D.

APPEARANCES OF COUNSEL

Roberto C. Bermejo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In resolving this petition for review on *certiorari*, we rely on two legal precepts. First, inconsistencies in the testimonies of prosecution witnesses that do not relate to the elements of the offense are too inconsequential to warrant a reversal of the trial court's judgment of conviction. Second, the defenses of denial and frame-up must be substantiated with clear and convincing evidence; otherwise, same cannot prevail over the positive and credible testimonies of the prosecution witnesses.

Factual Antecedents

On October 22, 2002, two Informations charging petitioner Radito Aurelio *y* Reyes @ Jack (petitioner) with violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165[1] were filed with the Regional Trial Court (RTC) of Mandaluyong City, and raffled off to Branch 213.

The Information[2] charging the petitioner with violation of Section 5,[3] Article II of R.A. No. 9165 was docketed as Criminal Case No. MC-02-6019-D and contained the following accusatory allegations:

> That on or about the 17th day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously deliver, distribute, transport or sell to poseur buyer, P01 Julius B. Bacero one (1) small heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, which was found positive to the test for Methylamphetamine Hydrochloride, commonly known as "*shabu*", a dangerous drug, for the amount of ₱100.00 bearing Serial No. HA802877, without the corresponding license and prescription, in violation of the above-cited law.
>
> CONTRARY TO LAW.

On the other hand, the Information[4] charging petitioner with violation of Section 11,[5] Article II of R.A. No. 9165 was docketed as Criminal Case No. MC-02-6020-D and contained the following accusatory allegations:

> That on or about the 17th day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this

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[1] The Comprehensive Dangerous Drugs Act of 2002.

[2] Records of Criminal Case No. MC-02-6019-D, p. 7.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Records of Criminal Case No. MC-02-6020, p. 1.

[5] Possession of Dangerous Drugs.

Honorable Court the above-named accused, not having been lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing 0.12 gram of white crystalline substance, which was found positive to the test for Methylamphetamine Hydrochloride, commonly known as "*shabu*," a dangerous drug, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.

Upon motion of the prosecution, the two cases were consolidated. When petitioner was arraigned, he entered a plea of "not guilty" to the charges. Thereafter, pre-trial and trial ensued.

The Version of the Prosecution

On October 17, 2002, Police Chief Inspector Bien B. Calag, Jr. (Chief Inspector Calag) of Task Force Magpalakas of the Philippine National Police instructed SPO2 Julius Bacero (SPO2 Bacero) to verify a report of rampant selling of *shabu* in M. Vasquez Street, Barangay Harapin ang Bukas, Mandaluyong City. At the same time, Chief Inspector Calag also contacted his informant and directed the latter to gather data that would substantiate the report. After 45 minutes, the informant called up and confirmed the reported illegal trade of *shabu*.

SPO2 Bacero, together with PO1 Ronald Jacuba (PO1 Jacuba), then proceeded to the area to conduct police surveillance. The informant directed them to the house where the sale of *shabu* was being conducted. Thereafter, the police officers returned to the station and reported their findings to Chief Inspector Calag, who immediately formed a buy-bust team composed of said police officers and members of the Mayor's Action Command. SPO2 Bacero was designated as the poseur-buyer.

At around 4:30 in the afternoon that day, the buy-bust team proceeded to the house of the petitioner. SPO2 Bacero knocked on the door and petitioner opened it. When SPO2 Bacero said "*Pare iiskor ako ng piso*," petitioner told him to wait and went

back inside the house. Meanwhile, SPO2 Bacero used his mobile phone to give PO1 Jacuba a ring – their pre-arranged signal for PO1 Jacuba to get closer to the house of petitioner. After three minutes, the petitioner asked SPO2 Bacero to enter and gave him a small sachet containing white crystalline substance. In exchange, SPO2 Bacero paid petitioner with marked money.

Thereafter, PO1 Jacuba arrived and, together with SPO2 Bacero, arrested the petitioner. They apprised him of his constitutional rights and frisked him. They recovered the marked money and another plastic sachet containing white crystalline substance from petitioner.

The police officers brought petitioner to the Mandaluyong Medical Center for medical check-up then proceeded to the police station for blotter and interrogation. The two sachets containing white crystalline substance recovered from the petitioner were sealed and marked as "JB-1" and "JB-2". The case was then turned over to SPO1 Jaime Masilang of the Criminal Investigation Unit of Mandaluyong City for investigation and referral to appropriate offices. He endorsed the two sachets to the crime laboratory for examination. The results of the examination conducted by Police Inspector Armand De Vera (Police Inspector De Vera) on the contents of the sachets tested positive for methamphetamine hydrochloride, also known as *shabu*, a dangerous drug.

The Version of the Petitioner

Petitioner denied the allegations against him and presented a completely different scenario. He testified that in the late afternoon of October 17, 2002, he was watching television in the house of his neighbor which is about 20 meters from his house. He went out to buy cigarettes, but suddenly two men grabbed him and told him to proceed to his house. They went to his house and stayed there for 15 minutes until they were joined by three more persons. After that he was taken to an alley and ordered to board a vehicle that took them to the *barangay* hall. Ten minutes later he was brought to the City Hall of Mandaluyong where a police officer questioned him on an alleged *shabu* incident.

Petitioner was then taken to the office of Task Force Magpalakas, located at the lower level of the Mandaluyong City Hall. Thereat, he saw SPO2 Bacero for the first time, who demanded ₱30,000.00 for his liberty. Unable to produce the money, he was charged in separate criminal informations with allegedly selling and possessing *shabu*.

Petitioner's long-time neighbor, Julieta Dulia (Julieta) and his sister, Teresita Aurelio (Teresita), corroborated his testimony.

Ruling of the Regional Trial Court

On March 2, 2005, the trial court rendered its Judgment[6] convicting petitioner for violation of Sections 5 and 11, Article II of R.A. No. 9165. The dispositive portion of the Judgment reads:

> WHEREFORE, CONSIDERING ALL THE FOREGOING, accused RADITO AURELIO *Y* REYES is hereby found GUILTY BEYOND REASONABLE DOUBT of the offenses charged and he is hereby sentence [sic] to suffer the straight penalty of twelve (12) years imprisonment for Violation of Section 5, Article II of Republic Act No. 9165, in Criminal Case No. MC-02-6019-D and he is likewise, sentence [sic] to suffer the straight penalty of twelve (12) years imprisonment for Violation of Section 11, Article II of Republic Act No. 9165, in Criminal Case No. MC-02-6020-D, respectively.
>
> The evidence recovered from the herein accused is hereby forfeited in favor of the government to be disposed of in accordance with existing rules.
>
> The Branch Clerk of Court is hereby ordered to submit the same to that office within fifteen (15) days from today, the corresponding receipt to be submitted to the undersigned.
>
> SO ORDERED.[7]

Ruling of the Court of Appeals

The CA affirmed with modification the Judgment of the trial court by increasing the penalty of imprisonment imposed on

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[6] *Rollo*, pp. 33-46; penned by Judge Amalia F. Dy.

[7] *Id.* at 46.

the petitioner in both cases. The dispositive portion of its June 22, 2006 Decision[8] reads:

> WHEREFORE, the assailed decision of the Regional Trial Court of Mandaluyong City, Branch 213 dated March 2, 2005 is hereby AFFIRMED with the following MODIFICATIONS:
>
> (1) In Criminal Case No. MC-02-0619-D, the penalty is modified to LIFE IMPRISONMENT and a fine of ₱500,000.00, in accordance with the first paragraph of Section 5, Article II of Republic Act No. 9165.
>
> (2) In Criminal Case No. MC-02-6020-D, the penalty is modified to the indeterminate sentence of TWELVE (12) YEARS AND ONE (1) DAY as minimum to TWENTY (20) YEARS as maximum and a fine of ₱300,000.00.
>
> SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration[10] but it was denied in the Resolution[11] dated October 9, 2006.

Thus, this petition.

Assignment of Errors

The petitioner ascribes upon the CA the following two-fold errors:

> BOTH THE TRIAL AND APPELLATE COURTS GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF POLICE OFFICER JULIUS BACERO AND IN FINDING PETITIONER 'GUILTY' OF THE OFFENSES CHARGED.
>
> BOTH THE TRIAL AND APPELLATE COURTS ERRED IN NOT FINDING THAT NO DRUG BUY-BUST [OPERATION] ACTUALLY TOOK PLACE.[12]

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[8] CA *rollo*, pp. 117-127; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Jose L. Sabio, Jr. and Rosalinda Asuncion-Vicente.

[9] *Id.* at 126.

[10] *Id.* at 128-133.

[11] *Rollo*, pp. 67-68.

[12] *Id.* at 11.

The petitioner contends that the trial court erred in giving credence to the testimonies of the prosecution witnesses due to several inconsistencies on material points. According to the petitioner, the trial court obviously had no basis in relying on the presumption that the police officers regularly performed their duties in conducting the entrapment operation. In support of his contention, petitioner quoted at length portions of the stenographic notes.

Our Ruling

The petition is unmeritorious.

Elements for the Prosecution of Illicit Sale and Possession of Shabu

In a prosecution for the illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is crucial to the prosecution for illegal sale of dangerous drugs is evidence of the transaction, as well as the presentation in court of the *corpus delicti*. On the other hand, in a prosecution for illegal possession of a dangerous drug, there must be proof that "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."[13]

In this particular case, the prosecution established beyond reasonable doubt all the essential elements of illegal sale and possession of *shabu*. Petitioner was positively identified by the prosecution witnesses as the person who sold the *shabu* presented in court. SPO2 Bacero testified that he purchased and received the *shabu* from petitioner during a legitimate buy-bust operation and that another sachet containing *shabu* was seized from petitioner's possession after they conducted a lawful search as an incident to a valid warrantless arrest. The marked

[13] *People v. Hajili*, 447 Phil. 283, 295 (2003).

money used in the buy-bust operation was duly presented, and the *shabu* seized from the petitioner was positively and categorically identified in open court. It was also shown that petitioner sold and possessed the *shabu* without authority, license or prescription.

SPO2 Bacero narrated the details leading to the consummation of the sale of the illegal drug, the arrest he made, and the recovery of the drugs from the possession of the petitioner:

Q. Who in your office actually received the information that somebody is selling "*shabu*" somewhere in M. Vasquez St.?
A. Police Chief Inspector Bien B. Calag, ma'am.

x x x x x x x x x x x x

Q. Aside from informing you that he received an information regarding activities involving selling "*shabu*" along M. Vasquez St., what if any did chief Inspector Calag [tell] you?
A. He instructed us to verify the report.

x x x x x x x x x x x x

Q. And what did you do by way of verifying the information?
A. In compliance with that we directed our secret informant to conduct surveillance to confirm the report.

x x x x x x x x x x x x

Q. Mr. witness you said you dispatched your informant in the place, now after you dispatched him, what action if any was taken by you?
A. After 45 minutes thereafter, our informant called up and confirmed the information, ma'am.

x x x x x x x x x x x x

Q. And what did he tell you if any during the call?

x x x x x x x x x x x x

A. That it is true that somebody was selling "*shabu*" at M. Vasquez St., and he gave the address.

x x x x x x x x x x x x

Q. And what was the address given to you?

A. 522 M. Vasquez St., Brgy. Harapin ang Bukas, Mandaluyong City.

Q. Now, upon receipt of this information coming from your informant, what did you do, Mr. witness?
A. At around quarter to four in the afternoon, we proceeded to M. Vasquez St.

Q. Before you proceeded to M. Vasquez St., what did you do first?
A. Before proceeding to the area, I was given by Chief Calag, Jr. a ₱100 bill as a buy bust money.

Q. What did you do upon receipt of the ₱100 bill?
A. I placed a marking on the ₱100 bill, ma'am.

x x x x x x x x x

Q. At quarter to four of October 17, who were with you when you left your office to proceed to M. Vasquez St.?
A. PO1 Jacuba.

Q. And who else?
A. And other members of Mayor's Action Command.

Q. And how many were you more or less?
A. We were five (5) ma'am.

x x x x x x x x x

Q. Mr. witness, at 4:30 in the afternoon of October 17, 2002 where were you?
A. I went to his house and [knocked].

Q. [Whose house]?
A. The house of Radito Reyes.

Q. Mr. witness, at what particular house did you knock x x x when you reached M. Vasquez St.?
A. At 522 M. Vasquez St., Brgy. Harapin ang Bukas, Mandaluyong City.

x x x x x x x x x

Q. You said you knocked at his door at 522 M. Vasquez St., Brgy. Harapin ang Bukas, Mandaluyong City[. After] you knocked at this house, what happened, Mr. witness?
A. Radito opened the door.

x x x x x x x x x

Q. After he opened the door, what transpired next?
A. I told him "*Pare, iiskor ako ng piso*" which is equivalent to ₱100.00.

Q. Now Mr. witness, upon telling him the word "*iiskor ako ng piso*" what was the response, if any, of the person you are talking with?
A. I was told to wait for a while.

Q. After he uttered the word "for a while", what did he do?
A. He went inside, ma'am.

Q. What about you, where were you when he entered the house?
A. I was left outside the door.

Q. Now after he left and you were at the door, what happened next?
A. After a while x x x he came back.

x x x x x x x x x

Q. You said he entered the house and you were left standing outside the house, now while he was away, what did you do?
A. I signaled PO1 Jacuba to come nearer.

Q. What signal, if any, was employed by you in conveying to Jacuba the message?
A. I made a miss[ed] call to his cellphone.

Q. After you made a miss[ed] call to PO1 Ronald Jacuba which according to you is a way of conveying to him that he should come near, what happened next?
A. He got close to the area.

Q. You said that the accused went back after three (3) minutes, what transpired between you and the accused when he returned?
A. He let me x x x inside.

Q. When he let you x x x inside, what did you do, did you come [sic] inside?
A. Yes, ma'am.

Q. When you were already inside the house upon invitation of the accused, what transpired between you and him?
A. He handed to me a small x x x thing x x x.

Q. Will you describe to us the small thing which he handed to you?
A. It is a small thing containing white crystalline substance.

x x x x x x x x x

Q. Now this small thing that you are referring to, what is it made of?
A. It is a small plastic sachet, ma'am.

Q. And what is the color of the plastic?
A. White, ma'am.

Q. Now after he handed to you the plastic sachet with white crystalline substance, what did you do with your money?
A. In exchange, I handed to him the money. "*Kaliwaan po*."

x x x x x x x x x

Q. Now after he handed to you the plastic sachet with white crystalline substance and in exchange therefor you handed to him this ₱100 bill which was already marked as Exhibit "D", what happened next?
A. We talked for a while inside the house, ma'am.

x x x x x x x x x

Q. And after two (2) minutes what transpired next?
A. After two (2) minutes, Jacuba suddenly arrived.

Q. And what transpired when Jacuba arrived after two (2) minutes?
A. We arrested the accused.

Q. By the way, Mr. witness, before you [made] the arrest, what did you do first?
A. I introduced myself as a Police Officer.

Q. And aside from introducing yourself as policeman, what else?
A. I advised him of his right to remain silent.

x x x x x x x x x

Q. Now, what did you do next after you told him that he has the right to remain silent?
A. Thereafter, as an S.O.P. we made a search upon the body of the accused.

x x x x x x x x x x x x

Q. And what was the result, if any, of the search which you made on the accused?
A. We were able to recover the money from him.

x x x x x x x x x x x x

Q. What else was recovered by you from him, if any?
A. We were likewise able to recover another plastic sachet in his right pocket. In his "*bulsa de relo*."

x x x x x x x x x x x x

Q. And what is it that was placed or contained inside the plastic sachet?
A. White crystalline substance, ma'am.

Q. Mr. witness, after you arrested the herein accused what did you do next?
A. We brought him to our Head Quarters [sic].

x x x x x x x x x x x x

Q. What else was endorsed by you, I will withdraw that, your Honor. What about the two (2) plastic sachets, what did you do with these two (2) plastic sachets upon arrival at the Mandaluyong Police station?
A. We likewise, brought the same to the Crime Laboratory . . .

Q. Before bringing [them] to the Crime Laboratory, did you do anything, on the two (2) sachets?
A. I placed markings, your Honor.[14]

PO1 Jacuba corroborated the testimony of SPO2 Bacero on relevant points. He testified as follows:

Q. Now, after you were briefed as to your designated task in this buy-bust operation, what happened next?
A. [At] or about 4:00 p.m., we [proceeded] to the area, ma'am.

Q. Where did you proceed?
A. To M. Vasquez Street, ma'am.

Q. In what particular place at M. Vasquez?
A. At 522 M. Vasquez Street, ma'am.

[14] TSN, August 6, 2003, pp. 7-26.

x x x x x x x x x

Q. When you reached this place, in the afternoon, at around what time? 4:30 more or less?
A. More or less, ma'am.

x x x x x x x x x

Q. In terms of distance, more or less, how far were you from this house with address at 522 M. Vasquez Street, where [did] you [position] yourself in this operation? In terms of meters, how far, approximately?
A. Approximately, thirty (30) meters, ma'am.

x x x x x x x x x

Q. Mr. witness, after you positioned yourself 30 meters away from the house with address 522 M. Vasquez Street, what took place?
A. Bacero went to the house of *alias* Jack, ma'am.

Q. How did you know that he proceeded to the house of *alias* Jack?
A. He told us and he likewise told us to wait for his miss[ed] call.

Q. Now, thereafter, when he told you that he will now proceed to the house of *alias* Jack at 522 M. Vasquez Street, in the meantime, what were you doing while you were in your post?
A. We were just on stand-by, ma'am.

x x x x x x x x x

Q. Thereafter, while you were then on stand-by, what took place, if any?
A. After 8 – 10 minutes, ma'am, PO1 Bacero made a miss[ed] call.

Q. When Bacero made a miss[ed] call, what did you do?
A. We proceeded to the house pointed to us by the asset when we conducted our casing, ma'am.

x x x x x x x x x

Q. When you proceeded there, what happened?
A. PO1 Bacero already arrested Jack, ma'am.

x x x x x x x x x

Q. What happened next, Mr. witness, you said after the miss[ed] call you went to this place where you saw Bacero and Jack, already arrested by Police Officer Bacero, what happened next?
A. He was searched, ma'am, and we apprised him of his rights.

x x x x x x x x x

Q. You said that Bacero frisked him and on the later part of the frisking, you were present?
A. Yes, ma'am.

x x x x x x x x x

Q. And what was told to you by Bacero?

x x x x x x x x x

A. Bacero told me that when he searched the body of that person, he confiscated a plastic sachet and the buy-bust money.[15]

Police Inspector De Vera, the Forensic Chemical Officer who examined the confiscated crystalline substance from the illegal sale, found the same to be positive for methamphetamine hydrochloride or *shabu*. The examination of the contents of the other sachet seized from his possession as a result of a lawful search also tested positive for 0.12 gram of said dangerous drug. These findings are contained in Chemistry Report No. D-2059-02E.[16]

The Trial Court's Findings on the Credibility of Witnesses are Given Great Respect.

The trial court and the CA found the testimonies of the prosecution witnesses regarding petitioner's illegal sale and possession of *shabu* to be credible since they are consistent with the documentary and object evidence submitted by the prosecution. "When it comes to the credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some

[15] TSN, September 29, 2004, pp. 11-27.

[16] Records of Criminal Case No. MC-02-6020-D, p. 12.

fact or circumstance of weight and influence."[17] The trial court is in the best position to evaluate testimonial evidence properly because it has the full opportunity to observe directly the witnesses' deportment and manner of testifying.[18] This rule finds an even more stringent application where said findings are affirmed by the appellate court.[19]

The Inconsistencies in the Testimonies of the Prosecution Witnesses are Trivial.

The petitioner asserts that the credibility of the prosecution witnesses is adversely affected by several inconsistencies in their testimonies. These inaccuracies consist of the following: (a) the information regarding petitioner's illegal sale of *shabu* was allegedly received by the superior of SPO2 Bacero but surprisingly, same was not entered in the police blotter; (b) the participation of SPO2 Bacero in the test-buy with the petitioner is not clear, because if it is true that the test-buy yielded positive result, then SPO2 Bacero should have immediately arrested the petitioner; (c) SPO2 Bacero vacillated in his declaration that he has personal knowledge regarding petitioner's illegal activities; (d) the testimonies of SPO2 Bacero and PO1 Jacuba regarding the surveillance on the petitioner contradict each other; (e) the length of time SPO2 Bacero waited for the petitioner to return with the *shabu* is incredulous and cannot be ascertained if it was three minutes or three seconds; and, (f) the testimonies of said police officers on how the buy-bust money was recovered also diametrically oppose each other.

After a thorough review of the inconsistencies mentioned by the petitioner, we find that they do not relate to the elements of the offenses committed. Rather, they tend to focus on minor and insignificant matters. These inconsistencies do not detract from the fact that the prosecution's key witness who conducted the entrapment, identified the petitioner as the same person

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[17] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 444.

[18] *Id*.

[19] *Id*.

who sold the dangerous drug to him and from whose possession another plastic sachet containing *shabu* was recovered.

Inconsistencies in the testimonies of witnesses that refer to trivial and insignificant details do not destroy their credibility.[20] Moreover, minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase any suspicion that the testimonies have been rehearsed thereby negating any misgiving that the same were perjured.[21]

Testimonies of witnesses need only to corroborate each other on important and relevant details concerning the principal occurrence. "Besides, it is to be expected that the testimony of witnesses regarding the same incident may be inconsistent in some aspects because different persons may have different impressions or recollection of the same incident."[22]

The testimonies of the petitioner's witnesses cannot be given more weight than the testimonies of the prosecution witnesses. Teresita is the sister of the petitioner while Julieta has been his neighbor for the past 10 years. Thus, their testimonies are necessarily suspect, considering they are petitioner's sibling and friend respectively. The testimonies of Julieta and Teresita even contradict each other as Teresita declared that five malefactors entered their home while Julieta stated that only two men went with petitioner inside his house. This inconsistency further diminishes the credibility of petitioner's witnesses.[23]

To rebut the prosecution's overwhelming evidence, the petitioner asserts the defenses of denial and frame-up. He denies selling *shabu* to SPO2 Bacero and possessing a sachet that contained the same drug during the purported entrapment. He insists that the *shabu* was planted by the police officers and that they attempted to extort money from him in exchange for his freedom.

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[20] *People v. Mationg*, 407 Phil. 771, 787 (2001).

[21] *People v. Garcia*, 424 Phil. 158, 184-185 (2002).

[22] *People v. Sy Bing Yok*, 368 Phil. 326, 336 (1999).

[23] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 444.

We view with disfavor the defenses of denial and frame-up. Like the defense of alibi, said defenses can easily be concocted and are common and standard defenses employed in prosecutions for violations of the Dangerous Drug Act.[24] For these defenses to prosper there must be clear and convincing evidence.[25] In this case, petitioner failed to adduce sufficient proof in support of his defenses. There is simply no evidence to bolster his defenses other than his self-serving assertions. Moreover, we note that the petitioner did not file any complaint for frame-up or extortion against the buy-bust team. Such inaction belies his claim of frame-up and that the police officers were extorting money from him. His allegations therefore are simply implausible.

In the absence of evidence of any ill-motive on the part of the police officers who apprehended the petitioner, the presumption of regularity in the performance of official duty prevails.[26] The presumption that official duty has been regularly performed was not overcome since there was no proof showing that SPO2 Bacero and PO1 Jacuba were impelled by improper motive.[27] "There is, therefore, no basis to suspect the veracity of their testimonies."[28]

In view of the foregoing circumstances, a reversal of the trial court's judgment, as affirmed by the CA, is unwarranted. The inconsistencies that may be found in the testimonies of the prosecution witnesses are too insignificant to negate the fact that the petitioner indeed committed the offenses for which he was convicted. Moreover, the positive and credible testimonies of the prosecution witnesses cannot be overturned by the petitioner's defenses of denial and frame-up, which we frown upon in the absence of clear and convincing evidence.

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[24] *People v. Lazaro*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[25] *Id*.

[26] *People v. Naquita, supra* note 17 at 454.

[27] *Id*.

[28] *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 366.

The Proper Penalty

Having been duly established by the prosecution's evidence that petitioner violated Sections 5 and 11, Article II of R.A. No. 9165, we shall now ascertain the correctness of the penalties imposed on him.

Under Section 5, Article II of R.A. No. 9165, the penalty prescribed for unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱1 million. There being no circumstance which would aggravate petitioner's criminal liability, the CA therefore correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case No. MC-02-6019-D.

Under Section 11(3), Article II of R.A. No. 9165, on the other hand, the penalty prescribed for illegal possession of less than five grams of *shabu* or methamphetamine hydrochloride is imprisonment of twelve (12) years and one (1) day to twenty (20) years, plus a fine ranging from ₱300,000.00 to ₱400,000.00.

The petitioner was charged with and found guilty of illegal possession of 0.12 gram of *shabu* in Criminal Case No. MC-02-6020-D. Hence, the CA correctly imposed the indeterminate prison term of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and a fine of ₱300,000.00 in Criminal Case No. MC-02-6020-D.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR No. 29279 that affirmed with modification the Decision of the Regional Trial Court of Mandaluyong, Branch 213, finding petitioner Radito Aurelio *y* Reyes guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 in Criminal Case Nos. MC-02-6019-D and MC-02-6020-D, respectively, and its Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175074. August 31, 2011]

JESUS TORRES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DESIGNATION OF THE WRONG COURT DOES NOT NECESSARILY AFFECT THE VALIDITY OF THE NOTICE OF APPEAL, PROVIDED THE DESIGNATION OF THE PROPER COURT IS MADE WITHIN THE 15-DAY PERIOD TO APPEAL. — Paragraph 3, Section 4 (c) of Republic Act No. 8249 (RA 8249), which defined the jurisdiction of the Sandiganbayan, provides: "The *Sandiganbayan* shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided." Hence, upon his conviction, petitioner's remedy should have been an appeal to the Sandiganbayan. There is nothing in said paragraph which can conceivably justify the filing of petitioner's appeal before the Court of Appeals instead of the Sandiganbayan. Clearly, the Court of Appeals is bereft of any jurisdiction to review the judgment petitioner seeks to appeal. It must be emphasized, however, that the designation of the wrong court does not necessarily affect the validity of the notice of appeal. However, the designation of the proper court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, Section 2, Rule 50 of the Rules of Court would apply, the relevant portion of which states: "Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. – x x x **An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court, but shall be dismissed outright**." In the case at bar, petitioner sought correction of the error in filing the appeal way beyond the expiration of the period to appeal the decision. The RTC promulgated its Decision

on August 31, 2005. Petitioner filed his Notice of Appeal on September 8, 2005. Petitioner tried to correct the error only on February 10, 2006 when he filed his Manifestation and Motion. Clearly, this is beyond the 15-day period to appeal from the decision of the trial court. Therefore, the CA did not commit any reversible error when it dismissed petitioner's appeal for lack of jurisdiction.

2. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS OR PROPERTY; AN ACCOUNTABLE PUBLIC OFFICER IS ONE WHO HAS CUSTODY OR CONTROL OF PUBLIC FUNDS OR PROPERTY BY REASON OF THE DUTIES OF HIS OFFICE. — An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee. Hence, a school principal of a public high school, such as petitioner, may be held guilty of malversation if he or she is entrusted with public funds and misappropriates the same.

3. ID.; ID.; MAY BE COMMITTED EITHER THROUGH A POSITIVE ACT OF MISAPPROPRIATION OF PUBLIC FUNDS OR PROPERTY, OR PASSIVELY THROUGH NEGLIGENCE. — Malversation may be committed either through a positive act of misappropriation of public funds or property, or passively through negligence. To sustain a charge of malversation, there must *either* be criminal intent or criminal negligence, and while the prevailing facts of a case may not show that deceit attended the commission of the offense, it will not preclude the reception of evidence to prove the existence of negligence because *both* are *equally punishable* under Article 217 of the Revised Penal Code.

4. ID.; ID.; EVEN WHEN THE INFORMATION CHARGES WILLFUL MALVERSATION, CONVICTION FOR MALVERSATION THROUGH NEGLIGENCE MAY STILL BE ADJUDGED IF THE EVIDENCE ULTIMATELY PROVES THE MODE OF COMMISSION OF THE OFFENSE. — [T]he felony involves breach of public trust, and whether it is committed through deceit or negligence, the law makes it punishable and prescribes a

uniform penalty therefor. Even when the Information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves the mode of commission of the offense.

VELASCO, JR., *J., separate concurring opinion*:

REMEDIAL LAW; RULES OF PROCEDURE; SHOULD BE RELAXED FOR COMPELLING REASONS OF EQUITY AND SUBSTANTIVE JUSTICE; CASE AT BAR. — The *ponencia* is correct in turning down the argument of petitioner that his erroneous appeal to the CA should not be dismissed outright but referred to the proper court which is the Sandiganbayan. This is in line with Our ruling in *Melencion v. Sandiganbayan*, *Moll v. Buban*, and others that an appeal erroneously taken to the CA shall not be transferred to the appropriate court (in this case, the Sandiganbayan) but shall be dismissed outright pursuant to Section 2, Rule 50 of the Rules of Court. It is my opinion, however, that while the erroneous appeal of petitioner can be dismissed as a matter of course, I find that the facts and circumstances justify the relaxation and suspension of Our Rules of Court for compelling reasons of equity and substantive justice. The records reveal that petitioner has no financial resources to hire a *de parte* lawyer and resorted to seeking legal representation from the Public Attorney's Office (PAO) in Virac, Catanduanes. The PAO lawyer assigned to his case bungled his job and filed a Notice of Appeal to the CA when it should have been directed to the proper court—the Sandiganbayan. The PAO central, upon being apprised of the error, lost no time in seeking the referral of the case to the Sandiganbayan, but, unfortunately, the appeal period has lapsed. While it is the general rule that a party-litigant is bound by the mistake or negligence of his counsel, in the case at bar, I conclude that there was gross mistake or irresponsibility on the part of the PAO lawyer. In *Aguilar v. Court of Appeals*, the Court granted relief to the hapless accused by reopening the case to give him another chance to adduce evidence x x x. By analogy, it is my view that the Court should have remanded the instant case to the Sandiganbayan and ordered petitioner's appeal to be given due course. The PAO lawyer, who was assigned to the case of petitioner, is assumed to have

handled hundreds of cases for indigent litigants and should already be familiar with the exclusive appellate jurisdiction of the Sandiganbayan over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided pursuant to par. 3, Sec. 4(c) of Republic Act No. 8249. Apparently, he was not. Under the circumstances of the case, the Court could have suspended the rules and accorded petitioner his right to appeal his conviction to the Sandiganbayan.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Resolution[1] dated September 6, 2006 and Resolution dated October 17, 2006[2] of the Court of Appeals (CA) in CA-G.R. CR No. 29694.

The factual and procedural antecedents are as follows:

In an Information[3] dated November 15, 1994, petitioner Jesus U. Torres was charged with the crime of Malversation of Public Funds before the Regional Trial Court (RTC), Branch 42, Virac, Catanduanes, the accusatory portion of which reads:

That on or about the 27th day of April 1994, or sometime subsequent thereto, in the Municipality of Virac, Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above-named

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Jose Catral Mendoza (now a member of this Court) and Sesinando E. Villon, concurring; *rollo*, pp. 41-42.

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

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

accused, a public officer, being then the Principal of Viga Rural Development High School, Viga, Catanduanes, and as such by reason of his office and duties is responsible and accountable for public funds entrusted to and received by him, to wit: PNB Checks (sic) Nos. C-983182-Q for ₱42,033.32; C-983183-Q for ₱95,680.89; C-983184-Q for ₱58,940.33, all dated April 26, 1994 in the total amount of ONE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED FIFTY-FOUR PESOS and FIFTY-FOUR CENSTAVOS (₱196,654.54), Philippine Currency, representing salaries, salary differentials, additional compensation allowance and Personal Emergency Relief Allowance from January to March 1994 of the employees of the said school, taking advantage of his position and committing the offense in relation to his office, encashed said checks with the Philippine National Bank, Virac, Catanduanes Branch and once in possession of the money, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence, misapply, misappropriate, embezzle and convert to his personal use and benefit the aforementioned amount of money, to the damage and prejudice of the Government.

Contrary to law.

Upon his arraignment, petitioner pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.

Evidence for the Prosecution

[Petitioner] Jesus Torres *y* Uchi was the principal of Viga Rural Development High School (VRDHS). On April 26, 1994, he directed Edmundo Lazado, the school's collection and disbursing officer, to prepare the checks representing the teachers' and employees' salaries, salary differentials, additional compensation allowance (ACA) and personal emergency relief allowance (PERA) for the months of January to March, 1994. Lazado prepared three (3) checks in the total amount of ₱196,654.54, all dated April 26, 1994, *viz:* PNB Check Nos. C-983182-Q for ₱42,033.32; C-983183-Q for ₱95,680.89; C-983184-Q for ₱58,940.33 (Exhs. "A", "B" and "C"). The [petitioner] and Amador Borre, Head Teacher III, signed the three (3) checks (TSN, Aug. 30, 2001, pp. 4-8).

Upon the instruction of the [petitioner], Lazado endorsed the checks and handed them to the accused. It was the custom in the school for Lazado to endorse the checks representing the teachers' salaries and for the accused to encash them at PNB, Virac Branch

and deliver the cash to Lazado for distribution to the teachers (*Id*., pp. 12-17).

The following day, April 27, 1994, the accused encashed the three (3) checks at PNB, Virac Branch but he never returned to the school to deliver the money to Lazado (*Id*., pp. 8-9).[4]

Evidence for the Defense

The [petitioner] admitted that he encashed the subject checks at PNB, Virac Branch in the morning of April 27, 1994 but instead of going back to the school, he proceeded to the airport and availed of the flight to Manila to seek medical attention for his chest pain. Two (2) days after, around 4:30 o'clock in the morning of April 29, 1994, while he and his nephew were on the road waiting for a ride, three (3) armed men held them up and took his bag containing his personal effects and the proceeds of the subject checks. He reported the incident to the police authorities, but he failed to recover the money (TSN, Nov. 12, 2002, pp. 11-25).[5]

On August 31, 2005, after finding that the prosecution has established all the elements of the offense charged, the RTC rendered a Decision[6] convicting petitioner of the crime of Malversation of Public Funds, the decretal portion of which reads:

WHEREFORE, the Court finds the accused Jesus Torres *y* Uchi GUILTY beyond reasonable doubt of the crime of malversation of public funds as defined and penalized under Article 217 of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from 12 years and 1 day of *reclusion temporal*, as minimum, and to 18 years, 8 months and 1 day of *reclusion temporal*, as maximum; to suffer the penalty of perpetual special disqualification; and to pay the fine of ₱196,654.54 with subsidiary imprisonment in case of insolvency.

SO ORDERED.[7]

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[4] *Id.* at 27-28.

[5] *Id.* at 28.

[6] *Id.* at 26-32.

[7] *Id.* at 32.

On September 8, 2005, petitioner filed his Notice of Appeal,[8] where it was indicated that he was seeking recourse and appealing the decision of the RTC before the Court of Appeals.

On February 10, 2006, petitioner filed a Manifestation and Motion[9] acknowledging that he filed the appeal before the wrong tribunal. Petitioner eventually prayed, among other things, that the case be referred to the Sandiganbayan for appropriate action.

In its Comment[10] filed on June 29, 2006, the Office of the Solicitor General prayed that the appeal be dismissed outright, since transmittal to the proper court, in cases of erroneous modes of appeal, are proscribed.

On September 6, 2006, the CA issued a Resolution dismissing the appeal, the dispositive portion of which reads:

> WHEREFORE, pursuant to the provisions of *Section 2, Rule 50* of the *Rules* and *Section 4* of *SC Circular No. 2-90*, the instant appeal hereby is DISMISSED OUTRIGHT for lack of jurisdiction.
>
> SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration,[12] but was denied in the Resolution[13] dated October 17, 2006.

Hence, the petition raising the sole error:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITIONER'S APPEAL OUTRIGHT INSTEAD OF CERTIFYING THE CASE TO THE PROPER COURT.[14]

Petitioner maintains that he inadvertently filed the notice of appeal before the Court of Appeals instead of the Sandiganbayan.

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[8] *Id.* at 33.

[9] *Id.* 34-36.

[10] *Id.* at 37-39.

[11] *Id.* at 42.

[12] *Id.* at 43-45.

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

[14] *Id.* at 15.

Petitioner implores that the Court exercise its sound discretion and prerogative to relax compliance to sound procedural rules and to decide the case on the merits, considering that from the beginning, he has been candid and straightforward about the fact that the case was wrongfully filed with the Court of Appeals instead of the Sandiganbayan.

The petition is without merit.

Paragraph 3, Section 4 (c) of Republic Act No. 8249 (RA 8249),[15] which defined the jurisdiction of the Sandiganbayan, provides:

> The *Sandiganbayan* shall exercise **exclusive appellate jurisdiction** over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.[16]

Hence, upon his conviction, petitioner's remedy should have been an appeal to the Sandiganbayan. There is nothing in said paragraph which can conceivably justify the filing of petitioner's appeal before the Court of Appeals instead of the Sandiganbayan. Clearly, the Court of Appeals is bereft of any jurisdiction to review the judgment petitioner seeks to appeal.[17]

It must be emphasized, however, that the designation of the wrong court does not necessarily affect the validity of the notice of appeal. However, the designation of the proper court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, Section 2, Rule 50 of

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[15] Entitled *An Act Further Defining The Jurisdiction Of The Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes*. Approved on February 5, 1997.

[16] Emphasis ours.

[17] *Balaba v. People*, G.R. No. 169519, July 17, 2009, 593 SCRA 210, 214.

the Rules of Court would apply,[18] the relevant portion of which states:

Sec. 2. *Dismissal of improper appeal to the Court of Appeals.* – x x x

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court, but shall be dismissed outright.[19]

In the case at bar, petitioner sought correction of the error in filing the appeal way beyond the expiration of the period to appeal the decision. The RTC promulgated its Decision on August 31, 2005. Petitioner filed his Notice of Appeal on September 8, 2005. Petitioner tried to correct the error only on February 10, 2006 when he filed his Manifestation and Motion. Clearly, this is beyond the 15-day period to appeal from the decision of the trial court. Therefore, the CA did not commit any reversible error when it dismissed petitioner's appeal for lack of jurisdiction.

Besides, even if we look into the merits of his arguments, the case is doomed to fail. Contrary to petitioner's argument, We find that he is an accountable officer within the contemplation of Article 217[20] of the Revised Penal Code.

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[18] *Melencion v. Sandiganbayan*, G.R. No. 150684, June 12, 2008, 554 SCRA 345, 353; *Moll v. Buban*, 436 Phil. 627, 639 (2002). See also *Balaba v. People*, *supra* note 17, at 215.

[19] (Emphasis supplied.)

[20] Art. 217. *Malversation of public funds or property; Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos, but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office.[21] The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee. Hence, a school principal of a public high school, such as petitioner, may be held guilty of malversation if he or she is entrusted with public funds and misappropriates the same.

Petitioner also posits that he could not be convicted under the allegations in the Information without violating his constitutional right to be informed of the accusations against him. He maintains that the Information clearly charged him with intentional malversation and not malversation through negligence, which was the actual nature of malversation for which he was convicted by the trial court. This too lacks merit.

Malversation may be committed either through a positive act of misappropriation of public funds or property, or passively through negligence.[22] To sustain a charge of malversation, there must *either* be criminal intent or criminal negligence, and while the prevailing facts of a case may not show that deceit attended the commission of the offense, it will not preclude the reception

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4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos, but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

[21] *Alejo v. People*, G.R. No. 173360, March 28, 2008, 550 SCRA 326, 340.

[22] See *People v. Ting Lan Uy, Jr.*, 511 Phil. 682, 691 (2005).

of evidence to prove the existence of negligence because *both* are *equally punishable* under Article 217 of the Revised Penal Code.[23]

More in point, the felony involves breach of public trust, and whether it is committed through deceit or negligence, the law makes it punishable and prescribes a uniform penalty therefor. Even when the Information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves the mode of commission of the offense.[24] Explicitly stated –

> x x x [E]ven on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence, but the information was for intentional malversation, under the circumstances of this case, his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from mode proved, the same offense of malversation is involved and conviction thereof is proper. x x x[25]

WHEREFORE, premises considered, the petition is *DENIED*. The Resolutions dated September 6, 2006 and October 17, 2006 of the Court of Appeals in CA-G.R. CR No. 29694 are **AFFIRMED**.

SO ORDERED.

Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

Velasco, Jr., J. (Chairperson), please see separate concurring opinion.

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[23] *Id.*

[24] *Id.* at 691-692, citing *Diaz v. Sandiganbayan*, 361 Phil. 789, 802-803 (1999).

[25] *Cabello v. Sandiganbayan*, 274 Phil. 369 (1991).

[*] Designated as an additional member per Special Order No. 1028 dated June 21, 2011.

SEPARATE CONCURRING OPINION

VELASCO, JR., *J.*:

I concur in the result that the petition is rejected and the September 6, 2006 and October 17, 2006 Resolutions of the Court of Appeals (CA) are upheld. While the *ponencia* declined the supplication of petitioner that his appeal to the Sandiganbayan be given due course, the *ponencia* nevertheless impliedly granted the entreaty by delving on the merits of the appealed conviction. I fully agree with the *ponencia* that petitioner is guilty of malversation as he is an accountable officer under Article 217 of the Revised Penal Code. As a school principal of a public high school, petitioner is liable for malversation if he is entrusted with public funds and misappropriates them.

The *ponencia* is correct in turning down the argument of petitioner that his erroneous appeal to the CA should not be dismissed outright but referred to the proper court which is the Sandiganbayan. This is in line with Our ruling in *Melencion v. Sandiganbayan*,[1] *Moll v. Buban*,[2] and others that an appeal erroneously taken to the CA shall not be transferred to the appropriate court (in this case, the Sandiganbayan) but shall be dismissed outright pursuant to Section 2, Rule 50 of the Rules of Court.

It is my opinion, however, that while the erroneous appeal of petitioner can be dismissed as a matter of course, I find that the facts and circumstances justify the relaxation and suspension of Our Rules of Court for compelling reasons of equity and substantive justice. The records reveal that petitioner has no financial resources to hire a *de parte* lawyer and resorted to seeking legal representation from the Public Attorney's Office (PAO) in Virac, Catanduanes. The PAO lawyer assigned to his case bungled his job and filed a Notice of Appeal to the CA when it should have been directed to the proper court—the Sandiganbayan. The PAO central, upon being apprised of the

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[1] G.R. No. 150684, June 12, 2008, 554 SCRA 345.

[2] G.R. No. 136974, August 27, 2002, 388 SCRA 63.

error, lost no time in seeking the referral of the case to the Sandiganbayan, but, unfortunately, the appeal period has lapsed. While it is the general rule that a party-litigant is bound by the mistake or negligence of his counsel, in the case at bar, I conclude that there was gross mistake or irresponsibility on the part of the PAO lawyer.

In *Aguilar v. Court of Appeals*,[3] the Court granted relief to the hapless accused by reopening the case to give him another chance to adduce evidence, thus:

> [An accused's] right to appeal should not be lost through technicalities. His liberty is at stake. x x x If he has to spend x x x long stretch in prison, his guilt must be established beyond reasonable doubt. He cannot lose his liberty because of the gross irresponsibility of his lawyer. Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:
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> x x x x x x x x x
>
> "The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rules, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.
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> x x x x x x x x x
>
> The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.
>
> x x x x x x x x x
>
> If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good case, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. x x x"

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[3] G.R. No. 114282, November 28, 1995, 250 SCRA 371, 374-375.

By analogy, it is my view that the Court should have remanded the instant case to the Sandiganbayan and ordered petitioner's appeal to be given due course. The PAO lawyer, who was assigned to the case of petitioner, is assumed to have handled hundreds of cases for indigent litigants and should already be familiar with the exclusive appellate jurisdiction of the Sandiganbayan over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided pursuant to par. 3, Sec. 4(c) of Republic Act No. 8249. Apparently, he was not. Under the circumstances of the case, the Court could have suspended the rules and accorded petitioner his right to appeal his conviction to the Sandiganbayan.

Where one's liberty is at stake, it is fitting, but on a case-to-case-basis, that a window for redress should be opened for the accused especially in cases where the accused who is ordinarily unfamiliar with the rules of procedure is prejudiced by the gross mistake or negligence of his counsel. The deprivation of an accused of liberty and/or property should certainly receive the liberal application of the Rules of Court to attain justice and fairness.

I vote to dismiss the petition.

FIRST DIVISION

[G.R. No. 175289. August 31, 2011]

CRISOSTOMO VILLARIN and ANIANO LATAYADA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE ABSENCE OF A PROPER PRELIMINARY INVESTIGATION MUST BE TIMELY RAISED AND MUST NOT HAVE BEEN WAIVED. — [T]he absence of a proper preliminary investigation must be timely raised and must not have been waived. This is to allow the trial court to hold the case in abeyance and conduct its own investigation or require the prosecutor to hold a reinvestigation, which, necessarily "involves a re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the initial finding of probable cause which led to the filing of the Informations after the requisite preliminary investigation."

2. CIVIL LAW; VIOLATION OF SECTION 68 OF PRESIDENTIAL DECREE NO. 705 (THE REVISED FORESTRY CODE OF THE PHILIPPINES); TWO OFFENSES PENALIZED UNDER SECTION 68. — "There are two distinct and separate offenses punished under Section 68 of P.D. No. 705, to wit: (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authorization; and (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations."

3. ID.; ID.; CHARACTERIZED AS *MALUM PROHIBITUM*. — As a special law, the nature of the offense is *malum prohibitum* and as such, criminal intent is not an essential element. "However, the prosecution must prove that petitioners had the intent to possess (*animus possidendi*)" the timber. "Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the [object of the crime] is in the immediate physical control of the accused. On the other hand, constructive possession exists when the [object of the crime] is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found." There is no dispute that petitioners were in constructive possession of the timber without the requisite legal documents. Villarin and Latayada were personally involved in its procurement, delivery and storage

without any license or permit issued by any competent authority. Given these and considering that the offense is *malum prohibitum*, petitioners' contention that the possession of the illegally cut timber was not for personal gain but for the repair of said bridge is, therefore, inconsequential.

4. CRIMINAL LAW; *CORPUS DELICTI*; REFERS TO THE FACT OF THE COMMISSION OF THE CRIME CHARGED OR TO THE BODY OR SUBSTANCE OF THE CRIME. — "[*C*]*orpus delicti* refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered" or, in this case, to the seized timber. "Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. *Corpus delicti* may even be established by circumstantial evidence." Here, the trial court and the CA held that the *corpus delicti* was established by the documentary and testimonial evidence on record. The Tally Sheet, Seizure Receipts issued by the DENR and photograph proved the existence of the timber and its confiscation. The testimonies of the petitioners themselves stating in no uncertain terms the manner in which they consummated the offense they were charged with were likewise crucial to their conviction.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF A TRIAL COURT ARE GENERALLY BINDING ON THE SUPREME COURT. — [F]actual findings of a trial court are binding on us, absent any showing that it overlooked or misinterpreted facts or circumstances of weight and substance. The legal precept applies to this case in which the trial court's findings were affirmed by the appellate court.

6. CIVIL LAW; VIOLATION OF SECTION 68 OF PRESIDENTIAL DECREE NO. 705 (THE REVISED FORESTRY CODE OF THE PHILIPPINES); PENALIZED AS QUALIFIED THEFT UNDER ARTICLE 310 IN RELATION TO ARTICLE 309 OF THE REVISED PENAL CODE; PENALTY IN CASE AT BAR. — Violation of Section 68 of P.D. No. 705, as amended, is penalized as qualified theft under Article 310 in relation to Article 309 of the Revised Penal Code (RPC). x x x The Information filed against the petitioners alleged that the 63 pieces of timber without the

requisite legal documents measuring 4,326 board feet were valued at ₱108,150.00. To prove this allegation, the prosecution presented Pioquinto to testify, among others, on this amount. Tally Sheets and Seizure Receipts were also presented to corroborate said amount. With the value of the timber exceeding ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in its maximum, the range of which is eight (8) years, eight (8) months and one (1) day to ten (10) years. Since none of the qualifying circumstances in Article 310 of the RPC was alleged in the Information, the penalty cannot be increased two degrees higher. In determining the additional years of imprisonment, ₱22,000.00 is to be deducted from ₱108,150.00, which results to ₱86,150.00. This remainder must be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. Consequently, eight (8) years must be added to the basic penalty. Thus, the maximum imposable penalty ranges from sixteen (16) years, eight (8) months and one (1) day to eighteen (18) years of *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum imposable penalty should be taken anywhere within the range of the penalty next lower in degree, without considering the modifying circumstances. The penalty one degree lower from *prision mayor* in its minimum and medium periods is *prision correccional* in its medium and maximum periods, the range of which is from two (2) years, four (4) months and one (1) day to six (6) years. Thus, the RTC, as affirmed by the CA, erroneously fixed the minimum period of the penalty at twelve (12) years of *prision mayor*.

APPEARANCES OF COUNSEL

Bacal Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Mere possession of timber without the legal documents required under forest laws and regulations makes one automatically liable of violation of Section 68, Presidential Decree (P.D.) No. 705,[1] as amended. Lack of criminal intent is not a valid defense.

This petition for review on *certiorari* seeks to reverse the June 28, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 26720 which affirmed in all respects the Judgment[3] of the Regional Trial Court (RTC), Branch 38, Cagayan de Oro City, finding petitioners guilty beyond reasonable doubt of violation of Section 68, P.D. No. 705, as amended. Likewise assailed in this petition is the September 22, 2006 Resolution[4] denying petitioners' Motion for Reconsideration.[5]

Factual Antecedents

In a Criminal Complaint[6] filed before the Municipal Trial Court in Cities, Branch 4, Cagayan de Oro City by Marcelino B. Pioquinto (Pioquinto), Chief of the Forest Protection and Law Enforcement Unit under the TL Strike Force Team of Department of Environment and Natural Resources (DENR), petitioner Aniano Latayada (Latayada) and three others namely, *Barangay* Captain Camilo Sudaria (Sudaria) of Tagpangi, Cagayan de Oro City, Marlon Baillo (Baillo) and Cipriano Boyatac

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[1] REVISED FORESTRY CODE OF THE PHILIPPINES.

[2] CA *rollo*, pp. 135-148; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr.

[3] Records, pp. 162-173; penned by Judge Maximo G.W. Paderanga.

[4] CA *rollo*, pp. 158-159; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez.

[5] *Id.* at 149-156.

[6] Records, p. 4.

(Boyatac), were charged with violation of Section 68, P.D. No. 705 as amended by Executive Order No. 277.[7]

Subsequently, however, the Office of the City Prosecutor of Cagayan de Oro City issued a Resolution[8] dated March 13, 1996 recommending the filing of an Information for the aforesaid charge not only against Latayada, Baillo and Boyatac but also against petitioner Crisostomo Villarin (Villarin), then *Barangay* Captain of Pagalungan, Cagayan de Oro City. The dismissal of the complaint against Sudaria was likewise recommended. Said Resolution was then approved by the Office of the Ombudsman-Mindanao through a Resolution[9] dated May 9, 1996 ordering

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[7] Dated July 25, 1987 and is entitled as "AMENDING SECTION 68 OF PRESIDENTIAL DECREE NO. 705, AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS REQUIRED BY EXISTING FOREST LAWS, AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS, AND GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS, RULES AND REGULATIONS".

Section 1 thereof reads:

Section 1. Section 68 of Presidential Decree No. 705, as amended, is hereby amended to read as follows:

"Section 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License.* – Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found."

[8] Records, pp. 7-10.

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

the filing of the Information in the RTC of Cagayan de Oro City.

Thus, on October 29, 1996, an Information[10] was filed against petitioners Villarin and Latayada and their co-accused Baillo and Boyatac, for violation of Section 68, P.D. No. 705 as follows:

> That on or about January 13, 1996, in Pagalungan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, pursuant to RA 7975, the accused, Crisostomo Villarin, a public officer being the Barangay Captain of Pagalungan, this City, with salary grade below 27, taking advantage of his official position and committing the offense in relation to his office, and the other above-named accused, all private individuals, namely: Marlon Baillo, Cipriano Boyatac, and Aniano Latayada, confederating and mutually helping one another did then and there, willfully, unlawfully and feloniously gather and possess sixty-three (63) pieces flitches of varying sizes belonging to the Apitong specie with a total volume of Four Thousand Three Hundred Twenty Six (4,326) board feet valued at ₱108,150.00, without any authority and supporting documents as required under existing forest laws and regulation to the damage and prejudice of the government.
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> CONTRARY TO LAW.[11]

On January 14, 1997, Villarin, Boyatac and Baillo, filed a Motion for Reinvestigation.[12] They alleged that the Joint Affidavit[13]of the personnel of the DENR which became one of the bases in filing the Information never mentioned Villarin as one of the perpetrators of the crime while the accusations against Baillo and Boyatac were not based on the personal knowledge of the affiants. They also asserted that their indictment was based on polluted sources, consisting of the sworn statements

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

[11] *Id.* at 2.

[12] *Id.* at 30-31.

[13] Folder of Exhibits, p. 4; executed by Laurence Amiscaray, Roy Cabaraban, Pedro Morales, Jr. and Arthur Roda, to the effect that their investigation revealed that the cutting of trees was done under the supervision of Boyatac and Baillo.

of witnesses like Latayada and Sudaria, who both appeared to have participated in the commission of the crime charged.

Instead of resolving the Motion for Reinvestigation, the RTC, in its Order[14] dated January 27, 1997, directed Villarin, Boyatac, and Baillo to file their Motion for Reinvestigation with the Office of the Ombudsman-Mindanao, it being the entity which filed the Information in Court. On March 31, 1997, only Villarin filed a Petition for Reinvestigation[15] but same was, however, denied by the Office of the Ombudsman-Mindanao in an Order[16] dated May 15, 1997 because the grounds relied upon were not based on newly discovered evidence or errors of fact, law or irregularities that are prejudicial to the interest of the movants, pursuant to Administrative Order No. 07 or the Rules of Procedure of the Office of the Ombudsman in Criminal Cases. The Office of the Ombudsman-Mindanao likewise opined that Villarin was directly implicated by Latayada, his co-accused.

The RTC thus proceeded with the arraignment of the accused who entered separate pleas of not guilty.[17] Thereafter, trial ensued.

The Version of the Prosecution

On December 31, 1995, at around five o'clock in the afternoon, prosecution witness Roland Granada (Granada) noticed that a public utility jeep loaded with timber stopped near his house. The driver, petitioner Latayada, was accompanied by four to five other persons, one of whom was Boyatac while the rest could not be identified by Granada.[18] They alighted from the jeep and unloaded the timber 10 to 15 meters away from the Batinay bridge at *Barangay* Pagalungan, Cagayan De Oro City. Another prosecution witness, Pastor Pansacala (Pansacala), also noticed the jeep with plate number MBB 226 and owned by

[14] Records, p. 34-A.

[15] *Id*. at 2.

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

[17] *Id.* at 53 and 56.

[18] TSN, October 14, 1997, pp. 3-10.

Sudaria, loaded with timber.[19] Being then the president of a community-based organization which serves as a watchdog of illegal cutting of trees,[20] Pansacala even ordered a certain Mario Bael to count the timber.[21]

At six o'clock in the evening of the same day, *Barangay* Captain Angeles Alarcon (Alarcon)[22] noticed that the pile of timber was already placed near the bridge. Since she had no knowledge of any scheduled repair of the Batinay bridge she was surprised to discover that the timber would be used for the repair. After inquiring from the people living near the bridge, she learned that Latayada and Boyatac delivered the timber.[23]

Another prosecution witness, Ariel Palanga (Palanga), testified that at seven o'clock in the morning of January 1, 1996, Boyatac bought a stick of cigarette from his store and requested him to cover the pile of timber near the bridge for a fee. Palanga acceded and covered the pile with coconut leaves.[24]

On January 13, 1996, at around ten o'clock in the morning, prosecution witness Juan Casenas (Casenas), a radio and TV personality of RMN-TV8, took footages of the timber[25] hidden and covered by coconut leaves. Casenas also took footages of more logs inside a bodega at the other side of the bridge. In the following evening, the footages were shown in a news program on television.

On the same day, members of the DENR Region 10 Strike Force Team measured the timber which consisted of 63 pieces of Apitong flitches and determined that it totaled 4,326 board

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[19] TSN, October 16, 1997, p. 51.

[20] *Id.* at 44.

[21] *Id.* at 55.

[22] She was a *Barangay Kagawad* of *Barangay* Pagalungan, Cagayan de Oro City at the time of the commission of the crime subject of this case. She later succeeded petitioner Villarin as *Barangay* Captain.

[23] TSN, October 16, 1997, pp. 13-14.

[24] TSN, October 14, 1997, p. 25.

[25] TSN, January 20, 1998, p. 6.

feet[26] and subsequently entrusted the same to Alarcon for safekeeping.

Upon further investigation, it was learned that the timber was requisitioned by Villarin, who was then *Barangay* Captain of Pagulangan, Cagayan de Oro City. Villarin gave Sudaria the specifications for the requisitioned timber. Thereafter, Boyatac informed Villarin that the timber was already delivered on December 31, 1995.[27]

On January 18, 1996, Felix Vera Cruz (Vera Cruz), a security guard at the DENR Region 10 Office, received and signed for the confiscated timber since the property custodian at that time was not around.

The filing of the aforestated Information followed.

The Version of the Defense

In response to the clamor of the residents of *Barangays* Tampangan, Pigsag-an, Tuburan and Taglinao, all in Cagayan de Oro City, Villarin, decided to repair the impassable Batinay bridge. The project was allegedly with the concurrence of the *Barangay* Council.

Pressured to immediately commence the needed repairs, Villarin commissioned Boyatac to inquire from Sudaria about the availability of timber without first informing the City Engineer. Sudaria asked for the specifications which Villarin gave. Villarin then asked Baillo and Boyatac to attend to the same. When the timber was already available, it was transported from Tagpangi to Batinay. However, the timber flitches were seized by the DENR Strike Force Team and taken to its office where they were received by Vera Cruz, the security guard on duty.

Ruling of the Regional Trial Court

In its Memorandum filed before the trial court, the defense notified the court of Boyatac's demise.[28] However, the trial

[26] Joint Affidavit; *supra* note 13.

[27] TSN, June 2, 1998, pp. 8-9.

[28] Records, pp. 140, 145.

court did not act on such notice. Instead, it proceeded to rule on the culpability of Boyatac. Thus, in its Judgment, the trial court found herein petitioners and the deceased Boyatac guilty as charged. On the other hand, it found the evidence against Baillo insufficient. The dispositive portion of the Judgment reads:

> WHEREFORE, in view of the foregoing findings, judgment is hereby rendered finding the accused Crisostomo Villarin, Cipriano Boyatac and Aniano Latayada guilty beyond reasonable doubt of violating Section 68 of Presidential Decree No. 705 as amended, and hereby sentences each of them to suffer an indeterminate sentence of twelve (12) years of *prision mayor* as minimum to seventeen (17) years of *reclusion temporal* as maximum.
>
> Accused Marlon Baillo is hereby acquitted for lack of evidence.
>
> SO ORDERED.[29]

In reaching said conclusions, the RTC noted that:

> Without an iota of doubt, accused Crisostomo Villarin, being then a Barangay Captain of Pagalungan, Cagayan de Oro City, was the one who procured the subject flitches, while accused Aniano Latayada and Cipriano Boyatac mutually helped him and each other by transporting the flitches from Sitio Batinay to the Pagalungan Bridge. The accused would like to impress upon the Court that the subject fltiches were intended for the repair of the Pagalungan Bridge and were acquired by virtue of Barangay Resolution No. 110 of Barangay Pagalungan. The Court is not impressed by this lame excuse. There is no dispute that the flitches were intended for the repair of the bridge. The Court finds it a laudable motive. The fact remains though that the said forest products were obtained without the necessary authority and legal documents required under existing forest laws and regulations.[30]

Petitioners filed a Motion for Reconsideration[31] which was denied by the RTC in its Order[32] dated August 20, 2002.

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[29] *Id.* at 173.

[30] *Id.* at 172-173.

[31] *Id.* at 181-186

[32] *Id.* at 205-206.

Ruling of the Court of Appeals

Petitioners filed an appeal which was denied by the CA in its Decision dated June 28, 2005. The dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the judgment of the court *a quo* finding [d]efendant-[a]ppellants Crisostomo Villarin, Cipriano Boyatac and Aniano Latayada GUILTY beyond reasonable doubt for violating Sec. 68 of Presidential Decree 705 is hereby AFFIRMED *in toto*. No pronouncement as to cost.
>
> SO ORDERED.[33]

Petitioners filed a Motion for Reconsideration[34] which the appellate court denied for lack of merit in its Resolution[35] promulgated on September 22, 2006.

Issues

Undeterred, petitioners filed the instant petition raising the following issues:

1. WHETHER X X X THE COURT OF APPEALS[,] ON [THE] MATTER OF PRELIMINARY INVESTIGATION[,] DECIDED NOT IN ACCORD WITH JURISPRUDENCE OF THE SUPREME COURT;
2. WHETHER X X X THE COURT OF APPEALS DEPARTED FROM WHAT THE SUPREME COURT HAS ALWAYS BEEN SAYING, THAT, TO CONVICT AN ACCUSED ALL ELEMENTS OF THE CRIME MUST BE PROVEN BEYOND REASONABLE DOUBT and;
3. WHETHER X X X THE COURT OF APPEALS[,] IN AFFIRMING THE PENALTY IMPOSED BY THE COURT *A QUO*[,] DEPARTED FROM JURISPRUDENCE THAT EVEN IN CRIMES [INVOLVING] VIOLATION OF SPECIAL LAWS[,] SPECIAL CONSIDERATION SHOULD BE GIVEN TO CIRCUMSTANCES THAT [CAN BE CONSIDERED AS

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[33] CA *rollo*, p. 147.

[34] *Supra* note 5.

[35] *Supra* note 4.

MITIGATING HAD THE VIOLATION BEEN PENALIZED UNDER THE REVISED PENAL CODE, IN ORDER TO REDUCE PENALTY].[36]

Petitioners argue that the refusal of the Ombudsman to conduct a reinvestigation is tantamount to a denial of the right to due process. As Villarin was indicted in the Information despite his not being included in the criminal complaint filed by Pioquinto of the TL Strike Force Team of the DENR, they claim that he was not afforded a preliminary investigation. They also bewail the fact that persons who appear to be equally guilty, such as Sudaria, have not been included in the Information. Hence, they argue that the Ombudsman acted with grave abuse of discretion in denying their petition for reinvestigation because it deprived Villarin of his right to preliminary investigation and in refusing and to equally prosecute the guilty. They contend that the Ombudsman should not have relied on the prosecutor's Certification[37] contained in the Information to the effect that a preliminary investigation was conducted in the case.

Moreover, petitioners contend that the evidence was insufficient to prove their guilt beyond reasonable doubt since they had no intention to possess the timber and dispose of it for personal gain. They likewise claim that there was failure on the part of the prosecution to present the timber, which were the object of the offense.

Our Ruling

The petition is unmeritorious.

Villarin was properly afforded his right to due process.

Records show that the investigating prosecutor received a criminal complaint charging Sudaria, Latayada, Baillo and Boyatac with violation of Section 68 of P.D. No. 705, as amended.[38]

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[36] *Rollo,* pp. 17-18.

[37] Records, p. 3.

[38] *Id.* at 4.

The said complaint did not state the known addresses of the accused. Neither was the notarized joint-affidavit of the complainants attached thereto. The subpoena issued to the accused and the copy of their counter-affidavits were also not part of the record. Moreover, the complaint did not include Villarin as a respondent. However, said infirmities do not constitute denial of due process particularly on the part of Villarin.

It is evidently clear from the Resolution dated March 13, 1996 of the Office of the City Prosecutor that Villarin and all the accused participated in the scheduled preliminary investigation that was conducted prior to the filing of the criminal case.[39] They knew about the filing of the complaint and even denied any involvement in the illegal cutting of timber. They were also given the opportunity to submit countervailing evidence to convince the investigating prosecutor of their innocence.

Foregoing findings considered, there is no factual basis to the assertion that Villarin was not afforded a preliminary investigation. Accordingly, we find no grave abuse of discretion on the part of the Office of the Ombudsman-Mindanao in denying Villarin's motion for reconsideration. It validly relied on the certification contained in the Information that a preliminary investigation was properly conducted in this case. The certification was made under oath by no less than the public prosecutor, a public officer who is presumed to have regularly performed his official duty.[40] Besides, it aptly noted that "Villarin was implicated by x x x Latayada in his affidavit dated January 22, 1996 before Marcelino B. Pioquinto, Chief, Forest Protection and Law Enforcement Unit. The denial of Villarin cannot prevail over the declaration of witnesses."[41]

Moreover, the absence of a proper preliminary investigation must be timely raised and must not have been waived. This is to allow the trial court to hold the case in abeyance and conduct its own investigation or require the prosecutor to hold a

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[39] *Id.* at 9.

[40] RULES OF COURT, Rule 131, Section 3(m).

[41] Records, p. 75.

reinvestigation, which, necessarily "involves a re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the initial finding of probable cause which led to the filing of the Informations after the requisite preliminary investigation."[42]

Here, it is conceded that Villarin raised the issue of lack of a preliminary investigation in his Motion for Reinvestigation. However, when the Ombudsman denied the motion, he never raised this issue again. He accepted the Ombudsman's verdict, entered a plea of not guilty during his arraignment and actively participated in the trial on the merits by attending the scheduled hearings, conducting cross-examinations and testifying on his own behalf. It was only after the trial court rendered judgment against him that he once again assailed the conduct of the preliminary investigation in the Motion for Reconsideration.[43] Whatever argument Villarin may have regarding the alleged absence of a preliminary investigation has therefore been mooted. By entering his plea, and actively participating in the trial, he is deemed to have waived his right to preliminary investigation.

Petitioners also contend that Sudaria should also have been included as a principal in the commission of the offense. However, whether Sudaria should or should not be included as co-accused can no longer be raised on appeal. Any right that the petitioners may have in questioning the non-inclusion of Sudaria in the Information should have been raised in a motion for reconsideration of the March 13, 1996 Resolution of the Office of the City Prosecutor which recommended the dismissal of the complaint against Sudaria.[44] Having failed to avail of the proper procedural remedy, they are now estopped from assailing his non-inclusion.

Two Offenses Penalized Under Sec. 68 of Presidential Decree No. 705.

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[42] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 923 (2004).

[43] Records, pp. 181-197.

[44] *Aquino v. Hon. Mariano*, 214 Phil. 470, 474. (1984).

Section 68 of P.D. No. 705, as amended, provides:

> Section 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License.* – Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, that in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

"There are two distinct and separate offenses punished under Section 68 of P.D. No. 705, to wit:

(1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authorization; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations."[45]

The Information charged petitioners with the second offense which is consummated by the mere possession of forest products without the proper documents.

We reviewed the records and hold that the prosecution had discharged the burden of proving all the elements of the offense charged. The evidence of the prosecution proved beyond reasonable doubt that petitioners were in custody of timber without the necessary legal documents. Incidentally, we note that several transcripts of stenographic notes (TSNs) were not submitted by the trial court. No explanation was provided for these missing

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[45] *Aquino v. People*, G.R. No. 165448, July 27, 2009, 594 SCRA 50, 58.

TSNs. Notwithstanding the incomplete TSNs, we still find that the prosecution was able to prove beyond reasonable doubt petitioners' culpability.

The prosecution adduced several documents to prove that timber was confiscated from petitioners. It presented a Tally Sheet[46] to prove that the DENR Strike Force Team examined the seized timber on January 13, 1996. The number, volume and appraised value of said timber were also noted in the Tally Sheet. Seizure receipts were also presented to prove that the confiscated timber were placed in the custody of Alarcon[47] and eventually taken to the DENR Office.[48] There was a photograph of the timber taken by the television crew led by Casenas.[49]

The prosecution likewise presented in evidence the testimonies of eyewitnesses Granada and Pansacala who testified that Latayada and Boyatac were the ones who delivered the timber.[50]

More significantly, Villarin admitted that he was the one who commissioned the procurement of the timber[51] for the repair of the Batinay bridge. He even deputized Boyatac to negotiate with Sudaria and gave Latayada ₱2,000.00 to transport the logs. Boyatac later informed him of the delivery of timber. However, he could not present any document to show that his possession thereof was legal and pursuant to existing forest laws and regulations.

Relevant portions of the testimony of Villarin are as follows:

Q As Barangay Captain of Pagalungan, of course, you heard reports prior to the incident on December 31, 1995 that Barangay Captain Camilo Sudaria was also engaged in supplying forest products like forest lumber?

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[46] Exhibit "A", Folder of Exhibits, p. 1.

[47] Exhibit "B", *id.* at 2.

[48] Exhibit "C", *id.* at 3.

[49] Exhibit "J", *id.* at 11.

[50] TSN, October 14, 1997, pp. 4-7; TSN, October 16, 1997, pp. 41-42.

[51] See Reply to People's Comment, pp. 2-3; *rollo*, pp. 125-126.

A Yes, because I always go to Cagayan de Oro and I can always ride on his jeepney.

Q And you were sure that information of yours was received by you and not only by one but several persons from Barangay Tagpangi even up to Barangay Pagalungan?
A That's true because he even has a record with the police.

Q And you learned [this] prior to January 1995?
A Yes, Sir.

Q And your information was even to the effect that Sudaria was supplying illegally cut lumber regularly?
A What I have noticed because I always ride on his jeep wherein lumber was being loaded, the lumber will be taken when it arrived in Lumbia, kilometer 5.

Q Even if there were already raids being conducted to the person of Camilo Sudaria, still he continued to load illegally cut lumber?
A He slowed down after several arrest because maybe he was ashamed because he was the Barangay Captain of Tagpangi.

Q And his arrest and the slackening of his activities of illegally cut lumber occurred prior to June 1995?
A Yes, sir.

Q [In spite] of your knowledge that he is engaged [in] illegally cut[ting] forest products, you as Barangay Captain of Pagalungan transacted with him for the purpose of acquiring lumber [for] the bridge at Pagalungan?
A As we rode together in his jeep, he informed me that he has some lumber to be used to build his house and he told me he will sell it for the repair of the bridge in Pagalungan.

Q And because of that, in addition, you sent him the specifications of materials for the repair of the bridge in Pagalungan?
A I let Boyatac go to him and [inquire] from him if he has those specifications.

Q And he communicated to you that he has available lumber of those specification?
A Yes, because he sent to Boyatac some requirements of the specifications and he let me sign it.

Q And after that, you closed the [deal] with Sudaria?
A Yes, because I sent somebody to him and we did not talk anymore.

Q And thereafter on December 31, 1995, according to your testimony before, Aniano Latayada delivered the lumber flitches you ordered on board the passenger jeep of Camilo Sudaria?
A When the specifications were given, we were informed that the lumber were already there. So, it was delivered.

Q Who informed you that the lumber were already delivered?
A Boyatac.

Q And he is referring to those lumber placed alongside the Batinay Bridge.
A Yes, Sir.

Q And even without personally inspecting it, you immediately paid Latayada the compensation for the delivery of those lumber?
A There was already an advance payment for his delivery.

Q To whom did you give the advance?
A To Latayada.

Q You have not given the amount to Camilo Sudaria?
A No, Sir.

Q In fact, the money that you paid to Latayada was specifically for the transportation of the lumber from Tagpangi to Batinay bridge?
A Yes, Sir.

PROS. GALARRITA:

Q And at that time, you paid Latayada ₱2,000 as payment of the lumber?
A Yes, Sir.

COURT:

Q Did you pay Latayada?
A Yes, Sir.

Q How much?
A ₱2,000.

Q And you gave this to the conductor?
A Yes, Sir.

Q You told the conductor to pay the money to Latayada?
A Yes, sir.

Q What did the conductor say?
A The conductor said that the money was for the payment for the transporting of lumber from Tagpangi.[52] (Underscoring ours.)

Violation of Sec. 68 of Presidential Decree No. 705, as amended, is malum prohibitum.

As a special law, the nature of the offense is *malum prohibitum* and as such, criminal intent is not an essential element. "However, the prosecution must prove that petitioners had the intent to possess (*animus possidendi*)" the timber.[53] "Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the [object of the crime] is in the immediate physical control of the accused. On the other hand, constructive possession exists when the [object of the crime] is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found."[54]

There is no dispute that petitioners were in constructive possession of the timber without the requisite legal documents. Villarin and Latayada were personally involved in its procurement, delivery and storage without any license or permit issued by any competent authority. Given these and considering that the offense is *malum prohibitum*, petitioners' contention that the possession of the illegally cut timber was not for personal gain but for the repair of said bridge is, therefore, inconsequential.

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[52] TSN, June 2, 1998, pp. 4-12.

[53] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 391, citing *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[54] *Id.*

Corpus Delicti is the Fact of the Commission of the Crime

Petitioners argue that their convictions were improper because the *corpus delicti* had not been established. They assert that the failure to present the confiscated timber in court was fatal to the cause of the prosecution.

We disagree. "[*C*]*orpus delicti* refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered"[55] or, in this case, to the seized timber. "Since the *corpus delicti* is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. *Corpus delicti* may even be established by circumstantial evidence."[56]

Here, the trial court and the CA held that the *corpus delicti* was established by the documentary and testimonial evidence on record. The Tally Sheet, Seizure Receipts issued by the DENR and photograph proved the existence of the timber and its confiscation. The testimonies of the petitioners themselves stating in no uncertain terms the manner in which they consummated the offense they were charged with were likewise crucial to their conviction.

We find no reason to deviate from these findings since it has been established that factual findings of a trial court are binding on us, absent any showing that it overlooked or misinterpreted facts or circumstances of weight and substance.[57] The legal precept applies to this case in which the trial court's findings were affirmed by the appellate court.[58]

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[55] *Rimorin, Sr. v. People*, 450 Phil. 465, 474 (2003).

[56] *Id.* at 475.

[57] *Id.* at 477.

[58] *Id.*

The Proper Penalty

Violation of Section 68 of P.D. No. 705, as amended, is penalized as qualified theft under Article 310 in relation to Article 309 of the Revised Penal Code (RPC). The pertinent portions of these provisions read:

> Art. 310. *Qualified Theft* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any calamity, vehicular accident or civil disturbance.
>
> Art. 309. *Penalties*. – Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. x x x

The Information filed against the petitioners alleged that the 63 pieces of timber without the requisite legal documents measuring 4,326 board feet were valued at ₱108,150.00. To prove this allegation, the prosecution presented Pioquinto to testify, among others, on this amount. Tally Sheets and Seizure Receipts were also presented to corroborate said amount. With the value of the timber exceeding ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in its maximum, the range of which is eight (8) years, eight (8) months and one (1) day to ten (10) years. Since none of the qualifying circumstances in Article 310 of the RPC was alleged in the Information, the penalty cannot be increased two degrees higher.

In determining the additional years of imprisonment, ₱22,000.00 is to be deducted from ₱108,150.00, which results to ₱86,150.00. This remainder must be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. Consequently, eight (8) years must be added to the basic penalty. Thus the maximum imposable penalty ranges from sixteen (16) years, eight (8) months and one (1) day to eighteen (18) years of *reclusion temporal*.

Applying the Indeterminate Sentence Law, the minimum imposable penalty should be taken anywhere within the range of the penalty next lower in degree, without considering the modifying circumstances. The penalty one degree lower from *prision mayor* in its minimum and medium periods is *prision correccional* in its medium and maximum periods, the range of which is from two (2) years, four (4) months and one (1) day to six (6) years. Thus, the RTC, as affirmed by the CA, erroneously fixed the minimum period of the penalty at twelve (12) years of *prision mayor*.

Finally, the case against Boyatac must be dismissed considering his demise even before the RTC rendered its Judgment.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated June 28, 2005 and the Resolution dated September 22, 2006 in CA-G.R. CR No. 26720 are *AFFIRMED with the Modifications* that petitioners Crisostomo Villarin and Aniano Latayada are each sentenced to suffer imprisonment of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to sixteen (16) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. The complaint against Cipriano Boyatac is hereby *DISMISSED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 175991. August 31, 2011]

JOSE R. CATACUTAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; SATISFIED WHEN THE PARTIES ARE AFFORDED A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR RESPECTIVE SIDES OF THE CONTROVERSY. — "Due process simply demands an opportunity to be heard." "Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy." "Where an opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process." Guided by these established jurisprudential pronouncements, petitioner can hardly claim denial of his fundamental right to due process. Records show that petitioner was able to confront and cross-examine the witnesses against him, argue his case vigorously, and explain the merits of his defense. To reiterate, as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law for the opportunity to be heard is the better accepted norm of procedural due process.

2. ID.; ID.; ID.; ID.; NOT DENIED BY THE EXCLUSION OF IRRELEVANT, IMMATERIAL, OR INCOMPETENT EVIDENCE, OR TESTIMONY OF AN INCOMPETENT WITNESS. — There is also no denial of due process when the trial court did not allow petitioner to introduce as evidence the CA Decision in CA-G.R. SP No. 51795. It is well within the court's discretion to reject the presentation of evidence which it judiciously believes irrelevant and impertinent to the proceeding on hand. This is specially true when the evidence sought to be presented in a criminal proceeding as in this case, concerns an administrative matter. x x x "Due process of law is not denied by the exclusion of irrelevant, immaterial, or incompetent evidence, or testimony of an incompetent witness.

It is not an error to refuse evidence which although admissible for certain purposes, is not admissible for the purpose which counsel states as the ground for offering it."

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; TENDER OF EXCLUDED EVIDENCE; IF AN EXHIBIT SOUGHT TO BE PRESENTED IN EVIDENCE IS REJECTED, THE PARTY PRODUCING IT SHOULD ASK THE COURT'S PERMISSION TO HAVE THE EXHIBIT ATTACHED TO THE RECORD. — [E]ven assuming that the trial court erroneously rejected the introduction as evidence of the CA Decision, petitioner is not left without legal recourse. Petitioner could have availed of the remedy provided in Section 40, Rule 132 of the Rules of Court x x x . As observed by the appellate court, if the petitioner is keen on having the RTC admit the CA's Decision for whatever it may be worth, he could have included the same in his offer of exhibits. If an exhibit sought to be presented in evidence is rejected, the party producing it should ask the court's permission to have the exhibit attached to the record. As things stand, the CA Decision does not form part of the records of the case, thus it has no probative weight. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him otherwise it is excluded and rejected and cannot even be taken cognizance of on appeal. The rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.

4. CRIMINAL LAW; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS. — Under [Section 3(e) of RA 3019], three essential elements must thus be satisfied, *viz*: "1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3. His action caused any undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions."

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHERE THE FACTUAL FINDINGS OF BOTH THE TRIAL COURT AND THE APPELLATE COURT COINCIDE, THE SAME ARE BINDING ON THE SUPREME COURT. — Where the factual

findings of both the trial court and the appellate court coincide, the same are binding on this Court.

APPEARANCES OF COUNSEL

Jose V. Begil, Jr. for petitioner.
The Solicitor General for respondent.
Gonzales Gonzales and Quintana Law Office for private complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

It is well within the Court's discretion to reject the presentation of evidence which it judiciously believes irrelevant and impertinent to the proceeding on hand.

Before us is a Petition for Review on *Certiorari* filed by petitioner Jose R. Catacutan seeking to set aside and reverse the Decision[1] dated December 7, 2006 of the *Sandiganbayan* which affirmed the Decision[2] dated July 25, 2005 of the Regional Trial Court (RTC), Branch 30, Surigao City convicting him of the crime of violation of Section 3(e) of Republic Act (RA) No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act.

Factual Antecedents

The antecedent facts are clear and undisputed.

Private complainant Georgito Posesano was an Instructor II with Salary Grade 13 while private complainant Magdalena Divinagracia was an Education Program Specialist II with Salary Grade 16, both at the Surigao del Norte School of Arts and Trades (SNSAT).[3]

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[1] *Rollo*, pp. 48-65; penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada.

[2] *Id.* at 30-36; penned by Judge Floripinas C. Buyser.

[3] Now Surigao State College of Technology.

On June 2, 1997, the Commission on Higher Education (CHED) Caraga Administrative Region, appointed and promoted private complainants as Vocational Instruction Supervisor III with Salary Grade 18 at SNSAT.[4] These promotional appointments were duly approved and attested as permanent by the Civil Service Commission (CSC) on June 3, 1997.[5] Being then the Officer-In-Charge of SNSAT, the approved appointments were formally transmitted to the petitioner on June 6, 1997,[6] copy furnished the concerned appointees. Despite receipt of the appointment letter, the private complainants were not able to assume their new position since petitioner made known that he strongly opposed their appointments and that he would not implement them despite written orders from CHED[7] and the CSC, Caraga Regional Office.[8] Thus, on August 2, 1997, private complainants lodged a formal complaint against petitioner for grave abuse of authority and disrespect of lawful orders before the Office of the Ombudsman for Mindanao.[9]

In an Information dated February 27, 1998, petitioner was charged before the RTC of Surigao City with violation of Section 3(e) of RA 3019 as amended, committed in the following manner, to wit:

That in June 1997 or sometime thereafter, in Surigao City, Philippines and within the jurisdiction of this Honorable Court, the accused JOSE R. CATACUTAN, OIC Principal of Surigao del Norte School of Arts and Trades (SNSAT), Surigao City, with salary grade below 27, while in the performance of his official duties, thus committing the act in relation to his office, willfully, feloniously and unlawfully did then and there, with grave abuse of authority and evident bad faith, refuse to implement the promotion/appointments of Georgito Posesano and Magdalena A. Divinagracia as Vocational Supervisors III notwithstanding the issuance of the valid appointments

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[4] Exhibits "B" and "C", Folder of Exhibits No. II, pp. 310-311.

[5] Exhibits "B-5" and "C-5", *id.*

[6] Exhibit "A", *id.* at 309.

[7] Exhibits "D" and "G", *id.* at 312-313.

[8] Exhibit "H", *id.* at 317.

[9] Exhibit "J", *id.* at 318-320.

by the appointing authority and despite the directive of the Regional Director of the Commission on Higher Education and the Civil Service Commission in the region, thereby causing undue injury to complainants who were supposed to receive a higher compensation for their promotion, as well as [to] the school and the students who were deprived of the better services which could have been rendered by Georgito Posesano and Magdalena A. Divinagracia as Vocational Instruction Supervisors [III].

CONTRARY TO LAW.[10]

During arraignment on September 22, 1998, petitioner pleaded "not guilty."

For his defense, petitioner admitted that he did not implement the promotional appointments of the private complainants because of some procedural lapses or infirmities attending the preparation of the appointment papers. According to him, the appointment papers were prepared by SNSAT Administrative Officer, Crispin Noguera, using blank forms bearing the letterhead of SNSAT and not of the CHED Regional Office who made the appointments. He also averred that the appointment papers cited the entire plantilla[11] (1996 Plantilla-OSEC-DECSB-VOCIS3-19, Pages 1-16) instead of only the particular page on which the vacant item occurs. He likewise claimed that he received only the duplicate copies of the appointments contrary to the usual procedure where the original appointment papers and other supporting documents are returned to his office. Finally, he asserted that the transmittal letter from the CHED did not specify the date of effectivity of the appointments. These alleged infirmities, he contended, were formally brought to the attention of the CHED Regional Director on June 20, 1997[12] who, however, informed him that the subject appointments were regular and valid and directed him to implement the same. Still not satisfied, petitioner sought the intercession of CHED Chairman Angel C. Alcala in the settlement of this administrative problem[13] but the latter did not respond. Petitioner alleged that

[10] *Sandiganbayan rollo*, vol. I, p. 1.

[11] *Rollo*, p. 51.

[12] Exhibits "1" and "1-A", Folder of Exhibits No. II, pp. 427-428.

[13] Exhibits "2" and "2-A", *id.* at 429-430.

his refusal to implement the appointments of the private complainants was not motivated by bad faith but he just wanted to protect the interest of the government by following strict compliance in the preparation of appointment papers.

Ruling of the Regional Trial Court

On July 25, 2005, the RTC rendered its Decision[14] holding that the act of the petitioner in defying the orders of the CHED and the CSC to implement the subject promotional appointments despite the rejection of his opposition, demonstrates his palpable and patent fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. The trial court ruled that petitioner's refusal to implement the appointments of the private complainants had caused undue injury to them. Thus, it held petitioner guilty of the crime charged and accordingly sentenced him to suffer the penalty of imprisonment of six (6) years and one (1) month and perpetual disqualification from public office.

The RTC disposed of the case as follows:

> WHEREFORE, finding the accused JOSE R. CATACUTAN guilty beyond reasonable doubt [of] VIOLATION OF SECTION 3(e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, this Court hereby imposes upon him the penalty of imprisonment [of] SIX (6) YEARS and ONE (1) MONTH and PERPETUAL DISQUALIFICATION FROM PUBLIC OFFICE, and to pay the costs.
>
> The aforementioned accused is hereby ordered to pay private complainants Georgito Posesano and Magdalena Divinagracia the sum of Fifty Thousand Pesos (₱50,000.00) each, for moral damages.
>
> SO ORDERED.[15]

Petitioner moved for reconsideration[16] but it was denied in an Order[17] dated October 13, 2005.

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[14] *Supra* note 2.

[15] *Rollo*, p. 36.

[16] *Id.* at 37-42.

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

Ruling of the Sandiganbayan

On appeal, petitioner's conviction was affirmed *in toto* by the *Sandiganbayan*.[18] The appellate court ruled that the Decision of the trial court, being supported by evidence and firmly anchored in law and jurisprudence, is correct. It held that petitioner failed to show that the trial court committed any reversible error in judgment.

Hence, this petition.

In the Court's Resolution[19] dated February 26, 2007, the Office of the Solicitor General (OSG) was required to file its Comment. The OSG filed its Comment[20] on June 5, 2007 while the Office of the Special Prosecutor filed the Comment[21] for respondent People of the Philippines on February 22, 2008.

Issue

The sole issue for consideration in this present petition is:

> Whether the [petitioner's] constitutional right[s] to due process x x x and x x x equal protection of [the] law x x x were violated x x x [when he was denied] the opportunity to present [in] evidence [the Court of Appeals'] Decision dated April 18, 2001 x x x in CA-G.R. SP No. 51795 entitled "*Jose R. Catacutan, petitioner, versus Office of the Ombudsman for Mindanao, et al., respondents.*"[22]

Invoking the constitutional provision on due process,[23] petitioner argues that the Decision rendered by the trial court is flawed and is grossly violative of his right to be heard and to present evidence. He contends that he was not able to controvert the

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[18] *Id.* at 48-65.

[19] *Id.* at 66.

[20] *Id.* at 78-88.

[21] *Id.* at 402-417.

[22] *Id.* at 17.

[23] CONSTITUTION, Article III, Section 1. No person shall be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of the laws.

findings of the trial court since he was not able to present the Court of Appeals' (CA's) Decision in CA-G.R. SP No. 51795 which denied the administrative case filed against him and declared that his intention in refusing to implement the promotions of the private complainants falls short of malice or wrongful intent.

Our Ruling

The petition lacks of merit.

Petitioner was not deprived of his right to due process.

"Due process simply demands an opportunity to be heard."[24] "Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy."[25] "Where an opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process."[26]

Guided by these established jurisprudential pronouncements, petitioner can hardly claim denial of his fundamental right to due process. Records show that petitioner was able to confront and cross-examine the witnesses against him, argue his case vigorously, and explain the merits of his defense. To reiterate, as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law for the opportunity to be heard is the better accepted norm of procedural due process.

There is also no denial of due process when the trial court did not allow petitioner to introduce as evidence the CA Decision in CA-G.R. SP No. 51795. It is well within the court's discretion to reject the presentation of evidence which it judiciously believes irrelevant and impertinent to the proceeding on hand. This is

[24] *Philippine Deposit Insurance Corporation v. Commission on Audit*, G.R. No. 171548, February 22, 2008, 546 SCRA 473, 483.

[25] *People v. Dela Cruz*, G.R. No. 173308, June 25, 2008, 555 SCRA 329, 340.

[26] *Equitable PCI Banking Corporation v. RCBC Capital Corporation*, G.R. No. 182248, December 18, 2008, 574 SCRA 858, 883.

specially true when the evidence sought to be presented in a criminal proceeding as in this case, concerns an administrative matter. As the *Sandiganbayan* aptly remarked:

> The RTC committed no error in judgment when it did not allow the Accused-appellant to present the Decision of the Court of Appeals in CA-G.R. SP No. 51795 (*Jose R. Catacutan vs. Office of the Ombudsman*). The findings in administrative cases are not binding upon the court trying a criminal case, even if the criminal proceedings are based on the same facts and incidents which gave rise to the administrative matter. The dismissal of a criminal case does not foreclose administrative action or necessarily gives the accused a clean bill of health in all respects. In the same way, the dismissal of an administrative case does not operate to terminate a criminal proceeding with the same subject matter. x x x[27]

This action undertaken by the trial court and sustained by the appellate court was not without legal precedent. In *Paredes v. Court of Appeals*,[28] this Court ruled:

> It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa. One thing is administrative liability; quite another thing is the criminal liability for the same act.
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> x x x x x x x x x
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> Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases. x x x

In *Nicolas v. Sandiganbayan*,[29] the Court reiterated:

> This Court is not unmindful of its rulings that the dismissal of an administrative case does not bar the filing of a criminal prosecution

[27] *Rollo*, p. 57.

[28] G.R. No. 169534, July 30, 2007, 528 SCRA 577, 587-589.

[29] G.R. Nos. 175930-31, February 11, 2008, 544 SCRA 324, 345.

for the same or similar acts subject of the administrative complaint and that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa. x x x

On the basis of the afore-mentioned precedents, the Court has no option but to declare that the courts below correctly disallowed the introduction in evidence of the CA Decision. "Due process of law is not denied by the exclusion of irrelevant, immaterial, or incompetent evidence, or testimony of an incompetent witness. It is not an error to refuse evidence which although admissible for certain purposes, is not admissible for the purpose which counsel states as the ground for offering it."[30]

At any rate, even assuming that the trial court erroneously rejected the introduction as evidence of the CA Decision, petitioner is not left without legal recourse. Petitioner could have availed of the remedy provided in Section 40, Rule 132 of the Rules of Court which provides:

Section 40. *Tender of excluded evidence*. – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

As observed by the appellate court, if the petitioner is keen on having the RTC admit the CA's Decision for whatever it may be worth, he could have included the same in his offer of exhibits. If an exhibit sought to be presented in evidence is rejected, the party producing it should ask the court's permission to have the exhibit attached to the record.

As things stand, the CA Decision does not form part of the records of the case, thus it has no probative weight. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him otherwise it is excluded and rejected and cannot even be taken cognizance of on appeal.

[30] *People v. Larrañaga*, 466 Phil. 324, 373-374 (2004).

The rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.

Section 3(e) of RA 3019, as amended, provides:

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

Under said provision of law, three essential elements must thus be satisfied, *viz*:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. His action caused any undue injury to any party, including the government or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[31]

All the above enumerated elements of the offense charged have been successfully proven by the prosecution.

First, petitioner could not have committed the acts imputed against him during the time material to this case were it not for his being a public officer, that is, as the Officer-In-Charge (Principal) of SNSAT. As such public officer, he exercised official duties and functions, which include the exercise of

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

administrative supervision over the school such as taking charge of personnel management and finances, as well as implementing instruction as far as appointment of teachers.[32]

Second, petitioner acted with evident bad faith in refusing to implement the appointments of private complainants. As the *Sandiganbayan* aptly remarked:

> The records clearly indicate that the refusal of Catacutan to implement the subject promotion was no longer anchored on any law or civil service rule as early [as] the July 14, 1997 letter of the CHED Regional Director addressing the four issues raised by the Accused-appellant in the latter's protest letter. x x x In light of the undisputed evidence presented to the trial court that Catacutan's reason for not implementing the appointments was a personal dislike or ill feelings towards Posesano, this Court believes that Catacutan's refusal was impelled by an ill motive or dishonest purpose characteristic of bad faith. x x x
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> x x x x x x x x x
>
> In the August 1, 1997 [m]emorandum issued by the CHED Regional Director, Catacutan was once again directed, in strong words, to cease and desist from further questioning what has been lawfully acted upon by competent authorities. Catacutan deliberately ignored the memorandum and even challenged the private complainants to file a case against him. Such arrogance is indicative of the bad faith of the accused-appellant.
>
> Yet again, the [CSC] Regional Director wrote the Accused-appellant on September 5, 1997, clarifying with finality the validity of the appointment. Still, Accused-appellant failed to implement the subject promotions. This stubborn refusal to implement the clear and repeated directive of competent authorities established the evident bad faith of Catacutan and belies any of his claims to the contrary.[33]

While petitioner may have laudable objectives in refusing the implementation of private complainants' valid appointments, the Court fails to see how he can still claim good faith when no less than the higher authorities have already sustained the validity

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[32] TSN, June 17, 2004, p. 5.

[33] *Rollo*, pp. 62-63.

of the subject appointments and have ordered him to proceed with the implementation. "It is well to remember that good intentions do not win cases, evidence does."[34]

Third, undue injury to the private complainants was duly proven to the point of moral certainty. Here, the private complainants suffered undue injury when they were not able to assume their official duties as Vocational Supervisors III despite the issuance of their valid appointments. As borne out by the records, they were able to assume their new positions only on November 19, 1997. So in the interregnum from June to November 1997, private complainants failed to enjoy the benefits of an increased salary corresponding to their newly appointed positions. Likewise established is that as a result of petitioner's unjustified and inordinate refusal to implement their valid appointments notwithstanding clear and mandatory directives from his superiors, the private complainants suffered mental anguish, sleepless nights, serious anxiety warranting the award of moral damages under Article 2217 of the New Civil Code.

At this point, the Court just needs to stress that the foregoing are factual matters that were threshed out and decided upon by the trial court which were subsequently affirmed by the *Sandiganbayan*. Where the factual findings of both the trial court and the appellate court coincide, the same are binding on this Court. In any event, apart from these factual findings of the lower courts, this Court in its own assessment and review of the records considers the findings in order.

WHEREFORE, the petition is *DENIED* and the assailed Decision of the *Sandiganbayan* promulgated on December 7, 2006 is *AFFIRMED*.

SO ORDERED.

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

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[34] *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG),* G.R. No. 169982, November 23, 2007, 538 SCRA 534, 590.

THIRD DIVISION

[G.R. No. 176077. August 31, 2011]

ABRAHAM MICLAT, JR. *y* CERBO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; AN ACCUSED IS ESTOPPED FROM ASSAILING ANY IRREGULARITY OF HIS ARREST IF HE FAILS TO RAISE THIS ISSUE OR TO MOVE FOR THE QUASHAL OF THE INFORMATION AGAINST HIM ON THIS GROUND BEFORE ARRAIGNMENT. — At the outset, it is apparent that petitioner raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In the present case, at the time of petitioner's arraignment, there was no objection raised as to the irregularity of his arrest. Thereafter, he actively participated in the proceedings before the trial court. In effect, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST WARRANTLESS SEARCHES AND SEIZURE; AN EXCEPTION THERETO IS THAT OF AN ARREST MADE DURING THE COMMISSION OF THE CRIME, WHICH DOES NOT REQUIRE A PREVIOUSLY

ISSUED WARRANT.— True, the Bill of Rights under the present Constitution provides in part: "SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." However, a settled exception to the right guaranteed by the above-stated provision is that of an arrest made during the commission of a crime, which does not require a previously issued warrant. Such warrantless arrest is considered reasonable and valid under Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure, to wit: "Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, *without a warrant*, arrest a person: (a) When, *in his presence*, the person to be arrested has committed, *is actually committing*, or is attempting to commit an offense;"

3. ID.; ID.; ID.; ID.; ELEMENTS. — For the exception in Section 5 (a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

4. ID.; ID.; ID.; ID.; LEGAL AND JUDICIAL EXCEPTIONS. — [N]o less than the 1987 Constitution mandates that a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable, and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. The right against warrantless searches and seizure, however, is subject to legal and judicial exceptions, namely: 1. Warrantless search incidental to a lawful arrest; 2. Search of evidence in "plain view"; 3. Search of a moving vehicle; 4. Consented warrantless search; 5. Customs search; 6. Stop and Frisk; and 7. Exigent and emergency circumstances.

5. ID.; ID.; ID.; ID.; WHAT CONSTITUTES A REASONABLE OR UNREASONABLE WARRANTLESS SEARCH OR SEIZURE

IS PURELY A JUDICIAL QUESTION.— What constitutes a reasonable or unreasonable warrantless search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.

6. ID.; ID.; ID.; ID.; LEGAL AND JUDICIAL EXCEPTIONS; PLAIN VIEW DOCTRINE; WHEN APPLICABLE. — It is to be noted that petitioner was caught in the act of arranging the heat-sealed plastic sachets in plain sight of PO3 Antonio and he voluntarily surrendered them to him upon learning that he is a police officer. The seizure made by PO3 Antonio of the four plastic sachets from the petitioner was not only incidental to a lawful arrest, but it also falls within the purview of the "plain view" doctrine. "**Objects *falling in plain view* of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence**. The "plain view" doctrine applies when the following requisites concur: **(a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure**. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent." It is clear, therefore, that an object is in plain view if the object itself is plainly exposed to sight. Since petitioner's arrest is among the exceptions to the rule requiring a warrant before effecting an arrest and the evidence seized from the petitioner was the result of a warrantless search incidental to a lawful arrest, which incidentally was in plain view of the arresting officer, the results of the ensuing search and seizure were admissible in evidence to prove petitioner's guilt of the offense charged.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE FAILURE OF THE LAW ENFORCERS TO COMPLY STRICTLY WITH THE RULE ON THE PROPER PROCEDURE IN THE TRANSFER OF CUSTODY OF THE SEIZED EVIDENCE IS NOT FATAL. — [I]t is clear that the failure of the law enforcers to comply strictly with the rule [on the proper procedure in the transfer of custody of the seized evidence] is not fatal. It does not render petitioner's arrest illegal nor the evidence adduced against him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

8. ID.; ID.; CHAIN OF CUSTODY; AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS HAD BEEN ESTABLISHED IN CASE AT BAR. — Here, the requirements of the law were substantially complied with and the integrity of the drugs seized from the petitioner was preserved. More importantly, an unbroken chain of custody of the prohibited drugs taken from the petitioner was sufficiently established. The factual antecedents of the case reveal that the petitioner voluntarily surrendered the plastic sachets to PO3 Antonio when he was arrested. Together with petitioner, the evidence seized from him were immediately brought to the police station and upon arriving thereat, were turned over to PO3 Moran, the investigating officer. There the evidence was marked. The turn-over of the subject sachets and the person of the petitioner were then entered in the official blotter. Thereafter, the Chief of the SDEU, Police Senior Inspector Jose Ramirez Valencia, endorsed the evidence for laboratory examination to the National Police District PNP Crime Laboratory. The evidence was delivered by PO3 Moran and received by Police Inspector Jessie Dela Rosa. After a qualitative examination of the contents of the four (4) plastic sachets by the latter, the same tested positive for methamphetamine hydrochloride, a dangerous drug. An unbroken chain of custody of the seized drugs had, therefore, been established by the prosecution from the arresting officer, to the investigating officer, and finally to the forensic chemist. There is no doubt that the items seized from the petitioner at his residence were also the same items marked by the investigating officer, sent to the Crime

Laboratory, and later on tested positive for methamphetamine hydrochloride.

9. ID.; ILLEGAL POSSESSION OF PROHIBITED DRUG; ELEMENTS. — For conviction of illegal possession of a prohibited drug to lie, the following elements must be established: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. Based on the evidence submitted by the prosecution, the above elements were duly established in the present case.

10. ID.; ID.; MERE POSSESSION OF A REGULATED DRUG *PER SE* CONSTITUTES *PRIMA FACIE* EVIDENCE OF KNOWLEDGE OR *ANIMUS POSSIDENDI*.— Mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.

11. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY THE TRIAL COURT ARE GENERALLY RESPECTED ON APPEAL. — It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner. Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth. In the present case, there is no compelling reason to reverse the findings of fact of the trial court. No evidence exist that shows any apparent inconsistencies in the narration of the prosecution witnesses of the events which transpired and led to the arrest of petitioner. After a careful evaluation of the records, We find no error was committed by the RTC and the CA to disregard their factual

findings that petitioner committed the crime charged against him.

12. ID.; ID.; DENIAL AND FRAME–UP; MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE IN ORDER TO PROSPER AS DEFENSES. — Against the overwhelming evidence of the prosecution, petitioner merely denied the accusations against him and raised the defense of frame-up. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.

13. CRIMINAL LAW ; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF *SHABU*; PENALTY IN CASE AT BAR. — [I]llegal possession of less than five (5) grams of methamphetamine hydrochloride or *shabu* is penalized with *imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00)*. The evidence adduced by the prosecution established beyond reasonable doubt that petitioner had in his possession 0.24 gram of *shabu*, or less than five (5) grams of the dangerous drug, without any legal authority. Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law; hence, the imposable penalty should be within the range of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.*

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated October 13, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 28846, which in turn affirmed *in toto* the Decision of the Regional Trial Court (RTC), Branch 120, Caloocan City, in Criminal Case No. C-66765 convicting petitioner of Violation of Section 11, Article II of Republic Act (RA) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

The factual and procedural antecedents are as follows:

In an Information[2] dated November 11, 2002, petitioner Abraham C. Miclat, Jr. was charged for Violation of Section 11, Article II of RA No. 9165, the accusatory portion of which reads:

> That on or about the 08th day of November 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully and feloniously have in his possession, custody and control [**Methamphetamine] Hydrochloride (SHABU)** weighing 0.24 gram, knowing the same to be a dangerous drug under the provisions of the above-cited law.
>
> CONTRARY TO LAW. (Emphasis supplied.)[3]

Upon arraignment, petitioner, with the assistance of counsel pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.

To establish its case, the prosecution presented Police Inspector Jessie Abadilla Dela Rosa (P/Insp Dela Rosa), Forensic

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 140-51.

[2] *Id.* at 40.

[3] *Id.*

Chemical Officer of the Philippine National Police (PNP) Crime Laboratory, NPD-CLO, Caloocan City Police Station and Police Officer 3 Rodrigo Antonio (PO3 Antonio) of the Caloocan Police Station – Drug Enforcement Unit. The testimony of the police investigator, PO3 Fernando Moran (PO3 Moran), was dispensed with after petitioner's counsel admitted the facts offered for stipulation by the prosecution.

On the other hand, the defense presented the petitioner as its sole witness. The testimonies of Abraham Miclat, Sr. and Ma. Concepcion Miclat, the father and sister, respectively, of the petitioner was dispensed with after the prosecution agreed that their testimonies were corroborative in nature.

Evidence for the Prosecution

First to testify for the prosecution was P/Insp. Jessie Abadilla Dela Rosa, Forensic Chemical Officer of the PNP Crime Laboratory, NPD-CLO, Caloocan City Police Station who, on the witness stand, affirmed his own findings in Physical Science Report No. D-1222-02 (Exhs. "D", "D-1", and "D-2") that per qualitative examination conducted on the specimen submitted, the white crystalline substance weighing 0.05 gram, 0.06 gram, 0.07 gram, and 0.06 gram then contained inside four (4) separate pieces of small heat-sealed transparent plastic sachets (Exhs. "D-4" to "D-7") gave positive result to the test for Methylamphetamine (sic) Hydrochloride, a dangerous drug.

Also, thru the testimony of PO3 Rodrigo Antonio of the Caloocan Police Station-Drug Enforcement Unit, Samson Road, Caloocan City, the prosecution further endeavored to establish the following:

At about 1:00 o'clock in the afternoon of November 8, 2002, P/Insp. Jose Valencia of the Caloocan City Police Station-SDEU called upon his subordinates after the (sic) receiving an INFOREP Memo from Camp Crame relative to the illicit and down-right drug-trading activities being undertaken along Palmera Spring II, Bagumbong, Caloocan City involving Abe Miclat, Wily *alias* "Bokbok" and one Mic or Jojo (Exhs. "E", "E-1", and (sic) "E-3", and "E-4"). Immediately, P/Insp. Valencia formed a surveillance team headed by SPO4 Ernesto Palting and is composed of five (5) more operatives from the Drug Enforcement Unit, namely: PO3 Pagsolingan, PO2 Modina, PO2 De Ocampo, and herein witness PO3 Antonio. After a short briefing at

their station, the team boarded a rented passenger jeepney and proceeded to the target area to verify the said informant and/or memorandum.

When the group of SPO4 Palting arrived at Palmera Spring II, Caloocan City at around 3:50 o'clock that same afternoon, they were [at] once led by their informant to the house of one *Alias* "Abe." PO3 Antonio then positioned himself at the perimeter of the house, while the rest of the members of the group deployed themselves nearby. Thru a small opening in the curtain-covered window, PO3 Antonio peeped inside and there at a distance of 1½ meters, he saw "Abe" arranging several pieces of small plastic sachets which he believed to be containing *shabu*. Slowly, said operative inched his way in by gently pushing the door as well as the plywood covering the same. Upon gaining entrance, PO3 Antonio forthwith introduced himself as a police officer while "Abe," on the other hand, after being informed of such authority, voluntarily handed over to the former the four (4) pieces of small plastic sachets the latter was earlier sorting out. PO3 Antonio immediately placed the suspect under arrest and brought him and the four (4) pieces of plastic sachets containing white crystalline substance to their headquarters and turned them over to PO3 Fernando Moran for proper disposition. The suspect was identified as Abraham Miclat *y* Cerbo *a.k.a* "ABE," 19 years old, single, jobless and a resident of Maginhawa Village, Palmera Spring II, Bagumbong, Caloocan City.[4]

Evidence for the Defense

On the other hand, the [petitioner] has a different version of the incident completely opposed to the theory of the prosecution. On the witness stand, he alleged that at about 4:00 o'clock in the afternoon of November 8, 2002, while he, together with his sister and father, were at the upper level of their house watching the television soap "Cindy," they suddenly heard a commotion downstairs prompting the three (3) of them to go down. There already inside were several male individuals in civilian clothes who introduced themselves as raiding police operatives from the SDEU out to effect his (Abe) arrest for alleged drug pushing. [Petitioner] and his father tried to plead his case to these officers, but to no avail. Instead, one of the operatives even kicked [petitioner] at the back when he tried to resist the arrest. Immediately, [petitioner] was handcuffed and together

[4] *Id.* at 76-77.

with his father, they were boarded inside the police vehicle. That on their way to the Bagong Silang Police Station, PO3 Pagsolingan showed to [petitioner] a small piece of plastic sachet containing white crystalline substances allegedly recovered by the raiding police team from their house. At around 9:00 o'clock in the evening, [petitioner] was transferred to the Sangandaan Headquarters where he was finally detained. That upon [petitioner's] transfer and detention at the said headquarters, his father was ordered to go home.[5]

On July 28, 2004, the RTC, after finding that the prosecution has established all the elements of the offense charged, rendered a Decision[6] convicting petitioner of Violation of Section 11, Article II of RA No. 9165, the dispositive portion of which reads:

WHEREFORE, from the facts established, the Court finds the accused **ABRAHAM MICLAT *Y* CERBO "GUILTY"** beyond reasonable doubt of the crime of possession of a dangerous drugs (sic) defined and penalized under the provision of Section 11, sub-paragraph No. (3), Article II of Republic Act No. 9165 and hereby imposes upon him an indeterminate penalty of **six (6) years and one (1) day to twelve (12) years of imprisonment,** in view of the absence of aggravating circumstances. The Court likewise orders the accused to pay the amount of Three Hundred Thousand Pesos (Php300,000.00) as fine.

Let the 0.24 gram of *shabu* subject matter of this case be confiscated and forfeited in favor of the Government and to be turned over to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED. (Emphasis supplied.)[7]

Aggrieved, petitioner sought recourse before the CA, which appeal was later docketed as CA-G.R. CR No. 28846.

On October 13, 2006, the CA rendered a Decision[8] affirming *in toto* the decision of the RTC, the dispositive portion of which reads:

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[5] *Id.* at. 78.

[6] *Id.* at 75-82.

[7] *Id.* at 81-82.

[8] *Supra* note 1.

WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Decision **AFFIRMED** *in toto*. Costs against the accused-appellant.

SO ORDERED. (Emphasis supplied.)[9]

In affirming the RTC, the CA ratiocinated that contrary to the contention of the petitioner, the evidence presented by the prosecution were all admissible against him. Moreover, it was established that he was informed of his constitutional rights at the time of his arrest. Hence, the CA opined that the prosecution has proven beyond reasonable doubt all of the elements necessary for the conviction of the petitioner for the offense of illegal possession of dangerous drugs.

Hence, the petition raising the following errors:

1. WHETHER OR NOT A POLICE SURVEILLANCE TEAM SENT TO DETERMINE THE VERACITY OF A CAMP CRAME MEMORANDUM OF *SHABU* TRADING ACTIVITY AT CALOOCAN CITY, WHICH CONVERTED THEIR MISSION FROM SURVEILLANCE TO A RAIDING TEAM, CAN VALIDLY MAKE AN ARREST AND SEARCH WITHOUT A VALID WARRANT HAVING BEEN FIRST OBTAINED FROM A COURT OF COMPETENT JURISDICTION.
2. WHETHER OR NOT PEEPING THROUGH A CURTAIN-COVERED WINDOW IS WITHIN THE MEANING OF "PLAIN VIEW DOCTRINE" FOR A WARRANTLESS SEIZURE TO BE LAWFUL.
3. WHETHER OR NOT THE BELIEF OF PO3 ANTONIO THAT THE FOUR (4) PIECES OF PLASTIC SACHETS ALLEGEDLY BEING ARRANGED BY PETITIONER CONTAINED *SHABU* JUSTIFIED HIS ENTRY INTO THE HOUSE AND ARREST PETITIONER WITHOUT ANY WARRANT.
4. WHETHER OR NOT ARRANGING FOUR (4) PIECES OF PLASTIC SACHETS CONSTITUTE AS A CRIME WITHIN THE MEANING OF SECTION 5 (3), RULE 113 OF THE RULES OF COURT.

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[9] *Id.* at 151.

5. WHETHER OR NOT PETITIONER WAS PROPERLY APPRAISED (SIC) OF HIS CONSTITUTIONAL RIGHTS TO BE INFORMED OF THE CAUSE AND NATURE OF HIS ARREST AND RIGHT TO BE ASSISTED BY COUNSEL DURING THE PERIOD OF HIS ARREST AND CONTINUED DETENTION.

6. WHETHER OR NOT THE CONVICTION BY THE LOWER COURT OF THE PETITIONER, AS AFFIRMED BY THE HONORABLE COURT OF APPEALS, ON THE BASIS OF AN ILLEGAL SEARCH AND ARREST, IS CORRECT.[10]

Simply stated, petitioner is assailing the legality of his arrest and the subsequent seizure of the arresting officer of the suspected sachets of dangerous drugs from him. Petitioner insists that he was just watching television with his father and sister when police operatives suddenly barged into their home and arrested him for illegal possession of *shabu*.

Petitioner also posits that being seen in the act of arranging several plastic sachets inside their house by one of the arresting officers who was peeping through a window is not sufficient reason for the police authorities to enter his house without a valid search warrant and/or warrant of arrest. Arguing that the act of arranging several plastic sachets by and in itself is not a crime *per se*, petitioner maintains that the entry of the police surveillance team into his house was illegal, and no amount of incriminating evidence will take the place of a validly issued search warrant. Moreover, peeping through a curtain-covered window cannot be contemplated as within the meaning of the plain view doctrine, rendering the warrantless arrest unlawful.

Petitioner also contends that the chain of custody of the alleged illegal drugs was highly questionable, considering that the plastic sachets were not marked at the place of the arrest and no acknowledgment receipt was issued for the said evidence.

Finally, petitioner claims that the arresting officer did not inform him of his constitutional rights at any time during or

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[10] *Id.* at 209-210.

after his arrest and even during his detention. Hence, for this infraction, the arresting officer should be punished accordingly.

The petition is bereft of merit.

At the outset, it is apparent that petitioner raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.[11] An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[12]

In the present case, at the time of petitioner's arraignment, there was no objection raised as to the irregularity of his arrest. Thereafter, he actively participated in the proceedings before the trial court. In effect, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.[13]

True, the Bill of Rights under the present Constitution provides in part:

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable

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[11] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 622.

[12] *Rebellion v. People*, G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.

[13] *People v. Santos*, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 601.

cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

However, a settled exception to the right guaranteed by the above-stated provision is that of an arrest made during the commission of a crime, which does not require a previously issued warrant. Such warrantless arrest is considered reasonable and valid under Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure, to wit:

Sec. 5. *Arrest without warrant; when lawful.* : a peace office of a private person may, *without a warrant*, arrest a person:

(a) When, *in his presence*, the person to be arrested has committed, *is actually committing*, or is attempting to commit an offense;[14]

For the exception in Section 5 (a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[15]

In the instant case, contrary to petitioner's contention, he was caught *in flagrante delicto* and the police authorities effectively made a valid warrantless arrest. The established facts reveal that on the date of the arrest, agents of the Station Drug Enforcement Unit (SDEU) of the Caloocan City Police Station were conducting a surveillance operation in the area of Palmera Spring II to verify the reported drug-related activities of several individuals, which included the petitioner. During the operation, PO3 Antonio, through petitioner's window, saw petitioner arranging several plastic sachets containing what appears to be *shabu* in the living room of their home. The plastic sachets and its suspicious contents were plainly exposed to the view of PO3 Antonio, who was only about one and one-half meters

[14] Emphasis supplied.

[15] *People v. Tudtud*, 458 Phil. 752, 775 (2003).

from where petitioner was seated. PO3 Antonio then inched his way in the house by gently pushing the door. Upon gaining entrance, the operative introduced himself as a police officer. After which, petitioner voluntarily handed over to PO3 Antonio the small plastic sachets. PO3 Antonio then placed petitioner under arrest and, contrary to petitioner's contention, PO3 Antonio informed him of his constitutional rights.[16] PO3 Antonio then took the petitioner and the four (4) pieces of plastic sachets to their headquarters and turned them over to PO3 Moran. Thereafter, the evidence were marked "AMC 1-4," the initials of the name of the petitioner. The heat-sealed transparent sachets containing white crystalline substance were submitted to the PNP Crime Laboratory for drug examination, which later yielded positive results for the presence of methamphetamine hydrochloride, a dangerous drug under RA No. 9165.

Considering the circumstances immediately prior to and surrounding the arrest of the petitioner, petitioner was clearly arrested *in flagrante delicto* as he was then committing a crime, violation of the Dangerous Drugs Act, within the view of the arresting officer.

As to the admissibility of the seized drugs in evidence, it too falls within the established exceptions.

Verily, no less than the 1987 Constitution mandates that a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable, and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[17] The right against warrantless searches and seizure, however, is subject to legal and judicial exceptions, namely:

1. Warrantless search incidental to a lawful arrest;
2. Search of evidence in "plain view";
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;

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[16] TSN, (PO3 Rodrigo Antonio), April 21, 2003, p. 5; *rollo*, p. 60.

[17] 1987 Constitution, Article III, Sections 2 and 3 (2).

6. Stop and Frisk; and
7. Exigent and emergency circumstances.[18]

What constitutes a reasonable or unreasonable warrantless search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[19]

It is to be noted that petitioner was caught in the act of arranging the heat-sealed plastic sachets in plain sight of PO3 Antonio and he voluntarily surrendered them to him upon learning that he is a police officer. The seizure made by PO3 Antonio of the four plastic sachets from the petitioner was not only incidental to a lawful arrest, but it also falls within the purview of the "plain view" doctrine.

Objects *falling in plain view* of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: **(a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure**. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent. (Emphasis supplied.)[20]

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[18] *People v. Racho*, G.R. No. 186529, August 3, 2010, 626 SCRA 633, 641.

[19] *People v. Nuevas*, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 476.

[20] *People v. Lagman*, G.R. No. 168695, December 8, 2008, 573 SCRA 224, 236, citing *People v. Doria*, 361 Phil. 595, 633-634 (1999).

It is clear, therefore, that an object is in plain view if the object itself is plainly exposed to sight. Since petitioner's arrest is among the exceptions to the rule requiring a warrant before effecting an arrest and the evidence seized from the petitioner was the result of a warrantless search incidental to a lawful arrest, which incidentally was in plain view of the arresting officer, the results of the ensuing search and seizure were admissible in evidence to prove petitioner's guilt of the offense charged.

As to petitioner's contention that the police failed to comply with the proper procedure in the transfer of custody of the seized evidence thereby casting serious doubt on its seizure, this too deserves scant consideration.

Section 21, paragraphs 1 and 2, Article II of RA 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:
>
> (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;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

x x x x x x x x x.

Corolarilly, the implementing provision of Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165, provides:

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.*

x x x x x x x x x x.[21]

From the foregoing, it is clear that the failure of the law enforcers to comply strictly with the rule is not fatal. It does not render petitioner's arrest illegal nor the evidence adduced against him inadmissible.[22] What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[23]

Here, the requirements of the law were substantially complied with and the integrity of the drugs seized from the petitioner was preserved. More importantly, an unbroken chain of custody of the prohibited drugs taken from the petitioner was sufficiently established. The factual antecedents of the case reveal that the petitioner voluntarily surrendered the plastic sachets to PO3 Antonio when he was arrested. Together with petitioner, the

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[21] Emphasis supplied.

[22] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 218, citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448.

[23] *Id*.

evidence seized from him were immediately brought to the police station and upon arriving thereat, were turned over to PO3 Moran, the investigating officer. There the evidence was marked. The turn-over of the subject sachets and the person of the petitioner were then entered in the official blotter. Thereafter, the Chief of the SDEU, Police Senior Inspector Jose Ramirez Valencia, endorsed the evidence for laboratory examination to the National Police District PNP Crime Laboratory. The evidence was delivered by PO3 Moran and received by Police Inspector Jessie Dela Rosa.[24] After a qualitative examination of the contents of the four (4) plastic sachets by the latter, the same tested positive for methamphetamine hydrochloride, a dangerous drug.[25]

An unbroken chain of custody of the seized drugs had, therefore, been established by the prosecution from the arresting officer, to the investigating officer, and finally to the forensic chemist. There is no doubt that the items seized from the petitioner at his residence were also the same items marked by the investigating officer, sent to the Crime Laboratory, and later on tested positive for methamphetamine hydrochloride.

For conviction of illegal possession of a prohibited drug to lie, the following elements must be established: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[26] Based on the evidence submitted by the prosecution, the above elements were duly established in the present case. Mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.[27]

[24] *Rollo*, p. 37.

[25] *Id.* at 38.

[26] *People v. Teddy Batoon and Melchor Batoon*, G.R. No. 184599, November 24, 2010.

[27] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 343.

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner.[28] Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth.[29]

In the present case, there is no compelling reason to reverse the findings of fact of the trial court. No evidence exist that shows any apparent inconsistencies in the narration of the prosecution witnesses of the events which transpired and led to the arrest of petitioner. After a careful evaluation of the records, We find no error was committed by the RTC and the CA to disregard their factual findings that petitioner committed the crime charged against him.

Against the overwhelming evidence of the prosecution, petitioner merely denied the accusations against him and raised the defense of frame-up. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[30]

As to the penalty, while We sustain the amount of fine, the indeterminate sentence imposed should, however, be modified.

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[28] *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564.

[29] *People v. Willie Midenilla, et al.*, G.R. No. 186470, September 27, 2010.

[30] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642.

Section 11, Article II, RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, provides:

> Section 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
>
> x x x x x x x x x.
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> x x x x x x x x x.
>
> (3) *Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00)*, if the quantities of dangerous drugs are *less than five (5) grams* of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, *methamphetamine hydrochloride or "shabu"*, or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.[31]

From the foregoing, illegal possession of less than five (5) grams of methamphetamine hydrochloride or *shabu* is penalized with *imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00)*. The evidence adduced by the prosecution established beyond reasonable doubt that petitioner had in his possession 0.24 gram of *shabu*, or less than five (5) grams of the dangerous drug, without any legal authority.

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[31] Emphasis supplied.

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law; hence, the imposable penalty should be within the range of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.*

WHEREFORE, premises considered, the appeal is *DENIED*. The Decision dated October 13, 2006 of the Court of Appeals in CA-G.R. CR No. 28846 is *AFFIRMED with MODIFICATION*. Petitioner is sentenced to suffer the indeterminate sentence of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months*.

SO ORDERED.

Velasco, Jr.(Chairperson), Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 179978. August 31, 2011]

DCD CONSTRUCTION, INC., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; CONFIRMATION OF IMPERFECT TITLE; REGISTRABLE TITLE, HOW PROVEN. — Applicants for confirmation of imperfect title must prove the following: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain and (b) that they have been in open, continuous, exclusive and

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* Designated additional member, per Special Order No. 1028 dated June 21, 2011.

notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ALL LANDS NOT APPEARING TO BE CLEARLY OF PRIVATE DOMINION PRESUMPTIVELY BELONG TO THE STATE. — Under Section 2, Article XII of the Constitution, which embodies the *Regalian doctrine*, all lands of the public domain belong to the State – the source of any asserted right to ownership of land. All lands not appearing to be clearly of private dominion presumptively belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable and disposable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.

3. CIVIL LAW; LAND REGISTRATION; CONFIRMATION OF IMPERFECT TITLE; TO PROVE THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE, AN APPLICANT MUST ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT. — In *Republic v. Court of Appeals*, this Court noted that to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. A certification issued by a Community Environment and Natural Resources Officer in the Department of Environment and Natural Resources (DENR) stating that the lots involved were found to be within the alienable and disposable area was deemed sufficient to show the real character of the land.

4. ID; ID.; ID.; THE NOTATION APPEARING IN THE SUBDIVISION PLAN OF THE LOT STATING THAT IT IS WITHIN THE ALIENABLE AND DISPOSABLE AREA DOES NOT SATISFY THE INCONTROVERTIBLE PROOF REQUIRED BY LAW ON THE CLASSIFICATION OF LAND APPLIED FOR REGISTRATION. — As to notations appearing in the subdivision plan of the lot stating that it is within the alienable and disposable area, the consistent holding is that these do

not constitute proof required by the law. x x x [I]t is clear that the notation inserted in the survey plan (Exhibit "Q") hardly satisfies the incontrovertible proof required by law on the classification of land applied for registration.

5. ID.; ID.; ID.; THE PHRASE "ADVERSE, CONTINUOUS, OPEN, PUBLIC, PEACEFUL AND IN CONCEPT OF OWNER," IS A MERE CONCLUSION OF LAW REQUIRING EVIDENTIARY SUPPORT AND SUBSTANTIATION. — The phrase "adverse, continuous, open, public, peaceful and in concept of owner," is mere conclusion of law requiring evidentiary support and substantiation. The burden of proof is on the applicant to prove by clear, positive and convincing evidence that the alleged possession was of the nature and duration required by law. The bare statement of petitioner's witness, Andrea Batucan Enriquez, that her family had been in possession of the subject land from the time her father bought it after the Second World War does not suffice.

6. ID.; ID.; ID.; THE BARE CLAIM OF THE APPLICANT THAT THE LAND APPLIED FOR HAD BEEN IN THE POSSESSION OF HER PREDECESSOR-IN-INTEREST FOR THIRTY YEARS DOES NOT CONSTITUTE THE WELL-NIGH INCONTROVERTIBLE AND CONCLUSIVE EVIDENCE REQUIRED IN LAND REGISTRATION. — We have held that the bare claim of the applicant that the land applied for had been in the possession of her predecessor-in-interest for 30 years does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration. As the Court declared in *Republic v. Alconaba*: "The law speaks of **possession and occupation**. Since these words are separated by the conjunction **and**, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. *Actual* possession of a land consists in the *manifestation of acts of dominion* over it of such a nature as a party would naturally exercise over his own property**."

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 which seeks to set aside the Decision[1] dated June 25, 2007 and Resolution[2] dated September 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 77868. The CA reversed the Decision[3] dated August 22, 2002 of the Regional Trial Court (RTC) of Danao City, Branch 25 in LRC No. 147 (LRA Rec. No. N-73333).

On January 19, 2001, petitioner DCD Construction, Inc., through its President and CEO Danilo D. Dira, Jr., filed a verified application for registration[4] of a parcel of land situated in Taytay, Danao City with an area of 4,493 square meters designated as Cadastral Lot No. 5331-part, CAD 681-D. It was alleged that applicant which acquired the property by purchase, together with its predecessors-in-interest, have been in continuous, open, adverse, public, uninterrupted, exclusive and notorious possession and occupation of the property for more than thirty (30) years. Thus, petitioner prayed to have its title judicially confirmed.

After compliance with the jurisdictional requirements, the trial court through its clerk of court conducted hearings for the reception of petitioner's evidence. Based on petitioner's documentary and testimonial evidence, it appears that although designated as Cadastral Lot No. 5331-part, the approved technical description indicated the lot number as Lot 30186, CAD 681-

[1] *Rollo*, pp. 27-37. Penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Agustin S. Dizon concurring.

[2] *Id.* at 39-40.

[3] Records, pp. 188-193. Penned by Judge Sylva G. Aguirre Paderanga.

[4] *Id.* at 2-6.

D which is allegedly identical to Lot 21225-A, Csd-07-006621 consisting of 3,781 square meters. Lot 5331-part (4,493 sq. ms.) was subdivided into two (Lots 21225-A and 21225-B) so that the 712 square meters (Lot 21225-B) can be segregated as salvage zone pursuant to DENR Administrative Order No. 97-05.[5]

Andrea Batucan Enriquez, one of the six (6) children of Vivencio and Paulina Batucan, testified that her parents originally owned the subject land which was bought by her father after the Second World War. Vivencio and Paulina died on April 2, 1967 and November 11, 1980, respectively. Upon the death of their parents, she and her siblings inherited the land which they possessed and declared for tax purposes. On December 22, 1993, they executed a Deed of Extrajudicial Settlement With Absolute Sale whereby they sold the property to Danilo C. Dira, Sr., petitioner's father.[6]

Danilo D. Dira, Jr. testified that the subject land declared under Tax Declaration (TD) No. 0400583 in the name of Danilo C. Dira, Sr. was among those properties which they inherited from his father, as shown in the Extrajudicial Settlement of Estate With Special Power of Attorney dated May 28, 1996 and Supplemental Extrajudicial Settlement of Estate dated February 27, 1997. On June 26, 2000, his mother, brothers and sisters executed a Deed of Absolute Sale whereby the subject land was sold to petitioner. Thereafter, petitioner declared the property for tax purposes and also paid realty taxes. His father had possessed the land beginning 1992 or 1994, and presently petitioner is in possession thereof. Petitioner also assumed the ₱3.8 million mortgage obligation with Land Bank of the Philippines as evidenced by the Deed of Undertaking/Agreement dated March 30, 2000.[7]

On August 22, 2002, the trial court rendered its decision, the dispositive portion of which reads:

[5] Records, p. 171; TSN, Geodetic Engineer Norvic Abella, March 21, 2002, pp. 4-11; TSN, Rafaela A. Belleza, March 21, 2002, pp. 17-18, 21-25.

[6] TSN, February 14, 2002, pp. 3-17; records, pp. 167-169.

[7] TSN, March 21, 2002, pp. 31-43; records, pp. 8-9, 14-18, 177-185.

WHEREFORE, from all of the foregoing undisputed facts, this Court finds and so holds that the applicant DCD CONSTRUCTION INC., has a registerable title to Lot No. 5331-A with an area of 3,781 square meters as part of Lot 5331, CAD-681-D, under Csd-072223-003891 which is identical to Lot No. 21225-A as part of Lot No. 21225, CAD-681-D, under Csd-07-006621, and is covered by Tax Declaration No. 0-0400469 situated in Taytay, Danao City, hereby confirming the same and ordering its registration under Act 496, as amended by Presidential Decree No. 1529, strictly in line with the Technical Description of Lot 30186, Danao, CAD-681-D, identical to Lot 21225-A, Csd-07-006621, upon finality of this decision.

SO ORDERED.[8]

On appeal by respondent Republic of the Philippines, the CA reversed the trial court. The CA ruled that the evidence failed to show that the land applied for was alienable and disposable considering that only a notation in the survey plan was presented to show the status of the property. The CA also found that petitioner's evidence was insufficient to establish the requisite possession as the land was bought by Vivencio Batucan only after the Second World War or in 1946, further noting that the earliest tax declaration submitted was issued only in 1988. As to the testimony of witness Andrea Batucan Enriquez, the CA held that it did not prove open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership since June 12, 1945.

Its motion for reconsideration having been denied, petitioner is now before this Court raising the following arguments:

I

IN RULING THAT PETITIONER FAILED TO PROVE THAT THE LAND APPLIED FOR IS ALIENABLE AND DISPOSABLE, THE COURT OF APPEALS COMMITTED A GROSS MISAPPREHENSION OF FACTS, WHICH WARRANTS A REVIEW BY THE HONORABLE SUPREME COURT, IN ACCORDANCE WITH THE RULING IN *MEGAWORLD AND HOLDINGS, INC. VS. HON. JUDGE BENEDICTO G. COBARDE, ET AL.* AND *SUPERLINES TRANSPORTATION*

[8] Records, p. 193.

COMPANY, INC. VS. PHILIPPINE NATIONAL CONSTRUCTION COMPANY, ET AL.

(A) THE BUREAU OF LANDS VERIFIED AND CERTIFIED THE SUBJECT LOT AS "ALIENABLE AND DISPOSABLE."

(B) THE DENR CERTIFIED THAT ITS OWN LAND CLASSIFICATION MAP SHOWS THAT SUBJECT LOT IS "WITHIN THE ALIENABLE AND DISPOSABLE AREA."

II

THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND SETTLED DECISION OF THE HONORABLE SUPREME COURT, WHEN IT RULED THAT PETITIONER FAILED TO PROVE THAT THE REQUIREMENT OF OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE SUBJECT LAND FOR THE PERIOD REQUIRED BY LAW HAS BEEN COMPLIED WITH, DESPITE THE FACT THAT:

(A) WITNESS ANDREA ENRIQUEZ'S TESTIMONY SHOWS THAT PETITIONER'S PREDECESSORS-IN-INTEREST ACQUIRED AND POSSESSED SUBJECT LOT IN 1942.

(B) IN *REPUBLIC OF THE PHILS. VS. SPOUSES ENRIQUEZ*, THE SUPREME COURT CATEGORICALLY RULED THAT POSSESSION FOR 34 YEARS IS SUFFICIENT COMPLIANCE WITH THE LEGAL REQUIREMENT FOR REGISTRATION.[9]

We deny the petition.

In *Megaworld Properties and Holdings, Inc. v. Cobarde*,[10] the Court held that as an exception to the binding effect of the trial court's factual findings which were affirmed by the CA, a review of such factual findings may be made when the judgment of the CA is premised on a misapprehension of facts or a failure to consider certain relevant facts that would lead to a completely different conclusion. In the same vein, we declared in *Superlines Transportation Company, Inc. v. Philippine National Construction*

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[9] *Rollo*, pp. 11-12.

[10] G.R. No. 156200, March 31, 2004, 426 SCRA 689, 694.

Company,[11] that while it is settled that this Court is not a trier of facts and does not, as a rule, undertake a re-examination of the evidence presented by the parties, a number of exceptions have nevertheless been recognized by the Court, such as when the judgment is based on a misapprehension of facts, and when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Petitioner invokes the foregoing exceptions urging this Court to pass upon anew the CA's findings regarding the status of the subject land and compliance with the required character and duration of possession by an applicant for judicial confirmation of title.

After a thorough review, we find no reversible error committed by the CA in ruling that petitioner failed to establish a registrable title on the subject land.

Applicants for confirmation of imperfect title must prove the following: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain and (b) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.[12]

Under Section 2, Article XII of the Constitution, which embodies the *Regalian doctrine*, all lands of the public domain belong to the State – the source of any asserted right to ownership of land.[13] All lands not appearing to be clearly of private dominion presumptively belong to the State.[14] Accordingly, public lands

[11] G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441.

[12] *Carlos v. Republic*, G.R. No. 164823, August 31, 2005, 468 SCRA 709, 714-715, citing *Republic v. Alconaba*, G.R. No. 155012, April 14, 2004, 427 SCRA 611, 617 and *Republic v. Court of Appeals*, G.R. No. 127060, November 19, 2002, 392 SCRA 190, 200.

[13] *Republic v. Naguiat*, G.R. No. 134209, January 24, 2006, 479 SCRA 585, 590, citing *Seville v. National Development Company*, G.R. No. 129401, February 2, 2001, 351 SCRA 112, 120.

[14] *Id.*, citing *Bracewell v. Court of Appeals*, G.R. No. 107427, January 25, 2000, 323 SCRA 193, 199.

not shown to have been reclassified or released as alienable and disposable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.[15] Incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.[16]

In support of its contention that Lot 5331-A, CAD-681-D under Csd-072223-003891 is alienable and disposable, petitioner presented the following notation appearing in the survey plan which reads:

> CONFORMED PER LC MAP NOTATION LC Map No. 1321, Project No. 26-A certified on June 07, 1938, verified to be within Alienable & Disposable Area
>
> (SGD.) CYNTHIA L. IBAÑEZ
> Chief, Map Projection Section[17]

Petitioner assailed the CA in refusing to give weight to the above certification, stressing that the DENR-Lands Management Services (LMS) approved the survey plan in its entirety, "without any reservation as to the 'inaccuracy' or 'incorrectness' of Cynthia L. Ibañez'[s] annotation found therein."[18] Petitioner relies on the statement of Rafaela A. Belleza, Chief, Surveys Assistance Section, DENR-LMS, who testified (direct examination) as follows:

> Atty. Paylado continues:
>
> Q Before this is given to the surveyor, did **these two (2) documents pass your office?**
>
> A Yes, sir.
>
> Q When you said it passed your office, it passed your office as you have to verify all the entries in these documents whether they are correct?

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[15] *Id.* at 590-591.

[16] *Republic v. Tri-Plus Corporation,* G.R. No. 150000, September 26, 2006, 503 SCRA 91, 102.

[17] Records, p. 172.

[18] *Rollo,* p. 15.

A Yes, sir.

Q Were you able to have a personal look and verification on these Exhibits "P" and "Q" and **will you confirm that all the entries here are true and correct?**

A **Yes, sir**.

Q Based on the records in your office?

A As a whole.

x x x x x x x x x[19] (Emphasis supplied)

Petitioner contends that the foregoing declaration of Belleza conclusively proves that the LMS itself had approved and adopted the notation made by Ibañez on the survey plan as its own. Such approval amounts to a positive act of the government indicating that the land applied for is indeed alienable and disposable.

We do not agree.

First, it must be clarified that the survey plan (Exhibit "Q") was not offered by petitioner as evidence of the land's classification as alienable and disposable. The formal offer of exhibits stated that said document and entries therein were offered for the purpose of proving the identity of the land, its metes and bounds, boundaries and adjacent lots; and that the survey has passed and was approved by the DENR-LMS. And while it was also stated therein that the evidence is also being offered as part of the testimony of Belleza, nowhere in her testimony do we find a confirmation of the notation concerning the land's classification as correct. In fact, said witness denied having any participation in the actual approval of the survey plan. This can be gleaned from her testimony on cross-examination which immediately followed the afore-quoted portion of her testimony that the survey plan "passed" their office, thus:

CROSS-EXAMINATION: (FISCAL KYAMKO TO THE WITNESS)

Q Madam Witness, you said that Exhibits "P" and "Q" passed before your office, now, the question is, could you possibly

[19] TSN, March 21, 2002, p. 19.

inform the Court whether you have some sort of an initial on the two (2) documents or the two (2) exhibits?

A Actually, sir, **I am not a part of this approval** because this will undergo in the isolated survey and my section is I am the Chief, Surveys Assistant Section, which concerns of the LRA, issuance of Certified Sketch Plans, issuance of certified Technical Descriptions of Untitled Lots to correct the titles for judicial purpose.

Q In other words, since Exhibits "P" and "Q" are originals, **they did not actually pass your office, is it not?**

A **Our office, yes, <u>but not in my section</u>,** sir.

Q So it passed your office but it did not pass your section?

A Yes, sir.

Q In other words, you had [no] hand in re-naming or renumbering of the subject lots, is it not?

A It is in the Isolated Survey Section, sir.

Q In other words, you cannot possibly testify with authority as to the manner by which the numbering of the subject lot was renumbered, is it not?

A Yes, sir.

x x x x x x x x x[20] (Emphasis supplied.)

Clearly, the testimony of the officer from DENR-LMS, Rafaela Belleza, did not at all attest to the veracity of the notation made by Ibañez on the survey plan regarding the status of the subject land. Hence, no error was committed by the CA in finding that the certification made by DENR-LMS pertained only to the technical correctness of the survey plotted in the survey plan and not to the nature and character of the property surveyed.

In *Republic v. Court of Appeals*,[21] this Court noted that to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive

[20] *Id.* at 20-21.

[21] G.R. No. 127060, November 19, 2002, 392 SCRA 190.

act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.[22] A certification issued by a Community Environment and Natural Resources Officer in the Department of Environment and Natural Resources (DENR) stating that the lots involved were found to be within the alienable and disposable area was deemed sufficient to show the real character of the land.[23]

As to notations appearing in the subdivision plan of the lot stating that it is within the alienable and disposable area, the consistent holding is that these do not constitute proof required by the law.[24] In *Menguito v. Republic*,[25] the Court declared:

> x x x petitioners cite a surveyor-geodetic engineer's notation x x x indicating that the survey was inside alienable and disposable land. Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable.[26]

The above ruling equally applies in this case where the notation on the survey plan is supposedly made by the Chief of Map Projection Unit of the DENR-LMS. Such certification coming from an officer of the DENR-LMS is still insufficient to establish the classification of the property surveyed. It is not shown that the notation was the result of an investigation specifically conducted by the DENR-LMS to verify the status of the subject land. The certifying officer, Cynthia L. Ibañez, did not testify on her findings regarding the classification of the lot as reflected in her notation on the survey plan. As to the testimonial evidence

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[22] *Id.* at 201.

[23] *Id.*

[24] See *Republic v. Barandiaran,* G.R. No. 173819, November 23, 2007, 538 SCRA 705, 710, citing *Republic v. Tri-Plus Corporation, supra* note 16.

[25] G.R. No. 134308, December 14, 2000, 348 SCRA 128.

[26] *Id.* at 140.

presented by the petitioner, the CA noted that Engr. Norvic Abella who prepared the survey plan had no authority to reclassify lands of the public domain, while Rafaela A. Belleza who is the Chief of the Surveys Assistance Section, admitted on cross-examination that she had no part in the approval of the subdivision plan, and hence incompetent to testify as to the correctness of Ibañez's notation. More important, petitioner failed to establish the authority of Cynthia L. Ibañez to issue certifications on land classification status for purpose of land registration proceedings.

Our pronouncement in *Republic v. T.A.N. Properties, Inc*.[27] is instructive:

> In this case, respondent submitted two certifications issued by the Department of Environment and Natural Resources (DENR). The 3 June 1997 Certification by the Community Environment and Natural Resources Offices (CENRO), Batangas City, certified that "lot 10705, Cad-424, Sto. Tomas Cadastre situated at Barangay San Bartolome, Sto. Tomas, Batangas with an area of 596,116 square meters falls within the ALIENABLE AND DISPOSABLE ZONE under Project No. 30, Land Classification Map No. 582 certified [on] 31 December 1925." The second certification in the form of a memorandum to the trial court, which was issued by the Regional Technical Director, Forest Management Services of the DENR (FMS-DENR), stated "that the subject area falls within an alienable and disposable land, Project No. 30 of Sto. Tomas, Batangas certified on Dec. 31, 1925 per LC No. 582."
>
> The certifications are not sufficient. DENR Administrative Order (DAO) No. 20, dated 30 May 1988, delineated the functions and authorities of the offices within the DENR. Under DAO No. 20, series of 1988, the CENRO issues certificates of land classification status for areas below 50 hectares. The Provincial Environment and Natural Resources Offices (PENRO) issues certificate of land classification status for lands covering over 50 hectares. DAO No. 38, dated 19 April 1990, amended DAO No. 20, series of 1988. DAO No. 38, series of 1990 retained the authority of the CENRO to issue certificates of land classification status for areas below 50 hectares, as well as the authority of the PENRO to issue certificates of land classification

[27] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

status for lands covering over 50 hectares. In this case, respondent applied for registration of Lot 10705-B. The area covered by Lot 10705-B is over 50 hectares (564,007 square meters). The CENRO certificate covered the entire Lot 10705 with an area of 596,116 square meters which, as per DAO No. 38, series of 1990, is beyond the authority of the CENRO to certify as alienable and disposable.

The Regional Technical Director, FMS-DENR, has no authority under DAO Nos. 20 and 38 to issue certificates of land classification.
xxx

xxx x x x xxx

Hence, the certification issued by the Regional Technical Director, FMS-DENR, in the form of a memorandum to the trial court, has no probative value.

Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. **The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO.** In addition, **the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records**. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. **The government officials who issued the certifications were not presented before the trial court to testify on their contents.** The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.

xxx x x x xxx

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may

be evidenced by an official publication thereof **or by a copy attested by the officer having legal custody of the record, or by his deputy** x x x. The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.

x x x x x x x x x

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. The certifications are conclusions unsupported by adequate proof, and thus have no probative value. Certainly, the certifications cannot be considered *prima faci*e evidence of the facts stated therein.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, **the certifications are prima facie evidence of their due execution and date of issuance but they do not constitute prima facie evidence of the facts stated therein**.

x x x x x x x x x[28] (Emphasis supplied.)

In the light of the foregoing, it is clear that the notation inserted in the survey plan (Exhibit "Q") hardly satisfies the incontrovertible proof required by law on the classification of land applied for registration.

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[28] *Id.* at 486-491.

The CA likewise correctly held that there was no compliance with the required possession under a *bona fide* claim of ownership since June 12, 1945.

The phrase "adverse, continuous, open, public, peaceful and in concept of owner," is mere conclusion of law requiring evidentiary support and substantiation. The burden of proof is on the applicant to prove by clear, positive and convincing evidence that the alleged possession was of the nature and duration required by law.[29] The bare statement of petitioner's witness, Andrea Batucan Enriquez, that her family had been in possession of the subject land from the time her father bought it after the Second World War does not suffice.

Moreover, the tax declaration in the name of petitioner's father, TD No. 0400583 was issued only in 1994, while TD No. 0-0400469 in its own name was issued in 2000. Petitioner's predecessors-in-interest were able to submit a tax declaration only for the year *1988*, which was long after both spouses Vivencio and Paulina Batucan have died. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner.[30] And while Andrea Batucan Enriquez claimed knowledge of their family's possession since she was just ten (10) years old – although she said she was born in 1932 — there was no clear and convincing evidence of such open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership. She never mentioned any act of occupation, development, cultivation or maintenance over the property throughout the alleged length of possession.[31]

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[29] *Director, Lands Management Bureau v. Court of Appeals,* G.R. No. 112567, February 7, 2000, 324 SCRA 757, 767, citing *Republic v. Lee,* G.R. No. 64818, May 13, 1991, 197 SCRA 13, 20-21.

[30] *Cuenco v.Cuenco Vda. de Manguerra,* G.R. No. 149844, October 13, 2004, 440 SCRA 252, 264-265.

[31] See *Wee v. Republic,* G.R. No. 177384, December 8, 2009, 608 SCRA 72, 83.

There was no account of the circumstances regarding their father's acquisition of the land, whether their father introduced any improvements or farmed the land, and if they established residence or built any house thereon.

We have held that the bare claim of the applicant that the land applied for had been in the possession of her predecessor-in-interest for 30 years does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration.[32]

As the Court declared in *Republic v. Alconaba*:[33]

> The law speaks of **possession and occupation**. Since these words are separated by the conjunction **and**, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. *Actual* possession of a land consists in the *manifestation of acts of dominion* over it of such a nature as a party would naturally exercise over his own property**.[34] (Emphasis supplied.)

WHEREFORE, the petition for review on *certiorari* is *DENIED***.** The Decision dated June 25, 2007 and Resolution dated September 10, 2007 of the Court of Appeals in CA-G.R. CV No. 77868 are *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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[32] *Arbias v. Republic,* G.R. No. 173808, September 17, 2008, 565 SCRA 582, 595, citing *Republic of the Philippines v. Lee, et al.*, 274 Phil. 284, 291 (1991) cited in *Turquesa v. Valera,* 379 Phil. 618, 631 (2000).

[33] *Supra* note 12.

[34] *Id.* at 619-620.

THIRD DIVISION

[G.R. No. 181902. August 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR EVANGELIO *y* GALLO, JOSEPH EVANGELIO, ATILANO AGATON *y* OBICO, and NOEL MALPAS *y* GARCIA,** *accused.* **JOSEPH EVANGELIO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION THEREON BY THE TRIAL COURT IS GIVEN GREAT WEIGHT BY THE SUPREME COURT. — Both the trial court and the CA found the testimonies of the prosecution witnesses credible. The Court gives great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying, thus making it in a better position to determine whether a witness is lying or telling the truth.

2. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF PROSECUTION WITNESSES. — Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant. x x x [P]ositive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.

3. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED AND THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME. — Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.

4. CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS. — To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.

5. ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI*; PRESUMED FROM THE UNLAWFUL TAKING OF THINGS, IT BEING AN INTERNAL ACT. — Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Having established that the personal properties of the victims were unlawfully taken by the appellant, intent to gain was sufficiently proven.

6. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO SUSTAIN CONVICTION. — Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence

can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.

7. CRIMINAL LAW; RAPE; A FRESHLY BROKEN HYMEN IS NOT AN ESSENTIAL ELEMENT OF RAPE AND HEALED LACERATIONS DO NOT NEGATE RAPE. — The Court held that the absence of fresh lacerations does not prove that the victim was not raped. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the appellant when the crime was proven by the combination of highly convincing pieces of circumstantial evidence. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.

8. ID.; ROBBERY WITH RAPE; CONTEMPLATES A SITUATION WHERE THE ORIGINAL INTENT OF THE ACCUSED WAS TO TAKE, WITH INTENT TO GAIN, PERSONAL PROPERTY BELONGING TO ANOTHER AND RAPE IS COMMITTED ON THE OCCASION THEREOF AS AN ACCOMPANYING CRIME. — For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion* of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. In the case at bar, the original intent of the appellant and his co-accused was to rob the victims and AAA was raped on the occasion of the robbery.

9. ID.; CONSPIRACY; WHEN PRESENT. — Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.

10. ID.; ID.; TO BE A CONSPIRATOR, ONE NEED NOT PARTICIPATE IN EVERY DETAIL OF THE EXECUTION. — To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

11. ID.; ROBBERY WITH RAPE; PENALTY; CASE AT BAR. — The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. 7659. Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. x x x Since the aggravating circumstances of band and dwelling were alleged in the Information and proven, the imposable penalty upon the appellant is death, pursuant to Article 63, paragraph 1, of the Revised Penal Code x x x. In view, however, of the passage of R.A. No. 9346, prohibiting the imposition of the death penalty, the CA correctly reduced the penalty of death to *reclusion perpetua*, without eligibility for parole.

12. ID.; AGGRAVATING CIRCUMSTANCES; BAND; CONSIDERED AN AGGRAVATING CIRCUMSTANCE IN ROBBERY WITH RAPE. — In the crime of robbery with rape, band is considered as an aggravating circumstance. The prosecution established that one of the accused was armed with a handgun, while the other three had knives when they committed the crime.

13. ID.; ID.; DWELLING; AGGRAVATES A FELONY WHERE THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY PROVIDED THAT THE LATTER HAS NOT GIVEN PROVOCATION THEREFOR. — Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. In this case, robbery with violence was committed in the house of the victims without provocation on

their part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house. It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.

14. ID.; CIVIL LIABILITY; RESTITUTION; WHERE RESTITUTION IS NO LONGER POSSIBLE, THE ACCUSED IS OBLIGED TO MAKE REPARATION FOR THE VALUE OF THE ARTICLES TAKEN; CASE AT BAR. — Under Article 105 of the Revised Penal Code, the appellant is obliged to return the items he took from the spouses BBB and CCC. If appellant can no longer return the articles taken, he is obliged to make reparation for their value, taking into consideration their price and their special sentimental value to the offended parties. Hence, the Court modifies the decision of the trial court, as affirmed by the CA, and directs the appellant to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information dated December 3, 2001 and proven during trial. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and valuables as determined by the trial court in the amount of PhP336,000.00.

15. CIVIL LAW; DAMAGES; MORAL DAMAGES; WHEN AWARDED. — The trial court's award of moral damages in the amount of PhP50,000.00 to the spouses BBB and CCC is not proper. In order that a claim for moral damages can be aptly justified, it must be anchored on proof showing that the claimant experienced moral suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation or similar injury. The victim spouses BBB and CCC, however, did not present any evidence of their moral sufferings as a result of the robbery. Thus, there is no basis for the grant of moral damages in connection with the robbery.

16. ID.; ID.; CIVIL INDEMNITY; THE VICTIM IS ENTITLED THERETO UPON THE FINDING OF RAPE.— AAA is entitled to civil indemnification. Upon the finding of rape, the victim is entitled to civil indemnity. Thus, AAA is entitled to PhP75,000.00 as civil indemnity.

17. ID.; ID.; MORAL DAMAGES; GRANTED WITHOUT THE NECESSITY OF ADDITIONAL PLEADINGS OR PROOF OTHER THAN THE FACT OF RAPE. — AAA is entitled to moral damages pursuant to Article 2219 of the Civil Code, without the necessity of additional pleadings or proof other than the fact of rape. Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape. Such award is separate and distinct from the civil indemnity. However, the amount of PhP50,000.00 awarded as moral damages, is increased to PhP75,000.00 in line with current jurisprudence.

18. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN THE CRIME IS ATTENDED BY AN AGGRAVATING CIRCUMSTANCE, OR AS A PUBLIC EXAMPLE, IN ORDER TO PROTECT HAPLESS INDIVIDUALS FROM MOLESTATION. — The award of exemplary damages in the amount of PhP30,000.00 should also be imposed. Exemplary damages are awarded when the crime is attended by an aggravating circumstance, or as a public example, in order to protect hapless individuals from molestation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00109, affirming the trial court's judgment finding appellant Joseph Evangelio guilty beyond reasonable doubt of the crime of Robbery with Rape in Criminal Case No. 2001-12-773.

Appellant Joseph Evangelio (Joseph), accused Edgar Evangelio *y* Gallo (Edgar), Atilano Agaton *y* Obico (Atilano) and Noel

[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring; *rollo,* pp. 4-17.

Malpas *y* Garcia (Noel) are charged with the crime of Robbery with Rape in an Information, which reads:

The undersigned City Prosecutor of the City of Tacloban accuses EDGAR EVANGELIO *y* GALLO, JOSEPH EVANGELIO, ATILANO AGATON *y* OBICO, and NOEL MALPAS *y* GARCIA of the crime of Robbery with Rape, committed as follows:

That on or about the 3rd day of October 2001, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to gain and armed with a handgun and deadly/bladed weapons forcibly enter the inhabited house/residence of BBB and while inside, by means of violence and intimidation using said arms on the latter and the other occupants therein, and without the consent of their owners did, then and there willfully, unlawfully and feloniously, take, and carry away from said residence the following personal properties belonging to:

(a) BBB:
* Two Saudi-gold necklace with pendant with a combined value of ₱25,000 more or less;
* Saudi-gold bracelet valued at ₱25,000.00;
* Leather wallet containing ₱1,500.00 cash;
and -
* Two shoulder bags with a combined value of ₱2,000.00.

(b) CCC:
* One tri-colored gold necklace (choker) valued at ₱50,000.00;
* One yellow-gold necklace (choker) valued at ₱5,000.00;
* One gold necklace with Jesus Christ head pendant valued at ₱12,000.00;
* One gold necklace with star diamond pendant valued at ₱8,000.00;
* One gold necklace, tri-colored cross diamond valued at ₱13,000.00;
* Three tri-colored bracelet (gold) with diamond valued at ₱18,000.00;
* Three tri-colored bracelet (twisted) valued at ₱15,000.00;
* One gold bracelet with diamonds valued at ₱6,000.00;
* One gold bracelet (dangling) valued at ₱4,000.00;
* One gold bracelet (chain) valued at ₱7,000.00;
* Five sets earrings and rings valued at ₱45,000.00;

* One set earrings and rings (diamond Solitaire) valued at ₱45,000.00;
* Two black-colored wristwatch (Pierre Cardin) valued at ₱25,000.00; and
* Two gold-plated wristwatch (Pierre Cardin) valued at ₱25,000.00; and -
* One gold bracelet (chain) valued at ₱4,000; and -
(c) Josefina Manlolo:
* Instamatic Camera, Olympus brand.

to the damage and prejudice of said owners to the extent of the value of their respective properties above indicated.

That on the occasion of the said robbery and in the same house/residence, accused, by means of force and intimidation and using the said handgun and deadly/bladed weapons, did then and there, willfully, unlawfully and feloniously have carnal knowledge of AAA,[2] a 17-year-old minor, against her will and consent and at the time when the latter lost consciousness after her head was banged on the bathroom floor.[3]

CONTRARY TO LAW.

On December 18, 2001, a Warrant of Arrest was issued against the four accused. On February 8, 2002, appellant Joseph, accused Edgar and Atilano were arrested, while accused Noel remained at-large.

On May 21, 2002, appellant was arraigned and pleaded not guilty to the crime charged. Accused Edgar and Atilano, who at that time were detained at the Bacolod City Bureau of Jail Management and Penology (BJMP), were ordered to be brought to Tacloban City for trial. However, they were not brought to Tacloban City by the Bacolod City BJMP for the reason that they were criminally charged in the courts of Bacolod City.

The evidence of the prosecution follows:

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[2] The victim is referred to as AAA; her employer, BBB; and her employer's wife, CCC, per Republic Act No. 9262 and A.M. No. 04-10-11-SC. See *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA *rollo,* pp. 8-10.

On October 3, 2001, at 6:30 in the evening, while AAA, a 17-year-old househelper, was cooking in the kitchen of the house of BBB situated in Tacloban City, four persons, one of whom was armed with a handgun while the other three with knives, suddenly barged inside the house through the open kitchen door. The four men accosted her, warned her to keep quiet, and brought her to the living room. There, they herded all the other members of the household whom they caught and bound their hands and feet, and thereafter, placed masking tapes over their captives' eyes. With her eyes partially covered by the tape, AAA was brought by the appellant inside the comfort room and thereat, appellant and one of the robbers stripped off AAA's clothes and removed her panty. AAA resisted and fought back but they slammed her head twice against the concrete wall, causing her to lose consciousness. When she regained her senses, appellant and the other robbers were already gone, and she found herself lying on the side on the floor of the comfort room with her feet untied and her hands still tied behind her back. She saw her shorts and panty strewn at her side. She suffered pain in her knees, head, stomach, and her vagina, which was bleeding. Later on, AAA was freed from the comfort room by the other occupants of the house, who were earlier freed.

Prosecution witness Evelyn[4] was in the living room when the incident happened. She was tutoring her nieces when the four men barged inside the house. She testified that she could not be mistaken as to the identity of the accused Edgar, who was armed with a handgun, because he is a friend of her husband and who used to work for him. Appellant and accused Noel are also familiar to her because they previously stayed in Sampaguita, Tacloban City, where she lives. Upon the instruction of accused Edgar, Edelyn was divested of her earrings, bracelet, watch, and ring. Thereafter, appellant tied her hands and feet, and blindfolded her with masking tape. She was hit on the head with a firearm, causing a cut and her losing consciousness. When she regained her senses, she found herself in the maids' room.

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[4] Also referred as Edelyn.

She heard accused Edgar ask her nieces where their father kept their pieces of jewelry and firearm. When her nieces told him that the valuables were kept upstairs, accused Edgar brought one of them there.

BBB came home around 7:00 in the evening and when he entered the sliding door facing the garage, he saw the four accused inside, three of them armed with knives and the other one with a gun. When he entered, he was immediately accosted and warned to keep quiet. He recognized their faces, particularly the leader of the group, whom he identified as accused Edgar, who previously worked for him as a laborer in the construction of the extension of his house. Upon accused Edgar's command, the other three accused, one of whom he identified in open court as appellant, tied him up. Accused Edgar, then struck him with the gun on his head, causing him to fall face down on the floor with blood oozing from his left eyebrow. After a while, appellant and the three accused went out of the house, through the kitchen door, carrying two traveling bags and the jewelry box of his wife.

CCC, the wife of BBB, came home from the office in the early evening of October 3, 2001. Upon arriving thereat, she tried to open the door but was not able to do so. She then called out the names of her children, but nobody responded. She peeped through the window screen and saw people inside the house with whom she did not recognize. One of the accused then poked a gun at her head and told her to come inside, otherwise, he would kill her children. She ran away from their house, and cried out for help from the neighbors. They called the police. Shortly thereafter, the policemen arrived. They found the house in complete disarray, the cabinets were forcibly opened, CCC's jewelry box and her pieces of jewelry stolen, and the members of the household traumatized. An inventory was taken of the stolen valuables which amounted to PhP336,000.00, more or less. Some of the stolen items were later recovered from the house of accused Edgar.

The following day, AAA was examined by Dr. Angel Cordero, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory at Camp Ruperto Kangleon, Palo, Leyte.

Dr. Cordero found that AAA sustained *"deep healing lacerations at the 6 o'clock, 9 o'clock, and 3 o'clock positions and shallow healed lacerations at the 1 o'clock and 11 o'clock positions."* He concluded that AAA was in a *"non-virgin state physically"* and that *"findings are compatible with recent loss of virginity"* and with *"recent sexual intercourse."*

In his defense, appellant denied having committed the crimes charged and interposed alibi as a defense. He claims that at the time of the incident on October 3, 2001, at about 6:30 in the evening, he was sleeping in his house at Diit, Tacloban City with his mother and sisters. No other witness was presented by the appellant.

On August 23, 2004, the Regional Trial Court (RTC) of Tacloban City, Branch 7, rendered its Decision[5] dated May 16, 2003, the dispositive portion of which reads:

> WHEREFORE, premises considered, pursuant to Article 293 in relation to 294, par. 1 of the Revised Penal Code as amended, and the amendatory provisions of R.A. No. 8353, (the Anti-Rape Law of 1997) and R.A. No. 7659 (Death Penalty Law), the Court found accused, JOSEPH EVANGELIO, GUILTY beyond reasonable doubt of the special complex crime of ROBBERY WITH RAPE charged under the information and sentenced to suffer the maximum penalty of DEATH, and pay actual damages in the amount of Three Hundred Thirty-Six Thousand (₱336,000.00) Pesos to spouses BBB and CCC and moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos; pay civil indemnity to AAA, the amount of Seventy Five Thousand (₱75,000.00) Pesos, and moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos; pay Edelyn the amount of Three Thousand (₱3,000.00) Pesos as actual damages and moral damages in the amount of Twenty Thousand (₱20,000.00) Pesos; and pay the costs.
>
> SO ORDERED.[6]

An appeal was made and the records of the case were forwarded to this Court. However, pursuant to this Court's

[5] CA *rollo*, pp. 19-36.

[6] *Id.* at 35-36.

ruling in *People v. Mateo*,[7] the case was transferred to the CA for appropriate action and disposition. The CA rendered a Decision dated August 10, 2007 affirming with modification the decision of the trial court. In view of the abolition of the death penalty, pursuant to Republic Act (R.A.) No. 9346, which was approved on June 24, 2006, the appellant was sentenced to *reclusion perpetua* without eligibility for parole. The CA did not consider the aggravating circumstances of nighttime and unlawful entry in the commission of the crime. The CA deleted the awards of PhP3,000.00, as actual damages, and PhP20,000.00, as moral damages, in favor of Edelyn, because they were not charged in the Information.

On August 28, 2007, appellant, through the Public Attorney's Office (PAO), appealed the decision of the CA to this Court. Appellant had assigned the following error in his appeal initially passed upon by the CA, to wit:

I

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF NIGHTTIME, COMMITTED BY A BAND, DWELLING AND UNLAWFUL ENTRY IN THE IMPOSITION OF THE PENALTY AGAINST THE ACCUSED-APPELLANT.[8]

In his Brief, appellant denied having committed the crime charged and interposed alibi as a defense. He claims that at the time of the incident on October 3, 2001, at about 6:30 in the evening, he was sleeping in his house at Diit, Tacloban City, together with his mother and sisters. On the other hand, the appellant was positively identified by the prosecution witnesses as one of the perpetrators of the crime of robbery with rape. Both the trial court and the CA found the testimonies of the prosecution witnesses credible. The Court gives great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture,

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, modifying Sections 3 and 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure.

[8] CA *rollo*, p. 53.

and tone of voice of a witness while testifying, thus making it in a better position to determine whether a witness is lying or telling the truth.[9]

Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. [10] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.[11]

As to the defense of alibi. Aside from the testimony of appellant that he was in Diit, Tacloban City at the time of the incident, the defense was unable to show that it was physically impossible for appellant to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[12] Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[13] The appellant testified during trial that Diit is

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[9] *People v. Pillas*, 458 Phil. 347, 369 (2003).

[10] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[11] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 575.

[12] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[13] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.

only a one-hour ride away from Tacloban City.[14] Thus, it was not physically impossible for the appellant to be at the *locus criminis* at the time of the incident. In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[15]

Further, appellant insists that he was at home at the time of the incident with his mother and sisters. The defense, however, failed to put them on the witness stand. Neither did they execute any statement under oath to substantiate appellant's alibi.

To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus *lucrandi*; and (4) the robbery is accompanied by rape.[16]

In this case, the prosecution established that appellant and his three co-accused took the pieces of jewelry and valuables of the spouses BBB and CCC by means of violence and intimidation. Appellant and his co-accused barged into the house of the victims armed with a handgun and knives and tied the hands and feet of the members of the household. The perpetrators then asked for the location of the pieces of jewelry and valuables. BBB was also tied and was struck in the head with a gun causing him to fall face down on the floor with blood oozing from his left eyebrow. He was able to see the perpetrators going out of the house carrying bags and the jewelry box of his wife. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.[17] Having established that the personal properties of the victims were unlawfully taken by the appellant, intent to

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[14] TSN, February 6, 2003, p. 12.

[15] *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[16] *People v. Suyu*, G.R. No. 170191, August 16, 2006, 499 SCRA 177, 202-203.

[17] *Sazon v. Sandiganbayan (Fourth Division)*, G.R. No. 150873, February 10, 2009, 578 SCRA 211, 221.

gain was sufficiently proven. Thus, the first three elements of the crime were clearly established.

As regard the last requirement. Although the victim AAA did not exactly witness the actual rape because she was unconscious at that time, circumstantial evidence shows that the victim was raped by the appellant and the other accused.

Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience.[18] Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[19] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[20]

The following circumstantial evidence presented by the prosecution, when analyzed and taken together, lead to the inescapable conclusion that the appellant raped AAA: *first*, while two of the robbers were stealing, appellant and one of the robbers brought AAA inside the comfort room; *second*, inside the comfort room, AAA was stripped off her clothes and her panty; *third*, when AAA resisted and struggled, appellant and the other robber banged her head against the wall, causing her to lose consciousness; *fourth*, when she regained consciousness, the culprits were already gone and she saw her shorts and panty strewn at her side; and *fifth*, she suffered pain in her knees, head, stomach and, most of all, in her vagina which was then bleeding.

In the following decided cases, the victim was unconscious and was not aware of the sexual intercourse that transpired, yet

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[18] *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 530.

[19] Rules of Court, Rule 133, Sec. 4.

[20] *Diega v. Court of Appeals*, G.R. Nos. 173510 and 174099, March 15, 2010, 615 SCRA 399, 407- 408.

the accused was found guilty on the basis of circumstantial evidence.

In *People v. Gaufo*,[21] the victim was hit on her head by the accused but she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness. Upon regaining her bearings, she noticed that she had no more underwear, her vagina was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to adjudge the accused guilty of rape.

In *People v. Pabol*,[22] the accused hit the victim on her face causing her to fall. Accused then hugging the victim from behind, sat the victim on his lap, and stroke her breast with a piece of stone. When she shouted for help, accused covered her mouth and later she fell unconscious. When she had woken up some two hours later, she discovered that her ears had been sliced, her blouse opened and her underwear stained with her own blood. She also experienced pain in her private part after the incident. Given the foregoing circumstances, the Court found that the accused raped the victim.

The Court notes that AAA was examined by Dr. Angel Cordero, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory, Camp Ruperto Kangleon, Leyte the following day[23] and found that she sustained *deep healing lacerations* and *shallow healed lacerations*. He concluded that AAA was in a *"non-virgin state physically"* and that *"findings are compatible with recent loss of virginity"* and with *"recent sexual* intercourse."[24] Prosecution witness Dr. Cordero on direct examination stated that:

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[21] 469 Phil. 66 (2004).

[22] *Supra* note 18.

[23] AAA testified that she was subjected to medical check-up the following day of the incident. (TSN, October 16, 2002, p. 8). However, Dr. Cordero testified that he examined AAA on the same day of the incident at the later part of the evening. (TSN, November 6, 2002, p. 2.)

[24] Living Case Report of AAA, records, p. 13.

Q. Now in your examination were you able to conduct a personal examination on the person of the victim?
A. Yes, Sir.

Q. And what was your finding?
A. I had my findings in my report and it is all reflected in this particular report that I have made.

Q. Now in your report in the second page of your report there is here a conclusion and remarks, No. 3 of which states that finding compatible with recent sexual intercourse. What do you mean by that Doctor Cordero?
A. That there was a sexual connection between the victim and that of the offender and it was manifested on the findings that I have made and reflected in my report.[25]

Although Dr. Cordero's report stated that AAA's lacerations were deep healing and healed lacerations, this finding does not negate the commission of rape on October 3, 2001. The Court held that the absence of fresh lacerations does not prove that the victim was not raped.[26] A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.[27] Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the appellant when the crime was proven by the combination of highly convincing pieces of circumstantial evidence. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[28]

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion* of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property

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[25] TSN, November 6, 2002, p. 2.

[26] *People v. Baylen*, 431 Phil. 106, 116 (2002).

[27] *People v. Orilla*, 467 Phil. 253, 274 (2004).

[28] *Id.*

belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[29] In the case at bar, the original intent of the appellant and his co-accused was to rob the victims and AAA was raped on the occasion of the robbery.

The trial court also found the presence of conspiracy between the perpetrators. Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[30] To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[31]

In the instant case, conspiracy was shown by the coordinated acts of the four persons. From the time they gained entry into the victims' residence, they tied and blindfolded the members of the household; inflicted physical injuries on some of the victims; some went upstairs and proceeded to ransack the house; the others brought AAA in the comfort room and sexually abused her; they then left the house together carrying the loot. With the foregoing circumstances, there can be no other conclusion than that the successful perpetration of the crime was done through the concerted efforts of the four armed men.

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[29] *People v. Tamayo*, 434 Phil. 642, 654 (2002).

[30] *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 290.

[31] *People v. De Jesus*, 473 Phil. 405, 429 (2004).

In *People v. Suyu*, we ruled that once conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the others from committing rape.[32] There is no showing that the other accused prevented appellant from sexually abusing AAA. In view, however, that the accused Edgar, Atilano and Noel were not brought for arraignment and trial, judgment cannot be rendered against them.

THE PENALTY

We now come to the imposition of the proper penalty. The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. 7659.[33] Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. The provision reads as follows:

> Art. 294. *Robbery with violence against or intimidation of persons; Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; x x x

The CA correctly ruled in not considering the aggravating circumstances of nighttime and unlawful entry.

As correctly pointed out by the CA:

> x x x [T]he aggravating circumstances of nighttime and unlawful entry cannot be considered. Under the law, specifically Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure, as well as jurisprudence, it is required that qualifying as well as aggravating circumstances must be expressly and specifically alleged in the Complaint or Information; otherwise, the same will not be considered

[32] *People v. Suyu, supra* note 16, at 202.

[33] Otherwise known as *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.*

by the court against the appellant, even if proved during the trial. And, this principle is applicable to all criminal cases.

The information merely stated that the crime took place "on or about the 3rd day of October 2001," without specifying the time of its commission. Also nighttime is considered an aggravating circumstance only when it is deliberately sought to prevent the accused from being recognized or to ensure escape. There must be proof that this was intentionally sought to ensure the commission of the crime, and that the accused took advantage of it to insure his immunity from captivity. Here, there is a paucity of evidence that nighttime was purposely, deliberately, and especially sought by the accused. The mere fact that the offense was committed at night will not suffice to sustain a finding of nocturnity.

Further, the phrase, "forcibly enter the inhabited house" does not comprise the aggravating circumstance of "unlawful entry." Verily, evidence showed that all the accused freely entered the [victims'] residence through the open kitchen door, which is clearly intended for ingress and or egress.[34]

The trial court and the CA correctly appreciated the aggravating circumstance of the commission of a crime by a band.[35] In the crime of robbery with rape, band is considered as an aggravating circumstance.[36] The prosecution established that one of the accused was armed with a handgun, while the other three had knives when they committed the crime.[37]

The aggravating circumstance of dwelling[38] was also attendant in the present case. Dwelling aggravates a felony where the

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[34] *Rollo*, pp. 14-15.

[35] Article 296 of the Revised Penal Code defines a band in this wise:"When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band x x x.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."

[36] *People v. Tejero*, G.R. No. 128892, June 21, 1999, 308 SCRA 660, 683.

[37] TSN, October 16, 2002, p. 4; TSN, October 17, 2002, pp. 3-4; TSN, November 7, 2002, p. 3.

[38] Revised Penal Code, Art. 14, Par. 3, x x x that it be committed in the dwelling of the offended party, if the latter has not given provocation.

crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[39] In this case, robbery with violence was committed in the house of the victims without provocation on their part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.[40] It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode.[41] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[42]

Since the aggravating circumstances of band and dwelling were alleged in the Information and proven, the imposable penalty upon the appellant is death, pursuant to Article 63, paragraph 1, of the Revised Penal Code, which provides:

> x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
>
> 1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x

In view, however, of the passage of R.A. No. 9346,[43] prohibiting the imposition of the death penalty, the CA correctly reduced the penalty of death to *reclusion perpetua*,[44] without eligibility for parole.[45]

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[39] *People v. Bragat*, 416 Phil. 829, 843 (2001).

[40] *People v. Paraiso*, 377 Phil. 445, 464 (1999).

[41] *People v. Taboga*, G.R. Nos. 144086-87, February 6, 2002, 376 SCRA 500, 519.

[42] *People v. Bragat*, *supra* note 39.

[43] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[44] R.A. 9346, Sec. 2.

[45] R.A. 9346, Sec. 3.

THE DAMAGES

The trial court did not order the appellant to return the items taken from the victims but, instead, directed the payment of actual damages amounting to PhP336,000.00. The said amount is the value of the items taken from the spouses BBB and CCC.

Under Article 105[46] of the Revised Penal Code, the appellant is obliged to return the items he took from the spouses BBB and CCC. If appellant can no longer return the articles taken, he is obliged to make reparation for their value, taking into consideration their price and their special sentimental value to the offended parties.[47] Hence, the Court modifies the decision of the trial court, as affirmed by the CA, and directs the appellant to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information[48] dated December 3, 2001 and proven during trial. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and valuables as determined by the trial court in the amount of PhP336,000.00.

The trial court's award of moral damages in the amount of PhP50,000.00 to the spouses BBB and CCC is not proper. In order that a claim for moral damages can be aptly justified, it must be anchored on proof showing that the claimant experienced moral suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation or similar injury.[49] The victim spouses BBB and CCC, however,

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[46] ART. 105. *Restitution – How made.* – The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in case in which the thing has been acquired by the third person in the manner and under the requirement which, by law, bar an action for its recovery.

[47] *People v. Carpio*, G.R. No. 150083, May 27, 2004, 429 SCRA 676, 683.

[48] CA *rollo*, pp. 8-10.

[49] *People v. Taño*, 387 Phil. 465, 490 (2000).

did not present any evidence of their moral sufferings as a result of the robbery. Thus, there is no basis for the grant of moral damages in connection with the robbery.

In line with prevailing jurisprudence, AAA is entitled to civil indemnification. Upon the finding of rape, the victim is entitled to civil indemnity.[50] Thus, AAA is entitled to PhP75,000.00 as civil indemnity.[51]

In addition, AAA is entitled to moral damages pursuant to Article 2219 of the Civil Code,[52] without the necessity of additional pleadings or proof other than the fact of rape.[53] Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.[54] Such award is separate and distinct from the civil indemnity.[55] However, the amount of PhP50,000.00 awarded as moral damages, is increased to PhP75,000.00 in line with current jurisprudence.[56]

The award of exemplary damages in the amount of PhP30,000.00 should also be imposed. Exemplary damages are awarded when the crime is attended by an aggravating circumstance, or as a public example, in order to protect hapless individuals from molestation.[57] Furthermore, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment, pursuant to prevailing jurisprudence.[58]

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[50] *People v. Madsali,* G.R. No. 179570, February 4, 2010, 611 SCRA 596, 621.

[51] *Id.*

[52] Civil Code, Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x

(3) Seduction, abduction, rape, or other lascivious acts; x x x.

[53] *People v. Ospig,* 461 Phil. 481, 496 (2003).

[54] *Id.* at 496-497.

[55] *People v. Sabardan,* G.R. No. 132135, May 21, 2004, 429 SCRA 9, 29.

[56] *People v. Madsali, supra* note 50, at 621-622.

[57] *People v. Neverio,* G.R. No. 182792, August 25, 2009, 597 SCRA 149, 158.

[58] *People v. Florante Relantes @ Dante,* G.R. No. 175831, April 12, 2011.

The CA was also correct in deleting the award of actual damages amounting to PhP3,000.00 and moral damages amounting to PhP20,000.00 in favor of Edelyn. Verily, it is a rule that the accused is entitled to be informed of the nature and cause of the accusation against him.[59] The information for robbery with rape filed against the accused shows that Edelyn is not one of the complainants therein and there is no description of the pieces of jewelry and valuables allegedly taken from her. Simply put, the appellant was not informed that he was being charged of robbery in so far as Edelyn is concerned. Hence, the CA correctly deleted the award.

On a final note, records reveal that accused Edgar and Atilano, who were charged with the appellant, were not brought for arraignment and trial, despite the fact that they are detained in Bacolod City.

Records show that the RTC of Tacloban City directed the BJMP of Bacolod City to transfer the accused Atilano and Edgar to the BJMP of Tacloban City in order for them to stand trial for the crime of robbery with rape.[60] In a letter[61] dated June 26, 2002, the Jail Warden of Bacolod City informed the trial court that Edgar and Atilano are being charged with several offenses in the courts of Bacolod City.[62] Thus, the Jail Warden of Bacolod City requested that Edgar and Atilano be transferred from the BJMP Bacolod City to the BJMP Tacloban City only after their pending criminal cases in Bacolod City shall have been terminated. However, the records are bereft of any information as to the status of this case, *i.e.*, Criminal Case

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[59] Revised Rules of Criminal Procedure, Rule 115, Sec. 1(b).

[60] Records, p. 31.

[61] *Id.* at 35.

[62] Accused Atilano and Edgar are facing trial for violation of Illegal Possession of Firearms and Ammunitions at the RTC Bacolod City, Branch 42. (*Id.* at 37-38.) Further, Atilano and Edgar are both facing charges for attempted robbery in the Municipal Trial Court in Cities, Branch 5, Bacolod City. (*Id.* at 39 and 41) Furthermore, Edgar is also facing charges for Direct Assault Upon an Agent of a Person in Authority at the Municipal Trial Court in Cities, Branch 5, Bacolod City. (*Id.* at 40.)

No. 2001-12-773, insofar as accused Atilano and Edgar are concerned.

WHEREFORE, the appeal is *DISMISSED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00109 is *AFFIRMED* with *MODIFICATIONS.* Appellant Joseph Evangelio is found guilty beyond reasonable doubt of Robbery with Rape and is sentenced to suffer the penalty of *Reclusion Perpetua*, without eligibility of parole pursuant to Republic Act No. 9346. He is ordered to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information[63] dated December 3, 2001. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and valuables in the amount of PhP336,000.00. He is further directed to pay AAA the amounts of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages and PhP30,000.00 as exemplary damages. Interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

The Office of the Court Administrator is hereby *DIRECTED* to determine the status of the case against the accused Edgar Evangelio and Atilano Agaton who, despite being under the custody of the BJMP Bacolod City, were not brought for trial at the RTC, Tacloban City for the crime of robbery with rape. The said office is further directed to investigate and ascertain the possible liability of the person(s) concerned who caused the delay in the prosecution of accused Edgar Evangelio and Atilano Agaton for the said offense.

SO ORDERED.

Velasco, Jr.(Chairperson), Abad, Mendoza, and *Sereno,*[*] *JJ.*, concur.

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[63] CA *rollo*, pp. 8-10.

* Designated additional member, per Special Order No. 1028 dated June 21, 2011.

FIRST DIVISION

[G.R. No. 184053. August 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VIRGINIA BABY P. MONTANER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA UNDER PARAGRAPH 2(D), ARTICLE 315 OF THE REVISED PENAL CODE; ELEMENTS. — The elements of estafa under paragraph 2(d), Article 315 of the Revised Penal Code are: (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee.

2. ID.; ID.; ID.; DULY ESTABLISHED IN CASE AT BAR. — In the case at bar, the prosecution sufficiently established appellant's guilt beyond reasonable doubt for estafa under paragraph 2(d), Article 315 of the Revised Penal Code. According to Solis's clear and categorical testimony, appellant issued to him the 10 postdated Prudential Bank checks, each in the amount of ₱5,000.00 or a total of ₱50,000.00, in his house in exchange for their cash equivalent. x x x [I]t was evident that Solis would not have given ₱50,000.00 cash to appellant had it not been for her issuance of the 10 Prudential Bank checks. These postdated checks were undoubtedly issued by appellant to induce Solis to part with his cash. However, when Solis attempted to encash them, they were all dishonored by the bank because the account was already closed.

3. ID.; ID.; ID.; FAILURE TO DEPOSIT AMOUNT NEEDED TO COVER CHECKS THAT BOUNCED GAVE RISE TO A *PRIMA FACIE* EVIDENCE OF DECEIT CONSTITUTING FALSE PRETENSE OR FRAUDULENT ACT; CASE AT BAR. — Solis wrote appellant a demand letter dated October 13, 1996 which was received by appellant's husband to inform appellant that her postdated checks had bounced and that she must settle her obligation or else face legal action from Solis. Appellant did not comply with the demand nor did she deposit the amount necessary to cover the checks within three days

from receipt of notice. This gave rise to a *prima facie* evidence of deceit, which is an element of the crime of estafa, constituting false pretense or fraudulent act as stated in the second sentence of paragraph 2(d), Article 315 of the Revised Penal Code.

4. REMEDIAL LAW; EVIDENCE; TO BE BELIEVED, EVIDENCE MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS, BUT IT MUST BE CREDIBLE IN ITSELF. — 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. The Court has 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 judicial cognizance.

5. ID.; ID.; DENIAL; CONSIDERED NEGATIVE AND SELF-SERVING EVIDENCE IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE. — [I]t is elementary that denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters. We agree with the lower courts that appellant's bare denial cannot be accorded credence for lack of evidentiary support.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal of the Decision[1] dated February 12, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01162, entitled *People of the Philippines v. Virginia Baby P. Montaner*, which

[1] *Rollo*, pp. 4-10; penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring.

affirmed the Decision[2] dated April 8, 2003 of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93, in Criminal Case No. 0748-SPL. The RTC found appellant Virginia Baby P. Montaner guilty beyond reasonable doubt of the crime of estafa as defined and penalized under paragraph 2(d), Article 315 of the Revised Penal Code.

In an Information[3] dated April 21, 1998, appellant was charged as follows:

> That on or about May 17, 1996 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court accused Virginia (Baby) P. Montaner did then and there willfully, unlawfully and feloniously defraud one Reynaldo Solis in the following manner: said accused by means of false pretenses and fraudulent acts that her checks are fully funded draw, make and issue in favor of one Reynaldo Solis the following Prudential Bank Checks Nos.:
>
> | | | |
> |---|---|---|
> | 1. | 0002284 | ₱5,000.00 |
> | 2. | 0002285 | ₱5,000.00 |
> | 3. | 0002286 | ₱5,000.00 |
> | 4. | 0002287 | ₱5,000.00 |
> | 5. | 0002288 | ₱5,000.00 |
> | 6. | 0002289 | ₱5,000.00 |
> | 7. | 0002290 | ₱5,000.00 |
> | 8. | 0002291 | ₱5,000.00 |
> | 9. | 0002292 | ₱5,000.00 |
> | 10. | 0002293 | ₱5,000.00 |
>
> all having a total value of FIFTY THOUSAND PESOS (₱50,000.00) and all aforesaid checks are postdated June 17, 1996 in exchange for cash knowing fully well that she has no funds in the drawee bank and when the said checks were presented for payment the same were dishonored by the drawee bank on reason of "ACCOUNT CLOSED" and despite demand accused failed and refused to pay the value thereof to the damage and prejudice of Reynaldo Solis in the aforementioned total amount of ₱50,000.00.

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[2] CA *rollo*, pp. 19-22.

[3] Records, pp. 1-2.

Appellant pleaded "not guilty" to the charge leveled against her during her arraignment on June 10, 1998.[4] Thereafter, trial ensued.

The parties' evidence was summarized by the trial court, as follows:

> The evidence for the prosecution disclose that on May 17, 1996, accused Virginia Baby P. Montaner, in exchange for cash, issued to private complainant Reynaldo Solis in his house at Caliraya Street, Holiday Homes, San Pedro, Laguna, ten (10) Prudential Bank checks, specifically, check nos. 0002284, 0002285, 0002286, 0002287, 0002288, 0002289, 0002290, 0002291, 0002292, and 0002293 all postdated June 17, 1996, each in the amount of ₱5,000.00 all in the total amount of ₱50,000.00. Accused represented to complainant Solis that the checks were fully funded. When private complainant deposited the checks for encashment however, they were dishonored for the reason "account closed". Private complainant verbally and thereafter, thru demand letter (Exhibit "A") formally demanded that accused settle her accounts. Despite receipt of the demand letter, accused Montaner failed to pay the value of the ten (10) checks, thus private complainant Reynaldo Solis filed the instant complaint for estafa. In connection with this complaint, private complainant Solis executed a sworn statement (Exhibit "D").
>
> Ruel Allan Pajarito, Branch Cashier O-I-C of Prudential Bank testified that they placed the mark "account closed" on the ten (10) checks issued in the account of accused Montaner considering that at the time the same were presented to them, the account of accused Montaner was already closed. Witness Pajarito further testified that as per their records, the account of accused Montaner, account no. 00099-000050-4 was closed on July 11, 1996. The checks were returned on October 4, 1996 for the reason account closed.
>
> Accused, thru counsel initially manifested that she is intending to file a demurrer to evidence. However, her right to file the same was considered waived in view of her failure to file the demurrer despite due notice.
>
> To exculpate herself from criminal liability, accused Virginia Baby P. Montaner denied the allegations that she issued ten (10) checks in private complainant's favor claiming that the ten (10) checks were

[4] *Id.* at 37.

borrowed from her by one Marlyn Galope because the latter needed money. She gave the ten checks to Galope, signed the same albeit the space for the date, amount and payee were left blank so that the checks cannot be used for any negotiation. She further told Galope that the checks were not funded. When she learned that a case was filed against her for estafa, she confronted Marlyn Galope and the latter told her that money will not be given to her if she will not issue the said checks. She has no knowledge of the notice of dishonor sent to her by private complainant and claimed that her husband, who supposedly received the notice of dishonor left for abroad in July 1996 and returned only after a year, that is, in 1997.[5]

In a Decision dated April 8, 2003, the trial court convicted appellant for the crime of estafa as defined and penalized under paragraph 2(d), Article 315 of the Revised Penal Code. The dispositive portion of said Decision reads:

WHEREFORE, this Court hereby sentences accused Virginia Baby P. Montaner to suffer an indeterminate penalty of imprisonment from twelve (12) years of *prision mayor* as minimum to twenty-two (22) years of *reclusion perpetua* as maximum and to indemnify complainant Reynaldo Solis in the amount of ₱50,000.00.[6]

Appellant elevated the case to the Court of Appeals but the adverse ruling was merely affirmed by the appellate court in its Decision dated February 12, 2008, the dispositive portion of which states:

WHEREFORE, premises considered, the instant petition is DENIED. Accordingly, the challenged Decision is hereby AFFIRMED *in toto*.[7]

Hence, appellant interposed this appeal before this Court and adopted her Appellant's Brief with the Court of Appeals, wherein she put forth a single assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED–APPELLANT GUILTY BEYOND REASONABLE

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[5] CA *rollo*, pp. 20-21.

[6] *Id.* at 22.

[7] *Rollo*, p. 10.

DOUBT OF THE CRIME OF ESTAFA UNDER ARTICLE 315, PAR. 2 (D) OF THE REVISED PENAL CODE.[8]

Appellant maintains that she entrusted the subject checks, purportedly signed in blank, to Marilyn Galope (Galope) out of pity in order for the latter to secure a loan. Thus, there is purportedly no certainty beyond reasonable doubt that she issued the checks purposely to defraud Reynaldo Solis (Solis) into lending her money. She further claims that no transaction had ever transpired between her and Solis. Admitting that she may have been imprudent, she nonetheless insists that her simple imprudence does not translate to criminal liability.

We are not persuaded.

Paragraph 2(d), Article 315 of the Revised Penal Code provides:

ART. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

The elements of estafa under paragraph 2(d), Article 315 of the Revised Penal Code are: (1) the postdating or issuance of a check in payment of an obligation contracted at the time the

[8] CA *rollo*, p. 87.

check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee.[9]

In the case at bar, the prosecution sufficiently established appellant's guilt beyond reasonable doubt for estafa under paragraph 2(d), Article 315 of the Revised Penal Code. According to Solis's clear and categorical testimony, appellant issued to him the 10 postdated Prudential Bank checks, each in the amount of ₱5,000.00 or a total of ₱50,000.00, in his house in exchange for their cash equivalent. We quote the pertinent portions of the transcript:

[On Direct Examination]

Q: Mr. Witness, why did you file this complaint against the accused?
A: She issued me checks in exchange for cash, ten postdated checks, ma'am.

Q: When did Mrs. Montaner issue to you these checks?
A: In May 1996, ma'am.

Q: What was the purpose of issuing to you these checks?
A: Because she needed cash, ma'am.

Q: And how many checks did she issue to you?
A: Ten checks, ma'am.

Q: And what is the date of the checks that were issued to you?
A: June 17, 1996, ma'am.

Q: What is the total value of these ten checks?
A: Fifty Thousand Pesos.

Q: At the time these checks were issued to you, what if any, was her representation about them?
A: To deposit those checks on their due date, ma'am.

Q: And aside from telling you to deposit those checks on their due date, what else did she represent to you regarding these checks?
A: None, ma'am.

Q: Did you deposit these checks?

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[9] *Cajigas v. People*, G.R. No. 156541, February 23, 2009, 580 SCRA 54, 63.

A: Yes, ma'am.

Q: Where?
A: At the Premier Bank, San Pedro, Laguna.

Q: What happened to these checks after depositing the same?
A: The checks bounced, ma'am.

Q: All these checks?
A: Yes, ma'am, all checks bounced for reason account closed.

Q: After these checks were dishonored what did you do?
A: I informed her about that.

Q: Thru what, verbal or written?
A: Initially it was verbal, then I informed her thru a demand letter, ma'am.

x x x x x x x x x

Fiscal (continuing):

Q: You said that the accused issued to you ten checks in exchange for cash, where are those checks?
A. The original checks are with me here, ma'am.

Q. Handed to this representation are checks, Prudential Bank checks Nos. 002284, 002285, 002286, 002287, 002288, 002289, 002290, 002291, 002292, 002293 all dated June 17, 1996 and all in the amount of ₱50,000 [should be ₱5,000.00] each. Mr. Witness, there appears from these checks a signature at the bottom portion whose signature is this?
A. The signature of Mrs. Montaner, ma'am.

Q. Why do you say it is her signature?
A. She signed those in my presence, ma'am.

Q. I am showing these checks to the opposing counsel for comparison…

Atty. Peñala

The checks are admitted, your Honor.

x x x x x x x x x

[On Cross-Examination]

Atty. Peñala (continuing):

Q: When Mrs. Montaner issued those checks, ten checks were they issued in your house or in her house?
A: In my house, sir.

Q: Mrs. Montaner brought the checks in your house?
A: Yes, sir.

Q: Can you tell us the time of the day when she brought the checks to you?
A: May 17, 1996 at 1:00 o'clock in the afternoon, sir.

Q: Was she alone or including her husband?
A: She was alone, sir.[10]

From the circumstances narrated above, it was evident that Solis would not have given ₱50,000.00 cash to appellant had it not been for her issuance of the 10 Prudential Bank checks. These postdated checks were undoubtedly issued by appellant to induce Solis to part with his cash. However, when Solis attempted to encash them, they were all dishonored by the bank because the account was already closed.

Solis wrote appellant a demand letter dated October 13, 1996[11] which was received by appellant's husband to inform appellant that her postdated checks had bounced and that she must settle her obligation or else face legal action from Solis. Appellant did not comply with the demand nor did she deposit the amount necessary to cover the checks within three days from receipt of notice. This gave rise to a *prima facie* evidence of deceit, which is an element of the crime of estafa, constituting false pretense or fraudulent act as stated in the second sentence of paragraph 2(d), Article 315 of the Revised Penal Code.

As for appellant's claims that she merely entrusted to Galope the blank but signed checks imprudently, without knowing that Galope would give them as a guarantee for a loan, the Court views such statements with the same incredulity as the lower courts.

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself –

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[10] TSN, November 25, 1998, pp. 4-8.

[11] Records, p. 15.

such as the common experience and observation of mankind can approve as probable under the circumstances. The Court has 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 judicial cognizance.[12]

Appellant wishes to impress upon the Court that she voluntarily parted with her blank but signed checks not knowing or even having any hint of suspicion that the same may be used to defraud anyone who may rely on them. Verily, appellant's assertion defies ordinary common sense and human experience.

Moreover, it is elementary that denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[13] We agree with the lower courts that appellant's bare denial cannot be accorded credence for lack of evidentiary support. As aptly noted by the trial court, appellant's failure to produce Galope as a witness to corroborate her story is fatal to her cause.[14] In all, the Court of Appeals committed no error in upholding the conviction of appellant for estafa.

WHEREFORE, premises considered, the Decision dated February 12, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01162 is hereby *AFFIRMED*.

SO ORDERED.

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

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[12] *People v. Garin*, 476 Phil. 455, 474 (2004); *People v. Samus*, 437 Phil. 645, 659 (2002).

[13] *Gomba v. People*, G.R. No. 150536, September 17, 2008, 565 SCRA 396, 400, citing *People v. Magbanua*, G.R. No. 133004, May 20, 2004, 428 SCRA 617, 630.

[14] Records, p. 212.

THIRD DIVISION

[G.R. No. 186387. August 31, 2011]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN MENDOZA *y* VICENTE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; SALE OF ILLEGAL DRUGS; ELEMENTS. — In crimes involving the sale of illegal drugs, two essential elements must be satisfied: (1) identities of the buyer, the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.

2. ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In the prosecution for illegal possession of dangerous drugs, x x x it must be shown that: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

3. ID.; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS; CHAIN OF CUSTODY; LINKS TO BE ESTABLISHED. — In the chain of custody in a buy-bust situation, the following links must be established: *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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal assailing the June 5, 2008 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. HC-No. 02734 which affirmed with modification the February 6, 2007 Decision[2] of the Regional Trial Court, Baguio City, Branch 61 *(RTC)*. The RTC found accused Juan Mendoza *y* Vicente guilty of having violated Section 5 and Section 11, Article II of Republic Act (*R.A.*) No. 9165 or the Dangerous Drugs Act of 2002.

Version of the Prosecution

The evidence for the prosecution shows that Senior Police Officer 4 Edelfonso Sison (*SPO4 Sison*) received information from a long-serving unidentified informant of the Baguio City Police Office's (*BCPO*) Drug Enforcement Section (*DES*) that the accused contacted him and offered to sell *shabu* worth ₱1,000.00 to any interested buyer. The accused then suggested that they meet at the stairs of the Cresencia Barangay Hall along Bokawkan Road.

After interviewing the informant, Police Senior Inspector Myles Pascual (*PSI Pascual*) decided to conduct a buy-bust operation to entrap the accused. PSI Pascual made arrangements for the informant, the accused, and the poseur buyer officer to meet on April 14, 2005 around 2:30 o'clock in the afternoon at the stairs below the Cresencia Barangay Hall along Bokawkan Road. He planned for an entrapment operation and put together a team, with SPO4 Sison, as team leader; Police Officer 3 Ricky Calamiong *(PO3 Calamiong)* and PO3 Roy Mateo (*PO3 Mateo*), as back-up officers; and Police Officer 2 Edgar Antolin *(PO2 Antolin)*, as the poseur buyer.

In coordination with the Philippine Drug Enforcement Agency *(PDEA)*, the entrapment team proceeded to the area at 2:00

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Agustin S, Dizon, concurring.

[2] Records, p. 186.

o'clock in the afternoon, half an hour before the scheduled time. The team parked their vehicle 20 to 30 meters away from the designated transaction area. PO2 Antolin and the informant alighted and proceeded to the stairway to wait for the accused.

Twenty minutes later, the accused arrived and approached the informant. The latter introduced PO2 Antolin as the buyer. After the accused asked if the buyer had the money, PO2 Antolin handed over ₱1,000.00. The accused then gave him two (2) sachets containing white crystalline substance. PO2 Antolin raised his right hand, the pre-arranged signal, signifying to the other team members that the transaction had been consummated. The team rushed to assist PO2 Antolin, who arrested the accused and recovered the buy-bust-money. PO2 Antolin frisked the accused and recovered five (5) more small transparent sachets with white crystalline substance from the pants pocket of the accused. He turned over the same to the team leader, SPO4 Sison.

SPO4 Sison informed the accused in Tagalog the reason why he was being arrested and apprised him of his constitutional rights. The accused merely nodded but otherwise kept silent.[3] The buy-bust team then took the accused to the BCPO, where PO2 Antolin identified him as Juan Mendoza, *alias* "*Ampi*."

In a preliminary test, the white crystalline substance recovered from the accused tested positive for the presence of Methamphetamine Hydrochloride or *shabu*, a dangerous drug.[4] The case records state that after the conduct of such preliminary test, the items confiscated from the accused were turned over to the Philippine National Police *(PNP)* Crime Laboratory Service at Camp Bado Dangwa, La Trinidad, Benguet for further analysis and disposition.[5]

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[3] TSN, November 22, 2005, pp. 33-34; TSN, March 7, 2006, pp. 13-14; TSN, May 11, 2006, p. 20; TSN, August 14, 2006, pp. 25-26.

[4] Records, p. 54.

[5] *Id*.

A confirmatory test conducted on the same day by Police Inspector and Forensic Chemical Officer Cecile Akiangan Bullong yielded the same result.[6]

Version of the Accused

The accused alleges that in the afternoon of April 14, 2005, he was walking down Sepic Road, Baguio City, on his way home from his brother's house in Guisad, where he had just finished washing diapers and clothes. A vehicle stopped beside him and SPO4 Sison alighted. The accused knew SPO4 Sison because the latter arrested him for a drug offense way back in 1997, for which he was convicted and incarcerated in Camp Sampaguita for five years.

SPO4 Sison showed him a photograph and demanded information about the person in the photo. When he insisted that he did not know who it was, SPO4 Sison invited him to the BCPO-DES. As he could not decline, he went along with him.

At the DES, the police again asked him if he knew the person in the photo and a certain Gary Chua, but he replied in the negative. He was also questioned whether he knew someone who was selling drugs, and he again replied in the negative. He told the police that since his release from prison, he no longer dabbled in the drug trade, as he already had a family. When he told SPO4 Sison that he did not know anyone who was selling drugs, SPO4 Sison got angry.

After an hour, he was informed that he would be subjected to a drug test. Again, unable to refuse, he was subjected to a drug test at the BCPO Station 7 laboratory, in front of the DES. He was then brought to the Baguio General Hospital (*BGH*) for a medical examination, and later back to the police station.

During the interrogation at the police office, he did not have a counsel present.[7] SPO4 Sison did not inform him that he was

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[6] *Id.* at 70.

[7] TSN, November 7, 2006, p. 15.

being arrested for the possession of the 5 heat-sealed plastic sachets containing *shabu*.[8]

Ruling of the Regional Trial Court

In its Decision dated February 6, 2007, the RTC found the accused guilty beyond reasonable doubt in both Criminal Case No. 24384-R and Criminal Case No. 24385-R. The dispositive portion thereof reads:

> WHEREFORE, in Criminal Case No. 24384-R, judgment is rendered finding the accused **GUILTY** beyond any reasonable doubt and he is hereby sentenced to suffer Life Imprisonment and to pay a fine of ₱500,000.00 and in Criminal Case No. 24385-R, judgment is rendered finding the accused GUILTY beyond any reasonable doubt and he is hereby sentenced to suffer an indeterminate sentence of Twelve (12) Years and One (1) Day to Fourteen (14) Years, and to pay the costs.
>
> SO ORDERED.[9]

Ruling of the Court of Appeals

In its Decision[10] dated June 5, 2008, the CA affirmed with modification the RTC decision. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the appeal is **DENIED** for lack of merit. The Decision dated 06 February 2007 of the Regional Trial Court of Baguio City, Branch 61 finding the accused-appellant JUAN MENDOZA *Y* VICENTE guilty beyond reasonable doubt for violations of Sections 5 and 11, Article II of Republic Act No. 9165 in Criminal Case Nos. 24384-R and 24385-R and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,00[0].00, and the indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years, respectively, is **AFFIRMED with MODIFICATION**

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[8] *Id.* at 18.

[9] CA *rollo*, p. 18.

[10] *Rollo*, p. 2. Sixteenth Division. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Regalado E. Maambong and Agustin S. Dizon, concurring.

in that said accused-appellant is hereby ordered to pay a fine of ₱300,000.00 in Criminal Case No. 24385-R.

SO ORDERED.[11]

ASSIGNMENT OF ERRORS

In his *Supplemental Brief for the Accused-Appellant*,[12] the accused submits that the court *a quo* erred:

In not finding that the procedures for the custody and disposition of confiscated dangerous drugs in Section 21 of R.A. No. 9165 were not complied with, rendering the evidence compromised.

In convicting the accused-appellant notwithstanding the fact that his guilt was not established beyond reasonable doubt.[13]

Ruling of the Court

The Court finds the arguments of the accused bereft of merit.

In crimes involving the sale of illegal drugs, two essential elements must be satisfied: (1) identities of the buyer, the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[14]

In the prosecution for illegal possession of dangerous drugs, on the other hand, it must be shown that: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[15] In this case, all these elements were satisfactorily

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[11] *Id.* at 33.

[12] *Id.* at 55-67.

[13] *Id.* at 60.

[14] *People v. Salak,* G.R. No. 181249, March 14, 2011, citing *People v. Razul*, 441 Phil. 62, 75 (2002).

[15] *People v. Villahermosa*, G.R. No. 186465, June 1, 2011, citing *People v. Concepcion*, 414 Phil. 247, 255 (2001); *People v. Khor*, 366 Phil. 762, 795 (1995).

proven by the prosecution beyond reasonable doubt through testimonial, documentary and object evidence presented during the trial. PO2 Antolin, the designated poseur-buyer, testified as to the circumstances surrounding the apprehension of the accused, and the seizure and marking of the illegal drugs recovered from the accused. [16] Then, SPO4 Sison corroborated PO2 Antolin's testimony and confirmed that all the confiscated items recovered from the accused were turned over to him as team leader.[17]

The accused also argues that the procedure in the custody and disposition of the dangerous drugs was not observed. The Court finds, however, that the compliance with the chain of custody rule was sufficiently established in this case.

In the chain of custody in a buy-bust situation, the following links must be established: *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.[18]

Regarding the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination, the parties admitted the following facts during pre-trial:

1. The fact that the forensic chemist examined the drugs and prepared the report thereon but qualified that it did not come from the accused;

2. Medico-legal Report;

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[16] TSN, November 22, 2005, pp. 20-32.

[17] TSN, May 11, 2006, p. 22.

[18] *Ampatuan v. People*, G.R. No. 183676, June 22, 2011, citing *People v. Magpayo,* G.R. No. 187069, October 20, 2010, 634 SCRA 441, 451 citing *People v. Kamad,* G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

3. The witnesses to the inventory witnessed the inventory taking, signed the inventory but they have no knowledge that the drugs came from the accused.

4. Order of detention, booking sheet and preliminary test;

5. Existence of the pre-operation report and the request for drug test.[19] [Emphases supplied]

The prosecution also presented several documents that traced how the evidence changed hands.

The *Inventory in the Presence of Witnesses*[20] (Exhibit "D") listed six small transparent heat-sealed plastic sachets, each weighing approximately 0.3g and containing white crystalline substance suspected to be Methamphetamine Hydrochloride or *shabu*, previously marked as "ECA" 04/14/05[21], and showed the corresponding photos taken during the inventory (Exhibit "N").[22]

The *Certificate of Preliminary Test*[23] (Exhibit "F") prepared under the signature of Marites Vizcara Tamio of the BCPO DES and addressed to the Baguio City Prosecutor, certified that on April 14, 2005, at 3:00 o'clock in the afternoon, she conducted a preliminary test on the same marked items[24] by

[19] Records, p. 73.

[20] *Id.* at 52. Signed by Natividad G. Akim, a *barangay* representative; a representative of the DOJ; and Jimmy Ceraude, a representative of the media.

[21] The two items subject of the buy-bust bore the additional mark "BB", and the five items recovered from the accused upon apprehension and arrest bore the additional mark "R".

[22] Records, p. 69.

[23] *Id.* at 54.

[24]

EXHIBIT	QUANTITY	DESCRIPTION
Exh "A"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride or *Shabu* marked as "ECA" 04/14/05 with signature, BB
Exh "B"	Approximately zero point three	One (1) small transparent heat sealed plastic sachet containing white

using Simons reagent on the white crystalline substance contained in the individually heat-sealed plastic sachets. All the items yielded a "dark blue color," indicating the presence of Methamphetamine Hydrochloride, a dangerous drug. The same certificate stated that the alleged confiscated pieces of evidence were turned over the to the PNP Crime Laboratory Service at Camp Bado Dangwa, La Trinidad, Benguet for chemistry analysis and disposition.

	(0.3) gram including plastic sachet	crystalline substance suspected to be Methamphetamine Hydrochloride / *Shabu* marked as "ECA" 04/14/05 with signature, BB
Exh "C"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride/ *Shabu* marked as "ECA" 04/14/05 with signature, R
Exh "D"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride/ *Shabu* marked as "ECA" 04/14/05 with signature, R
Exh "E"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride/ *Shabu* marked as "ECA" 04/14/05 with signature, R
Exh "F"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride / *Shabu* marked as "ECA" 04/14/05 with signature, R
Exh "G"	Approximately zero point three (0.3) gram including plastic sachet	One (1) small transparent heat sealed plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride/ *Shabu* marked as "ECA" 04/14/05 with signature, R

Finally, Chemistry Report No. D-044-2005[25] (Exhibit "G")[26] issued by the PNP Regional Crime Laboratory Office at Camp Bado Dangwa, La Trinidad, Benguet stated that following a qualitative examination conducted on the same marked items,[27] it was found that the specimens produced a positive result for the presence of Methamphetamine Hydrochloride, a dangerous drug.

The illegal drugs subject of the buy-bust transaction and those recovered from the person of the accused were positively identified by PO2 Antolin, marked and presented as evidence during trial:

Q x x x I am showing you two sachets marked as Exhibit "A" ECA. 04/14/05 BB and a signature. Now tell us the relation

[25] Records, p. 70.

[26] Prepared by Police Inspector and Forensic Chemical Officer Cecile Akiangan Bullong of the Regional Crime Laboratory Office at Camp Bado Dangwa, La Trinidad, Benguet, and approved by Police Chief Inspector and Provincial Chief Dalmacio Weygan Magantino.

[27] Exh "A" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, BB and signature containing 0.05 gram of white crystalline substance.

Exh "B" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, BB and signature containing 0.04 gram of white crystalline substance.

Exh "C" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, R and signature containing 0.05 gram of white crystalline substance.

Exh "D" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, R and signature containing 0.06 gram of white crystalline substance.

Exh "E" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, R and signature containing 0.05 gram of white crystalline substance.

Exh "F" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, R and signature containing 0.05 gram of white crystalline substance.

Exh "G" – One (1) small heat-sealed transparent plastic sachet with attached markings Exh "A", ECA, 04/14/05, R and signature containing 0.06 gram of white crystalline substance.

of these sachets which the accused gave to you in exchange of the ₱1,000.00?

WITNESS:

A These are the buy bust item, sir.

PROS. CATRAL:

Q Now what does ECA stands (sic) for again?
A Edgar Cortes Antolin, sir.

Q And that will be you
A Yes, sir.

Q And 04/14/05 would be the date of the transaction?
A Yes, sir.

Q And BB. What would those letters mean?
A Buy bust, sir.

Q How about this signature, whose signature would that be?
A My signature, sir.

x x x x x x x x x

Q I am presenting to you five sachets which your office marked as Exhibit CDEF and G with the marking ECA, 04/14/05 signature and a letter R. Are these the same items which you referred a while back?
A Yes, sir.

Q And for the record, what does ECA stands (sic) for?

WITNESS:

A Edgar Cortes Antolin, sir.

PROS. CATRAL:

Q And what does 04/14/05 means (sic)?
A The date, sir.

Q The date of what?
A The date of the transaction, sir.

Q And what does "R" in the five sachets represents (sic)?
A Recovered, sir.

PROS. CATRAL:

> For purposes of identification, may we have the two sachets marked as BB be marked as Exhibit M-1 and M-2 which are the subject for sale and the other five other sachets with marking R be marked as M-3, 4, 5, 6, and 7 to constitute the charge for possession.

COURT:

> Mark it. [28]

From the foregoing circumstances, it is unmistakable that there is no break in the chain of custody of the seized dangerous drugs from the time that it came to the possession of PO2 Antolin to the point when such items were presented and identified during trial. Clearly, there is no doubt that the integrity and evidentiary value of the seized dangerous drug were properly preserved, in compliance with what the law requires.

WHEREFORE, the June 5, 2008 Decision of the Court of Appeals in CA-G.R. HC-No. 02734 is *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.*, concur.

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[28] TSN, November 22, 2006, pp. 26-27, 31-32.

* Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[G.R. No. 194580. August 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ADRIANO PASCUA *y* CONCEPCION,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In every case of illegal sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in the court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

2. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY REQUIREMENT; NON-COMPLIANCE THEREWITH, UNDER JUSTIFIABLE GROUNDS, SHALL NOT RENDER VOID AND INVALID THE SEIZURE OF AND CUSTODY OVER THE SEIZED ITEMS; CONDITION. — Apart from establishing the elements in the illegal sale of drugs, it must further be shown by the prosecution that the drugs seized and tested are the same as the *corpus delicti* presented in court. Sec. 21(a), Art. II of the Implementing Rules and Regulations (IRR) of RA 9165 lays down the procedure in the custody and control of drugs x x x. In *People v. Rosialda*, We reiterated jurisprudence to the effect that leeway is given to the prosecution as regards compliance with the chain of custody requirement. We have previously underscored that RA 9165's IRR provides that "non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending

officers." What is significant in the requirement is the preservation of the integrity and evidentiary value of the seized items. Indeed, "non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible."

3. ID.; ID.; ID.; IT IS NOT INDISPENSABLE THAT EACH AND EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TAKE THE WITNESS STAND. — On the matter of presenting only one witness against accused-appellant, We had occasion to rule that "not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; TO OVERTURN THE PRESUMPTION, THERE MUST BE CLEAR AND CONVINCING EVIDENCE THAT THE POLICE OFFICER IS INSPIRED BY AN IMPROPER MOTIVE. — "PO1 Tadeo enjoys the presumption of regularity accorded to those performing their official duties." To overturn the presumption, there must be clear and convincing evidence that the police officer was inspired by an improper motive. No evidence was shown by accused-appellant that PO1 Tadeo had any ill motive to frame him.

5. CRIMINAL LAW; VIOLATION OF SECTION 5 OF REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PENALTY IN CASE AT BAR. — As there were no attending circumstances in the commission of the offense, the RTC imposed the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP500,000). A violation of Sec. 5 of RA 9165 carries with it a penalty of life imprisonment and a fine ranging from five hundred thousand pesos (PhP500,000) to ten million pesos (PhP10,000,000) for the sale of any dangerous drug regardless

of the quantity or purity involved. We find the penalty and fine imposed on accused-appellant conform to RA 9165.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the July 16, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03563, which affirmed the August 21, 2008 Decision[2] of the Regional Trial Court (RTC), Branch 21 in Malolos, Bulacan, in Criminal Case No. 3936-M-2003. The RTC found accused Adriano Pascua guilty of violating Sec. 5, Art. II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

An Information charged the accused with the following:

That on or about the 13th day of October, 2003, in the municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.084 gram.[3]

During his arraignment, the accused pleaded not guilty.

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[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Estela M. Perlas-Bernabe.

[2] Penned by Judge Jaime V. Samonte.

[3] *Rollo*, p. 3.

The parties stipulated on the following facts during the trial:

1) That there was a request for laboratory examination (Exhibit "A") covering two (2) sachets of regulated drugs (Exhibits "C" and "C-1");

(2) That pursuant to the request, an examination was conducted on the specimens seized; and

(3) That the examination conducted by Forensic Chemical Officer Nelson Sta. Maria found the subject specimens positive for methamphetamine hydrochloride or *shabu* (Chemistry Report No. D-768-2003, Exhibit "B").[4]

Version of the Prosecution

The CA summarized the facts from the records as follows:

On 13 October 2003, PO1 Tadeo of the PNP Station, Meycauayan, Bulacan, received a phone call from a concerned citizen saying that there was rampant selling of illegal drugs in Banga, Meycauayan, Bulacan. When the information was relayed to the Chief of Police, the latter instructed the police officers to form a team which would conduct a buy-bust operation. The team was composed of PO1 Tadeo, who would act as the poseur-buyer in the said operation, and his back-up officers PO1 Michael Sarangaya, PO1 Frederick Viesca and PO1 Philip Santos.

After the pre-operational report was made, the buy-bust team, together with the asset, proceeded to the target area which was a club located at Banga, Meycauayan, Bulacan. PO1 Tadeo was given two pieces of ₱100-bills, and he marked the same with his initials "WCT." Thereafter, the back-up officers positioned themselves at the other side of the street, while PO1 Tadeo and his asset went inside the club. Upon entering the same, PO1 Tadeo noticed that there was somebody transacting with their suspect. Afterwards, PO1 Tadeo was introduced by the asset to their suspect, *alias* Joel, as the next buyer of *shabu*. PO1 Tadeo then asked *alias* Joel if he had ₱200.00 worth of *shabu*, to which the latter replied in the affirmative. PO1 Tadeo thus handed *alias* Joel the marked ₱100-bills, while the latter in turn gave PO1 Tadeo a plastic sachet containing white crystalline substance. PO1 Tadeo, thereafter, dialed the number of

[4] CA *rollo*, pp. 49-50.

one of his back-up officers and made a missed call from his cellphone, which was the pre-arranged signal for his back-up team. Consequently, the other members of the entrapment team entered the premises and arrested the person whom they first saw buying suspected drugs from *alias* Joel, who they identified later on as Robert Carmelo, and likewise obtained from him a plastic sachet containing white crystalline substance. Thereafter, they arrested *alias* Joel, who was later on identified as accused-appellant Adriano Pascua.

After placing the necessary markings, the two (2) plastic sachets containing white crystalline substance recovered from the accused-appellant Pascua and Robert Carmelo were submitted to the PNP Crime Laboratory for analysis. Consequently, Forensic Chemist Nelson Sta. Maria issued Chemistry Report No. D-768-2003 which stated that the seized specimen yielded positive for Methamphetamine Hydrochloride, also known as "*shabu*", a dangerous drug.[5]

Version of the Defense

As synthesized by the CA, the defense offered the following version of what transpired:

On 13 October, 2003, at around 11:00 a.m., accused-appellant was resting in his home. Suddenly, he heard a noise and saw two uniformed men holding short guns while destroying the door of his house. He instantly felt afraid because just recently, two of his brothers were killed in an ambush, hence this prompted him to run away and pass through the back door of his house. While running, he fell into the river, but he managed to swim and climb up the cliff. He continued running until he noticed two men in a motorcycle chasing him. When the men caught up with him, they grabbed him by the hand and told him that he was being arrested. The accused-appellant asked them for what offense he was being arrested, but he was instead told by the men that he better take a bath since he fell into a river and he [did] not smell good, after which they would bring him to the police headquarters. The armed men thus forcibly brought him inside their vehicle, where he saw another person handcuffed. The men subsequently brought both of them at the police headquarters in Meycauayan, Bulacan. At the police station, the accused-appellant [begged] the police officers not to charge him with violation of Section 5, Article II of Republic Act No. 9165, since said offense was not

[5] *Rollo*, pp. 4-5.

bailable. One of the police officers then told him that he would be charged with violation of Section 11 instead, but he should bring five (5) grams of *shabu* with him. The accused-appellant, however, replied that he did not have any *shabu*. The police officers thereafter locked him up in the Municipal Hall and, the next day, charged him at the fiscal's office with violation of Section 5, Article II of R.A. 9165. Subsequently, the police officers brought him back to his house and told him to give them money and *shabu*. Accused-appellant again replied that he did not have any money and *shabu* in his possession. The police officers then entered his house and searched it thoroughly, without showing him any search warrant. After conducting the search, the accused-appellant was brought back to the police station.

On the other hand, Robert Carmelo narrated that, on 13 October 2003, at around 11:00 a.m., he was at his house at Bangcal Extension, Meycauayan, Bulacan, when somebody forcibly entered it and hit him in the stomach with a 45-caliber gun. He was then forcefully taken outside and was made to ride in an ambulance. They passed by a bridge and stopped as the men riding with him alighted from the vehicle and entered another house. Thereafter, a chase ensued as the occupant of the house ran away. Subsequently, the men were able to arrest the person they were chasing and likewise was able to lead him inside the vehicle. Carmelo and the other person arrested were brought to the Municipal Hall, where they were immediately charged with Violation of Section 11, Article II of R.A. 9165 and Section 5 of the same law, respectively. Carmelo only found out that the other person arrested with him was accused-appellant Pascua when they were already inside the jail.

Teresita "Bheng" de Belen, an assistant at the videoke bar located in front of accused-appellant's house who claimed to have witnessed the incident, corroborated the testimonies of accused-appellant and Carmelo.[6]

Ruling of the Trial Court

The RTC found the accused guilty of the offense charged. It found that the evidence of the prosecution established the elements of illegal sale of drugs as the accused was caught *in flagrante delicto* via a buy-bust operation. On the other hand,

[6] *Id.* at 6-8.

the RTC noted that the defense merely offered denial as its defense while failing to overturn the presumption of regularity in the performance of official duties accorded to the buy-bust team.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, all the foregoing premises considered, this Court finds and so holds that the prosecution was able to establish by proof beyond reasonable doubt the guilt of accused Adriano Pascua *y* Concepcion of the crime charged. Consequently, he is hereby sentenced, there being no attending circumstances, to serve the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos.
>
> x x x x
>
> SO ORDERED.[7]

Ruling of the Appellate Court

On appeal, accused averred that the trial court erred in finding him guilty beyond reasonable doubt despite the prosecution's non-compliance with Sec. 21 of RA 9165 on the chain of custody of seized drugs. He alleged that the prosecution failed to prove the integrity of the seized drug. He also raised as error his conviction based solely on the testimony of Police Officer 1 Willie Tadeo (PO1 Tadeo).

The People, represented by the Office of the Solicitor General (OSG), countered that the integrity and chain of custody of the seized item was duly established during the trial. It was further argued that not all those who came into possession of the seized drugs have to be presented as a witness as long as the chain of custody was not broken and the seized drugs were properly identified.

Moreover, the OSG argued that the failure of the prosecution to comply with Sec. 21 of RA 9165 did not overcome the application of the presumption of regularity in the performance of regular duty accorded to the police officers involved in the

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[7] CA *rollo*, p. 18.

buy-bust operation. The OSG furthermore argued that the defense of bare denial cannot be given greater evidentiary weight than the positive declarations of the complainant. It added that no evidence was shown that the police officers in the buy-bust operation had any ill motive to make false charges against the accused.

The CA affirmed the ruling of the RTC. The *fallo* of the CA Decision reads:

> WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DISMISSED, and the appealed decision is AFFIRMED *in toto*.[8]

On January 19, 2011, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested that they were adopting their respective briefs filed before the CA.

The Issues

I

Whether the Court of Appeals erred in finding accused-appellant guilty beyond reasonable doubt despite the prosecution's non-compliance with RA 9165 on chain of custody of seized drugs

II

Whether the Court of Appeals erred in finding accused-appellant guilty despite the prosecution's failure to prove the integrity of the seized drug

III

Whether the Court of Appeals erred in finding accused-appellant guilty based solely on the testimony of PO1 Tadeo.

The Ruling of this Court

In every case of illegal sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually

[8] *Rollo*, p. 25.

took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[9]

On the first issue, the CA did not err in finding accused-appellant guilty beyond reasonable doubt. As the records show, the identities of the buyer, PO1 Tadeo, and the seller, accused-appellant, were established. The object of the sale, 0.084 gram of *shabu*, and the consideration, PhP 200, were likewise adequately shown by the prosecution. There is also no question as to the delivery of the *shabu* sold and the payment for it.

As to the second issue on the integrity of the seized drug, the CA correctly affirmed the findings of the RTC. Apart from establishing the elements in the illegal sale of drugs, it must further be shown by the prosecution that the drugs seized and tested are the same as the *corpus delicti* presented in court. Sec. 21(a), Art. II of the Implementing Rules and Regulations (IRR) of RA 9165 lays down the procedure in the custody and control of drugs:

> (a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In *People v. Rosialda*,[10] We reiterated jurisprudence to the effect that leeway is given to the prosecution as regards compliance

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[9] *People v. Midenilla*, G.R. No. 186470, September 27, 2010, 631 SCRA 350, 364; citing *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 322-323.

[10] G.R. No. 188330, August 25, 2010, 629 SCRA 507, 521; citing *People*

with the chain of custody requirement. We have previously underscored that RA 9165's IRR provides that "non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers."[11] What is significant in the requirement is the preservation of the integrity and evidentiary value of the seized items. Indeed, "non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible."[12]

In the instant case, the chain of custody over the seized drugs was testified on by PO1 Tadeo. After the buy-bust was completed, PO1 Tadeo marked the plastic sachet sold by accused-appellant with the initials "WCT." PO1 Michael Sarangaya, who arrested accused-appellant's co-accused Carmelo, marked the plastic sachet from Carmelo with "MCS." A request for laboratory examination of the seized items was made (Exhibit "A"). Afterwards, PO1 Tadeo personally brought the request and the seized items to the PNP crime laboratory. The same specimens tested positive for *shabu* as evidenced in Chemistry Report No. D-768-2003 (Exhibit "B") and were subsequently presented during trial (Exhibits "C" and "C-1").

Reiterating his earlier argument, accused-appellant maintains that there was a broken chain of custody over the seized drugs in the instant case. However, as aptly shown by the prosecution, the chain of custody was shown to have been unbroken in accordance with RA 9165 and its IRR.

On the third issue, We affirm the CA as well. On the matter of presenting only one witness against accused-appellant, We had occasion to rule that "not all people who came into contact

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v. Rivera, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-899.

[11] *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 233.

[12] *People v. Marcelino*, G.R. No. 189278, July 26, 2010, 625 SCRA 632, 641; citing *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 718.

with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."[13]

What is more, PO1 Tadeo enjoys the presumption of regularity accorded to those performing their official duties. To overturn the presumption, there must be clear and convincing evidence that the police officer was inspired by an improper motive.[14] No evidence was shown by accused-appellant that PO1 Tadeo had any ill motive to frame him.

Penalty Imposed

As there were no attending circumstances in the commission of the offense, the RTC imposed the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP 500,000).

A violation of Sec. 5 of RA 9165 carries with it a penalty of life imprisonment and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000) for the sale of any dangerous drug regardless of the quantity or purity involved.

We find the penalty and fine imposed on accused-appellant conform to RA 9165.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03563 is hereby *AFFIRMED IN TOTO*.

SO ORDERED.

Peralta, Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

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[13] *People v. Padua, supra* note 11.

[14] *People v. Pagkalinawan,* G.R. No. 184805, March 3, 2010, 614 SCRA 202, 219.

* Additional member per Special Order No. 1028 dated June 21, 2011.

SECOND DIVISION

[A.M. No. P-04-1771. September 5, 2011]
(Formerly OCA I.P.I. No. 03-1618-P)

Atty. PACIFICO CAPUCHINO, *complainant, vs.* **Stenographer MARIPI A. APOLONIO, Legal Researcher CARINA C. BRETANIA, Court Stenographer ANDREALYN M. ANDRES, Court Stenographer ANA GRACIA E. SANTIAGO, Interpreter MA. ANITA G. GATCHECO, Branch Clerk of Court ROMEO B. ASPIRAS, Clerk IV FE L. ALVAREZ and Process Server EUGENIO P. TAGUBA, Municipal Trial Court in Cities, Branch 2, Santiago City, Isabela,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT; ILLEGAL TAPE RECORDING OF THE CONVERSATION OF THE COUNSEL AND HIS CLIENT TO SECURE EVIDENCE AGAINST A CO-EMPLOYEE AND LATER USING THE TAPED CONVERSATION AS BASIS OF THE COMPLAINT FILED AGAINST THE LATTER CONSTITUTES MISCONDUCT.— [The respondents'] concerted acts – of leading Atty. Capuchino and Valencia into the court sala, engaging them in conversation regarding the money deposited with Duque, taping their conversation without Capuchino's & Valencia's knowledge, and later using the taped conversation as basis of the complaint they filed against Duque – constitute misconduct. Santiago's claim that she forgot who borrowed her tape recorder and for what purpose it was borrowed is not credible.

2. ID.; ID.; ID.; MAKING FALSE ACCUSATIONS AND SOWING INTRIGUES CONSTITUTE ACTS UNBECOMING OF A PUBLIC SERVANT.— Making false accusations and sowing intrigues are acts unbecoming of a public servant. They run against the principles of public service envisioned by the 1987 Constitution and by the Code of Conduct and Ethical Standards

for Public Officials & Employees (Republic Act No. 6713). These acts divert the attention of public employees and the courts from their more important tasks, and result in undue wastage of government resources; they cannot be tolerated if we are to demand the highest degree of excellence and professionalism among public employees, and if we are to preserve the integrity and dignity of our courts.

3. ID.; ID.; ID.; MISCONDUCT; DEFINED; FOR ADMINISTRATIVE LIABILITY TO ATTACH, IT MUST BE ESTABLISHED THAT THE RESPONDENT WAS MOVED BY BAD FAITH, DISHONESTY, HATRED OR OTHER SIMILAR MOTIVES; PRESENT IN CASE AT BAR.— Misconduct, on the other hand, is a transgression of some definite or established rule of action; more particularly, it is unlawful behavior by the public officer and refers as well to wrongful or improper behavior under applicable provisions of the Code of Ethics. The term "gross" connotes something "out of all measure; beyond allowance; flagrant; shameful such conduct as is not be excused." For administrative liability to attach, it must be established that the respondent was moved by bad faith, dishonesty, hatred or other similar motives. Clearly, substantial evidence exists in this case to hold Taguba guilty of gross misconduct punishable by dismissal from the service even for the first offense. Not only did he disregard the terms of the Anti-Wiretapping Act within court premises where the public should feel most secure about their personal liberties. He undertook the act to secure evidence against a co-employee; he obtained and used the taped conversation as basis for a complaint against Duque who was penalized for the deposit she had accepted. We cannot accept, under these circumstances, any claimed absence of bad faith after considering the devious method Taguba employed and the purpose that it served, however lofty Taguba thought his purpose had been.

4. ID.; ID.; ID.; ID.; DISMISSAL FROM THE SERVICE, PROPER PENALTY FOR GROSS MISCONDUCT; FORFEITURE OF THE EMPLOYEE'S REMAINING RETIREMENT BENEFITS ORDERED, IN LIEU OF DISMISSAL, DUE TO THE RETIREMENT OF THE RESPONDENT.— Unfortunately, we can no longer impose the penalty of dismissal on Taguba because he has retired from the service on disability effective September 1, 2006. Additionally, we recently found

Taguba guilty of gross misconduct in another case — A.M. No. MTJ-08-1727, entitled *"Milagros Villaceran and Omar T. Miranda v. Judge Maxwel Rosete and Process Server Eugenio Taguba, etc."* — for soliciting ₱25,000.00 from the defendant in a pending case with the promise that he would work for the defendant's acquittal. In lieu of the dismissal that at that point we could no longer impose because of his previous retirement, the Court — "given the gravity of respondent Taguba's offense" — ordered the forfeiture of Taguba's disability retirement benefits. While we therefore find Taguba administratively liable in the present case, we have run out of administrative penalties to impose on him. Nothing, however, can stop us from holding and declaring him liable for the gross misconduct that he stands charged with. Since the penalty of dismissal can no longer be imposed on respondent Taguba, we can only reiterate the directive in A.M. No. MTJ-08-1727 ordering the forfeiture of his remaining retirement benefits.

5. ID.; ID.; ID.; SIMPLE MISCONDUCT; PROPER PENALTY.— For their participation in the illegal tape recording of the complainant and his client, the Court finds respondents Apolonio and Santiago guilty of simple misconduct. We so rule given the evidence that they merely followed the lead of Taguba. Under the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is a less grave offense punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Respondent Maripi A. Apolonio has previously been found guilty of simple misconduct for gambling during office hours, together with respondents Taguba and Andres, in A.M. No. P-01-1517. They were suspended for one (1) month and one (1) day. Since this is Maripi A. Apolonio's second offense, the penalty of dismissal should be imposed. We opt, however, to merely order her **SUSPENSION** from the service for one (1) year effective immediately, in light of our recognition that her present act is different in nature from her first offense; the elements of perversity and impenitence that are considered in a repetition of the same offense are not necessarily present. Thus, we accord her the benefit of the doubt. This is respondent Ana Gracia E. Santiago's first offense; thus, the

Court hereby imposes on her a lighter penalty and orders her **SUSPENSION** from the service for only six (6) months.

D E C I S I O N

BRION, *J.*:

This administrative case involves eight (8) personnel of the Municipal Trial Court in Cities (*MTCC*), Santiago City, Isabela, Branch 2, namely: Branch Clerk of Court Romeo B. Aspiras; Stenographers Maripi A. Apolonio, Andrealyn M. Andres and Ana Gracia E. Santiago; Legal Researcher Carina C. Bretania; Interpreter Ma. Anita G. Gatcheco; Clerk IV Fe L. Alvarez; and Process Server Eugenio P. Taguba (*respondents*). They were charged with Grave Misconduct and Violation of the Anti-Wire Tapping Act (Republic Act No. 4200) in two identical complaints, both dated January 20, 2003, filed by Atty. Pacifico Capuchino with the Office of the Ombudsman[1] (*Ombudsman*) and this Court.[2] The Ombudsman, in an Order[3] dated July 31, 2003, referred the complaint to the Office of the Court Administrator (*OCA*) for appropriate action, "considering that the respondents are court personnel"[4] who are under the administrative supervision of this Court.[5] It dismissed the criminal aspect of the complaint without prejudice to the outcome of the present administrative case against the respondents.

THE COMPLAINT

Atty. Capuchino alleged that he was the counsel of the accused in Criminal Case No. II-4066, entitled "*People of the Philippines v. Marirose Valencia*," for violation of *Batas Pambansa Blg*. 22, filed with the MTCC of Santiago City, Isabela, Branch 2. The accused, Marirose Valencia, was convicted of the offense

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[1] *Rollo*, p. 151.

[2] *Id.* at 1.

[3] *Id.* at 207-209.

[4] *Id.* at 208.

[5] *Maceda v. Vasquez,* G.R. No. 102781, April 22, 1993, 221 SCRA 464.

charged and was ordered to pay private complainant Reynaldo Valmonte the amount of ₱120,000.00, plus interest at the rate of 12% per annum computed from the time of the filing of the criminal case. Atty. Capuchino filed a motion for reconsideration of Valencia's conviction. Pending resolution of the motion for reconsideration, he tried to settle the case amicably with Valmonte.

On May 9, 2001, Atty. Capuchino and Valencia met with Valmonte at the MTCC. They offered Valmonte the amount of ₱120,000.00, asking him to withdraw the criminal case he filed against Valencia. Valmonte refused and demanded a higher amount. As they failed to come to a settlement by lunchtime, they agreed to schedule another meeting. Apprehensive of carrying a big amount, Valencia requested Tessie Duque (who was the only personnel left in the court at that time) to hold the money for safekeeping until their next meeting with Valmonte. Duque initially refused to receive the money, but relented when Valencia insisted; she agreed to hold the money temporarily, and issued a provisional receipt for the amount.

Meanwhile, the court denied Atty. Capuchino's motion for reconsideration and issued a Writ of Execution. To show her readiness to settle her obligation, Valencia presented the provisional receipt issued by Duque for the ₱120,000.00.

The respondents, claiming that Duque was not authorized to receive money from litigants even for safekeeping purposes, brought the matter to the attention of Judge Maxwell Rosete. Judge Rosete required Duque to comment on the respondents' report. Instead of filing the required comment, Duque filed a motion to set the case for hearing.

On September 24, 2002, Atty. Capuchino and Valencia went to the MTCC to attend the hearing on their motion for the withdrawal of the money deposited with Duque. The hearing did not materialize because Judge Rosete was absent. Atty. Capuchino went to see Aspiras to inquire about the next scheduled hearing. Instead of attending to their request, respondents Aspiras, Apolonio and Taguba casually led them to the court sala and asked them questions about the money they entrusted to Duque. Atty. Capuchino later learned that their conversations had been

tape recorded by Apolonio with the aid of the other court personnel. The tapes were then used by the respondents to report the illegal deposit to then Chief Justice Hilario G. Davide, Jr., in a letter-complaint dated October 3, 2002.[6] They asked for an immediate investigation "before it is blown out of proportion."[7] The respondents' letter-complaint was later docketed as A.M. No. P-05-1958, entitled "*Office of the Court Administrator v. Duque*."[8]

Atty. Capuchino claimed that his and his client's conversations with Aspiras, Apolonio and Taguba were recorded by Apolonio, with the assistance of the other court personnel, without his and his client's knowledge, in violation of the Anti-Wire Tapping Act. He further claimed that all the respondents conspired with each other to illegally record their conversations.

In separate 1st Indorsements,[9] all dated May 7, 2003, the OCA required the respondents to comment on the charges against them.

In a Joint Comment[10] dated June 16, 2003, respondents Bretania, Gatcheco, Santiago and Andres denied having instigated or influenced Judge Rosete to issue an Order directing Duque to comment on the allegation that she has no authority to receive money from court litigants, even for safekeeping purposes. They also denied involvement in the taping incident. Gatcheco and Andres further claimed that they did not report for work on the date the incident complained of transpired, as they were on leave. They submitted photocopies of their Daily Time Record in support of their contentions.

Respondent Alvarez, in her Comment[11] dated June 16, 2003, denied involvement in the incident. Although she intended to

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[6] *Rollo*, pp. 12-13.

[7] *Id.* at 13.

[8] 491 Phil. 128 (2005).

[9] *Rollo*, pp. 54-61.

[10] *Id.* at 67-69.

[11] *Id.* at 77-80.

keep silent about the incident, she signed the administrative complaint prepared by Taguba because "she is interested to know the truth, no more, no less."[12]

For his part, Taguba claimed that he filed a complaint against Duque because he believed that Duque's act "was improper as it is unauthorized and unlawful;" and that he was not motivated by malice in filing the complaint. Further, he argued that Atty. Capuchino has no cause to file the present complaint as the criminal case of his client had already been terminated.[13]

Aspiras and Apolonio, in their joint Comment[14] dated June 16, 2003, asserted that "the contention that the alleged tape record[ing] is inadmissible in evidence by virtue of R. A. No. 4200 cannot hold water because[:] the matters covered are clothed with public interest – the interest of the Judiciary itself to stand with unblemished integrity."[15]

Atty. Capuchino filed a Reply[16] dated July 18, 2003 to the respondents' comments, contending that violation of a law cannot be condoned, no matter how good and noble the intention of the perpetrators is. He averred that as a lawyer, it is his duty to call attention to violations of the law. He cannot see any reason why the respondents made a big fuss over the provisional receipt issued by Duque, but he can discern their sinister motives. On the respondents' allegation that he has nothing at stake or interest to file the present case, he counter-argued that the respondents were the ones who have no stake or interest in the money privately entrusted to Duque and who merely pretended that they were doing a "messianic act." He referred to respondent Taguba as a "false messiah" who has a string of cases for extortion filed with this Court. He also said that seven of the respondents came to see

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[12] *Id.* at 78.

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

[14] *Id.* at 98-100.

[15] *Id.* at 100.

[16] *Id.* at 137-139.

him at this house several times to apologize, to plead for mercy, and to ask for the withdrawal of the case against them.

On the recommendation of the OCA, the Court issued a Resolution,[17] dated January 14, 2004, ordering the redocketing of Atty. Capuchino's complaint as a regular administrative matter; and referring the case to the Executive Judge of the MTCC, Santiago City, Isabela, for investigation, report and recommendation. Hence, the present administrative case.

Judge Ruben R. Plata, (then the Executive Judge of the MTCC of Santiago City, Isabela) inhibited himself from the case on the ground that all the respondents have filed an administrative complaint against him, docketed as A.M. OCA I.P.I. No. 03-1483-MTJ, and that he filed against all the respondents a criminal case for perjury and libel with the Office of the Prosecutor of Manila.[18]

In a Resolution dated March 31, 2004, the case was instead referred to Judge Fe Albano Madrid, Executive Judge, Regional Trial Court, Santiago City, Isabela, for investigation, report and recommendation.[19]

During the scheduled hearings of the case, Atty. Capuchino could not appear as he had suffered a stroke and was under medication. All the eight (8) respondents moved to dismiss the complaint for lack of basis, and for Atty. Capuchino's failure to appear and to present evidence against them. They manifested that they have nothing more to add to their comments filed with the Court.

In her undated Report,[20] Judge Madrid found that the respondents were not guilty of misconduct, reporting that:

The investigating judge believes that Atty. Capuchino would not care to appear and substantiate his complaint. He was not a party

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[17] *Id.* at 215.

[18] *Id.* at 218.

[19] *Id.* at 241.

[20] *Id.* at 247-250.

to the taped conversation. He was not prejudiced by the letter-complaint of Eugenio Taguba against Tessie Duque nor about the taped conversation. I suppose that the complaint against the respondents is just a means to get back at them because of the expose they made regarding the ₱120,000.00. At any rate, the Investigating Judge believes that the outrage of the court employees which prompted them to bring to the attention of the Supreme Court what they believe was an illegal transaction of another court employee is definitely not a misconduct.

As the matters raised in the present administrative case were related to the letter-complaint filed by Taguba and the other respondents against Duque, the OCA recommended the consolidation of the present administrative case with A.M. No. P-05-1958 (formerly A.M. OCA I.P.I. No. 03-1718-P).[21] However, no consolidation was effected because A.M. No. P-05-1958 had already been decided on February 7, 2005.

THE OCA's REPORT & RECOMMENDATION

In an Evaluation Report dated October 12, 2005,[22] the OCA disagreed with the findings of Judge Madrid. It found that the act of respondents Taguba, Aspiras, Apolonio and Santiago of surreptitiously taping their conversations with Atty. Capuchino and Valencia, without the latter's knowledge and consent, constitutes misconduct and/or conduct unbecoming of a court employee.

The OCA also confirmed Atty. Capuchino's allegation that respondent Taguba had been charged with several administrative cases before this Court. Taguba, together with respondents Apolonio and Andres, was found guilty of gambling during office hours in A.M. No. P-01-1517, and was suspended for one (1) month and one (1) day. Taguba was also found guilty of violation of Republic Act No. 3019 and conduct unbecoming a court employee in A.M. No. P-05-1942, and was suspended for six (6) months.

The OCA recommended that:

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[21] *Id.* at 289-295.

[22] *Id.* at 300-310.

1. the criminal aspect of the case be referred back to the Ombudsman for proper disposition;
2. respondents Taguba, Apolonio and Santiago be suspended for one (1) month for misconduct;
3. respondents Gatcheco and Andres be exonerated as they were absent when the act complained of transpired;
4. the issue of Aspiras' administrative liability be declared moot and academic as he has retired from the service; and
5. the instant case against Bretania be dismissed as her participation in the act complained of could not clearly be established.

On December 14, 2005, the Court issued a Resolution: (1) exonerating respondents Gatcheco and Andres of the complaint against them, (2) declaring the complaint against Aspiras moot and academic, and (3) dismissing the complaint against Bretania.[23] Also, on the recommendation of the OCA,[24] the Court dismissed in its Resolution dated July 31, 2006,[25] the complaint against Alvarez for insufficiency of evidence. Hence, the present administrative case only relates to respondents Taguba, Apolonio and Santiago.

THE COURT'S RULING

The issue in an administrative case is not essentially about the wrong inflicted on the complainant by the respondent; the main question is whether the accused employee breached the norms and standards of service in the judiciary.[26] We resolve this case based on this perspective and not on the basis of whether respondents Taguba, Apolonio and Santiago violated the Anti-Wire Tapping Act.

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[23] *Id.* at 311.

[24] *Id.* at 338-340.

[25] *Id.* at 347.

[26] *Mutia v. Pacariem,* A.M. No. P-06-2170, July 11, 2006, 494 SCRA 448; and *Camus, Jr. v. Alegre,* A.M. No. P-06-2182, August 12, 2008, 561 SCRA 744.

Taguba denied that he was motivated by malice in bringing Valencia's deposit of funds to Judge Rosete's attention and in filing a complaint against Duque based on the taped conversation. He believed that the taping was for the good of the service; all he wanted was to ferret out the truth. He insisted that Atty. Capuchino has no cause to file the complaint against them because the criminal case of his client had already been terminated. Santiago denied any participation in the taping, insisting that she was implicated because she was the owner of the tape recorder used. It was borrowed from her by somebody whom she could no longer remember. On her part, Apolonio, together with Aspiras, maintained that the accusation against them cannot prosper because the matters covered are matters of public interest – the interest of the Judiciary itself.

The Court finds the respondents' contentions without merit. Their concerted acts – of leading Atty. Capuchino and Valencia into the court sala, engaging them in conversation regarding the money deposited with Duque, taping their conversation without Capuchino's & Valencia's knowledge, and later using the taped conversation as basis of the complaint they filed against Duque – constitute misconduct. Santiago's claim that she forgot who borrowed her tape recorder and for what purpose it was borrowed is not credible.

The Court observes that there exists animosity among the judges and employees of the court. When the present case was referred to Judge Plata for investigation, he inhibited himself on the ground that the respondents had filed a complaint against him and that he had also filed a criminal case against all of them. The filing of the complaint against Duque was instigated by Taguba. Initially signed only by Taguba, he prevailed upon the other respondents to co-sign his letter addressed to then Chief Justice Hilario G. Davide, Jr., which was later docketed as A.M. No. P-05-1958. He introduced as evidence in this complaint the tape recorded conversation. Although Duque was penalized for simple misconduct, the Court found that there "was no evidence that she was moved by evident bad faith, dishonesty or hatred"[27]

[27] *Office of the Court Administrator v. Duque, supra* note 8, at 532.

in receiving Valencia's money for safekeeping. We cannot say the same of Taguba's actions in the animosity-ridden atmosphere apparently obtaining in the MTCC of Santiago City.

Making false accusations and sowing intrigues are acts unbecoming of a public servant. They run against the principles of public service envisioned by the 1987 Constitution and by the Code of Conduct and Ethical Standards for Public Officials & Employees (Republic Act No. 6713). These acts divert the attention of public employees and the courts from their more important tasks, and result in undue wastage of government resources; they cannot be tolerated if we are to demand the highest degree of excellence and professionalism among public employees, and if we are to preserve the integrity and dignity of our courts.[28]

Misconduct, on the other hand, is a transgression of some definite or established rule of action; more particularly, it is unlawful behavior by the public officer and refers as well to wrongful or improper behavior under applicable provisions of the Code of Ethics. The term "gross" connotes something "out of all measure; beyond allowance; flagrant; shameful such conduct as is not be excused."[29] For administrative liability to attach, it must be established that the respondent was moved by bad faith, dishonesty, hatred or other similar motives.[30]

Clearly, substantial evidence exists in this case to hold Taguba guilty of gross misconduct punishable by dismissal from the service even for the first offense. Not only did he disregard the terms of the Anti-Wiretapping Act within court premises where the public should feel most secure about their personal liberties. He undertook the act to secure evidence against a co-employee; he obtained and used the taped conversation as

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[28] *Mendoza v. Buo-Rivera,* A.M. No. P-04-1784, April 28, 2004, 428 SCRA 72; and *Mutia v. Pacariem, supra* note 26.

[29] *Santos v. Arcaya-Chua,* A.M. No. RTJ-07-2093, February 13, 2009, 579 SCRA 17, 30.

[30] *Office of the Court Administrator v. Duque, supra* note 8; and *Camus v. Alegre, supra* note 26.

basis for a complaint against Duque who was penalized for the deposit she had accepted. We cannot accept, under these circumstances, any claimed absence of bad faith after considering the devious method Taguba employed and the purpose that it served, however lofty Taguba thought his purpose had been.

Unfortunately, we can no longer impose the penalty of dismissal on Taguba because he has retired from the service on disability effective September 1, 2006. Additionally, we recently found Taguba guilty of gross misconduct in another case — A.M. No. MTJ-08-1727, entitled *"Milagros Villaceran and Omar T. Miranda v. Judge Maxwel Rosete and Process Server Eugenio Taguba, etc."*[31] — for soliciting ₱25,000.00 from the defendant in a pending case with the promise that he would work for the defendant's acquittal. In lieu of the dismissal that at that point we could no longer impose because of his previous retirement, the Court — "given the gravity of respondent Taguba's offense" — ordered the forfeiture of Taguba's disability retirement benefits. While we therefore find Taguba administratively liable in the present case, we have run out of administrative penalties to impose on him. Nothing, however, can stop us from holding and declaring him liable for the gross misconduct that he stands charged with.

For their participation in the illegal tape recording of the complainant and his client, the Court finds respondents Apolonio and Santiago guilty of simple misconduct. We so rule given the evidence that they merely followed the lead of Taguba. Under the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is a less grave offense punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.[32]

Since the penalty of dismissal can no longer be imposed on respondent Taguba, we can only reiterate the directive in A.M.

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[31] Decision dated March 22, 2011.

[32] Section 52B(2).

No. MTJ-08-1727[33] ordering the forfeiture of his remaining retirement benefits.

Respondent Maripi A. Apolonio has previously been found guilty of simple misconduct for gambling during office hours, together with respondents Taguba and Andres, in A.M. No. P-01-1517.[34] They were suspended for one (1) month and one (1) day. Since this is Maripi A. Apolonio's second offense, the penalty of dismissal should be imposed. We opt, however, to merely order her **SUSPENSION** from the service for one (1) year effective immediately, in light of our recognition that her present act is different in nature from her first offense; the elements of perversity and impenitence that are considered in a repetition of the same offense are not necessarily present. Thus, we accord her the benefit of the doubt.

This is respondent Ana Gracia E. Santiago's first offense; thus, the Court hereby imposes on her a lighter penalty and orders her **SUSPENSION** from the service for only six (6) months.

WHEREFORE, the Court finds respondent Eugenio P. Taguba guilty of *GROSS MISCONDUCT*, and respondents Maripi A. Apolonio and Ana Gracia E. Santiago guilty of *SIMPLE MISCONDUCT*.

Maripi A. Apolonio is ordered *SUSPENDED* for one year effective immediately, with the warning that any similar or graver offense at any time in the future shall merit the penalty of outright dismissal.

Ana Gracia E. Santiago is hereby ordered *SUSPENDED* for six (6) months effective immediately, with the warning that any similar or graver offense at any time in the future shall merit the penalty of outright dismissal.

Let a copy of the records of OMB-L-C-03-0619-E be returned to the Office of the Ombudsman and a copy of this Decision be

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[33] Decision dated March 22, 2011.

[34] *Supra* note 26.

furnished the said Office, for appropriate action with respect to the criminal aspect of the case.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Mendoza,*[**] and *Sereno, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-09-2703. September 5, 2011]
(Formerly OCA I.P.I. No. 99-654-P)

LINA LAURIA-LIBERATO, *complainant, vs.* **NESTOR M. LELINA, Clerk of Court II, Municipal Circuit Trial Court (MCTC), Naguilian-Reina Mercedes, Isabela,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; MUST SHOW COMPETENCE, HONESTY AND PROBITY, HAVING BEEN CHARGED WITH SAFEGUARDING THE INTEGRITY OF THE COURT AND ITS PROCEEDINGS. — The Code of Conduct for Court Personnel stresses that employees of the Judiciary serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an

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[*] Designated additional Member vice Associate Justice Jose P. Perez per Raffle dated August 24, 2011.

[**] Designated additional Member vice Associate Justice Bienvenido L. Reyes per Special Order No. 1066 dated August 23, 2011.

employee than in the Judiciary. Clerks of Court, in particular, are the chief administrative officers of their respective courts. They must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings.

2. ID.; ID.; ID.; ENJOINED TO ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY IN THEIR PROFESSIONAL AND PRIVATE CONDUCT IN ORDER TO PRESERVE THE GOOD NAME AND INTEGRITY OF THE COURT OF JUSTICE; APPLIES NOT ONLY TO THE COURT EMPLOYEE'S NORM OF CONDUCT PERTAINING TO THE DISCHARGE OF HIS OFFICIAL DUTIES, BUT ALSO TO HIS PERSONAL DEALINGS, WHICH MUST BE WITHIN THE PARAMETERS OF MORALITY, PROPRIETY, AND DECENCY. — In *Rivara's Compound Homeowners' Association v. Cervantes*, We emphasized the need for circumspect and proper behavior on the part of the court employees. Government officials and employees, more specifically those employed in the Judiciary, are bound by the highest standards of propriety and decorum to maintain the people's respect and faith in the Judiciary. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. The image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work thereat. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice. This exacting standard applies not only to the court employee's norm of conduct pertaining to the discharge of his official duties, but also to his personal dealings, which must be within the parameters of morality, propriety, and decency. As Clerk of Court II, respondent's act of executing an Affidavit of Relinquishment, dated October 3, 1997, which stated that Candido Lauria, who earlier died on December 13, 1974, personally appeared before the Deputy Public Land Inspector of the Bureau of Lands in Ilagan, Isabela and relinquished his rights, in favor of respondent, as owner-claimant of Lot No. 4213 Cad-389-D, was a willful perversion of the truth that greatly prejudiced the rights and interests of the heirs of the deceased as the rightful claimants.To compound the defraudation, respondent presented the said affidavit to the Bureau of Lands in support of his application for free patent over the subject parcel of land

that eventually led to the issuance of OCT No. P-72874 in his name and, later, three other titles, also under his name. Although the execution of the document was done in his personal capacity, and not in any way related to his duties as Clerk of Court II, being a court personnel, the act of defraudation he perpetrated, which caused damage and prejudice of the heirs of the deceased, amounted to grave misconduct and clearly degraded the integrity of the Judiciary as a respectable institution. His reprehensible act should be sanctioned, and he should be purged from the Judiciary.

3. ID.; ID.; ID.; MISCONDUCT; DEFINED; RESTITUTION OF THE PROPERTY SUBJECT OF THE SUIT WILL NOT OPERATE TO EXTINGUISH ADMINISTRATIVE LIABILITY NOR WOULD IT MITIGATE THE PENALTY TO BE IMPOSED. — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Respondent's defense that he already reconveyed the subject lot to the heirs of Candido Lauria, per TCT No. 288745, did not operate as an extenuating circumstance so as to exculpate him from administrative liability, nor would it be considered a mitigating circumstance that may lower the penalty to be imposed upon him. On the contrary, it even bolstered his commission of defraudation against the heirs of the deceased. In fact, the present administrative case can proceed independently of the criminal case, and the restitution of the property subject of the case, through a Deed of Reconveyance, would not operate to extinguish his administrative liability. Besides, he was compelled to effect the return of the property to the heirs only after the RTC, in its Decision dated August 5, 2003, categorically ordered him to execute the necessary deed to reconvey the properties subject of the suit to the legal heirs of the deceased.

4. ID.; ID.; ID.; ID.; FALSIFYING AN AFFIDAVIT OF RELINQUISHMENT AND EMPLOYING UNDUE ADVANTAGE UPON A PARTY ON A PRETEXT THAT HE WOULD HELP FACILITATE THE PROCESSING OF THE TITLES CONSTITUTE THE CRIME OF ESTAFA AMOUNTING TO GRAVE MISCONDUCT AND DISHONESTY; ABSENCE OF IMPROPER MOTIVE AND

MATERIAL BENEFIT IS NOT A DEFENSE. — Moreover, respondent cannot find solace under the cloak that he was not inspired by any improper motive and that he did not obtain any material benefit. Prudence dictates that, at the outset, he should not have caused the preparation of the Affidavit of Relinquishment and should have refrained himself from getting involved in the family affairs of the complainant. He employed undue advantage upon the heirs of the deceased on the pretext that he would help facilitate the processing of the titles. He ought to know that his act, although a private transaction, constitutes the crime of estafa, which amounts to grave misconduct and dishonesty, and tarnishes the integrity and dignity of the Judiciary.

5. ID.; ID.; ID.; DISMISSAL FROM THE SERVICE PROPER PENALTY FOR GRAVE MISCONDUCT; THE COURT WILL NEVER CONDONE ANY CONDUCT THAT WOULD TEND TO DIMINISH THE FAITH OF THE PEOPLE IN THE JUSTICE SYSTEM. — The conduct and behavior of everyone connected with the Judiciary, from the presiding judge to the lowest clerk, is circumscribed with the heavy burden of responsibility. And the Court will not hesitate to impose the ultimate penalty of dismissal from the service, for it has never and will never condone any conduct that would tend to diminish the faith of the people in the justice system. For transgressing the benchmark of propriety and uprightness due to his grave misconduct, respondent's dismissal from the service becomes inevitable, pursuant to Section 52, A(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

6. ID.; ID.; ID.; ID.; RETIREMENT FROM SERVICE DOES NOT PRECLUDE THE FINDING OF ANY ADMINISTRATIVE LIABILITY TO WHICH ONE SHALL STILL BE ANSWERABLE. — However, since respondent compulsorily retired on September 28, 2010, after reaching the age of 65, the penalty of dismissal can no longer be imposed upon him. This fact, however, does not render the case moot and academic. Retirement of a Judiciary personnel from service does not preclude the finding of any administrative liability to which one shall still be answerable. In *Gallo v. Cordero*, We ruled that mere cessation from office (*i.e.*, due to compulsory retirement at the age of 70) of therein respondent judge, during the pendency of his case, does not

ipso facto divest the Court of its jurisdiction over the same nor preclude it from determining his administrative liability.

7. ID.; ID.; ID.; ID.; PENALTY OF FINE IMPOSED INSTEAD OF DISMISSAL FROM THE SERVICE IN VIEW OF THE COMPULSORY RETIREMENT OF THE RESPONDENT-EMPLOYEE. — In the present case, the RTC, Branch 16, Ilagan, Isabela, as affirmed by the CA, found respondent guilty of Estafa thru Falsification of Public Document. However, the trial court ruled that there was no evidence that, in perpetrating the crime of estafa, respondent took advantage of his position, as Clerk of Court II, in order to gain leverage over complainant and the other heirs of the deceased, as his offense was not in any way related to the discharge of his official duties. Moreover, respondent's cessation from the service (due to his compulsory retirement), coupled with his 25 years and 25 days of continuous service in the Judiciary without any previous derogatory record, warrant a penalty commensurate to the offense sought to be sanctioned. Considering that respondent ceases to be an employee of the Judiciary, the continuing tarnish on the image of the Judiciary sought to be curbed no longer exists. Hence, We find it appropriate to impose upon respondent the lesser penalty of fine in the amount of forty thousand pesos (₱40,000.00), to be deducted from the retirement benefits or privileges he may be entitled to receive from the government, with prejudice to reemployment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an administrative complaint[1] dated May 14, 1999, filed on June 8, 1999, by complainant Lina Lauria-Liberato, against respondent Nestor M. Lelina, Clerk of Court II, Municipal Circuit Trial Court of Naguilian-Reina Mercedes, Isabela, for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service, for falsifying an Affidavit of Relinquishment and by enriching himself at their expense.

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

In his sworn Affidavit[2] dated March 24, 1999, complainant alleged that she is the granddaughter of Candido Lauria, who died on December 13, 1974 and is survived by her father Dionisio Lauria and her aunt, Juana Lauria. She declared that Candido Lauria was the owner and original claimant of Lot No. 4213 Cad-389-D, containing an area of 1,642 square meters, more or less, as evidenced by Tax Declaration Real Property No. 96-20-0020379. She averred that her grandfather allowed respondent to occupy a portion of the property and build a house thereon, provided that he would pay monthly rentals. However, respondent never paid any rentals. On March 16, 1999, complainant found out from the Office of the Municipal Assessor of Naguilian, Isabela that the name of her grandfather no longer appeared as owner of the said property and, upon further verification with the Office of the Register of Deeds and Bureau of Lands of the Province of Isabela, she discovered that the subject property had been titled in the name of respondent per OCT No. P-72874. It appeared that the issuance of the title under respondent's name was based on an Affidavit of Relinquishment dated October 3, 1997, purportedly executed by Candido Lauria wherein he reliquished or waived his right to claim the subject property in favor of the respondent. According to the complainant, respondent presented the said affidavit to the Bureau of Lands in support of his application for free patent over the subject parcel of land. As a consequence of the falsification and misrepresentation, OCT No. P-72874 was issued in respondent's favor and, subsequently, the same was subdivided into three lots, to wit: TCT No. T-288607 (which was later mortgaged with the Government Service Insurance System in the amount of ₱225,000.00), TCT No. 288608, and TCT No. 288609, all of which were registered under respondent's name.

Complainant appended the Affidavit dated March 24, 1999 to her letter-complaint[3] dated May 14, 1999, alleging that on October 3, 1997, respondent prepared an Affidavit of

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

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

Relinquishment, signed by Candido Lauria, the contents of which stated that her grandfather, Candido Lauria, personally appeared before Deputy Public Land Inspector Luisa A. Paggao of the Bureau of Lands in Ilagan, Isabela, and relinquished, in favor of respondent, his rights as owner-claimant of Lot No. 4213 Cad-389-D, 1,642 square meters, (valued at ₱1,642,000.00 more or less), situated in Barangay Magsaysay, Naguilian, Isabela. Complainant disputed the validity of the Affidavit of Relinquishment as Candido Lauria could not have personally executed the same in view of the fact that he had earlier died on December 13, 1974. Further, she stated that a criminal complaint against respondent for Estafa thru Falsification of Public Documents was filed with the Office of the Provincial Prosecutor of Ilagan, Isabela. She added that while occupying the position of Clerk of Court II, respondent enriched himself at their expense, which constituted gross misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

In his Comment[4] dated January 15, 2000, respondent asserted that he co-owned 421 square meters of Lot No. 4213 Cad-389-D (registered in the name of Candido Lauria), which he acquired from the heirs of Dionisio Lauria (the deceased Dionisio being the legitimate son of the deceased Candido). Respondent averred that Juana Lauria (eldest daughter of Candido Lauria), as administratrix of the estate of Candido Lauria, requested him to cause the registration and titling of Lot No. 4213 Cad-389-D, with an agreement that he would eventually reconvey the said lot to the heirs of Candido Lauria. Thereafter, respondent engaged the services of a geodetic engineer who helped him prepare all the pertinent documents for the titling of the three parcels of land in his name. Respondent denied that there was intent on his part to appropriate the said parcels of land, and justified that the registration of the subject properties in his name was merely a way of expediting that proceedings for the application for free patent, as he and Juana Lauria previously had an agreement regarding reconveyance thereof to the heirs. In defense, he explained that he had already reconveyed the subject parcels of land, as evidenced by TCT No. 288745,

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

which was already issued in the name of the heirs of Candido Lauria. He also denied enriching himself at the expense of the litigants, and appended copies of his Sworn Statement of Assets, Liabilities and Net Worth to controvert the allegations in the complaint.

Meanwhile, complainant lodged a criminal complaint against respondent for Estafa thru Falsification of Public Documents and, accordingly, an information thereof, docketed as Criminal Case No. 3210, was filed with the Regional Trial Court (RTC), Branch 16, Ilagan, Isabela.[5]

In a Resolution[6] dated August 30, 2000, the Court deferred action on the administrative complaint pending the final determination of the criminal case against respondent.

In a Decision[7] dated August 5, 2003, in Criminal Case No. 3210,[8] the trial court found respondent guilty beyond reasonable doubt of the crime of Estafa thru Falsification of Public Document[9] under paragraph 2 (a) of Article 315, in relation to Article 172 of the Revised Penal Code, and sentenced him to suffer the indeterminate penalty of imprisonment ranging from 10 years of *prision mayor* as minimum to 14 years of *reclusion temporal* as maximum and all the accessory penalties provided by law, and ordered respondent to execute the necessary deed to reconvey the properties subject of the suit to the legal heirs of Candido Lauria. The trial court found that there was no evidence that respondent took advantage of his position as Clerk of Court II in committing the offense charged.

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[5] *Id.* at 18.

[6] *Id.* at 21.

[7] Per Presiding Judge Isaac R. De Alban, *id.* at 22-30.

[8] Entitled as *People of the Philippines v. Nestor M. Lelina, Clerk of Court [II], Municipal Trial Court, Naguilian-Reina Mercedes, Naguilian, Isabela*.

[9] Respondent was charged with the crime of Estafa thru Falsification of Public Document under Article 171 of the Revised Penal Code, but was convicted of the crime of Estafa thru Falsification of Public Document under Article 172 of the Revised Penal Code.

The decision was appealed before the Court of Appeals. In a Decision[10] dated March 31, 2009, the CA affirmed the RTC Decision dated August 5, 2003.

On petition for review on *certiorari* by respondent, the Court, in a Resolution[11] dated July 27, 2009, denied his petition for late filing, failure to timely pay the docket and other legal fees and deposit for costs, his counsel's failure to indicate his MCLE Certificate of Compliance Number or Certificate of Exemption, and for being factual in nature and, likewise, in the same resolution, denied his motion for reconsideration.

In the Memorandum dated July 27, 2009, the Office of the Court Administrator (OCA) recommended that the complaint against respondent be redocketed as a regular administrative complaint and that respondent be found guilty of dishonesty and, accordingly, be dismissed from the service. The OCA found respondent's dishonest conduct to be gravely injurious to the noble and untarnished image of the court.

We adopt the findings and recommendation of the OCA.

The Code of Conduct for Court Personnel stresses that employees of the Judiciary serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary.[12] Clerks of Court, in particular, are the chief administrative officers of their respective courts. They must show competence, honesty and probity, having

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[10] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Isaias P. Dicdican, concurring; *rollo*, pp. 63-73.

[11] Minute Resolution in G.R. No. 187837, entitled *Nestor M. Lelina v. People of the Philippines*.

[12] *Concerned Employee v. Generoso*, A.M. No. 2004-33-SC, August 24, 2005, 467 SCRA 614, 622-623.

[13] *Office of the Court Administrator v. Villanueva*, A.M. No. P-04-

been charged with safeguarding the integrity of the court and its proceedings.[13]

In *Rivara's Compound Homeowners' Association v. Cervantes*,[14] We emphasized the need for circumspect and proper behavior on the part of the court employees. Government officials and employees, more specifically those employed in the Judiciary, are bound by the highest standards of propriety and decorum to maintain the people's respect and faith in the Judiciary. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct.[15] The image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work thereat. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.[16]

This exacting standard applies not only to the court employee's norm of conduct pertaining to the discharge of his official duties, but also to his personal dealings, which must be within the parameters of morality, propriety, and decency. As Clerk of Court II, respondent's act of executing an Affidavit of Relinquishment, dated October 3, 1997, which stated that Candido Lauria, who earlier died on December 13, 1974, personally appeared before the Deputy Public Land Inspector of the Bureau of Lands in Ilagan, Isabela and relinquished his rights, in favor of respondent, as owner-claimant of Lot No. 4213 Cad-389-D, was a willful perversion of the truth that greatly prejudiced

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1819 (Formerly A.M. No. 04-6-133-MTC), March 22, 2010, 616 SCRA 257, 266, citing *Judge De la Peña v. Sia*, A.M. No. P-06-2167, June 27, 2006, 493 SCRA 8.

[14] A.M. No. 2006-18-SC, September 5, 2006, 501 SCRA 1.

[15] *Id.* at 8-9, citing *Re: Disciplinary Action Against Antonio Lamano, Jr. of the Judgment Division, Supreme Court*, 377 Phil. 364, 319 SCRA 350 (1999).

[16] *Id.* at 9, citing *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. [of the] Clerk of Court*, A.M. No. 2001-7-SC & No. 2001-8-SC, July 22, 2005, 464 SCRA 1, 15.

the rights and interests of the heirs of the deceased as the rightful claimants. To compound the defraudation, respondent presented the said affidavit to the Bureau of Lands in support of his application for free patent over the subject parcel of land that eventually led to the issuance of OCT No. P-72874 in his name and, later, three other titles, also under his name. Although the execution of the document was done in his personal capacity, and not in any way related to his duties as Clerk of Court II, being a court personnel, the act of defraudation he perpetrated, which caused damage and prejudice of the heirs of the deceased, amounted to grave misconduct and clearly degraded the integrity of the Judiciary as a respectable institution. His reprehensible act should be sanctioned, and he should be purged from the Judiciary.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[17] Respondent's defense that he already reconveyed the subject lot to the heirs of Candido Lauria, per TCT No. 288745, did not operate as an extenuating circumstance so as to exculpate him from administrative liability, nor would it be considered a mitigating circumstance that may lower the penalty to be imposed upon him. On the contrary, it even bolstered his commission of defraudation against the heirs of the deceased. In fact, the present administrative case can proceed independently of the criminal case, and the restitution of the property subject of the case, through a Deed of Reconveyance, would not operate to extinguish his administrative liability. Besides, he was compelled to effect the return of the property to the heirs only after the RTC, in its Decision dated August 5, 2003, categorically ordered him to execute the necessary deed to reconvey the properties subject of the suit to the legal heirs of the deceased.

[17] *Re Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico,* A.M. No. 2008-20-SC, March 15, 2010, 615 SCRA 186, 203-204.

Moreover, respondent cannot find solace under the cloak that he was not inspired by any improper motive and that he did not obtain any material benefit. Prudence dictates that, at the outset, he should not have caused the preparation of the Affidavit of Relinquishment and should have refrained himself from getting involved in the family affairs of the complainant. He employed undue advantage upon the heirs of the deceased on the pretext that he would help facilitate the processing of the titles. He ought to know that his act, although a private transaction, constitutes the crime of estafa, which amounts to grave misconduct and dishonesty, and tarnishes the integrity and dignity of the Judiciary.

The conduct and behavior of everyone connected with the Judiciary, from the presiding judge to the lowest clerk, is circumscribed with the heavy burden of responsibility. And the Court will not hesitate to impose the ultimate penalty of dismissal from the service, for it has never and will never condone any conduct that would tend to diminish the faith of the people in the justice system.[18] For transgressing the benchmark of propriety and uprightness due to his grave misconduct, respondent's dismissal from the service becomes inevitable, pursuant to Section 52, A(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.[19]

However, since respondent compulsorily retired on September 28, 2010, after reaching the age of 65, the penalty of dismissal can no longer be imposed upon him. This fact, however, does not render the case moot and academic. Retirement of a Judiciary personnel from service does not preclude the finding of any administrative liability to which one shall still be answerable. In *Gallo v. Cordero*,[20] We ruled that mere cessation from office (*i.e.*, due to compulsory retirement at the age of 70) of therein respondent judge, during the pendency of his case, does

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[18] *Muin v. Avestruz, Jr.*, A.M. No. P-04-1831, February 2, 2009, 578 SCRA 1, 10.

[19] Civil Service Commission (CSC) Resolution No. 99-1936, dated August 31, 1999, and implemented by CSC Memorandum Circular No. 19, series of 1999.

[20] A.M. No. MTJ-95-1035, June 21, 1995, 245 SCRA 219.

not *ipso facto* divest the Court of its jurisdiction over the same nor preclude it from determining his administrative liability. Thus:

> [T]he jurisdiction that was ours 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. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.... If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[21]

In certain cases where therein respondents were found guilty of grave misconduct, but the penalty of dismissal is no longer possible in view of their compulsory retirement, the Court nonetheless imposed the corresponding disciplinary measures and sanctions, to wit: ordered the forfeiture of all benefits that therein employee may be entitled, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of government, including government-owned and controlled corporations,[22] or imposed a fine of ₱40,000.00 to be deducted from the retirement benefits of therein judge.[23] In another case, therein Human Rights Resource Management Officer II was found guilty of misconduct and the Court meted upon her a fine in an amount equivalent to six (6) months salary to be deducted from whatever leave and retirement benefits or privileges she may be entitled thereto.[24]

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[21] *Id.* at 226, citing *Zarate v. Judge Romanillos*, 312 Phil. 679 (1995), citing *People v. Valenzuela*, 220 Phil. 385 (1985) and *Perez v. Abiera*, 159-A Phil. 575 (1975).

[22] *Re Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico, supra* note 17, at 205.

[23] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City,* A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105.

[24] *Orfila v. Arellano,* A.M. Nos. P-06-2110 and P-03-1692, February 13, 2006, 482 SCRA 280, 308.

In the present case, the RTC, Branch 16, Ilagan, Isabela, as affirmed by the CA, found respondent guilty of Estafa thru Falsification of Public Document. However, the trial court ruled that there was no evidence that, in perpetrating the crime of estafa, respondent took advantage of his position, as Clerk of Court II, in order to gain leverage over complainant and the other heirs of the deceased, as his offense was not in any way related to the discharge of his official duties. Moreover, respondent's cessation from the service (due to his compulsory retirement), coupled with his 25 years and 25 days of continuous service[25] in the Judiciary without any previous derogatory record, warrant a penalty commensurate to the offense sought to be sanctioned. Considering that respondent ceases to be an employee of the Judiciary, the continuing tarnish on the image of the Judiciary sought to be curbed no longer exists. Hence, We find it appropriate to impose upon respondent the lesser penalty of fine in the amount of forty thousand pesos (₱40,000.00), to be deducted from the retirement benefits or privileges he may be entitled to receive from the government, with prejudice to reemployment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations.

WHEREFORE, the Court finds respondent Nestor M. Lelina, Clerk of Court II of the Municipal Circuit Trial Court of Naguilian-Reina Mercedes, Isabela, who compulsorily retired on September 28, 2010, *GUILTY of GRAVE MISCONDUCT* and imposes upon him a *FINE* in the amount of FORTY THOUSAND PESOS (₱40,000.00), to be deducted from the retirement benefits he may be entitled to receive from the government, with prejudice to reemployment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Velasco, Jr.(Chairperson), Abad, Mendoza, and *Sereno,** *JJ.*, concur.

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[25] Respondent assumed office as Process Server on September 2, 1985. He was promoted to Clerk of Court II on April 8, 1997. He took a vacation leave (without pay) from March 1 to September 27, 2010 until he compulsorily retired on September 28, 2010.

* Designated additional member, per Special Order No. 1028 dated June 21, 2011.

SECOND DIVISION

[G.R. No. 156318. September 5, 2011]

SPOUSES ANSELMO[1] **and PRISCILLA BULAONG,** *petitioners, vs.* **VERONICA GONZALES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS PRESENT. — Time and again, we have stated that petitions for review on *certiorari* shall only raise questions of law, as questions of fact are not reviewable by this Court. The main issue of who has a better right over the disputed properties is not only a question of law but one that requires a thorough review of the presented evidence, in view particularly of the Bulaongs' allegation that fraud attended the annotation of Entry No. 7808 in the titles. Thus, in the usual course, we would have denied the present petition for violation of Section 1, Rule 45 of the Rules of Court x x x. This rule, however, admits of several exceptions. Questions of fact may be reviewed, among others, when the lower court makes inferences that are manifestly mistaken, and when the judgment of the CA is based on a misapprehension of facts. As will be apparent in the discussions below, these exceptional circumstances are present in the present case. A review of the evidence, therefore, is not only allowed, but is necessary for the proper resolution of the presented issues.

2. ID.; ACTIONS; THE CAUSE OF ACTION IN A COMPLAINT IS NOT THE TITLE OR DESIGNATION OF THE COMPLAINT BUT THE ALLEGATIONS IN THE BODY OF THE COMPLAINT; CAPTION IS NOT AN INDISPENSABLE PART OF THE COMPLAINT. — It has not escaped our attention that the Bulaongs appear to have erroneously filed a petition for *mandamus* for what is essentially an action to assail the validity of Veronica's certificates of title over the subject properties. This lapse, however, is not legally significant under

[1] Substituted by his heir Joel Bulaong, pursuant to the Court's January 31, 2005 Resolution.

the well-settled rule that the cause of action in a complaint is not the title or designation of the complaint, but the allegations in the body of the complaint. The designation or caption is not controlling as it is not even an indispensable part of the complaint; the allegations of the complaint control. We thus proceed to resolve the case, bearing in mind that the relief the Bulaongs sought before the lower court was to nullify Veronica's certificates of title and to order the Register of Deeds to issue new titles in their name.

3. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; REDEMPTION IS AN IMPLIED ADMISSION OF THE REGULARITY OF THE SALE AND WOULD ESTOP THE PARTY FROM LATER IMPUGNING ITS VALIDITY ON THAT GROUND. — At the outset, we observe that this is not a simple case of determining which lien came first. A perusal of the Bulaongs' submissions to the Court shows that they have consistently maintained that the levy and the corresponding execution sale in Veronica's favor are null and void. Had the Bulaongs merely exercised the right of redemption, they would have been barred from raising these issues in court, pursuant to our ruling in *Cometa v. Intermediate Appellate Court*: The respondent appellate court's emphasis on the failure of the petitioner to redeem the properties within the period required by law is misplaced because redemption, in this case, is inconsistent with the petitioner's claim of invalidity of levy and sale. **Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground.** The Bulaongs were thus justified in their refusal to redeem the properties.

4. REMEDIAL LAW; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENT; LEVY ON EXECUTION; THE ORDER OF ENTRIES IN THE PRIMARY ENTRY BOOK DETERMINES THE PRIORITY IN REGISTRATION. — The apparent discrepancy in the numbering of the Notice of Levy on Execution and the date of inscription on the certificates of title is suitably explained by Section 56 of Presidential Decree No. 1529 whose pertinent portion states: Section 56. *Primary Entry Book; fees; certified copies*. – Each Register of Deeds shall **keep a primary entry book in which**, upon payment of the entry fee, **he shall enter, in the order of their reception, all instruments including copies**

of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, **note in such book the date, hour and minute of reception of all instruments, in the order in which they were received.** They shall be regarded as registered from the time so noted, and **the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. In other words, the order of entries in the Primary Entry Book determines the priority in registration. Thus, the Register of Deeds merely complied with the law when she fixed Entry No. 7808's date of inscription as January 4, 1993, to coincide with the date when the Notice of Levy on Execution was presented and inscribed in the Primary Entry Book.

5. ID.; ID.; ID.; ID.; THE ENTRY OF THE NOTICE OF LEVY ON EXECUTION IN THE PRIMARY ENTRY BOOK, EVEN WITHOUT THE CORRESPONDING ANNOTATION ON THE CERTIFICATE OF TITLE, IS SUFFICIENT NOTICE TO ALL PERSONS THAT THE LAND IS ALREADY SUBJECT TO THE LEVY. — The late annotation of the levy on execution on the titles did not at all lessen its effectivity. Jurisprudence has already established the rule that the entry of the notice of levy on execution in the Primary Entry Book, even without the corresponding annotation on the certificate of titles, is sufficient notice to all persons that the land is already subject to the levy. As we explained in *Armed Forces and Police Mutual Benefit Association, Inc. v. Santiago*:x x x The entry of the notice of levy on attachment in the primary entry book or day book of the Registry of Deeds on September 14, 1994 is sufficient notice to all persons, including the respondent, that the land is already subject to an attachment. **The earlier registration of the notice of levy on attachment already binds the land insofar as third persons are concerned.** Consequently, when the Register of Deeds placed the Notice of Levy on Execution in the Primary Entry Book on January 4, 1993, this entry already bound third persons to the notice entered.

6. ID.; ID.; ID.; ID.; EVERY INTEREST WHICH THE JUDGMENT DEBTOR MAY HAVE IN THE PROPERTY MAY BE

SUBJECTED TO LEVY ON EXECUTION. — The levy on execution for judgment is "the act x x x by which an officer sets apart or appropriate[s,] for the purpose of satisfying the command of the writ, a part or the whole of the judgment debtor's property." Every interest which the judgment debtor may have in the property may be subjected to levy on execution. As established by the Court in *Reyes v. Grey*: The term "property" as here applied to lands comprehends every species of title, **inchoate or complete**; **legal or equitable**. This statute authorizes the sale under execution of every kind of property, and ***every interest*** in property which is, or may be, the subject of private ownership and transfer. It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or making any distinction between them. In *Reyes*, the Court set the standard to be applied in determining the kind of property that can be subject to attachment: We think the real test, as to whether or not property can be attached and sold upon execution is — **does the judgment debtor hold such a beneficial interest in such property that *he can sell* or *otherwise dispose of* it for value**? If he does, then the property is subject to execution and payment of his debts. Applying the test in *Reyes*, the Court, in *Gotauco & Co. v. Register of Deeds of Tayabas*, recognized as valid the inscription of a notice of levy on execution on the certificates of title, even though the titles were not in the name of the judgment debtor (Rafael Vilar).

7. ID.; ID.; ID.; ID.; LEVY AND EXECUTION SALE IN FAVOR OF THE JUDGMENT CREDITOR NOT VALID WHERE THE JUDGMENT DEBTOR HAS NO INTEREST IN THE SUBJECT PROPERTIES AT THE TIME OF THE LEVY; THE SPRING CANNOT RISE HIGHER THAN ITS SOURCE. — Although we recognize the validity of the annotation of the levy on the execution in the present case, the question of whether the levy itself is valid remains to be determined. To do this, Regina's interest in the subject properties at the time of the levy has to be ascertained. To recall, Veronica's notice of levy on execution is based on Regina's interest in the two properties, which she acquired *via* the Deed of Absolute Sale purportedly executed by her parents in her favor on November 5, 1991. But is this Deed of Absolute Sale a sufficient evidence of Regina's interest in the subject properties? After carefully reviewing the evidence on record, we rule in the negative. To begin with, not only were

the properties subject of the attachment not registered in Regina's name, the Deed of Absolute Sale on which Regina based her interest ***was not even annotated on these titles***. x x x. More importantly, from the records, it is clear that **the subject properties were finally registered in Regina's name, not by virtue of the 1991 Deed of Absolute Sale, but *by virtue of succession***, specifically by the "Adjudication" that Regina filed with the Register of Deeds on February 24, 1993, pursuant to Section 1, Rule 74 of the Rules of Court. x x x. These facts, taken together, lead us to doubt that Regina had any interest in the properties at the time of the levy. Thus, unlike in the previously cited cases where the debtors, although possessing merely an inchoate interest in the properties at the time of the levy, had interests that were established with reasonable certainty and could be the subject of attachment; in the present case, **the evidence on record fails to prove that Regina actually had *any* interest in the properties which could be the subject of levy.** The spring cannot rise higher than its source. Since Regina had no established interest in the subject properties at the time of the levy, Veronica's levy had nothing to attach to in the subject properties.

8. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD 1529); IF A SALE IS NOT REGISTERED, IT IS BINDING ONLY BETWEEN THE SELLER AND THE BUYER, BUT IT DOES NOT AFFECT INNOCENT THIRD PERSONS. — Even assuming that the Deed of Absolute Sale in Regina's favor was valid, we still cannot uphold the validity of the levy and execution sale in Veronica's favor. The general rule in dealing with registered land is set forth in Section 51 of P.D. No. 1529 x x x. From the standpoint of third parties, a property registered under the Torrens system remains, for all legal purposes, the property of the person in whose name it is registered, notwithstanding the execution of any deed of conveyance, unless the corresponding deed is registered. Simply put, if a sale is not registered, it is binding only between the seller and the buyer, but it does not affect innocent third persons. x x x One of the principal features of the Torrens system of registration is that all encumbrances on the land shall be shown, or at least intimated upon the certificate of title and a person dealing with the owner of the registered land is not bound to go behind the certificate and inquire into transactions, the existence of which is not there

intimated. **Since the Bulaongs had no knowledge of the unregistered sale between Regina and her parents, the Bulaongs can neither be bound by it, nor can they be prejudiced by its consequences.** This is but the logical corollary to the rule set forth in Section 51 of P.D. No. 1529, in keeping with the basic legal maxim that what cannot be done directly cannot be done indirectly.

9. REMEDIAL LAW; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENT; LEVY ON EXECUTION; A SALE OF ADDITIONAL LAND OR PERSONAL PROPERTY OF THE JUDGMENT DEBTOR AFTER ENOUGH HAS BEEN SOLD TO SATISFY THE JUDGMENT IS UNAUTHORIZED. — We also find that the execution sale in favor of Veronica is invalid because Regina's interest in both lots was sold together, in violation of Sections 15 and 21, Rule 39 of the old Rules of Court. x x x Where the property to be sold consists of distinct lots, tracts or parcels, or is susceptible of division without injury, it should be offered for sale in parcels and not *en masse*, for the reason that a sale in that manner will generally realize the best price, and will not result in taking from the debtor any more property than is necessary to satisfy the judgment. It will also enable the defendant to redeem any one or more of the parcels without being compelled to redeem all the land sold. A sale of additional land or personal property after enough has been sold to satisfy the judgment is unauthorized. While the general policy of the law is to sustain execution sales, the sale may be set aside where there is a resulting injury based on fraud, mistake and irregularity. Where the properties were sold together when the sale of less than the whole would have been sufficient to satisfy the judgment debt, the sale may be set aside.

10. ID.; ID.; ID.; ID.; THE SALE OF BOTH PARCELS OF LAND, WHEN THE SALE OF JUST ONE OF THE LOTS IS SUFFICIENT TO SATISFY THE JUDGMENT DEBT, RENDERS THE EXECUTION SALE DEFECTIVE AND IS A SUFFICIENT GROUND TO SET THE SALE ASIDE. — [W]e can logically assume that the sale of just one of the lots would have been sufficient to satisfy the judgment debt. Yet no explanation was provided as to why the sheriff sold both parcels of land at the execution sale for the paltry sum of ₱640,354.14. This act undoubtedly resulted in great prejudice

to the Bulaongs. To our minds, this renders the execution sale defective, and provides sufficient ground for us to set the sale aside. For the foregoing reasons, we rule and so hold that the levy and the corresponding execution sale in Veronica's favor are invalid, and must be set aside. Veronica, however, is not without recourse, as she may still seek to enforce the judgment debt against Regina.

APPEARANCES OF COUNSEL

Alampay Gatchalian Mawis & Alampay for petitioners.
Venancio C. Reyes, Jr. for respondent.

D E C I S I O N

BRION, *J.*:

Petitioners Anselmo Bulaong and Priscilla Bulaong – collectively referred to as the *Bulaongs* – seek, through their petition for review on *certiorari*, the reversal of the decision[2] of the Court of Appeals (*CA*) dated July 31, 2002 in CA-G.R. SP No. 55423 and the subsequent resolution of November 27, 2002[3] reiterating this decision. These CA rulings reversed and set aside the decision[4] of the Regional Trial Court (*RTC*) of Malolos, Bulacan, Branch 12, that ordered the cancellation of Transfer Certificate of Title (*TCT*) No. T-62002 and TCT No. T-62003.

FACTUAL ANTECEDENTS

This case traces its roots to the conflicting claims of two sets of parties over two parcels of land. The first parcel of land, with an area of 237 square meters and covered by TCT No. T-249639,[5]

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[2] Penned by Associate Justice Conchita Carpio Morales (a former member of this Court), and concurred in by Associate Justices Martin S. Villarama, Jr. and Mariano C. del Castillo, who are Members of this Court. *Rollo*, pp. 53-61.

[3] *Id.* at 63-64.

[4] *Id.* at 81-87.

[5] *Id.* at 81.

was originally registered in the name of Fortunato E. Limpo, married to Bertha Limpo.[6] The other parcel of land, with an area of 86 square meters and covered by TCT No. T-249641,[7] was originally registered in the names of Pacifica E. Limpo, married to Nicanor C. Sincionco, and Fortunato E. Limpo, married to Bertha Limpo.[8]

These parcels of land were mortgaged by the daughter of Fortunato and Bertha Limpo, Regina Christi Limpo, upon the authority of her father,[9] to the Bulaongs, to secure a loan in the amount of ₱4,300,000.00. The mortgage was evidenced by a Deed of Mortgage dated January 13, 1993.[10]

The Bulaongs alleged that before they executed the mortgage, Regina gave them the *owner's duplicates of title* of the two properties. In early January 1993 (the exact date is unknown but prior to the execution of the mortgage), Anselmo Bulaong, together with his counsel, Atty. Roberto Dionisio, allegedly went to the Office of the Register of Deeds of Bulacan to check the titles of the properties to be mortgaged. **According to the Bulaongs, the Register of Deeds, Atty. Elenita Corpus, assured them that TCT Nos. T-249639 and T-249641 were completely clear of any liens or encumbrances from any party**. Relying on this assurance, Anselmo Bulaong agreed to the execution of the mortgage over the two properties.[11]

After the execution of the mortgage, the Bulaongs once again went to the Office of the Register of Deeds of Bulacan to register and annotate the mortgage on the titles. They learned then that the Register of Deed's copies of the two titles were among the records that were burned in the fire that destroyed the entire

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[6] *Id.* at 185.

[7] *Id.* at 81.

[8] *Id.* at 186.

[9] *Id.* at 185.

[10] *Id.* at 81.

[11] *Id.* at 186-187.

office of the Register of Deeds of Bulacan on March 7, 1987. Atty. Elenita Corpus convinced them to cause the reconstitution of the originals of the titles, and further assured them that the mortgage over the properties would be protected since a copy of the Deed of Mortgage had already been given to her office for annotation.[12]

On February 4, 1993, the newly reconstituted titles were issued – TCT No. RT-29488 replaced TCT No. T-249639, and TCT No. RT-22489 replaced TCT No. T-249641, still in the names of Fortunato Limpo, and of Pacifica Limpo and Fortunato Limpo, respectively.

Thereafter, on February 24, 1993, new titles were again issued upon the *extrajudicial settlement of the estate of Regina's parents*. Thus, TCT No. RT-29488 was cancelled and TCT No. T-30395 was issued in its place, with Regina replacing her parents as the registered owner; similarly, TCT No. RT-22489 was cancelled and TCT No. T-30396 was issued in the names of Pacifica Limpo and Regina Limpo, as her parents' heir.[13]

To the Bulaongs' astonishment, the new titles in Regina's name now contained the following entries:

TCT No. T-30395

Entry No. 5306; Kind: Condition: The property herein described is subject to the prov. of Sec. 4, rule 74 of the rules of court. date of instrument: 1-13-93; date of inscription: 2-24-93 at 10:42 a.m.

(SGD.) ELENITA E. CORPUS
Register of Deeds

Entry No. 5484; Kind: Mortgage: Exec. In favor of: Sps. Anselmo Bulaong & Priscilla Bulaong; Condition: Covering the parcel of land herein described, for the sum of ₱4,300,000.00 subject to all the conditions stipulated in the deed of mortgage on file in this office. Doc. No. 428, Page 86, Book XXX, S. of 1993, N.P. – Roberto Dionisio of Mal. Bul. Date of Instrument: 1-13-93; date of inscription – 3-1-93 at 9:20 a.m.

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[12] *Id.* at 187.

[13] *Id.* at 188.

(SGD.) ELENITA E. CORPUS
Register of Deeds

/5306

(NOTE: Proceed to Entry no. 5484)

Entry No. 7808: Kind: NOTICE OF LEVY ON EXECUTION: Conditions: Notice is hereby given that by virtue of the Writ of Execution, issued in Crim. Cases Nos. 9638 to 9646-M, entitled "*People of the Philippines v. Reggie Christi Schaetchen Limpo and Maria Lourdes (Bong) Diaz y Gamir, et al.*, Accused" by the Regional Trial Court, Third Jud. Region, Branch 12, Malolos, Bulacan, under date of Dec. 29, 1992, and at the instance of the private complainant Veronica R. Gonzales, thru counsel, levy on execution is hereby made upon all the rights, shares, interests and participations of accused Reggie Christi Schaetchen[14] over the real properties described in T-249641 and T-249639, **by virtue of Deeds of Absolute Sale executed by former registered owners in favor of Reggie Christi Schaetchen dated November 5, 1991**, together with all the improvements existing thereon, was levied on execution preparatory to the sale of the same without prejudice to third persons having better right thereof and to any valid lien and encumbrances. Date of instrument – Jan. 4, 1993; Date of inscription – Jan. 4, 1993 at 11:50 a.m.

(SGD.) ELENITA E. CORPUS
Register of Deeds/negm[15] (emphasis ours)

TCT No. T-30396

Entry No. 5306; Kind: Condition: One-half (1/2) of the property herein described is subject to the prov. of Sec. 4, rule 74 of the rules of court. date of instrument: 1-13-93; date of inscription: 2-24-93 at 10:42 a.m.

(SGD.) ELENITA E. CORPUS
Register of Deeds

Entry No. 5484; Kind: Mortgage: Exec. In favor of: Sps. Anselmo Bulaong & Priscilla Bulaong; Condition: Covering the parcel of land herein described, for the sum of ₱4,300,000.00 subject to all the conditions stipulated in the deed of mortgage on file in this office.

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[14] Also known as Regina Limpo.

[15] *Rollo*, pp. 188-190.

Doc. No. 428, Page 86, Book XXX, S. of 1993, N.P. – Roberto Dionisio of Mal. Bul. Date of Instrument: 1-13-93; date of inscription – 3-1-93 at 9:20 a.m.

(SGD.) ELENITA E. CORPUS
Register of Deeds

/5306
(NOTE: Proceed to Entry No. 5484)

Entry No. 7808: Kind: NOTICE OF LEVY ON EXECUTION: Conditions: Notice is hereby given that by virtue of the Writ of Execution, issued in Crim. Cases Nos. 9638 to 9646-M, entitled "People of the Philippines v. Reggie Christi Schaetchen Limpo and Maria Lourdes (Bong) Diaz y Gamir, et al., Accused" by the Regional Trial Court, Third Jud. Region, Branch 12, Malolos, Bulacan, under date of Dec. 29, 1992, and at the instance of the private complainant Veronica R. Gonzales, thru counsel, levy on execution is hereby made upon all the rights, shares, interests and participations of accused Reggie Christi Schaetchen over the real properties described in T-249641 and T-249639, **by virtue of Deeds of Absolute Sale executed by former registered owners in favor of Reggie Christi Schaetchen dated Nov. 5, 1991,** together with all the improvements existing thereon, was levied on execution preparatory to the sale of the same without prejudice to third persons having better right thereof and to any valid lien and encumbrances. Date of instrument – Jan. 4, 1993; Date of inscription – Jan. 4, 1993 at 11:50 a.m.

(SGD.) ELENITA E. CORPUS
Register of Deeds/negm[16] (emphasis ours)

It appears that a certain Veronica Gonzales had filed a criminal case for estafa against Regina with the RTC of Bulacan, Branch 12.[17] On October 28, 1991, the RTC rendered a decision acquitting Regina, but at the same time ordering her to pay Veronica actual damages in the total amount of ₱275,000.00.[18] By virtue of a

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

[17] Criminal Case Nos. 9638 to 9653-M; *id.* at 226.

[18] The dispositive portion of the decision stated:

WHEREFORE, the prosecution having failed to prove the guilt of any of the three (3) accused beyond reasonable doubt, they are hereby ACQUITTED and these cases against them DISMISSED. However, it appearing from the

writ of execution issued on December 29, 1992, the above-quoted notice of levy was recorded in the Primary Entry Book of the Registry of Bulacan on January 4, 1993. However, this was not annotated on the titles themselves because *at the time of the levy, the properties had not yet been transferred to Regina, but were still registered in the name of her parents.*[19]

Based on the annotation referring to the notice of levy, the subject of the levy was Regina's interest in the properties which, in turn, was anchored on a Deed of Absolute Sale allegedly executed by her parents on November 5, 1991 to transfer their interest in both properties to her. Notably, ***Regina never registered this sale with the Register of Deeds.***

To satisfy Regina's judgment debt, the two lots were sold at public auction on June 8, 1993 to Veronica, the only bidder, for ₱640,354.14.[20] The Certificate of Sale was annotated on the titles on June 8, 1993 as Entry No. 2075. Upon the lapse of the one year redemption period on June 20, 1994, Veronica's titles over the properties were consolidated. A final deed of sale was issued in Veronica's name and annotated as Entry No. 40425 on TCT Nos. T-30395 and T-30396 on June 24, 1994.[21]

On the other hand, the Bulaongs also had the mortgage extrajudicially foreclosed, with the sheriff conducting the auction sale on August 22, 1994. The Bulaongs were the highest bidders, buying the properties for the sum of ₱4,300,000.00. They also paid the corresponding capital gains tax of ₱215,000.00, plus

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facts and the law that both accused Reggie Christi Schaetchen Limpo and Maria Lourdes (Bong) Gamir Diaz are civilly liable for the amounts of their checks representing their due obligation to complainant Veronica R. Gonzales for the jewelry items they obtained from her still unpaid, judgment is hereby rendered ordering them to pay jointly and severally to said complainant the total amount of ₱275,000.00 as actual damages, plus interests at the legal rate computed from the date of first demand or on November 19, 1985, until fully paid and satisfied. (*Id.* at 82.)

[19] *Ibid.*

[20] We presume that this amount includes the ₱275,000.00 judgment debt, as well as the interest at the legal rate.

[21] *Rollo*, p. 83.

₱64,500.00 for the documentary stamp tax, which were required before the titles to the lots could be transferred in their names. The Certificate of Sale in their favor was inscribed on August 23, 1994 on TCT No. T-30395 and TCT No. T-30396 as Entry No. 46739.[22]

Veronica thereafter filed a petition for the surrender to the Register of Deeds of the owner's copies of TCT Nos. T-30395 and T-30396 with the RTC of Malolos, docketed as LRC Case No. P-292. On December 16, 1994, the RTC granted the petition and ordered Regina to surrender her owner's copies of the titles; should Regina fail to comply, the RTC ordered the Register of Deeds to cancel these titles and issue new ones in Veronica's name. Complying with this order, the Register of Deeds cancelled TCT Nos. T-30395 and T-30396, and issued TCT No. T-62002 in Veronica's name, and TCT No. T-62003 in the name of Veronica and Pacifica Limpo. **These new titles were "clean" and did not contain any annotations, liens or encumbrances**.

The Bulaongs thus filed a petition for *mandamus* with the RTC of Bulacan against Ramon Sampana, the incumbent Register of Deeds of Bulacan, and Veronica, praying that the court order Sampana to cancel TCT Nos. T-62002 and T-62003, and issue new titles in their names; and order the respondents therein to pay them moral and exemplary damages, and attorney's fees.

On July 30, 1999, the RTC ruled in favor of the Bulaongs. According to the RTC, allowing Veronica to levy on the properties worth at least ₱5,000,000.00 for a judgment of ₱275,000.00 would result in gross unjust enrichment. The RTC thus ordered the Register of Deeds of Bulacan to issue new titles in the name of the Bulaongs, but only after the Bulaongs had reimbursed the amount of ₱275,000.00 to Veronica, with interest. The RTC also ordered Veronica to pay the Bulaongs ₱50,000.00 as attorney's fees. The dispositive portion of the RTC decision reads:

WHEREFORE, conformably with all the foregoing, judgment is hereby rendered:

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[22] *Ibid.*

1. – Annulling and cancelling Transfer Certificates of Title Nos. T-62002 in the name of defendant Veronica Gonzales, and T-62003 in the name of defendant Veronica Gonzales and Pacifica E. Limpo married to Nicanor C. Sincioco;

2. – Ordering the *Ex-Officio* Sheriff of Bulacan to execute a final deed of sale in favor of petitioner spouses Anselmo Bulaong and Pr[i]scilla Bulaong on the basis of the registered Certificate of Sale executed by said court officer on August 23, 1994, in favor of said spouses-mortgagee, without the owner-mortgagors exercising the right of redemption since then;

3. – Ordering the Register of Deeds of Bulacan to issue new titles, in place of Transfer Certificate of Title Nos. T-62002 and T-62003, this time in the name of petitioner spouses Anselmo Bulaong and Pr[is]cilla Bulaong, as soon as the aforesaid final deed of sale in their favor is executed by the *Ex-Officio* Sheriff of Bulacan and only after said spouses shall have paid and/or reimbursed Veronica Gonzales' lien as judgment creditor in the amount of ₱275,000.00, plus interests at the legal rate computed from November 19, 1995, until fully paid and satisfied;

4. – Order[ing] herein defendants Veronica R. Gonzales and the Register of Deeds of Bulacan upon notice of this judgment, not to effect any transfer, encumbrance or any disposition whatsoever of the parcels of land covered by Transfer Certificates of Title Nos. 62002 and T-62003, or any part thereof, right or interest therein, either by sale or any form of conveyance, lien or encumbrance; and

5. – Ordering only defendant Veronica R. Gonzales to pay herein petitioners ₱50,000.00 as just and equitable attorney's fees, and the costs of suit, defendant Ramon C. Sampana as the Register of Deeds of Bulacan having merely performed his ministerial duty of following the court order of issuing titles to defendant Gonzales.

No pronouncement as to moral and exemplary damages alleged in the petition but not even testified to by petitioners at the trial.[23]

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[23] *Id.* at 86-87.

Both parties appealed to the CA, with the case docketed as CA-G.R. SP No. 55423.

THE COURT OF APPEALS DECISION

In its July 31, 2002 decision, the CA upheld the validity of the Notice of Levy on Execution, noting that it created a lien in favor of the judgment creditor over the property. According to the CA, when the Bulaongs received the owners' copies of TCT Nos. T-30395 and T-30396, the Notice of Levy was already annotated on the titles and, thus, should have put them on guard. As mortgagees of the lots, the Bulaongs had the option to redeem the properties within the redemption period provided by law. Since they failed to avail of this remedy, the consolidation of titles in Veronica's name was proper.

THE PETITION

The Bulaongs filed the present petition, raising the following issues:

a) Whether Entry No. 7808 is valid;

b) Whether Veronica has a superior right over the properties; and

c) Assuming the notice of levy earlier annotated in favor of Veronica to be valid, whether there was a valid foreclosure sale.

THE COURT'S RULING

We GRANT the petition.

Procedural issues

Time and again, we have stated that petitions for review on *certiorari* shall only raise questions of law, as questions of fact are not reviewable by this Court. The main issue of who has a better right over the disputed properties is not only a question of law but one that requires a thorough review of the presented evidence, in view particularly of the Bulaongs' allegation that fraud attended the annotation of Entry No. 7808 in the titles. Thus, in the usual course, we would have denied the present

petition for violation of Section 1, Rule 45 of the Rules of Court, which provides:

> **Section 1.** *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (emphasis ours)

This rule, however, admits of several exceptions. Questions of fact may be reviewed, among others, when the lower court makes inferences that are manifestly mistaken, and when the judgment of the CA is based on a misapprehension of facts.[24] As will be apparent in the discussions below, these exceptional circumstances are present in the present case. A review of the evidence, therefore, is not only allowed, but is necessary for the proper resolution of the presented issues.

It has not escaped our attention that the Bulaongs appear to have erroneously filed a petition for *mandamus* for what is essentially an action to assail the validity of Veronica's certificates of title over the subject properties. This lapse, however, is not legally significant under the well-settled rule that the cause of action in a complaint is not the title or designation of the complaint, but the allegations in the body of the complaint. The designation or caption is not controlling as it is not even an indispensable part of the complaint; the allegations of the complaint control.[25] We thus proceed to resolve the case, bearing in mind that the relief the Bulaongs sought before the lower court was to nullify Veronica's certificates of title and to order the Register of Deeds to issue new titles in their name.

Redemption not the proper remedy

The CA faulted the Bulaongs for not redeeming the properties from Veronica when they had the option of doing so. For failing

[24] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249.

[25] See *Sumulong v. Court of Appeals*¸ G.R. No. 108817, May 10, 1994, 232 SCRA 372.

to exercise this right, the CA concluded that the consolidation of the titles to the lots in Veronica's name thus became a matter of course.

We disagree.

At the outset, we observe that this is not a simple case of determining which lien came first. A perusal of the Bulaongs' submissions to the Court shows that they have consistently maintained that the levy and the corresponding execution sale in Veronica's favor are null and void. Had the Bulaongs merely exercised the right of redemption, they would have been barred from raising these issues in court, pursuant to our ruling in *Cometa v. Intermediate Appellate Court*:[26]

> The respondent appellate court's emphasis on the failure of the petitioner to redeem the properties within the period required by law is misplaced because redemption, in this case, is inconsistent with the petitioner's claim of invalidity of levy and sale. **Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground.**[27](emphasis ours)

The Bulaongs were thus justified in their refusal to redeem the properties.

Annotation is valid

The Bulaongs assail the validity of Entry No. 7808 (relating to the Notice of Levy on Execution in Veronica's favor) on the two titles, asserting that it is null and void for being a fraudulent entry. In support of this contention, they note the following suspicious circumstances: (a) although Entry No. 7808 has a higher number and appears after Entry No. 5484 (corresponding to the Bulaongs' mortgage) on the titles, Entry No. 7808 appeared in an earlier volume of the Book of Entries; and (b) although the Notice of Levy on Execution was purportedly presented to the Registry of Bulacan on January 4, 1993, or prior to the

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[26] 235 Phil. 569 (1987).

[27] *Id.* at 574, citing *Castillo v. Nagtalon*, No. L-17079, January 29, 1962, 4 SCRA 48.

date when the Bulaongs' deed of mortgage was presented on January 13, 1993, the Notice of Levy on Execution, Entry No. 7808, was numbered and placed *after* the mortgage, Entry No. 5484, on the titles.

We agree that these circumstances render the Notice of Levy on Execution, annotated on the titles, highly suspicious. These circumstances, however, can be sufficiently explained when the records are examined.

The records show that on January 4, 1993, Veronica went to the Registry of Bulacan with the Notice of Levy on Execution, requesting that the notice be registered. While the Register of Deeds placed the Notice of Levy on Execution in the Primary Entry Book, she did not immediately make a registration when a question arose regarding the registrability of the notice; the question necessitated the submission of a *consulta* to the Land Registration Authority (*LRA*) on January 25, 1993.[28]

The LRA Administrator responded to the *consulta* only on February 10, 1993.[29] Thus, the Notice of Levy on Execution was not immediately annotated on the newly reconstituted titles, which were issued on February 4, 1993. It was only when new titles were again issued to reflect the extrajudicial settlement of the estate of Regina's parents on February 24, 1993 that the Notice of Levy on Execution appeared on the titles as Entry No. 7808.

The apparent discrepancy in the numbering of the Notice of Levy on Execution and the date of inscription on the certificates of title is suitably explained by Section 56 of Presidential Decree No. 1529 whose pertinent portion states:

Section 56. *Primary Entry Book; fees; certified copies*. – Each Register of Deeds shall **keep a primary entry book in which**, upon payment of the entry fee, **he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him** relating to registered land. He shall, as a preliminary process in registration, **note in such book the date,**

[28] *Rollo*, p. 82.

[29] *Ibid*.

hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and **the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. [emphases ours]

In other words, the order of entries in the Primary Entry Book determines the priority in registration. Thus, the Register of Deeds merely complied with the law when she fixed Entry No. 7808's date of inscription as January 4, 1993, to coincide with the date when the Notice of Levy on Execution was presented and inscribed in the Primary Entry Book.

The late annotation of the levy on execution on the titles did not at all lessen its effectivity. Jurisprudence has already established the rule that the entry of the notice of levy on execution in the Primary Entry Book, even without the corresponding annotation on the certificate of titles, is sufficient notice to all persons that the land is already subject to the levy.[30] As we explained in *Armed Forces and Police Mutual Benefit Association, Inc. v. Santiago*:[31]

The notice of levy on attachment in favor of petitioner may be annotated on TCT No. PT-94912. *Levin v. Bass* (91 Phil. 420 [1952]; see also *Dr. Caviles, Jr. v. Bautista*, 377 Phil. 25; 319 SCRA 24 [1999]; *Garcia v. Court of Appeals*, 184 Phil. 358; 95 SCRA 380 [19890]) provided the distinction between voluntary registration and involuntary registration. In ***voluntary registration***, such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within fifteen (15) days, entry in the day book of the deed of sale does not operate to convey and affect the land sold. In ***involuntary registration***, such as an attachment, levy upon execution,

[30] See *Villasor v. Camon*, 89 Phil. 404 (1951); *Levin v. Bass, et al.*, 91 Phil. 420 (1952); *Garcia v. Court of Appeals*, 184 Phil. 358 (1980); *Dr. Caviles, Jr. v. Bautista*, 377 Phil. 25 (1999); and *Autocorp Group and Autographics, Inc. v. Court of Appeals*, 481 Phil. 298 (2004).

[31] G.R. No. 147559, June 27, 2008, 556 SCRA 46.

lis pendens and the like, **entry thereof in the day book is a sufficient notice to all persons of such adverse claim.**

The entry of the notice of levy on attachment in the primary entry book or day book of the Registry of Deeds on September 14, 1994 is sufficient notice to all persons, including the respondent, that the land is already subject to an attachment. **The earlier registration of the notice of levy on attachment already binds the land insofar as third persons are concerned.**[32] (emphases ours)

Consequently, when the Register of Deeds placed the Notice of Levy on Execution in the Primary Entry Book on January 4, 1993, this entry already bound third persons to the notice entered.

Validity of the Levy

i. Regina's interest in the properties is not established

The levy on execution for judgment is "the act x x x by which an officer sets apart or appropriate[s,] for the purpose of satisfying the command of the writ, a part or the whole of the judgment debtor's property."[33] Every interest which the judgment debtor may have in the property may be subjected to levy on execution.[34] As established by the Court in *Reyes v. Grey*:[35]

The term "property" as here applied to lands comprehends every species of title, **inchoate or complete**; **legal or equitable**. This statute authorizes the sale under execution of every kind of property, and ***every interest*** in property which is, or may be, the subject of private ownership and transfer. It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or making any distinction between them. [emphases ours]

In *Reyes*, the Court set the standard to be applied in determining the kind of property that can be subject to attachment:

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[32] *Id.* at 54-55.

[33] Vicente J. Francisco, *The Revised Rules of Court in the Philippines, Civil Procedure*, Volume II, p. 701, citing *Llenares v. Valdeavella and Zoreta*, 46 Phil. 358 (1924).

[34] *Levy Hermanos, Inc. v. Ramirez and Casimiro*, 60 Phil. 978 (1934).

[35] 21 Phil. 73, 75 (1911).

We think the real test, as to whether or not property can be attached and sold upon execution is — **does the judgment debtor hold such a beneficial interest in such property that *he can sell* or *otherwise dispose of* it for value**? If he does, then the property is subject to execution and payment of his debts.[36] (emphasis and underscoring ours)

Applying the test in *Reyes*, the Court, in *Gotauco & Co. v. Register of Deeds of Tayabas*,[37] recognized as valid the inscription of a notice of levy on execution on the certificates of title, even though the titles were not in the name of the judgment debtor (Rafael Vilar). According to the Court, while the certificates of title were still registered in the name of Florentino Vilar, since Rafael Vilar presented a copy of a petition filed with the lower court, from which it could be inferred that Florentino Vilar was dead and Rafael Vilar was one of his heirs, Rafael had an interest in Florentino's property that could properly be the subject of attachment, **even if his participation in Florentino's property was *indeterminable* before the final liquidation of the estate.**

Similarly, in *Pacific Commercial Co. v. Geaga*,[38] the Court held that although the Register of Deeds may properly reject an attachment where it appears that the titles involved are not registered in the name of the defendants (debtors), that rule yields to a case where there is evidence submitted to indicate that the defendants have present or ***future interests*** in the property covered by said titles, regardless of whether they still stand in the names of other persons. The fact that the present interests of the defendants are still indeterminate, and even though there was no judicial declaration of heirship yet, is of no consequence for the purpose of registering the attachment in question. This is the case since **what is being attached and what may be later sold at public auction in pursuance of the attachment cannot be anything more than whatever rights, titles, interests and participations which the defendants may**

[36] *Id.* at 76.

[37] 59 Phil. 756 (1934).

[38] 69 Phil. 64. (1939), cited in Narciso Peña, *Registration of Land Titles and Deeds*, 1994 ed., p. 604.

or might have in the property so attached. In other words, if they had actually nothing in the property, then nothing is affected and the property will remain intact.[39] This rule is expressed in Section 35, Rule 39 of the old Rules of Civil Procedure, which provides:

> Upon the execution and delivery of said deed [of conveyance and possession], the purchaser, or redemptioner, or his assignee, shall be substituted to and **acquire all the right, title, interest and claim of the judgment debtor to the property as of the *time of the levy*[.]** [emphases ours]

Although we recognize the validity of the annotation of the levy on the execution in the present case, the question of whether the levy itself is valid remains to be determined. To do this, Regina's interest in the subject properties at the time of the levy has to be ascertained. To recall, Veronica's notice of levy on execution is based on Regina's interest in the two properties, which she acquired *via* the Deed of Absolute Sale purportedly executed by her parents in her favor on November 5, 1991. But is this Deed of Absolute Sale a sufficient evidence of Regina's interest in the subject properties?

After carefully reviewing the evidence on record, we rule in the negative.

To begin with, not only were the properties subject of the attachment not registered in Regina's name, the Deed of Absolute Sale on which Regina based her interest ***was not even annotated on these titles***. While Regina purportedly purchased her parents' rights to the subject properties in 1991, she never asserted her rights over these properties by presenting the Deed of Absolute Sale to the Register of Deeds for registration and annotation on the titles. As a matter of fact, it was Veronica, and not Regina, who presented the Deed of Absolute Sale to the Register of Deeds.

More importantly, from the records, it is clear that **the subject properties were finally registered in Regina's name, not by**

[39] *Narciso Peña*, *supra*, citing LRC Consulta No. 65, Register of Deeds of Albay, pet., July 9, 1555.

virtue of the 1991 Deed of Absolute Sale, but *by virtue of succession*, specifically by the "Adjudication" that Regina filed with the Register of Deeds on February 24, 1993,[40] pursuant to Section 1, Rule 74 of the Rules of Court.[41] The procedure by which the properties were registered in Regina's name suggests that when Regina's parents died, the subject lots still formed part of Regina's parents' estate, and were not, as Veronica claims, sold to Regina in 1991, thereby casting doubt to the validity of the Deed of Absolute Sale. As the Bulaongs reason in their memorandum, if the subject properties had already been sold to Regina as early as 1991, why would they still be considered a part of her parents' estate in 1993?[42]

Another point to consider is that Regina dealt with the Bulaongs as her father's representative when they were negotiating the mortgage over the properties.[43]If she had already acquired her parents' interest in these properties in 1991, she would not have needed any authority from her father to execute the mortgage with the Bulaongs; she would have done so in her own capacity.

These facts, taken together, lead us to doubt that Regina had any interest in the properties at the time of the levy. Thus, unlike in the previously cited cases where the debtors, although

[40] *Rollo*, p. 206.

[41] Section 1. *Extrajudicial settlement by agreement between heirs.* – xxx If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under Section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

[42] *Rollo*, p. 206.

[43] *Supra* note 9.

possessing merely an inchoate interest in the properties at the time of the levy, had interests that were established with reasonable certainty and could be the subject of attachment; in the present case, **the evidence on record fails to prove that Regina actually had *any* interest in the properties which could be the subject of levy.**

The spring cannot rise higher than its source.[44] Since Regina had no established interest in the subject properties at the time of the levy, Veronica's levy had nothing to attach to in the subject properties.

ii. Unregistered sale of land cannot bind third parties

Even assuming that the Deed of Absolute Sale in Regina's favor was valid, we still cannot uphold the validity of the levy and execution sale in Veronica's favor.

The general rule in dealing with registered land is set forth in Section 51 of P.D. No. 1529:

> Section 51. *Conveyance and other dealings by registered owner.* – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But **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**, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.
>
> **The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned**, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. [emphases ours]

From the standpoint of third parties, a property registered under the Torrens system remains, for all legal purposes, the

[44] *Republic of the Phils. v. Hon. Mamindiara P. Mangotara, etc., et al.*, G.R. Nos. 170375, 170505, 173355-56, 173401, 173563-64, 178779, and 178894, October 13, 2010, citing *Sanchez v. Quinio*, 502 Phil. 40, 49 (2005).

property of the person in whose name it is registered, notwithstanding the execution of any deed of conveyance, unless the corresponding deed is registered.[45] Simply put, if a sale is not registered, it is binding only between the seller and the buyer, but it does not affect innocent third persons.

Undoubtedly, Veronica's claim on the properties is rooted in the unregistered Deed of Absolute Sale between Regina and her parents. The Bulaongs do not appear to have had any knowledge that this sale ever took place. To recall, Regina gave the Bulaongs the owner's duplicate certificates of the properties, which showed that the properties were registered in the names of her parents, Fortunato and Bertha Limpo. It thus appears that the Bulaongs first learned about the sale between Regina and her parents when they received the newly issued titles in Regina's name which contained the annotation of the levy in Veronica's favor.

One of the principal features of the Torrens system of registration is that all encumbrances on the land shall be shown, or at least intimated upon the certificate of title and a person dealing with the owner of the registered land is not bound to go behind the certificate and inquire into transactions, the existence of which is not there intimated.[46] **Since the Bulaongs had no knowledge of the unregistered sale between Regina and her parents, the Bulaongs can neither be bound by it, nor can they be prejudiced by its consequences.** This is but the logical corollary to the rule set forth in Section 51 of P.D. No. 1529, in keeping with the basic legal maxim that what cannot be done directly cannot be done indirectly.

Execution sale in Veronica's favor was highly irregular

We also find that the execution sale in favor of Veronica is invalid because Regina's interest in both lots was sold together, in violation of Sections 15 and 21, Rule 39 of the old Rules of Court. The pertinent portions of these provisions provide:

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[45] Narciso Peña, *supra* note 38, at 189.

[46] *Bass v. Dela Rama*, 73 Phil. 682 (1942), citing *Quimson v. Suarez*, 45 Phil. 901, 906 (1924).

Section 15. *Execution of money judgments*. – The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, **he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs**.

Section 21. *How property sold on execution. Who may direct manner and order of sale*. – All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. ***After sufficient property has been sold to satisfy the execution, no more shall be sold.*** When the sale is of real property, consisting of several known lots, ***they must be sold separately***; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. [emphases ours]

Where the property to be sold consists of distinct lots, tracts or parcels, or is susceptible of division without injury, it should be offered for sale in parcels and not *en masse*, for the reason that a sale in that manner will generally realize the best price, and will not result in taking from the debtor any more property than is necessary to satisfy the judgment. It will also enable the defendant to redeem any one or more of the parcels without being compelled to redeem all the land sold.[47] A sale of additional land or personal property after enough has been sold to satisfy the judgment is unauthorized.[48]

While the general policy of the law is to sustain execution sales, the sale may be set aside where there is a resulting injury

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[47] See Vicente J. Francisco, *supra* note 33, at 747, citing 33 C.J.S., 448.

[48] *Ibid.*, citing 33 C.J.S., 440.

based on fraud, mistake and irregularity.[49] Where the properties were sold together when the sale of less than the whole would have been sufficient to satisfy the judgment debt, the sale may be set aside.[50]

In *Caja v. Nanquil*, [51] we took judicial notice of the fact that the value of a property was usually bigger than the amount for which it could be mortgaged. Since the two properties, taken together, were mortgaged to the petitioners to secure a loan worth ₱4,300,000.00, we can easily assume that these properties are worth at least this amount. Even Veronica does not contest this assumption.

From this premise, we can logically assume that the sale of just one of the lots would have been sufficient to satisfy the judgment debt. Yet no explanation was provided as to why the sheriff sold both parcels of land at the execution sale for the paltry sum of ₱640,354.14. This act undoubtedly resulted in great prejudice to the Bulaongs. To our minds, this renders the execution sale defective, and provides sufficient ground for us to set the sale aside.

For the foregoing reasons, we rule and so hold that the levy and the corresponding execution sale in Veronica's favor are invalid, and must be set aside. Veronica, however, is not without recourse, as she may still seek to enforce the judgment debt against Regina.

WHEREFORE, premises considered, we *GRANT* the petition and *REVERSE* the decision of the Court of Appeals dated July 31, 2002 in CA-G.R. SP No. 55423. We *REINSTATE* the decision of the Regional Trial Court, Branch 12, Malolos, Bulacan, dated July 30, 1999 in Civil Case No. 170-M-95, with the *MODIFICATION* that petitioners Anselmo Bulaong and Priscilla Bulaong are no longer required to reimburse Veronica Gonzales for her lien in the amount of ₱275,000.00, plus interest.

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[49] *Id.* at 751, citing *National Bank v. Gonzalez*, 45 Phil. 693 (1924).

[50] *Ibid.*, citing *Herman v. La Urbana*, 59 Phil. 621, 625 (1934).

[51] 481 Phil. 488 (2004).

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[*] and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169331. September 5, 2011]

AGAPITO ROM, PASTORA P. ROSEL, VALENTINO R. ANILA, JUANITO P. ROSEL, VIRGILIO R. CASAL, LUIS H. BAUTISTA, CRESENCIANO M. ARGENTE, ANA M. ARGENTE, GIL B. CUENO, ENGRACIO B. BELTRAN, ANGELITO B. AURE, ESTEBAN C. BENDO, MARIA ALBAO, GILBERT H. DEL MUNDO, EUFRONIO H. DEL MUNDO, PASTOR H. DEL MUNDO, ANTONIO H. DEL MUNDO, ALBERTA H. DEL MUNDO, PEDRO H. DEL MUNDO, ROLANDO B. ATIE, *petitioners, vs.* **ROXAS & COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES WHICH HAVE ACQUIRED EXPERTISE BECAUSE THEIR JURISDICTION IS CONFINED TO SPECIFIC MATTERS ARE GENERALLY ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY. — We are inclined to uphold the DAR's November 6, 2002 Order which granted respondent's application for exemption in DAR Administrative Case No. A-9999-014-98 subject of this case. Aside from the fact that this Court in *Roxas & Company, Inc. v. DAMBA-NFSW* has already upheld the grant of a similar

[*] Designated as additional Member vice Associate Justice Bienvenido L. Reyes per Special Order No. 1066 dated August 23, 2011.

application which, notably, was supported by the same documents submitted in support of the application herein, our own review of the records of this case reveals that there was indeed no error on the part of the DAR in issuing said Order. The documents submitted by respondent to support its application for exemption as well as the Investigation Report of CLUPPI-II clearly show that the 27 parcels of land, specifically identified, were already re-classified as residential prior to the effectivity of the CARL. "Well-settled is the rule that findings of fact of x x x quasi-judicial bodies (like the DAR) which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record."

2. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* BEFORE THE COURT OF APPEALS; PROPER REMEDY TO ASSAIL THE ORDERS OR DECISIONS OF THE DEPARTMENT OF AGRARIAN REFORM. — "Section 61 of R.A. No. 6657 clearly mandates that judicial review of DAR orders or decisions are governed by the Rules of Court. The Rules direct that it is Rule 43 that governs the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary." Hence here, petitioners should have assailed before the CA the November 6, 2002 and December 12, 2003 Orders of the DAR through a Petition for Review under Rule 43. "By pursuing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review under Rule 43, petitioners opted for the wrong mode of appeal."

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERRORS COMMITTED IN THE EXERCISE OF JURISDICTION ARE MERELY ERRORS OF JUDGMENT WHICH ARE NOT PROPER SUBJECTS THEREOF; THE SUBMISSION OF PROOF OF PAYMENT OF DISTURBANCE COMPENSATION IS NOT JURISDICTIONAL AS TO DEPRIVE THE DEPARTMENT OF AGRARIAN REFORM OF THE POWER TO ACT ON AN APPLICATION FOR EXEMPTION. — Petitioners assert that a *certiorari* petition is the proper mode since what they principally questioned before the CA was the jurisdiction of the DAR to take cognizance of

respondent's application for exemption. We are not persuaded. It bears stressing that it is the law which confers upon the DAR the jurisdiction over applications for exemption. And, "[w]hen a court, tribunal or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*." Besides, petitioners' basis in claiming that the DAR has no jurisdiction to take cognizance of respondent's application for exemption is gravely flawed. The submission of proof of payment of disturbance compensation is not jurisdictional as to deprive the DAR of the power to act on an application for exemption. To reiterate, jurisdiction over the subject of a case is conferred by law.

4. ID.; ID.; ID.; WILL NOT LIE IF AN APPEAL IS THE PROPER REMEDY; EXCEPTION; NOT APPLICABLE ABSENT SUBSTANTIAL WRONG OR SUBSTANTIAL INJUSTICE TO BE PREVENTED. — Also untenable is petitioners' assertion that even assuming that a petition for review under Rule 43 is the proper remedy, they are still entitled to the writ of *certiorari*. Petitioners posit that an exceptional circumstance in this case calls for the issuance of the writ, *i.e.*, they stand to lose the land they till without receiving the appropriate disturbance compensation. It is well to remind petitioners, however, that the assailed November 6, 2002 Order of the DAR granting respondent's application for exemption is subject to the payment of disturbance compensation to the farmer-beneficiaries of the subject parcels of land. Hence, petitioners' fear that they will be deprived of the land they till without payment of disturbance compensation is totally without basis. There being no substantial wrong or substantial injustice to be prevented here, petitioners cannot therefore invoke the exception to the general rule that a petition for *certiorari* will not lie if an appeal is the proper remedy.

5. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; A PARTY IS NOT BOUND BY ITS PREVIOUS VOLUNTARY OFFER TO SELL (VOS) WHERE IT WAS ESTABLISHED THAT THE SUBJECT PROPERTIES ARE

BEYOND THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM. — Indeed, respondent had previously voluntarily offered to sell to the DAR *Hacienda* Caylaway, where the properties subject of this case are located. However, this offer to sell became irrelevant because respondent was later able to establish before the DAR that the subject 27 parcels of land were reclassified as non-agricultural (residential) by virtue of (Nasugbu) Municipal Zoning Ordinance No. 4 prior to the effectivity of the CARL on June 15, 1988. "In *Natalia Realty, Inc. vs. Department of Agrarian Reform,* it was held that lands not devoted to agricultural activity are outside the coverage of CARL including lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than the DAR." This being the case, respondent is not bound by its previous voluntary offer to sell because the subject properties cannot be the subject of a VOS, they being clearly beyond the CARP's coverage.

6. ID.; ID.; DAR AO NO. 6, SERIES OF 1990; APPLICATION FOR EXEMPTION MUST BE ACCOMPANIED BY PROOF OF PAYMENT OF DISTURBANCE COMPENSATION AND/OR WAIVER OF RIGHTS OF *BONA FIDE* OCCUPANT; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR. — Indeed, respondent's application for exemption was not accompanied by proof of disturbance compensation or by petitioners' waiver/undertaking that they will vacate the subject parcels of land whenever required. However, this Court finds that respondent has substantially complied with this requirement found under Section III (B) of DAR AO No. 6, Series of 1990. Records show that upon being required by CLUPPI-II to submit proof of payment of disturbance compensation and/or waiver of rights of bona fide occupants after an evaluation of its application for exemption revealed that it was not accompanied by the same, respondent exerted efforts to comply with the said requirement. It offered to pay petitioners their disturbance compensation but they failed to agree on the price. Petitioners also refused to execute a waiver/ undertaking. Respondent thus filed a Petition to fix disturbance compensation before the PARAD. To prove these, it submitted to the DAR a (1) Certification dated September 10, 2001, issued by Manuel J. Limjoco, Jr., MARO of Nasugbu, Batangas, stating that there was failure to reach an amicable settlement on the matter of disturbance compensation between the parties; and (2) copy

of the Petition to fix disturbance compensation duly received by the PARAD on September 28, 2001. To us, these constitute substantial compliance with the said particular requirement of Section III (B), DAR AO No. 6, Series of 2002.

7. REMEDIAL LAW; ACTIONS; ISSUES; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT, ADMINISTRATIVE AGENCY OR QUASI-JUDICIAL BODY, NEED NOT BE CONSIDERED BY THE REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE. — A careful review of the records reveals that petitioners raised the issues of respondent's non-posting of bond pursuant to Section IV, paragraph 4.5 of DAR AO No. 4, Series of 2003 and its non-compliance with Section VIII thereof only in their Motion for Reconsideration of the CA's assailed Decision. While petitioners themselves alleged that DAR AO No. 4, Series of 2003 was already in effect during the pendency of their Motions for Reconsideration before the DAR, there is no showing that they raised these points therein. "It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*." Thus, petitioners cannot now be allowed to challenge the assailed Orders of the DAR on grounds of technicalities belatedly raised as an afterthought.

APPEARANCES OF COUNSEL

Gerardo R. Manalo for petitioners.
Florencio M. Mamauag, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Justifying their resort to a petition for *certiorari* before the appellate court and insisting that the Department of Agrarian Reform (DAR) Orders they assailed therein were issued without jurisdiction, petitioners are now before this Court for recourse.

This Petition for Review on *Certiorari* assails the Decision[1] dated April 29, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 82709 dismissing the Petition for *Certiorari* which assailed the DAR Orders[2] dated November 6, 2002 and December 12, 2003 in ADM Case No. A-9999-014-98. Said DAR November 6, 2002 Order granted respondent Roxas & Company, Inc.'s Application for Exemption from the Comprehensive Agrarian Reform Program's (CARP) coverage while the December 12, 2003 Order denied petitioners' Motion for Reconsideration thereto. Likewise assailed herein is the CA Resolution[3] dated August 11, 2005 denying the Motion for Reconsideration of its April 29, 2005 Decision.

Factual Antecedents

On September 30, 1997, respondent sought the exemption of 27 parcels of land located in *Barangay* Aga, Nasugbu, Batangas, having an aggregate area of 21.1236 hectares and constituting portions of the land covered by Transfer Certificate of Title (TCT) No. T-44664 from the coverage of CARP, pursuant to DAR Administrative Order (AO) No. 6, Series of 1994.[4] The application was docketed as DAR ADM Case No. A-9999-014-98.

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[1] CA *rollo*, pp. 211-227; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[2] *Id.* at 19-25 and 39-50, respectively.

[3] *Id.* at 277-282.

[4] Guidelines for the Issuance of Exemption Clearances based on Sec. 3(c) of Republic Act No. 6657 and the Department of Justice Opinion No. 44 Series of 1990.

Respondent asserted that Comprehensive Agrarian Reform Law (CARL) covers only agricultural land[5] which is defined under Section 3(c) thereof as "land devoted to agricultural activity x x x and not classified as mineral, forest, *residential*, commercial or industrial land." Respondent claimed that prior to the effectivity of the CARL on June 15, 1988, the lands subject of its application were already re-classified as part of the Residential Cluster Area specified in Zone A VII of the Nasugbu Municipal Zoning Ordinance No. 4, Series of 1982, which zoning ordinance was approved by the Human Settlement Regulatory Commission (HSRC [now the Housing and Land Use Regulatory Board (HLURB)]) under HSRC Resolution No. 123, Series of 1983. Respondent cited DOJ Opinion No. 44 (1990) which provides that lands already classified by a valid zoning ordinance for commercial, industrial or residential use, which ordinance was approved prior to the effectivity of the CARL, no longer need conversion clearance from the DAR.[6]

In support of its application for exemption, respondent submitted, among others, the following documents:

1. Letter-application dated 29 September 1997 signed by Elino SJ. Napigkit, for and on behalf of Roxas & Company, Inc., seeking exemption from CARP coverage of subject landholdings;

x x x x x x x x x

3. Photocopy of TCT No. T-44664 and the corresponding Declaration of Real Property No. 024-17-013-01-001;

4. Location and vicinity maps of subject landholdings;

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[5] Sec. 4. Scope – The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, **all public and private and agricultural lands** as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

x x x (Emphasis supplied.)

[6] Said Department of Justice Opinion states that the legal requirement for the Department of Agrarian Reform clearance in cases of land use conversion from agricultural to non-agricultural uses applies only to conversion made on or after June 15, 1988, the date of the agrarian reform law's effectivity.

5. Certification dated 10 July 1997 issued by Administrator Reynaldo Garcia [Administrator Garcia], Municipal Planning and Development Coordinator (MPDC) and Zoning Administrator of Nasugbu, Batangas, stating that the subject parcels of land are within the Residential Cluster Area as specified in Zone VII of Municipal Zoning Ordinance No. 4, series of 1982, approved by the Human Settlements Regulatory Commission (HSRC), now the Housing and Land Use Regulatory Board (HLURB), thru Resolution No. 123, Series of 1983, dated 4 May 1983;

6. Certification dated 31 August 1998 issued by Engr. Alfredo M. Tan II [Engr. Tan], Regional Director, HLURB, Region IV, stating that the subject parcels of land appear to be within the Residential Cluster Area as specified in Zone VII of Municipal Zoning Ordinance No. 4, Series of 1982, as approved under HSRC Resolution No. 123, Series of 1983, dated 4 May 1983;

7. Three (3) Certifications all dated 8 September 1997 issued by Administrator Rolando T. Bonrostro, Regional Irrigation Manager, National Irrigation Administration (NIA), Region IV; stating that the subject parcels of land are not irrigated, not irrigable lands and not covered by irrigation projects with firm funding commitment; and,

8. Certification dated 18 January 1999, issued by Manuel J. Limjoco, Jr., Municipal Agrarian Reform Officer of Nasugbu, Batangas, stating that the subject parcels of land are not covered by Operation Land Transfer (OLT) but covered by a collective Certificate of Land Ownership Award (CLOA) No. 6653 issued to twenty-seven (27) farmer-beneficiaries.

x x x x x x x x x[7]

Ruling of the Department of Agrarian Reform

Considering that the application for exemption was not accompanied by proof of disturbance compensation,[8] the DAR, through its Center for Land Use Policy, Planning and

[7] See pp. 2-3 of the Department of Agrarian Reform's assailed Order of November 6, 2002, CA *rollo*, pp. 20-21.

[8] III (B) of DAR Administrative Order No. 6, Series of 1990 provides:-

Implementation (CLUPPI-II), directed respondent to submit proof of payment of disturbance compensation and/or waiver of rights of bona fide occupants.[9]

To comply with the directive, respondent offered payment of disturbance compensation and attempted to obtain the required waivers from herein petitioners who are the farmer-beneficiaries of the subject parcels of land as identified by the DAR. However, the parties failed to reach an agreement as regards the amount of disturbance compensation, hence, respondent filed on September 28, 2001 a Petition[10] to fix disturbance compensation before the Provincial Agrarian Reform Adjudication Board (PARAD) of Batangas.

III. FILING OF THE APPLICATION

x x x x

B. The application should be duly signed by the landowner or his representative, and should be accompanied by the following documents:

1. Duly notarized Special Power of Attorney, if the applicant is not the landowner himself;

2. Certified true copies of the titles which is the subject of the application;

3. Current tax declaration(s) covering the property;

4. Location Map or Vicinity Map

5. Certification from the Deputized Zoning Administrator that the land has been reclassified to residential industrial or commercial use prior to June 15, 1988;

6. Certification from the HLURB that the pertinent zoning ordinance has been approved by the Board prior to June 15, 1988;

7. Certification from the National Irrigation Administration that the land is not covered by Administrative Order No. 20 s. 1992, *i.e.*, that the area is not irrigated, nor scheduled for irrigation rehabilitation nor irrigable with firm funding commitment.

8. Proof of payment of disturbance compensation, if the area is presently being occupied by farmers, or waiver/undertaking by the occupants that they will vacate the area whenever required. (Emphasis supplied.)

[9] See DAR CLUPPI-II's Letter dated July 31, 2001 addressed to respondent's representative Atty. Mariano Ampil III, CA *rollo*, p. 68.

[10] *Id.* at 57-61.

In its Order[11] of November 6, 2002, the DAR granted the application in this wise:

WHEREFORE, premises considered, the Application for Exemption Clearance from CARP coverage filed by Roxas & Company, Inc., involving twenty-seven (27) parcels of land, specifically described in pages 1 and 2 of this Order,[12] being portions of TCT No. T-44664, with an aggregate area of 21.1236 hectares located [in] Barangay Aga, Nasugbu, Batangas is hereby GRANTED, subject to the following conditions:

11 *Id.* at 19-25.

12 The 27 parcels of land subject of the application are particularly described as follows in the said DAR Order:

DAR LOT NO.	DAR SURVEY PLAN	AREA (in has.)
79	Psd-04-045072 (AR)	3.3234
87	Psd-04-045072 (AR)	0.2408
88	Psd-04-045072 (AR)	0.0706
89	Psd-04-045072 (AR)	0.7027
90	Psd-04-045072 (AR)	2.3763
91	Psd-04-045072 (AR)	0.2663
92	Psd-04-045072 (AR)	1.0109
99	Psd-04-045072 (AR)	0.4619
100	Psd-04-045072 (AR)	1.5665
101	Psd-04-045072 (AR)	0.5449
102	Psd-04-045072 (AR)	0.4069
139	Psd-04-045072 (AR)	0.1645
141	Psd-04-045072 (AR)	0.2716
548	Psd-04-045071 (AR)	0.3941
549	Psd-04-045071 (AR)	1.0917
550	Psd-04-045071 (AR)	0.1871
551	Psd-04-045071 (AR)	2.0000
552	Psd-04-045071 (AR)	1.6392
553	Psd-04-045071 (AR)	0.5236
554	Psd-04-045071 (AR)	0.3841
555	Psd-04-045071 (AR)	0.2260
556	Psd-04-045071 (AR)	0.2783

1. The farmer-occupants within subject parcels of land shall be maintained in their peaceful possession and cultivation of their respective areas of tillage until a final determination has been made on the amount of disturbance compensation due and entitlement of such farmer-occupants thereto by the PARAD of Batangas.

2. No development shall be undertaken within the subject parcels of land until the appropriate disturbance compensation has been paid to the farmer-occupants who are determined by the PARAD to be entitled thereto. Proof of payment of disturbance compensation shall be submitted to this Office within ten (10) days from such payment; and

3. The cancellation of the CLOA issued to the farmer beneficiaries shall be subject of a separate proceeding before the PARAD of Batangas.

SO ORDERED.[13]

From this Order, petitioners filed a Motion for Reconsideration,[14] Supplemental Motion for Reconsideration[15] and Second Supplemental Motion for Reconsideration.[16] They averred that the bases of the DAR in granting respondent's application for exemption were the Certification[17] dated July 10, 1997 of Administrator Garcia and the Certification[18] dated

557	Psd-04-045071 (AR)	0.6531
564	Psd-04-045071 (AR)	0.9600
565	Psd-04-045071 (AR)	0.3757
655	Psd-04-045071 (AR)	0.2437
681	Psd-04-045071 (AR)	0.7597
	TOTAL	**21.1236**

[13] CA *rollo*, pp. 23-24.

[14] *Id.* at 26-28.

[15] *Id.* at 29-30.

[16] *Id.* at 33-34.

[17] *Id.* at 54-55.

[18] *Id.* at 193.

August 31, 1998 issued by Engr. Tan of the HLURB, Region IV, both of which stated that the subject lands are within the residential cluster area as specified in Zone VII of the (Nasugbu) Municipal Zoning Ordinance No. 4, series of 1982, as approved under HSRC Resolution No. 123, Series of 1983, dated May 4, 1983. However, they claimed that these certifications have already been superseded by *Sangguniang Bayan* Resolution No. 30, Series of 1993,[19] which classified the area of *Barangay* Aga as an agricultural zone except for the 50-meter strip from both sides of the National Road with existing roads, which was classified as residential zone. Petitioners also alleged that the application for exemption is already barred by laches or *estoppel* considering that Certificates of Land Ownership Award (CLOAs) have been issued to petitioners way back in 1991 and that since then, they have been occupying the subject parcels of land in the concept of an owner. Finally, they claimed that they were never notified of the proceedings in the said application despite their being parties-in-interest thereto.

Said motions, however, were dismissed by the DAR in an Order[20] dated December 12, 2003.

Aggrieved, petitioners filed a Petition for *Certiorari*[21] before the CA.

Ruling of the Court of Appeals

Petitioners averred that Sec. III (B) of DAR AO No. 06, Series of 1994 requires that an application for exemption must be accompanied by certain documents[22] before DAR acquires jurisdiction over the application. And since respondent failed to attach to its application the required proof of disturbance compensation, petitioners claimed that the DAR has no jurisdiction to act on the same. Moreover, petitioners alleged that the payment

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[19] See the Certification to that effect issued on January 29, 2003, *id.* at 35.

[20] *Id.* at 39-50.

[21] *Id.* at 2-18.

[22] *Supra* note 8.

of disturbance compensation is a condition *sine qua non* to the grant of exemption and since no disturbance compensation was paid to them, then the DAR gravely abused its discretion amounting to lack or excess of jurisdiction in issuing its assailed Orders.

Petitioners reiterated their argument that the Certifications dated July 10, 1997 and August 31, 1998, respectively issued by the MPDC and HLURB, and used as bases for DAR's assailed Orders granting the application for exemption, have already been superseded by *Sangguniang Bayan* Resolution No. 30, Series of 1993. This fact was affirmed by the Certification dated January 29, 2003 likewise issued by Administrator Garcia of the MPDC. Also, petitioners argued that since respondent had previously voluntarily offered to sell the subject land to the DAR, then they (petitioners) have already acquired a vested right over the subject properties.

In a Decision[23] dated April 29, 2005, the CA dismissed the petition for *certiorari* it being an improper remedy. The CA held that petitioners should have filed a petition for review under Section 1, Rule 43 of the Rules of Court.[24] Even if the *certiorari* petition is considered as properly filed, the CA ruled that it would still dismiss the same as there was no grave abuse of discretion on the part of the DAR in issuing the assailed Orders.

Petitioners filed a Motion for Reconsideration[25] and a Supplemental Motion for Reconsideration[26] but both were denied in a Resolution[27] dated August 11, 2005.

Hence, this Petition for Review on *Certiorari*.

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[23] *Supra* note 1.

[24] The section provides that Rule 43 shall apply to appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among the agencies enumerated is the Department of Agrarian Reform under Republic Act No. 6657.

[25] CA *rollo*, pp. 233-241.

[26] *Id.* at 243-246.

[27] *Supra* note 3.

Issues

Petitioners raise the following issues:

i. WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OR GRAVE ABUSE OF DISCRETION IN AFFIRMING THE GRANT OF RESPONDENT ROXAS' APPLICATION FOR EXEMPTION FROM COVERAGE OF THE CARL DESPITE THE FACT THAT THE PROPERTY [HAS BEEN THE SUBJECT OF RESPONDENT'S VOLUNTARY OFFER TO SELL TO THE DAR]

ii. WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OR GRAVE ABUSE OF DISCRETION IN AFFIRMING THE GRANT OF RESPONDENT ROXAS' APPLICATION FOR EXEMPTION FROM COVERAGE OF THE CARL WITHOUT THE REQUIRED PAYMENT OF DISTURBANCE COMPENSATION, WITHOUT ANY UNDERTAKING TO PAY THE SAID COMPENSATION AND WITHOUT ANY BOND BEING POSTED BY THE LANDOWNER TO SECURE PAYMENT OF SAID COMPENSATION

iii. WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OR GRAVE ABUSE OF DISCRETION IN RULING THAT THE REMEDY OF APPEAL IS NOT AVAILABLE IN THIS CASE[28]

The Parties' Arguments

Petitioners insist that a *certiorari* petition, instead of a petition for review under Rule 43 of the Rules of Court, is the proper remedy since what they principally questioned before the CA was the jurisdiction of the DAR to take cognizance of the application. Even assuming that a petition for review is the proper mode of appeal, petitioners contend that they can still resort to the remedy of *certiorari* pursuant to settled jurisprudence[29] that the Court, in exceptional cases, may consider

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[28] *Rollo*, p. 24.

[29] *Estate of Salud Jimenez v. Phil. Export Processing Zone*, 402 Phil. 271, (2001) and *Gutib v. Court of Appeals*, 371 Phil. 293 (1999).

certiorari as the appropriate remedy.[30] "[T]he writ [may] be granted where necessary to prevent a substantial wrong or to do substantial justice."[31] Since in this case, petitioners stand to lose the land they are tilling without receiving the appropriate disturbance compensation, the ends of justice dictate that they be entitled to the writ of *certiorari.*

Petitioners likewise aver that since respondent had previously voluntarily offered to sell the subject parcels of land to the DAR, it can no longer withdraw the same from the CARP's coverage. Under DAR Memorandum Circular No. 02, Series of 1998,[32] a landowner who voluntarily offers to sell his property but failed to submit the required documents shall be notified that the property offered for sale shall be acquired by compulsory acquisition. This means that once a landowner has voluntarily offered to sell his property, he can no longer withdraw it from the coverage of the land reform law as the DAR will nevertheless acquire it through compulsory acquisition even if he fails to submit the documents required. Moreover, petitioners claim that *estoppel* has already set in considering that respondent filed its application only after eight years from the time it voluntarily offered to sell the property.

Petitioners also cite Section III (B), paragraph 8 of DAR AO No. 06, Series of 1994 which provides that an application for exemption should be accompanied by proof of payment of disturbance compensation, if the area is occupied by farmers, or waiver/undertaking by the occupants that they will vacate the area whenever required. There being no payment of disturbance compensation here, respondent should have submitted such a waiver/undertaking. Also, when respondent was granted

[30] Like for instance, "in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from injurious effect of the judgment complained of." *Estate of Salud Jimenez v. Phil. Export Processing Zone*, *supra* at 284.

[31] *Gutib v. Court of Appeals*, *supra* at 307.

[32] Compulsory Acquisition of Landholdings Covered by Voluntary Offer to Sell.

exemption, conditional as it is since same is subject to the payment of disturbance compensation, it should have posted a bond in an amount to be determined by the adjudicator pursuant to paragraphs 4.4 and 4.5 of DAR AO No. 4, Series of 2003[33] *viz*:

> 4.4. Whenever there is a dispute on the fixing of disturbance compensation or entitlement to disturbance compensation, the Regional Director shall refer the matter to the Adjudicator who shall be bound to take cognizance of and resolve the case despite the non-finality of the issue on whether or not the subject land is exempt from CARP.
>
> 4.5. The Approving Authority may grant a conditional exemption order, despite non-payment of disturbance compensation or while awaiting determination of entitlement thereto, subject however to the condition that the applicant and/or landowner shall post a bond in an amount to be determined by the Adjudicator. Notwithstanding the posting of such bond, the property applied for exemption shall not be developed for non-agricultural purposes and the farmers, agricultural lessees, share tenants, farmworkers, and actual tillers thereof cannot be ejected therefrom until the finality of the exemption order.

In contravention of the above-quoted provisions, however, no bond was posted in this case.

Lastly, petitioners cite Section VIII of said DAR AO No. 04, Series of 2003 which provides that:

> VIII. EFFECT ON PRE-EXISTING CARP COVERAGE
>
> When the filing of an application for exemption clearance is in response to a notice of CARP coverage, the DAR shall deny due course to the application if it was filed after sixty (60) days from the date the landowner received a notice of CARP Coverage.

Petitioners allege that here, respondent filed its application for exemption more than eight years from its receipt of the notice of CARP coverage on August 23, 1989. While conceding

[33] 2003 Rules on Exemption of Lands from CARP Coverage Under Section 3(c) of Republic Act No. 6657 and Department of Justice Opinion No. 44, Series of 1990.

that said administrative order was issued only in 2003, petitioners argue that same is applicable to respondent as this merely interpreted both Sec. 3 of R.A. No. 6657 and DOJ Opinion No. 44, Series of 1990, which were already in effect long before respondent filed its application.

Respondent, for its part, emphasizes that petitioners resorted to a wrong mode of appeal. For this alone, it contends that the CA correctly dismissed petitioners' petition for *certiorari*.

As regards petitioners' other arguments, respondent addresses them point by point.

Respondent refutes petitioners' contention that a landowner can no longer withdraw his property from the coverage of CARP once he has voluntarily offered to sell the same to the DAR by invoking this Court's ruling in the related case of *Roxas & Company, Inc. v. Court of Appeals*.[34] There it was held that as part of administrative due process, the DAR must first comply with the notice requirement before a Voluntary Offer to Sell (VOS) is accepted. For failure of the DAR to send notices to Roxas to attend the survey and the land valuation meeting before accepting the VOS, the acceptance of the VOS and the entire acquisition proceedings over three *haciendas*, including *Hacienda* Caylaway, where the parcels of land subject of this case are located, were nullified. Moreover, respondent stresses that DAR Memorandum Circular No. 02 Series of 1998 upon which petitioners anchor their assertion that a VOS cannot be withdrawn was issued 10 years after the VOS in this case was made in 1988. Aside from arguing that the circular cannot be applied retroactively, respondent asserts that there is nothing in such circular which prohibits, either expressly or impliedly, a landowner from withdrawing a VOS. If at all, said circular merely serves as guide to be followed by the concerned DAR officials in cases where landowners have voluntarily offered to sell their land to the government.

Anent the claim that payment of disturbance compensation is a condition *sine qua non* to the grant of an application for

[34] 378 Phil. 727 (1999).

exemption, respondent invokes the Court's ruling in *Bacaling v. Muya*[35] that farmer-beneficiaries are not entitled to disturbance compensation because the lots subject thereof never became available for agrarian reform. This was because said lots were already classified as residential prior to the effectivity of Presidential Decree No. 27 and R.A. No. 6657. Similarly in this case, respondent contends that petitioners are not entitled to disturbance compensation because the subject landholdings are not and have never been available for agrarian reform as they have been classified as residential properties prior to the effectivity of the CARL. However, believing in good faith that it has the legal obligation to pay disturbance compensation, respondent still filed a Petition to fix disturbance compensation before the PARAD after petitioners refused to accept respondent's offer of disturbance compensation or to execute a waiver/ undertaking that they will vacate the area whenever required.

With respect to the requirement of bond under paragraph 4.5 of DAR AO No. 4, Series of 2003, respondent counter-argues that such was not a requirement at the time of the filing of its application. It asserts that said administrative order cannot be retroactively applied to its application which was filed prior to said administrative order's issuance.

Finally, respondent avers that petitioners' invocation of Section VIII of DAR AO No. 04, Series of 2003 is downright illogical. It points out that it received a notice of compulsory acquisition way back in 1989 while said AO was issued only in 2003. Respondent asserts that this provision cannot be given retroactive application; otherwise, it would prejudice its vested right to file an application, which at that time, was not yet subject to the 60-day period. More importantly, there was no valid notice of coverage to speak of as held in *Roxas & Company, Inc. v. Court of Appeals*.

Our Ruling

There is no merit in the petition.

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[35] 430 Phil. 531 (2002).

We note at the outset that this case is intimately related to *Roxas & Company, Inc. v. Court of Appeals*[36] and *Roxas & Company, Inc. v. DAMBA-NFSW*,[37] earlier resolved by this Court on December 17, 1999 and December 4, 2009, respectively. In fact, the present case is similar to one[38] of the seven consolidated petitions in *Roxas & Company, Inc. v. DAMBA-NFSW*, except that the parcels of land involved therein are located in *Hacienda* Palico, while here, they are situated in *Hacienda* Caylaway.[39]

For purposes of discussion, a brief overview of said two cases is proper.

Roxas & Company, Inc. v. Court of Appeals involves three *haciendas* in Nasugbu, Batangas, namely, Palico, Banilad and Caylaway, owned by herein respondent Roxas & Company, Inc. At issue there was the validity of the *haciendas*' coverage under the CARP as well as Roxas' application for their conversion from agricultural to non-agricultural use. For failure to observe due process, the acquisition proceedings over the *haciendas* were nullified. With respect, however, to the application for conversion, the Court held that DAR is in a better position to resolve the same, it being the primary agency possessing the necessary expertise on the matter. In its Decision dated December 17, 1999, this Court ordered the remand of the case to the DAR for proper acquisition proceedings and determination of Roxas's application for conversion.

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[36] *Supra* note 34.

[37] G.R. Nos. 149548, 167505, 167540, 167543, 167845, 169163, and 179650, December 4, 2009, 607 SCRA 33.

[38] G.R. No. 167505 entitled *Damayan ng mga Manggagawang Bukid sa Asyenda Roxas-National Federation of Sugar Workers (DAMBA-NFSW), petitioner, vs. Secretary of the Dept. of Agrarian Reform, Roxas & Co., Inc. and/or Atty. Mariano Ampil,* respondents.

[39] TCT No. T-44664 which covered the 27 parcels of land in DAR ADM Case No. A-9999-014-98 subject of this case is one of the four titles covering the entire 867,4571 hectares of *Hacienda* Caylaway.

Roxas & Company, Inc. v. DAMBA-NFSW, on the other hand, involved seven consolidated petitions,[40] the main subjects of which were Roxas' application for conversion from agricultural to non-agricultural use of said three *haciendas* and exemption from CARP coverage. Apparently, after the remand of the case to the DAR in *Roxas & Company, Inc. v. Court of Appeals* and during the pendency of Roxas' application for conversion, it likewise filed an application for exemption of the *haciendas* from the CARP's coverage on the basis of Presidential Proclamation No. 1520[41] and DAR AO No. 6, Series of 1994.[42]

Two of the seven consolidated petitions relevant to the present case are G.R. Nos. 167505[43] and 179650.[44] Both petitions

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[40] **G.R. No. 149548** entitled *Roxas & Company, Inc.*, petitioner, *v. DAMBA-NFSW and the Department of Agrarian Reform*, respondents; **G.R. No. 167505** entitled *Damayan ng mga Manggagawang Bukid sa Asyenda Roxas-National Federation of Sugar Workers (DAMBA-NFSW)*, petitioner, *v. Secretary of the Dept. of Agrarian Reform, Roxas & Co., Inc. and/or Atty. Mariano Ampil*, respondents; **G.R. No. 167540** entitled *Katipunan ng mga Magbubukid sa Hacienda Roxas, Inc. (KAMAHARI)*, rep. by its *President Carlito Caisip, and Damayan ng Manggagawang Bukid sa Asyenda Roxas-National Federation of Sugar Workers (DAMBA-NFSW)*, represented by *Lauro Martin*, petitioners, *v. Secretary of the Dept. of Agrarian Reform, Roxas & Co., Inc.*, respondents; **G.R. No. 167543** entitled *Department of Land Reform*, formerly *Department of Agrarian Reform* (DAR), petitioner *v. Roxas & Co., Inc.*, respondent; **G.R. No. 167845** entitled *Roxas & Co, Inc.*, petitioner, *v. DAMBA-NFSW*, respondent; **G.R. No. 169163** entitled *DAMBA-NFSW*, represented by *Lauro V. Martin*, petitioner, *v. Roxas & Co. Inc.*, respondent; and **G.R. No. 179650** entitled *DAMBA-NFSW*, petitioner *v. Roxas & Co., Inc.*, respondent.

[41] Declaring the Municipalities of Maragondon and Ternate in Cavite Province and the Municipality of Nasugbu in Batangas as a Tourist Zone, and for Other Purposes, issued on November 28, 1975 by then President Ferdinand E. Marcos.

[42] *Supra* note 4.

[43] Subject of this petition was Roxas' application for exemption of nine parcels of land located in *Hacienda* Palico docketed as DAR Administrative Case No. A-9999-008-98.

[44] Subject of this petition was Roxas' application for exemption of six parcels of land also located in *Hacienda* Palico docketed as DAR Administrative Case No. A-9999-142-97.

revolved around Roxas' application for exemption under DAR AO No. 6, Series of 1994 invoking as basis the same (Nasugbu) Municipal Zoning Ordinance No. 4 earlier alluded to. In resolving them, the Court recognized the power of a local government unit to classify and convert land from agricultural to non-agricultural prior to the effectivity of the CARL and thus upheld the validity of said zoning ordinance. However, in G.R. No. 179650, the Court found that the DAR acted with grave abuse of discretion when it granted the application for exemption considering that there exist uncertainties on the location and identities of the properties being applied for exemption. It stated that Roxas should have submitted the comprehensive land use plan and pinpointed therein the location of the properties to prove that they are indeed within the area of coverage of the subject (Nasugbu) Municipal Zoning Ordinance No. 4.

With respect to G.R. No. 167505, we quote the pertinent portions of the Court's December 4, 2009 Decision:

> In its application, Roxas & Co. submitted the following documents:
>
> 1. Letter-application dated 29 September 1997 signed by Elino SJ. Napigkit, for and on behalf of Roxas & Company, Inc., seeking exemption from CARP coverage of subject landholdings;
>
> 2. Secretary's Certificate dated September 2002 executed by Mariano M. Ampil III, Corporate Secretary of Roxas & Company, Inc., indicating a Board Resolution authorizing him to represent the corporation in its application for exemption with the DAR. The same Board Resolution revoked the authorization previously granted to the Sierra Management & Resources Corporation;
>
> 3. Photocopy of TCT No. 985 and its corresponding Tax Declaration No. 0401;
>
> **4. Location and vicinity maps of subject landholdings;**
>
> **5. Certification dated 10 July 1997 issued by Reynaldo Garcia, Municipal Planning and Development Coordinator (MPDC) and Zoning Administrtor of Nasugbu, Batangas, stating that the subject parcels of land are within the Urban Core Zone as specified in Zone A. VII of Municipal Zoning Ordinance No. 4,** Series of 1982, approved by the Human Settlements Regulatory Commission (HSRC), now the Housing and Land Use Regulatory

Board (HLURB), under Resolution No. 123, Series of 1983, dated 4 May 1983;

6. Two (2) Certifications both dated 31 August 1998, issued by Alfredo Tan II, Director, HLURB, Region IV, stating that the subject parcels of land appear to be within the Residential cluster Area as specified in Zone VII of Municipal Zoning Ordinance No. 4, Series of 1982, approved under HSRC Resolution No. 123, Series of 1983, dated 4 May, 1983

x x x x x x x x x x x x

By Order of November 6, 2002, the DAR Secretary granted the application for exemption but issued the following conditions:

1. The farmer-occupants within subject parcels of land shall be maintained in their peaceful possession and cultivation of their respective areas of tillage until a final determination has been made on the amount of disturbance compensation due and entitlement of such farmer-occupants thereto by the PARAD of Batangas;

2. No development shall be undertaken within the subject parcels of land until the appropriate disturbance compensation has been paid to the farmer-occupants who are determined by the PARAD to be entitled thereto. Proof of payment of disturbance compensation shall be submitted to this Office within ten (10) days from such payment; and

3. The cancellation of the CLOA issued to the farmer-beneficiaries shall be subject of a separate proceeding before the PARAD of Batangas.

DAMBA-NSFW moved for reconsideration but the DAR Secretary denied the same x x x x.

x x x x x x x x x x x x

On DAMBA-NSFW's petition for *certiorari*, the Court of Appeals, x x x x sustained, by Decision of December 20, 1994 and Resolution of May 7, 2007, the DAR Secretary's finding that Roxas & Co. had substantially complied with the prerequisites of DAR AO 6, Series of 1994. Hence, DAMBA-NFSW's petition in G.R. No. 167505.

The Court finds no reversible error in the Court of Appeals' assailed issuances, the orders of the DAR Secretary which it

sustained being amply supported by evidence.[45] (Emphasis and underscoring in the original.)

In view of this, the Court ordered the cancellation of the CLOAs issued to farmer-beneficiaries of the nine parcels of land in DAR Administrative Case No. A-9999-008-98 subject of G.R. No. 167505, conditioned, however, on the satisfaction of the disturbance compensation of said farmer-beneficiaries pursuant to R. A. No. 3844, as amended[46] and DAR AO No. 6, Series of 1994.[47]

Remarkably, in its application for exemption in DAR ADM Case No. A-9999-014-98 subject of this case, respondent submitted documents in support of its application for exemption similar to those submitted by it in DAR Administrative Case No. A-9999-008-98 subject of G.R. No. 167505. And, having established through said documents that the 27 parcels of land are within the coverage of the said (Nasugbu) Municipal Zoning Ordinance No. 4, the DAR declared as well that respondent substantially complied with the requirements of DAR AO No. 6, series of 1994 in DAR ADM Case No. A-9999-014-98. The DAR thus granted the application in an Order of the same date and of exactly the same tenor as that issued in DAR Administrative Case No. A-9999-008-98.

Given this backdrop, we are inclined to uphold the DAR's November 6, 2002 Order which granted respondent's application

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[45] *Supra* note 37 at 64-66.

[46] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES, AS AMENDED BY REPUBLIC ACT NO. 6389; It mandates that disturbance compensation be given to tenants of parcels of land upon finding that the landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some urban purposes.

[47] It directs payment of disturbance compensation before the application for exemption may be completely granted.

for exemption in DAR Administrative Case No. A-9999-014-98 subject of this case. Aside from the fact that this Court in *Roxas & Company, Inc. v. DAMBA-NFSW* has already upheld the grant of a similar application which, notably, was supported by the same documents submitted in support of the application herein, our own review of the records of this case reveals that there was indeed no error on the part of the DAR in issuing said Order. The documents submitted by respondent to support its application for exemption as well as the Investigation Report of CLUPPI-II[48] clearly show that the 27 parcels of land, specifically identified, were already re-classified as residential prior to the effectivity of the CARL. "Well-settled is the rule that findings of fact of x x x quasi-judicial bodies (like the DAR) which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record."[49]

On this ground alone we can already deny the petition. Nonetheless, we shall proceed to discuss the issues raised by petitioners.

Petitioners resorted to a wrong mode of appeal.

"Section 61[50] of R.A. No. 6657 clearly mandates that judicial review of DAR orders or decisions are governed by the Rules of Court. The Rules direct that it is Rule 43 that governs the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary."[51] Hence here, petitioners should have assailed before the CA the November 6, 2002 and December

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

[49] *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*, G.R. No. 149050, March 25, 2009, 582 SCRA 369, 376-377.

[50] Sec. 61. *Procedure on Review.* - Review by the Court of Appeals or the Supreme Court, as the case may be, shall be governed by the Rules of Court. x x x.

[51] *Sebastian v. Hon. Morales*, 445 Phil. 595, 607 (2003).

12, 2003 Orders of the DAR through a Petition for Review under Rule 43. "By pursuing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review under Rule 43, petitioners opted for the wrong mode of appeal."[52]

Petitioners assert that a *certiorari* petition is the proper mode since what they principally questioned before the CA was the jurisdiction of the DAR to take cognizance of respondent's application for exemption.

We are not persuaded. It bears stressing that it is the law which confers upon the DAR the jurisdiction over applications for exemption.[53] And, "[w]hen a court, tribunal or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*."[54]

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[52] *Id.*

[53] Sec. 50 of the CARL provides:

> Sec. 50. *Quasi-Judicial Powers of the DAR.* – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform x x x.
>
> Thus, Section 3, Rule II of the 2003 DARAB Rules of Procedure provides:
>
> SECTION 3. Agrarian Law Implementation Cases. – The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:
>
> x x x x x x x x x
>
> 3.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);
>
> x x x x x x x x x

[54] *Sebastian v. Hon. Morales, supra* note 51 at 608.

Besides, petitioners' basis in claiming that the DAR has no jurisdiction to take cognizance of respondent's application for exemption is gravely flawed. The submission of proof of payment of disturbance compensation is not jurisdictional as to deprive the DAR of the power to act on an application for exemption. To reiterate, jurisdiction over the subject of a case is conferred by law.[55]

Also untenable is petitioners' assertion that even assuming that a petition for review under Rule 43 is the proper remedy, they are still entitled to the writ of *certiorari*. Petitioners posit that an exceptional circumstance in this case calls for the issuance of the writ, *i.e.*, they stand to lose the land they till without receiving the appropriate disturbance compensation. It is well to remind petitioners, however, that the assailed November 6, 2002 Order of the DAR granting respondent's application for exemption is subject to the payment of disturbance compensation to the farmer-beneficiaries of the subject parcels of land. Hence, petitioners' fear that they will be deprived of the land they till without payment of disturbance compensation is totally without basis. There being no substantial wrong or substantial injustice to be prevented here, petitioners cannot therefore invoke the exception to the general rule that a petition for *certiorari* will not lie if an appeal is the proper remedy.

Thus, we are totally in accord with the CA's finding that petitioners resorted to a wrong remedy.

The fact that respondent had previously voluntarily offered to sell the subject properties to the DAR is immaterial in this case.

Indeed, respondent had previously voluntarily offered to sell to the DAR *Hacienda* Caylaway, where the properties subject of this case are located. However, this offer to sell became irrelevant because respondent was later able to establish before the DAR that the subject 27 parcels of land were reclassified as non-agricultural (residential) by virtue of (Nasugbu) Municipal

[55] *Municipality of Kananga v. Judge Madrona*, 450 Phil. 394, 396 (2003).

Zoning Ordinance No. 4 prior to the effectivity of the CARL on June 15, 1988. "In *Natalia Realty, Inc. vs. Department of Agrarian Reform*,[56] it was held that lands not devoted to agricultural activity are outside the coverage of CARL including lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than the DAR."[57] This being the case, respondent is not bound by its previous voluntary offer to sell because the subject properties cannot be the subject of a VOS, they being clearly beyond the CARP's coverage.

Respondent substantially complied with the requirements of DAR AO No. 6, Series of 1990.

Indeed, respondent's application for exemption was not accompanied by proof of disturbance compensation or by petitioners' waiver/undertaking that they will vacate the subject parcels of land whenever required. However, this Court finds that respondent has substantially complied with this requirement found under Section III (B) of DAR AO No. 6, Series of 1990.

Records show that upon being required by CLUPPI-II to submit proof of payment of disturbance compensation and/or waiver of rights of bona fide occupants after an evaluation of its application for exemption revealed that it was not accompanied by the same,[58] respondent exerted efforts to comply with the said requirement. It offered to pay petitioners their disturbance compensation but they failed to agree on the price. Petitioners also refused to execute a waiver/ undertaking. Respondent thus filed a Petition to fix disturbance compensation before the PARAD. To prove these, it submitted to the DAR a (1) Certification dated September 10, 2001, issued by Manuel J. Limjoco, Jr., MARO of Nasugbu, Batangas, stating that there was failure to reach an amicable settlement on the matter of disturbance compensation between

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[56] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

[57] *De Guzman v. Court of Appeals*, G.R. No. 156965, October 12, 2006, 504 SCRA 238, 245.

[58] *Supra* note 9.

the parties; and (2) copy of the Petition to fix disturbance compensation duly received by the PARAD on September 28, 2001.[59] To us, these constitute substantial compliance with the said particular requirement of Section III (B), DAR AO No. 6, Series of 2002. At any rate, the lack of proof of such payment later proved to be of no consequence since the assailed November 6, 2002 Order of the DAR was nevertheless made subject to the condition of payment of disturbance compensation to petitioners. In fact, the Order likewise states that 10 days from such payment, proof of payment of disturbance compensation must be submitted to the DAR.

The issues regarding respondent's non-posting of bond pursuant to Section IV, paragraph 4.5 of DAR AO No. 4, Series of 2003 and its non-compliance with Section VIII thereof were belatedly raised.

A careful review of the records reveals that petitioners raised the issues of respondent's non-posting of bond pursuant to Section IV, paragraph 4.5 of DAR AO No. 4, Series of 2003 and its non-compliance with Section VIII thereof only in their Motion for Reconsideration of the CA's assailed Decision. While petitioners themselves alleged that DAR AO No. 4, Series of 2003 was already in effect during the pendency of their Motions for Reconsideration before the DAR, there is no showing that they raised these points therein. "It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*."[60] Thus, petitioners cannot now be allowed to challenge the assailed Orders of the DAR on grounds of technicalities belatedly raised as an afterthought.

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[59] CA *rollo*, p. 21.

[60] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

WHEREFORE, this petition is *DENIED*. The assailed Decision dated April 29, 2005 and Resolution dated August 11, 2005 of the Court of Appeals in CA-G.R. SP No. 82709 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176800. September 5, 2011]

ELMER LOPEZ, *petitioner, vs.* **KEPPEL BANK PHILIPPINES, INC., MANUEL BOSANO III and STEFAN TONG WAI MUN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF CONFIDENCE AS A JUST CAUSE OF DISMISSAL; APPLIES TO EMPLOYEES OCCUPYING POSITIONS OF TRUST AND CONFIDENCE AND TO THOSE WHO ARE ROUTINELY CHARGED WITH THE CARE AND CUSTODY OF THE EMPLOYER'S MONEY OR PROPERTY. — The right of an employer to freely select or discharge his employee is a recognized prerogative of management; an employer cannot be compelled to continue employing one who has been guilty of acts inimical to its interests. When this happens, the employer can dismiss the employee for loss of confidence. At the same time, loss of confidence as a just cause of dismissal was never intended to provide employers with a blank check for terminating employment. Loss of confidence should ideally apply only (1)

[*] In lieu of Associate Justice Lucas P. Bersamin, per Raffle dated August 31, 2011.

to cases involving employees occupying positions of trust and confidence, or (2) to situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, *i.e.*, those vested with the powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or effectively recommend such managerial actions. To the second class belong cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

2. ID.; ID.; ID.; GUIDELINES FOR THE APPLICATION OF LOSS OF CONFIDENCE AS A JUST CAUSE OF DISMISSAL; TERMINATION OF EMPLOYMENT BY REASON OF LOSS OF TRUST AND CONFIDENCE BECAUSE OF THE EMPLOYEE'S DEFIANCE OF THE DIRECTIVE OF HIGHER AUTHORITY ON A BUSINESS JUDGMENT, JUSTIFIED. — As a bank official, the petitioner must have been aware that it is basic in every sound management that people under one's supervision and direction are bound to follow instructions or to inform their superior of what is going on in their respective areas of concern, especially regarding matters of vital interest to the enterprise. Under these facts, we find it undisputed that Lopez disobeyed the bank's directive to put the Hertz loan application on hold, and did not wait until its negative credit rating was cleared before proceeding to act. That he might have been proven right is immaterial. Neither does the submission that the bank honored and paid the first PO and even realized a profit from the transaction, mitigate the gravity of Lopez's defiance of the directive of higher authority on a business judgment. What appears clear is that the bank cannot in the future trust the petitioner as a manager who would follow directives from higher authorities on business policy and directions. The bank can be placed at risk if this kind of managerial attitude will be repeated, especially if it becomes an accepted rule among lower managers. In *Nokom v. NLRC,* we reiterated the guidelines for the application of loss of confidence as follows: (1) loss of confidence, should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere

afterthought to justify an earlier action taken in bad faith. Under the circumstances of this case, we are convinced that the bank was justified in terminating Lopez's employment by reason of loss of trust and confidence.

3. ID.; ID.; ID.; NO DENIAL OF DUE PROCESS WHERE THE DISMISSED EMPLOYEE WAS GIVEN THE REQUIRED NOTICES AND THE OPPORTUNITY TO BE HEARD. — As the NLRC and the CA did, we find Lopez to have been afforded due process when he was dismissed. He was given the required notices. More importantly, he was actually given the opportunity to be heard; when he moved for reconsideration of the bank's decision to terminate his employment, it scheduled a hearing where he appeared together with his lawyer and a military man. This was an opportunity to be heard that the law recognizes.

APPEARANCES OF COUNSEL

Musico Law Office for petitioner.

Espinosa Aldea-Espinosa & Associates and *Tan Acut Lopez & Pizon* for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] seeking the nullification of the decision[2] and the resolution[3] of the Court of Appeals (*CA*), dated December 19, 2006 and February 7, 2007, respectively, rendered in CA-G.R. CEB-SP. No. 01754.

The Antecedents

The facts, as set out in the assailed CA decision, are summarized below.

Petitioner Elmer Lopez was the Branch Manager of the respondent Keppel Bank Philippines, Inc. (*bank)* in Iloilo City.

[1] *Rollo*, pp. 9-35; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 38-46; penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla.

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

Allegedly, through his efforts, Hertz Exclusive Cars, Inc. (*Hertz)* became a client of the bank.

By notice dated August 12, 2003,[4] the bank asked Lopez to explain in writing why he should not be disciplined for issuing, without authority, two purchase orders (*POs*) for the Hertz account amounting to a total of ₱6,493,000.00, representing the purchase price of 13 Suzuki Bravo and two Nissan Exalta vehicles.

Lopez submitted his written explanation on the same day,[5] but the bank refused to give it credit. Through respondents Manuel Bosano III (Vice-President and Head of Retail Banking Division/Consumer Banking Division) and Stefan Tong Wai Mun (Vice-President/Comptroller), the bank terminated Lopez's employment effective immediately.[6]

Lopez asked the bank for reconsideration.[7] In response, the bank, through the respondent officers, met with Lopez at its headquarters in Cubao, Quezon City on September 25, 2003. Lopez came with his lawyer (Atty. Edmundo V. Buensuceso) and a military man (one Col. Flordeliza). After the meeting, the bank found no reason to reconsider and reiterated its decision to dismiss Lopez.[8]

Lopez filed a complaint for illegal dismissal and money claims against the bank, Bosano and Tong.

The Compulsory Arbitration Proceedings

Lopez alleged before the labor arbiter that he issued the POs as part of his strategy to enhance the bank's business, in line with his duty as branch manager to promote the growth of

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[4] *Id.* at 63; Petition, Annex "E".

[5] *Id.* at 61-62; Petition, Annex "D".

[6] *Id.* at 64; Notice of Termination dated August 27, 2003; Petition, Annex "F".

[7] *Id.* at 65-68; Petition, Annex "G".

[8] *Id.* at 72-73; Letter signed by Tong, dated October 3, 2003; Petition, Annex "H".

the bank. He claimed that the bank honored the first PO for ₱1.8M from which the bank derived an income of ₱142,000.00. He added that the second PO did not materialize because Mr. James Puyat Concepcion, a Hertz incorporator and director who opened the Hertz account, stopped depositing with the bank because of the negative credit rating he received from the bank's credit committee. Allegedly, the committee discovered that James Puyat Concepcion had several pending court cases.

For its part, the bank denied approving the first PO, arguing that Lopez did not have the authority to issue the POs for the Hertz account as there was a standing advice that no Hertz loan application was to be approved. It stressed that Lopez committed a serious violation of company rules when he issued the POs.

In a decision dated April 28, 2004,[9] Labor Arbiter Cesar D. Sideño ruled that Lopez was illegally dismissed. Accordingly, the labor arbiter ordered Lopez's immediate reinstatement, and awarded him backwages of ₱392,000.00, moral and exemplary damages of ₱8M, and ₱550,000.00 — the purchase price of a Toyota Revo which Lopez allegedly brought over from his stint with Global Bank (now Metrobank). The labor arbiter found that contrary to the bank's claim, the evidence showed that Lopez had been issuing POs which the bank had paid, including the first of the two POs that led to his dismissal.[10]

On appeal by the bank, the National Labor Relations Commission (*NLRC*) rendered a decision on October 11, 2005[11] reversing the labor arbiter's ruling. It dismissed the complaint for lack of merit. The NLRC found merit in the bank's submission that by issuing the questioned POs without authority and against the bank's express orders, Lopez thereby committed a willful disobedience against his superiors — a sufficient basis for the bank to lose its trust and confidence in him as branch manager. It thus found that Lopez had been dismissed for cause after the

[9] *Id.* at 118-135; Petition, Annex "K".

[10] *Id.* at 186-192.

[11] *Ibid.*

observance of due process. Lopez moved for reconsideration, but the NLRC denied the motion in its resolution of January 25, 2006.[12] Lopez sought relief from the CA through a petition for *certiorari*, charging the NLRC with grave abuse of discretion for setting aside the labor arbiter's decision.

The CA Decision

On December 19, 2006, the CA rendered its now assailed decision,[13] denying the petition and affirming the October 11, 2005 decision of the NLRC. It fully agreed with the NLRC finding that Lopez had not been illegally dismissed.

Lopez moved for, but failed to obtain, a reconsideration of the CA decision. The CA denied the motion on February 7, 2007.[14]

The Case for Lopez

Through the present petition,[15] the reply to the bank's comment dated February 11, 2008,[16] and the memorandum dated September 22, 2008,[17] Lopez entreats the Court to nullify the CA decision, contending that the CA erred in: (1) not ruling that the bank's appeal with the NLRC should have been dismissed on the ground of non-perfection; and (2) affirming the decision of the NLRC that he was dismissed for a just cause (loss of trust and confidence) and that he was afforded due process.

Lopez argues, with respect to the first assignment of error, that the bank failed to comply with Sections 4 and 6, Rule VI, of the 2002 Rules of Procedure of the NLRC.[18] He points out that the bank did not file a notice of appeal together with its

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[12] *Id.* at 197-198.

[13] *Supra* note 2.

[14] *Supra* note 3.

[15] *Supra* note 1.

[16] *Rollo,* pp. 263-266.

[17] *Id.* at 276-310.

[18] Now 2005 Revised Rules of Procedure of the NLRC.

memorandum of appeal, which in turn was not supported by a certificate of non-forum shopping; and neither did the bank furnish him, as appellee, a certified copy of the appeal bond.

On the substantive aspect of the case, Lopez posits that the bank failed to justify his dismissal on the ground of loss of trust and confidence. He insists that, as branch manager, he had the authority to issue POs as in fact he issued several of them in the past, which POs were honored and paid by the bank. The labor arbiter properly relied on the past transactions in his decision. These included, he reiterates, the first PO for the Hertz account which was paid by the bank on July 18, 2003, a transaction where the bank even earned a substantial income (₱142,000.00). He maintains that the bank failed to substantiate its position that he was not authorized to issue the POs. He adds that the bank's claim that his issuance of the POs exposed the bank to financial loss is a lame excuse to justify the termination of his employment.

Lopez argues that his dismissal was a mere afterthought on the part of the bank management, particularly Bosano, to cover up its embarrassment when he (Lopez) made inquiries and discovered that Hertz's James Puyat Concepcion had no pending court cases and was therefore credit worthy. He adds that assuming that he did not have the authority to issue POs, still, he cannot be held guilty of willful disobedience; even if he had been guilty, dismissal was a very harsh penalty.

Finally, Lopez submits that the bank failed to accord him due process because the bank did not give him the opportunity to prepare for his defense. He points out that his written explanation (dated August 12, 2003)[19] preceded the bank's letter (of the same date)[20] that required him to explain why he issued the POs in question. Lopez contends in this regard that on August 12, 2003, he went to Bosano's office in Quezon City all the way from Iloilo City and there, he was cornered by Bosano who verbally instructed him to immediately write down

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[19] *Supra* note 5.

[20] *Supra* note 4.

his explanation even before he was served with the bank's August 12, 2003 letter. He maintains that Bosano's preemptive move deprived him of the opportunity to secure the services of a counsel.

While Lopez believes his dismissal to be illegal, he does not seek reinstatement due to the antagonism that has developed between him, and the bank and its officers, due to the present case. He only asks for separation pay of one month pay for every year of service, full backwages, allowances and other benefits. Additionally, he prays for moral and exemplary damages, as well as attorney's fees, to compensate him for a dismissal that was attended by bad faith and effected in a wanton, oppressive and malevolent manner.

The Case for the Bank and its Officers

Through its comment to the petition[21] and memorandum,[22] the bank submits that the CA committed no reversible error in denying Lopez's petition for *certiorari*, and in affirming the ruling of the NLRC that Lopez was dismissed for a just cause and after due process.

The bank is puzzled why Lopez is standing firm on his position that he did nothing wrong when he issued the questioned POs despite the express directive not to proceed with the Hertz loan application unless its adverse credit investigation report is explained to the bank's credit committee. It posits that no bank would gamble to maintain as branch manager a person who dares to supplant a major decision of the bank's top leadership with his personal decision. It argues that in this situation, the law (Labor Code) provides protection to the employer through its management prerogative rights and the right to dismiss employees on just and valid grounds.

The bank refutes Lopez's contention that there was no willful disobedience that warranted his dismissal. It points out that there was an order for him not to proceed with the Hertz loan

[21] *Rollo,* pp. 205-228.

[22] *Id.* at 317-352.

application. The order was very reasonable as it is the standard policy of every bank to conduct an investigation on the credit worthiness of any loan applicant. Since it appeared from the investigation of its credit committee that James Puyat Concepcion of Hertz had various court cases, it was only proper for the bank to put on hold the loan application of Hertz until the adverse finding could be cleared. It insists that Lopez willfully and knowingly disobeyed this order.

Further, the bank questions Lopez's submission, through a supplemental addendum to his position paper, of evidence that it honored and paid POs issued by Lopez in the past. It maintains that it was not furnished a copy of this submission; hence, it was unable to controvert this evidence.

On the procedural due process issue, the bank denies Lopez's allegation that he was not given the opportunity to defend himself. It points out that both the NLRC and the CA confirmed that Lopez was not deprived the opportunity to be heard; the opportunity commenced with (1) the notice for him to explain his side regarding his unauthorized issuance of POs, (2) the notice of his termination from employment, and (3) the hearing called in response to his motion for reconsideration where he was assisted by his lawyer and his soldier friend.

The Court's Ruling

The procedural issue

Lopez faults the CA for not ruling that the bank's appeal to the NLRC should have been dismissed for non-perfection. He argues that no notice of appeal accompanied the memorandum of appeal; neither was there a certificate of non-forum shopping nor any copy furnished to him of the certified true copy of the appeal bond.

The procedural question is a non-issue. Lopez did not raise it before the CA; in fact, he challenged the NLRC decision of October 11, 2005[23] on its merits and not on its form. We, therefore, see no need to further discuss this argument.

[23] *Supra* note 10.

The merits of the case

On the substantive aspect of the case, we note that Lopez was dismissed from the service by reason of loss of trust and confidence, a just cause for an employee's dismissal under the law.[24] Lopez insists though that the act which triggered the dismissal action does not justify his separation from the service.

Is Lopez liable for loss of trust and confidence for issuing the two disputed POs?

The right of an employer to freely select or discharge his employee is a recognized prerogative of management; an employer cannot be compelled to continue employing one who has been guilty of acts inimical to its interests. When this happens, the employer can dismiss the employee for loss of confidence.[25]

At the same time, loss of confidence as a just cause of dismissal was never intended to provide employers with a blank check for terminating employment. Loss of confidence should ideally apply only (1) to cases involving employees occupying positions of trust and confidence, or (2) to situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, *i.e.*, those vested with the powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or effectively recommend such managerial actions. To the second class belong cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[26]

As branch manager, Lopez clearly occupies a "position of trust." His hold on his position and his stay in the service depend on the employer's trust and confidence in him and on his

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[24] LABOR CODE, Article 282(c).

[25] Cesario Alverio Azucena, Jr., *The Labor Code with Comments and Cases, Volume II,* Sixth Edition (2007), p. 752 citing *Tabacalera Insurance Co. v. NLRC*, 236 Phil. 714 (1987).

[26] *Mabeza v. NLRC,* 338 Phil. 386 (1997).

managerial services.[27] According to the bank, Lopez betrayed this trust and confidence when he issued the subject POs without authority and despite the express directive to put the client's application on hold. In response, Lopez insists that he had sufficient authority to act as he did, as this authority is inherent in his position as bank manager. He points to his record in the past when he issued POs which were honored and paid by the bank and which constituted the arbiter's "overwhelming evidence"[28] in support of the finding that "complainant's dismissal from work was without just cause, hence, illegal."[29]

We disagree with Lopez's contention. Despite evidence of his past exercise of authority (as found by the labor arbiter), we cannot disregard evidence showing that in August 2003, the bank specifically instructed Lopez not to proceed with the Hertz loan application because of the negative credit rating issued by the bank's credit committee. We find it undisputed that Lopez processed the loan despite the adverse credit rating. In fact, he admitted that he overlooked the "control aspects" of the transaction as far as the bank was concerned because of his eagerness to get a bigger share of the market.[30]

Lopez's good intentions, assuming them to be true, are beside the point for, ultimately, what comes out is his defiance of a direct order of the bank on a matter of business judgment. He went over the heads of the bank officers, including the credit committee, when, based on inquiries he made on his own regarding the credit worthiness of James Puyat Concepcion, he simply proceeded to act on the basis of his own judgment. Evident in his written explanation[31] was his failure to inform the credit committee of his own efforts to check on the committee's adverse findings against Hertz and his independent action based solely on his own authority.

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[27] *International Harvester Macleod, Inc. v. Intermediate Appellate Court*, 233 Phil. 655 (1987).

[28] *Supra* note 10.

[29] *Id.* at 132.

[30] *Supra* note 5.

[31] *Ibid.*

As a bank official, the petitioner must have been aware that it is basic in every sound management that people under one's supervision and direction are bound to follow instructions or to inform their superior of what is going on in their respective areas of concern, especially regarding matters of vital interest to the enterprise. Under these facts, we find it undisputed that Lopez disobeyed the bank's directive to put the Hertz loan application on hold, and did not wait until its negative credit rating was cleared before proceeding to act. That he might have been proven right is immaterial. Neither does the submission that the bank honored and paid the first PO and even realized a profit from the transaction, mitigate the gravity of Lopez's defiance of the directive of higher authority on a business judgment. What appears clear is that the bank cannot in the future trust the petitioner as a manager who would follow directives from higher authorities on business policy and directions. The bank can be placed at risk if this kind of managerial attitude will be repeated, especially if it becomes an accepted rule among lower managers.

In *Nokom v. NLRC,*[32] we reiterated the guidelines for the application of loss of confidence as follows: (1) loss of confidence, should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

Under the circumstances of this case, we are convinced that the bank was justified in terminating Lopez's employment by reason of loss of trust and confidence. He admitted issuing the two POs, claiming merely that he had the requisite authority. He could not present any proof in this regard, however, except to say that it was part of his inherent duty as bank manager. He also claimed that the bank acquiesced to the issuance of the POs as it paid the first PO and the POs he issued in the past. This submission flies in the face of the bank's directive for him not to proceed unless matters are cleared with the bank's credit

[32] 390 Phil. 1228 (2000).

committee. The bank had a genuine concern over the issue as it found through its credit committee that Hertz was a credit risk. Whether the credit committee was correct or not is immaterial as the bank's direct order left Lopez without any authority to clear the loan application on his own. After this defiance, we cannot blame the bank for losing its confidence in Lopez and in separating him from the service.

The due process issue

As the NLRC and the CA did, we find Lopez to have been afforded due process when he was dismissed. He was given the required notices. More importantly, he was actually given the opportunity to be heard; when he moved for reconsideration of the bank's decision to terminate his employment, it scheduled a hearing where he appeared together with his lawyer and a military man. This was an opportunity to be heard that the law recognizes.

In fine, **we find no merit in the petition.**

WHEREFORE, premises considered, we hereby *DENY* the petition for lack of merit. The assailed decision and resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioner Elmer Lopez.

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[*] and *Sereno, JJ.*, concur.

[*] Designated as additional Member vice Associate Justice Bienvenido L. Reyes per Special Order No. 1066 dated August 23, 2011.

EN BANC

[A.M. No. 2011-05-SC. September 6, 2011]

Re: Deceitful Conduct of IGNACIO S. DEL ROSARIO, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY, DEFINED; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, DEFINED. — Dishonesty has been defined as a disposition to lie, cheat, deceive or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings. On the other hand, conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary. The circumstances of the present case show that Del Rosario committed these violations in his dealings with Primo.

2. ID.; ID.; ID.; PROPER PENALTY FOR DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. — Under the Revised Uniform Rules on Administrative Cases in the Civil Service (*Civil Service Rules*), dishonesty and conduct prejudicial to the best interest of the service are classified as grave offenses. Under Section 52(A)(1), Rule IV of the Civil Service Rules, dishonesty is punishable by dismissal for the first offense. In turn, conduct prejudicial to the best interest of the service under Section 52(A)(20), Rule IV of the Civil Service Rules is punishable by suspension for six (6) months and one (1) day to one year for the first offense, and by dismissal for the second offense. In this case, considering Del Rosario's two civil service offenses, Section 55 of the Civil Service Rules provides that the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances.

Thus, Del Rosario's infractions merit the imposition of the penalty of dismissal from the service with the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.

3. ID.; ID.; ID.; THE EMPLOYEE'S ADMISSIONS OF HIS INFRACTIONS, THE RESTITUTION MADE AND THE COMPLAINANT'S DESISTANCE CANNOT BE CONSIDERED AS MITIGATING CIRCUMSTANCES WHERE PUBLIC INTEREST IN THE CONDUCT OF AN EMPLOYEE OF THE JUDICIARY AND THE NAME OF THE JUDICIARY ITSELF IS INVOLVED. — We cannot consider as mitigating circumstances Del Rosario's ready admissions of his infractions, the proffered reason for the misappropriation, the restitution made, and Primo's expressed intent to desist from pursuing the present administrative case. We note the OAS' observation that Del Rosario's restitution was not of his own volition but stemmed only from his fear of possible administrative sanctions. Any consideration of restitution must also take into account the nature of the offense committed in terms of the stakes involved. In this case, public interest in the conduct of an employee of the Judiciary and the name of the Judiciary itself are involved. Del Rosario's infractions cannot but be severe as he took advantage of the trust and confidence of a lower court employee that his office (Fiscal Management Office-OCA) ministers to. The complainant's desistance, on the other hand, is not a critical factor as what is involved is not a private offense but one where public interest is involved.

4. ID.; ID.; ID.; EXPECTED TO POSSESS A HIGH DEGREE OF WORK ETHIC, AND ABIDE BY THE STRICTEST PRINCIPLES OF ETHICAL CONDUCT AND DECORUM BOTH IN THEIR PROFESSIONAL AND PRIVATE DEALINGS. — As an OCA employee, Del Rosario is expected to set a good example for other court employees in the standards of propriety, honesty and fairness. He is expected to possess a high degree of work ethic, and abide by the strictest principles of ethical conduct and decorum both in his professional and private dealings. Del Rosario failed to meet these standards for he placed his personal interest over the interest of an employee who trusted him as a friend and as an employee

administering to the needs of other employees; he catered to his own interest without regard to the Court's interest in promoting and uplifting the public's confidence in the integrity of the Judiciary, and in the trustworthiness, reliability and honesty of its employees.

5. ID.; ID.; ID.; PENALTY OF DISMISSAL IMPOSED FOR DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COURT EMPLOYEES, AS PUBLIC SERVANTS, ARE REMINDED THAT THE HIGHEST SENSE OF HONESTY, INTEGRITY, MORALITY AND DECENCY IS DEMANDED IN THEIR PERFORMANCE OF OFFICIAL DUTIES AND IN THE HANDLING OF THEIR PERSONAL AFFAIRS; AT ALL TIMES, THEY CARRY, AND MUST PRESERVE, THE COURT'S GOOD NAME AND STANDING. — We have many times declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel – from the judge to the lowest of its rank and file – who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions. In this case, Del Rosario's actions tarnished the public perception of the image of the Court, and placed into serious question the Court's capability to ably handle the supervision and administration of its own personnel. Under the circumstances, our compassion has to give way to the higher demand of the interest of the institution. Thus, we impose the supreme penalty of dismissal from the service in this case. We hope that this case shall remind court employees that as public servants, the highest sense of honesty, integrity, morality and decency is demanded in their performance of official duties and in the handling of their personal affairs; at all times, they carry, and must preserve, the Court's good name and standing. The Court cannot sit idly as its own employee violates the norm of public accountability in a manner that diminishes the people's faith in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

On April 19, 2011, the Office of the Court Administrator (*OCA*) was furnished a copy of the letter-complaint dated April

6, 2011 written by Noel G. Primo, a retired sheriff of the Regional Trial Court, Branch 65, Bulan, Sorsogon. Primo's letter was addressed to Ignacio S. del Rosario, Cash Clerk III of the Records and Miscellaneous Matter Section, Checks Disbursement Division, Fiscal Management Office-OCA of the Supreme Court, demanding the return of a sum of money that was entrusted to him by Primo. In the letter, Primo accused Del Rosario of dishonesty, grave abuse of trust and confidence, and conduct extremely prejudicial to a civil servant, "specifically a **SUPREME COURT EMPLOYEE**."[1]

According to Primo, Del Rosario is a friend who offered to help him settle his financial liability with the Court so he could process his retirement papers. On November 3, 2010, Primo entrusted to Del Rosario the amount of ₱34,000.00. It was agreed that a portion of this amount (₱32,421.43) would be paid by Del Rosario to the Court's cashier while the remaining amount would belong to Del Rosario as a token for the services rendered to Primo. From December 2010 to January 2011, Del Rosario represented to Primo that he could process his retirement papers with the Government Service Insurance System (*GSIS*). Del Rosario also blamed the GSIS for the slow processing of Primo's retirement papers. Primo subsequently discovered that his retirement papers were still with the Supreme Court. He also discovered that Del Rosario did not pay the former's financial liability with the Court. Primo demanded from Del Rosario the return of the ₱32,421.43. Despite Del Rosario's assurances and Primo's repeated demands, the money was not returned.

Court Administrator Jose Midas P. Marquez indorsed the matter for appropriate action to the Office of Administrative Services (*OAS*) which directed Del Rosario to comment on the letter-complaint.

In his Comment, Del Rosario admitted receiving ₱34,000.00 from Primo. He claimed that he failed to pay the Court's cashier as he was compelled to use the money to pay for his son's hospitalization. He also claimed that with the help of his relatives

[1] Letter dated April 6, 2011 of Primo to Del Rosario, p. 2.

and friends, he raised the money and fully paid the financial liability of Primo with the Court. Del Rosario asked that the present matter be considered settled, and that the complaint against him be dismissed considering the restitution and payment made. Primo at the same time manifested that he no longer wanted to pursue his complaint against Del Rosario in light of the restitution and payment made.

After evaluation of the letter-complaint and Del Rosario's comment, the OAS found that Del Rosario violated the Code of Conduct and Ethical Standards for Public Officials and Employees;[2] Canon I (Fidelity to Duty)[3] of the Code of Conduct for Court Personnel, for not returning the amount in excess of ₱32,421.43; and Canon IV, Section 7[4] (Performance of Duties) of the same Code, for doing work outside the scope of his duties as Cash Clerk III. For his actions, the OAS found him administratively liable for dishonesty and conduct prejudicial

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[2] Republic Act No. 6713, as amended. Section 4(c) states, [j]ustness and sincerity. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity x x x. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.

[3] CANON I (Fidelity to Duty)

SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions.

SECTION 3. Court personnel shall not discriminate by dispensing special favors to anyone. They shall not allow kinship, rank, position or favors from any party to influence their official acts or duties.

SECTION 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.

SECTION 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures.

[4] Sec. 7. Court personnel shall not be required to perform any work or duty outside the scope of their assigned job description.

to the best interest of the service. The OAS reasoned:

> Del Rosario's actuation amounts to dishonesty and conduct prejudicial to the best interest of the service. Inasmuch as Del Rosario was fully aware that the money was only entrusted to him for payment since Primo could not personally tender payment due to the long distance in going to Manila and of his present health condition, the former, however, appropriated it instead for his personal use to remedy the financial needs of his family. This is a form of deceit and betrayal of trust. The Court defines dishonesty as a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty; probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[5]

The OAS recommended:

a. That Mr. Ignacio S. Del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA be held liable for serious dishonesty and conduct prejudicial to the best interest of the service; and

b. That he be suspended from office for six (6) months without pay, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.[6]

The Court's Ruling

We agree with the findings of the OAS that Del Rosario's actions constituted dishonesty and demonstrated conduct prejudicial to the best interest of the service. We cannot, however, accept the recommended penalty imposed by the OAS.

Dishonesty has been defined as a disposition to lie, cheat, deceive or defraud.[7] It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings.[8] On the other hand, conduct prejudicial to

[5] Memorandum for Hon. Renato C. Corona dated July 26, 2011, p. 3.

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

[7] *Bulalat v. Adil*, A.M. No. SCC-05-10-P, October 19, 2007, 537 SCRA 44, 48.

[8] *Ibid.*

the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary.[9] The circumstances of the present case show that Del Rosario committed these violations in his dealings with Primo.

The records show that Del Rosario admitted to the dishonest act of misappropriating the money that was entrusted to him by Primo. He also did not deny the misrepresentations he made to Primo to cover up his misappropriation of the entrusted sum. Del Rosario also admitted to his improper conduct in accepting money to undertake work outside the scope of his assigned tasks. Lastly, he admitted that he failed to immediately return the money he misappropriated despite Primo's repeated demands.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service (*Civil Service Rules*), dishonesty and conduct prejudicial to the best interest of the service are classified as grave offenses. Under Section 52(A)(1), Rule IV of the Civil Service Rules, dishonesty is punishable by dismissal for the first offense. In turn, conduct prejudicial to the best interest of the service under Section 52(A)(20), Rule IV of the Civil Service Rules is punishable by suspension for six (6) months and one (1) day to one year for the first offense, and by dismissal for the second offense.

In this case, considering Del Rosario's two civil service offenses, Section 55 of the Civil Service Rules provides that the penalty to be imposed should be that corresponding to the most serious charge, with the rest considered as aggravating circumstances. Thus, Del Rosario's infractions merit the imposition of the penalty of dismissal from the service with the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.[10]

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[9] *Toledo v. Perez*, A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5, 11, citing *Ito v. De Vera*, A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11.

[10] Section 58(a), Rule IV of the Civil Service Rules.

We cannot consider as mitigating circumstances Del Rosario's ready admissions of his infractions, the proffered reason for the misappropriation, the restitution made, and Primo's expressed intent to desist from pursuing the present administrative case. We note the OAS' observation that Del Rosario's restitution was not of his own volition but stemmed only from his fear of possible administrative sanctions.[11] Any consideration of restitution must also take into account the nature of the offense committed in terms of the stakes involved. In this case, public interest in the conduct of an employee of the Judiciary and the name of the Judiciary itself are involved. Del Rosario's infractions cannot but be severe as he took advantage of the trust and confidence of a lower court employee that his office (Fiscal Management Office-OCA) ministers to. The complainant's desistance, on the other hand, is not a critical factor as what is involved is not a private offense but one where public interest is involved.

As an OCA employee, Del Rosario is expected to set a good example for other court employees in the standards of propriety, honesty and fairness. He is expected to possess a high degree of work ethic, and abide by the strictest principles of ethical conduct and decorum both in his professional and private dealings. Del Rosario failed to meet these standards for he placed his personal interest over the interest of an employee who trusted him as a friend and as an employee administering to the needs of other employees; he catered to his own interest without regard to the Court's interest in promoting and uplifting the public's confidence in the integrity of the Judiciary, and in the trustworthiness, reliability and honesty of its employees.

We have many times declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel – from the judge to the lowest of its rank and file – who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.[12] In this case, Del Rosario's actions tarnished the public perception of the image of the Court, and placed into serious question the

[11] *Supra* note 5.

[12] *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

Court's capability to ably handle the supervision and administration of its own personnel.

Under the circumstances, our compassion has to give way to the higher demand of the interest of the institution. Thus, we impose the supreme penalty of dismissal from the service in this case. We hope that this case shall remind court employees that as public servants, the highest sense of honesty, integrity, morality and decency is demanded in their performance of official duties and in the handling of their personal affairs; at all times, they carry, and must preserve, the Court's good name and standing.[13] The Court cannot sit idly as its own employee violates the norm of public accountability in a manner that diminishes the people's faith in the Judiciary.[14]

WHEREFORE, premises considered, we hereby *DISMISS* Ignacio S. del Rosario, Cash Clerk III of the Records and Miscellaneous Matter Section, Checks Disbursement Division, Fiscal Management Office-Office of the Court Administrator, from the service for Dishonesty and Conduct Prejudicial to the Best Interest of the Service. The penalty of dismissal shall carry the accessory penalties of forfeiture of all his retirement benefits, except accrued leave benefits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Sereno, J., on leave.

Reyes, J., on official leave.

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[13] *San Jose, Jr. v. Camurongan,* A.M. No. P-06-2158, April 25, 2006, 488 SCRA 102, 106; and *Floria v. Sunga, ibid.,* citing *Bucatcat v. Bucatcat,* 380 Phil. 555, 567 (2000).

[14] *San Jose, Jr. v. Camurongan, supra,* at 106.

EN BANC

[A.M. No. P-05-2083. September 6, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ELSIE C. REMOROZA, Clerk of Court, Municipal Trial Court, Mauban, Quezon,** *respondent.*

[A.M. No. P-06-2263. September 6, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JOSEFINA NERI N. ALPAJORA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GROSS DISHONESTY AND GROSS NEGLECT OF DUTY; DISMISSAL FROM THE SERVICE AND RESTITUTION OF THE SHORTAGES IMPOSED; THE COURT CANNOT COUNTENANCE ANY DISHONESTY AND MALVERSATION COMMITTED BY THOSE RESPONSIBLE FOR SAFEKEEPING AND HANDLING OF ITS FUNDS. — The Court fully agrees with the OCA's finding and recommendations. Remoroza deserves to be dismissed from the service, with forfeiture of all her leave credits and retirement privileges and with prejudice to reemployment in any branch or instrumentality of the government. She must restitute her shortages of ₱10,583.60 for the JDF, ₱18,952.00 for the GF, ₱25,281.40 for the SAJF, and ₱168,000.00 for the FF. The Court cannot countenance any dishonesty and malversation committed by those responsible for safekeeping and handling of its funds. Any lenience towards their infractions will ultimately diminish the faith and trust of the people in the judiciary.

2. ID.; ID.; ID.; THE EMPLOYEE'S DEFIANCE OF THE COURT'S SHOW CAUSE ORDER DEMONSTRATES EXTREME INSOLENCE AND ARROGANCE, MAKING HER UNFIT FOR GOVERNMENT SERVICE. — It does not also pass the Court's attention that respondent Remoroza twice requested for additional time to submit her written

explanation to the audit results yet did not. She also snubbed the Court's show cause order. Her defiance demonstrates extreme insolence and arrogance, making her unfit for government service.

D E C I S I O N

ABAD, *J.*:

On February 28, 2005 an Audit Team of the Court conducted a financial audit of the accountabilities of the following officials of the Municipal Trial Court of Mauban, Quezon:

Name of Accountable Officer	Official Designation	Accountability Period
Elsie C. Remoroza	Clerk of Court II	Sept. 23, 2004 to Feb. 2005
Anaceto T. Obeña	Officer-in-charge	Jan. 2003 to Sept. 22, 2004
Josefina Neri-Al[p]ajora	Officer-in-charge	Sept. 2001 to Dec. 2002

The audit showed a shortage of ₱160,221.00 in respondent Elsie C. Remoroza's collections. The subsidiary ledgers of the Court's Accounting Division also showed that Remoroza and respondents Anaceto T. Obeña and Josefina Neri-Alpajora failed to submit their monthly reports for collections, deposits, and withdrawals involving the Judiciary Development Fund (JDF), General Fund (GF), Special Allowance for the Judiciary Fund (SAJF) and the Fiduciary Fund (FF).

On October 5, 2005 the Court adopted the findings of the audit team[1] and resolved to:

(a) **DOCKET** the report of the Financial Audit Team as a regular administrative complaint against Clerk of Court Elsie C. Remoroza.

(b) **DIRECT** Ms. Elsie C. Remoroza to: [1] **EXPLAIN** within ten (10) days from notice, her: [a] failure to remit her collections for the

[1] *Rollo* (A.M. P-05-2083), pp. 33-35.

different judiciary funds on time; [2] non-submission of Monthly reports of Collections, Deposits and Withdrawals for the Judiciary Development Fund, Special Allowance for the Judiciary, and Fiduciary Fund from September 2004 to January 2005; and [3] failure to update postings of transactions in the cashbooks for the different funds; [2] **RESTITUTE** her shortages in the Judiciary Development Fund, General Fund, Special Allowance for the Judiciary Fund, and Fiduciary Fund in the amounts of ₱10,583.60, ₱18,952.00, ₱25,281.40 and ₱168,000.00, respectively, by depositing the same to their respective Fund Accounts; and [3] **SUBMIT** the machine-validated deposit slips to the Fiscal Monitoring Division, Court Management Office, as proof of compliance.

(c) **DIRECT** former Officer-in-Charge Josefina Neri-Al[p]ajora to: [1] **EXPLAIN**, within ten (10) days from notice, the: [a] shortage in the Judiciary Development Fund and General Fund in the amounts of ₱10,120.00 and ₱4,684.00, respectively; and [b] non-submission of Monthly reports of Collections, Deposits and Withdrawals for the following funds:

FUND	PERIOD
JDF	April 2002 to December 2002
GF	April 2002 to December 2002
FF	March 2002 to December 2002

[2] **RESTITUTE** the aforesaid shortages in the different Funds by depositing the same to their respective Fund Accounts; and [3] **SUBMIT** the machine-validated deposit slips to the Fiscal Monitoring Division, Court Management Office, as proof of compliance;

(d) **DIRECT** former Officer-in-Charge Anaceto T. Obeña to: [1] **EXPLAIN** within ten (10) days, the non-submission of Monthly Reports of Collections, Deposits and Withdrawals for the following Funds:

FUND	PERIOD
GF	January 2003 to November 2003
SAJF	Start of Collection to December 2003
FF	January 2003 to August 2004

[2] **RESTITUTE** his shortages in the Judiciary Development Fund and Fiduciary Fund in the amounts of ₱350.00 and ₱40,000.00, respectively, by depositing the same to their respective Fund Accounts; and [3] **SUBMIT** the machine-validated deposit slips to

the Fiscal Monitoring Division, Court Management Office, as proof of compliance;

(e) **DIRECT** Acting Presiding Judge Felix A. Caraos to STUDY and IMPLEMENT procedures that shall strengthen the internal control over cash transactions of the Court; and

(f) **SUSPEND** Clerk of Court Elsie C. Remoroza form office, pending resolution of this administrative matter.

Respondent Alpajora submitted her explanation[2] on March 8, 2006. She said that she already accounted for and remitted all her collections to respondent Remoroza when the latter resumed her post as clerk of court. Alpajora also submitted with her explanation the monthly reports relating to funds mentioned. Further, she attached to her explanation Remoroza's certification that she was not involved in any anomaly regarding the handling of court funds.

Respondent Obeña, on the other hand, maintained[3] that his appointment as acting clerk of court was a mere "paper" designation since Remoroza continued with the work of preparing the monthly reports of collections, deposits, and withdrawals during her suspension from work. Obeña further said that he had already complied with the order for him to restitute his cash shortages and submit the machine-validated deposit slips for the JDF as well as the required monthly reports.

The Court referred the cases of respondents Alpajora and Obeña to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation. On June 23, 2006 the OCA recommended[4] that Alpajora: 1) be fined the amount of ₱5,000.00 for her failure to remit her collections on time and for the delay in submitting the monthly reports for collections, deposits, and withdrawals; and 2) be ordered to restitute the shortages of ₱10,120.00 and ₱4,684.00 for the JDF and GF, respectively.

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[2] *Id*. at 40-43.

[3] *Id*. at 76-77.

[4] *Id*. at 54-55.

On August 20, 2008 the Court adopted *in toto* the OCA's above recommendations. On December 15, 2008 Alpajora told the Court that she had already restored the shortages required of her.

On June 23, 2008 the Court also issued a resolution adopting[5] the OCA's recommendation,[6] finding respondent Obeña guilty of simple neglect of duty. The Court fined him in the amount of ₱5,000.00 and ordered him to restitute the shortages in his collections.

What remains is the case of respondent Remoroza. The issue presented in her case is whether or not she committed a breach of duty a) to account for and deposit without delay her collections of court funds and b) render the corresponding monthly report of collections, deposits and withdrawals.

The OCA stressed in its report and recommendation[7] that in an earlier administrative case,[8] the Court had found against respondent Remoroza guilty of simple neglect of duty for failing to remit her collections and belatedly submitting the required monthly reports. The Court suspended her from work without pay and fined her ₱10,000.00. This time, the OCA has found Remoroza guilty of gross dishonesty and grave misconduct and recommends her dismissal from the service. It also asks that she be directed to restitute her shortages for the different court funds.

The Court fully agrees with the OCA's finding and recommendations. Remoroza deserves to be dismissed from the service, with forfeiture of all her leave credits and retirement privileges and with prejudice to reemployment in any branch or instrumentality of the government. She must restitute her shortages of ₱10,583.60 for the JDF, ₱18,952.00 for the GF, ₱25,281.40 for the SAJF, and ₱168,000.00 for the FF.

[5] *Id*. at 98.

[6] *Id*. at 93-97.

[7] Report and Recommendation signed by then Court Administrator and now incumbent Associate Justice Jose P. Perez.

[8] A.M. 01-4-133-MTC.

Notably, respondent Remoroza repeated exactly the same offenses for which she was previously found guilty and penalized.[9] She is apparently incorrigible. And what makes the matter worse is that she had returned to work barely five months and yet she already incurred huge shortages of ₱222,817.00 affecting four separate court funds placed in her safekeeping. It now appears fortunate that a Court's Audit Team happened to conduct a spot audit sooner.

It does not also pass the Court's attention that respondent Remoroza twice requested for additional time to submit her written explanation to the audit results yet did not. She also snubbed the Court's show cause order. Her defiance demonstrates extreme insolence and arrogance, making her unfit for government service.

The Court cannot countenance any dishonesty and malversation committed by those responsible for safekeeping and handling of its funds. Any lenience towards their infractions will ultimately diminish the faith and trust of the people in the judiciary.

WHEREFORE, the Court finds respondent Clerk of Court Elsie C. Remoroza *GUILTY* of gross dishonesty and gross neglect of duty for failure to explain and restitute her shortages in the different funds of the court and *DISMISSES* her from the service with forfeiture of all leave credits and of retirement privileges and with prejudice to reemployment in any branch or instrumentality of the government, including the government-owned or controlled corporation. The Court further *FORFEITS* all of Remoroza's accrued leave credits, if any, which shall be applied as part of the restitution of her shortages in the Judiciary Development Fund, General Fund, Special Allowance for the Judiciary Fund, and Fiduciary Fund in respective amounts of ₱10,583.60, ₱18,952.00, ₱25,281.40 and ₱168,000.00. Lastly, in the event that her accrued leave credits will not be enough to cover the shortages, the Court *DIRECTS* the Office of the Court Administrator to file the appropriate case for the recovery of such unremitted amounts.

SO ORDERED.

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[9] *Id*.

Corona, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr,. and *Mendoza, JJ.,* concur.

Velasco, Jr. and *Perez, JJ.,* no part.

*Sereno, J.,*on leave.

Reyes, J., on official leave.

EN BANC

[A.M. No. RTJ-10-2225. September 6, 2011]
(Formerly A.M. OCA I.P.I. No. 09-3182-RTJ)

ATTY. TOMAS ONG CABILI, *complainant, vs.* **JUDGE RASAD G. BALINDONG, Acting Presiding Judge, RTC, Branch 8, Marawi City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF JUDICIAL STABILITY; RATIONALE FOR THE RULE. — The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders **of another court of concurrent jurisdiction** having the power to grant the relief sought by the injunction. The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, **to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment**.

2. ID.; ID.; ID.; A COURT WHICH ISSUED A WRIT OF EXECUTION HAS THE INHERENT POWER TO CORRECT ERRORS OF

ITS MINISTERIAL OFFICERS AND TO CONTROL ITS OWN PROCESSES; VIOLATION OF THE RULE AGAINST SPLITTING OF JURISDICTION WARRANTS IMPOSITION OF ADMINISTRATIVE SANCTIONS. — [W]e have repeatedly held that a case where an execution order has been issued is considered as **still pending**, so that all the proceedings on the execution are still proceedings in the suit. A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administration of justice. Jurisprudence shows that a violation of this rule warrants the imposition of administrative sanctions.

3. ID.; JUDGMENTS; EXECUTION OF; WHERE THE SHERIFF COMMITTED IRREGULARITY OR EXCEEDED HIS AUTHORITY IN THE ENFORCEMENT OF THE WRIT, THE PROPER REMEDY IS A MOTION WITH, OR AN APPLICATION FOR RELIEF FROM, THE SAME COURT WHICH ISSUED THE DECISION, NOT FROM ANY OTHER COURT, OR TO ELEVATE THE MATTER TO THE COURT OF APPEALS ON A PETITION FOR *CERTIORARI*. **—** The respondent Judge should have refrained from acting on the petition because Branch 6 of the Iligan City RTC retains jurisdiction to rule on any question on the enforcement of the writ of execution. Section 16, Rule 39 of the Rules of Court (*terceria*), cited in the course of the Court's deliberations, finds no application to this case since this provision applies to claims made by a third person, **other than the judgment obligor or his agent;** a third-party claimant of a property under execution may file a claim with another court which, in the exercise of its own jurisdiction, may issue a temporary restraining order. **In this case, the petition for injunction before the respondent Judge was filed by MSU itself, the judgment obligor**. If Sheriff Gaje committed any irregularity or exceeded his authority in the enforcement of the writ, the proper recourse for MSU was to file a motion with, or an application for relief from, the same court which issued the decision, not from any other court, or to elevate the matter to the CA on a petition for *certiorari*. In this case, MSU filed the proper motion with the Iligan City RTC (the issuing court),

but, upon denial, proceeded to seek recourse through another co-equal court presided over by the respondent Judge.

4. ID.; ID.; ID.; A TEMPORARY RESTRAINING ORDER ENJOINING THE ENFORCEABILITY OF A WRIT ADDRESSES THE WRIT ITSELF, NOT MERELY THE EXECUTING SHERIFF; DUTY OF THE SHERIFF IN ENFORCING WRITS IS MINISTERIAL AND NOT DISCRETIONARY. — It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. The duty of a sheriff in enforcing writs is ministerial and not discretionary. As already mentioned above, the appropriate action is to assail the implementation of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body. Significantly, MSU did file its opposition before the issuing court — Iligan City RTC — which denied this opposition.

5. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; LACK OF FAMILIARITY WITH THE RULES IN INTERFERING WITH THE ACTS OF A CO-EQUAL COURT UNDERMINES PUBLIC CONFIDENCE IN THE JUDICIARY THROUGH THE JUDGE'S DEMONSTRATED INCOMPETENCE. — That the respondent Judge subsequently rectified his error by eventually dismissing the petition before him for lack of jurisdiction is not a defense that the respondent Judge can use. His lack of familiarity with the rules in interfering with the acts of a co-equal court undermines public confidence in the judiciary through his demonstrated incompetence. In this case, he impressed upon the Iligan public that the kind of interference he exhibited can be done, even if only temporarily, *i.e.*, that an official act of the Iligan City RTC can be thwarted by going to the Marawi City RTC although they are co-equal courts. That the complaining lawyer, Atty. Tomas Ong Cabili, subsequently reversed course and manifested that the respondent Judge is "basically a good Judge," and should only be reprimanded, cannot affect the respondent Judge's liability. This liability and the commensurate penalty do not depend on the complainant's *personal opinion* but on the facts he alleged and proved, and on the applicable law and jurisprudence.

6. ID.; ID.; ID.; WHEN THE LAW IS SUFFICIENTLY BASIC, A JUDGE OWES IT TO HIS OFFICE TO KNOW AND TO

SIMPLY APPLY IT AND ANYTHING LESS WOULD BE CONSTITUTIVE OF GROSS IGNORANCE OF THE LAW; PROPER PENALTY FOR GROSS IGNORANCE OF THE LAW. — When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law. Under A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or dismissal from the service. Considering the attendant circumstances of this case, the Court — after prolonged deliberations — holds that a fine of ₱30,000.00 is the appropriate penalty. This imposition is an act of leniency as we can, if we so hold, rule for the maximum fine of ₱40,000.00 or for suspension since this is the respondent Judge's second offense.

ABAD, *J.*, *dissenting opinion*:

1. POLITICAL LAW; GOVERNMENT; GOVERNMENT AGENCIES AND INSTRUMENTALITIES; FILING OF CLAIM FOR PAYMENT WITH THE COMMISSION ON AUDIT IS NECESSARY BEFORE A WRIT OF EXECUTION AGAINST FUNDS OF GOVERNMENT INSTRUMENTALITIES CAN BE ENFORCED.— While funds of government instrumentalities that have separate and distinct personalities from the national government are not exempt from execution or garnishment, the enforcement of a writ of execution against these funds are not ministerial compared to the execution of funds belonging to private individuals. An additional requirement, the filing of claim for payment with the COA, is necessary before execution can prosper. This additional requirement is pursuant to Commonwealth Act 327, as amended by Section 26 of Presidential Decree 1445, which vests in the COA the primary jurisdiction to examine, audit, and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, ***agencies and instrumentalities***, including government-owned and controlled corporations and their subsidiaries.

2. ID.; ID.; ID.; FUNDS OF MINDANAO STATE UNIVERSITY, A GOVERNMENT INSTRUMENTALITY, CANNOT BE SIMPLY

GARNISHED THROUGH THE MERE SERVICE OF SHERIFF OF A NOTICE OF GARNISHMENT WITHOUT PROOF OF APPROVAL FROM THE COMMISSION ON AUDIT; ISSUANCE OF THE SUBJECT TEMPORARY RESTRAINING ORDER, PENDING HEARING OF AN APPLICATION FOR PRELIMINARY INJUNCTION, NOT IMPROPER.— As properly alleged in its petition, MSU is a government instrumentality, being a creation of Republic Act 1387, as amended. As an instrumentality of the government, its funds cannot be simply garnished through the mere service of Sheriff Gaje of a notice of garnishment without proof of approval from the COA. Consequently, it cannot be said that Judge Balindong acted with blatant gross ignorance of the law. His TRO did not enjoin the enforcement of the final judgment of Branch 8. He issued a temporary restraining order based on the legally plausible proposition that there was a need to protect Congress-appropriated funds that MSU, a government instrumentality for providing higher education for the Muslim minority in Mindanao, needed for its operations. And it was but a TRO of limited life, sufficient to enable him to hear the parties and decide what appropriate action to take in the case. After hearing the parties on the need to issue a writ of preliminary injunction and finding merit on the motion questioning Branch 8's jurisdiction over the action, Judge Balindong eventually dismissed the petition filed in his sala. He acted prudently and correctly in the case. He did not act with outrageous ignorance of the principle of non-interference with the proceedings of a court of co-equal jurisdiction.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; ISSUANCE BY ONE COURT OF A TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION AGAINST THE SHERIFF OF ANOTHER COURT WHO ATTEMPTS TO ENFORCE A JUDGMENT AGAINST PROPERTIES THAT DO NOT BELONG TO THE JUDGMENT DEBTOR IS NOT REGARDED AS INTERFERENCE WITH THE AUTHORITY OF A CO-EQUAL BODY.— Actually the issuance by one court of a TRO or writ of preliminary injunction against the sheriff of another court who attempts to enforce a judgment against properties that do not belong to the judgment debtor is common place, is authorized by the rules, and is not regarded as interference with the authority of a co-equal body. The party

prejudiced by the execution has an option to raise the matter before the court that rendered the judgment or before some other appropriate court. MSU relied on this authorized course of action. The only problem is that the OSG had already filed an opposition to the issuance of the writ of execution against MSU before Branch 6 and the latter court denied such opposition. Consequently, the proper remedy was a special civil action with the Court of Appeals assailing such denial.

4. JUDICIAL ETHICS; JUDGES; ERROR OF JUDGMENT COMMITTED BY THE RESPONDENT JUDGE, NOT GROSS IGNORANCE OF THE LAW.— Still Judge Balindong cannot be regarded as incorrigibly incompetent. At best he initially incurred an error of judgment. Still, after appropriate hearing, he declined to issue a writ of preliminary injunction in the case and instead dismissed the action for lack of jurisdiction. He, therefore, acted reasonably, prudently, and appropriately. He certainly does not deserve either the finding that he was guilty of gross ignorance of the law or the harsh penalty that the majority prescribes for him. Parenthetically, complainant Atty. Cabili himself openly declares that Judge Balindong is a good judge and that the Court should consider in his favor his lack of bad faith in issuing the TRO in question.

APPEARANCES OF COUNSEL

Cabili Law Office for complainant.

D E C I S I O N

***PER CURIAM*:**

We resolve the administrative complaint against respondent Acting Presiding Judge Rasad G. Balindong of the Regional Trial Court (*RTC*) of Marawi City, Branch 8, for *Gross Ignorance of the Law, Grave Abuse of Authority, Abuse of Discretion, and/or Grave Misconduct Prejudicial to the Interest of the Judicial Service*.[1]

[1] *Rollo,* pp. 2-9.

The Factual Antecedents

The antecedent facts, gathered from the records, are summarized below.

Civil Case No. 06-2954[2] is an action for damages in **Branch 6 of the Iligan City RTC** against the Mindanao State University (*MSU*), *et al.*, arising from a vehicular accident that caused the death of Jesus Ledesma and physical injuries to several others.

On November 29, 1997, the Iligan City RTC rendered a Decision, holding the MSU liable for damages amounting to ₱2,726,189.90. The Court of Appeals (*CA*) affirmed the Iligan City RTC decision and the CA decision subsequently lapsed to finality. On January 19, 2009, Entry of Judgment was made.[3]

On March 10, 2009, the Iligan City RTC issued a writ of execution.[4] The MSU, however, failed to comply with the writ; thus, on March 24, 2009, Sheriff Gerard Peter Gaje served a Notice of Garnishment on the MSU's depository bank, the Land Bank of the Philippines (*LBP*), Marawi City Branch.[5]

The Office of the Solicitor General opposed the motion for execution, albeit belatedly, in behalf of MSU.[6] The *Iligan City RTC* denied the opposition in its March 31, 2009 Order. The MSU responded to the denial by filing on April 1, 2009 *a petition with the Marawi City RTC*, for prohibition and *mandamus* with an application for the issuance of a temporary restraining order (*TRO*) and/or preliminary

[2] Entitled "*City of Iligan, represented by Mayor Alejo A. Yanez, Heirs of Jesus Ledesma, Jr., represented by Dexter Ledesma, Wendell Boque, Rodrigo Dayta, Mae Gayta, Landenila Jabonillo, Trifon Llloren, Alma Polo, Jeselda Maybituin, Leobert Pairat, Orchelita Ronquillo, Estrella Ratunil, Virginia Salinas, Lucia Sinanggote, Erwin Siangco, Cesar Cabatic and Alicia Sumapig v. Percing Gabriel and Mindanao State University, Government Service Insurance System, and Fidelity and Surety Company of the Philippines, Inc*."

[3] *Rollo*, pp. 10-11.

[4] *Id.* at 12-14.

[5] *Id.* at 15.

[6] *Id.* at 16.

injunction against the LBP and Sheriff Gaje.[7] The petition of MSU was raffled to the RTC, Marawi City, Branch 8, presided by respondent Judge.

The respondent Judge set the hearing for the application for the issuance of a TRO on April 8, 2009.[8] After this hearing, the respondent Judge issued a TRO restraining Sheriff Gaje from garnishing ₱2,726,189.90 from MSU's LBP-Marawi City Branch account.[9]

On April 17, 2009, the respondent Judge conducted a hearing on the application for the issuance of a writ of preliminary injunction. Thereafter, he required MSU to file a memorandum in support of its application for the issuance of a writ of preliminary injunction.[10] On April 21, 2009, Sheriff Gaje moved to dismiss the case on the ground of lack of jurisdiction.[11] The respondent Judge thereafter granted the motion and dismissed the case.[12]

On May 8, 2009, complainant Atty. Tomas Ong Cabili, counsel of the private plaintiffs in Civil Case No. 06-2954, filed the complaint charging the respondent Judge with *Gross Ignorance of the Law, Grave Abuse of Authority, Abuse of Discretion, and/or Grave Misconduct Prejudicial to the Interest of the Judicial Service* for interfering with the order of a co-equal court, Branch 6 of the Iligan City RTC, by issuing the TRO to enjoin Sheriff Gaje from garnishing ₱2,726,189.90 from MSU's LBP-Marawi City Branch account.[13]

The respondent Judge denied that he interfered with the order of Branch 6 of the Iligan City RTC.[14] He explained that he

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

[8] *Id.* at 33.

[9] *Id.* at 17-19.

[10] *Id.* at 37-38.

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

[12] *Id.* at 39-40.

[13] *Supra* note 1.

[14] Comment dated June 29, 2009; *rollo*, pp. 31-32.

merely gave the parties the opportunity to be heard and eventually dismissed the petition for lack of jurisdiction.[15]

In its December 3, 2009 Report, the Office of the Court Administrator (*OCA*) found the respondent Judge guilty of gross ignorance of the law for violating the elementary rule of non-interference with the proceedings of a court of co-equal jurisdiction.[16] **It recommended a fine of ₱40,000.00, noting that this is the respondent Judge's second offense**.[17]

The Court resolved to re-docket the complaint as a regular administrative matter and to require the parties to manifest whether they were willing to submit the case for resolution on the basis of the pleadings/records on file.[18]

Atty. Tomas Ong Cabili complied through his manifestation of April 19, 2010,[19] stating that he learned from reliable sources that the respondent Judge is "basically a good Judge," and "an admonition will probably suffice as reminder to respondent not to repeat the same mistake in the future."[20] The respondent Judge filed his manifestation on September 28, 2010.[21]

The Court's Ruling

The Court finds the OCA's recommendation well-taken.

The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice:[22] no court can interfere

[15] *Ibid.*

[16] *Id.* at 81-85.

[17] In *Benito v. Balindong* (A.M. No. RTJ-08-2103, February 23, 2009, 580 SCRA 41), respondent Judge was fined ₱30,000.00 for gross ignorance of the law and ₱10,000.00 for violation of the Lawyer's Oath and Canons 1, 5, 6 and 11 of the Code of Professional Responsibility.

[18] *Rollo*, pp. 86-87.

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

[20] *Ibid.*

[21] *Id.* at 96.

[22] *Republic of the Philippines v. Judge Reyes*, 239 Phil. 304, 316 (1987).

by injunction with the judgments or orders **of another court of concurrent jurisdiction** having the power to grant the relief sought by the injunction.[23] The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, **to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment**.[24]

Thus, we have repeatedly held that a case where an execution order has been issued is considered as **still pending**, so that all the proceedings on the execution are still proceedings in the suit.[25] A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.[26] To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administration of justice.[27]

Jurisprudence shows that a violation of this rule warrants the imposition of administrative sanctions.

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[23] *Go v. Villanueva, Jr.*, G.R. No. 154623, March 13, 2009, 581 SCRA 126, 131-132; *Aquino, Sr. v. Valenciano*, A.M. No. MTJ-93-746, December 27, 1994, 239 SCRA 428, 429; *Prudential Bank v. Judge Gapultos*, 260 Phil. 167, 179 (1990); and *Investors' Finance Corp. v. Ebarle*, 246 Phil. 60, 71 (1988).

[24] *De Leon v. Hon. Salvador, et al.*, 146 Phil. 1051, 1057 (1970).

[25] *Go v. Villanueva, Jr., supra* note 23; *Union Bank of the Philippines v. Securities and Exchange Commission*, G.R. No. 165382, August 17, 2006, 499 SCRA 253, 264; *David v. Court of Appeals*, 375 Phil. 177, 187 (1999); *Darwin, et al. v. Tokonaga, et al.*, 274 Phil. 726, 736 (1991); and *Paper Industries Corp. of the Philippines v. Intermediate Appellate Court*, 235 Phil. 162, 167 (1987).

[26] *Balais v. Velasco*, 322 Phil. 790, 806 (1996); and *Vda. de Dimayuga v. Raymundo and Nable*, 76 Phil. 143, 146 (1946).

[27] *Bishop Mondejar v. Hon. Javellana*, 356 Phil. 1004, 1017 (1998); and *Balais v. Velasco*, *supra* note 26.

In *Aquino, Sr. v. Valenciano,*[28] the judge committed grave abuse of discretion for issuing a TRO that **interfered with or frustrated the implementation** of an order of another court of co-equal jurisdiction. In *Yau v. The Manila Banking Corporation,*[29] the Court held that **undue interference** by one in the proceedings and processes of another is prohibited by law.

In *Coronado v. Rojas*,[30] the judge was found liable for gross ignorance of the law when he proceeded to enjoin the final and executory decision of the Housing and Land Use Regulatory Board (*HLURB*) on the pretext that the temporary injunction and the writ of injunction he issued were not directed against the HLURB's writ of execution, but only against the manner of its execution. The Court noted that the judge **"cannot feign ignorance that the effect of the injunctive writ was to freeze the enforcement of the writ of execution, thus frustrating the lawful order of the HLURB, a co-equal body."**[31]

In *Heirs of Simeon Piedad v. Estrera*,[32] the Court penalized two judges for issuing a TRO against the execution of a demolition order issued by another co-equal court. The Court stressed that "when the respondents-judges acted on the application for the issuance of a TRO, **they were aware that they were acting on matters pertaining to a co-equal court**, namely, Branch 9 of the Cebu City RTC, which was already exercising jurisdiction over the subject matter in Civil Case No. 435-T. Nonetheless, respondent-judges **still opted to interfere with the order of a co-equal and coordinate court of concurrent jurisdiction**,

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[28] *Supra* note 23.

[29] 433 Phil. 701, 711 (2002), citing *Parco, et al. v. CA, et al.*, 197 Phil. 240, 257 (1982).

[30] A.M. Nos. RTJ-07-2047-48, July 3, 2007, 526 SCRA 280.

[31] *Id.* at 289.

[32] A.M. No. RTJ-09-2170, December 16, 2009, 608 SCRA 268.

in blatant disregard of the doctrine of judicial stability, a well-established axiom in adjective law." [33]

To be sure, the law and the rules are not unaware that an issuing court may violate the law in issuing a writ of execution and have recognized that there should be a remedy against this violation. The remedy, however, is not the resort to another co-equal body but to a higher court with authority to nullify the action of the issuing court. This is precisely the judicial power that the 1987 Constitution, under Article VIII, Section 1, paragraph 2,[34] speaks of and which this Court has operationalized through a petition for *certiorari*, under Rule 65 of the Rules of Court.[35]

In the present case, the respondent Judge clearly ignored the principle of judicial stability by issuing a TRO to temporarily restrain[36] Sheriff Gaje from enforcing the writ of execution issued by a co-equal court, Branch 6 of the Iligan City RTC, and from pursuing the garnishment of the amount of ₱2,726,189.90 from MSU's account with the LBP, Marawi City Branch. The respondent Judge was aware that he was acting on matters pertaining to the execution phase of a final decision of a co-equal and coordinate court since he even quoted MSU's allegations in his April 8, 2009 Order.[37]

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[33] *Id.* at 277.

[34] Article VIII, Section 1, paragraph 2 of the 1987 Constitution reads:

Section 1. x x x

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave of abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[35] *Abraham Kahlil B. Mitra v. Commission on Elections, et al.*, G.R. No. 191938, October 19, 2010; and *People v. Nazareno*, G.R. No. 168982, August 5, 2009, 595 SCRA 438, 451.

[36] *Rollo*, pp. 34-36; TRO issued in Spl. Civil Case No. 1873-09, entitled "*Mindanao State University, etc. v. Land Bank of the Philippines, etc.*"

[37] *Supra* note 9.

The respondent Judge should have refrained from acting on the petition because Branch 6 of the Iligan City RTC retains jurisdiction to rule on any question on the enforcement of the writ of execution. Section 16, Rule 39 of the Rules of Court (*terceria*), cited in the course of the Court's deliberations, finds no application to this case since this provision applies to claims made by a third person, **other than the judgment obligor or his agent;**[38] a third-party claimant of a property under execution may file a claim with another court[39] which, in the exercise of its own jurisdiction, may issue a temporary restraining order. **In this case, the petition for injunction before the respondent Judge was filed by MSU itself, the judgment obligor**. If Sheriff Gaje committed any irregularity or exceeded his authority in the enforcement of the writ, the proper recourse for MSU was to file a motion with, or an application for relief from, the same court which issued the decision, not from any

[38] *Fermin v. Esteves*, G.R. No. 147977, March 26, 2008, 549 SCRA 424, 431; and *DSM Construction and Dev't Corp. v. Court of Appeals*, 514 Phil. 782, 797 (2005).

[39] Section 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 therefore 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. See *Bon-Mar Realty and Sport Corporation v. De Guzman,* G.R. Nos. 182136-37, August 29, 2008, 563 SCRA 737, 749-750; and *Solidum v. Court of Appeals*, G.R. No. 161647, June 22, 2006, 492 SCRA 261, 271.

other court,[40] or to elevate the matter to the CA on a petition for *certiorari*.[41] In this case, MSU filed the proper motion with the Iligan City RTC (the issuing court), but, upon denial, proceeded to seek recourse through another co-equal court presided over by the respondent Judge.

It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. The duty of a sheriff in enforcing writs is ministerial and not discretionary.[42] As already mentioned above, the appropriate action is to assail the implementation of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body. Significantly, MSU did file its opposition before the issuing court — Iligan City RTC — which denied this opposition.

That the respondent Judge subsequently rectified his error by eventually dismissing the petition before him for lack of jurisdiction is not a defense that the respondent Judge can use.[43] His lack of familiarity with the rules in interfering with the acts of a co-equal court undermines public confidence in the judiciary through his demonstrated incompetence. In this case, he impressed upon the Iligan public that the kind of interference he exhibited can be done, even if only temporarily, *i.e.*, that an official act of the Iligan City RTC can be thwarted by going to the Marawi

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[40] *Collado v. Heirs of Alejandro Triunfante, Sr.*, G.R. No. 162874, November 23, 2007, 538 SCRA 404, 413.

[41] *Supra* note 35.

[42] *Ramas-Uypitching, Jr. v. Magalona*, A.M. No. P-07-2379, November 17, 2010, 635 SCRA 1, 5; *Patawaran v. Nepomuceno*, A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 277; *Apostol v. Ipac*, 502 Phil. 485, 490 (2005); and *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 696 (2005).

[43] Nor is it a viable legal position to claim that a TRO is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ; any complaint against the act of the sheriff must be addressed to the issuing court, not the executing sheriff.

City RTC although they are co-equal courts. That the complaining lawyer, Atty. Tomas Ong Cabili, subsequently reversed course and manifested that the respondent Judge is "basically a good Judge,"[44] and should only be reprimanded, cannot affect the respondent Judge's liability. This liability and the commensurate penalty do not depend on the complainant's *personal opinion* but on the facts he alleged and proved, and on the applicable law and jurisprudence.

When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[45]

Under A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or dismissal from the service. Considering the attendant circumstances of this case, the Court — after prolonged deliberations — holds that a fine of ₱30,000.00 is the appropriate penalty. This imposition is an act of leniency as we can, if we so hold, rule for the maximum fine of ₱40,000.00 or for suspension since this is the respondent Judge's second offense.

WHEREFORE, premises considered, respondent Judge Rasad G. Balindong, Acting Presiding Judge, Regional Trial Court, Branch 8, Marawi City, is hereby *FOUND GUILTY* of Gross Ignorance of the Law and *FINED* in the amount of ₱30,000.00, with a stern *WARNING* that a repetition of the same will be dealt with more severely.

SO ORDERED.

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[44] *Rollo,* p. 89.

[45] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105, 116.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama, Jr., and *Mendoza, JJ.,* concur.

Abad, J., please see dissenting opinion.

Bersamin, J., joins the dissenting opinion of *J.* Abad.

Perez, J., no part. Acted on matter as Court Administrator.

Sereno, J., on leave.

Reyes, J., on official leave.

DISSENTING OPINION

ABAD, *J.*:

Is it right to impose the penalty of fine of ₱40,000.00 upon Judge Rasad G. Balindong for issuing a temporary restraining order, pending hearing of an application for preliminary injunction, that enjoins a sheriff from executing, in violation of the rules governing satisfaction of judgment against State instrumentalities, upon Mindanao State Universitys Congress-appropriated funds needed for its operations?

The Facts and the Case

Complainant Atty. Tomas Ong Cabili (Atty. Cabili) was counsel of the Heirs of Jesus Ledesma in the latters action for damages against the Mindanao State University (MSU) and others arising from the death of the late Jesus Ledesma in Civil Case 06-254 of the Regional Trial Court (RTC) of Iligan City, Branch 6.[1] The RTC rendered judgment[2] against the defendants, including MSU, ordering them to pay damages to the Heirs. On appeal,[3] the Court of Appeals (CA) affirmed the RTC decision[4] which became final and executory.[5]

[1] Entitled *City of Iligan, Heirs of Jesus Ledesma, et al. v. Percing Gabriel, Mindanao State University, et al.*

[2] Decision dated November 29, 1997.

[3] Docketed as CA-G.R. CV 64832.

[4] Decision dated August 27, 2008.

[5] *Rollo,* p. 10.

Eventually, on motion of the Heirs, on March 6, 2009 the RTC Branch 6 caused the issuance of a writ of execution against the defendants. The Office of the Solicitor General (OSG) belatedly filed an opposition to the issuance of the writ, resulting in its denial on the ground of mootness of the motion.[6] Meantime, the Sheriff of Branch 6, Sheriff Gerard Peter Gaje, served a notice of garnishment on MSUs funds with the Land Bank of the Philippines–Marawi City Branch by reason of MSUs failure to obey the writ.

On April 1, 2009, to prevent seizure of its Land Bank deposits that it needed for operations, MSU filed a special civil action of prohibition and *mandamus* with application for the issuance of a temporary restraining order (TRO) and, subsequently, a preliminary injunction before the RTC Branch 8, presided over by respondent acting presiding judge, Judge Rasad G. Balindong, against Land Bank and Sheriff Gaje.[7]

In its petition, MSU averred that it is a state university, funded by appropriations law enacted by Congress; that despite OSG opposition to the issuance of a writ of execution against it, such writ was issued and Sheriff Gaje garnished upon MSUs deposits with Land Bank, who in turn gave notice to MSU that it was putting on hold the sum of ₱2,726,189.90 on its deposit in Account 2002-0000-35; that, this money being government funds, Sheriff Gaje was executing on the same in violation of Commission on Audit (COA) Circular 2001-002 dated July 31, 2001 and SC Administrative Circular 10-2000; and that unless restrained, the garnishment of government fund would disrupt MSUs operations.

After due hearing, Judge Balindong issued a TRO, enjoining Land Bank and Sheriff Gaje from proceeding with the garnishment of the MSU deposit with Land Bank.[8] To determine whether the issuance of a writ of preliminary injunction was warranted,

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[6] A copy of the OSG's Opposition dated February 8, 2009 was received by the RTC on March 13, 2009 and was denied by the RTC in its Order dated March 31, 2009.

[7] Docketed as SPL Civil Case 1873-09.

[8] Order dated April 8, 2009.

Judge Balindong heard the parties and required them to submit memoranda. Instead of submitting a memorandum, Sheriff Gaje filed a motion to dismiss on the ground that RTC Branch 8 had no jurisdiction to issue an injunction order against another court of equal rank. Finding merit, on April 28, 2009 Judge Balindong issued an Order, dismissing the petition.

For having initially taken cognizance of the case and issuing a TRO, Atty. Cabili filed the present administrative action Judge Balindong for gross ignorance of the law, grave abuse of authority, abuse of discretion and/or grave misconduct prejudicial to the interest of the judicial service. The Office of the Court Administrator (OCA) found ground to hold Judge Balindong guilty of gross ignorance of the law for interfering with the judgment of a co-equal court. It recommended the imposition of a fine of ₱40,000.00 on Judge Balindong with a stern warning against a future offense.[9]

The majority would want to adopt the recommendation.

The Issue Presented

The issue in this case is whether or not Judge Balindong of RTC Branch 8 acted with gross ignorance of the law when he issued the TRO, pending hearing on the application for preliminary injunction that enjoined Sheriff Gaje from garnishing MSUs Congress-appropriated operating funds for the satisfaction of the judgment of RTC Branch 6.

The Dissent

With all due respect, I dissent from my colleagues. The majority concludes that Judge Balindong exceeded his authority when he temporarily restrained the writ of execution issued by a co-equal court, RTC Branch 6. Judge Balindongs act, said the majority, betrayed his gross ignorance of the policy of peaceful co-existence among courts of the same judicial plane and the

[9] Judge Balindong was previously found guilty of gross ignorance of the law and for violation of the lawyers oath and Canons 1, 5, 6 and 11 of the Code of Professional Responsibility and was fined ₱30,000.00 and ₱10,000.00 respectively, in A.M. RTJ-08-2103 entitled: "*Edna S.V. Benito v. Rasad G. Balindong.*"

elementary rule of non-interference with the proceedings of a court of co-equal jurisdiction.

But there is quite a huge difference between a) issuing a TRO that enjoins the sheriff from enforcing the writ of execution of a co-equal court against specific assets that are exempt from execution and b) issuing one that altogether enjoins a co-equal court from enforcing its judgment.

Here, MSUs action before Branch 8, presided over by Judge Balindong, was not directed against the final decision of Branch 6 of the Court or its enforceability against MSU but against Sheriff Gajes authority to look for the judgment debtors assets, not exempt from execution, upon which he could satisfy the judgment. Clearly, Judge Balindongs TRO was addressed to the sheriff, enjoining him from enforcing the writ of execution, a writ directed in general against all assets of MSU and the other defendants that were not exempt from execution.

Indeed, Judge Balindongs TRO did not enjoin the enforcement of the judgment of a co-equal branch. It merely restricted Sheriff Gajes discretion in determining what assets of MSU he can validly execute upon. From the circumstances above, it is clear that Sheriff Gaje actually exceeded his authority in serving the notice of garnishment against the Congress-appropriated funds of MSU that were deposited with Land Bank.

While funds of government instrumentalities that have separate and distinct personalities from the national government are not exempt from execution or garnishment,[10] the enforcement of a writ of execution against these funds are not ministerial compared to the execution of funds belonging to private individuals. An additional requirement, the filing of claim for payment with the COA, is necessary before execution can prosper.[11] This additional requirement is pursuant to Commonwealth Act 327, as amended

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[10] In this case, MSU has a separate juridical personality from the National Government and has the power to sue and to be sued as provided in Section 5 of R.A. 1387 in relation to Section 13, Act 1459.

[11] *National Electrification Administration v. Morales*, G.R. No. 154200, July 24, 2007.

by Section 26 of Presidential Decree 1445, which vests in the COA the primary jurisdiction to examine, audit, and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, ***agencies and instrumentalities***, including government-owned and controlled corporations and their subsidiaries.

As properly alleged in its petition, MSU is a government instrumentality,[12] being a creation of Republic Act 1387, as amended. As an instrumentality of the government, its funds cannot be simply garnished through the mere service of Sheriff Gaje of a notice of garnishment without proof of approval from the COA.

Consequently, it cannot be said that Judge Balindong acted with blatant gross ignorance of the law. His TRO did not enjoin the enforcement of the final judgment of Branch 8. He issued a temporary restraining order based on the legally plausible proposition that there was a need to protect Congress-appropriated funds that MSU, a government instrumentality for providing higher education for the Muslim minority in Mindanao, needed for its operations. And it was but a TRO of limited life, sufficient to enable him to hear the parties and decide what appropriate action to take in the case. After hearing the parties on the need to issue a writ of preliminary injunction and finding merit on the motion questioning Branch 8's jurisdiction over the action, Judge Balindong eventually dismissed the petition filed in his sala. He acted prudently and correctly in the case. He did not act with outrageous ignorance of the principle of non-interference with the proceedings of a court of co-equal jurisdiction.

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[12] Executive Order 292 or the Revised Administrative Code defines a *government instrumentality* as any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. ***This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations***. (Section 2 [10]) *"Chartered institution"* refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. ***This term includes the state universities and colleges and the monetary authority of the State***. (Section 2[12]).

Actually the issuance by one court of a TRO or writ of preliminary injunction against the sheriff of another court who attempts to enforce a judgment against properties that do not belong to the judgment debtor is common place, is authorized by the rules, and is not regarded as interference with the authority of a co-equal body.[13] The party prejudiced by the execution has an option to raise the matter before the court that rendered the judgment or before some other appropriate court. MSU relied on this authorized course of action. The only problem is that the OSG had already filed an opposition to the issuance of the writ of execution against MSU before Branch 6 and the latter court denied such opposition. Consequently, the proper remedy was a special civil action with the Court of Appeals assailing such denial.

Still Judge Balindong cannot be regarded as incorrigibly incompetent. At best he initially incurred an error of judgment. Still, after appropriate hearing, he declined to issue a writ of preliminary injunction in the case and instead dismissed the action for lack of jurisdiction. He, therefore, acted reasonably, prudently, and appropriately. He certainly does not deserve either the finding that he was guilty of gross ignorance of the law or the harsh penalty that the majority prescribes for him.[14]

Parenthetically, complainant Atty. Cabili himself openly declares that Judge Balindong is a good judge[15] and that the Court should consider in his favor his lack of bad faith in issuing the TRO in question.

I therefore vote to reduce the penalty imposed on Judge Rasad G. Balindong to ₱20,000.00.

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[13] RULES OF COURT, Rule 39, Section 16.

[14] *Andres v. Judge Majaducon*, A.M. No. RTJ-03-1762, December 17, 2008: "[M]ere error is not sufficient in order to indict a judge for gross ignorance of the law. For liability to attach, the assailed order, decision or actuation must not only be contrary to existing law and jurisprudence, but, most importantly, it must be established that he was moved by bad faith, fraud, dishonesty and corruption."

[15] Manifestation, *rollo*, pp. 89-90.

EN BANC

[G.R. No. 193677. September 6, 2011]

LUCIANO VELOSO, ABRAHAM CABOCHAN, JOCELYN DAWIS-ASUNCION and MARLON M. LACSON, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT; JURISDICTION THEREOF; THE LOCAL GOVERNMENT UNITS ARE STILL WITHIN THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT.— Under the first paragraph of [Section 2, Article IX-D of the Constitution] the COA's audit jurisdiction ***extends to the government, or any of its subdivisions, agencies, or instrumentalities,*** including government-owned or controlled corporations with original charters. Its jurisdiction likewise covers, albeit on a post-audit basis, the constitutional bodies, commissions and offices that have been granted fiscal autonomy, autonomous state colleges and universities, other government-owned or controlled corporations and their subsidiaries, and such non-governmental entities receiving subsidy or equity from or through the government. The power of the COA to examine and audit government agencies cannot be taken away from it as Section 3, Article IX-D of the Constitution mandates that "no law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the [COA]." Pursuant to its mandate as the guardian of public funds, the COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property. This includes the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant

and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government. The Court had therefore previously upheld the authority of the COA to disapprove payments which it finds excessive and disadvantageous to the Government; to determine the meaning of "public bidding" and when there is failure in the bidding; to disallow expenditures which it finds unnecessary according to its rules even if disallowance will mean discontinuance of foreign aid; to disallow a contract even after it has been executed and goods have been delivered. Thus, LGUs, though granted local fiscal autonomy, are still within the audit jurisdiction of the COA.

2. REMEDIAL LAW; APPEALS; FINDINGS OF ADMINISTRATIVE AGENCIES ARE ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY WHEN THE DECISION AND ORDER ARE NOT TAINTED WITH UNFAIRNESS OR ARBITRARINESS THAT WOULD AMOUNT TO GRAVE ABUSE OF DISCRETION.— It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. In this case, we find no grave abuse of discretion on the part of the COA in issuing the assailed decisions.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT; COMPENSATION OF LOCAL OFFICIALS AND EMPLOYEES; LIMITATIONS ON THE POWER OF THE SANGGUNIANG PANLUNGSOD TO DETERMINE THE

COMPENSATION, ALLOWANCES AND OTHER EMOLUMENTS AND BENEFITS OF ITS LOCAL OFFICIALS AND PERSONNEL. — Indeed, Section 458 of RA 7160 defines the power, duties, functions and compensation of the *Sangguniang Panlungsod.* x x x. In the exercise of the above power, the City Council of Manila enacted on December 7, 2000 Ordinance No. 8040, but the same was deemed approved on August 23, 2002. The ordinance authorized the conferment of the EPSA to the former three-term councilors and, as part of the award, the qualified city officials were to be given "retirement and gratuity pay remuneration." We believe that the award is a "gratuity" which is a free gift, a present, or benefit of pecuniary value bestowed without claim or demand, or without consideration. However, as correctly held by the COA, the above power is not without limitations. These limitations are embodied in Section 81 of RA 7160, to wit: SEC. 81. *Compensation of Local Officials and Employees.* The compensation of local officials and personnel shall be determined by the sanggunian concerned: *Provided*, That the increase in compensation of elective local officials shall take effect only after the terms of office of those approving such increase shall have expired: *Provided, further*, That the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance authorizing such increase; *Provided however*, That said increases shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II of this Code: *Provided finally*, That such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-seven fifty-eight (R.A. No. 6758), otherwise known as the "Compensation and Position Classification Act of 1989. Moreover, the IRR of RA 7160 reproduced the Constitutional provision that "no elective or appointive local official or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emoluments, office, or title of any kind from any foreign government." Section 325 of the law limit the total appropriations for personal services of a local government unit to not more than 45% of its total annual income from regular sources realized in the next preceding fiscal year.

4. ID.; ID.; ID.; ID.; THE GRANT OF ADDITIONAL ALLOWANCES AND BENEFITS MUST BE NECESSARY

OR RELEVANT TO THE FULFILLMENT OF THE OFFICIAL DUTIES AND FUNCTIONS OF THE GOVERNMENT OFFICERS AND EMPLOYEES. — Section 2 of Ordinance No. 8040 provides for the payment of ***"retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms"*** as part of the EPSA. The recomputation of the award disclosed that it is equivalent to the total compensation received by each awardee for nine years that includes basic salary, additional compensation, Personnel Economic Relief Allowance, representation and transportation allowance, rice allowance, financial assistance, clothing allowance, 13th month pay and cash gift. This is not disputed by petitioners. There is nothing wrong with the local government granting additional benefits to the officials and employees. The laws even encourage the granting of incentive benefits aimed at improving the services of these employees. Considering, however, that the payment of these benefits constitute disbursement of public funds, it must not contravene the law on disbursement of public funds. As clearly explained by the Court in *Yap v. Commission on Audit*, the disbursement of public funds, salaries and benefits of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. Without this limitation, government officers and employees may be paid enormous sums without limit or without justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.

5. ID.; ID.; ID.; ID.; PROHIBITION AGAINST ADDITIONAL OR DOUBLE COMPENSATION, PURPOSE THEREOF; AWARDEE'S MONETARY REWARD PROVIDED IN MANILA CITY ORDINANCE NO. 8040 DECLARED EXCESSIVE AND TANTAMOUNT TO DOUBLE AND ADDITIONAL COMPENSATION. — The computation of the awardees' reward is excessive and tantamount to double and additional compensation. This cannot be justified by the mere

fact that the awardees have been elected for three (3) consecutive terms in the same position. Neither can it be justified that the reward is given as a gratuity at the end of the last term of the qualified elective official. The fact remains that the remuneration is equivalent to everything that the awardees received during the entire period that he served as such official. Indirectly, their salaries and benefits are doubled, only that they receive half of them at the end of their last term. The purpose of the prohibition against additional or double compensation is best expressed in *Peralta v. Auditor General*, to wit: This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the idea. There is then to be an awareness on the part of the officer or employee of the government that he is to receive only such compensation as may be fixed by law. ***With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.*** Verily, the COA's assailed decisions were made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution. The COA adheres to the policy that government funds and property should be fully protected and conserved and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented.

6. ID.; ID.; ID.; ID.; DISALLOWED RETIREMENT AND GRATUITY PAY REMUNERATION RECEIVED IN GOOD FAITH NEED NOT BE REFUNDED.— However, in line with existing jurisprudence, we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration in the honest belief that the amounts given were due to the recipients and the latter

accepted the same with gratitude, confident that they richly deserve such reward.

APPEARANCES OF COUNSEL

Law Firm of Ferrer & Perez-Ferrer for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 65 of the Rules of Court assailing Decision No. 2008-088[1] dated September 26, 2008 and Decision No. 2010-077[2] dated August 23, 2010 of the Commission on Audit (COA) sustaining Notice of Disallowance (ND) No. 06-010-100-05[3] dated May 24, 2006 disallowing the payment of monetary reward as part of the Exemplary Public Service Award (EPSA) to former three-term councilors of the City of Manila authorized by City Ordinance No. 8040.

The facts of the case are as follows:

On December 7, 2000, the City Council of Manila enacted Ordinance No. 8040 entitled *An Ordinance Authorizing the Conferment of Exemplary Public Service Award to Elective Local Officials of Manila Who Have Been Elected for Three (3) Consecutive Terms in the Same Position*. Section 2 thereof provides:

SEC. 2. The EPSA shall consist of a Plaque of Appreciation, ***retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms***, subject to the availability of funds as certified by the City Treasurer. PROVIDED, That [it] shall be accorded to qualified elected City

[1] *Rollo*, pp. 21-25.

[2] *Id.* at 26-30.

[3] *Id.* at 35-38.

Officials on or before the first day of service in an appropriated public ceremony to be conducted for the purpose. PROVIDED FURTHER, That this Ordinance shall only cover the Position of Mayor, Vice-Mayor and Councilor: PROVIDED FURTHERMORE, That those who were elected for this term and run for higher elective position thereafter, after being elected shall still be eligible for this award for the actual time served: PROVIDED FINALLY That the necessary and incidental expenses needed to implement the provisions of this Ordinance shall be appropriated and be included in the executive budget for the year when any city official will qualify for the Award.[4]

The ordinance was deemed approved on August 23, 2002.

Pursuant to the ordinance, the City made partial payments in favor of the following former councilors:

Councilor/Recipients	**Check**	**Date**	**Amount**
Abraham C. Cabochan	353010	06/07/05	₱1,658,989.09
Julio E. Logarta, Jr.	353156	06/14/05	₱1,658,989.08
Luciano M. Veloso	353778	06/30/05	₱1,658,989.08
Jocelyn Dawis-Asuncion	353155	06/14/05	₱1,658,989.08
Marlon M. Lacson	353157	06/14/05	₱1,658,989.08
Heirs of Hilarion C. Silva	353093	06/09/05	₱1,628,311.59
TOTAL			₱9,923,257.00[5]

On August 8, 2005, Atty. Gabriel J. Espina (Atty. Espina), Supervising Auditor of the City of Manila, issued Audit Observation Memorandum (AOM) No. 2005-100(05)07(05)[6] with the following observations:

1. The initial payment of monetary reward as part of Exemplary Public Service Award (EPSA) amounting to ₱9,923,257.00 to former councilors of the City Government of Manila who have been elected for three (3) consecutive terms to the same position as authorized by City Ordinance No. 8040 is without legal basis.

2. The amount granted as monetary reward is excessive and tantamount to double compensation in contravention to Article 170

[4] *Id.* at 31. (Emphasis supplied.)

[5] *Id.* at 32.

[6] *Id.* at 32-34.

(c) of the IRR of RA 7160 which provides that no elective or appointive local official shall receive additional, double or indirect compensation unless specifically authorized by law.

3. The appropriations for retirement gratuity to implement EPSA ordinance was classified as Maintenance and Other Operating Expenses instead of Personal Services contrary to Section 7, Volume III of the Manual on the New Government Accounting System (NGAS) for local government units and COA Circular No. 2004-008 dated September 20, 2004 which provide the updated description of accounts under the NGAS.[7]

After evaluation of the AOM, the Director, Legal and Adjudication Office (LAO)-Local of the COA issued ND No. 06-010-100-05[8] dated May 24, 2006.

On November 9, 2006, former councilors Jocelyn Dawis-Asuncion (Dawis-Asuncion), Luciano M. Veloso (Veloso), Abraham C. Cabochan (Cabochan), Marlon M. Lacson (Lacson), Julio E. Logarta, Jr., and Monina U. Silva, City Accountant Gloria C. Quilantang, City Budget Officer Alicia Moscaya and then Vice Mayor and Presiding Officer Danilo B. Lacuna filed a Motion to Lift the Notice of Disallowance.[9] In its Decision No. 2007-171[10] dated November 29, 2007, the LAO-Local decided in favor of the movants, the pertinent portion of which reads:

WHEREFORE, premises considered, the motion of former Vice-Mayor Danilo B. Lacuna, *et al*., is GRANTED and ND No. 06-010-100-05 dated May 24, 2006 is hereby ordered lifted as the reasons for the disallowance have been sufficiently explained. This decision, however, should not be taken as precedence (sic) to other or similar personal benefits that a local government unit may extend which should be appreciated based on their separate and peculiar circumstances.[11]

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[7] *Id.* at 32-33.

[8] *Id.* at 35-38.

[9] *Id.* at 39-41.

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

[11] *Id.* at 44.

Citing Article 170 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 7160, the LAO-Local held that the monetary reward given to the former councilors can be one of gratuity and, therefore, cannot be considered as additional, double or indirect compensation. Giving importance to the principle of local autonomy, the LAO-local upheld the power of local government units (LGUs) to grant allowances. More importantly, it emphasized that the Department of Budget and Management (DBM) did not disapprove the appropriation for the EPSA of the City which indicate that the same is valid.[12]

Upon review, the COA rendered the assailed Decision No. 2008-088 sustaining ND No. 06-010-100-05.[13] The motion for reconsideration was likewise denied in Decision No. 2010-077.[14] The COA opined that the monetary reward under the EPSA is covered by the term "compensation." Though it recognizes the local autonomy of LGUs, it emphasized the limitations thereof set forth in the Salary Standardization Law (SSL). It explained that the SSL does not authorize the grant of such monetary reward or gratuity. It also stressed the absence of a specific law passed by Congress which ordains the conferment of such monetary reward or gratuity to the former councilors.[15] In Decision No. 2010-077, in response to the question on its jurisdiction to rule on the legality of the disbursement, the COA held that it is vested by the Constitution the power to determine whether government entities comply with laws and regulations in disbursing government funds and to disallow irregular disbursements.[16]

Aggrieved, petitioners Veloso, Cabochan, Dawis-Asuncion and Lacson come before the Court in this special civil action for *certiorari* alleging grave abuse of discretion on the part of the COA. Specifically, petitioners claim that:

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

[13] *Supra* note 1.

[14] *Supra* note 2.

[15] *Rollo*, pp. 22-24.

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

The respondent Commission on Audit did not only commit a reversible error but was, in fact, guilty of grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the monetary award given under the EPSA partakes of the nature of an additional compensation prohibited under the Salary Standardization Law, and other existing laws, rules and regulations, and not a GRATUITY "voluntarily given in return for a favor or services rendered purely out of generosity of the giver or grantor." (*Plastic Tower Corporation vs. NLRC*, 172 SCRA 580-581).

Apart from being totally oblivious of the fact that the monetary award given under the EPSA was intended or given in return for the exemplary service rendered by its recipient(s), the respondent COA further committed grave abuse of discretion when it effectively nullified a duly-enacted ordinance which is essentially a judicial function. In other words, in the guise of disallowing the disbursement in question, the respondent Commission arrogated unto itself an authority it did not possess, and a prerogative it did not have.[17]

On November 30, 2010, the Court issued a *Status Quo Ante* Order[18] requiring the parties to maintain the *status quo* prevailing before the implementation of the assailed COA decisions.

There are two issues for resolution: (1) whether the COA has the authority to disallow the disbursement of local government funds; and (2) whether the COA committed grave abuse of discretion in affirming the disallowance of ₱9,923,257.00 covering the EPSA of former three-term councilors of the City of Manila authorized by Ordinance No. 8040.

In their Reply,[19] petitioners insist that the power and authority of the COA to audit government funds and accounts does not carry with it in all instances the power to disallow a particular disbursement.[20] Citing *Guevara v. Gimenez*,[21] petitioners claim that the COA has no discretion or authority to disapprove

[17] *Id.* at 9.

[18] *Id.* at 79-81.

[19] *Id.* at 117-127.

[20] *Id.* at 120.

[21] No. L-17115, November 30, 1962, 6 SCRA 807.

payments on the ground that the same was unwise or that the amount is unreasonable. The COA's remedy, according to petitioners, is to bring to the attention of the proper administrative officer such expenditures that, in its opinion, are irregular, unnecessary, excessive or extravagant.[22] While admitting that the cited case was decided by the Court under the 1935 Constitution, petitioners submit that the same principle applies in the present case.

We do not agree.

As held in *National Electrification Administration v. Commission on Audit*,[23] the ruling in *Guevara* cited by petitioners has already been overturned by the Court in *Caltex Philippines, Inc. v. Commission on Audit.*[24] The Court explained[25] that under the 1935 Constitution, the Auditor General could not correct irregular, unnecessary, excessive or extravagant expenditures of public funds, but could only bring the matter to the attention of the proper administrative officer. Under the 1987 Constitution, however, the COA is vested with the authority to determine whether government entities, including LGUs, comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of these funds.

Section 2, Article IX-D of the Constitution gives a broad outline of the powers and functions of the COA, to wit:

> Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy

[22] *Rollo*, p. 121.

[23] 427 Phil. 464, 481 (2002).

[24] G.R. No. 92585, May 8, 1992, 208 SCRA 726.

[25] *Id.* at 746, citing the observations of one of the Commissioners of the 1986 Constitutional Commission, Fr. Joaquin G. Bernas.

under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for ***the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.***[26]

Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 echoes this constitutional mandate to COA.

Under the first paragraph of the above provision, the COA's audit jurisdiction ***extends to the government, or any of its subdivisions, agencies, or instrumentalities,*** including government-owned or controlled corporations with original charters. Its jurisdiction likewise covers, albeit on a post-audit basis, the constitutional bodies, commissions and offices that have been granted fiscal autonomy, autonomous state colleges and universities, other government-owned or controlled corporations and their subsidiaries, and such non-governmental entities receiving subsidy or equity from or through the government. The power of the COA to examine and audit government agencies cannot be taken away from it as Section 3, Article IX-D of the Constitution mandates that "no law shall be passed exempting any entity of the Government or its subsidiary

[26] Emphasis supplied.

in any guise whatever, or any investment of public funds, from the jurisdiction of the [COA]."

Pursuant to its mandate as the guardian of public funds, the COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property.[27] This includes the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[28] The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.[29] It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property.[30] The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.[31]

The Court had therefore previously upheld the authority of the COA to disapprove payments which it finds excessive and disadvantageous to the Government; to determine the meaning of "public bidding" and when there is failure in the bidding; to disallow expenditures which it finds unnecessary according to its rules even if disallowance will mean discontinuance of foreign aid; to disallow a contract even after it has been executed and goods have been delivered.[32]

Thus, LGUs, though granted local fiscal autonomy, are still within the audit jurisdiction of the COA.

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[27] *Yap v. Commission on Audit,* G.R. No. 158562, April 23, 2010, 619 SCRA 154, 167-168; *Sanchez v. Commission on Audit,* G.R. No. 127545, April 23, 2008, 552 SCRA 471, 477.

[28] *Id.* at 168; *Id.*

[29] *Sanchez v. Commission on Audit, supra* note 27, at 487.

[30] *Barbo v. Commission on Audit,* G.R. No. 157542, October 10, 2008, 568 SCRA 302, 310.

[31] *Yap v. Commission on Audit, supra* note 27, at 169.

[32] *Sanchez v. Commission on Audit, supra* note 27, at 488.

Now on the more important issue of whether the COA properly exercised its jurisdiction in disallowing the disbursement of the City of Manila's funds for the EPSA of its former three-term councilors.

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[33] It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.[34] There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[35]

In this case, we find no grave abuse of discretion on the part of the COA in issuing the assailed decisions as will be discussed below.

Petitioners claim that the grant of the retirement and gratuity pay remuneration is a valid exercise of the powers of the *Sangguniang Panlungsod* set forth in RA 7160.

We disagree.

Indeed, Section 458 of RA 7160 defines the power, duties, functions and compensation of the *Sangguniang Panlungsod*, to wit:

SEC. 458. *Powers, Duties, Functions and Compensation.* - (a) The *Sangguniang Panlungsod*, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds

[33] *Id.* at 489.

[34] *Id.*

[35] *Yap v. Commission on Audit*, *supra* note 27, at 174.

for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

xxx x x x xxx

(viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from city funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the city government.

In the exercise of the above power, the City Council of Manila enacted on December 7, 2000 Ordinance No. 8040, but the same was deemed approved on August 23, 2002. The ordinance authorized the conferment of the EPSA to the former three-term councilors and, as part of the award, the qualified city officials were to be given "retirement and gratuity pay remuneration." We believe that the award is a "gratuity" which is a free gift, a present, or benefit of pecuniary value bestowed without claim or demand, or without consideration.[36]

However, as correctly held by the COA, the above power is not without limitations. These limitations are embodied in Section 81 of RA 7160, to wit:

SEC. 81. *Compensation of Local Officials and Employees.* The compensation of local officials and personnel shall be determined by the sanggunian concerned: *Provided*, That the increase in compensation of elective local officials shall take effect only after the terms of office of those approving such increase shall have expired: *Provided, further*, That the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance authorizing such increase; *Provided however*, That said increases shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II of this Code: *Provided finally*, That such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-seven fifty-eight (R.A. No. 6758), otherwise known as the "Compensation and Position Classification Act of 1989.

[36] *Cajiuat v. Mathay*, 209 Phil. 579, 582 (1983).

Moreover, the IRR of RA 7160 reproduced the Constitutional provision that "no elective or appointive local official or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emoluments, office, or title of any kind from any foreign government." Section 325 of the law limit the total appropriations for personal services[37] of a local government unit to not more than 45% of its total annual income from regular sources realized in the next preceding fiscal year.

While it may be true that the above appropriation did not exceed the budgetary limitation set by RA 7160, we find that the COA is correct in sustaining ND No. 06-010-100-05.

Section 2 of Ordinance No. 8040 provides for the payment of ***"retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms"*** as part of the EPSA. The recomputation of the award disclosed that it is equivalent to the total compensation received by each awardee for nine years that includes basic salary, additional compensation, Personnel Economic Relief Allowance, representation and transportation allowance, rice allowance, financial assistance, clothing allowance, 13th month pay and cash gift.[38] This is not disputed by petitioners. There is nothing wrong with the local government granting additional benefits to the officials and employees. The laws even encourage the granting of incentive benefits aimed at improving the services of these employees. Considering, however, that the payment of these benefits constitute disbursement of public funds, it must not contravene the law on disbursement of public funds.[39]

As clearly explained by the Court in *Yap v. Commission on Audit*,[40] the disbursement of public funds, salaries and benefits

[37] Personal services include the payment of salaries and wages; *per diem* compensation; social security insurance premium; overtime pay; and commutable allowances.

[38] *Rollo*, p. 33.

[39] *Yap v. Commission on Audit*, *supra* note 27, at 164.

[40] *Id.* at 154.

of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. Without this limitation, government officers and employees may be paid enormous sums without limit or without justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.[41]

Undoubtedly, the above computation of the awardees' reward is excessive and tantamount to double and additional compensation. This cannot be justified by the mere fact that the awardees have been elected for three (3) consecutive terms in the same position. Neither can it be justified that the reward is given as a gratuity at the end of the last term of the qualified elective official. The fact remains that the remuneration is equivalent to everything that the awardees received during the entire period that he served as such official. Indirectly, their salaries and benefits are doubled, only that they receive half of them at the end of their last term.

The purpose of the prohibition against additional or double compensation is best expressed in *Peralta v. Auditor General*,[42] to wit:

> This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion

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[41] *Id.* at 166-167.

[42] 148 Phil. 261 (1971), cited in the separate opinion of Justice Arturo D. Brion in *Herrera v. National Power Corporation*, G.R. No. 166570, December 18, 2009, 608 SCRA 475,504.

of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the idea. There is then to be an awareness on the part of the officer or employee of the government that he is to receive only such compensation as may be fixed by law. ***With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.***[43]

Verily, the COA's assailed decisions were made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution.[44] The COA adheres to the policy that government funds and property should be fully protected and conserved and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented.[45]

However, in line with existing jurisprudence,[46] we need not require the refund of the disallowed amount because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward.

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[43] *Peralta v. Auditor General Mathay*, 148 Phil. 261, 265-266 (1971). (Emphasis supplied.)

[44] *Yap v. Commission on Audit, supra* note 27, at 174-175.

[45] *Sambeli v. Province of Isabela*, G.R. No. 92279, June 18, 1992, 210 SCRA 80, 84.

[46] *Singson v. Commission on Audit*, G.R. No. 159355, August 9, 2010, 627 SCRA 36, citing *Molen, Jr. v. Commission on Audit*, 493 Phil. 874 (2005); *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*, G.R. No. 159299, July 7, 2004, 433 SCRA 769; *De Jesus v. Commission on Audit*, 466 Phil. 912 (2004); *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003).

WHEREFORE, the petition is *DISMISSED*. Decision No. 2008-088 dated September 26, 2008 and Decision No. 2010-077 dated August 23, 2010 of the Commission on Audit, are *AFFIRMED WITH MODIFICATION*. The recipients need not refund the retirement and gratuity pay remuneration that they already received.

Accordingly, the Status Quo Ante Order issued by the Court on November 30, 2010 is hereby *RECALLED*. In view, however, of this Court's decision not to require the refund of the amounts already received, the Commission on Audit is *ORDERED* to cease and desist from enforcing the Notice of Finality of Decision[47] dated October 5, 2010.

SO ORDERED.

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

Sereno, J., on leave.

Reyes, J., on official leave.

SECOND DIVISION

[A.M. No. P-11-2953. September 7, 2011]

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ROMEO L. DE LEMOS, Clerk of Court VI, DOMINADOR C. MASANGKAY, Sheriff IV, ADELAIDA D. TOLENTINO, Cash Clerk II, MA. FATIMA M. YUMENA, Demo II, MA. FE E. YUMOL, Court Aide**

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[47] *Rollo,* pp. 71-76.

II, and RONALD M. TAGUINOD, Process Server, all of the Office of the Clerk of Court, Regional Trial Court, Balanga City, Bataan, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF DISHONESTY; PUNCHING OF ONE'S DAILY TIME RECORD IS A PERSONAL ACT OF THE HOLDER AND CANNOT BE DELEGATED TO ANYONE ELSE. — OCA Circular No. 7-2003, referring to the Certificates of Service and Daily Time Records/Bundy Cards of Judges and Personnel of the Lower Courts, provides: In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed: After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office x x x. The circular provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has already held that the punching of one's daily time record is a *personal act* of the holder. It cannot and should not be delegated to anyone else. This is mandated by the word *every* in the above-quoted circular.

2. ID.; ID.; ID.; CLERK OF COURT; ALLOWING ONE OF THE STAFF TO PUNCH IN THE BUNDY CARDS OF THE OTHER PERSONNEL CONSTITUTES FALSIFICATION. — Also, Section 4, Rule XVII (on Government Office Hours) of the Omnibus Civil Service Rules and Regulations Implementing Book V of Executive Order No. 292 states: Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x. In the present case, respondents' admission of allowing one of the staff from the Office of the Clerk of Court, Balanga City, Bataan to punch in all the bundy cards of the six court personnel, indicating the almost identical time in and time out on their daily time records at the questioned dates, constitutes

falsification. They made it appear that their log-in time was made in the morning instead of the actual time-in made in the evening of the 6th, 12th, 17th, 20th and 26th of November 2009.

3. ID.; ID.; ID.; CHARGE OF DISHONESTY; FALSIFICATION OR IRREGULARITIES IN THE KEEPING OF TIME RECORDS CONSTITUTE DISHONESTY PUNISHABLE BY DISMISSAL FROM THE SERVICE; LENGTH OF SERVICE, ACKNOWLEDGMENT OF INFRACTIONS AND FEELING OF REMORSE, AND FAMILY CIRCUMSTANCES MAY MITIGATE THE ADMINISTRATIVE LIABILITY. — Falsification or irregularities in the keeping of time records constitute dishonesty, which is a grave offense punishable by dismissal from the service. However, in several administrative cases involving dishonesty, mitigating circumstances merited the leniency of the Court. The presence of factors such as length of service in the judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, play an important role in the imposition of penalties. Here, circumstances exist that mitigate the liability of the respondents. Judge Escalada, in his Initial Investigation Report dated 16 April 2010, stated that all six court personnel readily admitted their mistakes and they apologized for their actions. He expressed his view that the changes in the bundy cards were made by respondents without any malice or intent to mislead. Also, in their respective written explanations submitted to the OCA, the respondents promised to mend their ways. Since this is their first infraction, the respondents deserve another chance.

4. ID.; ID.; ID.; ID.; PENALTY IMPOSED, MODIFIED; AS THE ADMINISTRATION OF JUSTICE IS A SACRED TASK, THE PERSONS INVOLVED IN IT OUGHT TO LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY. — However, considering the seriousness of the offense, we modify the OCA's recommendation, and increase the fine to ₱5,000.00 with a stern warning for all respondents, except for Clerk of Court VI Atty. Romeo L. de Lemos. As correctly observed by the OCA, de Lemos, being the administrative officer who acts on applications for leave of absence and signs the daily time records, has a greater responsibility and is personally accountable for the attendance of the five

respondents, who are under his administrative control and supervision. Thus, his penalty should be more severe and a fine of ₱10,000.00 with a stern warning is more appropriate. In *Office of the Court of Administrator v. Isip*, we held that all court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative case for dishonesty against six personnel of the Office of the Clerk of Court, Regional Trial Court (RTC) of Balanga City, Bataan: (1) Atty. Romeo L. de Lemos, Clerk of Court VI; (2) Dominador C. Masangkay, Sheriff IV; (3) Adelaida D. Tolentino, Cash Clerk II; (4) Ma. Fatima M. Yumena, Data Entry Machine Operator II; (5) Ma. Fe E. Yumol, Court Aide II; and (6) Ronald M. Taguinod, Process Server.

The Facts

The Leave Division of the Office of Administrative Services, Office of the Court Administrator, found irregularities in the bundy card entries for the month of November 2009 of de Lemos, Masangkay, Tolentino, Yumena, Yumol, and Taguinod. The employees made it appear that they arrived on time in the morning when the entries were actually made in the evening of the same dates.

On 17 March 2010, Deputy Court Administrator Jesus Edwin A. Villasor (DCA Villasor) requested Executive Judge Remigio M. Escalada, Jr. (Judge Escalada) of the RTC of Balanga City, Bataan to (1) direct his six personnel to explain the irregularities within 10 days from notice, and (2) provide a certified true copy of the court's logbook of attendance for the month of November 2009.

Judge Escalada sent his Compliance dated 15 April 2010. Judge Escalada apologized that he could not send a copy of the requested logbook since the entire logbook was lost, as reported by de Lemos and his staff. The loss occurred sometime in the first week of January 2010 when the Office of the Clerk of Court was transferring records and equipment from the Provincial Capitol Building, where the RTC held temporary office, back to the Hall of Justice of Balanga City, Bataan. The new logbook covered only the attendance data starting 4 January 2010. Judge Escalada also mentioned that on 8 April 2010 he conducted an investigation on the matter.

In the Initial Investigation Report dated 16 April 2010 of Judge Escalada, all six employees admitted having altered the entries in their bundy cards. De Lemos spoke for the group and explained that sometime in October 2009, the Office of the Clerk of Court and all of Branches 1 to 4 of the RTC of Bataan, including the Office of the Provincial Prosecutor, the Office of the District Public Attorney and the Bataan Parole and Probation Office, all housed in the Hall of Justice of Balanga City, which was then under major rehabilitation, were temporarily relocated to the Bataan Capitol Compound.

Since the temporary office was some 150 meters away from the Hall of Justice where the court's bundy clock is installed, the employees would sometimes forget to take their bundy cards to punch in at the Hall of Justice. De Lemos also mentioned that there were mornings in the month of November 2009 that they found it difficult to punch in their bundy cards because of heavy rains.

However, de Lemos and his five personnel denied that they were not present from work during the days they punched in their cards in the evening. Although they could not present concrete proof that they reported on time in the mornings of November 6, 12, 17, 20 and 26, they presented testimonial evidence to confirm that they did report for work. Those who attested to these facts were Atty. Alfredo S. de la Cruz, District Attorney of the Public Attorney's Office; Richard L. Salaya (Salaya), Parole and Probation Officer II of the Bataan Parole and Probation Office; and Rosanna A. Vergel, Administrative Aide IV of the Department of Agriculture detailed at the Provincial Governor's Office-Iskolar ng Bataan.

Judge Escalada verified with the three witnesses and all attested to seeing the six personnel during the entire office hours of the questioned dates, except for Salaya who only confirmed their presence on the 6th, 12th, 17th and 20th of November since he was on paternity leave on the 26th of the same month. All the three witnesses expressed their willingness to execute affidavits in support of what they had alleged. The respective affidavits were later on submitted and attached to the records.

In addition, de Lemos and the five court personnel confessed having committed the same irregularities in two or three other instances before the month of November 2009 for "thinking that there was really no harm done" and even reported being late on certain dates which they have readily disclosed on their attendance sheets.

Judge Escalada concluded by stating that the acts of the six personnel were done without malice or intent to mislead. All of them expressed their remorse and promised never to commit the same wrongdoing in the future.

After the investigation, Judge Escalada required the six personnel to file separate written explanations to DCA Villasor. All six court personnel complied with the directive. All acknowledged committing the irregularities in their November 2009 bundy cards. However, they justified their action stating that they only punched in their bundy cards after office hours in order to reflect their actual time-in in the morning of said dates. Their statements were further corroborated by the three main witnesses who disclosed that all reported for work on those days. Ultimately, they asked for the court's mercy and apologized for their wrongdoing. They also showed remorse for their improper behavior and cited the nature of their jobs, good performance rating, and length of satisfactory service in the judiciary.

The OCA's Report and Recommendation

In its Report dated 3 May 2011, the OCA found all six court personnel administratively liable for their acts. The OCA stated that administrative liability does not end by mere show of remorse. Respondents' admission of punching their bundy cards after office hours to reflect their actual time-in coupled with a mistaken belief that such act will not register in the bar code of the bundy clock as altered is deceitful and impermissible.

The OCA added that the affidavits of respondents' three witnesses were self-serving and deserved scant consideration. The witnesses only attested to the fact that they saw all six respondents reporting for work on the questioned dates but did not attest as to the specific time that the six court personnel reported or left for work.

The OCA made this recommendation:

Premises considered, it is respectfully recommended that this matter be RE-DOCKETED as a regular administrative matter and that respondents Sheriff IV Dominador Masangkay, Cash Clerk II Adelaida Tolentino, DEMO II Ma. Fatima Yumena, Court Aide II Ma. Fe Yumol, and Process Server Ronald M. Taguinod, all of the Regional Trial Court, Office of the Clerk of Court, Balanga City, Bataan be FINED in the amount of ₱3,000.00 each with SEVERE REPRIMAND and Clerk

of Court VI, Atty. Romeo L. De Lemos be FINED in the amount of ₱5,000.00, all for Irregularity in the Entries of their Bundy Cards with a WARNING that a repetition of the same infraction will warrant the imposition of a more severe penalty.

The Court's Ruling

After a careful review of the records of the case, we find reasonable grounds to hold all six respondents administratively liable for dishonesty.

OCA Circular No. 7-2003, referring to the Certificates of Service and Daily Time Records/Bundy Cards of Judges and Personnel of the Lower Courts, provides:

> In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:
>
> 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office x x x.

The circular provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has already held that the punching of one's daily time record is a *personal act* of the holder. It cannot and should not be delegated to anyone else. This is mandated by the word *every* in the above-quoted circular.[1]

Also, Section 4, Rule XVII (on Government Office Hours) of the Omnibus Civil Service Rules and Regulations Implementing Book V of Executive Order No. 292 states:

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[1] *Garcia v. Bada*, A.M. No. P-07-2311, 23 August 2007, 530 SCRA 779, citing *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D. J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52.

Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x.

In the present case, respondents' admission of allowing one of the staff from the Office of the Clerk of Court, Balanga City, Bataan to punch in all the bundy cards of the six court personnel, indicating the almost identical time in and time out on their daily time records at the questioned dates, constitutes falsification. They made it appear that their log-in time was made in the morning instead of the actual time-in made in the evening of the 6th, 12th, 17th, 20th and 26th of November 2009.

Falsification or irregularities in the keeping of time records constitute dishonesty, which is a grave offense punishable by dismissal from the service. However, in several administrative cases[2] involving dishonesty, mitigating circumstances merited the leniency of the Court. The presence of factors such as length of service in the judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, play an important role in the imposition of penalties.

Here, circumstances exist that mitigate the liability of the respondents. Judge Escalada, in his Initial Investigation Report dated 16 April 2010, stated that all six court personnel readily admitted their mistakes and they apologized for their actions. He expressed his view that the changes in the bundy cards were made by respondents without any malice or intent to mislead. Also, in their respective written explanations submitted to the OCA, the respondents promised to mend their ways. Since this is their first infraction, the respondents deserve another chance.

However, considering the seriousness of the offense, we modify the OCA's recommendation, and increase the fine to ₱5,000.00 with a stern warning for all respondents, except for Clerk of Court VI Atty. Romeo L. de Lemos. As correctly observed by the OCA, de Lemos, being the administrative officer who acts on applications for leave of absence and signs the

[2] *Id.*; *In Re: Employees Incurring Habitual Tardiness in the First Semester of 2005*, A.M. No. 2005-25-SC, 6 July 2006, 494 SCRA 422.

daily time records, has a greater responsibility and is personally accountable for the attendance of the five respondents, who are under his administrative control and supervision. Thus, his penalty should be more severe and a fine of ₱10,000.00 with a stern warning is more appropriate.

In *Office of the Court Administrator v. Isip*,[3] we held that all court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.

WHEREFORE, we find respondents Dominador C. Masangkay, Sheriff IV; Adelaida D. Tolentino, Cash Clerk II; Ma. Fatima M. Yumena, DEMO II; Ma. Fe E. Yumol, Court Aide II; and Ronald M. Taguinod, Process Server, all from the Office of the Clerk of Court, Regional Trial Court of Balanga City, Bataan, *GUILTY* of *DISHONESTY* and *FINE* each of them ₱5,000.00 with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

We also find respondent Atty. Romeo L. de Lemos, Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court of Balanga City, Bataan, *GUILTY* of *DISHONESTY* and *FINE*

[3] A.M. No. P-07-2390, 19 August 2009, 596 SCRA 407.

him ₱10,000.00 with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Brion, Peralta,[*] *Perez,* and *Mendoza,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 157537. September 7, 2011]

THE HEIRS OF PROTACIO GO, SR. and MARTA BAROLA, namely: LEONOR, SIMPLICIO, PROTACIO, JR., ANTONIO, BEVERLY ANN LORRAINE, TITA, CONSOLACION, LEONORA and ASUNCION, all surnamed GO, represented by LEONORA B. GO, *petitioners, vs.* **ESTER L. SERVACIO and RITO B. GO,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 130 THEREOF; LIQUIDATION OF CONJUGAL PARTNERSHIP PROPERTY UPON TERMINATION OF MARRIAGE BY DEATH SHALL BE IN THE SAME PROCEEDING FOR THE SETTLEMENT OF THE ESTATE OF THE DECEASED. — Article 130 of the *Family Code* reads: "Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased. If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership

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[*] Designated Acting Member per Special Order No. 1074 dated 6 September 2011.

[**] Designated Acting Member per Special Order No. 1066 dated 23 August 2011.

property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the six month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void. Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage."

2. ID.; ID.; ARTICLE 105 THEREOF; CONJUGAL PARTNERSHIP OF GAINS; FAMILY CODE PROVISIONS ON CONJUGAL PARTNERSHIP OF GAINS APPLY TO MARRIAGES CONTRACTED BEFORE THE FAMILY CODE. —Article 130 is to be read in consonance with Article 105 of the *Family Code, viz*: Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application. **The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.**

3. ID.; ID.; CONJUGAL PARTNERSHIP OF GAINS; CONJUGAL PARTNERSHIP OF GAINS ESTABLISHED BEFORE AND AFTER THE EFFECTIVITY OF THE FAMILY CODE ARE GOVERNED BY THE LEGAL PROVISIONS FOUND IN CHAPTER 4 (CONJUGAL PARTNERSHIP OF GAINS) OF TITLE IV (PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE) OF THE FAMILY CODE. —It is clear that conjugal partnership of gains established before and after the effectivity of the *Family Code* are governed by the rules found in Chapter 4 (Conjugal Partnership of Gains) of Title IV (Property Relations Between Husband And Wife) of the *Family Code*. Hence, any disposition of the conjugal property after the dissolution of the conjugal partnership must be made only after the liquidation; otherwise, the disposition is void. Before applying such rules, however, the conjugal partnership of gains must be subsisting at the time of the effectivity of the *Family Code*.

4. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, UPON MARTA'S DEATH IN 1987, THE CONJUGAL PARTNERSHIP WAS DISSOLVED AND AN IMPLIED ORDINARY CO-OWNERSHIP ENSUED AMONG PROTACIO, SR. AND THE OTHER HEIRS OF MARTA. — There being no dispute that Protacio, Sr. and Marta were married prior to the effectivity of the *Family Code* on August 3, 1988, their property relation was properly characterized as one of conjugal partnership governed by the *Civil Code*. Upon Marta's death in 1987, the conjugal partnership was dissolved, pursuant to Article 175(1) of the *Civil Code*, and an implied ordinary co-ownership ensued among Protacio, Sr. and the other heirs of Marta with respect to her share in the assets of the conjugal partnership pending a liquidation following its liquidation.

5. ID.; ID.; ARTICLE 105 THEREOF; CONJUGAL PARTNERSHIP OF GAINS; FAMILY CODE PROVISIONS ON CONJUGAL PARTNERSHIP OF GAINS APPLY TO MARRIAGES CONTRACTED BEFORE THE FAMILY CODE; IN THE CASE AT BAR, THE SALE IN QUESTION CAN NOT BE DECLARED AS ENTIRELY VOID. — Article 105 of the *Family Code, supra,* expressly provides that the applicability of the rules on dissolution of the conjugal partnership is "without prejudice to vested rights already acquired in accordance with the *Civil Code* or other laws." This provision gives another reason not to declare the sale as entirely void. Indeed, such a declaration prejudices the rights of Servacio who had already acquired the shares of Protacio, Sr. and Rito in the property subject of the sale.

6. ID.; PROPERTY; CO-OWNERSHIP; RELEVANT LAW IS ARTICLE 493 OF THE CIVIL CODE; IN THE CASE AT BAR, PROTACIO, SR. HAD THE RIGHT TO FREELY SELL AND DISPOSE OF HIS UNDIVIDED INTEREST. — The ensuing implied ordinary co-ownership was governed by Article 493 of the *Civil Code*, to wit: "Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

(399)" Protacio, Sr., although becoming a co-owner with his children in respect of Marta's share in the conjugal partnership, could not yet assert or claim title to any specific portion of Marta's share without an actual partition of the property being first done either by agreement or by judicial decree. Until then, all that he had was an ideal or abstract quota in Marta's share. Nonetheless, a co-owner could sell his undivided share; hence, Protacio, Sr. had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners. Consequently, the sale by Protacio, Sr. and Rito as co-owners without the consent of the other co-owners was not necessarily void, for the rights of the selling co-owners were thereby effectively transferred, making the buyer (Servacio) a co-owner of Marta's share. This result conforms to the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).

7. ID.; ID.; ID.; ID.; ID.; PENDING A PARTITION AMONG THE HEIRS OF MARTA, THE EFFICACY OF THE SALE, AND WHETHER THE EXTENT OF THE PROPERTY SOLD ADVERSELY AFFECTED THE INTERESTS OF THE PETITIONERS MIGHT NOT YET BE PROPERLY DECIDED WITH FINALITY. — In their separate comments, the respondents aver that each of the heirs had already received "a certain allotted portion" at the time of the sale, and that Protacio, Sr. and Rito sold only the portions adjudicated to and owned by them. However, they did not present any public document on the allocation among her heirs, including themselves, of specific shares in Marta's estate. Neither did they aver that the conjugal properties had already been liquidated and partitioned. Accordingly, pending a partition among the heirs of Marta, the efficacy of the sale, and whether the extent of the property sold adversely affected the interests of the petitioners might not yet be properly decided with finality. The appropriate recourse to bring that about is to commence an action for judicial partition ….

8. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR JUDICIAL PARTITION; AS INSTRUCTED IN *BAILON-CASILAO V. COURT OF APPEALS* (160 SCRA 738, 745). — [A]n action for judicial partition, as instructed in *Bailon-Casilao v. Court of Appeals* to wit: "From the foregoing, it may be deduced

that since a co-owner is entitled to sell his undivided share, **a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void**. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property. The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it [*Mainit v. Bandoy*, *supra*]. **Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court.** x x x"

9. CIVIL LAW; PROPERTY; CO-OWNERSHIP; THE BUYERS OF THE PROPERTY THAT COULD NOT BE VALIDLY SOLD BECOME TRUSTEES OF SAID PORTION FOR THE BENEFIT OF THE CO-OWNER WHO COULD VALIDLY SELL HIS SHARE; IN THE CASE AT BAR, SERVACIO WOULD BE A TRUSTEE FOR THE BENEFIT OF THE CO-HEIRS OF HER VENDORS IN RESPECT OF ANY PORTION THAT MIGHT NOT BE VALIDLY SOLD TO HER. — In the meanwhile, Servacio would be a trustee for the benefit of the co-heirs of her vendors in respect of any portion that might not be validly sold to her. The following observations of Justice Paras are explanatory of this result, *viz*: "xxx [I]f it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after liquidation, no more conjugal assets then the whole transaction is *null and void*. But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the time the liquidation is over, it follows logically that a disposal made by the surviving spouse is not

> *void ab initio*. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. The sale is void as to the share of the deceased spouse (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que trust ent*. Said heirs shall not be barred by prescription or by laches (*See Cuison, et al. v. Fernandez, et al.*,L-11764, Jan.31, 1959.)"

APPEARANCES OF COUNSEL

Malilong Hupp and Cabatingan for petitioners.
Latras Heyrosa Alcazaren Rusorra for Ester L. Servacio.

D E C I S I O N

BERSAMIN, *J.*:

The disposition by sale of a portion of the conjugal property by the surviving spouse without the prior liquidation mandated by Article 130 of the *Family Code* is not necessarily void if said portion has not yet been allocated by judicial or extrajudicial partition to another heir of the deceased spouse. At any rate, the requirement of prior liquidation does not prejudice vested rights.

Antecedents

On February 22, 1976, Jesus B. Gaviola sold two parcels of land with a total area of 17,140 square meters situated in Southern Leyte to Protacio B. Go, Jr. (Protacio, Jr.). Twenty three years later, or on March 29, 1999, Protacio, Jr. executed an *Affidavit of Renunciation and Waiver*,[1] whereby he affirmed under oath that it was his father, Protacio Go, Sr. (Protacio, Sr.), not he, who had purchased the two parcels of land (the property).

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[1] Original records, p. 20.

On November 25, 1987, Marta Barola Go died. She was the wife of Protacio, Sr. and mother of the petitioners.[2] On December 28, 1999, Protacio, Sr. and his son Rito B. Go (joined by Rito's wife Dina B. Go) sold a portion of the property with an area of 5,560 square meters to Ester L. Servacio (Servacio) for ₱5,686,768.00.[3] On March 2, 2001, the petitioners demanded the return of the property,[4] but Servacio refused to heed their demand. After *barangay* proceedings failed to resolve the dispute,[5] they sued Servacio and Rito in the Regional Trial Court in Maasin City, Southern Leyte (RTC) for the annulment of the sale of the property.

The petitioners averred that following Protacio, Jr.'s renunciation, the property became conjugal property; and that the sale of the property to Servacio without the prior liquidation of the community property between Protacio, Sr. and Marta was null and void.[6]

Servacio and Rito countered that Protacio, Sr. had exclusively owned the property because he had purchased it with his own money.[7]

On October 3, 2002,[8] the RTC declared that the property was the conjugal property of Protacio, Sr. and Marta, not the exclusive property of Protacio, Sr., because there were three vendors in the sale to Servacio (namely: Protacio, Sr., Rito, and Dina); that the participation of Rito and Dina as vendors had been by virtue of their being heirs of the late Marta; that under Article 160 of the *Civil Code*, the law in effect when the property was acquired, all property acquired by either spouse

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[2] *Id.,* p.173.

[3] *Id.*, pp. 22-24 (the contract was denominated as "Deed of Absolute Sale of a Portion of Real Property").

[4] *Id.,* p. 26.

[5] *Id.,* p. 27.

[6] *Id.,* pp. 1-7.

[7] *Id.,* pp. 31-43.

[8] *Rollo,* pp. 22-25.

during the marriage was conjugal unless there was proof that the property thus acquired pertained exclusively to the husband or to the wife; and that Protacio, Jr.'s renunciation was grossly insufficient to rebut the legal presumption.[9]

Nonetheless, the RTC affirmed the validity of the sale of the property, holding that: "xxx As long as the portion sold, alienated or encumbered will not be allotted to the other heirs in the final partition of the property, or to state it plainly, as long as the portion sold does not encroach upon the legitimate (*sic*) of other heirs, it is valid."[10] Quoting Tolentino's commentary on the matter as authority,[11] the RTC opined:

> In his comment on Article 175 of the New Civil Code regarding the dissolution of the conjugal partnership, Senator Arturo Tolentino, says" [*sic*]
>
> > "Alienation by the survivor. — After the death of one of the spouses, in case it is necessary to sell any portion of the community property in order to pay outstanding obligation of the partnership, such sale must be made in the manner and with the formalities established by the Rules of Court for the sale of the property of the deceased persons. Any sale, transfer, alienation or disposition of said property affected without said formalities shall be null and void, except as regards the portion that belongs to the vendor as determined in the liquidation and partition. Pending the liquidation, the disposition must be considered as limited only to the contingent share or interest of the vendor in the particular property involved, but not to the corpus of the property.
> >
> > This rule applies not only to sale but also to mortgages. The alienation, mortgage or disposal of the conjugal property without the required formality, is not however, null *ab initio*, for the law recognizes their validity so long as they do not exceed the portion which, after liquidation and partition, should pertain to the surviving spouse who made the contract." [underlining supplied]

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[9] *Id.*

[10] *Id.*

[11] *Id.*

It seems clear from these comments of Senator Arturo Tolentino on the provisions of the New Civil Code and the Family Code on the alienation by the surviving spouse of the community property that jurisprudence remains the same - that the alienation made by the surviving spouse of a portion of the community property is not wholly void *ab initio* despite Article 103 of the Family Code, and shall be valid to the extent of what will be allotted, in the final partition, to the vendor. And rightly so, because why invalidate the sale by the surviving spouse of a portion of the community property that will eventually be his/her share in the final partition? Practically there is no reason for that view and it would be absurd.

Now here, in the instant case, the 5,560 square meter portion of the 17,140 square-meter conjugal lot is certainly mush (*sic*) less than what vendors Protacio Go and his son Rito B. Go will eventually get as their share in the final partition of the property. So the sale is still valid.

WHEREFORE, premises considered, complaint is hereby DISMISSED without pronouncement as to cost and damages.

SO ORDERED.[12]

The RTC's denial of their motion for reconsideration[13] prompted the petitioners to appeal directly to the Court on a pure question of law.

Issue

The petitioners claim that Article 130 of the *Family Code* is the applicable law; and that the sale by Protacio, Sr., *et al.* to Servacio was void for being made without prior liquidation.

In contrast, although they have filed separate comments, Servacio and Rito both argue that Article 130 of the *Family Code* was inapplicable; that the want of the liquidation prior to the sale did not render the sale invalid, because the sale was valid to the extent of the portion that was finally allotted to the vendors as his share; and that the sale did not also prejudice any rights of the petitioners as heirs, considering that what the

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[12] *Id.*, pp. 24-25.

[13] *Id.*, pp. 26- 27.

sale disposed of was within the aliquot portion of the property that the vendors were entitled to as heirs.[14]

Ruling

The appeal lacks merit.

Article 130 of the *Family Code* reads:

> Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
>
> If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the six month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.
>
> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

Article 130 is to be read in consonance with Article 105 of the *Family Code, viz*:

> Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.
>
> **The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.** (n) [emphasis supplied]

It is clear that conjugal partnership of gains established before and after the effectivity of the *Family Code* are governed by the rules found in Chapter 4 (Conjugal Partnership of Gains) of

[14] *Id.*, p. 65.

Title IV (Property Relations Between Husband And Wife) of the *Family Code*. Hence, any disposition of the conjugal property after the dissolution of the conjugal partnership must be made only after the liquidation; otherwise, the disposition is void.

Before applying such rules, however, the conjugal partnership of gains must be subsisting at the time of the effectivity of the *Family Code*. There being no dispute that Protacio, Sr. and Marta were married prior to the effectivity of the *Family Code* on August 3, 1988, their property relation was properly characterized as one of conjugal partnership governed by the *Civil Code*. Upon Marta's death in 1987, the conjugal partnership was dissolved, pursuant to Article 175 (1) of the *Civil Code*,[15] and an implied ordinary co-ownership ensued among Protacio, Sr. and the other heirs of Marta with respect to her share in the assets of the conjugal partnership pending a liquidation following its liquidation.[16] The ensuing implied ordinary co-ownership was governed by Article 493 of the *Civil Code*,[17] to wit:

> Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)

Protacio, Sr., although becoming a co-owner with his children in respect of Marta's share in the conjugal partnership, could not yet assert or claim title to any specific portion of Marta's share without an actual partition of the property being first done either by agreement or by judicial decree. Until then, all that he

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[15] Article 175. The conjugal partnership of gains terminates:

1. Upon the death of either spouse.

xxx

[16] *Dael v. Intermediate Appellate Court*, G.R. No. 68873, March 31, 1989, 171 SCRA 524, 532-533.

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

had was an ideal or abstract quota in Marta's share.[18] Nonetheless, a co-owner could sell his undivided share; hence, Protacio, Sr. had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners.[19] Consequently, the sale by Protacio, Sr. and Rito as co-owners without the consent of the other co-owners was not necessarily void, for the rights of the selling co-owners were thereby effectively transferred, making the buyer (Servacio) a co-owner of Marta's share.[20] This result conforms to the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).[21]

Article 105 of the *Family Code, supra,* expressly provides that the applicability of the rules on dissolution of the conjugal partnership is "without prejudice to vested rights already acquired in accordance with the *Civil Code* or other laws." This provision gives another reason not to declare the sale as entirely void. Indeed, such a declaration prejudices the rights of Servacio who had already acquired the shares of Protacio, Sr. and Rito in the property subject of the sale.

In their separate comments,[22] the respondents aver that each of the heirs had already received "a certain allotted portion" at the time of the sale, and that Protacio, Sr. and Rito sold only the portions adjudicated to and owned by them. However, they did not present any public document on the allocation among her heirs, including themselves, of specific shares in Marta's estate. Neither did they aver that the conjugal properties had already been liquidated and partitioned. Accordingly, pending a

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[18] *Acabal v. Acabal*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 581.

[19] *Id.*, p. 582.

[20] *Aguirre v. Court of Appeals*, G.R. No. 122249. January 29, 2004, 421 SCRA 310, 324, citing *Fernandez v. Fernandez*,G.R. No. 143256, August 28, 2001, 363 SCRA 811, 829.

[21] *Metrobank v. Pascual, supra,* note 17, at p. 260, quoting from *Aromin v. Floresca*, G.R. No. 160994, July 27, 2006, 496 SCRA 785, 815.

[22] *Rollo*, pp. 62-67, 79-83.

partition among the heirs of Marta, the efficacy of the sale, and whether the extent of the property sold adversely affected the interests of the petitioners might not yet be properly decided with finality. The appropriate recourse to bring that about is to commence an action for judicial partition, as instructed in *Bailon-Casilao v. Court of Appeals*,[23] to wit:

> From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, **a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void**. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.
>
> The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it [*Mainit v. Bandoy*, *supra*].
>
> **Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court.** xxx[24]

In the meanwhile, Servacio would be a trustee for the benefit of the co-heirs of her vendors in respect of any portion that might not be validly sold to her. The following observations of Justice Paras are explanatory of this result, *viz*:

> xxx [I]f it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after liquidation, no more conjugal assets then the whole transaction is *null and void.* But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the

[23] G. R. No. 78178, April 15, 1988, 160 SCRA 738.

[24] *Id.,* p. 745.

time the liquidation is over, it follows logically that a disposal made by the surviving spouse is not *void ab initio*. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. The sale is void as to the share of the deceased spouse (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que trust ent*. Said heirs shall not be barred by prescription or by laches (*See Cuison, et al. v. Fernandez, et al.*,L-11764, Jan.31, 1959.)[25]

WHEREFORE, we *DENY* the petition for review on *certiorari*; and *AFFIRM* the decision of the Regional Trial Court.

The petitioners shall pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163602. September 7, 2011]

SPOUSES EULOGIA MANILA and RAMON MANILA, *petitioners, vs.* **SPOUSES EDERLINDA GALLARDO-MANZO and DANIEL MANZO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PETITION FOR ANNULMENT OF JUDGMENT OF A REGIONAL TRIAL COURT; CAN ONLY BE AVAILED OF

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[25] I Paras , *Civil Code of the Philippines Annotated,* Sixteenth Ed., p. 592.

WHERE THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, PETITION FOR RELIEF OR OTHER APPROPRIATE REMEDIES ARE NO LONGER AVAILABLE THROUGH NO FAULT OF THE PETITIONER. — A petition for annulment of judgments or final orders of a Regional Trial Court in civil actions can only be availed of where "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner." It is a remedy granted only under exceptional circumstances and such action is never resorted to as a substitute for a party's own neglect in not promptly availing of the ordinary or other appropriate remedies.

2. ID.; ID.; ID.; ID.; LACK OF JURISDICTION AS A GROUND FOR ANNULMENT OF JUDGMENT REFERS TO EITHER LACK OF JURISDICTION OVER THE PERSON OF THE DEFENDING PARTY OR OVER THE SUBJECT MATTER OF THE CLAIM. — The only grounds provided in Sec. 2, Rule 47 are extrinsic fraud and lack of jurisdiction. x x x Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute **lack** of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction, that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law.

3. ID.; ID.; ID.; ID.; ID.; THE GROUND FOR ANNULMENT OF THE DECISION IS THAT THE COURT SHOULD NOT HAVE TAKEN COGNIZANCE OF THE PETITION BECAUSE THE LAW DOES NOT VEST IT WITH JURISDICTION OVER THE SUBJECT MATTER. — The ground for annulment of the decision is absence of, or no, jurisdiction; that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter. x x x As we held in *Ybañez v. Court of Appeals* (253 SCRA 540, 548): "On the first issue, we feel that respondent court acted inadvertently when it set aside the

RTC ruling relative to the validity of the substituted service of summons over the persons of the petitioners in the MTC level. We must not lose sight of the fact that what was filed before respondent court is an action to annul the RTC judgment and not a petition for review. Annulment of judgment may either be based on the ground that a judgment is void for want of jurisdiction or that the judgment was obtained by extrinsic fraud. There is nothing in the records that could cogently show that the RTC lacked jurisdiction. Chiefly, Section 22 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests upon the RTC the exercise of an "appellate jurisdiction over all cases decided by the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions." Clearly then, **when the RTC took cognizance of petitioners' appeal from the adverse decision of the MTC in the ejectment suit, it (RTC) was unquestionably exercising its appellate jurisdiction as mandated by law. Perforce, its decision may not be annulled on the basis of lack of jurisdiction as it has, beyond cavil, jurisdiction to decide the appeal.**

4. ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE CA ERRED IN ANNULLING THE NOVEMBER 18, 1994 RTC DECISION ON THE GROUND OF LACK OF JURISDICTION AS SAID COURT HAD JURISDICTION TO TAKE COGNIZANCE OF PETITIONERS' APPEAL. — Thus, while respondents assailed the content of the RTC decision, they failed to show that the RTC did not have the authority to decide the case on appeal. x x x The CA therefore erred in annulling the November 18, 1994 RTC decision on the ground of lack of jurisdiction as said court had jurisdiction to take cognizance of petitioners' appeal.

5. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THAT RESPONDENTS CONTINUED TO RELY ON THE SERVICES OF THEIR COUNSEL NOTWITHSTANDING HIS CHRONIC AILMENTS THAT HAD HIM CONFINED FOR LONG PERIODS AT THE HOSPITAL IS UNTHINKABLE. — We are not persuaded by respondents' asseveration. They could have directly followed up the status of their case with the RTC especially during the period of Atty. Atienza's hospital confinement. As party litigants, they should

have constantly monitored the progress of their case. Having completely entrusted their case to their former counsel and believing his word that everything is alright, they have no one to blame but themselves when it turned out that their opportunity to appeal and other remedies from the adverse ruling of the RTC could no longer be availed of due to their counsel's neglect. That respondents continued to rely on the services of their counsel notwithstanding his chronic ailments that had him confined for long periods at the hospital is unthinkable.

6. ID.; ID.; ID.; PARTIES; PARTY REPRESENTED BY COUNSEL; WHEN A PARTY RETAINS THE SERVICES OF A LAWYER, HE IS BOUND BY HIS COUNSEL'S ACTIONS AND DECISIONS REGARDING THE CONDUCT OF THE CASE. —The Court has held that when a party retains the services of a lawyer, he is bound by his counsel's actions and decisions regarding the conduct of the case. This is true especially where he does not complain against the manner his counsel handles the suit.

7. ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE NEGLIGENCE OF COUNSEL OF RESPONDENTS IS BINDING ON THEM. — In this case, respondents alleged that the loss of remedies against the RTC decision was attributable to their former counsel's late filing of their motion for reconsideration and failure to file any proper petition to set aside the said decision. They claimed that they had been constantly following up the status of the case with their counsel, Atty. Jose Atienza, who repeatedly assured them he was on top of the situation and would even get angry if repeatedly asked about the case. Out of their long and close relationship with Atty. Atienza and due regard for his poor health due to his numerous and chronic illnesses which required frequent prolonged confinement at the hospital, respondents likewise desisted from hiring the services of another lawyer to assist Atty. Atienza, until the latter's death on September 10, 1998. Thus, it was only on November 1998 that respondents engaged the services of their new counsel who filed the petition for annulment of judgment in the CA. x x x Such negligence of counsel is binding on the client, especially when the latter offered no plausible explanation for his own inaction.

8. ID.; ID.; ID.; PETITION FOR ANNULMENT OF JUDGMENT OF A REGIONAL TRIAL COURT; EJECTMENT CASE

IN THE FIRST LEVEL COURT; THE RTC, EXERCISING APPELLATE JURISDICITON OVER AN EJECTMENT SUIT, MAY DELVE ON THE ISSUE OF OWNERSHIP AND RECEIVE EVIDENCE ON POSSESSION *DE JURE* BUT IT CANNOT ADJUDICATE WITH SEMBLANCE OF FINALITY THE OWNERSHIP OF THE PROPERTY TO EITHER PARTY BY ORDERING THE CANCELLATION OF THE TCT. —While the court in an ejectment case may delve on the issue of ownership or possession *de jure* solely for the purpose of resolving the issue of possession *de facto*, it has no jurisdiction to settle with finality the issue of ownership and any pronouncement made by it on the question of ownership is provisional in nature. A judgment in a forcible entry or detainer case disposes of no other issue than possession and establishes only who has the right of possession, but by no means constitutes a bar to an action for determination of who has the right or title of ownership. We have held that although it was proper for the RTC, on appeal in the ejectment suit, to delve on the issue of ownership and receive evidence on possession *de jure*, it cannot adjudicate with semblance of finality the ownership of the property to either party by ordering the cancellation of the TCT.

9. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE RTC ACTED IN EXCESS OF ITS JURISDICTION IN DECIDING THE APPEAL OF RESPONDENTS WHEN, INSTEAD OF SIMPLY DISMISSING THE COMPLAINT AND AWARDING ANY COUNTERCLAIM FOR COSTS DUE TO THE DEFENDANTS (PETITIONERS), IT ORDERED THE RESPONDENTS-LESSORS TO EXECUTE A DEED OF ABSOLUTE SALE IN FAVOR OF THE PETITIONERS-LESSEES. —There is no dispute that the RTC is vested with appellate jurisdiction over ejectment cases decided by the MeTC, MTC or MCTC. We note that petitioners' attack on the validity of the RTC decision pertains to a relief erroneously granted on appeal, and beyond the scope of judgment provided in Section 6 (now Section 17) of Rule 70. x x x In this case, the RTC acted in excess of its jurisdiction in deciding the appeal of respondents when, instead of simply dismissing the complaint and awarding any counterclaim for costs due to the defendants (petitioners), it ordered the respondents-lessors to execute a deed of absolute sale in favor of the petitioners-lessees, on the basis of its own interpretation of the Contract of Lease

which granted petitioners the option to buy the leased premises within a certain period (two years from date of execution) and for a fixed price (₱150,000.00). This cannot be done in an ejectment case where the only issue for resolution is who between the parties is entitled to the physical possession of the property.

10. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; PRESCRIPTION; PRINCIPLE OF LACHES; IT IS THE FAILURE OR NEGLECT, FOR AN UNREASONABLE AND UNEXPLAINED LENGTH OF TIME, TO DO THAT WHICH BY EXERCISING DUE DILIGENCE COULD OR SHOULD HAVE BEEN DONE EARLIER. — The principle of laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier — negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it has abandoned it or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances.

11. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PETITION FOR ANNULMENT OF JUDGMENT OF A REGIONAL TRIAL COURT; TIMELINESS OF FILING OF THE PETITION FOR ANNULMENT OF JUDGMENT; RESPONDENTS' PETITION TO ANNUL THE FINAL RTC DECISION IS BARRED UNDER THE EQUITABLE DOCTRINE OF LACHES. — On the timeliness of the petition for annulment of judgment filed with the CA, Section 3, Rule 47 of the Rules of Court provides that a petition for annulment of judgment based on extrinsic fraud must be filed within four years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. x x x Here, respondents' failure to assail the RTC ruling in a petition for review or *certiorari* before the CA, rendered the same final and executory. Having lost these remedies due to their lethargy for three and a half years, they cannot now be permitted to assail anew the said ruling rendered by the RTC in the exercise of its appellate jurisdiction. Their inaction and neglect to pursue available remedies to set aside the RTC decision for such length of time, without any acceptable explanation other than the word of a

former counsel who already passed away, constitutes unreasonable delay warranting the presumption that they have declined to assert their right over the leased premises which continued to be in the possession of the petitioners. Clearly, respondents' petition to annul the final RTC decision is barred under the equitable doctrine of laches.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioners.
Cabochan Reyes & Capones Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This resolves the petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated February 27, 2004 and Resolution[2] dated May 14, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 49998 which granted the petition for annulment of judgment filed by the respondents.

The controversy stemmed from an action for ejectment[3] filed by the respondents, spouses Ederlinda Gallardo-Manzo and Daniel Manzo, against the petitioners, spouses Ramon and Eulogia Manila, before the Metropolitan Trial Court (MeTC) of Las Piñas City, Branch 79 (Civil Case No. 3537). The facts as summarized by the said court are as follows:

On June 30, 1982, Ederlinda Gallardo leased two (2) parcels of land situated along Real St., Manuyo, Las Piñas, Metro Manila, to Eulogia Manila for a period of ten (10) years at a monthly rental(s) of ₱2,000.00 for the first two years, and thereafter an increase of ten (10) percent every after two years. They also agreed that the lessee shall have the option to buy the property within two (2) years

[1] *Rollo*, pp. 10-21. Penned by Presiding Justice Cancio C. Garcia (retired Member of this Court) with Associate Justices Renato C. Dacudao and Danilo B. Pine concurring.

[2] *Id.* at 22.

[3] Records, pp. 8-12.

from the date of execution of the contract of lease at a fair market value of One Hundred and Fifty Thousand Pesos (₱150,000.00)

The contract of lease expired on July 1, 1992 but the lessee continued in possession of the property despite a formal demand letter dated August 8, 1992, to vacate the same and pay the rental arrearages. In a letter reply dated August 12, 1992, herein defendant claimed that no rental fee is due because she allegedly became the owner of the property at the time she communicated to the plaintiff her desire to exercise the option to buy the said property.

Their disagreement was later brought to the *Barangay* for conciliation but the parties failed to reach a compromise, hence the present action.[4]

On July 14, 1993, the MeTC rendered its decision,[5] the dispositive portion of which reads:

WHEREFORE, a judgment is rendered in favor of the plaintiffs ordering the defendants:

1) To vacate the subject parcels of land and surrender possession thereof upon the payment by the plaintiff of one-half of the value of the building constructed by the lessee. Should the lessor refuse to reimburse the aforesaid amount, the lessee shall have the option to exercise her right under Article 1678 of the New Civil Code;

2) To pay rental arrearages up to July 1, 1992 in the amount of Two Hundred Twenty Eight Thousand and Forty Four 80/100 Pesos (₱228,044.80);

3) To pay, as reasonable compensation for their continued withholding of possession of the subject lots, the sum of Three Thousand Two Hundred and Twenty One Pesos (₱3,221.00) every month, commencing July 2, 1992 up to such time that they finally yield possession thereof to the plaintiffs, subject to an increase of ten percent (10%) after every two (2) years from said date; and

4) To pay plaintiffs attorney's fees in the sum of Five Thousand Pesos (₱5,000.00)

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[4] *Id.* at 145.

[5] *Id.* at 145-148. Penned by Judge Alfredo R. Enriquez.

No pronouncement as to costs.

SO ORDERED.[6]

Petitioners appealed to the Regional Trial Court (RTC) of Makati City, Branch 63 (Civil Case No. 93-3733) which reversed the MeTC. The RTC found that petitioners have in fact exercised their option to buy the leased property but the respondents refused to honor the same. It noted that respondents even informed the petitioners about foreclosure proceedings on their property, whereupon the petitioners tried to intervene by tendering rental payments but the respondents advised them to withhold such payments until the appeal of respondents in the case they filed against the Rural Bank of Bombon (Camarines Sur), Inc. (Civil Case No. 6062) is resolved. It further noted that respondents' intention to sell the lot to petitioners is confirmed by the fact that the former allowed the latter to construct a building of strong materials on the premises. The RTC thus decreed:

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered reversing the decision of the lower court dated July 14, 1993 and ordering as follows:

1) That plaintiffs execute a deed of absolute sale over that parcel of land subject of the Contract of Lease dated June 30, 1982 after full payment of defendants of the purchase price of ₱150,000.00;

2) That plaintiffs pay the costs of suit.

SO ORDERED.[7]

Respondents filed a motion for reconsideration on December 23, 1994. In its Order dated March 24, 1995, the RTC denied the motion for having been filed beyond the fifteen (15)-day period considering that respondents received a copy of the decision on December 7, 1994.[8] Consequently, the November 18, 1994

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[6] *Id.* at 147-148.

[7] *Id.* at 243.

[8] *Id.* at 264.

decision of the RTC became final and executory.[9]

On December 22, 1998, respondents filed a petition for annulment of the RTC decision in the CA. Respondents assailed the RTC for ordering them to sell their property to petitioners arguing that said court's appellate jurisdiction in ejectment cases is limited to the determination of who is entitled to the physical possession of real property and the only judgment it can render in favor of the defendant is to recover his costs, which judgment is conclusive only on the issue of possession and does not affect the ownership of the land. They contended that the sale of real property by one party to another may be ordered by the RTC only in a case for specific performance falling under its original exclusive jurisdiction, not in the exercise of its appellate jurisdiction in an ejectment case. Respondents also alleged that the petition for annulment is the only remedy available to them because the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault on their part.

By Decision dated February 27, 2004, the CA granted the petition, annulled the November 18, 1994 RTC decision and reinstated the July 14, 1993 MeTC decision. On the issue of lack of jurisdiction raised by the respondents, the CA ruled as follows:

> It must be stressed that the main action before the Metropolitan Trial Court is one for ejectment grounded on the expiration of the parties' contract of lease. And said court, finding that petitioners have a valid right to ask for the ejectment of private respondents, ordered the latter to vacate the premises and to pay their rentals in arrears. To Our mind, what the respondent court should have done **in the exercise of its appellate jurisdiction**, was to confine itself to the issue of whether or not petitioners have a valid cause of action for ejectment against the private respondents.
>
> Unfortunately, in the decision herein sought to be annulled, the respondent court went further than what is required of it as an appellate court when it ordered the petitioners to sell their properties to the private respondents. In a very real sense, **the respondent court**

[9] *Id.* at 267.

materially changed the nature of petitioners' cause of action by deciding the question of ownership even as the appealed case involves only the issue of prior physical possession which, in every ejectment suit, is the only question to be resolved. As it were, the respondent court converted the issue to one for specific performance which falls under its **original**, not appellate jurisdiction. Sad to say, this cannot be done by the respondent court in an appealed ejectment case because the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause (*Marbury v. Madison*, 1 Cranch (U.S.), 137, 172, 2 L. edition 60, cited in 15 Corpus Juris 727).

It follows that the respondent Regional Trial Court clearly acted without jurisdiction when it ordered the petitioners to sell their properties to the private respondents. The order to sell can be made only by the respondent court in an action for specific performance under its exclusive original jurisdiction, and not in the exercise of its **appellate** jurisdiction in an appealed ejectment suit, as in this case. Worse, the relief granted by the same court was not even prayed for by the private respondents in their Answer and position paper before the MTC, whereat they only asked for the dismissal of the complaint filed against them.[10] (Emphasis supplied.)

With the denial of their motion for reconsideration, petitioners filed the present petition raising the following issues:

A

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN ANNULLING THE JUDGMENT BY THE REGIONAL TRIAL COURT OF MAKATI CITY NOTWITHSTANDING THE FINDING THAT THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, PETITION FOR RELIEF OR OTHER APPROPRIATE REMEDIES WERE LOST THROUGH THE FAULT OF THE RESPONDENTS

B

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN ANNULLING THE JUDGMENT BY THE REGIONAL TRIAL COURT OF MAKATI CITY ON THE GROUND OF "LACK OF JURISDICTION" WHEN IT HAS NOT BEEN SHOWN THAT

[10] *Rollo*, pp. 20-21.

THE REGIONAL TRIAL COURT OF MAKATI CITY HAD NO JURISDICTION OVER THE PERSON OF THE RESPONDENTS OR THE SUBJECT MATTER OF THE CLAIM[11]

The petition is meritorious.

A petition for annulment of judgments or final orders of a Regional Trial Court in civil actions can only be availed of where "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner."[12] It is a remedy granted only under exceptional circumstances and such action is never resorted to as a substitute for a party's own neglect in not promptly availing of the ordinary or other appropriate remedies.[13] The only grounds provided in Sec. 2, Rule 47 are extrinsic fraud and lack of jurisdiction.

In this case, respondents alleged that the loss of remedies against the RTC decision was attributable to their former counsel's late filing of their motion for reconsideration and failure to file any proper petition to set aside the said decision. They claimed that they had been constantly following up the status of the case with their counsel, Atty. Jose Atienza, who repeatedly assured them he was on top of the situation and would even get angry if repeatedly asked about the case. Out of their long and close relationship with Atty. Atienza and due regard for his poor health due to his numerous and chronic illnesses which required frequent prolonged confinement at the hospital, respondents likewise desisted from hiring the services of another lawyer to assist Atty. Atienza, until the latter's death on September 10, 1998. Thus, it was only on November 1998 that respondents engaged the services of their new counsel who filed the petition for annulment of judgment in the CA.

We are not persuaded by respondents' asseveration. They could have directly followed up the status of their case with the

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[11] *Id.* at 38.

[12] Sec. 1, Rule 47, 1997 RULES OF CIVIL PROCEDURE.

[13] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.,* G.R. No. 139895, August 15, 2003, 409 SCRA 186, 192.

RTC especially during the period of Atty. Atienza's hospital confinement. As party litigants, they should have constantly monitored the progress of their case. Having completely entrusted their case to their former counsel and believing his word that everything is alright, they have no one to blame but themselves when it turned out that their opportunity to appeal and other remedies from the adverse ruling of the RTC could no longer be availed of due to their counsel's neglect. That respondents continued to rely on the services of their counsel notwithstanding his chronic ailments that had him confined for long periods at the hospital is unthinkable. Such negligence of counsel is binding on the client, especially when the latter offered no plausible explanation for his own inaction. The Court has held that when a party retains the services of a lawyer, he is bound by his counsel's actions and decisions regarding the conduct of the case. This is true especially where he does not complain against the manner his counsel handles the suit.[14] The oft-repeated principle is that an action for annulment of judgment cannot and is not a substitute for the lost remedy of appeal.[15]

In any event, the petition for annulment was based not on fraudulent assurances or negligent acts of their counsel, but on lack of jurisdiction.

Petitioners assail the CA in holding that the RTC decision is void because it granted a relief inconsistent with the nature of an ejectment suit and not even prayed for by the respondents in their answer. They contend that whatever maybe questionable in the decision is a ground for assignment of errors on appeal – or in certain cases, as ground for a special civil action for *certiorari* under Rule 65 – and not as ground for its annulment. On the other hand, respondents assert that the CA, being a higher court, has the power to adopt, reverse or modify the findings of the RTC in this case. They point out that the CA

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[14] *Tolentino v. Leviste,* G.R. No. 156118, November 19, 2004, 443 SCRA 274, 282, citing *Alarcon v. Court of Appeals,* G.R. No. 126802, January 28, 2000, 323 SCRA 716, 725.

[15] *Mercado v. Security Bank Corporation,* G.R. No. 160445, February 16, 2006, 482 SCRA 501, 514.

in the exercise of its sound discretion found the RTC's findings unsupported by the evidence on record which also indicated that the loss of ordinary remedies of appeal, new trial and petition for review was not due to the fault of the respondents.

We agree with the petitioners.

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[16] In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute **lack** of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction, that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law.[17]

There is no dispute that the RTC is vested with appellate jurisdiction over ejectment cases decided by the MeTC, MTC or MCTC. We note that petitioners' attack on the validity of the RTC decision pertains to a relief erroneously granted on appeal, and beyond the scope of judgment provided in Section 6 (now Section 17) of Rule 70.[18] While the court in an ejectment case may delve on the issue of ownership or possession *de jure* solely for the purpose of resolving the issue of possession *de facto,* it has no jurisdiction to settle with finality the issue of ownership[19] and any pronouncement made by it on the question

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[16] *Tolentino v. Leviste, supra* note 14 at 284.

[17] *Durisol Philippines, Inc. v. Court of Appeals,* G.R. No. 121106, February 20, 2002, 377 SCRA 353, 358.

[18] SEC. 17. *Judgment.* — If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

[19] See *Paz v. Reyes,* G.R. No. 127439, March 9, 2000, 327 SCRA 605,

of ownership is provisional in nature.[20] A judgment in a forcible entry or detainer case disposes of no other issue than possession and establishes only who has the right of possession, but by no means constitutes a bar to an action for determination of who has the right or title of ownership.[21] We have held that although it was proper for the RTC, on appeal in the ejectment suit, to delve on the issue of ownership and receive evidence on possession *de jure*, it cannot adjudicate with semblance of finality the ownership of the property to either party by ordering the cancellation of the TCT.[22]

In this case, the RTC acted in excess of its jurisdiction in deciding the appeal of respondents when, instead of simply dismissing the complaint and awarding any counterclaim for costs due to the defendants (petitioners), it ordered the respondents-lessors to execute a deed of absolute sale in favor of the petitioners-lessees, on the basis of its own interpretation of the Contract of Lease which granted petitioners the option to buy the leased premises within a certain period (two years from date of execution) and for a fixed price (₱150,000.00).[23] This cannot be done in an ejectment case where the only issue for resolution is who between the parties is entitled to the physical possession of the property.

609-610; *Aznar Brothers Realty Company v. Court of Appeals*, G.R. No. 128102, March 7, 2000, 327 SCRA 359, 372-373; *Carreon v. Court of Appeals*, G.R. No. 112041, June 22, 1998, 291 SCRA 78, 88.

Sec. 16, Rule 70, 1997 RULES OF CIVIL PROCEDURE STATES:

SEC. 16. *Resolving defense of ownership.* – When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

[20] *Heirs of Rosendo Sevilla Florencio v. Heirs of Teresa Sevilla De Leon*, G.R. No. 149570, March 12, 2004, 425 SCRA 447, 458.

[21] Sec. 18, Rule 70, 1997 RULES OF CIVIL PROCEDURE; *Custodio v. Corrado*, G.R. No. 146082, July 30, 2004, 435 SCRA 500, 509.

[22] *Dizon v. Court of Appeals*, G.R. No. 116854, November 19, 1996, 264 SCRA 391, 396.

[23] CA *rollo*, p. 187.

Such erroneous grant of relief to the defendants on appeal, however, is but an exercise of jurisdiction by the RTC. Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein.[24] The ground for annulment of the decision is absence of, or no, jurisdiction; that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter.[25]

Thus, while respondents assailed the content of the RTC decision, they failed to show that the RTC did not have the authority to decide the case on appeal. As we held in *Ybañez v. Court of Appeals*:[26]

> On the first issue, we feel that respondent court acted inadvertently when it set aside the RTC ruling relative to the validity of the substituted service of summons over the persons of the petitioners in the MTC level. We must not lose sight of the fact that what was filed before respondent court is an action to annul the RTC judgment and not a petition for review. Annulment of judgment may either be based on the ground that a judgment is void for want of jurisdiction or that the judgment was obtained by extrinsic fraud. There is nothing in the records that could cogently show that the RTC lacked jurisdiction. Chiefly, Section 22 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests upon the RTC the exercise of an "appellate jurisdiction over all cases decided by the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions." Clearly then, **when the RTC took cognizance of petitioners' appeal from the adverse decision of the MTC in the ejectment suit, it (RTC) was unquestionably exercising its appellate jurisdiction as mandated by law. Perforce, its decision may not be annulled on the basis of lack of jurisdiction as it has, beyond cavil, jurisdiction to decide the appeal.**[27] (Emphasis supplied.)

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[24] *Tolentino v. Leviste, supra* note 14 at 285.

[25] *Republic v. Technological Advocates for Agro-Forest Programs Association, Inc.*, G.R. No. 165333, February 9, 2010, 612 SCRA 76, 86.

[26] G.R. No. 117499, February 9, 1996, 253 SCRA 540.

[27] *Id.* at 548.

The CA therefore erred in annulling the November 18, 1994 RTC decision on the ground of lack of jurisdiction as said court had jurisdiction to take cognizance of petitioners' appeal.

On the timeliness of the petition for annulment of judgment filed with the CA, Section 3, Rule 47 of the Rules of Court provides that a petition for annulment of judgment based on extrinsic fraud must be filed within four years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. The principle of laches or "stale demands" ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier—negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it has abandoned it or declined to assert it.[28] There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances.[29]

Here, respondents' failure to assail the RTC ruling in a petition for review or *certiorari* before the CA, rendered the same final and executory. Having lost these remedies due to their lethargy for three and a half years, they cannot now be permitted to assail anew the said ruling rendered by the RTC in the exercise of its appellate jurisdiction. Their inaction and neglect to pursue available remedies to set aside the RTC decision for such length of time, without any acceptable explanation other than the word of a former counsel who already passed away, constitutes unreasonable delay warranting the presumption that they have declined to assert their right over the leased premises which continued to be in the possession of the petitioners. Clearly,

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[28] *Galicia v. Manliquez Vda. de Mindo,* G.R. No. 155785, April 13, 2007, 521 SCRA 85, 96, citing *Chua v. Court of Appeals,* G.R. No. 125837, October 6, 2004, 440 SCRA 121, 135.

[29] *Id.,* citing *Far East Bank and Trust Company v. Querimit,* 424 Phil. 721, 732 (2002).

respondents' petition to annul the final RTC decision is barred under the equitable doctrine of laches.

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The Decision dated February 27, 2004 and Resolution dated May 14, 2004 of the Court of Appeals in CA-G.R. SP No. 49998 are *SET ASIDE*. The petition for annulment of judgment filed by herein respondents is *DISMISSED*.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164255. September 7, 2011]

SPOUSES ELBE LEBIN and ERLINDA LEBIN, *petitioners, vs.* **VILMA S. MIRASOL, and REGIONAL TRIAL COURT OF ILOILO, BRANCH XXVII,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL, A MERE STATUTORY PRIVILEGE AND SHOULD BE EXERCISED ONLY IN THE MANNER PRESCRIBED BY LAW. — The right to appeal is a mere statutory privilege, and should be exercised only in the manner prescribed by law. The statutory nature of the right to appeal requires the one who avails himself of it to strictly comply with the statutes or rules that are considered indispensable interdictions against needless delays and for an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, like when the loftier demands of substantial justice and equity require

the relaxation, or when there are other special and meritorious circumstances and issues, such statutes or rules should remain inviolable.

2. ID.; ID.; THE PERFECTION OF AN APPEAL WITHIN THE PERIOD LAID DOWN BY LAW IS MANDATORY AND JURISDICTIONAL. — In like manner, the perfection of an appeal within the period laid down by law is mandatory and jurisdictional, because the failure to perfect the appeal within the time prescribed by the *Rules of Court* causes the judgment or final order to become final as to preclude the appellate court from acquiring the jurisdiction to review the judgment or final order. x x x Among the innovations introduced by *Batas Pambansa Blg.* 129 is the elimination of the record on appeal in most cases, retaining the record on appeal only for appeals in special proceedings and in other cases in which the *Rules of Court* allows multiple appeals. Section 39 of *Batas Pambansa Blg.* 129 has incorporated this innovation. x x x In early 1990, the Supreme Court issued its resolution in *Murillo v. Consul* to clarify and fortify a judicial policy against misdirected or erroneous appeals. x x x An offshoot of *Murillo v. Consul* is the inclusion in the 1997 revision of the rules of civil procedure, effective July 1, 1997, of a provision that forthrightly delineated the modes of appealing an adverse jusgment or final order. The provision is Section 2 of Rule 41. x x x The changes and clarifications recognize that appeal is neither a natural nor a constitutional right, but merely statutory, and the implication of its statutory character is that the party who intends to appeal must always comply with the procedures and the rules governing appeals, or else the right of appeal may be lost or squandered.

3. ID.; ID.; IN SPECIAL PROCEEDINGS, JUDGMENT OR FINAL ORDER IS APPEALED BY RECORD ON APPEAL; CASE AT BAR. — As the foregoing rules further indicate, a judgment or final order in special proceedings is appealed by record on appeal. A judgment or final order determining and terminating a particular part is usually appealable, because it completely disposes of a particular matter in the proceeding, unless otherwise declared by the *Rules of Court*. The ostensible reason for requiring a record on appeal instead of only a notice of appeal is the multi-part nature of nearly all special proceedings, with each part susceptible of being finally determined and

terminated independently of the other parts. An appeal by notice of appeal is a mode that envisions the elevation of the original records to the appellate court as to thereby obstruct the trial court in its further proceedings regarding the other parts of the case. In contrast, the record on appeal enables the trial court to continue with the rest of the case because the original records remain with the trial court even as it affords to the appellate court the full opportunity to review and decide the appealed matter. Section 1, Rule 109 of the *Rules of Court* underscores the multi-part nature of special proceedings by enumerating the particular judgments and final orders already subject of appeal by any interested party despite other parts of the proceedings being still untried or unresolved. x x x The petitioners' appeal comes under item (e) of Section 1, *supra*, due to the final order of May 3, 1995 issued in the settlement of the estate of L.J. Hodges being "a final determination in the lower court of the rights of the party appealing." In order to elevate a part of the records sufficient for appellate review without the RTC being deprived of the original records, the remedy was to file a record on appeal to be approved by the RTC. The elimination of the record on appeal under *Batas Pambansa Blg. 129* made feasible the shortening of the period of appeal from the original 30 days to only 15 days from notice of the judgment or final order. Section 3, Rule 41 of the *Rules of Court*, retains the original 30 days as the period for perfecting the appeal by record on appeal to take into consideration the need for the trial court to approve the record on appeal. Within that 30-day period a party aggrieved by a judgment or final order issued in special proceedings should perfect an appeal by filing both a notice of appeal *and* a record on appeal in the trial court, serving a copy of the notice of appeal *and* a record on appeal upon the adverse party within the period; in addition, the appealing party shall pay within the period for taking an appeal to the clerk of the court that rendered the appealed judgment or final order the full amount of the appellate court docket and other lawful fees. A violation of these requirements for the timely perfection of an appeal by record on appeal, or the non-payment of the full amount of the appellate court docket and other lawful fees to the clerk of the trial court may be a ground for the dismissal of the appeal.

4. ID.; ID.; DISMISSAL OF APPEAL FOR FAILURE TO TIMELY FILE A RECORD ON APPEAL, PROPER. — The petitioners

received the assailed May 3, 1995 order of the RTC on May 15, 1995. They filed a motion for reconsideration and/or new trial on May 24, 1995. On March 23, 1998, they were served with the order dated March 2, 1998 (denying their motion for reconsideration and/or new trial). Although they filed a notice of appeal on March 27, 1998, they submitted the record on appeal only on May 5, 1998. Undoubtedly, they filed the record on appeal 43 days from March 23, 1998, the date they received the denial of their motion for reconsideration and/or new trial. They should have filed the record on appeal within 30 days from their notice of the judgment. Their appeal was not perfected, therefore, because their filing of the record on appeal happened beyond the end of their period for the perfection of their appeal. The petitioners' filing of the motion for reconsideration *vis-à-vis* the order of May 3, 1995 interrupted the running of the period of 30 days; hence, their period to appeal started to run from May 15, 1995, the date they received the order of May 3, 1995. They filed their motion for reconsideration on May 24, 1995. By then, nine days out of their 30-day period to appeal already elapsed. They received a copy of the order dated March 2, 1998 on March 23, 1998. Thus, the period to appeal *resumed* from March 23, 1998 and ended 21 days later, or on April 13, 1998. Yet, they filed their record on appeal only on May 5, 1998, or 22 days beyond the end of their reglementary period. Although, by that time, the 1997 *Rules on Civil Procedure* had meanwhile taken effect (July 1, 1997), their period of appeal remained 30 days. x x x Section 13, Rule 41 of the *Rules of Court* empowers the RTC as the trial court, *motu proprio* or on motion, to 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. For that reason, the RTC rightly granted Mirasol's motion to dismiss the record on appeal.

5. ID.; ID.; NON-PERFECTION OF AN APPPEAL NOTWITHSTANDING, THE DISPOSAL OF ESTATE ASSETS BY PROBATE COURT TO CONFORM TO THE LAW OR TO STANDING POLICIES, PROPER IN CASE AT BAR. — The non-perfection of the appeal by the petitioners notwithstanding, the Court declares that the RTC did not err in allocating the parcel of land equally to the parties if only to serve and enforce a standing policy in the settlement of the large estate of the late L.J. Hodges to prefer actual occupants in the disposition of estate assets. The

policy was entirely within the power of the RTC to adopt and enforce as the probate court. As stated in the administrator's motion for approval of the offer, the approval of the offer to purchase would be conditioned upon whether the petitioners were the only actual occupants. The condition was designed to avoid the dislocation of actual occupants, and was the reason why the RTC dispatched Atty. Tabares to determine who actually occupied the property before approving the motion. It turned out that the report of Atty. Tabares about the petitioners being the only occupants was mistaken, because the house of Mirasol, who had meanwhile also offered to purchase the portion where her house stood, happened to be within the same lot subject of the petitioners' offer to purchase. The confusion arose from the misdescription of Mirasol's portion as Lot 4, instead of Lot 18. Under Rule 89 of the *Rules of Court*, the RTC may authorize the sale, mortgage, or encumbrance of assets of the estate. The approval of the sale in question, and the modification of the disposition of property of the Estate of L.J. Hodges were made pursuant to Section 4 of Rule 89, x x x. Without doubt, the disposal of estate property required judicial approval before it could be executed. Implicit in the requirement for judicial approval was that the probate court could rescind or nullify the disposition of a property under administration that was effected without its authority. This power included the authority to nullify or modify its approval of the sale of the property of the estate to conform to the law or to the standing policies set and fixed for the purpose, where the invalidation or modification derived from the falsity of the factual basis of the disposition, or from any other factual mistake, or from the concealment of a material fact by a party. Consequently, the probate court's modification of its approval of the petitioners' offer to purchase was well within the power of the RTC to nullify or modify after it was found to be contrary to the condition for the approval. Thereby, the RTC's ruling, being sound and judicious, constituted neither abuse of discretion nor excess of jurisdiction.

APPEARANCES OF COUNSEL

Resurreccion S. Salvilla for petitioners.
Danny Villanueva for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

The perfection of an appeal in the manner and within the period laid down by law is mandatory and jurisdictional.

The Case

In Special Proceedings No. 1307 involving the settlement of the estate of the late L.J. Hodges, the Regional Trial Court (RTC), Branch 27, in Iloilo City, issued an order dated May 3, 1995 (ruling that a property of the estate sold to the petitioners be divided in two equal portions between the petitioners and the respondent).[1] On March 2, 1998, the RTC affirmed the order dated May 3, 1995.[2] The petitioners filed a notice of appeal and, later on, a record on appeal, but the respondents moved to dismiss their appeal on June 15, 2000 on the ground of tardiness of the record on appeal. The RTC granted the motion to dismiss on February 1, 2002. On March 13, 2002, the petitioners moved for reconsideration of the dismissal,[3] but the RTC denied the motion for reconsideration on May 21, 2004.[4] Thus, on June 23, 2004, the petitioners directly appealed to the Court, assailing the orders of February 1, 2002 and May 21, 2004.

Antecedents

In January 1985, the petitioners relayed their offer to the administrator of the Estate of L.J. Hodges to purchase for ₱22,560.00 Lot 18, Block 7 of 971 (Lot 18), an asset of the Estate situated on D.B. Ledesma Interior, Jaro, Iloilo City. They made a deposit of ₱4,512.00, the equivalent of 20% of the offer.[5] On August 1, 1985, the administrator sought judicial approval

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[1] *Rollo*, pp. 12-13.

[2] *Id.*, p. 17.

[3] *Id.*, pp. 26-27.

[4] *Id.*, pp. 28-29.

[5] *Id.*, pp. 39.

of the offer,[6] stating to the RTC that petitioner Erlinda Lebin was the actual occupant of Lot 18.[7] The RTC commissioned one Atty. Tabares to conduct an ocular inspection of Lot 18 to ascertain if Erlinda Lebin was really the occupant. In his report, Atty. Tabares confirmed that Erlinda Lebin was the only occupant of Lot 18.[8] Accordingly, on August 28, 1985, the RTC granted the administrator's motion for approval of the offer.[9]

In the meanwhile, respondent Vilma S. Mirasol (Mirasol) also offered to purchase the lot containing an area of 188 square meters where her house stood. The lot was initially identified as Lot No. 4, Block 7 of 971 (Lot 4), but a later survey revealed that her house was actually standing on Lot 18, not Lot 4.[10] Learning on November 11, 1985 of the approval of the petitioners' offer to purchase Lot 18, therefore, Mirasol filed on December 6, 1985 a petition for relief from the order dated August 28, 1985.[11]

On December 17, 1987, pending resolution of the petition for relief, the petitioners paid the last installment for Lot 18, and moved for the execution of the deed of sale.[12] Apparently, the motion was not acted upon by the RTC.

At last, on May 3, 1995, the RTC resolved the petition for relief, *viz*:

> WHEREFORE, the Court, under the auspices of equity and justice tempered with humanitarian reasons, hereby declare each of the offeror-claimants after complying with their respective obligation with the estate, should there be any, to be the owner where their respective houses stand, and therefore, DIRECTS and ENJOINS for the following matters to be undertaken:

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[6] *Id.*, pp. 30-31.

[7] *Id.*, p. 31.

[8] *Id.*, pp. 32-33.

[9] *Id.*, p. 32.

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

[11] *Id.*, pp. 32-35.

[12] *Id.*, pp. 37-38.

For the Administrator of the L.J. Hodges Estate:

1) To assist both offeror-claimants in effecting a Relocation Survey Plan and cause the equal partition of the subject lot herein between the said offeror-claimant;

2) To execute the corresponding deed of sale over the aforecited subject lot in favor of the herein offeror-claimants — Erlinda Lebin and Vilma S. Mirasol purposely to expedite the issuance of respective title; and —

3) To exact payment from either or both offeror-claimants should there be any deficiency, and/or to refund payment should there be any excess payment from either or both offeror-claimants.

SO ORDERED.[13]

On May 23, 1995, the petitioners moved for reconsideration and/or new trial.[14] On March 2, 1998, the RTC denied the motion for reconsideration and/or new trial of the petitioners.[15] Thus, on March 27, 1998, the petitioners filed a notice of appeal in the RTC.[16] Allegedly, on May 5, 1998, they also filed a record on appeal.[17] On January 25, 1999, they presented an *ex parte* motion to approve the record on appeal.[18] On June 15, 2000, Mirasol filed a motion to dismiss the appeal, insisting that the record on appeal had been filed late.[19] The RTC granted the motion to dismiss the appeal on February 1, 2002.[20] The petitioners moved for reconsideration on March 13, 2002,[21] but the RTC denied their motion for reconsideration on May 21, 2004.[22]

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[13] *Id.*, pp. 12-13.

[14] *Id.*, pp. 14-16.

[15] *Id.*, p. 17.

[16] *Id.*, p. 18.

[17] *Id.*, p. 20.

[18] *Id.*, p. 19.

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

[20] *Id.*, pp. 24-25.

[21] *Id.*, pp. 26-27.

[22] *Id.*, pp. 28-29.

Hence, the petitioners appealed *via* petition for review on *certiorari* filed on June 23, 2004, to seek the review and reversal of the orders of the RTC dated February 1, 2002 and May 21, 2004.

Issues

1. Whether or not the RTC erred in dismissing the petitioners' appeal for their failure to timely file a record on appeal; and
2. Whether or not the RTC committed reversible error in adjudging that Lot 18 be sold to both the petitioners and Mirasol in equal portions.

Ruling

The petition for review lacks merit.

I

RTC did not err in dismissing the petitioners' appeal for their failure to timely file a record on appeal

Among the innovations introduced by *Batas Pambansa Blg.* 129[23] is the elimination of the record on appeal in most cases, retaining the record on appeal only for appeals in special proceedings and in other cases in which the *Rules of Court* allows multiple appeals. Section 39 of *Batas Pambansa Blg.* 129 has incorporated this innovation, to wit:

> Section 39. *Appeals*. - The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided however, That in *habeas corpus* cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.
>
> **No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted with all**

[23] Entitled *An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for other Purposes*.

the pages prominently numbered consecutively, together with an index of the contents thereof.

This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court. (emphasis supplied)

In early 1990, the Supreme Court issued its resolution in *Murillo v. Consul*[24] to clarify and fortify a judicial policy against misdirected or erroneous appeals, stating:

At present then, except in criminal cases where the penalty imposed is life imprisonment or *reclusion perpetua*, there is no way by which judgments of regional trial courts may be appealed to the Supreme Court except by petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court, in relation to Section 17 of the Judiciary Act of 1948 as amended. The proposition is clearly stated in the *Interim* Rules: "Appeals to the Supreme Court shall be taken by petition for *certiorari* which shall be governed by Rule 45 of the Rules of Court.

On the other hand, it is not possible to take an appeal by *certiorari* to the Court of Appeals. Appeals to that Court from the Regional Trial Courts are perfected in two (2) ways, both of which are entirely distinct from an appeal by *certiorari* to the Supreme Court. They are:

a) by *ordinary appeal*, or *appeal by writ of error* - where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; and

b) by *petition for review* - where judgment was rendered by the RTC in the exercise of appellate jurisdiction.

The petition for review must be filed with the Court of Appeals within 15 days from notice of the judgment, and as already stated, shall point out the error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed. An ordinary appeal is taken by merely filing a notice of appeal within 15 days from notice of the judgment, except in special proceedings

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[24] Undk. No. 9748, February 27, 1990; 183 SCRA xi, which became the basis for the guidelines set forth in Circular No. 2-90 issued by the Supreme Court on March 9, 1990.

or cases where multiple appeals are allowed in which event the period of appeal is 30 days and a record on appeal is necessary.

There is therefore no longer any common method of appeal in civil cases to the Supreme Court and the Court of Appeals. The present procedures for appealing to either court – and, it may be added, the process of ventilation of the appeal – are distinct from each other. To repeat, appeals to this court cannot now be made by petition for review or by notice of appeals (and, in certain instances, by record on appeal), but only by petition for review on *certiorari* under Rule 45. As was stressed by this Court as early as 1980, in *Buenbrazo v. Marave*, 101 SCRA 848, all "the members of the bench and bar" are charged with knowledge, not only that "since the enactment of Republic Act No. 8031 in 1969," the review of the decision of the Court of First Instance in a case exclusively cognizable by the inferior court xxx cannot be made in an ordinary appeal or by record on appeal," but also that *appeal by record on appeal to the Supreme Court under Rule 42 of the Rules of Court was abolished by Republic Act No. 5440 which, as already stated, took effect on September 9, 1968.* Similarly, in *Santos, Jr., v. C.A.*, 152 SCRA 378, this Court declared that "Republic Act No. 5440 had long superseded Rule 41 and Section 1, Rule 122 of the Rules of Court on direct appeals from the court of first instance to the Supreme Court in civil and criminal cases, x x and that "direct appeals to this Court from the trial court on questions of law had to be through the filing of a petition for review on *certiorari*, wherein this Court could either give due course to the proposed appeal or deny it outright to prevent the clogging of its docket with unmeritorious and dilatory appeals."

In fine, if an appeal is essayed to either court by the wrong procedure, the only course of action open is to dismiss the appeal. In other words, if an appeal is attempted from a judgment of a Regional Trial Court by notice of appeal, that appeal can and should never go to this Court, regardless of any statement in the notice that the court of choice is the Supreme Court; and more than once has this Court admonished a Trial Judge and/or his Clerk of Court, as well as the attorney taking the appeal, for causing the records to be sent up to this Court in such a case. Again, if an appeal by notice of appeal is taken from the Regional Trial Court to the Court of Appeals and in the latter Court, the appellant raises naught but issues of law, the appeal should be dismissed for lack of jurisdiction. And finally, it may be stressed once more, it is only through petitions for review

on *certiorari* that the appellate jurisdiction of the Supreme Court may properly be invoked.

There is no longer any justification for allowing transfers of erroneous appeals from one court to the other, much less for tolerating continued ignorance of the law on appeals. It thus behooves every attorney seeking review and reversal of a judgment or order promulgated against his client, to determine clearly the errors he believes may be ascribed to the judgment or order, whether of fact or of law; then to ascertain which court properly has appellate jurisdiction; and finally, to observe scrupulously the requisites for appeal prescribed by law, with keen awareness that any error or imprecision in compliance therewith may well be fatal to his client's cause.[25] (emphasis supplied)

An offshoot of *Murillo v. Consul* is the inclusion in the 1997 revision of the rules of civil procedure, effective July 1, 1997, of a provision that forthrightly delineated the modes of appealing an adverse judgment or final order. The provision is Section 2 of Rule 41, *viz*:

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

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[25] *Id.*, pp. xv-xviii.

by petition for review on *certiorari* in accordance with Rule 45. (n) (emphasis supplied)

The changes and clarifications recognize that appeal is neither a natural nor a constitutional right, but merely statutory, and the implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals, or else the right of appeal may be lost or squandered.

As the foregoing rules further indicate, a judgment or final order in special proceedings is appealed by record on appeal. A judgment or final order determining and terminating a particular part is usually appealable, because it completely disposes of a particular matter in the proceeding, unless otherwise declared by the *Rules of Court*.[26] The ostensible reason for requiring a record on appeal instead of only a notice of appeal is the multi-part nature of nearly all special proceedings, with each part susceptible of being finally determined and terminated independently of the other parts. An appeal by notice of appeal is a mode that envisions the elevation of the original records to the appellate court as to thereby obstruct the trial court in its further proceedings regarding the other parts of the case. In contrast, the record on appeal enables the trial court to continue with the rest of the case because the original records remain with the trial court even as it affords to the appellate court the full opportunity to review and decide the appealed matter.

Section 1, Rule 109 of the *Rules of Court* underscores the multi-part nature of special proceedings by enumerating the particular judgments and final orders already subject of appeal by any interested party despite other parts of the proceedings being still untried or unresolved, to wit:

Section 1. *Orders or judgments from which appeals may be taken.* - An interested person may appeal in special proceedings

[26] According to Section 1, first paragraph, Rule 41, *Rules of Court*: "An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable."

from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

The petitioners' appeal comes under item (e) of Section 1, *supra*, due to the final order of May 3, 1995 issued in the settlement of the estate of L.J. Hodges being "a final determination in the lower court of the rights of the party appealing." In order to elevate a part of the records sufficient for appellate review without the RTC being deprived of the original records, the remedy was to file a record on appeal to be approved by the RTC.

The elimination of the record on appeal under *Batas Pambansa Blg. 129* made feasible the shortening of the period of appeal from the original 30 days to only 15 days from notice of the judgment or final order. Section 3,[27] Rule 41 of the *Rules of Court*, retains the original 30 days as the period for perfecting

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[27] Section 3. *Period of Ordinary Appeal*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from the notice of the judgment or final order.

the appeal by record on appeal to take into consideration the need for the trial court to approve the record on appeal. Within that 30-day period a party aggrieved by a judgment or final order issued in special proceedings should perfect an appeal by filing both a notice of appeal *and* a record on appeal in the trial court, serving a copy of the notice of appeal *and* a record on appeal upon the adverse party within the period;[28] in addition, the appealing party shall pay within the period for taking an appeal to the clerk of the court that rendered the appealed judgment or final order the full amount of the appellate court docket and other lawful fees.[29] A violation of these requirements for the timely perfection of an appeal by record on appeal,[30] or the non-payment of the full amount of the appellate court docket and other lawful fees to the clerk of the trial court[31] may be a ground for the dismissal of the appeal.

Did the petitioners comply with the requirements for perfecting their appeal?

The petitioners received the assailed May 3, 1995 order of the RTC on May 15, 1995. They filed a motion for reconsideration and/or new trial on May 24, 1995. On March 23, 1998, they were served with the order dated March 2, 1998 (denying their motion for reconsideration and/or new trial). Although they filed a notice of appeal on March 27, 1998, they submitted the record on appeal only on May 5, 1998. Undoubtedly, they filed the record on appeal 43 days from March 23, 1998, the date they received the denial of their motion for reconsideration and/or new trial. They should have filed the record on appeal within 30 days from their notice of the judgment. Their appeal was not perfected, therefore, because their filing of the record on appeal happened beyond the end of their period for the perfection of their appeal.

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[28] Section 2(a) and Section 3, Rule 41, *Rules of Court*.

[29] Section 4, Rule 41, *Rules of Court*.

[30] Section 13, Rule 41, and Section 1(a), Rule 50, *Rules of Court*.

[31] Section 1(a) and (c), Rule 50, *Rules of Court*.

The petitioners' filing of the motion for reconsideration *vis-à-vis* the order of May 3, 1995 interrupted the running of the period of 30 days; hence, their period to appeal started to run from May 15, 1995, the date they received the order of May 3, 1995. They filed their motion for reconsideration on May 24, 1995. By then, nine days out of their 30-day period to appeal already elapsed. They received a copy of the order dated March 2, 1998 on March 23, 1998. Thus, the period to appeal *resumed* from March 23, 1998 and ended 21 days later, or on April 13, 1998. Yet, they filed their record on appeal only on May 5, 1998, or 22 days beyond the end of their reglementary period. Although, by that time, the 1997 *Rules on Civil Procedure* had meanwhile taken effect (July 1, 1997), their period of appeal remained 30 days. It is stressed that under the 1997 revisions, the timely filing of the motion for reconsideration interrupted the running of the period of appeal, pursuant to Section 3, Rule 41 of the 1997 *Rules on Civil Procedure, viz*:

> Section 3. *Period of ordinary appeal*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
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> **The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed**. (n) (emphasis supplied)

Section 13, Rule 41 of the *Rules of Court* empowers the RTC as the trial court, *motu proprio* or on motion, to 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.[32] For that reason, the RTC rightly granted Mirasol's motion to dismiss the record on appeal.

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[32] Section 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.

Nonetheless, the petitioners propose to be excused from the requirement of filing a record on appeal, arguing that "(t)o require a (r)ecord on (a)ppeal here is to reproduce the more than eighteen (18) volumes of records here which is quite impossible to do" and that "most of these records, (*sic*) have nothing to do with the present controversy."[33] Also, they state that their counsel was "of the honest belief and impression" that "the same was not really necessary because the nature of the controversy xxx is civil and not an intestate one."[34]

The petitioners' submissions are frail and facetious.

In order to come up with the record on appeal, the petitioners were not expected to reproduce over 18 volumes of the records, for their record on appeal would have included only the records of the trial court which the appellate court would be asked to pass upon.[35] Section 6, Rule 41 of the 1997 *Rules of Civil Procedure*, which meanwhile became applicable to them, specified what the record on appeal should contain, thusly:

Section 6. *Record on appeal; form and contents thereof*. - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the judgment or final order from which the appeal is taken and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed judgment or final order for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, testimonial and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the testimonial evidence by the names of the corresponding witnesses. If the whole testimonial and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the

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

[34] *Id.*

[35] Bersamin, *Appeal and Review in the Philippines*, Central Professional Books, Inc., 2nd Edition, p. 136; citing 3 Am Jur 215.

witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index. (6a)

The right to appeal is a mere statutory privilege, and should be exercised only in the manner prescribed by law.[36] The statutory nature of the right to appeal requires the one who avails himself of it to strictly comply with the statutes or rules that are considered indispensable interdictions against needless delays and for an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, like when the loftier demands of substantial justice and equity require the relaxation,[37] or when there are other special and meritorious circumstances and issues,[38] such statutes or rules should remain inviolable.[39]

In like manner, the perfection of an appeal within the period laid down by law is mandatory and jurisdictional, because the failure to perfect the appeal within the time prescribed by the *Rules of Court* causes the judgment or final order to become final as to preclude the appellate court from acquiring the jurisdiction to review the judgment or final order.[40] The failure

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[36] *Borlongan v. Buenaventura*, G.R. No. 167234, September 27, 2006, 483 SCRA 405, 411-412; *Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 106956, January 27, 1994, 229 SCRA 560.

[37] *Remulla v. Manlongat*, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 233; *Yutingco v. Court of Appeals*, G.R. No. 137264, August 1, 2002, 386 SCRA 85, 91; *Tan Tiac Chiong v. Cosico*, A.M. No. CA-02-33, July 21, 2002, 385 SCRA 509, 515; *Olacao v. NLRC*, G.R. No. 81390, August 29, 1989, 177 SCRA 38, 49.

[38] *Equitable PCI Bank v. Ku*, G.R. No. 142950, March 26, 2001, 355 SCRA 309, 316; *De Guzman v. Sandiganbayan*, G.R. No. 103276, April 11, 1996, 256 SCRA 171, 177; *Orata v.Intermediate Appellate Court*, G.R. No. 73471, May 8, 1990, 185 SCRA 148, 152.

[39] *Almeda v. Court of Appeals*, G.R. No. 121013, July 16, 1998, 292 SCRA 587, 593-595.

[40] *Ko v. Philippine National Bank*, G. R. Nos. 169131-132, January 20, 2006, 479 SCRA 298; *Air France Philippines v. Leachon*, G.R. No. 134113, October 12, 2005, 472 SCRA 439; *Remulla v. Manlongat*, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 233; *Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 127275, June 20, 2003, 404 SCRA 442,

of the petitioners and their counsel to file their record on appeal on time rendered the orders of the RTC final and unappealable. Thereby, the appellate court lost the jurisdiction to review the challenged orders, and the petitioners were precluded from assailing the orders.

II

RTC committed no reversible error in allocating Lot 18 in equal portions to both petitioners and respondent

The non-perfection of the appeal by the petitioners notwithstanding, the Court declares that the RTC did not err in allocating the parcel of land equally to the parties if only to serve and enforce a standing policy in the settlement of the large estate of the late L.J. Hodges to prefer actual occupants in the disposition of estate assets. The policy was entirely within the power of the RTC to adopt and enforce as the probate court.

As stated in the administrator's motion for approval of the offer, the approval of the offer to purchase would be conditioned upon whether the petitioners were the only actual occupants. The condition was designed to avoid the dislocation of actual occupants, and was the reason why the RTC dispatched Atty. Tabares to determine who actually occupied the property before approving the motion. It turned out that the report of Atty. Tabares about the petitioners being the only occupants was mistaken, because the house of Mirasol, who had meanwhile also offered to purchase the portion where her house stood, happened to be within the same lot subject of the petitioners' offer to purchase. The confusion arose from the misdescription of Mirasol's portion as Lot 4, instead of Lot 18.[41]

448*; Yao v. Court of Appeals*, G.R. No. 132426, October 24, 2000, 344 SCRA 202; *Dayrit v. Philippine Bank of Communications*, G.R. No. 140316, August 1, 2002, 386 SCRA 117, 125; *Bishop of Tuguegarao v. Director of Lands*, 34 Phil. 623 (1916); *Estate of Cordoba and Zarate v. Alabado*, 34 Phil. 920 (1916); *Bermudez v. Director of Lands*, 36 Phil. 774 (1917).

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

Under Rule 89 of the *Rules of Court*, the RTC may authorize the sale, mortgage, or encumbrance of assets of the estate. The approval of the sale in question, and the modification of the disposition of property of the Estate of L.J. Hodges were made pursuant to Section 4 of Rule 89, to wit:

> Section 4. *When court may authorize sale of estate as beneficial to interested persons; Disposal of proceeds.* - **When it appears that the sale of the whole or a part of the real or personal estate will be beneficial to the heirs, devisees, legatees, and other interested persons**, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; but such authority shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be assigned to the persons entitled to the estate in the proper proportions. [emphasis supplied]

Without doubt, the disposal of estate property required judicial approval before it could be executed.[42] Implicit in the requirement for judicial approval was that the probate court could rescind or nullify the disposition of a property under administration that was effected without its authority.[43] This power included the authority to nullify or modify its approval of the sale of the property of the estate to conform to the law or to the standing policies set and fixed for the purpose, where the invalidation or modification derived from the falsity of the factual basis of the disposition, or from any other factual mistake, or from the concealment of a material fact by a party. Consequently, the probate court's modification of its approval of the petitioners' offer to purchase was well within the power of the RTC to nullify or modify after it was found to be contrary to the condition for the approval. Thereby, the RTC's ruling, being sound and judicious, constituted neither abuse of discretion nor excess of jurisdiction.

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[42] *Acebedo v Abesamis*, G.R. No. 102380, January 18, 1993, 217 SCRA 186, 193.

[43] *Dillena v. Court of Appeals*, G.R. No. 77660, July 28, 1988, 163 SCRA 630, 637.

WHEREFORE, we *DENY* the petition for review, and *AFFIRM* the final orders dated May 3, 1995 and March 2, 1998.

The petitioners 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. 169905. September 7, 2011]

ST. PAUL COLLEGE QUEZON CITY, SR. LILIA THERESE TOLENTINO, SPC, SR. BERNADETTE RACADIO, SPC, and SR. SARAH MANAPOL, *petitioners, vs.* **REMIGIO MICHAEL A. ANCHETA II and CYNTHIA A. ANCHETA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYEES; PROBATIONARY STATUS OF TEACHING PERSONNEL, GOVERNED BY THE LABOR CODE SUPPLEMENTED WITH SPECIAL RULES IN THE MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS. — Before this Court delves into the merits of the petition, it deems it necessary to discuss the nature of the employment of the respondents. It is not disputed that respondent Remigio Michael was a full-time probationary employee and his wife, a part-time teacher of the petitioner school. A reality we have to face in the consideration of employment on probationary status of teaching personnel is that they are not governed purely by the Labor Code. The Labor Code is supplemented with respect to the period of probation by special rules found in the Manual of Regulations for Private

Schools. On the matter of probationary period, Section 92 of these regulations provides: "Sec. 92. *Probationary Period*.— Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis."

2. ID.; ID.; ID.; ID.; NATURE OF PROBATIONARY EMPLOYMENT, ELUCIDATED . — A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.

3. ID.; ID.; ID.; ID.; UPON THE EXPIRATION OF A TEACHER'S CONTRACT OF EMPLOYMENT, BEING SIMPLY ON PROBATION, HE CANNOT AUTOMATICALLY CLAIM SECURITY OF TENURE AND COMPEL THE EMPLOYER TO RENEW HIS EMPLOYMENT CONTRACT. — The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year

— since it would be the third school year % of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract.

4. ID.; ID.; ID.; ID.; CONTRACT OF PROBATIONARY EMPLOYMENT; NECESSITY OF SPECIFYING THE PERIOD OR TERM OF ITS EFFECTIVITY; CASE AT BAR. — Pursuant to Section 91 of the Manual of Regulations for Private Schools, x x x it is important that the contract of probationary employment specify the period or term of its effectivity. The failure to stipulate its precise duration could lead to the interference that the contract is binding for the full three-year probationary period. Therefore, the letters sent by petitioner Sr. Racadio, which were void of any specifics cannot be considered as contracts. The closest they can resemble to are that of informal correspondence among the said individuals. As such, petitioner school has the right not to renew the contracts of the respondents, the old ones having been expired at the end of their terms.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; GROUNDS THEREFOR MUST BE BASED ON JUST OR AUTHORIZED CAUSES. — The Labor Code commands that before an employer may legally dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes.

6. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENTS ADMITTED CHARGES OF NONCOMPLIANCE WITH SCHOOL POLICIES. — Petitioner school charged respondent Remigio Michael of non-compliance with a school policy regarding the submission of final test questions to his program coordinator for checking or comment. Following due process, the same respondent admitted the charge. x x x

Respondent Remigio Michael was further charged with non-compliance with the standard format (multiple choice) of final test questions as agreed upon by the different departments of petitioner school, to which the former replied: "**I am not the only one who does not comply with this policy**. x x x He was also charged with failure to encode modular grade reports as required by the school. On that charge, respondent Remigio Michael cited a letter dated April 22, 1998 that criticizes the school policy of penalizing the delays in encoding final grades. On the charge that he had a high failure rate in his classes, respondent Remigio Michael claimed that he did not flunk students, but the latter failed. He further commented that petitioner school did not consciously promote academic excellence. Finally, as to the charge that he constantly failed to report for work on time, the same respondent admitted such tardiness but only with respect to his 7:30 AM classes. Respondent Remigio Michael's spouse shared the same defenses and admissions as to the charges against her. The plain admissions of the charges against them were the considerations taken into account by the petitioner school in their decision not to renew the respondent spouses' employment contracts. This is a right of the school that is mandated by law and jurisprudence.

7. POLITICAL LAW; CONSTITUTION; EDUCATION; A SCHOOL HAS THE PREROGATIVE TO SET HIGH STANDARDS OF EFFICIENCY FOR ITS TEACHERS SINCE QUALITY EDUCATION IS A MANDATE OF THE CONSTITUTION. — It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside. Schools cannot be required to adopt standards which barely satisfy criteria set for government recognition. The same academic freedom grants the school the autonomy to decide for itself the terms and conditions for hiring its teacher, subject of course to the overarching limitations under the Labor Code.

8. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MANAGEMENT HAS THE PREROGATIVE TO REGULATE ALL ASPECTS OF EMPLOYMENT. — The authority to hire is likewise covered

and protected by its management prerogative — the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
Remigio Michael A. Ancheta II for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review[1] dated November 18, 2005 of petitioners St. Paul College, Quezon City, *et al*. which seeks to reverse and set aside the Decision[2] dated July 8, 2005 of the Court of Appeals (CA) and its Resolution[3] dated September 29, 2005, reversing the Decision[4] dated February 28, 2003 of the National Labor Relations Commission (NLRC) and the Decision[5] dated November 20, 2000 of the Labor Arbiter.

As culled from the records, the antecedent facts are the following:

Petitioner St. Paul College, Quezon City (SPCQC) is a private Catholic educational institution. It is represented by its President, petitioner Sr. Lilia Therese Tolentino, SPC, the College Dean, Sr. Bernadette Racadio, SPC, and the Mass Communication Program Director, Sr. Sarah Manapol, SPC. The respondents,

[1] *Rollo*, pp. 11-230.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eliezer R. Delos Santos and Arturo D. Brion (now Associate Justice of the Supreme Court), concurring; *rollo*, pp. 64-84.

[3] *Rollo*, pp. 86-87.

[4] *Id.* at 89-103.

[5] *Id.* at 107-138.

Spouses Remigio Michael A. Ancheta II and Cynthia A. Ancheta are former teachers of the same school.

Respondent Remigio Michael was hired by the SPCQC as a teacher in the General Education Department with a probationary rank in the School Year (SY) 1996-1997 which was renewed in the following SY 1997-1998. His wife, respondent Cynthia was hired by the same school as a part time teacher of the Mass Communication Department in the second semester of SY 1996-1997 and her appointment was renewed for SY 1997-1998.

On February 13, 1998, respondent Remigio Michael wrote a letter[6] to petitioner Sr. Lilia, signifying his intention to renew his contract with SPCQC for SY 1998-1999. A letter[7] of the same tenor was also written by respondent Cynthia addressed to petitioner Sr. Lilia.

Petitioner Sr. Bernadette, on March 9, 1998, sent two letters[8] with the same contents to the respondent spouses informing them that upon the recommendation of the College Council, the school is extending to them new contracts for SY 1998-1999.

A letter[9] dated April 22, 1998 was sent to petitioner Sr. Bernadette and signed by some of the teachers of SPCQC, including the respondent spouses. The said letter contained the teachers' sentiments regarding two school policies, namely: *first*, the policy of penalizing the delay in encoding final grades and, *second*, the policy of withholding salaries of the teachers. Meanwhile, a letter[10] dated April 21, 1998 (the date, later on contested by respondent Remigio Michael to be ante-dated) was written by petitioner Sr. Bernadette to respondent Remigio Michael, reiterating the conversation that took place between

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[6] *Id.* at 139.

[7] *Id.* at 140.

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

[9] *Id.* at 143-148.

[10] *Id.* at 149.

them the day before the date of the said letter (April 20, 1998). The letter enumerated the departmental and instructional policies that respondent Remigio Michael failed to comply with, such as the late submission of final grades, failure to submit final test questions to the Program Coordinator, the giving of tests in the essay form instead of the multiple choice format as mandated by the school and the high number of students with failing grades in the classes that he handled.

Thereafter, petitioner Sr. Bernadette wrote a letter[11] dated April 30, 1998 to petitioner Sr. Lilia, endorsing the immediate termination of the teaching services of the respondent spouses on the following grounds:

1. Non-compliance with the departmental policy to submit their final test questions to their respective program coordinators for checking/comments (violating par. 7.1, p. 65 of the Faculty Manual).

This policy was formulated to ensure the validity and reliability of test questions of teachers for the good of the students. This in effect can minimize if not prevent unnecessary failure of students.

2. Non-compliance with the standard format (multiple choice) of final test questions as agreed upon in the department. Mr. Ancheta prepared purely essay questions for the students.

Well-prepared multiple choice questions are more objective, and develop critical thinking among students.

3. Failure to encode their modular grade reports as required (violating par. H. 8, p. 66 of our Faculty manual).

4. Failure to submit and update required modules (syllabi) of their subject despite reminders (violating D, 1.5, p. 40 of our Faculty Manual).

5. Both spouses have a gross number of failure in their class.

Mr. Ancheta failed 27 in a class of 44 students, and had a total number of 56 failures in his sections of Philippine History. Mrs. Ancheta failed 11 students in a class of 37, and had a total number of 16 failures in her 2 classes of Communication Theories.

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[11] *Id.* at 150-151.

When I talked to each of them to re-examine their bases of failure, they refused saying that they had done this; otherwise, the number of failures would have been more. I gathered data as to the mental ability of the students who failed, and the number of students who incurred more than one failure. In Mr. Ancheta's class of 44 students with 27 failures, majority had average IQ's, 8 were on probation status, and 2 had above-average IQ. Only 7 of his 27 failures were also failing in other subjects.

6. Failure to report to work on time <re: Mr. Ancheta> (violating par. 1, 21, p. 63 of our Faculty Manual).

7. Both spouses are not open to suggestions to improve themselves as teachers. They just see their points and their principles.

When I talked to Mr. Ancheta the second time telling him of the data I gathered, including the information that statistics permits only 1 to 2% failures, he still refused to budge in to review his grades and his quality of teaching. He stood firm in his conviction and ground that the students were to blame for their failures, and reiterated his disagreement with several school policies (which he violated) contained in his letter which he had asked his wife to give to the dean's office. Not content on writing down his personal disagreement on some policies, he also asked some faculty members to read his letter and put their signatures on it if they were in favor of one or all of his points.

In other words, said spouses had refused and continue to refuse to evaluate the students' performance on the bases of an established grading system to ensure just and fair appraisal (violating par. 1.4, p. 40 of our Faculty Manual).[12]

Respondent spouses were given an opportunity to comment on the above letter-recommendation of petitioner Sr. Bernadette.[13] On May 4, 1998, respondent spouses sent their respective comments[14] to petitioner Sr. Lilia. Subsequently, the respondent spouses received their respective letters of termination[15] on May

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[12] *Id.*

[13] *Id.* at 152.

[14] *Id.* at 153-197.

[15] *Id.* at 98-199.

14, 1998. Respondent spouses sent a letter[16] for reconsideration to petitioner Sr. Lilia, but was eventually denied.[17]

Thus, respondent spouses filed a Complaint[18] for illegal dismissal with the NLRC. On November 20, 2000, the Labor Arbiter dismissed the complaint,[19] the dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint of illegal dismissal for lack of merit. All other claims are denied for lack of basis.
>
> SO ORDERED.

The decision of the Labor Arbiter was appealed to the NLRC, but was affirmed by the latter on February 28, 2003,[20] disposing the case as follows:

> WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit and the Decision appealed from is AFFIRMED *en toto*.
>
> SO ORDERED.

After the denial of their motion for reconsideration with the NLRC,[21] the respondent spouses filed a petition for *certiorari* with the CA. In its Decision[22] dated July 8, 2005, the CA granted the petition and reversed the decisions of the Labor Arbiter and the NLRC, thus, it ruled:

> WHEREFORE, finding grave abuse of discretion amounting to lack or excess of jurisdiction, the court resolved to SET ASIDE the decision dated February 28, 2003 of public respondent National Labor Relations

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[16] *Id.* at 200-201.

[17] *Id.* at 202.

[18] *Id.* at 203-226.

[19] *Id.* at 107-138.

[20] *Id.* at 89-103.

[21] *Id.* at 104-106.

[22] *Id.* at 64-84.

Commission. Private respondents are hereby ordered to pay, jointly and severally, petitioners the following:

a) Separation pay equivalent to one (1) month's pay for every year of continuous service;

b) Deficiency wages to be computed from the unexpired portion of petitioners' employment contract.

c) Moral damages in the amount of ₱250,000.00 to each [of the] petitioners;

d) Exemplary damages also in the amount of ₱250,000.00 to each [of the] petitioners; and

e) Attorney's fees.

SO ORDERED.

In its Resolution[23] dated September 29, 2005, the CA denied the motion for reconsideration of the petitioners herein; hence, the present petition.

The petitioners cited the following arguments:

I.

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED GRAVE AND REVERSIBLE ERROR IN SETTING ASIDE THE FINDING IN THE DECISION DATED 20 NOVEMBER 2000 OF THE HONORABLE LABOR ARBITER IN NLRC NCR CASE NO. 00-07-06018-98 THAT INDIVIDUAL CONTRACTS OF EMPLOYMENT OF ATTY. REMIGIO MICHAEL A. ANCHETA II AND MS. CYNTHIA A. ANCHETA HAD EXPIRED AT THE END OF SY 1997-1998, *I.E.*, 1 JUNE 1997- 31 MARCH 1998, AND WAS NOT RENEWED FOR SY 1998-1999 AND, ACCORDINGLY, THEY WERE NOT ILLEGALLY TERMINATED BY ST. PAUL COLLEGE QUEZON CITY.

II.

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED GRAVE AND REVERSIBLE ERROR IN SETTING ASIDE THE DECISION DATED 28 FEBRUARY 2003 OF THE NATIONAL LABOR RELATIONS COMMISSION IN NLRC

[23] *Id.* at 86-87.

NCR CA NO. 02775-01 FINDING THAT ATTY. REMIGIO MICHAEL A. ANCHETA II AND MS. CYNTHIA A. ANCHETA WERE DISMISSED FOR JUST CAUSE AND AFTER DUE PROCESS.

III.

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED GRAVE AND REVERSIBLE ERROR IN RULING THAT ATTY. REMIGIO MICHAEL A. ANCHETA II AND MS. CYNTHIA A. ANCHETA WERE (A) EXTENDED A THIRD APPOINTMENT TO TEACH AS PROBATIONARY TEACHERS FOR SY 1998-1999, (B) ILLEGALLY DISMISSED BY ST. PAUL COLLEGE QUEZON CITY AS AN ACT OF RETALIATION ON THE PART OF SR. BERNADETTE RACADIO, SPC AND (C) ENTITLED TO SEPARATION PAY, DEFICIENCY WAGES, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[24]

The petition is impressed with merit.

Before this Court delves into the merits of the petition, it deems it necessary to discuss the nature of the employment of the respondents. It is not disputed that respondent Remigio Michael was a full-time probationary employee and his wife, a part-time teacher of the petitioner school.

A reality we have to face in the consideration of employment on probationary status of teaching personnel is that they are not governed purely by the Labor Code.[25] The Labor Code is supplemented with respect to the period of probation by special rules found in the Manual of Regulations for Private Schools.[26] On the matter of probationary period, Section 92 of these regulations provides:

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

[25] *Mercado, et al. v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 233.

[26] *Id.*, citing The 1992 Manual of Regulations [being the] applicable Manual as it embodied the pertinent rules at the time of the parties' dispute, but a new Manual has been in place since July 2008; see also *Magis Young Achievers' Learning Center v. Manalo*, G.R. No. 178835, February 13, 2009, 579 SCRA 421, 431-438.

Section 92. *Probationary Period*. - Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.

A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment.[27] The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee.[28] While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.[29] Thus, the word probationary, as used to describe the period of employment, implies the purpose of the term or period, not its length.[30]

The common practice is for the employer and the teacher to enter into a contract, effective for one school year.[31] At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance.[32] If the contract is not renewed, the employment relationship terminates.[33] If the contract is renewed, usually

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[27] *Magis Young Achievers' Learning Center v. Manalo, supra,* at 431.

[28] *Id.*

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

[30] *Id.* at 432, citing *International Catholic Migration Commission v. NLRC,* 251 Phil. 560, 567 (1989).

[31] *Id.* at 435.

[32] *Id.* at 435-436.

[33] *Id.*

for another school year, the probationary employment continues.[34] Again, at the end of that period, the parties may opt to renew or not to renew the contract.[35] If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment.[36] At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer.[37] For the entire duration of this three-year period, the teacher remains under probation.[38] Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract.[39]

Petitioner school contends that it did not extend the contracts of respondent spouses. It claims that, although, it has sent letters to the spouses informing them that the school is extending to them new contracts for the coming school year, the letters do not constitute as actual employment contracts but merely offers to teach on the said school year. The respondent spouses wrote to the president, petitioner Sr. Lilia:

Respondent Remigio Michael:

Dear Sister,

Peace!

This signifies my intention of renewing my contract of employment with [SPCQC] for SY 1998-1999.

Thank you.[40]

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*, citing *Lacuesta v. Ateneo de Manila University*, G.R. No. 152777, December 9, 2005, 477 SCRA 217, 225.

[40] *Rollo*, p. 139.

Respondent Cynthia:

Dear Sister,

I wish to continue teaching in St. Paul College Quezon City for school year 1998-99.

Thank you very much.[41]

In response to the above, the college dean, petitioner Sr. Bernadette wrote the respondent spouses letters with the same contents, thus:

This is to acknowledge receipt of your letter of application to teach during the School year of 1998-1999.

Upon the recommendation of the College Council, I am happy to inform you that the school is extending to you a new contract for School year 1998-1999.

I wish to take this opportunity to thank you for the service which you have rendered to our students and to the school during the past School year 1997-1998. I hope you will again go out of your way and cooperate in this apostolate that we are doing.

Congratulations and I look forward to a fruitful and harmonious time with you.[42]

Section 91 of the Manual of Regulations for Private Schools, states that:

Section 91. Employment Contract. Every contract of employment shall **specify** the designation, qualification, salary rate, the period and nature of service and its date of effectivity, and such other terms and condition of employment as may be consistent with laws and rules, regulations and standards of the school. A copy of the contract shall be furnished the personnel concerned.[43]

It is important that the contract of probationary employment specify the period or term of its effectivity.[44] The failure to

[41] *Id.* at 140.

[42] *Id.* at 141.

[43] Emphasis supplied.

[44] *Magis Young Achievers' Learning Center, et al. v. Manalo, supra*

stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period.[45] Therefore, the letters sent by petitioner Sr. Racadio, which were void of any specifics cannot be considered as contracts. The closest they can resemble to are that of informal correspondence among the said individuals. As such, petitioner school has the right not to renew the contracts of the respondents, the old ones having been expired at the end of their terms.

Assuming, *arguendo,* that the employment contracts between the petitioner school and the respondent spouses were renewed, this Court finds that there was a valid and just cause for their dismissal. The Labor Code commands that before an employer may legally dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with.[46] Under the requirement of substantial due process, the grounds for termination of employment must be based on just[47] or authorized causes.[48]

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note 26, at 436.

[45] See *Espiritu Santo Parochial School v. NLRC,* G.R. No. 82325, September 26, 1989, 177 SCRA 802.

[46] *Woodridge School v. Pe Benito,* G.R. No. 160240, October 29, 2008, 570 SCRA 164, 806-807, citing *National Labor Relations Commission v. Salgarino,* G.R. No. 164376, July 31, 2006, 497 SCRA 361, 374.

[47] The following are the just causes of termination of employment, as provided for in Article 282 of the Labor Code, thus:

Art. 282. *Termination by Employer*. - An employer may terminate an employment for any of the following causes:

a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;"b) Gross and habitual neglect by the employee of his duties;"c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;"d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and"e) Other causes analogous to the foregoing.

[48] The following are the authorized causes of termination as provided for in Articles 283 and 284 of the Labor Code, *viz.:*

Art. 283. *Closure of Establishment and Reduction of Personnel.* - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent

Petitioner school charged respondent Remigio Michael of non-compliance with a school policy regarding the submission of final test questions to his program coordinator for checking or comment. Following due process, the same respondent admitted the charge in his letter,[49] stating that:

It is true that I failed to submit a copy of my final exam to my program coordinator for checking or comment. But to single me out (and Mrs. Cynthia Ancheta for that matter) and hold me accountable for it would not only defy the basic tenets of fair play and equality. It is a common knowledge that there are many teachers who do not comply with this policy. To impose solely upon me the whole weight of this particular policy, leaving the others who similarly violate the same policy, would put me under the mercy of selective justice and the exercise of gross abuse of discretion by the Dean. If the root cause of this matter – which I will discuss later – had not happened, I know that my attention would never be called to this policy, as what was the case in the past. I plead to you, Sister, to find out how many of us have not complied with this policy and how many were actually called their attention for non-compliance. I do not disagree with the objective of this policy; I am only shocked to find out that while many are non-compliant, only few are punished. So be it, I apologize for my violation.[50]

Respondent Remigio Michael was further charged with non-compliance with the standard format (multiple choice) of final test questions as agreed upon by the different departments of petitioner school, to which the former replied:

I am not the only one who does not comply with this policy. Many teachers do not give multiple choice exams at all; others do not give a pure multiple choice exam. I urge you, Sister, to kindly do the rounds. x x x

losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of the Title, x x x.

Art. 284. *Disease as Ground for Termination*. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: x x x.

[49] Dated May 4, 1998, *rollo*, pp. 153-172.

[50] *Id.* at 153. (Emphasis supplied.)

x x x x x x x x x

Again, I apologize if I did not comply with this policy.[51]

He was also charged with failure to encode modular grade reports as required by the school. On that charge, respondent Remigio Michael cited a letter dated April 22, 1998 that criticizes the school policy of penalizing the delays in encoding final grades.

On the charge that he had a high failure rate in his classes, respondent Remigio Michael claimed that he did not flunk students, but the latter failed. He further commented that petitioner school did not consciously promote academic excellence.

Finally, as to the charge that he constantly failed to report for work on time, the same respondent admitted such tardiness but only with respect to his 7:30 a.m. classes.

Respondent Remigio Michael's spouse shared the same defenses and admissions as to the charges against her.

The plain admissions of the charges against them were the considerations taken into account by the petitioner school in their decision not to renew the respondent spouses' employment contracts. This is a right of the school that is mandated by law and jurisprudence. It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution.[52] As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside.[53] Schools cannot be required to adopt standards which barely satisfy criteria set for government recognition.[54] The same academic freedom grants the school the autonomy to decide for itself the terms and conditions for hiring its teacher, subject of course to the overarching limitations under the Labor Code.[55]

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[51] *Id.* at 153-155. (Emphasis supplied.)

[52] *Peña v. National Labor Relations Commission*, 327 Phil. 673, 676 (1996).

[53] *Id.*

[54] *Id.*

[55] *Mercado, et al. v. AMA Computer College-Parañaque City, Inc., supra* note 25, at 237.

The authority to hire is likewise covered and protected by its management prerogative – the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers.[56]

WHEREFORE, the Petition for Review dated November 18, 2005 of petitioners St. Paul College, Quezon City, *et al*. is hereby *GRANTED* and the Decision dated July 8, 2005 of the Court of Appeals and its Resolution dated September 29, 2005 are hereby *REVERSED* and *SET ASIDE*. Consequently, the Decision dated February 28, 2003 of the National Labor Relations Commission and the Decision dated November 20, 2000 of the Labor Arbiter are hereby *REINSTATED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170257. September 7, 2011]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[56] *Id*., citing *Baybay Water District v. COA*, 425 Phil. 326, 343-344 (2002); see also *Consolidated Food Corporation v. NLRC*, 373 Phil. 751, 762 (1999).

[*] Designated additional member in lieu of Associate Justice Maria Lourdes P.A. Sereno, per Special Order No. 1076 dated September 6, 2011.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; ESTOPPEL; AN ADMISSION OR REPRESENTATION IS RENDERED CONCLUSIVE UPON THE PERSON MAKING IT, AND CANNOT BE DENIED OR DISPROVED AS AGAINST THE PERSON RELYING THEREON.**— Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.

2. **ID.; ID.; ID.; ID.; ID.; RCBC IMPLIEDLY ADMITTED VALIDITY OF QUESTIONED WAIVERS THROUGH ITS PARTIAL PAYMENT OF THE REVISED ASSESSMENTS ISSUED WITHIN THE EXTENDED PERIOD AS PROVIDED THEREIN; CASE AT BAR.**— Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.

3. **TAXATION; NATIONAL INTERNAL REVENUE CODE; FINAL WITHHOLDING TAX; FOREIGN CURRENCY DEPOSITS; REVENUE REGULATIONS NO. 2-98 INAPPLICABLE IN THE CASE AT BAR.**— Before any further discussion, it should be pointed out that RCBC erred in citing the abovementioned Revenue Regulations No. 2-98 because the same governs collection at source on income paid only on or after January 1, 1998. The deficiency withholding tax subject of this petition was supposed to have been withheld on income paid during

the taxable years of 1994 and 1995. Hence, Revenue Regulations No. 2-98 obviously does not apply in this case.

4. **ID.; ID.; ID.; UNDER THE WITHHOLDING TAX SYSTEM, THE PAYOR IS THE TAXPAYER UPON WHOM THE TAX IS IMPOSED, WHILE THE WITHHOLDING AGENT SIMPLY ACTS AS AN AGENT OR A COLLECTOR OF THE GOVERNMENT TO ENSURE THE COLLECTION OF TAXES.** —In *Chamber of Real Estate and Builders' Associations, Inc. v. The Executive Secretary* , the Court has explained that the purpose of the withholding tax system is three-fold: (1) to provide the taxpayer with a convenient way of paying his tax liability; (2) to ensure the collection of tax, and (3) to improve the government's cashflow. Under the withholding tax system, the payor is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes.

5. **ID.; ID.; ID.; ID.; A WITHHOLDING AGENT CANNOT BE MADE LIABLE FOR THE TAX DUE, BUT ONLY INSOFAR AS HE FAILED TO PERFORM HIS DUTY TO WITHHOLD THE TAX AND REMIT THE SAME TO THE GOVERNMENT.**—It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*. x x x Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

6. **ID.; ID.; ID.; FOREIGN CURRENCY LOANS; IN THE CASE AT BAR, RCBC IS LIABLE FOR PAYMENT OF DEFICIENCY ONSHORE TAX ON INTEREST INCOME DERIVED FROM FOREIGN CURRENCY LOANS.**— While the payor-borrower can be held accountable for its negligence in performing its duty to withhold the amount of tax due on the transaction, RCBC, as the taxpayer and the one which earned income on the transaction, remains liable for the payment of tax as the taxpayer shares the responsibility of making certain that the

tax is properly withheld by the withholding agent, so as to avoid any penalty that may arise from the non-payment of the withholding tax due. RCBC cannot evade its liability for FCDU Onshore Tax by shifting the blame on the payor-borrower as the withholding agent. As such, it is liable for payment of deficiency onshore tax on interest income derived from foreign currency loans, pursuant to Section 24(e)(3) of the National Internal Revenue Code of 1993.

7. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE COURT OF TAX APPEALS (CTA) TO THE SUPREME COURT; FINDINGS AND CONCLUSIONS OF THE CTA SHALL BE ACCORDED THE HIGHEST RESPECT AND SHALL BE PRESUMED VALID, IN THE ABSENCE OF ANY CLEAR AND CONVINCING PROOF TO THE CONTRARY.**— As a final note, this Court has consistently held that findings and conclusions of the CTA shall be accorded the highest respect and shall be presumed valid, in the absence of any clear and convincing proof to the contrary. The CTA, as a specialized court dedicated exclusively to the study and resolution of tax problems, has developed an expertise on the subject of taxation. As such, its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority on the part of the Tax Court.

APPEARANCES OF COUNSEL

Lapuz-Ureta Ramos Arches Cruz & Manlangit Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 seeking to set aside the July 27, 2005 Decision[1] and October

[1] Penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C.

26, 2005 Resolution[2] of the Court of Tax Appeals *En Banc (CTA-En Banc*) in C.T.A. E.B. No. 83 entitled *"Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue."*

THE FACTS

Petitioner Rizal Commercial Banking Corporation *(RCBC)* is a corporation engaged in general banking operations. It seasonably filed its Corporation Annual Income Tax Returns for Foreign Currency Deposit Unit for the calendar years 1994 and 1995.[3]

On August 15, 1996, RCBC received Letter of Authority No. 133959 issued by then Commissioner of Internal Revenue *(CIR)* Liwayway Vinzons-Chato, authorizing a special audit team to examine the books of accounts and other accounting records for all internal revenue taxes from January 1, 1994 to December 31, 1995.[4]

On January 23, 1997, RCBC executed two Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code covering the internal revenue taxes due for the years 1994 and 1995, effectively extending the period of the Bureau of Internal Revenue (BIR) to assess up to December 31, 2000.[5]

Subsequently, on January 27, 2000, RCBC received a Formal Letter of Demand together with Assessment Notices from the BIR for the following deficiency tax assessments:[6]

Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova; *rollo*, pp. 44-66.

[2] *Id.* at 67-68.

[3] *Id.* at 69-70.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 70-71.

Particulars	Basic Tax	Interest	Compromise Penalties	Total
Deficiency Income Tax				
1995 (ST-INC-95-0199-2000)	₱252,150,988.01	₱191,496,585.96	₱25,000.00	₱443,672,573.97
1994 (ST-INC-94-0200-2000)	₱216,478,397.90	₱207,819,261.99	₱25,000.00	₱424,322,659.89
Deficiency Gross Receipts Tax				
1995 (ST-GRT-95-0201-2000)	₱13,697,083.68	₱12,428,696.21	₱2,819,745.52	₱28,945,525.41
1994 (ST-GRT-94-0202-2000)	₱ 2,488,462.38	₱2,755,716.42	₱25,000.00	₱5,269,178.80
Deficiency Final Withholding Tax				
1995 (ST-EWT-95-0203-2000)	₱64,365,610.12	₱58,757,866.78	₱25,000.00	₱123,148,477.15
1994 (ST-EWT-94-0204-2000)	₱53,058,075.25	₱59,047,096.34	₱25,000.00	₱112,130,171.59
Deficiency Final Tax on FCDU Onshore Income				
1995 (ST-OT-95-0205-2000)	₱81,508,718.20	₱61,901,963.52	₱25,000.00	₱143,435,681.72
1994 (ST-OT-94-0206-2000)	₱34,429,503.10	₱33,052,322.98	₱25,000.00	₱67,506,826.08
Deficiency Expanded Withholding Tax				
1995 (ST-EWT-95-0207-2000)	₱5,051,415.22	₱4,583,640.33	₱113,000.00	₱9,748,055.55
1994 (ST-EWT-94-0208-2000)	₱4,482,740.35	₱4,067,626.31	₱78,200.00	₱8,628,566.66
Deficiency Documentary Stamp Tax				

1995 (ST-DST1-95-0209-2000)	₱351,900,539.39	₱315,804,946.26	₱250,000.00	₱667,955,485.65
1995 (ST-DST2-95-0210-2000)	₱367,207,105.29	₱331,535,844.68	₱300,000.00	₱699,042,949.97
1994 (ST-DST3-94-0211-2000)	₱460,370,640.05	₱512,193,460.02	₱300,000.00	₱972,864,100.07
1994 (ST-DST4-94-0212-2000)	₱223,037,675.89	₱240,050,706.09	₱300,000.00	₱463,388,381.98
TOTALS	₱2,130,226,954.83	₱2,035,495,733.89	₱4,335,945.52	₱4,170,058,634.49

Disagreeing with the said deficiency tax assessment, RCBC filed a protest on February 24, 2000 and later submitted the relevant documentary evidence to support it. Much later on November 20, 2000, it filed a petition for review before the CTA, pursuant to Section 228 of the 1997 Tax Code.[7]

On December 6, 2000, RCBC received another Formal Letter of Demand with Assessment Notices dated October 20, 2000, following the reinvestigation it requested, which drastically reduced the original amount of deficiency taxes to the following:[8]

Particulars	Basic Tax	Interest	Surcharge &/ Compromise	Total
Deficiency Income Tax				
1995 (INC-95-000003)	₱374,348.45	₱346,656.92		₱721,005.37
1994 (INC-94-000002)	₱1,392,366.28	₱1,568,605.52		₱2,960,971.80
Deficiency Gross Receipts Tax				
1995 (GRT-95-000004)	₱2,000,926.96	₱3,322,589.63	₱1,367,222.04	₱6,690,738.63
1994 (GRT-94-000003)	₱138,368.61	₱161,872.32		₱300,240.93

[7] *Id.* at 71-72.

[8] *Id.* at 72.

Deficiency Final Withholding Tax				
1995 (FT-95-000005)	₱362,203.47	₱351,287.75		₱713,491.22
1994 (FT-94-000004)	₱188,746.43	₱220,807.47		₱409,553.90
Deficiency Final Tax on FCDU Onshore Income				
1995 (OT-95-000006)	₱81,508,718.20	₱79,052,291.08		₱160,561,009.28
1994 (OT-94-000005)	₱34,429,503.10	₱40,277,802.26		₱74,707,305.36
Deficiency Expanded Withholding Tax				
1995 (EWT-95-000004)	₱520,869.72	₱505,171.80	₱25,000.00	₱1,051,041.03
1994 (EWT-94-000003)	₱297,949.95	₱348,560.63	₱25,000.00	₱671,510.58
Deficiency Documentary Stamp Tax				
1995 (DST-95-000006)	₱599,890.72		₱149,972.68	₱749,863.40
1995 (DST2-95-000002)	₱24,953,842.46	₱126,155,645.38	₱6,238,460.62	₱31,192,303.08
1994 (DST-94-000005)	₱905,064.74		₱226,266.18	₱1,131,330.92
1994 (DST2-94-000001)	₱17,040,104.84		₱4,260,026.21	₱21,300,131.05
TOTALS	₱164,712,903.44		₱12,291,947.73	₱303,160,496.55

On the same day, RCBC paid the following deficiency taxes as assessed by the BIR:[9]

Particulars	1994	1995	Total
Deficiency Income Tax	₱2,965,549.44	₱722,236.11	₱3,687,785.55

[9] *Id.* at 73.

Deficiency Gross Receipts Tax	300,695.84	6,701,893.17	7,002,589.01
Deficiency Final Withholding Tax	410,174.44	714,682.02	1,124,856.46
Deficiency Expanded Withholding Tax	672,490.14	1,052,753.48	1,725,243.62
Deficiency Documentary Stamp Tax	1,131,330.92	749,863.40	1,881,194.32
TOTALS	₱5,480,240.78	₱9,941,428.18	₱15,421,668.96

RCBC, however, refused to pay the following assessments for deficiency onshore tax and documentary stamp tax which remained to be the subjects of its petition for review:[10]

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	₱34,429,503.10	₱81,508,718.20	₱115,938,221.30
Interest	40,277,802.26	79,052,291.08	119,330,093.34
Sub Total	₱74,707,305.36	₱160,561,009.28	₱235,268,314.64
Deficiency Documentary Stamp Tax			
Basic	₱17,040,104.84	₱24,953,842.46	₱41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	21,300,131.05	31,192,303.08	52,492,434.13
TOTALS	₱96,007,436.41	₱191,753,312.36	₱287,760,748.77

RCBC argued that the waivers of the Statute of Limitations which it executed on January 23, 1997 were not valid because the same were not signed or conformed to by the respondent CIR as required under Section 222(b) of the Tax Code.[11] As regards the deficiency FCDU onshore tax, RCBC contended that because the onshore tax was collected in the form of a final withholding tax, it was the borrower, constituted by law

[10] *Id.*

[11] *Id.* at 100.

as the withholding agent, that was primarily liable for the remittance of the said tax.[12]

On December 15, 2004, the First Division of the Court of Tax Appeals *(CTA-First Division)* promulgated its Decision[13] which partially granted the petition for review. It considered as closed and terminated the assessments for deficiency income tax, deficiency gross receipts tax, deficiency final withholding tax, deficiency expanded withholding tax, and deficiency documentary stamp tax (not an industry issue) for 1994 and 1995.[14] It, however, upheld the assessment for deficiency final tax on FCDU onshore income and deficiency documentary stamp tax for 1994 and 1995 and ordered RCBC to pay the following amounts plus 20% delinquency tax:[15]

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	22,356,324.43	16,067,952.86	115,938,
Interest	26,153,837.08	15,583,713.19	221.30
Sub Total	48,510,161.51	31,651,666.05	119,330,093.34
Deficiency Documentary Stamp Tax (Industry Issue)			119,330,093.34
Basic	17,040,104.84	24,953,842.46	
Surcharge	4,260,026.21	6,238,460.62	41,993,947.30
Sub Total	21,300,131.05	31,192,303.08	10,498,486.83
TOTALS	69,810,292.56	62,843,969.13	52,492,434.13
			171,822,527.47

Unsatisfied, RCBC filed its Motion for Reconsideration on January 21, 2005, arguing that: (1) the CTA erred in its addition of the total amount of deficiency taxes and the correct amount should only be ₱132,654,261.69 and not ₱171,822,527.47; (2) the CTA erred in holding that RCBC was estopped from questioning

[12] *Id.* at 104.

[13] *Id.* at 69-87. Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

[14] *Id.* at 86.

[15] *Id.*

the validity of the waivers; (3) it was the payor-borrower as withholding tax agent, and not RCBC, who was liable to pay the final tax on FCDU, and (4) RCBC's special savings account was not subject to documentary stamp tax.[16]

In its Resolution[17] dated April 11, 2005, the CTA-First Division substantially upheld its earlier ruling, except for its inadvertence in the addition of the total amount of deficiency taxes. As such, it modified its earlier decision and ordered RCBC to pay the amount of ₱132,654,261.69 plus 20% delinquency tax.[18]

RCBC elevated the case to the CTA-*En Banc* where it raised the following issues:

I.

Whether or not the right of the respondent to assess deficiency onshore tax and documentary stamp tax for taxable year 1994 and 1995 had already prescribed when it issued the formal letter of demand and assessment notices for the said taxable years.

II.

Whether or not petitioner is liable for deficiency onshore tax for taxable year 1994 and 1995.

III.

Whether or not petitioner's special savings account is subject to documentary stamp tax under then Section 180 of the 1993 Tax Code.[19]

The CTA-*En Banc*, in its assailed Decision, denied the petition for lack of merit. It ruled that by receiving, accepting and paying portions of the reduced assessment, RCBC bound itself to the new assessment, implying that it recognized the validity of the waivers.[20] RCBC could not assail the validity of the waivers after it had received and accepted certain benefits as

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[16] *Id.* at 89.

[17] *Id.* at 88-94.

[18] *Id.* at 94.

[19] *Id.* at 50-51.

[20] *Id.* at 55.

a result of the execution of the said waivers.[21] As to the deficiency onshore tax, it held that because the payor-borrower was merely designated by law to withhold and remit the said tax, it would then follow that the tax should be imposed on RCBC as the payee-bank.[22] Finally, in relation to the assessment of the deficiency documentary stamp tax on petitioner's special savings account, it held that petitioner's special savings account was a certificate of deposit and, as such, was subject to documentary stamp tax.[23]

Hence, this petition.

While awaiting the decision of this Court, RCBC filed its Manifestation dated July 22, 2009, informing the Court that this petition, relative to the DST deficiency assessment, had been rendered moot and academic by its payment of the tax deficiencies on Documentary Stamp Tax *(DST)* on Special Savings Account *(SSA)* for taxable years 1994 and 1995 after the BIR approved its applications for tax abatement.[24]

In its November 17, 2009 Comment to the Manifestation, the CIR pointed out that the only remaining issues raised in the present petition were those pertaining to RCBC's deficiency tax on FCDU Onshore Income for taxable years 1994 and 1995 in the aggregate amount of 80,161,827.56 plus 20% delinquency interest per annum. The CIR prayed that RCBC be considered to have withdrawn its appeal with respect to the CTA-*En Banc* ruling on its DST on SSA deficiency for taxable years 1994 and 1995 and that the questioned CTA decision regarding RCBC's deficiency tax on FCDU Onshore Income for the same period be affirmed.[25]

THE ISSUES

Thus, only the following issues remain to be resolved by this Court:

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[21] *Id.*

[22] *Id.* at 59.

[23] *Id.* at 65.

[24] *Id.* at 218-220.

[25] *Id.* at 233-235.

Whether petitioner, by paying the other tax assessment covered by the waivers of the statute of limitations, is rendered estopped from questioning the validity of the said waivers with respect to the assessment of deficiency onshore tax.[26]

and

Whether petitioner, as payee-bank, can be held liable for deficiency onshore tax, which is mandated by law to be collected at source in the form of a final withholding tax.[27]

THE COURT'S RULING

Petitioner is estopped from questioning the validity of the waivers

RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code.[28] RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.[29]

The Court disagrees.

Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.[30]

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[26] *Id.* at 15.

[27] *Id.*

[28] *Id.* at 173.

[29] *Id.* at 176.

[30] Tolentino, Arturo M. *Commentaries and Jurisprudence on the Civil Code of the Philippines,* Vol. 4, p. 660.

Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.[31]

Liability for Deficiency Onshore Withholding Tax

RCBC is convinced that it is the payor-borrower, as withholding agent, who is directly liable for the payment of onshore tax, citing Section 2.57(A) of Revenue Regulations No. 2-98 which states:

> (A) Final Withholding Tax. — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. **The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent.** The payee is not required to file an income tax return for the particular income. (Emphasis supplied)

The petitioner is mistaken.

Before any further discussion, it should be pointed out that RCBC erred in citing the abovementioned Revenue Regulations No. 2-98 because the same governs collection at source on income paid only on or after January 1, 1998. The deficiency withholding tax subject of this petition was supposed to have been withheld on income paid during the taxable years of 1994

[31] *Id.*

and 1995. Hence, Revenue Regulations No. 2-98 obviously does not apply in this case.

In *Chamber of Real Estate and Builders' Associations, Inc. v. The Executive Secretary*,[32] the Court has explained that the purpose of the withholding tax system is three-fold: (1) to provide the taxpayer with a convenient way of paying his tax liability; (2) to ensure the collection of tax, and (3) to improve the government's cashflow. Under the withholding tax system, the payor is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes.[33]

It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*,[34] to wit:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. **His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income.** The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
>
> "**the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code**, compliance with which is imposed on the withholding agent and not upon the taxpayer."[35] (Emphases supplied)

[32] G.R. No. 160756, March 9, 2010, 614 SCRA 605, 632-633.

[33] *Bank of America NT & SA v. Court of Appeals*, G.R. Nos. 103092 and 103106, July 21, 1994, 234 SCRA 302, 310.

[34] 361 Phil. 103 (1999).

[35] *Commissioner of Internal Revenue v. Court of Appeals*, 361 Phil.

Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

While the payor-borrower can be held accountable for its negligence in performing its duty to withhold the amount of tax due on the transaction, RCBC, as the taxpayer and the one which earned income on the transaction, remains liable for the payment of tax as the taxpayer shares the responsibility of making certain that the tax is properly withheld by the withholding agent, so as to avoid any penalty that may arise from the non-payment of the withholding tax due.

RCBC cannot evade its liability for FCDU Onshore Tax by shifting the blame on the payor-borrower as the withholding agent. As such, it is liable for payment of deficiency onshore tax on interest income derived from foreign currency loans, pursuant to Section 24(e)(3) of the National Internal Revenue Code of 1993:

Sec. 24. Rates of tax on domestic corporations.

x x x x x x x x x

(e) Tax on certain incomes derived by domestic corporations

x x x x x x x x x

(3) Tax on income derived under the Expanded Foreign Currency Deposit System. – Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions

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103, 117-118 (1999), citing *Commissioner of Internal Revenue v. Malayan Insurance*, 129 Phil. 165, 170 (1967), citing *Jai Alai v. Republic*, L-17462, May 29, 1967; 1967B PHILD 460.

as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: Provided, **That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.** (Emphasis supplied)

As a final note, this Court has consistently held that findings and conclusions of the CTA shall be accorded the highest respect and shall be presumed valid, in the absence of any clear and convincing proof to the contrary.[36] The CTA, as a specialized court dedicated exclusively to the study and resolution of tax problems, has developed an expertise on the subject of taxation.[37] As such, its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority on the part of the Tax Court.[38]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Villarama, Jr.,*[*] *JJ.,* concur.

[36] *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28, 38, citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625,640 (2005); *Commissioner of Internal Revenue v. Court of Appeals, Atlas Consolidated Mining and Development Corporation*, 312 Phil. 337 (1995), citing *Luzon Stevedoring Corporation v. Court of Tax Appeals, et al.*, 246 Phil. 666 (1988).

[37] *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999), citing *Commissioner of Internal Revenue v. Wander Philippines, Inc.*, 243 Phil. 717 (1988).

[38] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561-562, citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006, 498 SCRA 126,135-136 and *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625,640 (2005).

[*] Designated as additional member in lieu of Associate Justice Maria Lourdes P.A. Sereno, per Special Order No. 1076 dated September 6, 2011.

FIRST DIVISION

[G.R. Nos. 173090-91. September 07, 2011]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES RODOLFO T. TIU AND VICTORIA N. TIU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PHYSICAL EVIDENCE; DOCUMENTARY EVIDENCE; DOCUMENTARY EVIDENCE IS SUPERIOR TO ORAL EVIDENCE WITH RESPECT TO SAME SUBJECT MATTER; SPOUSES TIU ARE BOUND TO PAY THE LOAN IN DOLLARS AS STIPULATED IN THE LOAN DOCUMENTS; CASE AT BAR. — Although indeed, the spouses Tiu received peso equivalents of the borrowed amounts, the loan documents presented as evidence, *i.e.*, the promissory notes, expressed the amount of the loans in US dollars and not in any other currency. This clearly indicates that the spouses Tiu were bound to pay Union Bank in dollars, the amount stipulated in said loan documents. Thus, before the Restructuring Agreement, the spouses Tiu were bound to pay Union Bank the amount of US$3,632,000.00 plus the interest stipulated in the promissory notes, without converting the same to pesos. The spouses Tiu, who are in the construction business and appear to be dealing primarily in Philippine currency, should therefore purchase the necessary amount of dollars to pay Union Bank, who could have justly refused payment in any currency other than that which was stipulated in the promissory notes.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OF DEBTS IN DOLLARS PERMISSIBLE UNDER PREVAILING LAW AT THE TIME THE LOANS WERE TAKEN; CASE AT BAR. — Such stipulation of payment in dollars is not prohibited by any prevailing law or jurisprudence at the time the loans were taken. In this regard, Article 1249 of the Civil Code provides: "Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender

in the Philippines." Although the Civil Code took effect on **August 30, 1950**, jurisprudence had upheld the continued effectivity of Republic Act No. 529, which took effect earlier on **June 16, 1950**. Pursuant to Section 1 of Republic Act No. 529, any agreement to pay an obligation in a currency other than the Philippine currency is void; the most that could be demanded is to pay said obligation in Philippine currency to be measured in the prevailing rate of exchange at the time the obligation was incurred. On **June 19, 1964**, Republic Act No. 4100 took effect, modifying Republic Act No. 529 by providing for several exceptions to the nullity of agreements to pay in foreign currency. On **April 13, 1993**, Central Bank Circular No. 1389 was issued, lifting foreign exchange restrictions and liberalizing trade in foreign currency. In cases of foreign borrowings and foreign currency loans, however, prior Bangko Sentral approval was required. On **July 5, 1996**, Republic Act No. 8183 took effect, expressly repealing Republic Act No. 529 in Section 2 thereof. The same statute also explicitly provided that parties may agree that the obligation or transaction shall be settled in a currency other than Philippine currency at the time of payment. Although the Credit Line Agreement between the spouses Tiu and Union Bank was entered into on **November 21, 1995**, when the agreement to pay in foreign currency was still considered void under Republic Act No. 529, the actual loans, as shown in the promissory notes, were taken out from **September 22, 1997 to March 26, 1998**, during which time Republic Act No. 8183 was already in effect.

3. REMEDIAL LAW; EVIDENCE; *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION OF NOTARIAL DOCUMENTS; THE SPOUSES TIU FAILED TO PRESENT SUFFICIENT EVIDENCE TO OVERCOME SUCH LEGAL PRESUMPTION IN CASE AT BAR. — We have painstakingly perused over the records of this case, but failed to find any documentary evidence of the alleged payment of ₱40,447,185.60 before the execution of the Restructuring Agreement. In paragraph 16 of their Amended Complaint, the spouses Tiu alleged payment of ₱40,447,185.60 *for interests* before the conversion of the dollar loan. This was specifically denied by Union Bank in paragraph 5 of its Answer with Counterclaim. Respondent Rodolfo Tiu testified that they made "50 million plus" in cash payment plus "other monthly interest payments," and identified a computation of payments dated

July 17, 2002 signed by himself. Such computation, however, was never formally offered in evidence and was in any event, wholly self-serving. As regards the alleged redenomination of the same dollar loans in 1997 at the rate of US$1=₱26.34, the spouses Tiu merely relied on the following direct testimony of Herbert Hojas, one of the witnesses of Union Bank: x x x Neither party presented any documentary evidence of the alleged redenomination in 1997. Respondent Rodolfo Tiu did not even mention it in his testimony. Furthermore, Hojas was obviously uncertain in his statement that said redenomination was made in 1997. As pointed out by the trial court, the Restructuring Agreement, being notarized, is a public document enjoying a *prima facie* presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption. The spouses Tiu, who attested before the notary public that the Restructuring Agreement "is their own free and voluntary act and deed," failed to present sufficient evidence to prove otherwise. It is difficult to believe that the spouses Tiu, veteran businessmen who operate a multi-million peso company, would sign a very important document without fully understanding its contents and consequences. This Court therefore rules that the Restructuring Agreement is valid and, as such, a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 which had a total amount of US$3,632,000.00.

4. ID.; ID.; FORMAL OFFER OF EVIDENCE; EVIDENCE NOT FORMALLY OFFERED CANNOT BE CONSIDERED BY THE COURT; REASONS; CASE AT BAR. — We have ruled that the Restructuring Agreement is a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 in the total amount of US$3,632,000.00. Thus, in order that the spouses Tiu can be held to have fully paid their loan obligation, they should present evidence showing their payment of the total restructured amount under the Restructuring Agreement which was ₱104,668,741.00. As we have discussed above, however, while respondent Rodolfo Tiu appeared to have identified during his testimony a computation dated July 17, 2002 of the alleged payments made to Union Bank, the same was not formally offered in evidence. Applying Section 34, Rule 132 of the Rules of Court, such computation cannot be considered by this Court. We have held that a formal offer is necessary because judges are mandated to rest their findings

of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. It has several functions: (1) to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence; (2) to allow opposing parties to examine the evidence and object to its admissibility; and (3) to facilitate review by the appellate court, which will not be required to review documents not previously scrutinized by the trial court. Moreover, even if such computation were admitted in evidence, the same is self-serving and cannot be given probative weight. In the case at bar, the records do not contain even a single receipt evidencing payment to Union Bank.

5. ID.; ID.; BURDEN OF PROOF; THE BURDEN TO PROVE THE SPOUSES TIU'S ALLEGATION - THAT THEY DO NOT OWN THE IMPROVEMENTS ON LOT NO. 639, DESPITE HAVING SUCH IMPROVEMENTS INCLUDED IN THE MORTGAGE - IS ON THE SPOUSES TIU THEMSELVES; CASE AT BAR. — Contrary to the ruling of the Court of Appeals, the burden to prove the spouses Tiu's allegation - that they do not own the improvements on Lot No. 639, despite having such improvements included in the mortgage - is on the spouses Tiu themselves. The fundamental rule is that he who alleges must prove. The allegations of the spouses Tiu on this matter, which are found in paragraphs 35 to 39 of their Amended Complaint, were specifically denied in paragraph 9 of Union Bank's Answer with Counterclaim. Upon careful examination of the evidence, we find that the spouses Tiu failed to prove that the improvements on Lot No. 639 were owned by third persons.

APPEARANCES OF COUNSEL

Fe Tengco Becina-Macalino & Associates for petitioner.
Zosa & Quijano Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* seeking to reverse the Joint Decision[1] of the Court of Appeals dated February 21, 2006 in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253, as well as the Resolution[2] dated June 1, 2006 denying the Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

On November 21, 1995, petitioner Union Bank of the Philippines (Union Bank) and respondent spouses Rodolfo T. Tiu and Victoria N. Tiu (the spouses Tiu) entered into a Credit Line Agreement (CLA) whereby Union Bank agreed to make available to the spouses Tiu credit facilities in such amounts as may be approved.[3] From September 22, 1997 to March 26, 1998, the spouses Tiu took out various loans pursuant to this CLA in the total amount of three million six hundred thirty-two thousand dollars (US$3,632,000.00), as evidenced by promissory notes:

PN No.	Amount in US$	Date Granted
87/98/111	72,000.00	02/16/98
87/98/108	84,000.00	02/13/98
87/98/152	320,000.00	03/02/98
87/98/075	150,000.00	01/30/98
87/98/211	32,000.00	03/26/98
87/98/071	110,000.00	01/29/98
87/98/107	135,000.00	02/13/98
87/98/100	75,000.00	02/12/98
87/98/197	195,000.00	03/19/98

[1] *Rollo*, pp. 74-96; penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring.

[2] Id. at 97-100.

[3] Records, pp. 12-13.

87/97/761	60,000.00	09/26/97
87/97/768	30,000.00	09/29/97
87/97/767	180,000.00	09/29/97
87/97/970	110,000.00	12/29/97
87/97/747	50,000.00	09/22/97
87/96/944	605,000.00	12/19/97
87/98/191	470,000.00	03/16/98
87/98/198	505,000.00	03/19/98
87/98/090	449,000.00	02/09/98
	US$3,632,000.00[4]	

On June 23, 1998, Union Bank advised the spouses Tiu through a letter[5] that, in view of the existing currency risks, the loans shall be redenominated to their equivalent Philippine peso amount on July 15, 1998. On July 3, 1998, the spouses Tiu wrote to Union Bank authorizing the latter to redenominate the loans at the rate of US$1=₱41.40[6] with interest of 19% for one year.[7]

On December 21, 1999, Union Bank and the spouses Tiu entered into a Restructuring Agreement.[8] The Restructuring Agreement contains a clause wherein the spouses Tiu confirmed their debt and waived any action on account thereof. To quote said clause:

> **1. Confirmation of Debt** – The BORROWER hereby confirms and accepts that as of December 8, 1999, its outstanding principal indebtedness to the BANK under the Agreement and the Notes amount to ONE HUNDRED FIFTY[-]FIVE MILLION THREE HUNDRED SIXTY[-]FOUR THOUSAND EIGHT HUNDRED PESOS (PHP 155,364,800.00) exclusive of interests, service and penalty charges (the "Indebtedness") and further confirms the correctness, legality, collectability and enforceability of the Indebtedness. The BORROWER unconditionally waives any action, demand or claim that they

[4] *Id*. at 14.

[5] *Id*.

[6] Written in the document as "@ 41.40%".

[7] Records, p. 333.

[8] *Id*. at 334-344.

> may otherwise have to dispute the amount of the Indebtedness as of the date specified in this Section, or the collectability and enforceability thereof. It is the understanding of the parties that the BORROWER's acknowledgment, affirmation, and waiver herein are material considerations for the BANK's agreeing to restructure the Indebtedness which would have already become due and payable as of the above date under the terms of the Agreement and the Notes.[9]

The restructured amount (₱155,364,800.00) is the sum of the following figures: (1) ₱150,364,800.00, which is the value of the US$3,632,000.00 loan as redenominated under the above-mentioned exchange rate of US$1=₱41.40; and (2) ₱5,000,000.00, an additional loan given to the spouses Tiu to update their interest payments.[10]

Under the same Restructuring Agreement, the parties declared that the loan obligation to be restructured (after deducting the *dacion* price of properties ceded by the Tiu spouses and adding: [1] the taxes, registration fees and other expenses advanced by Union Bank in registering the Deeds of Dation in Payment; and [2] other fees and charges incurred by the Indebtedness) is one hundred four million six hundred sixty-eight thousand seven hundred forty-one pesos (₱104,668,741.00) (total restructured amount).[11] The Deeds of Dation in Payment referred to are the following:

1. *Dation* of the **Labangon properties** – Deed executed by Juanita Tiu, the mother of respondent Rodolfo Tiu, involving ten parcels of land with improvements located in Labangon, Cebu City and with a total land area of 3,344 square meters, for the amount of ₱25,130,000.00. The Deed states that these properties shall be leased to the Tiu spouses at a monthly rate of ₱98,000.00 for a period of two years.[12]

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[9] *Id.* at 335.

[10] *Id.* at 115.

[11] *Id.* at 335.

[12] *Id.* at 354-357.

2. *Dation* of the **Mandaue property** – Deed executed by the spouses Tiu involving one parcel of land with improvements located in A.S. Fortuna St., Mandaue City, covered by TCT No. T-31604 and with a land area of 2,960 square meters, for the amount of ₱36,080,000.00. The Deed states that said property shall be leased to the Tiu spouses at a monthly rate of ₱150,000.00 for a period of two years.[13]

As likewise provided in the Restructuring Agreement, the spouses Tiu executed a Real Estate Mortgage in favor of Union Bank over their "residential property inclusive of lot and improvements" located at P. Burgos St., Mandaue City, covered by TCT No. T-11951 with an area of 3,096 square meters.[14]

The spouses Tiu undertook to pay the total restructured amount (₱104,668,741.00) via three loan facilities (payment schemes).

The spouses Tiu claim to have made the following payments: (1) ₱15,000,000.00 on August 3, 1999; and (2) another ₱13,197,546.79 as of May 8, 2001. Adding the amounts paid under the Deeds of Dation in Payment, the spouses Tiu postulate that their payments added up to ₱89,407,546.79.[15]

Asserting that the spouses Tiu failed to comply with the payment schemes set up in the Restructuring Agreement, Union Bank initiated extrajudicial foreclosure proceedings on the residential property of the spouses Tiu, covered by TCT No. T-11951. The property was to be sold at public auction on July 18, 2002.

The spouses Tiu, together with Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu, filed with the Regional Trial Court (RTC) of Mandaue City a Complaint seeking to have the Extrajudicial Foreclosure declared null and void. The case was docketed as Civil Case No. MAN-4363.[16] Named as defendants were Union Bank and Sheriff IV

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[13] *Id*. at 350-353.

[14] *Id*. at 339.

[15] *Id*. at 114.

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

Veronico C. Ouano (Sheriff Oano) of Branch 55, RTC, Mandaue City. Complainants therein prayed for the following: (1) that the spouses Tiu be declared to have fully paid their obligation to Union Bank; (2) that defendants be permanently enjoined from proceeding with the auction sale; (3) that Union Bank be ordered to return to the spouses Tiu their properties as listed in the Complaint; (4) that Union Bank be ordered to pay the plaintiffs the sum of ₱10,000,000.00 as moral damages, ₱2,000,000.00 as exemplary damages, ₱3,000,000.00 as attorney's fees and ₱500,000.00 as expenses of litigation; and (5) a writ of preliminary injunction or temporary restraining order be issued enjoining the public auction sale to be held on July 18, 2002.[17]

The spouses Tiu claim that from the beginning the loans were in pesos, not in dollars. Their office clerk, Lilia Gutierrez, testified that the spouses Tiu merely received the peso equivalent of their US$3,632,000.00 loan at the rate of US$1=₱26.00. The spouses Tiu further claim that they were merely forced to sign the Restructuring Agreement and take up an additional loan of ₱5,000,000.00, the proceeds of which they never saw because this amount was immediately applied by Union Bank to interest payments.[18]

The spouses Tiu allege that the foreclosure sale of the mortgaged properties was invalid, as the loans have already been fully paid. They also allege that they are not the owners of the improvements constructed on the lot because the real owners thereof are their co-petitioners, Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu.[19]

The spouses Tiu further claim that prior to the signing of the Restructuring Agreement, they entered into a Memorandum of Agreement with Union Bank whereby the former deposited with the latter several certificates of shares of stock of various companies and four certificates of title of various parcels of land located in Cebu. The spouses Tiu claim that these properties

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[17] *Id*. at 10.

[18] *Rollo*, pp. 163-164.

[19] *Id*. at 169.

have not been subjected to any lien in favor of Union Bank, yet the latter continues to hold on to these properties and has not returned the same to the former.[20]

On the other hand, Union Bank claims that the Restructuring Agreement was voluntarily and validly entered into by both parties. Presenting as evidence the Warranties embodied in the Real Estate Mortgage, Union Bank contends that the foreclosure of the mortgage on the residential property of the spouses Tiu was valid and that the improvements thereon were absolutely owned by them. Union Bank denies receiving certificates of shares of stock of various companies or the four certificates of title of various parcels of land from the spouses Tiu. However, Union Bank also alleges that even if said certificates were in its possession it is authorized under the Restructuring Agreement to retain any and all properties of the debtor as security for the loan.[21]

The RTC issued a Temporary Restraining Order[22] and, eventually, a Writ of Preliminary Injunction[23] preventing the sale of the residential property of the spouses Tiu. [24]

On December 16, 2004, the RTC rendered its Decision[25] in Civil Case No. MAN-4363 in favor of Union Bank. The dispositive portion of the Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint and lifting and setting aside the Writ of Preliminary Injunction. No pronouncement as to damages, attorney's fees and costs of suit.[26]

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[20] *Id.* at 168.

[21] *Id.* at 42-61.

[22] Records, pp. 97-98.

[23] *Id.* at 420-423.

[24] *Rollo*, pp. 75-78.

[25] *Id.* at 101-120.

[26] *Id.* at 120.

In upholding the validity of the Restructuring Agreement, the RTC held that the spouses Tiu failed to present any evidence to prove either fraud or intimidation or any other act vitiating their consent to the same. The exact obligation of the spouses Tiu to Union Bank is therefore ₱104,668,741.00, as agreed upon by the parties in the Restructuring Agreement. As regards the contention of the spouses Tiu that they have fully paid their indebtedness, the RTC noted that they could not present any detailed accounting as to the total amount they have paid after the execution of the Restructuring Agreement.[27]

On January 4, 2005, Union Bank filed a Motion for Partial Reconsideration,[28] protesting the finding in the body of the December 16, 2004 Decision that the residential house on Lot No. 639 is not owned by the spouses Tiu and therefore should be excluded from the real properties covered by the real estate mortgage. On January 6, 2005, the spouses Tiu filed their own Motion for Partial Reconsideration and/or New Trial.[29] They alleged that the trial court failed to rule on their fourth cause of action wherein they mentioned that they turned over the following titles to Union Bank: TCT Nos. 30271, 116287 and 116288 and OCT No. 0-3538. They also prayed for a partial new trial and for a declaration that they have fully paid their obligation to Union Bank.[30]

On January 11, 2005, the spouses Tiu received from Sheriff Oano a Second Notice of Extra-judicial Foreclosure Sale of Lot No. 639 to be held on February 3, 2005. To prevent the same, the Tiu spouses filed with the Court of Appeals a Petition for Prohibition and Injunction with Application for TRO/Writ of Preliminary Injunction.[31] The petition was docketed as CA-G.R. SP No. 00253. The Court of Appeals issued a Temporary Restraining Order on January 27, 2005.[32]

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[27] *Id.* at 117-118.

[28] Records, pp. 787-794.

[29] *Id.* at 799-815.

[30] *Id.* at 814-815.

[31] CA *rollo* (CA-G.R. SP No. 00253), pp. 2-8.

[32] *Id.* at 90-91.

On January 19, 2005, the RTC issued an Order denying Union Bank's Motion for Partial Reconsideration and the Tiu spouses' Motion for Partial Reconsideration and/or New Trial.[33]

Both the spouses Tiu and Union Bank appealed the case to the Court of Appeals.[34] The two appeals were given a single docket number, CA-G.R. CEB-CV No. 00190. Acting on a motion filed by the spouses Tiu, the Court of Appeals consolidated CA-G.R. SP No. 00253 with CA-G.R. CEB-CV No. 00190.[35]

On April 19, 2005, the Court of Appeals issued a Resolution finding that there was no need for the issuance of a Writ of Preliminary Injunction as the judgment of the lower court has been stayed by the perfection of the appeal therefrom.[36]

On May 9, 2005, Sheriff Oano proceeded to conduct the extrajudicial sale. Union Bank submitted the lone bid of ₱18,576,000.00.[37] On June 14, 2005, Union Bank filed a motion with the Court of Appeals praying that Sheriff Oano be ordered to issue a definite and regular Certificate of Sale.[38] On July 21, 2005, the Court of Appeals issued a Resolution denying the Motion and suspending the auction sale at whatever stage, pending resolution of the appeal and conditioned upon the filing of a bond in the amount of ₱18,000,000.00 by the Tiu spouses.[39] The Tiu spouses failed to file said bond.[40]

On February 21, 2006, the Court of Appeals rendered the assailed Joint Decision in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253. The Court of Appeals dismissed the Petition

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[33] Records, p. 828.

[34] *Id*. at 830-831, 836-837.

[35] CA *rollo* (CA-G.R. SP No. 00253), pp. 140-141.

[36] CA *rollo* (CA-G.R. SP No. 00190), pp. 92-95.

[37] *Id*. at 253.

[38] *Id*. at 250-256.

[39] *Id*. at 305-307.

[40] *Rollo*, p. 78.

for Prohibition, CA-G.R. SP No. 00253, on the ground that the proper venue for the same is with the RTC.[41]

On the other hand, the Court of Appeals ruled in favor of the spouses Tiu in CA-G.R. CV No. 00190. The Court of Appeals held that the loan transactions were in pesos, since there was supposedly no stipulation the loans will be paid in dollars and since no dollars ever exchanged hands. Considering that the loans were in pesos from the beginning, the Court of Appeals reasoned that there is no need to convert the same. By making it appear that the loans were originally in dollars, Union Bank overstepped its rights as creditor, and made unwarranted interpretations of the original loan agreement. According to the Court of Appeals, the Restructuring Agreement, which purportedly attempts to create a novation of the original loan, was not clearly authorized by the debtors and was not supported by any cause or consideration. Since the Restructuring Agreement is void, the original loan of ₱94,432,000.00 (representing the amount received by the spouses Tiu of US$3,632,000.00 using the US$1=₱26.00 exchange rate) should subsist. The Court of Appeals likewise invalidated (1) the ₱5,000,000.00 charge for interest in the Restructuring Agreement, for having been unilaterally imposed by Union Bank; and (2) the lease of the properties conveyed in *dacion en pago*, for being against public policy. [42]

In sum, the Court of Appeals found Union Bank liable to the spouses Tiu in the amount of ₱927,546.79. For convenient reference, we quote relevant portion of the Court of Appeal's Decision here:

> To summarize the obligation of the Tiu spouses, they owe Union Bank ₱94,432,000.00. The Tiu spouses had already paid Union Bank the amount of ₱89,407,546.79. On the other hand, Union Bank must return to the Tiu spouses the illegally collected rentals in the amount of ₱5,952,000.00. Given these findings, the obligation of the Tiu spouses has already been fully paid. In fact, it is the Union Bank that must return to the Tiu spouses the amount of NINE HUNDRED

[41] *Id.* at 79.

[42] *Id.* at 83-91.

TWENTY[-]SEVEN THOUSAND FIVE HUNDRED FORTY[-]SIX PESOS AND SEVENTY[-]NINE CENTAVOS (₱927,546.79).[43]

With regard to the ownership of the improvements on the subject mortgaged property, the Court of Appeals ruled that it belonged to respondent Rodolfo Tiu's father, Jose Tiu, since 1981. According to the Court of Appeals, Union Bank should not have relied on warranties made by debtors that they are the owners of the property. The appellate court went on to permanently enjoin Union Bank from foreclosing the mortgage not only of the property covered by TCT No. T-11951, but also any other mortgage over any other property of the spouses Tiu.[44]

The Court of Appeals likewise found Union Bank liable to return the certificates of stocks and titles to real properties of the spouses Tiu in its possession. The appellate court held that Union Bank made judicial admissions of such possession in its Reply to Plaintiff's Request for Admission.[45] In the event that Union Bank can no longer return these certificates and titles, it was mandated to shoulder the cost for their replacement.[46]

Finally, the Court of Appeals took judicial notice that before or during the financial crisis, banks actively convinced debtors to make dollar loans in the guise of benevolence, saddling borrowers with loans that ballooned twice or thrice their original loans. The Court of Appeals, noting "the cavalier way with which banks exploited and manipulated the situation,"[47] held Union Bank liable to the spouses Tiu for ₱100,000.00 in moral damages, ₱100,000.00 in exemplary damages, and ₱50,000.00 in attorney's fees.[48]

The Court of Appeals disposed of the case as follows:

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[43] *Id.* at 92.

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

[45] *Id.* at 91.

[46] *Id.* at 91-92.

[47] *Id.* at 93.

[48] *Id.* at 93-95.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us permanently enjoining Union Bank from foreclosing the mortgage of the residential property of the Tiu spouses which is covered by Transfer Certificate of Title No. 11951 and from pursuing other foreclosure of mortgages over any other properties of the Tiu spouses for the above-litigated debt that has already been fully paid. If a foreclosure sale has already been made over such properties, this Court orders the cancellation of such foreclosure sale and the Certificate of Sale thereof if any has been issued. This Court orders Union Bank to return to the Tiu spouses the amount of NINE HUNDRED TWENTY[-]SEVEN THOUSAND FIVE HUNDRED FORTY[-]SIX PESOS AND SEVENTY[-]NINE CENTAVOS (₱927,546.79) representing illegally collected rentals. This Court also orders Union Bank to return to the Tiu spouses all the certificates of shares of stocks and titles to real properties of the Tiu spouses that were deposited to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties. This Court finally orders Union Bank to pay the Tiu spouses ONE HUNDRED THOUSAND PESOS (₱100,000.00) in moral damages, ONE HUNDRED THOUSAND PESOS (₱100,000.00) in exemplary damages, FIFTY THOUSAND PESOS (₱50,000.00) in attorney's fees and cost, both in the lower court and in this Court.[49]

On June 1, 2006, the Court of Appeals rendered the assailed Resolution denying Union Bank's Motion for Reconsideration.

Hence, this Petition for Review on *Certiorari*, wherein Union Bank submits the following issues for the consideration of this Court:

1. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT CONCLUDED THAT THERE WERE NO DOLLAR LOANS OBTAINED BY [THE] TIU SPOUSES FROM UNION BANK DESPITE [THE] CLEAR ADMISSION OF INDEBTEDNESS BY THE BORROWER-MORTGAGOR TIU SPOUSES.
2. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN

[49] *Id*. at 95-96.

IT NULLIFIED THE RESTRUCTURING AGREEMENT BETWEEN TIU SPOUSES AND UNION BANK FOR LACK OF CAUSE OR CONSIDERATION DESPITE THE ADMISSION OF THE BORROWER-MORTGAGOR TIU SPOUSES OF THE DUE AND VOLUNTARY EXECUTION OF SAID RESTRUCTURING AGREEMENT.

3. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT PERMANENTLY ENJOINED UNION BANK FROM FORECLOSING THE MORTGAGE ON THE RESIDENTIAL PROPERTY OF THE TIU SPOUSES DESPITE THE ADMISSION OF NON-PAYMENT OF THEIR OUTSTANDING LOAN TO THE BANK BY THE BORROWER-MORTGAGOR TIU SPOUSES;

4. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT FIXED THE AMOUNT OF THE OBLIGATION OF RESPONDENT SPOUSES CONTRARY TO THE PROVISIONS OF THE PROMISSORY NOTES, RESTRUCTURING AGREEMENT AND [THE] VOLUNTARY ADMISSIONS BY BORROWER-MORTGAGOR TIU SPOUSES;

5. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT RULED ON THE ALLEGED RENTALS PAID BY RESPONDENT SPOUSES WITHOUT ANY FACTUAL BASIS;

6. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT HELD WITHOUT ANY FACTUAL BASIS THAT THE LOAN OBLIGATION OF TIU SPOUSES HAS BEEN FULLY PAID;

7. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT HELD WITHOUT ANY FACTUAL BASIS THAT THE HOUSE INCLUDED IN THE REAL ESTATE MORTGAGE DID NOT BELONG TO THE TIU SPOUSES.

8. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN

ORDERING UNION BANK TO RETURN THE CERTIFICATES OF SHARES OF STOCK AND TITLES TO REAL PROPERTIES OF TIU SPOUSES ALLEGEDLY IN THE POSSESSION OF UNION BANK.

9. WHETHER OR NOT THE COURT OF APPEALS VIOLATED THE DOCTRINES AND PRINCIPLES ON APPELLATE JURISDICTION.

10. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN AWARDING DAMAGES AGAINST UNION BANK.[50]

Validity of the Restructuring Agreement

As previously discussed, the Court of Appeals declared that the Restructuring Agreement is void on account of its being a failed novation of the original loan agreements. The Court of Appeals explained that since there was no stipulation that the loans will be paid in dollars, and since no dollars ever exchanged hands, the original loan transactions were in pesos.[51] Proceeding from this premise, the Court of Appeals held that the Restructuring Agreement, which was meant to convert the loans into pesos, was unwarranted. Thus, the Court of Appeals reasoned that:

> Be that as it may, however, since the loans of the Tiu spouses from Union Bank were peso loans from the very beginning, there is no need for conversion thereof. A Restructuring Agreement should merely confirm the loans, not add thereto. By making it appear in the Restructuring Agreement that the loans were originally dollar loans, Union Bank overstepped its rights as a creditor and made unwarranted interpretations of the original loan agreement. This Court is not bound by such interpretations made by Union Bank. When one party makes an interpretation of a contract, he makes it at his own risk, subject to a subsequent challenge by the other party and a modification by the courts. In this case, that party making the interpretation is not just any party, but a well entrenched and highly respected bank. The matter that was being interpreted was also a financial matter that is within the profound expertise of the bank. A normal person who does not possess the same financial proficiency

[50] *Id.* at 282-283.

[51] *Id*. at 83.

or acumen as that of a bank will most likely defer to the latter's esteemed opinion, representations and interpretations. It has been often stated in our jurisprudence that banks have a fiduciary duty to their depositors. According to the case of *Bank of the Philippine Islands vs. IAC (G.R. No. 69162, February 21, 1992*), "as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." Such fiduciary relationship should also extend to the bank's borrowers who, more often than not, are also depositors of the bank. Banks are in the business of lending while most borrowers hardly know the basics of such business. When transacting with a bank, most borrowers concede to the expertise of the bank and consider their procedures, pronouncements and representations as unassailable, whether such be true or not. Therefore, when there is a doubtful banking transaction, this Court will tip the scales in favor of the borrower.

Given the above ruling, the Restructuring Agreement, therefore, between the Tiu spouses and Union Bank does not operate to supersede all previous loan documents, as claimed by Union Bank. But the said Restructuring Agreement, as it was crafted by Union Bank, does not merely confirm the original loan of the Tiu spouses but attempts to create a novation of the said original loan that is not clearly authorized by the debtors and that is not supported by any cause or consideration. According to Article 1292 of the New Civil Code, in order that an obligation may by extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Such is not the case in this instance. No valid novation of the original obligation took place. Even granting *arguendo* that there was a novation, the sudden change in the original amount of the loan to the new amount declared in the Restructuring Agreement is not supported by any cause or consideration. Under Article 1352 of the Civil Code, contracts without cause, or with unlawful cause, produce no effect whatever. A contract whose cause did not exist at the time of the transaction is void. Accordingly, Article 1297 of the New Civil Code mandates that, if the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished at any event. Since the Restructuring Agreement is

void and since there was no intention to extinguish the original loan, the original loan shall subsist.[52]

Union Bank does not dispute that the spouses Tiu received the loaned amount of US$3,632,000.00 in Philippine pesos, not dollars, at the prevailing exchange rate of US$1=₱26.[53] However, Union Bank claims that this does not change the true nature of the loan as a foreign currency loan,[54] and proceeded to illustrate in its Memorandum that the spouses Tiu obtained favorable interest rates by opting to borrow in dollars (but receiving the equivalent peso amount) as opposed to borrowing in pesos.[55]

We agree with Union Bank on this point. Although indeed, the spouses Tiu received peso equivalents of the borrowed amounts, the loan documents presented as evidence, *i.e.*, the promissory notes,[56] expressed the amount of the loans in US dollars and not in any other currency. This clearly indicates that the spouses Tiu were bound to pay Union Bank in dollars, the amount stipulated in said loan documents. Thus, before the Restructuring Agreement, the spouses Tiu were bound to pay Union Bank the amount of US$3,632,000.00 plus the interest stipulated in the promissory notes, without converting the same to pesos. The spouses Tiu, who are in the construction business and appear to be dealing primarily in Philippine currency, should therefore purchase the necessary amount of dollars to pay Union Bank, who could have justly refused payment in any currency other than that which was stipulated in the promissory notes.

We disagree with the finding of the Court of Appeals that the testimony of Lila Gutierrez, which merely attests to the fact that the spouses Tiu received the peso equivalent of their dollar loan, proves the intention of the parties that such loans should be paid in pesos. If such had been the intention of the parties, the promissory notes could have easily indicated the same.

[52] *Id.* at 85-87.

[53] *Id.* at 292.

[54] *Id.* at 293.

[55] *Id.* at 293-295.

[56] Records, pp. 252-278.

Such stipulation of payment in dollars is not prohibited by any prevailing law or jurisprudence at the time the loans were taken. In this regard, Article 1249 of the Civil Code provides:

> Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

Although the Civil Code took effect on **August 30, 1950**, jurisprudence had upheld[57] the continued effectivity of Republic Act No. 529, which took effect earlier on **June 16, 1950**. Pursuant to Section 1[58] of Republic Act No. 529, any agreement to pay an obligation in a currency other than the Philippine currency is void; the most that could be demanded is to pay said obligation in Philippine currency to be measured in the prevailing rate of exchange at the time the obligation was incurred.[59] On **June 19, 1964**, Republic Act No. 4100 took effect, modifying Republic

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[57] *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.*, 102 Phil. 1, 9 (1957); *Arrieta v. National Rice and Corn Corporation*, 119 Phil. 339, 349-350 (1964).

[58] SECTION 1. Every provision contained in, or made with respect to, any obligation which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void and of no effect, and no such provision shall be contained in, or made with respect to, any obligation hereafter incurred. Every obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: *Provided*, That, if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore or hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private.

[59] *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc., supra* note 57.

Act No. 529 by providing for several exceptions to the nullity of agreements to pay in foreign currency.[60]

On **April 13, 1993**, Central Bank Circular No. 1389[61] was issued, lifting foreign exchange restrictions and liberalizing trade in foreign currency. In cases of foreign borrowings and foreign currency loans, however, prior Bangko Sentral approval was required. On **July 5, 1996**, Republic Act No.

[60] SEC. 1. Every provision contained in, or made with respect to, any domestic obligation to wit, any obligation contracted in the Philippines which provisions purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void, and of no effect, and no such provision shall be contained in, or made with respect to, any obligation hereafter incurred. The above prohibition shall not apply to (a) transactions where the funds involved are the proceeds of loans or investments made directly or indirectly, through bona fide intermediaries or agents, by foreign governments, their agencies and instrumentalities, and international financial and banking institutions so long as the funds are identifiable, as having emanated from the sources enumerated above; (b) transactions affecting high-priority economic projects for agricultural, industrial and power development as may be determined by the National Economic Council which are financed by or through foreign funds; (c) forward exchange transactions entered into between banks or between banks and individuals or juridical persons; (d) import-export and other international banking, financial investment and industrial transactions. With the exception of the cases enumerated in items (a), (b), (c) and (d) in the foregoing provision, in which bases the terms of the parties' agreement shall apply, every other domestic obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: *Provided*, That if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore and hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private.

[61] Otherwise known as the Consolidated Foreign Exchange Rules and Regulations.

8183 took effect,[62] expressly repealing Republic Act No. 529 in Section 2[63] thereof. The same statute also explicitly provided that parties may agree that the obligation or transaction shall be settled in a currency other than Philippine currency at the time of payment.[64]

Although the Credit Line Agreement between the spouses Tiu and Union Bank was entered into on **November 21, 1995**,[65] when the agreement to pay in foreign currency was still considered void under Republic Act No. 529, the actual loans,[66] as shown in the promissory notes, were taken out from **September 22, 1997 to March 26, 1998**, during which time Republic Act No. 8183 was already in effect. In *United Coconut Planters Bank v. Beluso*,[67] we held that:

> [O]pening a credit line does not create a credit transaction of loan or *mutuum*, since the former is merely a preparatory contract to the contract of loan or *mutuum*. Under such credit line, the bank is merely obliged, for the considerations specified therefor, to lend to the other party amounts not exceeding the limit provided. The credit transaction thus occurred not when the credit line was opened, but rather when the credit line was availed of. x x x.[68]

Having established that Union Bank and the spouses Tiu validly entered into dollar loans, the conclusion of the Court of

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[62] Republic Act No. 8183 provides that it shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) national newspapers of general circulation. It was published in Malaya and the Manila Times on June 20, 1996.

[63] SECTION 2. Republic Act Numbered Five Hundred Twenty-Nine (R.A. No. 529), as amended entitled "An Act to Assure Uniform Value of Philippine Coin and Currency," is hereby repealed.

[64] SECTION 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

[65] Records, pp. 12-13.

[66] *Id.* at 252-278.

[67] G.R. No. 159912, August 17, 2007, 530 SCRA 567.

[68] *Id.* at 599.

Appeals that there were no dollar loans to novate into peso loans must necessarily fail.

Similarly, the Court of Appeals' pronouncement that the novation was not supported by any cause or consideration is likewise incorrect. This conclusion suggests that when the parties signed the Restructuring Agreement, Union Bank got something out of nothing or that the spouses Tiu received no benefit from the restructuring of their existing loan and was merely taken advantage of by the bank. It is important to note at this point that in the determination of the nullity of a contract based on the lack of consideration, the debtor has the burden to prove the same. Article 1354 of the Civil Code provides that "[a]though the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary."

In the case at bar, the Restructuring Agreement was signed at the height of the financial crisis when the Philippine peso was rapidly depreciating. Since the spouses Tiu were bound to pay their debt in dollars, the cost of purchasing the required currency was likewise swiftly increasing. If the parties did not enter into the Restructuring Agreement in December 1999 and the peso continued to deteriorate, the ability of the spouses Tiu to pay and the ability of Union Bank to collect would both have immensely suffered. As shown by the evidence presented by Union Bank, the peso indeed continued to deteriorate, climbing to US$1=₱50.01 on December 2000.[69] Hence, in order to ensure the stability of the loan agreement, Union Bank and the spouses Tiu agreed in the Restructuring Agreement to peg the principal loan at ₱150,364,800.00 and the unpaid interest at ₱5,000,000.00.

Before this Court, the spouses Tiu belatedly argue that their consent to the Restructuring Agreement was vitiated by fraud and mistake, alleging that (1) the Restructuring Agreement did not take into consideration their substantial payment in the amount of ₱40,447,185.60 before its execution; and (2) the dollar loans had already been redenominated in 1997 at the rate of US$1=₱26.34.[70]

[69] TSN, October 8, 2004, pp. 8-9.

[70] *Rollo*, pp. 247-248.

We have painstakingly perused over the records of this case, but failed to find any documentary evidence of the alleged payment of ₱40,447,185.60 before the execution of the Restructuring Agreement. In paragraph 16 of their Amended Complaint, the spouses Tiu alleged payment of ₱40,447,185.60 *for interests* before the conversion of the dollar loan.[71] This was specifically denied by Union Bank in paragraph 5 of its Answer with Counterclaim.[72] Respondent Rodolfo Tiu testified that they made "50 million plus" in cash payment plus "other monthly interest payments,"[73] and identified a computation of payments dated July 17, 2002 signed by himself.[74] Such computation, however, was never formally offered in evidence and was in any event, wholly self-serving.

As regards the alleged redenomination of the same dollar loans in 1997 at the rate of US$1=₱26.34, the spouses Tiu merely relied on the following direct testimony of Herbert Hojas, one of the witnesses of Union Bank:

Q: Could you please describe what kind of loan was the loan of the spouses Rodolfo Tiu, the plaintiffs in this case?

A: It was originally an FCDU, meaning a dollar loan.

Q: What happened to this FCDU loan or dollar loan?

A: The dollar loan was re-denominated in view of the very unstable exchange of the dollar and the peso at that time,

Q: Could you still remember what year this account was re-denominated from dollar to peso?

A: *I think* it was on the year 1997.

Q: Could [you] still remember what was then the prevailing exchange rate between the dollar and the peso at that year 1997?

A: Yes. I have here the list of the dollar exchange rate from January 1987 (*sic*). It was ₱26.34 per dollar.[75]

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[71] Records, p. 114.

[72] *Id.* at 232.

[73] TSN, October 1, 2002, pp. 38-39.

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

[75] TSN, October 8, 2004, pp. 4-5.

Neither party presented any documentary evidence of the alleged redenomination in 1997. Respondent Rodolfo Tiu did not even mention it in his testimony. Furthermore, Hojas was obviously uncertain in his statement that said redenomination was made in 1997.

As pointed out by the trial court, the Restructuring Agreement, being notarized, is a public document enjoying a *prima facie* presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption.[76] The spouses Tiu, who attested before the notary public that the Restructuring Agreement "is their own free and voluntary act and deed,"[77] failed to present sufficient evidence to prove otherwise. It is difficult to believe that the spouses Tiu, veteran businessmen who operate a multi-million peso company, would sign a very important document without fully understanding its contents and consequences.

This Court therefore rules that the Restructuring Agreement is valid and, as such, a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 which had a total amount of US$3,632,000.00.

Validity of the Foreclosure of Mortgage

The spouses Tiu challenge the validity of the foreclosure of the mortgage on two grounds, claiming that: (1) the debt had already been fully paid; and (2) they are not the owners of the improvements on the mortgaged property.

(1) Allegation of full payment of the mortgage debt

In the preceding discussion, we have ruled that the Restructuring Agreement is a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 in the total amount of US$3,632,000.00. Thus, in order that the spouses Tiu can be held to have fully paid their loan obligation, they should present evidence showing their payment of the total restructured amount under the Restructuring

[76] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

[77] Records, p. 344; Restructuring Agreement, p. 11.

Agreement which was ₱104,668,741.00. As we have discussed above, however, while respondent Rodolfo Tiu appeared to have identified during his testimony a computation dated July 17, 2002 of the alleged payments made to Union Bank,[78] the same was not formally offered in evidence. Applying Section 34, Rule 132[79] of the Rules of Court, such computation cannot be considered by this Court. We have held that a formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. It has several functions: (1) to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence; (2) to allow opposing parties to examine the evidence and object to its admissibility; and (3) to facilitate review by the appellate court, which will not be required to review documents not previously scrutinized by the trial court.[80] Moreover, even if such computation were admitted in evidence, the same is self-serving and cannot be given probative weight. In the case at bar, the records do not contain even a single receipt evidencing payment to Union Bank.

The Court of Appeals, however, held that several payments made by the spouses Tiu had been admitted by Union Bank. Indeed, Section 11, Rule 8 of the Rules of Court provides that an allegation not specifically denied is deemed admitted. In such a case, no further evidence would be required to prove the antecedent facts. We should therefore examine which of the payments specified by the spouses Tiu in their Amended Complaint[81] were not specifically denied by Union Bank.

The allegations of payment are made in paragraphs 16 to 21 of the Amended Complaint:

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[78] TSN, October 1, 2002, pp. 18-19.

[79] SEC. 34. *Offer of Evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[80] *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[81] Records, pp. 110-119.

16. Before conversion of the dollar loan into a peso loan[,] the spouses Tiu had already paid the defendant bank the amount of ₱40,447,185.60 for interests;

17. On August 3, 1999 and August 12, 1999, plaintiffs made payments in the amount of ₱15,000,000.00;

18. In order to lessen the obligation of plaintiffs, the mother of plaintiff Rodolfo T. Tiu, plaintiff Juanita T. Tiu, executed a deed of dacion in payment in favor of defendant involving her 10 parcels of land located in Labangon, Cebu City for the amount of ₱25,130,000.00. Copy of the deed was attached to the original complaint as Annex "C";

19. For the same purpose, plaintiffs spouses Tiu also executed a deed of dacion in payment of their property located at A.S. Fortuna St., Mandaue City for the amount of ₱36,080,000.00. Copy of the deed was attached to the original complaint as Annex "D";

20. The total amount of the two dacions in payment made by the plaintiffs was ₱61,210,000.00;

21. Plaintiffs spouses Tiu also made other payment of the amount of ₱13,197,546.79 as of May 8, 2001;[82]

In paragraphs 4 and 5 of their Answer with Counterclaim,[83] Union Bank specifically denied the allegation in paragraph 9 of the Complaint, but admitted the allegations in paragraphs 17, 18, 19, 20 and 21 thereof. Paragraphs 18, 19 and 20 allege the two deeds of *dacion.* However, these instruments were already incorporated in the computation of the outstanding debt (*i.e.*, subtracted from the confirmed debt of ₱155,364,800.00), as can be gleaned from the following provisions in the Restructuring Agreement:

a.) The loan obligation to the BANK to be restructured herein after deducting from the Indebtedness of the BORROWER the dacion price of the properties subject of the Deeds of Dacion and adding to the Indebtedness all the taxes, registration fees and other expenses advanced by the bank in registering the Deeds of Dacion, and also adding to the

[82] *Id.* at 114.

[83] *Id.* at 232.

> Indebtedness the interest, and other fees and charges incurred by the Indebtedness, amounts to ONE HUNDRED FOUR MILLION SIX HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED FORTY-ONE PESOS (PHP104,668,741.00) (the "TOTAL RESTRUCTURED AMOUNT").[84]

As regards the allegations of cash payments in paragraphs 17 and 21 of the Amended Complaint, the date of the alleged payment is critical as to whether they were included in the Restructuring Agreement. The payment of ₱15,000,000.00 alleged in paragraph 17 of the Amended Complaint was supposedly made on August 3 and 12, 1999. This payment was before the date of execution of the Restructuring Agreement on December 21, 1999, and is therefore already factored into the restructured obligation of the spouses.[85] On the other hand, the payment of ₱13,197,546.79 alleged in paragraph 21 of the Amended Complaint was dated May, 8, 2001. Said payment cannot be deemed included in the computation of the spouses Tiu's debt in the Restructuring Agreement, which was assented to more than a year earlier. This amount (₱13,197,546.79) is even absent[86] in the computation of Union Bank of the outstanding debt, in contrast with the ₱15,000,000.00 payment which is included[87] therein. Union Bank did not explain this discrepancy and merely relied on the spouses Tiu's failure to formally offer supporting evidence. Since this payment of ₱13,197,546.79 on May 8, 2001 was admitted by Union Bank in their Answer with Counterclaim, there was no need on the part of the spouses Tiu to present evidence on the same. Nonetheless, if we subtract this figure from the total restructured amount (₱104,668,741.00) in the Restructuring Agreement, the result is that the spouses Tiu still owe Union Bank ₱91,471,194.21.

(2) Allegation of third party ownership of the improvements on the mortgaged lot

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[84] *Id.* at 335.

[85] *See* records, pp. 134-135.

[86] *Id.*

[87] *Id.* at 134.

The Court of Appeals, taking into consideration its earlier ruling that the loan was already fully paid, permanently enjoined Union Bank from foreclosing the mortgage on the property covered by Transfer Certificate of Title No. 11951 (Lot No. 639) and from pursuing other foreclosure of mortgages over any other properties of the spouses Tiu. The Court of Appeals ruled:

> The prayer, therefore, of the Tiu spouses to enjoin the foreclosure of the real estate mortgage over their residential property has merit. The loan has already been fully paid. It should also be noted that the house constructed on the residential property of the Tiu spouses is not registered in the name of the Tiu spouses, but in the name of Jose Tiu (Records, pp. 127-132), the father of appellant and petitioner Rodolfo Tiu, since 1981. It had been alleged by the Tiu spouses that Jose Tiu died on December 18, 1983, and, that consequently upon his death, Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu became owners of the house (Records, p. 116). This allegation has not been substantially denied by Union Bank. All that the Union Bank presented to refute this allegation are a Transfer Certificate of Title and a couple of Tax Declarations which do not indicate that a residential house is titled in the name of the Tiu spouses. In fact, in one of the Tax Declarations, the market value of the improvements is worth only ₱3,630.00. Certainly, Union Bank should have been aware that this Tax Declaration did not cover the residential house. Union Bank should also not rely on warranties made by debtors that they are the owners of the property. They should investigate such representations. The courts have made consistent rulings that a bank, being in the business of lending, is obligated to verify the true ownership of the properties mortgaged to them. Consequently, this Court permanently enjoins Union Bank from foreclosing the mortgage of the residential property of the Tiu spouses which is covered by Transfer Certificate of Title No. 11951 and from pursuing other foreclosure of mortgages over any other properties of the Tiu spouses. If a foreclosure sale has already been made over such properties, this Court orders the cancellation of such foreclosure sale and the Certificate of Sale thereof if any has been issued, and the return of the title to the Tiu spouses.[88]

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[88] *Rollo,* pp. 92-93.

We disagree. Contrary to the ruling of the Court of Appeals, the burden to prove the spouses Tiu's allegation – that they do not own the improvements on Lot No. 639, despite having such improvements included in the mortgage – is on the spouses Tiu themselves. The fundamental rule is that he who alleges must prove.[89] The allegations of the spouses Tiu on this matter, which are found in paragraphs 35 to 39[90] of their Amended Complaint, were specifically denied in paragraph 9 of Union Bank's Answer with Counterclaim.[91]

Upon careful examination of the evidence, we find that the spouses Tiu failed to prove that the improvements on Lot No. 639 were owned by third persons. In fact, the evidence presented by the spouses Tiu merely attempt to prove that the improvements on Lot No. 639 were declared for taxes in the name of respondent Rodolfo Tiu's father, Jose Tiu, who allegedly died on December 18, 1983. There was no effort to show how their co-plaintiffs in the original complaint, namely Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu, became co-owners of the house. The spouses Tiu did not present evidence as to (1) who the heirs of Jose Tiu are; (2) if Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu are indeed included as heirs; and (3) why petitioner Rodolfo Tiu is not included as an heir despite being

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[89] *Spouses Bejoc v. Cabreros*, 502 Phil. 336, 343 (2005).

[90] 35. That in 1983, the Spouses Jose Tiu and Juanita Tiu, and during the existence of their marriage, constructed their house on Lot No. 639 and declared the same for taxation purposes in the name of Jose Tiu;

36. That Jose Tiu died on December 18, 1983;

37. That consequently upon his death, the plaintiffs Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu became owners of the aforesaid house;

38. That the herein plaintiffs have not executed any real estate mortgage on their house constructed on plaintiffs spouses Tiu's lot in favor of defendant bank;

39. Consequently, the extra-judicial foreclosure sale of said house is null and void as the real owners of the same have not mortgaged the said house to defendant bank; (Records, p. 116.)

[91] Records, pp. 232-233.

the son of Jose Tiu. No birth certificate of the alleged heirs, will of the deceased, or any other piece of evidence showing judicial or extrajudicial settlement of the estate of Jose Tiu was presented.

In light of the foregoing, this Court therefore sets aside the ruling of the Court of Appeals permanently enjoining Union Bank from foreclosing the mortgage on Lot No. 639, including the improvements thereon.

Validity of Alleged Rental Payments on the Properties Conveyed to the Bank via *Dacion en Pago*

The Court of Appeals found the lease contracts over the properties conveyed to Union Bank via *dacion en pago* to be void for being against public policy. The appellate court held that since the General Banking Law of 2000[92] mandates banks to immediately dispose of real estate properties that are not necessary for its own use in the conduct of its business, banks should not enter into two-year contracts of lease over properties paid to them through *dacion*.[93] The Court of Appeals thus ordered Union Bank to return the rentals it collected. To determine the amount of rentals paid by the spouses Tiu to Union Bank, the Court of Appeals simply multiplied the monthly rental stipulated in the Restructuring Agreement by the stipulated period of the lease agreement:

> For the Labangon property, the Tiu spouses paid rentals in the amount of ₱98,000.00 per month for two years, or a total amount of ₱2,352,000.00. For the A.S. Fortuna property, the Tiu spouses paid rentals in the amount of ₱150,000.00 per month for two years, or a total amount of ₱3,600,000.00. The total amount in rentals paid by the Tiu spouses to Union Bank is FIVE MILLION NINE HUNDRED FIFTY- TWO THOUSAND PESOS (₱5,952,000.00). This Court finds that the return of this amount to the Tiu spouses is called for since it will better serve public policy. These properties that were given by the Tiu spouses to Union Bank as payment should not be used by the latter to extract more money from the former. This

[92] Republic Act No. 8791.

[93] *Rollo*, pp. 90-91.

situation is analogous to having a debtor pay interest for a debt already paid. Instead of leasing the properties, Union Bank should have instructed the Tiu spouses to vacate the said properties so that it could dispose of them.[94]

The Court of Appeals committed a serious error in this regard. As pointed out by petitioner Union Bank, the spouses Tiu did not present any proof of the alleged rental payments. Not a single receipt was formally offered in evidence. The mere stipulation in a contract of the monthly rent to be paid by the lessee is certainly not evidence that the same has been paid. Since the spouses Tiu failed to prove their payment to Union Bank of the amount of ₱5,952,000.00, we are constrained to reverse the ruling of the Court of Appeals ordering its return.

Even assuming *arguendo* that the spouses Tiu had duly proven that it had paid rent to Union Bank, we nevertheless disagree with the finding of the Court of Appeals that it is against public policy for banks to enter into two-year contracts of lease of properties ceded to them through *dacion en pago*. The provisions of law cited by the Court of Appeals, namely Sections 51 and 52 of the General Banking Law of 2000, merely provide:

SECTION 51. *Ceiling on Investments in Certain Assets*. — Any bank may acquire real estate as shall be necessary for its own use in the conduct of its business: *Provided, however*, That the total investment in such real estate and improvements thereof, including bank equipment, shall not exceed fifty percent (50%) of combined capital accounts: *Provided, further*, That the equity investment of a bank in another corporation engaged primarily in real estate shall be considered as part of the bank's total investment in real estate, unless otherwise provided by the Monetary Board.

SECTION 52. *Acquisition of Real Estate by Way of Satisfaction of Claims*. — Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

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[94] *Id*. at 91.

52.1. Such as shall be mortgaged to it in good faith by way of security for debts;

52.2. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or

52.3. Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.

Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: *Provided, however*, That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section.

Section 52.2 contemplates a *dacion en pago*. Thus, Section 52 undeniably gives banks five years to dispose of properties conveyed to them in satisfaction of debts previously contracted in the course of its dealings, unless another period is prescribed by the Monetary Board. Furthermore, there appears to be no legal impediment for a bank to lease the real properties it has received in satisfaction of debts, within the five-year period that such bank is allowed to hold the acquired realty.

We do not dispute the interpretation of the Court of Appeals that the purpose of the law is to prevent the concentration of land holdings in a few hands, and that banks should not be allowed to hold on to the properties contemplated in Section 52 beyond the five-year period unless such bank has exerted its best efforts to dispose of the property in good faith but failed. However, inquiries as to whether the banks exerted best efforts to dispose of the property can only be done if said banks fail to dispose of the same within the period provided. Such inquiry is furthermore irrelevant to the issues in the case at bar.

Order to Return Certificates Allegedly in Union Bank's Possession

In the Amended Complaint, the spouses Tiu alleged[95] that they delivered several certificates and titles to Union Bank pursuant to a Memorandum of Agreement. These certificates and titles were not subjected to any lien in favor of Union Bank, but the latter allegedly continued to hold on to said properties.

The RTC failed to rule on this issue. The Court of Appeals, tackling this issue for the first time, ruled in favor of the Tiu spouses and ordered the return of these certificates and titles. The appellate court added that if Union Bank can no longer return these certificates or titles, it should shoulder the cost for their replacement.[96]

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[95] 40. Before the execution of the restructuring agreement, the plaintiffs and the defendant bank entered into a memorandum of agreement, whereby the plaintiffs turned over to defendant bank in the meanwhile the following real and personal properties:

a) Shares of stock of the Borrower/Mortgagor in Grand Convention Center, Cebu Country Club, Subic Bay Yacht Club, Alta Vista Golf and Country Club and Cebu Grand Salinas Development Corporation,

b) Real Estate properties:

TCT number	Registry of Deeds	Location
116288	Cebu City	Panganiban St., Cebu City
116287	Cebu City	Panganiban St., Cebu City
OCT No. 0-3538	Cebu City	Panganiban St., Cebu City
30271	Cebu City	Minglanilla, Cebu Province

Copy of the memorandum of agreement was attached to the original complaint as Annex "I";

41. As can be seen from the Restructuring Agreement, only the lot subject of the sheriff's notice of extrajudicial foreclosure sale was mortgaged to guarantee plaintiff's obligation;

42. None of the properties mentioned in paragraph 40 hereof have been subjected to any lien in favor of defendant bank but the defendant bank continues to hold on to said properties and has not returned the same to the plaintiffs spouses Tiu (Records, p. 117).

[96] *Rollo*, pp. 91-92.

Union Bank, asserting that the Memorandum of Agreement did not, in fact, push through, denies having received the subject certificates and titles. Union Bank added that even assuming *arguendo* that it is in possession of said documents, the Restructuring Agreement itself allows such possession.[97]

The evidence on hand lends credibility to the allegation of Union Bank that the Memorandum of Agreement did not push through. The copy of the Memorandum of Agreement attached by the spouses Tiu themselves to their original complaint did not bear the signature of any representative from Union Bank and was not notarized.[98]

We, however, agree with the finding of the Court of Appeals that despite the failure of the Memorandum of Agreement to push through, the certificates and titles mentioned therein do appear to be in the possession of Union Bank. As held by the Court of Appeals:

> Lastly, this Court will order, as it hereby orders, Union Bank to return to the Tiu spouses all the certificates of shares of stocks and titles to real properties of the Tiu spouses in its possession. Union Bank cannot deny possession of these items since it had made judicial admissions of such possession in their document entitled "Reply to Plaintiffs' request for Admission" (records, pp. 216-217). While in that document, Union Bank only admitted to the possession of four real estate titles, this Court is convinced that all the certificates and titles mentioned in the unconsummated Memorandum of Agreement (Records, pp. 211-213) were given by the Tiu spouses to Union Bank for appraisal. This finding is further bolstered by the admission of the Union Bank that it kept the titles for safekeeping after it rejected the Memorandum of Agreement. Since Union Bank rejected these certificates and titles of property, it should return the said items to the Tiu spouses. If Union Bank can no longer return these certificates and titles or if it has misplaced them, it shall shoulder the cost for the replacement and issuance of new certificates and new titles over the said properties.[99]

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[97] *Id.* at 317.

[98] Records, pp. 41-42.

[99] *Rollo*, pp. 91-92.

As regards Union Bank's argument that it has the right to retain said documents pursuant to the Restructuring Agreement, it is referring to paragraph 11(b), which provides that:

> 11. Effects of Default – When the BORROWER is in default, such default shall have the following effects, alternative, concurrent and cumulative with each other:
>
> x x x x x x x x x
>
> (b) The BANK shall be entitled to all the remedies provided for and further shall have the right to effect or apply against the partial or full payment of any and all obligations of the BORROWER under this Restructuring Agreement any and all moneys or other properties of the BORROWER which, for any reason, are or may hereafter come into the possession of the Bank or the Bank's agent. All such moneys or properties shall be deemed in the BANK's possession as soon as put in transit to the BANK by mail or carrier.[100]

In the first place, notwithstanding the foregoing provision, there is no clear intention on the part of the spouses Tiu to deliver the certificates over certain shares of stock and real properties as security for their debt. From the terms of the Memorandum of Agreement, these certificates were surrendered to Union Bank in order that the said properties described therein be given their corresponding loan values required for the restructuring of the spouses Tiu's outstanding obligations. However, in the event the parties fail to agree on the valuation of the subject properties, Union Bank agrees to release the same.[101] As Union Bank itself vehemently alleges, the Memorandum of Agreement was not consummated. Moreover, despite the fact that the Bank was aware, or in possession, of these certificates,[102] at the time of execution of the Restructuring Agreement, only the mortgage over the real property covered by TCT No. T-11951 was expressly mentioned as a security in the Restructuring Agreement. In fact, in its Reply to Request for Admission,[103] Union Bank admitted

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[100] Records, p. 341.

[101] *Id*. at 41.

[102] *Id*. at 209; *see* Acknowledgement Receipt dated November 24, 1999.

[103] *Id*. at 216-217.

that (1) the titles to the real properties were submitted to it for appraisal but were subsequently rejected, and (2) no real estate mortgages were executed over the said properties. There being no agreement that these properties shall secure respondents' obligation, Union Bank has no right to retain said certificates.

Assuming *arguendo* that paragraph 11(b) of the Restructuring Agreement indeed allows the retention of the certificates (submitted to the Bank ostensibly for safekeeping and appraisal) as security for spouses Tiu's debt, Union Bank's position still cannot be upheld. Insofar as said provision permits Union Bank to apply properties of the spouses Tiu in its possession to the full or partial payment of the latter's obligations, the same appears to impliedly allow Union Bank to appropriate these properties for such purpose. However, said provision cannot be validly applied to the subject certificates and titles without violating the prohibition against *pactum commissorium* contained in Article 2088 of the Civil Code, to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void." Applicable by analogy to the present case is our ruling in *Nakpil v. Intermediate Appellate Court*,[104] wherein property held in trust was ceded to the trustee upon failure of the beneficiary to answer for the amounts owed to the former, to wit:

> For, there was to be automatic appropriation of the property by Valdes in the event of failure of petitioner to pay the value of the advances. Thus, contrary to respondent's manifestations, all the elements of a *pactum commissorium* were present: there was **a creditor-debtor relationship** between the parties; the **property was used as security** for the loan; and, there was **automatic appropriation** by respondent of Pulong Maulap **in case of default** of petitioner.[105] (Emphases supplied.)

This Court therefore affirms the order of the Court of Appeals for Union Bank to return to the spouses Tiu all the certificates of shares of stock and titles to real properties that were submitted

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[104] G.R. No. 74449, August 20, 1993, 225 SCRA 456.

[105] *Id*. at 467-468.

to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties.

Validity of the Award of Damages

The Court of Appeals awarded damages in favor of the spouses Tiu based on its taking judicial notice of the alleged exploitation by many banks of the Asian financial crisis, as well as the foreclosure of the mortgage of the home of the spouses Tiu despite the alleged full payment by the latter. As regards the alleged manipulation of the financial crisis, the Court of Appeals held:

> As a final note, this Court observes the irregularity in the circumstances [surrounding] dollar loans granted by banks right before or during the Asian financial crisis. It is of common knowledge that many banks, around that time, actively pursued and convinced debtors to make dollar loans or to convert their peso loans to dollar loans allegedly because of the lower interest rate of dollar loans. This is a highly suspect behavior on the part of the banks because it is irrational for the banks to voluntarily and actively proffer a conversion that would give them substantially less income. In the guise of benevolence, many banks were able to convince borrowers to make dollar loans or to convert their peso loans to dollar loans. Soon thereafter, the Asian financial crisis hit, and many borrowers were saddled with loans that ballooned to twice or thrice the amount of their original loans. This court takes judicial notice of these events or matters which are of public knowledge. It is inconceivable that the banks were unaware of the looming Asian financial crisis. Being in the forefront of the financial world and having access to financial data that were not available to the average borrower, the banks were in such a position that they had a higher vantage point with respect to the financial landscape over their average clients. The cavalier way with which banks exploited and manipulated the situation is almost too palpable that they openly and unabashedly struck heavy blows on the Philippine economy, industries and businesses. The banks have a fiduciary duty to their clients and to the Filipino people to be transparent in their dealings and to make sure that the latter's interest are not prejudiced by the former's interest. Article 1339 of the New Civil Code provides that the failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

Undoubtedly, the banks and their clients are bound by confidential relations. The almost perfect timing of the banks in convincing their clients to shift to dollar loans just when the Asian financial crisis struck indicates that the banks not only failed to disclose facts to their clients of the looming crisis, but also suggests of the insidious design to take advantage of these undisclosed facts.[106]

We have already held that the foreclosure of the mortgage was warranted under the circumstances. As regards the alleged exploitation by many banks of the Asian financial crisis, this Court rules that the generalization made by the appellate court is unfounded and cannot be the subject of judicial notice. "It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails."[107] The alleged insidious design of many banks to betray their clients during the Asian financial crisis is certainly not of public knowledge. The deletion of the award of moral and exemplary damages in favor of the spouses Tiu is therefore in order.

WHEREFORE, the Petition is *PARTIALLY GRANTED.* The Joint Decision of the Court of Appeals in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253 dated February 21, 2006 is hereby *AFFIRMED* insofar as it ordered petitioner Union Bank of the Philippines to return to the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu all the certificates of shares of stock and titles to real properties that were submitted to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties. The foregoing Joint Decision is hereby *SET ASIDE*: (1) insofar as it permanently enjoined Union Bank of the Philippines from foreclosing the mortgage of the residential property of respondent spouses Rodolfo T. Tiu and Victoria N. Tiu which is covered

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[106] *Rollo,* pp. 93-94.

[107] *Pacific Basin Securities Co., Inc. v. Oriental Petroleum And Minerals Corp.*, G.R. Nos. 143972, 144056 and 144056, August 31, 2007, 531 SCRA 667, 689.

by Transfer Certificate of Title No. 11951; (2) insofar as it ordered Union Bank of the Philippines to return to the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu the amount of ₱927,546.79 representing illegally collected rentals; and (3) insofar as it ordered Union Bank of the Philippines to pay the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu ₱100,000.00 in moral damages, ₱100,000.00 in exemplary damages, ₱50,000.00 in attorney's fees and cost, both in the lower court and in this Court.

No further pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174720. September 7, 2011]

LANDOIL RESOURCES CORPORATION, *petitioner, vs.* **AL RABIAH LIGHTING COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES RAISED BY PETITIONER FOR THE FIRST TIME ON APPEAL THAT IT WAS NEVER A PARTY TO THE SUBCONTRACT AGREEMENT CANNOT BE ENTERTAINED; CASE AT BAR. — As correctly found by the CA, petitioner's argument that the party adjudged liable under the foreign arbitral award was a different entity from it was only raised for the first time in petitioner's motion for reconsideration filed with it; thus, could not be entertained. We quote with approval what the CA said when it denied

petitioner's motion for reconsideration in this wise: The defendant mainly argues that it was never a party to the subcontract agreement. We find its argument meritless, because it is now too late for the defendant to claim that the party adjudged liable under the foreign arbitral award was a different entity. Moreover, we note that this is the first time that the defendant raises such defense. It is settled in jurisprudence that an issue cannot be raised for the first time on appeal. With more reason should we disallow and disregard the issue if it is initially raised in a motion for reconsideration of the decision of the appellate court.

2. ID.; EVIDENCE; JUDICIAL ADMISSIONS; JUDICIAL ADMISSIONS CANNOT BE CONTRADICTED BY THE ADMITTER WHO IS THE PARTY HIMSELF AND BINDS THE PERSON WHO MAKES THE SAME; CASE AT BAR. — Indeed, petitioner had never claimed in the RTC that it was not the party referred to in the foreign arbitral award. On the contrary, petitioner's Answer with Counterclaim filed in the RTC even established its knowledge and participation in the Sub-Contract Agreement. x x x Moreover, in petitioner's Memorandum of Authorities on the Invalidity and Unenforceability of the Foreign Judgment filed with the RTC, it again made admission that it was the party referred to in the foreign arbitral award. x x x Section 4, Rule 129 of the Rules of Court provides: 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 admissions was made. A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it. x x x [W]e find no reversible error committed by the CA in affirming the RTC decision finding petitioner estopped from denying its participation and liability under the Sub-Contract Agreement and the enforcement of the foreign arbitral award against it.

APPEARANCES OF COUNSEL

De Castro & Cagampang Law Offices for petitioner.
Reyes Tayao & Molo for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the instant petition for review on *certiorari* filed by petitioner are the Decision[1] dated August 14, 2003 and the Resolution[2] dated August 29, 2006 of the Court of Appeals issued in CA-G.R. CV No. 52003.

The facts, as borne by the records, are as follows:

Respondent Al Rabiah Lighting Company (Al Rabiah) is a foreign corporation existing under the laws of Kuwait. Defendant Construction Consortium, Inc. (CCI) and petitioner Landoil Resources Corporation (Landoil) are both domestic corporations organized under the Philippines Laws.

On December 20, 1981, CCI and respondent Al Rabiah entered into a Sub-Contract Agreement[3] wherein respondent was assigned to carry out the electrical works of Kuwait Oil Company's New Industrial Training Centre project in Ahmadi, Kuwait in the total amount of Three Hundred Forty-Three Thousand Five Hundred Kuwaiti Dinar. Respondent started carrying out its work as agreed upon. Later, the project owner had withdrawn the principal contract which led to the termination of petitioner's and CCI's services.[4] Consequently, respondent's works were stopped before being completed.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Eugenio S. Labitoria and Lucas P. Bersamin (now a member of this Court), concurring; *rollo*, pp. 27-35.

[2] Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court), and Monina Arevalo-Zenarosa, concurring; *id.* at 46-49.

[3] Records, pp. 8-15.

[4] *Id.* at 16-22.

On September 12, 1982, petitioner, through its Regional Managing Director for Operations Robert J. Brown, sent a letter[5] to respondent through Mr. Said Y. Al Imam, confirming that based on the July progress billing, petitioner owed respondent the sum of KD 21,930,317 which was already due and proposed the payment of 12% interest on the overdue account until payment has been made.

In a letter dated June 4, 1983, petitioner informed respondent that the Prime Contractor Al Fahd Company had already terminated its contract; that petitioner agreed to pay respondent 12% interest per year on the unpaid bills of completed works. The letter was signed by both Robert Brown and Gerald Love.[6]

On June 9, 1983, petitioner acknowledged its indebtedness to respondent in the amount of KD 91,580.059, plus general overtime pay of KD 8,126 and promised to pay it in installments.[7]

As petitioner failed to pay respondent any part of the amount due, together with the contractual interest of 12%, the latter referred their dispute to the Commercial Kully Court of Kuwait for arbitration as provided under the Sub-Contract Agreement. The parties were duly notified of the scheduled sessions of arbitration, but only respondent and its counsel appeared thereat.[8]

On April 14, 1984, the Arbitrator rendered its award as follows:

> The court decides that Land Oil Resources Company (Construction Consortium Incorporation) is indebted to [Al] Rabiah Lighting Company by KD 108,368.860 and that it is compelled to pay this sum in settlement of the account of the contract concluded between them on 20th December, 1981. The said sum includes also the contractual interest until the date of issue of this Award.[9]

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[5] *Id.* at 135.

[6] *Id.* at 20.

[7] *Id.* at 21.

[8] *Id.* at 19.

[9] *Id.* at 22.

Respondent then filed with the Regional Trial Court (RTC) of Makati, an action[10] for Enforcement of Foreign Judgment Plus Damages against defendant CCI and petitioner. The case was raffled off to Branch 64 and was docketed as Civil Case No. 11578.

In its Answer,[11] petitioner admitted the existence of the Sub-Contract Agreement, but claimed to have no knowledge as to its genuineness and due execution. By way of Special and Affirmative Defenses, petitioner argued among others that respondent had no cause of action; respondent's claims had been paid, set-off or extinguished; the Commercial Kully Court of Kuwait did not acquire jurisdiction over petitioner; and the arbitral award was contrary to public policy, hence, illegal. Petitioner also alleged that since it had not been paid by its principal contractor the value of the corresponding accomplishments done by respondent, respondent's cause of action had not yet accrued; and that the termination of the contract by the primary contractor occurred without the fault or negligence of petitioner and defendant CCI, nor were they responsible for *force majeure* under the contract.

On the other hand, defendant CCI, in its Answer,[12] specifically denied the Sub-Contract Agreement for lack of knowledge, claiming that it was not a party to the contract and that G.W. Love was not an employee nor authorized to act for and in behalf of CCI; and that the Commercial Kully Court of Kuwait did not acquire jurisdiction over it and the arbitral award was contrary to public policy.

After trial, the RTC rendered its Decision[13] dated July 31, 1995, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court finds the petition of plaintiff AL RABIAH Company to be well-taken, and

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[10] *Id.* at 1-5.

[11] *Id.* at 41-44.

[12] *Id.* at 45-49.

[13] *Id.* at 463-473; Per Judge Delia H. Panganiban.

judgment is hereby rendered finding defendants Landoil Resources Corporation and Construction Consortium solidarily liable to plaintiff Al Rabiah Lighting Company in the sum indicated in Arbitral Award with legal interest thereon from July 1984 (Certification of Non-occurrence of Appeal) until payment is made. Defendants are likewise ordered to pay to plaintiff the sum of ₱250,000.00 as attorney's fees and ₱100,000.00 as exemplary damages.

SO ORDERED.[14]

In resolving the main issue of whether the RTC can validly set aside the foreign arbitral award rendered against petitioner and defendant CCI on the bases of the defenses raised in the parties' respective Answers, the RTC ruled in the negative. The RTC found that petitioner and CCI were estopped from claiming that they were not parties to the Sub-Contract Agreement. Petitioner's Answer alleged that it admitted the existence of the sub-contract agreement, although claimed that "it has no knowledge as to its genuineness and due execution"; that such lack of knowledge was belied or negated by petitioner's own allegations in its Answer acknowledging indebtedness to respondent. The RTC found that petitioner's letter dated September 12, 1982 to respondent confirmed that it owed respondent the sum of KD 21,930,317 and anticipated that payment would be made in early October 1982, together with the other due accounts. This letter was submitted as respondent's Exhibit "C" and the RTC noted that this letter was among the documents submitted by respondent to the foreign arbitrator in support of its claim against petitioner and CCI.

The RTC said that while it appeared in the Sub-Contract Agreement that the contracting parties were CCI and respondent, however, in paragraph VIII thereof, petitioner Landoil appeared together with CCI as the First Party to whom notices shall be sent. The RTC then concluded that the inclusion of petitioner as first party to whom the notices shall be sent and the conduct exhibited by petitioner led to the inevitable conclusion that the two defendants, petitioner and CCI, were the parties with whom respondent entered into the sub-contract agreement; and that

[14] *Id.* at 473.

this conclusion was even strengthened by the fact that as between the two defendants, petitioner and CCI, there existed a "pooling agreement" for undertaking projects abroad pursuant to Presidential Decree (PD) 929. Since petitioner and CCI were the parties with whom respondent contracted, they were bound by the terms of the agreement, including the referral of their dispute to arbitration in accordance with the Rules and Regulations of the State of Kuwait.

Dissatisfied, petitioner appealed the RTC Decision to the CA. After the submission of the parties' respective briefs, the case was submitted for resolution.

On August 14, 2003, the CA issued its assailed Decision which dismissed the appeal and affirmed the RTC decision.

The CA ruled, among others, that petitioner was already estopped from claiming that it was not a party to the Sub-Contract Agreement as the agreement itself mentioned petitioner Landoil as one of the contracting parties and that petitioner had made representations in the past, binding itself for the overdue accounts in favor of respondent.

Petitioner's motion for reconsideration was denied in a Resolution dated August 29, 2006.

Hence, this petition wherein petitioner raises the following issues:

(a) whether a Philippine Court, in enforcing a foreign judgment that has become final and executory, has the jurisdiction to alter, amend or expand such final foreign judgment;

(b) Whether a foreign judgment may be enforced against a party other than the party decreed and held liable therein; and

(c) Whether Estoppel was properly appreciated in this case.[15]

Petitioner contends that as appearing in the dispositive portion of the foreign arbitral award, there is only one defendant adjudged liable to respondent, *i.e.*, Land Oil Resources Company (Construction Consortium Incorporation); thus, the party against

[15] *Rollo*, p. 15.

whom the Writ of Execution may be directed. Petitioner claims that it is not the same as Land Oil Resources Company (Construction Consortium Incorporation) as its Articles of Incorporation does not indicate any such appellation; that it was not a party to the proceedings before the foreign arbitrator as it is a different entity. Thus, enforcing an award against a non-party such as petitioner would be executing on properties owned by a third person other than the judgment debtor; and that to allow the same would amount to a deprivation of property without due process of law. Petitioner avers that the RTC and the CA erred and committed grave abuse of discretion in amending and modifying the foreign arbitral award so as to include petitioner which is a corporation different from the entity adjudged liable in the foreign arbitral award.

We are not convinced.

As correctly found by the CA, petitioner's argument that the party adjudged liable under the foreign arbitral award was a different entity from it was only raised for the first time in petitioner's motion for reconsideration filed with it; thus, could not be entertained. We quote with approval what the CA said when it denied petitioner's motion for reconsideration in this wise:

> The defendant mainly argues that it was never a party to the subcontract agreement. We find its argument meritless, because it is now too late for the defendant to claim that the party adjudged liable under the foreign arbitral award was a different entity. Moreover, we note that this is the first time that the defendant raises such defense. It is settled in jurisprudence that an issue cannot be raised for the first time on appeal. With more reason should we disallow and disregard the issue if it is initially raised in a motion for reconsideration of the decision of the appellate court.
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> From the outset of the case, the defendant's stance has always been to deny any participation in the sub-contract agreement between Construction Consortium Inc. and the plaintiff and, in the alternative, to bewail the failure of the arbitral award to spell out the factual distinctions between its liability and that of the Construction Consortium Inc. for they were separate and distinct entities. Thus, this is the first time that it asserts that it was not the defendant in

the case before the Commercial Kully Court of the State of Kuwait. The defendant thus asserts the existence of a third corporation against whom the arbitral award was supposedly rendered, Landoil Resources Company (Construction Consortium Incorporated). Not only is the Court precluded from entertaining such first-time issue but we also frown upon the apparent self-contradiction. We note that the defendant had, in the course of this case, repeatedly affirmed that it was the same party as the defendant against whom the foreign judgment had been rendered. In its Answer to the Complaint, it stated that:

> 12. The award directs the Landoil to pay and makes Construction Consortium Incorporated liable. x x x

Likewise, in its appeal brief, it also acknowledged being the defendant against whom the arbitral award was being enforced, thuswise:

> x x x the foreign judgment subject of the case before the court *a quo* is an arbitral award rendered by the Commercial Kully Court of the State of Kuwait on April 14, 1984, compelling defendant CCI and defendant appellant to pay the sum of KD 108,368.860 in settlement of the contract allegedly concluded between them and plaintiff-appellee, which included a 10% contractual interest until the time of said award.[16]

Indeed, petitioner had never claimed in the RTC that it was not the party referred to in the foreign arbitral award. On the contrary, petitioner's Answer with Counterclaim filed in the RTC even established its knowledge and participation in the Sub-Contract Agreement. Under the heading of Special and Affirmative Defenses, petitioner alleged, among others that:

> 6. plaintiff's claims have been paid, set-off, or extinguished.
> x x x x x x x x x
>
> 14. That under the Sub-Contract, Annex "A" of the complaint, it is provided as follows:
>
> 14.1 FIRST PARTY agrees to pay SECOND PARTY at monthly intervals based on actual monthly progress accomplishment, plus 50% on material on Site less 5% retention and less advance payments, to be paid within 15 days of FIRST PARTY'S receipt

[16] *Id.* at 48-49.

> from Client subject to any changes imposed by the Client in approving the monthly Valuation Certificate. Details of any such modifications will be available to the Sub-Contractor insofar as they affect his previously agreed valuation amount.

Defendant has not been paid by its principal contractor the payment/value of the corresponding accomplishments done by plaintiff and that, therefore, plaintiff's cause of action against answering defendant has not accrued;

15. That in any event, the alleged claim was discharged on September 12, 1983 by assignment to plaintiff in the full amount of the true and actual measure and valuation calculated upon termination of the contract by the Primary Contractor;

16. In any event, the termination of the contract of the primary contractor occurred without the fault or negligence of the defendants; neither was it responsible for the *force majeure* under the terms of the contract."[17]

Moreover, in petitioner's Memorandum of Authorities on the Invalidity and Unenforceability of the Foreign Judgment[18] filed with the RTC, it again made admission that it was the party referred to in the foreign arbitral award, thus:

x x x x x x x x x

Likewise, the foreign arbitral award rendered judgment against both defendants by placing the name of defendant LANDOIL RESOURCES COMPANY (sic corporation) and thereafter enclosed in parenthesis the name of the other defendant Construction Consortium, Inc. without however specifying the specific liabilities of either of the defendants. Being corporations, defendants have legal personalities separate and distinct from each other and as such must be taken distinctly and separately from one another x x x[19]

Section 4, Rule 129 of the Rules of Court provides:

Sec. 4. *Judicial admissions*. – An admission, verbal or written, made by a party in the course of the proceedings in the same case,

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[17] Records, pp. 41-43.

[18] *Id.* at 196-200.

[19] *Id.* at 200.

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.

A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding.[20] It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself [21] and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[22]

Finally, we find no reversible error committed by the CA in affirming the RTC decision finding petitioner estopped from denying its participation and liability under the Sub-Contract Agreement and the enforcement of the foreign arbitral award against it. We find *apropos* what the CA said in this wise:

> Defendant-appellant cannot deny its participation in the Subcontract. The agreement itself mentioned Landoil as one of the contracting parties. Specifically, a perusal of the Subcontract Agreement reveals in Article 8, Section 1 thereof that:
>
> 8.1 All notices to a party hereto shall be sent as follows:
>
> FIRST PARTY: LANDOIL RESOURCES CORPORATION
> CONSTRUCTION CONSORTIUM INCORPORATED
> P.O. Box 49393
> Omariyah,
> Kuwait
>
> For the attention
> of Or delivered
> To: K.O.C. Project Manager
> Project Office of Ahmadi

---

[20] See *Binarao v. Plus Builders, Inc.*, G.R. No. 154430, June 16, 2006, 491 SCRA 49, 54.

[21] *Id.* citing *Granada, et al. v. PNB*, G.R. No. L-20745, September 2, 1966, 18 SCRA 1.

[22] *Id.* citing *Yuliongsiu v. PNB*, G.R. No. L-19227, February 17, 1968, 22 SCRA 585.

SECONDARY PARTY: AL RABIAH LIGHTING COMPANY
W.L.I.
P.O. Box 22015
Sarat
Kuwait

For the attention
of Or delivered
To: Mr. Said Y. Al Imam

Further, it is of record that on September 12, 1982, Landoil, thru its Regional Marketing Director Robert J. Brown, wrote to plaintiff Al Rabiah confirming that Landoil owes Al Rabiah the sum of KD21,930.317 and that said sum was due on August 22, 1982. It was further acknowledged in said letter that inasmuch as the sum cannot be paid immediately, an interest at the rate of 12% on the overdue amount shall be paid until the principal amount can be satisfied. Landoil signified that it expected to pay such amount by October 1982 together with other due accounts. This letter is part of the evidence on record and was not refuted by defendant-appellant Landoil.

The foregoing persuades this Court of Landoil's participation in the Subcontract Agreement. It is apparent that Landoil is named as a first party to the subject Agreement and it represented itself as an obligor in the September 12, 1982 letter acknowledging overdue accounts in favor of Al Rabiah.

Moreover, notwithstanding its denial, defendant-appellant did allege in Paragraph 14 of its Answer to the Complaint *a quo* that:

> 14. x x x x
>
> Defendant had not been paid by its principal contractor the payment/value of the corresponding accomplishments done by plaintiff and that therefore, plaintiff's cause of action against answering defendant has not accrued. (RTC Records, p. 43)

Such statement impliedly admits defendant-appellant's liability under the Subcontract Agreement, but raises as a special defense that plaintiff-appellee's action is allegedly premature, as Landoil itself had not received any payment from its principal contractor.

Thus, Landoil's argument, that it is a distinct corporation from CCI and cannot be accountable for breaches made by such other corporation, must fail. We find that Landoil itself is a party to the Subcontract Agreement and has made representations in the past binding itself to Al Rabiah for overdue accounts in favor of the latter. Under the doctrine of estoppels, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereof. *(Ayala Corporation v. Ray Burton Development Corporation, 294 SCRA 48)*.[23]

Petitioner is indeed barred from adopting an inconsistent position, attitude, or course of conduct that would cause loss or injury to respondent.[24]

WHEREFORE, the petition for review is *DENIED*. The Decision dated August 14, 2003 and the Resolution dated August 29, 2006 of the Court of Appeals are hereby *AFFIRMED*.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174759. September 7, 2011]

DENIS B. HABAWEL and ALEXIS F. MEDINA, *petitioners, vs.* **THE COURT OF TAX APPEALS, FIRST DIVISION,** *respondent.*

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[23] *Rollo*, pp. 30-32.

[24] See *Caldo v. Caldo-Atienza*, G.R. No. 164453, March 28, 2006, 485 SCRA 504, 511, citing *Cruz v. Court of Appeals*, 354 Phil. 1036, 1054 (1998).

[*] Designated additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076-a dated September 6, 2011.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ALL LAWYERS ARE MANDATED TO OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS. — Canon 11 of the *Code of Professional Responsibility* mandates all attorneys to observe and maintain the respect due to the courts and to judicial officers and to insist on similar conduct by others. Rule 11.03 of the *Code of Professional Responsibility* specifically enjoins all attorneys thus: "Rule 11.03. — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts."

2. ID.; ID.; ID.; ID.; LAWYERS MAY BE CRITICAL OF THE COURTS PROVIDED CRITICISM IS MADE IN RESPECTFUL TERMS AND THROUGH LEGITIMATE CHANNELS. — It is conceded that an attorney or any other person may be critical of the courts and their judges provided the criticism is made in respectful terms and through legitimate channels. In that regard, we have long adhered to the sentiment aptly given expression to in the leading case of *In re: Almacen*: "x x x **every citizen has the right to comment upon and criticize the actuations of public officers. This right is not diminished by the fact that the criticism is aimed at a judicial authority, or that it is articulated by a lawyer. Such right is especially recognized where the criticism concerns a concluded litigation, because then the court's actuations are thrown open to public consumption**. x x x **Courts and judges are not sacrosanct. They should and do expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizens whom it is expected to serve. Well-recognized therefore is the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges**. **x x x But it is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety.** A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. **Intemperate and unfair criticism is**

a gross violation of the duty of respect to courts. it is such a misconduct that subjects a lawyer to disciplinary action.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIRECT CONTEMPT; AN IMPUTATION IN A PLEADING OF GROSS IGNORANCE OF THE LAW AGAINST A COURT OR JUDGE, ESPECIALLY IN THE ABSENCE OF ANY EVIDENCE, CONSTITUTES DIRECT CONTEMPT; CASE AT BAR. — Here, the petitioners' motion for reconsideration contained the following statements, to wit: (*a*) "[i]t is gross ignorance of the law for the Honorable Court to have held that it has no jurisdiction over the instant petition;" (*b*) "[t]he grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction;" and (*c*) the "Honorable Court's lack of understanding or respect for the doctrine of *stare decisis*." The CTA First Division held the statements to constitute direct contempt of court meriting prompt penalty. We agree. By such statements, the petitioners clearly and definitely overstepped the bounds of propriety as attorneys, and disregarded their sworn duty to respect the courts. An imputation in a pleading of gross ignorance against a court or its judge, especially in the absence of any evidence, is a serious allegation, and constitutes direct contempt of court. It is settled that derogatory, offensive or malicious statements contained in pleadings or written submissions presented to the same court or judge in which the proceedings are pending are treated as direct contempt because they are equivalent to a misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice. This is true, even if the derogatory, offensive or malicious statements are not read in open court.

4. ID.; ID.; ID.; ID.; THE LANGUAGE OF PETITIONERS REFLECTED A VERY DELIBERATE MOVE ON THEIR PART TO DENIGRATE THE COURT OF TAX APPEALS (CTA) IN CASE AT BAR. — By branding the CTA and the members of its First Division as "totally unaware or ignorant" of Section 7(a)(3) of Republic Act No. 9282, and making the other equally harsh statements, the petitioners plainly assailed the legal learning of the members of the CTA First Division. To hold such language as reflective of a very deliberate move on the part of the petitioners to denigrate the CTA and the members of its First Division is not altogether unwarranted.

5. REMEDIAL LAW; COURT OF TAX APPEALS; JURISDICTION PURSUANT TO REPUBLIC ACT NO. 9282; SECTION 7(A)(3) *VIS-A-VIS* SECTION 7(A)(5) THEREOF. — As can be read and seen, Section 7(a)(3) covers only appeals of the "(d)ecisions, ordres or resolutions of the regional trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction." The provision is clearly limited to local tax disputes decided by the Regional Trial Courts. In contrast, Section 7(a)(5) grants the CTA cognizance of appeals of the"(d)ecisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals." In its resolution of March 15, 2006, therefore, the CTA First Division forthrightly explained why, contrary to the petitioners' urging, Section 7(a)(3) was not aplicable by clarifying that a real property tax, being an *ad valorem* tax, could not be treated as a local tax. It would have been ethically better for the petitioners to have then retreated and simply admitted their blatant error upon being so informed by the CTA First Division about the untenability of their legal position on the matter, but they still persisted by going on in their compliance dated March 27, 2006 to also blame the CTA First Division for their "perception" about the CTA First Division's "being totally oblivious of Section 7(a)(3)" due to "the terseness of the Decision dated 05 January 2006."

6. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; EVERY LAWYER MUST USE ONLY FAIR AND TEMPERATE LANGUAGE IN ARGUING A WORTHY POSITION ON THE LAW; CASE AT BAR. — No attorney, no matter his great fame or high prestige, should ever brand a court or judge as grossly ignorant of the law, especially if there was no sincere or legitimate reason for doing so. Every attorney musy use only fair and temperate language in arguing a worthy position on the law, and must eschew harsh and intemperate language that has no place in the educated ranks of the Legal Profession.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIRECT CONTEMPT; THE POWER TO PUNISH CONTEMPT OF COURT IS EXERCISED ON THE PRESERVATIVE PRINCIPLE; APPROPRIATE PENALTY IN CASE AT BAR.

— The power to punish contempt of court is exercised on the preservative and not on the vindictive principle, and only occassionally should a court invoke its inherent power to punish contempt of court in order to retain that respect without which the administration of justice must falter or fail. We reiterate that the sanction the CTA First Division has visited upon the petitioners was preservative, for the sanction maintained and promoted the proper respect that attorneys and their clients should bear towards the courts of justice. x x x The Court's teatment of contemptuous and offensive language used by counsel in pleadings and other written submissions to the courts of law, including this Court, has not been uniform. The treatment has dealt with contemptuous and offensive language either as contempt of court or administrative or ethical misconduct, or as both. x x x The Court concurs with the offended court's treatment of the offensive language as direct contempt. Thus, we impose on each of them a fine of ₱2,000.00, the maximum imposable fine under Section 1 of Rule 71, taking into consideration the fact that the CTA is a superior court of the same level as the Court of Appelas, the second highest court of the land.

DEL CASTILLO, *J., dissenting opinion:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIRECT CONTEMPT; SNIDE REMARKS OR SARCASTIC INNUENDOES MADE BY COUNSELS ARE NOT CONSIDERED CONTEMPTUOUS CONSIDERING THAT AN UNFAVORABLE DECISION USUALLY INCITES BITTER FEELINGS. — The CTA found petitioners' use of the phrases "it is gross ignorance of the law [for] the Honorable Court to have held that it has no jurisdiction over the instant petition"; "the grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction over the instant case"; "this Court lacked the understanding or respect for the doctrine of *stare decisis*" as derogatory, offensive, and disrespectful. Indeed, petitioners' statements are strong, tactless and hurtful. However, I do not find the same contumacious. Statements made by a counsel "explaining his position in a case under consideration do not necessarily assume the level of contempt." In fact, snide remarks or sarcastic innuendoes made by counsels

are not considered contemptuous considering that an unfavorable decision usually incites bitter feelings.

2. ID.; ID.; ID.; ID.; THE POWER TO PUNISH CONTEMPT OF COURT IS EXERCISED ON THE PRESERVATIVE PRINCIPLE. — On the other hand, I fully understand the sentiments of the CTA, more so because petitioners failed to show that it "committed an error that is so gross, patent, deliberate, palpable and malicious as to warrant such an accusation." However, I cannot sustain its finding of contempt because the power to punish for contempt "should be exercised on the preservative and not on the vindictive principle." It must never be used for retaliation or vindication but only for the preservation of the dignity and integrity of the courts. Courts must therefore be patient and understanding of hasty and unguarded expressions of passion made by the losing party.

3. LEGAL ETHICS; LAWYERS; CODE OF PROFESSIONAL RESPONSIBILITY; ALL LAWYERS ARE MANDATED TO OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS; CASE AT BAR.— Finally, I take this opportunity to remind petitioners that as lawyers, they should be more cautious in expressing their dissatisfaction with the court. They must keep in mind that their language, though forceful and emphatic, must still be respectful and dignified, befitting advocates and in keeping with the dignity of the legal profession. They should also be reminded that as officers of the court, they should be circumspect in their language as their duty is to help build and not destroy the people's high esteem and regard for the courts.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioners.

D E C I S I O N

BERSAMIN, *J.*:

Found guilty of direct contempt by the First Division of the Court of Tax Appeals (CTA First Division), and sanctioned with imprisonment for a period of ten days and a fine of ₱2,000.00,

the petitioners have come to the Court for relief through *certiorari*, claiming that the CTA First Division's finding and sentence were made in grave abuse of its discretion because the language they used in their motion for reconsideration as the attorneys for a party was contumacious. Specifically, they assail the resolution dated May 16, 2006,[1] whereby the CTA First Division disposed as follows:

> WHEREFORE, premises considered, this Court finds Attorneys Denis B. Habawel and Alexis F. Medina of the Ponce Enrile Reyes and Manalastas Law Offices guilty of DIRECT CONTEMPT. Each counsel is hereby ORDERED TO PAY a fine of Two Thousand Pesos and to SUFFER IMPRISONMENT for a period of ten (10) days.
>
> SO ORDERED.[2]

and the resolution dated July 26, 2006,[3] whereby the CTA First Division denied their motion for reconsideration and reiterated the penalties.

Antecedents

The petitioners were the counsel of Surfield Development Corporation (Surfield), which sought from the Office of the City Treasurer of Mandaluyong City the refund of excess realty taxes paid from 1995 until 2000.[4] After the City Government of Mandaluyong City denied its claim for refund,[5] Surfield initiated a special civil action for *mandamus* in the Regional Trial Court (RTC) in Mandaluyong City, which was docketed as SCA No. MC03-2142 entitled *Surfield Development Corporation v. Hon. City Treasurer of Mandaluyong City, and Hon. City Assessor of Mandaluyong City,* and assigned to Branch 214.[6] Surfield

[1] *Rollo*, pp. 38-43.

[2] *Id.*, p. 43.

[3] *Id.*, pp. 45-49.

[4] *Id.*, p. 125.

[5] *Id.*, pp. 129-130, and p. 134 (respectively the letters dated November 5, 2002 and May 9, 2003 of Atty. Eddie N. Fernandez of the Mandaluyong City Legal Department).

[6] *Id.*, pp. 135-144.

later amended its petition to include its claim for refund of the excess taxes paid from 2001 until 2003.[7]

On October 15, 2004, the RTC dismissed the petition on the ground that the period to file the claim had already prescribed and that Surfield had failed to exhaust administrative remedies. The RTC ruled that the grant of a tax refund was not a ministerial duty compellable by writ of *mandamus*.[8]

Surfield, represented by the petitioners, elevated the dismissal to the CTA *via* petition for review (CTA AC No. 5 entitled *Surfield Development Corporation v. Hon. City Treasurer and Hon. City Assessor, Mandaluyong City*).[9] The appeal was assigned to the First Division, composed of Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

In its decision dated January 5, 2006,[10] the CTA First Division denied the petition for lack of jurisdiction and for failure to exhaust the remedies provided under Section 253[11] and Section 226[12] of Republic Act No. 7160 (*Local Government Code*).

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[7] *Id.*, pp. 194-203.

[8] *Id.*, pp. 85-101.

[9] *Id.*, pp. 50-83.

[10] *Id.*, pp. 329-341.

[11] Section 253. *Repayment of Excessive Collections.* – When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of this Code.

[12] Section 226. *Local Board of Assessment Appeals*.—Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province

Undeterred, the petitioners sought reconsideration in behalf of Surfield,[13] insisting that the CTA had jurisdiction pursuant to Section 7(a)(3) of Republic Act No. 9282;[14] and arguing that the CTA First Division manifested its "lack of understanding or respect" for the doctrine of *stare decisis* in not applying the ruling in *Ty v. Trampe* (G.R. No. 117577, December 1, 1995, 250 SCRA 500), to the effect that there was no need to file an appeal before the Local Board of Assessment Appeals pursuant to Section 22 of Republic Act No. 7160.

On March 15, 2006, the CTA First Division denied Surfield's motion for reconsideration. On the issue of jurisdiction, the CTA First Division explained that the jurisdiction conferred by Section 7(a)(3) of Republic Act No. 1125, as amended by Republic Act No. 9282, referred to appeals from the decisions, orders, or resolutions of the RTCs in local tax cases and did not include the real property tax, an *ad valorem* tax, the refund of excess payment of which Surfield was claiming. Accordingly, the CTA First Division ruled that the jurisdiction of the CTA concerning real property tax cases fell under a different section of Republic Act No. 9282 and under a separate book of Republic Act No. 7160.

In addition, the CTA First Division, taking notice of the language the petitioners employed in the motion for reconsideration, required them to explain within five days from receipt why they should not be liable for indirect contempt or be made subject to disciplinary action, thusly:

IN VIEW OF THE FOREGOING, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit. And insofar

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or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[13] *Rollo*, pp. 342-347.

[14] Entitled *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA) Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating The Court Of Tax Appeals, and for Other Purposes*.

as the merits of the case are concerned let this Resolution be considered as the final decision on the matter.

However, this Court finds the statements of petitioner's counsel that "it is gross ignorance of the law for the Honorable Court to have held that it has no jurisdiction over this instant petition; the grossness of this Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction over the instant case" and "this Court lacked the understanding and respect for the doctrine of "*stare decisis*" as derogatory, offensive and disrespectful. Lawyers are charged with the basic duty to "observe and maintain the respect due to the courts of justice and judicial officers;" they vow solemnly to conduct themselves "with all good fidelity…to the courts." As a matter of fact, the first canon of legal ethics enjoins them "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its superior importance." Therefore, petitioner's counsel is hereby ORDERED to explain within five (5) days from receipt of this Resolution why he should not be held for indirect contempt and/or subject to disciplinary action.

SO ORDERED.[15]

The petitioners submitted a compliance dated March 27, 2006,[16] in which they appeared to apologize but nonetheless justified their language as, among others, "necessary to bluntly call the Honorable Court's attention to the grievousness of the error by calling a spade by spade."[17]

In its first assailed resolution, the CTA First Division found the petitioners' apology wanting in sincerity and humility, observing that they chose words that were "so strong, which brings disrepute the Court's honor and integrity" for brazenly pointing to "the Court's alleged ignorance and grave abuse of discretion," to wit:

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[15] *Rollo*, pp. 367-368 (underlining and quotation marks are parts of the original).

[16] *Id.*, pp. 369-387.

[17] *Id.*, p. 370.

In their Compliance, the Court finds no sincerity and humility when counsels Denis B. Habawel and Alexis F. Medina asked for apology. In fact, the counsels brazenly pointed the Court's alleged ignorance and grave abuse of discretion. Their chosen words are so strong, which brings disrepute the Court's honor and integrity. We quote:

a) "Admittedly, the language of the Motion for Reconsideration was not endearing. However, the undersigned counsel found it necessary to bluntly call the Honorable Court's attention to the grievousness of the error by calling a spade a spade. The advocacy needed a strong articulation of the gravity of the error of the Honorable Court in avoiding the substantial and transcendental issues by the simple expedient of dismissing the petition for alleged lack of jurisdiction, in violation of Section 14, Article VIII of the Constitution, which requires that the Decision must express clearly and distinctly the facts and the law on which the Decision was based" (par. 3 of the Compliance; docket, p. 349);

b) "Since the Honorable Court simply quoted Section 7(a)(5) and it totally ignored Section 7(a)(3), to perfunctorily find that "(U)ndoubtedly, appeals of the decisions or rulings of the Regional Trial Court concerning real property taxes evidently do not fall within the jurisdiction of the CTA," the undersigned counsel formed a perception that the Honorable Court was totally unaware or ignorant of the new provision, Section 7(a)(3). Hence, the statements that it was gross ignorance of the law for the Honorable Court to have held that it has not [sic] jurisdiction, as well as, the grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction over the instant case were an honest and frank articulation of undersigned counsel's perception that was influenced by its failure to understand why the Honorable Court totally ignored Section 7(a)(3) in ruling on its lack of jurisdiction" (par. 10 of the Compliance; docket, p. 353);[18]

Accordingly, the CTA First Division adjudged both of the petitioners guilty of direct contempt of court for failing to uphold their duty of preserving the integrity and respect due to the courts, sentencing each to suffer imprisonment of ten days and to pay ₱2,000.00 as fine.

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[18] *Id.*, pp. 41-42.

Seeking reconsideration,[19] the petitioners submitted that they could not be held guilty of direct contempt because: (*a*) the phrase *gross ignorance of the law* was used in its legal sense to describe the error of judgment and was not directed to the character or competence of the decision makers; (*b*) there was no "unfounded accusation or allegation," or "scandalous, offensive or menacing," "intemperate, abusive, abrasive or threatening," or "vile, rude and repulsive" statements or words contained in their motion for reconsideration; (*c*) there was no statement in their motion for reconsideration that brought the authority of the CTA and the administration of the law into disrepute; and (*d*) they had repeatedly offered their apology in their compliance.[20]

Their submissions did not convince and move the CTA First Division to reconsider, which declared through its second assailed resolution that:

> The tone of an irate lawyer would almost always reveal the sarcasm in the phrases used. The scurrilous attacks made in the guise of pointing out errors of judgment almost always result to the destruction of the high esteem and regard towards the Court.[21]

and disposed thusly:

> WHEREFORE, petitioners' Motion for Reconsideration is hereby DENIED for lack of merit. Each counsel is hereby ORDERED TO PAY a fine of Two Thousand Pesos and to SUFFER IMPRISONMENT for a period of ten (10) days.
>
> SO, ORDERED.[22]

Issues

Arguing that they were merely prompted by their "(z)ealous advocacy and an appalling error" committed by the CTA First Division to frankly describe such error as gross ignorance of

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[19] *Id.*, pp. 389-406.

[20] *Id.*, p. 404.

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

[22] *Id.*, p. 49.

the law, the petitioners now attribute grave abuse of discretion to the CTA First Division in finding that:

I

THE PETITIONERS' LANGUAGE IN THE SUBJECT MOTION AND COMPLIANCE WAS CONTUMACIOUS;

II

THE PETITIONERS WERE NOT SINCERE IN THEIR APOLOGY AND WERE ARROGANT;

III

THE EXERCISE OF CONTEMPT POWER WAS WITHIN THE LIMITS SET BY THE SUPREME COURT; AND

IV

THE PETITIONERS WERE GUILTY BEYOND REASONABLE DOUBT OF DIRECT CONTEMPT.

The petitioners continue to posit that the phrase *gross ignorance of the law* was used in its strict legal sense to emphasize the gravity of the error of law committed by the CTA First Division; and that the statements described by the CTA First Division as "abrasive, offensive, derogatory, offensive and disrespectful" should be viewed within the context of the general tone and language of their motion for reconsideration; that their overall language was "tempered, restrained and respectful" and should not be construed as a display of contumacious attitude or as "a flouting or arrogant belligerence in defiance of the court" to be penalized as direct contempt; that the CTA First Division did not appreciate the sincerity of their apology; and that they merely pointed out the error in the decision of the CTA First Division.

For its part, the CTA First Division contends that a reading of the motion for reconsideration and the character of the words used therein by the petitioners indicated that their statements reflected no humility, nor were they "expressive of a contrite heart;" and that their submissions instead "reflected arrogance and sarcasm, that they even took the opportunity to again deride

the public respondent on the manner of how it wrote the decision."[23]

The Office of the Solicitor General (OSG) opines that submitting a pleading containing derogatory, offensive and malicious statements to the same court or judge in which the proceedings are pending constitutes direct contempt; and that the CTA First Division did not abuse its discretion in finding the petitioners liable for direct contempt under Section 1, Rule 71 of the *Rules of Court*.[24]

Ruling

We dismiss the petition for *certiorari*, and declare that the CTA First Division did not abuse its discretion, least of all gravely, in finding that the petitioners committed direct contempt of court.

Canon 11 of the *Code of Professional Responsibility* mandates all attorneys to observe and maintain the respect due to the courts and to judicial officers and to insist on similar conduct by others. Rule 11.03 of the *Code of Professional Responsibility* specifically enjoins all attorneys thus:

> Rule 11.03. – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

It is conceded that an attorney or any other person may be critical of the courts and their judges provided the criticism is made in respectful terms and through legitimate channels. In that regard, we have long adhered to the sentiment aptly given expression to in the leading case of *In re: Almacen*:[25]

> **xxx every citizen has the right to comment upon and criticize the actuations of public officers. This right is not diminished by the fact that the criticism is aimed at a judicial authority, or that it is articulated by a lawyer. Such right is especially**

[23] *Id.*, pp. 412-422 (Comment of the Court of Tax Appeals, First Division).

[24] *Id.*, pp. 436-455 (Comment of the OSG).

[25] G.R. No. L-27654, February 18, 1970, 31 SCRA 562.

recognized where the criticism concerns a concluded litigation, because then the court's actuations are thrown open to public consumption.

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Courts and judges are not sacrosanct. They should and do expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizens whom it is expected to serve.

Well-recognized therefore is the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges.xxx

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Hence, as a citizen and as officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he "professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen." xxx

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But it is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. **Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.** (emphasis supplied)[26]

The test for criticizing a judge's decision is, therefore, whether or not the criticism is *bona fide* or done in good faith, and does not spill over the walls of decency and propriety.

Here, the petitioners' motion for reconsideration contained the following statements, to wit: (*a*) "[i]t is gross ignorance of the law for the Honorable Court to have held that it has no

[26] *Id.*, pp. 576-580.

jurisdiction over the instant petition;"[27] (*b*) "[t]he grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction;"[28] and (*c*) the "Honorable Court's lack of understanding or respect for the doctrine of *stare decisis.*"[29]

The CTA First Division held the statements to constitute direct contempt of court meriting prompt penalty.

We agree.

By such statements, the petitioners clearly and definitely overstepped the bounds of propriety as attorneys, and disregarded their sworn duty to respect the courts. An imputation in a pleading of gross ignorance against a court or its judge, especially in the absence of any evidence, is a serious allegation,[30] and constitutes direct contempt of court. It is settled that derogatory, offensive or malicious statements contained in pleadings or written submissions presented to the same court or judge in which the proceedings are pending are treated as direct contempt because they are equivalent to a misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice.[31] This is true, even if the derogatory, offensive or malicious statements are not read in open court.[32] Indeed, in *Dantes v. Judge Ramon S. Caguioa,*[33] where the petitioner's motion for clarification stated that the respondent judge's decision

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[27] *Rollo*, p. 342.

[28] *Id.,* pp. 343-344.

[29] *Id.*

[30] *Mabanto v. Coliflores,* A.M. No. MTJ-04-1533, January 28, 2008, 542 SCRA 349, 353; *Enrique v. Caminade*, A.M. No. RTJ-05-1966, March 21, 2006, 485 SCRA 98, 106.

[31] *Tacardon v. Ang,* G.R. No. 159286, April 5, 2005; *Ante v. Pascua,* G.R. No. 74997, June 28, 1988, 162 SCRA 782; *Ang v. Castro,* G.R. No. 66371, May 15, 1985, 136 SCRA 453, 458.

[32] 17 Am Jur 2d, *Contempt*, §21, p. 385.

[33] A.M. No., RTJ-05-1919, June 27, 2005, 461 SCRA 236; See also *Re: Letter Dated 21 February 2005 of Atty. Noel S. Sorreda*, A.M. No. 05-3-04-SC, July 22, 2005, 464 SCRA 32; *Ang v. Castro, supra*, Note 31.

constituted gross negligence and ignorance of the rules, and was pure chicanery and sophistry, the Court held that "a pleading containing derogatory, offensive or malicious statements when submitted before a court or judge in which the proceedings are pending is direct contempt because it is equivalent to a misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice."[34]

In his dissent, Justice Del Castillo, although conceding that the petitioners' statements were "strong, tactless and hurtful,"[35] regards the statements not contemptuous, or not necessarily assuming the level of contempt for being explanations of their position "in a case under consideration" and because "an unfavorable decision usually incites bitter feelings."[36]

Such contempt of court cannot be condoned or be simply ignored and set aside, however, for the characterization that the statements were "strong, tactless and hurtful," although obviously correct, provides no ground to be lenient towards the petitioners, even assuming that such "strong, tactless and hurtful" statements were used to explain their client's position in the case.[37] The statements manifested a disrespect towards the CTA and the members of its First Division approaching disdain. Nor was the offensiveness of their "strong, tactless and hurtful" language minimized on the basis that "snide remarks or sarcastic innuendos made by counsels are not considered contemptuous considering that unfavorable decision usually incite bitter feelings."[38] By branding the CTA and the members of its First Division as "totally unaware or ignorant" of Section 7(a)(3) of Republic Act No. 9282, and making the other equally harsh statements, the petitioners plainly assailed the legal learning of the members of the CTA First Division. To hold such language as reflective of a very deliberate move on the part of the

[34] *Id.,* p. 244.

[35] Dissent, p. 2.

[36] *Id.*

[37] *Id.*

[38] *Id.*

petitioners to denigrate the CTA and the members of its First Division is not altogether unwarranted.

The petitioners' disdain towards the members of the CTA First Division *for ruling against their side* found firm confirmation in their compliance, in which they unrepentantly emphasized such disdain in the following telling words:

> 3. Admittedly, the **language of the Motion for Reconsideration was not endearing.** However, **the undersigned counsel found it necessary to bluntly call the Honorable Court's attention to the grievousness of the error by calling a spade a spade. The advocacy needed a strong articulation of the gravity of the error of the Honorable Court in avoiding the substantial and transcendental issues by the simple expedient of dismissing the petition for alleged lack of jurisdiction, in violation of Section 14, Article VIII of the Constitution**, which requires that the Decision must express clearly and distinctly the facts and the law on which the Decision was based.
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> 10. Since the Honorable Court simply quoted Section 7(a)(5), and it totally ignored Section 7(a)(3), to perfunctorily find that "(U)ndoubtedly, appeals of the decisions or rulings of the Regional Trial Court concerning real property taxes evidently do not fall within the jurisdiction of the CTA," **the undersigned counsel formed a perception that the Honorable Court was totally unaware or ignorant of the new provision, Section 7(a)(3)**. Hence the statements that it was gross ignorance of the law for the Honorable Court to have held that it has no jurisdiction, as well as, the grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction over the instant case were an honest and frank articulation of undersigned counsel's perception that was influenced by its failure to understand why the Honorable Court totally ignored Section 7(a)(3) in ruling on its lack of jurisdiction. (emphasis supplied)[39]

We might have been more understanding of the milieu in which the petitioners made the statements had they convinced us that the CTA First Division truly erred in holding itself bereft of jurisdiction over the appeal of their client. But our review

[39] *Rollo*, pp. 370 and 374.

of the text of the legal provisions involved reveals that the error was committed by them, not by the CTA First Division. This result became immediately evident from a reading of Section 7(a)(3) and Section 7(a)(5) of Republic Act No. 9282, the former being the anchor for their claim that the CTA really had jurisdiction, to wit:

> Section 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> x x x x x x x x x
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> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction**; (emphasis supplied)
>
> x x x x x x x x x
>
> (5) **Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals**; (emphasis supplied)
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> x x x x x x x x x

As can be read and seen, Section 7(a)(3) covers only appeals of the "(d)ecisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction." The provision is clearly limited to local tax disputes decided by the Regional Trial Courts. In contrast, Section 7(a)(5) grants the CTA cognizance of appeals of the "(d)ecisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals." In its resolution of March 15, 2006, therefore, the CTA First Division forthrightly explained why, contrary to the petitioners' urging, Section 7(a)(3) was not applicable by clarifying that a real property tax, being an *ad valorem* tax, could not be treated as a local tax.[40]

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[40] *Rollo*, pp. 356-357.

It would have been ethically better for the petitioners to have then retreated and simply admitted their blatant error upon being so informed by the CTA First Division about the untenability of their legal position on the matter, but they still persisted by going on in their compliance dated March 27, 2006 to also blame the CTA First Division for their "perception" about the CTA First Division's "being totally oblivious of Section 7(a)(3)" due to "the terseness of the Decision dated 05 January 2006," *viz*:

12. **Undersigned counsel regrets having bluntly argued that this Honorable Court was grossly ignorant of Section 7(a)(3) because from the terseness of the Decision dated 05 January 2006, the undersigned counsel perceived the Honorable Court as being totally oblivious of Section 7(a)(3). Had the reasons discussed in the Resolution dated 15 March 2006 been articulated in the 05 January 2006 decision, there would have been no basis for undersigned counsels to have formed the above-mentioned perception**.[41] (emphasis supplied)

The foregoing circumstances do not give cause for the Court to excuse the petitioners' contemptuous and offensive language. No attorney, no matter his great fame or high prestige, should ever brand a court or judge as grossly ignorant of the law, especially if there was no sincere or legitimate reason for doing so. Every attorney must use only fair and temperate language in arguing a worthy position on the law, and must eschew harsh and intemperate language that has no place in the educated ranks of the Legal Profession. Truly, the Bar should strive to win arguments through civility and fairness, not by "heated and acrimonious tone," as the Court aptly instructed in *Slade Perkins v. Perkins*,[42] to wit:

The court notices with considerable regret the heated and acrimonious tone of the remarks of the counsel for appellant, in his brief, in speaking of the action of the trial judge. We desire to express our opinion that excessive language weakens rather than

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[41] *Id.*, p. 379.

[42] 57 Phil. 223, 226.

strengthens the persuasive force of legal reasoning. We have noticed a growing tendency to use language that experience has shown not to be conducive to the orderly and proper administration of justice. We therefore bespeak the attorneys of this court to desist from such practices, and to treat their opposing attorneys, and the judges who have decided their cases in the lower court adversely to their contentions with that courtesy all have a right to expect. (emphasis supplied)

We do not hesitate to punish the petitioners for the direct contempt of court. They threw out self-restraint and courtesy, traits that in the most trying occasions equate to rare virtues that all members of the Legal Profession should possess and cherish. They shunted aside the nobility of their profession. They wittingly banished the ideal that even the highest degree of zealousness in defending the causes of clients did not permit them to cross the line between liberty and license.[43] Indeed, the Court has not lacked in frequently reminding the Bar that language, though forceful, must still be dignified; and though emphatic, must remain respectful as befitting advocates and in keeping with the dignity of the Legal Profession.[44] It is always worthwhile to bear in mind, too, that the language vehicle did not run short of expressions that were emphatic, yet respectful; convincing, yet not derogatory; and illuminating, yet not offensive.[45] No attorney worthy of the title should forget that his first and foremost status as an officer of the Court calls upon him to be respectful and restrained in his dealings with a court or its judge. Clearly, the petitioners' criticism of the CTA First Division was not *bona fide* or done in good faith, and spilled over the walls of propriety.

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[43] *Racines v. Morallos,* A.M. No. MTJ-081698, March 3, 2008, 547 SCRA 295, 302; *Surigao Mineral Reservation Board v. Cloribel*, G.R. No. L-27072, January 9, 1970, 31 SCRA 1, 17.

[44] *Florido v. Dlorido*, A.C. No. 5624, January 20, 2004, 420 SCRA 132, 136-137; *Lacurom v. Jacoba*, A.C. No. 5921, May 10, 2006.

[45] *Ng v. Alar*, A.C. No. 7252, November 22, 2006, 507 SCRA 465.

The power to punish contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power to punish contempt of court in order to retain that respect without which the administration of justice must falter or fail.[46] We reiterate that the sanction the CTA First Division has visited upon the petitioners was preservative, for the sanction maintained and promoted the proper respect that attorneys and their clients should bear towards the courts of justice.

Inasmuch as the circumstances indicate that the petitioners' tone of apology was probably feigned, for they did not relent but continued to justify their contemptuous language, they do not merit any leniency. Nonetheless, the penalty of imprisonment for ten days *and* a fine of ₱2,000.00 is excessive punishment of the direct contempt of court for using contemptuous and offensive language and verges on the vindictive. The Court foregoes the imprisonment.

The Court's treatment of contemptuous and offensive language used by counsel in pleadings and other written submissions to the courts of law, including this Court, has not been uniform. The treatment has dealt with contemptuous and offensive language either as contempt of court or administrative or ethical misconduct, or as both. The sanction has ranged from a warning (to be more circumspect), a reprimand with stern warning against a repetition of the misconduct, a fine of ₱2,000.00, a fine of ₱5,000.00, and even indefinite suspension from the practice of law.

The sanction has usually been set depending on whether the offensive language is viewed as contempt of court or as ethical misconduct. In *Re: Letter Dated 21 February 2005 of Atty. Noel S. Sorreda,*[47] the errant lawyer who made baseless accusations of manipulation in his letters and compliance to this Court was indefinitely suspended from the practice of law. Although he was further declared guilty of contempt of court,

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[46] *Villavicencio v. Lukban*, 39 Phil. 778.

[47] A.M. No. 05-3-04-SC, July 22, 2005, 464 SCRA 32.

the Court prescribed no separate penalty on him, notwithstanding that he evinced no remorse and did not apologize for his actions that resulted from cases that were decided against his clients for valid reasons. In *Re: Conviction of Judge Adoracion G. Angeles*,[48] the complaining State Prosecutor, despite his strong statements to support his position not being considered as direct contempt of court, was warned to be more circumspect in language. In contrast, Judge Angeles was reprimanded and handed a stern warning for the disrespectful language she used in her pleadings filed in this Court, which declared such language to be below the standard expected of a judicial officer. In *Nuñez v. Atty. Arturo B. Astorga*,[49] Atty. Astorga was meted a ₱2,000.00 fine for conduct unbecoming of a lawyer for hurling insulting language against the opposing counsel. Obviously, the language was dealt with administratively, not as contempt of court. In *Ng v. Atty. Benjamin C. Alar*,[50] the Court prescribed a higher fine of ₱5,000.00 coupled with a stern warning against Atty. Alar who, in his motion for reconsideration and to inhibit, cast insults and diatribes against the NLRC First Division and its members. Yet again, the fine was a disciplinary sanction.

Despite having earlier directed the petitioners through its resolution of March 15, 2006 that they should "explain within five (5) days from receipt of this Resolution why (they) should not be held for indirect contempt and/or subject to disciplinary action,"[51] the CTA First Division was content with punishing them for direct contempt under Section 1,[52] Rule 71 of the *Rules of Court,* and did not anymore pursue the disciplinary

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[48] A.M. No. 06-9-545-RTC, January 31, 2008, 543 SCRA 196.

[49] A.C. No. 6131, February 28, 2005, 452 SCRA 353.

[50] A.C. No. 7252, November 22, 2006, 507 SCRA 465.

[51] *Rollo*, pp. 367-368.

[52] Section 1. *Direct contempt punished summarily*. — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine

aspect. The Court concurs with the offended court's treatment of the offensive language as direct contempt. Thus, we impose on each of them a fine of ₱2,000.00, the maximum imposable fine under Section 1 of Rule 71, taking into consideration the fact that the CTA is a superior court of the same level as the Court of Appeals, the second highest court of the land. The penalty of imprisonment, as earlier clarified, is deleted. Yet, they are warned against using offensive or intemperate language towards a court or its judge in the future, for they may not be as lightly treated as they now are.

ACCORDINGLY, we *DISMISS* the petition for *certiorari; UPHOLD* the resolutions dated May 16, 2006 and July 26, 2006; and *MODIFY* the penalty imposed on Attorney Denis B. Habawel and Attorney Alexis F. Medina by deleting the penalty of imprisonment and sentencing them only to pay the fine of ₱2,000.00 each.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

Del Castillo, J., please see dissenting opinion.

SEPARATE OPINION

DEL CASTILLO, *J.*:

Indeed, lawyers, as officers of the court, must refrain from using derogatory, offensive or abrasive language in their pleadings[1] as the use of such language constitutes direct contempt, which is summarily punishable without need of a hearing.[2] Courts,

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not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court. (1a)

[1] Canon 11, Rule 11.03, Code of Professional Responsibility.

[2] *Re: Letter dated 21 February 2005 of Atty. Noel S. Sorreda*, 502 Phil. 292, 300 (2005).

on the other hand, in exercising the power of contempt, must not be easily moved by pride or passion;[3] but instead, be patient[4] and impassive.

In this case, I find that I cannot agree with the finding of the majority that petitioners' statements were abrasive hence they are guilty of direct contempt.

Statements used by petitioners are strong, tactless and hurtful but not contumacious.

The CTA found petitioners' use of the phrases "it is gross ignorance of the law [for] the Honorable Court to have held that it has no jurisdiction over the instant petition;" "the grossness of the Honorable Court's ignorance of the law is matched only by the unequivocal expression of this Honorable Court's jurisdiction over the instant case;" "this Court lacked the understanding or respect for the doctrine of *stare decisis*"[5] as derogatory, offensive, and disrespectful.

Indeed, petitioners' statements are strong, tactless and hurtful. However, I do not find the same contumacious. Statements made by a counsel "explaining his position in a case under consideration do not necessarily assume the level of contempt."[6] In fact, snide remarks or sarcastic innuendoes made by counsels are not considered contemptuous considering that an unfavorable decision usually incites bitter feelings.[7]

In their compliance, petitioners explained that:

3. Admittedly, the language of the Motion for Reconsideration was not endearing. However, **the undersigned counsel found it necessary to bluntly call the Honorable Court's attention to the**

[3] *Nuñez v. Ibay*, A.M. No. RTJ-06-1984, June 30, 2009, 591 SCRA 229, 239.

[4] *Dagudag v. Paderanga*, A.M. No. RTJ-06-2017, June 19, 2008, 555 SCRA 217, 234-235.

[5] *Rollo*, at p. 367.

[6] *Soriano v. Court of Appeals*, 416 Phil. 226, 253 (2001).

[7] *Id*. at 254.

grievousness of the error by calling a spade a spade. The advocacy needed a strong articulation of the gravity of the error of the Honorable Court in avoiding the substantial and transcendental issues by the simple expedient of dismissing the petition for alleged lack of jurisdiction, in violation of Section 14, Article VIII of the Constitution, which requires that the Decision must express clearly and distinctly the facts and the law on which the Decision was based.

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5. Unfortunately, the renewed debate has been rendered moot and academic by [Surfield] who has advised the undersigned counsel, who now respectfully so manifests, that it has decided not to pursue the captioned case anymore.

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10. Since the Honorable Court simply quoted Section 7(a) (5), and it totally ignored Section 7(a) (3), to perfunctorily find that "(U)ndoubtedly, appeals of the decisions or rulings of the Regional Trial Court concerning real property taxes evidently do not fall within the jurisdiction of the CTA," **the undersigned counsel formed a perception that the Honorable Court was totally unaware or ignorant of the new provision, Section 7(a) (3).**

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11.1 **From being apparently oblivious of Section 7(a) (3) in the Decision 05 January 2006**, it is evident in the Resolution dated 15 March 2006 that even the Honorable Court agrees that under Section 7(a) (3) of Republic Act (RA) 1125 as amended by RA 9282, it has jurisdiction if the following requisites are present; x x x

11.2 However, **from totally ignoring Section 7(a) (3) in the Decision dated 05 January 2006,** the Honorable Court in the Resolution dated 15 March 2006 in effect ruled that it has no jurisdiction over the instant case under Section 7(a) (3) because the third requisite is lacking. x x x

11.3 But with all due respects (sic), again, **it is clear that the Honorable Court has not realized as yet** that the proclamation in *Meralco Securities Industrial Corporation vs. Central Board of Assessment Appeals* that a real property tax is a national tax has been rendered inapplicable under the Local Government Code (RA 7160).

12. **Undersigned counsel regrets having bluntly argued that this Honorable Court was grossly ignorant of Section 7(a) (3) because from the terseness of the Decision dated 05 January 2006, the undersigned counsel perceived the Honorable Court as being totally oblivious of Section 7(a) (3).** Had the reasons discussed in the Resolution dated 15 March 2006 x x x been articulated in the 05 January 2006 decision, there would have been no basis for the undersigned counsel to have formed the above mentioned perception.

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21. Again, with all due respect, the Honorable Court's insistence on re-opening and re-litigating a factual issue that has already been decided with finality by the Court of Appeals in *Suguitan vs. Marcelino* does violence to the time honored principle of *res judicata*.

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29. x x x The assertions of this Honorable Court that are clearly not supported by the records of the case below **could only raise doubts about the judiciousness of its decision.** [8]

Power of contempt must be exercised on the preservative, not on the vindictive principle.

On the other hand, I fully understand the sentiments of the CTA, more so because petitioners failed to show that it "committed an error that is so gross, patent, deliberate, palpable and malicious as to warrant such an accusation." [9] However, I cannot sustain its finding of contempt because the power to punish for contempt "should be exercised on the preservative and not on the vindictive principle." [10] It must never be used for retaliation or vindication but only for the preservation of the dignity and integrity of the courts. [11] Courts must therefore be patient and understanding of hasty and unguarded expressions of passion made by the losing party. [12]

[8] *Rollo*, pp. 370-386.

[9] *Id*. at 47.

[10] *Sulit v. Hon. Tiangco*, 200 Phil. 597, 603 (1982).

[11] *Inonog v. Ibay*, A.M. No. RTJ-09-2175, July 28, 2009, 594 SCRA 168, 178.

[12] *Id*.

Lawyers must observe temperate language.

Finally, I take this opportunity to remind petitioners that as lawyers, they should be more cautious in expressing their dissatisfaction with the court. They must keep in mind that their language, though forceful and emphatic, must still be respectful and dignified, befitting advocates and in keeping with the dignity of the legal profession. [13] They should also be reminded that as officers of the court, they should be circumspect in their language as their duty is to help build and not destroy the people's high esteem and regard for the courts. [14]

ACCORDINGLY, I vote that the Resolutions dated May 16, 2006 and July 26, 2006 of the First Division of the Court of Tax Appeals finding petitioners Denis B. Habawel and Alexis F. Medina guilty of direct contempt be hereby *REVERSED and SET ASIDE*.

FIRST DIVISION

[G.R. No. 175409. September 7, 2011]

PHILIPPINE CHARTER INSURANCE CORPORATION, *petitioner, vs.* **EXPLORER MARITIME CO., LTD., OWNER OF THE VESSEL M/V "EXPLORER", WALLEM PHILS. SHIPPING, INC., ASIAN TERMINALS, INC. and FOREMOST INTERNATIONAL PORT SERVICES, INC.,** *respondents.*

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[13] *Ng v. Alar*, A.C. No. 7252 [CBD 05-1434], November 22, 2006, 507 SCRA 465, 473.

[14] *Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse*, A.M. No. 06-9-545-RTC, January 31, 2008, 543 SCRA 196, 214.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL FOR FAILURE TO PROSECUTE; IT IS THE DUTY OF THE PLAINTIFF TO MOVE *EX PARTE* THAT HIS CASE BE SET FOR TRIAL, OTHERWISE, THE COURT MAY DISMISS THE CASE UPON ITS OWN MOTION. — Section 3, Rule 17 and Section 1, Rule 18 of the Rules of Court, x x x respectively provide: "Section 3. *Dismissal due to the fault of the plaintiff.*— If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of adjudication upon the merits, unless otherwise declared by the court." x x x "Section 1. *When conducted*.—After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial."

2. ID.; ID.; ID.; ID.; GUIDELINES FOR THE COURTS IN EFFECTING SUCH DISMISSAL. — In the fairly recent case of *Espiritu v. Lazaro* (605 SCRA 566 572-573), this Court, in affirming the dismissal of a case for failure to prosecute on account of the omission of the plaintiff therein to move to set the case for pre-trial for almost one year from their receipt of the Answer, issued several guidelines in effecting such dismissal: "Respondents Lazaro filed the Cautionary Answer with Manifestation and Motion to File a Supplemental/Amended Answer on July 19, 2002, a copy of which was received by petitioners on August 5, 2002. Believing that the pending motion had to be resolved first, petitioners waited for the court to act on the motion to file a supplemental answer. **Despite the lapse of almost one year**, petitioners kept on waiting, without doing anything to stir the court into action. In any case, petitioners should not have waited for the court to act on the motion to file a supplemental answer or for the defendants to file a supplemental answer. As previously stated, the rule clearly states that the case must be set for pre-trial after the

last pleading is served and filed. Since respondents already filed a cautionary answer and [petitioners did not file any reply to it] the case was already ripe for pre-trial. It bears stressing that **the sanction of dismissal may be imposed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules. The failure of the plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested in obtaining the relief prayed for.** In this case, there was no justifiable reason for petitioners' failure to file a motion to set the case for pre-trial. Petitioners' stubborn insistence that the case was not yet ripe for pre-trial is erroneous. Although petitioners state that there are strong and compelling reasons justifying a liberal application of the rule, the Court finds none in this case. **The burden to show that there are compelling reasons that would make a dismissal of the case unjustified is on petitioners**, and they have not adduced any such compelling reason."

3. ID.; ID.; ID.; ID.; ID.; INACTION TO PROSECUTE FOR THREE YEARS WAS FOR AN UNREASONABLE LENGTH OF TIME; CASE AT BAR. — In the case at bar, the alleged Motion to Disclose was filed on November 19, 1997. Respondents filed the Motion to Dismiss on December 5, 2000. By that time, PCIC's inaction was thus already almost three years. There is therefore no question that the failure to prosecute in the case at bar was for an unreasonable length of time. Consequently, the Complaint may be dismissed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules. x x x As discussed by the Court of Appeals, PCIC could have filed a motion for the early resolution of their Motion to Disclose after the apparent failure of the court to do so. If PCIC had done so, it would possibly have discovered the error in the filing of said motion much earlier. Finally, it is worth noting that the defendants also have the right to the speedy disposition of the case; the delay of the pre-trial and the trial might cause the impairment of their defenses.

4. ID.; ID.; ID.; ID.; ID.; ID.; AS ALL THE PARTIES HAD BEEN PROPERLY IMPLEADED, THE PENDENCY OF THE MOTION TO DISCLOSE DID NOT BAR PCIC FROM MOVING FOR THE SETTING OF THE CASE FOR PRE-TRIAL AS REQUIRED UNDER RULE 18, SECTION 1 OF THE RULES OF COURT; CASE AT BAR. — Respondent Explorer Maritime Co., Ltd., which was then referred to as the "Unknown Owner of the vessel M/V 'Explorer,'" had already been properly impleaded pursuant to Section 14, Rule 3 of the Rules of Court. x x x As all the parties have been properly impleaded, the resolution of the Motion to Disclose was unnecessary for the purpose of setting the case for pre-trial. Furthermore, Section 3, Rule 3 of the Rules of Court likewise provides that an agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. Since Civil Case No. 95-73340 was an action for damages, the agent may be properly sued without impleading the principal. Thus, even assuming that petitioner had filed its Motion to Disclose with the proper court, its pendency did not bar PCIC from moving for the setting of the case for pre-trial as required under Rule 18, Section 1 of the Rules of Court.

APPEARANCES OF COUNSEL

Astorga and Repol Law Offices for petitioner.

Montilla Law Office for ATI.

Del Rosario & Del Rosario for Wallem Phils. Shipping, Inc., *et al.*

Abrogar Valerio Maderazo and Associates for Foremost Int'l. Port Services, Inc.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals dated July 20, 2006 in CA-G.R. CV No. 78834, which affirmed the Order[2] of Branch 37, Regional Trial Court (RTC) of Manila dated February 14, 2001 dismissing the Complaint for failure of the plaintiff to prosecute the same for an unreasonable length of time.

On March 22, 1995, petitioner Philippine Charter Insurance Corporation (PCIC), as insurer-subrogee, filed with the RTC of Manila a Complaint against respondents, to wit: the unknown owner of the vessel M/V "Explorer" (common carrier), Wallem Philippines Shipping, Inc. (ship agent), Asian Terminals, Inc. (arrastre), and Foremost International Port Services, Inc. (broker). PCIC sought to recover from the respondents the sum of ₱342,605.50, allegedly representing the value of lost or damaged shipment paid to the insured, interest and attorney's fees. The case was docketed as Civil Case No. 95-733**40** and was raffled to Branch **37**. On the same date, PCIC filed a similar case against respondents Wallem Philippines Shipping, Inc., Asian Terminals, Inc., and Foremost International Port Services, Inc., but, this time, the fourth defendant is "the unknown owner of the vessel M/V "Taygetus." This second case was docketed as Civil Case No. 95-7334**1** and was raffled to Branch **38**.

Respondents filed their respective answers with counterclaims in Civil Case No. 95-73340, pending before Branch 37. PCIC later filed its answer to the counterclaims. On September 18, 1995, PCIC filed an *ex parte* motion to set the case for pre-trial conference, which was granted by the trial court in its Order dated September 26, 1995. However, before the scheduled date of the pre-trial conference, PCIC filed on September 19,

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[1] *Rollo*, pp. 33-40; penned by Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Elvi John S. Asuncion and Arturo G. Tayag, concurring.

[2] CA *rollo*, p. 36.

1996 its Amended Complaint. The "Unknown Owner" of the vessel M/V "Explorer" and Asian Terminals, Inc. filed anew their respective answers with counterclaims.

Foremost International Port Services, Inc. filed a Motion to Dismiss, which was later denied by the trial court in an Order dated December 4, 1996.

On December 5, 2000, respondent common carrier, "the Unknown Owner" of the vessel M/V "Explorer," and Wallem Philippines Shipping, Inc. filed a Motion to Dismiss on the ground that PCIC failed to prosecute its action for an unreasonable length of time. PCIC allegedly filed its Opposition, claiming that the trial court has not yet acted on its Motion to Disclose which it purportedly filed on November 19, 1997. In said motion, PCIC supposedly prayed for the trial court to order respondent Wallem Philippines Shipping, Inc. to disclose the true identity and whereabouts of defendant "Unknown Owner of the Vessel M/V 'Explorer.'"

On February 14, 2001, the trial court issued an Order dismissing Civil Case No. 95-73340 for failure of petitioner to prosecute for an unreasonable length of time. Upon receipt of the order of dismissal on March 20, 2001, PCIC allegedly realized that its Motion to Disclose was inadvertently filed with Branch **38** of the RTC of Manila, where the similar case involving the vessel M/V "Taygetus" (Civil Case No. 95-7334**1**) was raffled to, and not with Branch **37,** where the present case (Civil Case No. 95-7334**0**) was pending.

Thus, PCIC filed a Motion for Reconsideration of the February 14, 2001 Order, explaining that its Motion to Disclose was erroneously filed with Branch 38. PCIC claimed that the mistake stemmed from the confusion created by an error of the docket section of the RTC of Manila in stamping the same docket number to the simultaneously filed cases. According to PCIC, it believed that it was still premature to move for the setting of the pre-trial conference with the Motion to Disclose still pending resolution. On May 6, 2003, the trial court issued the Order denying PCIC's Motion for Reconsideration.

On May 21, 2003, PCIC, through new counsel, appealed to the Court of Appeals. On July 20, 2006, the Court of Appeals rendered the assailed Decision affirming the February 14, 2001 Order of the RTC. On November 6, 2006, the Court of Appeals issued its Resolution[3] denying PCIC's Motion for Reconsideration.

Hence, this Petition for Review on *Certiorari*. On June 27, 2007, this Court required the counsel of the "Unknown Owner" of the vessel M/V Explorer and Wallem Philippines Shipping, Inc. to submit proof of identification of the owner of said vessel.[4] On September 17, 2007, this Court, pursuant to the information provided by Wallem Philippines Shipping, Inc., directed its Division Clerk of Court to change "Unknown Owner" to "Explorer Maritime Co., Ltd." in the title of this case.[5]

In affirming the dismissal of Civil Case No. 95-73340, the Court of Appeals held that PCIC should have filed a motion to resolve the Motion to Disclose after a reasonable time from its alleged erroneous filing. PCIC could have also followed up the status of the case by making inquiries on the court's action on their motion, instead of just waiting for any resolution from the court for more than three years. The appellate court likewise noted that the Motion to Disclose was not the only erroneous filing done by PCIC's former counsel, the Linsangan Law Office. The records of the case at bar show that on November 16, 1997, said law office filed with Branch 37 a Pre-trial Brief for the case captioned as "*Philippine Charter Insurance Corporation v. Unknown Owners of the Vessel MV 'Taygetus', et al.*, Civil Case No. 95-73340." The firm later filed a Manifestation and Motion stating that the same was intended for Civil Case No. 95-73341 which was pending before Branch 38. All these considered, the Court of Appeals ruled that PCIC must bear the consequences of its counsel's inaction and negligence, as well as its own. [6]

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[3] *Rollo*, p. 43.

[4] *Id.* at 90.

[5] *Id.* at 110a.

[6] *Id.* at 38-39.

PCIC claims that the merits of its case warrant that it not be decided on technicalities. Furthermore, PCIC claims that its former counsel merely committed excusable negligence when it erroneously filed the Motion to Disclose with the wrong branch of the court where the case is pending.

The basis for the dismissal by the trial court of Civil Case No. 95-73340 is Section 3, Rule 17 and Section 1, Rule 18 of the Rules of Court, which respectively provide:

> Section 3. *Dismissal due to the fault of the plaintiff*. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of adjudication upon the merits, unless otherwise declared by the court.
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> Section 1. *When conducted*. – After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

In the fairly recent case of *Espiritu v. Lazaro*,[7] this Court, in affirming the dismissal of a case for failure to prosecute on account of the omission of the plaintiff therein to move to set the case for pre-trial for almost one year from their receipt of the Answer, issued several guidelines in effecting such dismissal:

> Respondents Lazaro filed the Cautionary Answer with Manifestation and Motion to File a Supplemental/Amended Answer on July 19, 2002, a copy of which was received by petitioners on August 5, 2002. Believing that the pending motion had to be resolved first, petitioners waited for the court to act on the motion to file a supplemental answer. **Despite the lapse of almost one year**,[8] petitioners kept on waiting, without doing anything to stir the court into action.

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[7] G.R. No. 181020, November 25, 2009, 605 SCRA 566.

[8] The trial court in the cited case dismissed the complaint on July 24, 2003,

In any case, petitioners should not have waited for the court to act on the motion to file a supplemental answer or for the defendants to file a supplemental answer. As previously stated, the rule clearly states that the case must be set for pre-trial after the last pleading is served and filed. Since respondents already filed a cautionary answer and [petitioners did not file any reply to it] the case was already ripe for pre-trial.

It bears stressing that **the sanction of dismissal may be imposed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules. The failure of the plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested in obtaining the relief prayed for.**

In this case, there was no justifiable reason for petitioners' failure to file a motion to set the case for pre-trial. Petitioners' stubborn insistence that the case was not yet ripe for pre-trial is erroneous. Although petitioners state that there are strong and compelling reasons justifying a liberal application of the rule, the Court finds none in this case. **The burden to show that there are compelling reasons that would make a dismissal of the case unjustified is on petitioners**, and they have not adduced any such compelling reason.[9] (Emphases supplied.)

In the case at bar, the alleged Motion to Disclose was filed on November 19, 1997. Respondents filed the Motion to Dismiss on December 5, 2000. By that time, PCIC's inaction was thus already almost three years. There is therefore no question that the failure to prosecute in the case at bar was for an unreasonable length of time. Consequently, the Complaint may be dismissed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with the rules. The burden is now on PCIC to show that there are compelling reasons that would render the dismissal of the case unjustified.

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slightly less than one year from the plaintiff's receipt of the Cautionary Answer on August 5, 2002. (*Id.* at 570.)

[9] *Id.* at 572-573.

The only explanation that the PCIC can offer for its omission is that it was waiting for the resolution of its Motion to Disclose, which it allegedly filed with another branch of the court. According to PCIC, it was premature for it to move for the setting of the pre-trial conference before the resolution of the Motion to Disclose.

We disagree. Respondent Explorer Maritime Co., Ltd., which was then referred to as the "Unknown Owner of the vessel M/V 'Explorer,'" had already been properly impleaded pursuant to Section 14, Rule 3 of the Rules of Court, which provides:

> Section 14. *Unknown identity or name of defendant* – Whenever the identity or name of a defendant is unknown, he may be sued as the unknown owner, heir, devisee, or by such other designation as the case may require; when his identity or true name is discovered, the pleading must be amended accordingly.

In the Amended Complaint, PCIC alleged that defendant "Unknown Owner of the vessel M/V 'Explorer'" is a foreign corporation whose identity or name or office address are unknown to PCIC but is doing business in the Philippines through its local agent, co-defendant Wallem Philippines Shipping, Inc., a domestic corporation.[10] PCIC then added that both defendants may be served with summons and other court processes in the address of Wallem Philippines Shipping, Inc.,[11] which was correctly done[12] pursuant to Section 12, Rule 14 of the Rules of Court, which provides:

> Sec. 12. *Service upon foreign private juridical entity*. – When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

As all the parties have been properly impleaded, the resolution of the Motion to Disclose was unnecessary for the purpose of setting the case for pre-trial.

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[10] Records, p. 75.

[11] *Id.*

[12] *Id.* at 37.

Furthermore, Section 3, Rule 3 of the Rules of Court likewise provides that an agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. Since Civil Case No. 95-73340 was an action for damages, the agent may be properly sued without impleading the principal. Thus, even assuming that petitioner had filed its Motion to Disclose with the proper court, its pendency did not bar PCIC from moving for the setting of the case for pre-trial as required under Rule 18, Section 1 of the Rules of Court.[13]

Indeed, we find no error on the part of the lower courts in not giving credit to the purportedly erroneously filed Motion to Disclose. The only document presented by PCIC to prove the same, a photocopy thereof attached to their Motion for Reconsideration with the RTC, is highly suspicious. Said photocopy[14] of the Motion to Disclose contains an explanation why the same was filed through registered mail. However, it was also stamped as "RECEIVED" by the RTC on November 19, 1997,[15] indicating that said attachment was a receiving copy. The receiving copy was not signed by any court personnel[16] and does not contain any proof of service on the parties. The Motion sets the hearing thereon on the same date of its filing, November 19, 1997.[17]

Likewise, PCIC's attempt to shift the blame to the docket section of the RTC of Manila, which allegedly stamped the same docket number to Civil Case No. 95-73340 (involving M/V Explorer) and Civil Case No. 95-73341 (involving M/V Taygetus), is completely unfounded. A perusal of the Complaint in the case at bar shows that it was *correctly stamped Civil*

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[13] Rule 18, Section 1 provides that "[a]fter the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pretrial."

[14] Records, pp. 141-144.

[15] *Id.* at 141.

[16] *Id.*

[17] *Id.*

Case No. "95-73340," and the branch number was *correctly written as 37*.[18] PCIC did not bother to attach the alleged complaint filed in Branch 38 involving M/V Taygetus. However, it does not escape our attention that PCIC in its own pleadings repeatedly refer to the case pending in Branch 38 as Civil Case No. 95-73341, contrary to its claim that the two cases were docketed with the same number. In all, PCIC failed to adequately account how its counsel could have mistakenly filed the Motion intended for Branch 37 in Branch 38. Worse, said counsel also allegedly only discovered the error after three years from the filing of the Motion to Disclose. Such a circumstance could have only occurred if **both** PCIC and its counsel had indeed been uninterested and lax in prosecuting the case.

We therefore hold that the RTC was correct in dismissing Civil Case No. 95-73340 for failure of the plaintiff to prosecute the same for an unreasonable length of time. As discussed by the Court of Appeals, PCIC could have filed a motion for the early resolution of their Motion to Disclose after the apparent failure of the court to do so. If PCIC had done so, it would possibly have discovered the error in the filing of said motion much earlier. Finally, it is worth noting that the defendants also have the right to the speedy disposition of the case; the delay of the pre-trial and the trial might cause the impairment of their defenses.[19]

WHEREFORE, the Petition is *DENIED*. The Decision of the Court of Appeals dated July 20, 2006 in CA-G.R. CV No. 78834 is hereby *AFFIRMED*.

Costs against petitioner Philippine Charter Insurance Corporation.

SO ORDERED.

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

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[18] *Id.* at 1.

[19] See *Olave v. Mistas*, G.R. No. 155193, November 26, 2004, 444 SCRA 479, 493.

SECOND DIVISION

[G.R. No. 176535. September 7, 2011]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **FIRST UNITED CONSTRUCTORS CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PERFECTED AGREEMENT REACHED WHEN A PROPOSAL WAS ACKNOWLEDGED BUT QUALIFIED BY A CONDITION THAT WAS THEN COMPLIED WITH, AS IN CASE AT BAR. — When NHA acceded to FUCC's proposal in the letter dated 24 June 2002, it accepted FUCC's offer but qualified its acceptance by imposing the condition that the surety firm be among the top five surety firms as endorsed by the Insurance Commission. This qualified acceptance constituted a counter-offer which FUCC immediately accepted by way of the letter dated 3 July 2002. In that letter, FUCC submitted to NHA the names of the top five surety companies from where it intended to obtain the surety bond. Thus, a perfected agreement was reached between the parties, to wit: that FUCC would submit a surety bond from one of the top five private surety companies to secure the balance of the advance payment still to be recouped by NHA, while NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. There was a perfected agreement because the contractual elements of consent, object certain and cause had concurred.

2. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPLAINT. — *Cause of action* is defined as an act or omission by which a party violates the right of another. A complaint is deemed to have stated a cause of action provided it has indicated the following: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or the omission of the defendant in violation of the said legal right.

3. STATUTORY CONSTRUCTION; WORD "PAYMENT" USED IN THE SENSE OF 'ACT OF PAYING' IN CASE AT BAR. — The word "payment" is a noun that is used in two (2) general senses: as "money paid," i.*e.* an amount of money that is paid or due to be paid; or as the "act of paying," *i.e.* the act of paying money, or fact of being paid. In the case at bar, the word "payment" was obviously used by the Court of Appeals in the sense of the "act of paying," or more exactly, with respect to the mechanical act of releasing the check payments for FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. The Court of Appeals decreed that NHA may release the "payment" (meaning, the checks processed by NHA for FUCC's claims) provided FUCC would "post the requisite bond in the manner arranged by respondent with petitioner."

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) AFFIRMED BY THE COURT OF APPEALS (CA), RESPECTED. — As this finding of fact by the CIAC was affirmed by the Court of Appeals, and it being apparent that the CIAC arrived at said finding after a thorough consideration of the evidence presented by both parties, the same may no longer be reviewed by this Court. The all too-familiar rule is that the Court will not, in a petition for review on *certiorari*, entertain matters factual in nature, save for the most compelling and cogent reasons, like when such factual findings were drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd.This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes. Indeed, settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.

5. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INFRASTRUCTUTE PROJECT; THE DEPARTMENT OR AGENCY THAT OWNS THE PROJECT HAS FULL CONTROL OVER ITS IMPLEMENTATION; CASE AT BAR. — The Court subscribes to the view x x x that in a government infrastructure project, the department or agency that owns the project dictates not only what facilities, equipment and key technical staff the contractor should mobilize, it dictates as well the financial resources the contractor should muster for the project, the bonds, guarantees and sureties it should put up, the plans, specifications, schedule, and the manner by which it should prosecute the contract works, how it should bill for completed works, how it should document and claim variation orders, *etc.* Indeed, this appears to be so in the case of the FVR Project. The very Contract entered into by the parties (which appears to be a standard form contract with the blank spaces appropriately filled up) specifies the duration of the contract works and the bonds, guarantees and sureties to be put up by FUCC, and expressly states that, among other documents, the following shall form part of the Contract, to wit: plans, specifications, certificate of availability of funds, concurrence of lending institutions, duly approved program of work and cost estimates, PERT/CPM or equivalent schedule of work, *etc.*, all of which demonstrate that NHA, as the owner of the FVR Project, had full control over its implementation. This would certainly have included dictating or imposing, as it were, the minimum equipment and key staff that had to be mobilized by FUCC to undertake the contract works. Otherwise, NHA would have been remiss in its duty to ensure that the Project would be implemented properly and the people's money spent wisely. Indeed, there are rules and guidelines for the implementation of government contracts that procuring entities must follow to promote transparency and ensure that all contracts are performed strictly according to specifications.

6. ID.; ID.; CIAC RULES; ON FINAL AWARD AND IN CASE OF VACANCIES; COMPLIANCE OF THE CIAC TO THE ORDER OF THE CA RE THE COMPUTATION OF ARBITRAL AWARD IS NOT AN AWARD AND SAID COMPLIANCE IS VALID ALTHOUGH MADE WITH ONE CIAC MEMBER VACANCY. — The Compliance [of CIAC to the order of the CA] is not an award, let alone the "Final award" spoken of in Section 16.2 of the Revised CIAC Rules. The CIAC Arbitral Tribunal already

rendered a "Final award" in the Decision dated 7 January 2004. The Compliance merely clarifies and presents a re-computation of some items of the "Final award." It does not alter or supersede the "Final award" nor purport to be a new award. Further, Section 10.4 of the Revised CIAC Rules states that in case any Arbitrator should resign, *etc.*, the "CIAC may, within five days from the occurrence of a vacancy x x x, appoint a substitute(s) to be chosen." The use of the permissive "may," rather than the mandatory "shall" indicates that the appointment of a third member of the CIAC Arbitral Tribunal is not indispensable for the tribunal to discharge its functions. The records show that a vacancy in the Arbitral Tribunal occurred with the demise of Lauro M. Cruz. Nothing in the Revised CIAC Rules prevents the remaining two members – who constitute a majority – from complying with the remand orders of the Court of Appeals. The Court thus gives *imprimatur* and deems as approved the Compliance submitted by the CIAC. We find that it sufficiently complies with the remand orders contained in the CA Decision dated 1 August 2006 and presents a correct method of computation of the arbitral award.

7. ID.; ID.; CIAC; JURISDICTION; INCLUDES CLAIMS FOR BUSINESS LOSSES; CASE AT BAR. — [W]e have already categorically ruled in ***Gammon Philippines, Inc. vs. Metro Rail Transit***, that there is no basis for the exclusion of claims for business losses from the jurisdiction of CIAC because Executive Order No. 1008 (EO 1008), the law that created the CIAC, "excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC." The nature and bases of the awards for Disengagement Costs consisting of three components, namely: Foregone Equipment Rental, Extended Overhead Costs and Foregone Income; and the awards for Cost of Materials, Equipment and Facilities, and Idle Equipment have been discussed at length. They are either business or opportunity losses or foregone profits that resulted from, or are the necessary consequences of, the termination of the Contract. They arose from and are inextricably linked to the construction dispute between NHA and FUCC that was the subject of arbitration proceedings before the CIAC. We find and so hold that they are arbitrable claims within the ambit of Section 4 of EO 1008, which defines the jurisdiction of the CIAC.

8. ID.; ID.; GOVERNMENT INFRASTRUCTURE PROJECT; TERMINATION OF CONTRACT; UNILATERAL AS REQUIREMENT ON NOTICE NOT OBSERVED; CASE AT BAR. — [The] requirements of contracts as to ***notice*** – as to the *time of giving, form*, and *manner of service* thereof – must be strictly observed because in an obligation where a period is designated, it is presumed to have been established for the benefit of both the contracting parties. Indeed, [the failure of NHA] to comply with the notice requirement of the contract – being violative of the principle of mutuality of contracts – resulted in the unilateral termination of the Contract. In any case, and quite importantly, NHA failed to present evidence to buttress its stance that the termination of the Contract was due to factors beyond its control as to justify the application of Clause 3.04.06. On the contrary, the fact that the NHA Board resolved to redraft the FVR Project as a mixed-use development under a joint venture scheme with interested parties shows that NHA had other options at hand and could have chosen to negotiate with FUCC to amend the Contract instead of deciding to terminate the same. The conclusion is ineluctable: the termination of the Contract was well within the control of NHA, as correctly held by the Court of Appeals.

9. ID.; ID.; CIAC; ERRORS IN COMPUTATION CORRECTED BY THE COURT. — The Court takes judicial notice that Mathematics is an exact science. As the aforesaid error of omission is susceptible of correction using a straightforward mathematical formula already laid down by the CIAC in its Decision, which formula has never been questioned by petitioner, and considering further that petitioner has not interposed any objection to the proposition of respondent that the oversight committed by the CIAC in the Compliance ought to be corrected, the Court shall no longer remand this case to the CIAC for re-computation but shall proceed to re-compute the same. Needless to state, such a remand would not serve any useful purpose but will only delay the final disposition of this case.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Ruben Almadro for respondent.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner National Housing Authority (NHA), seeking to reverse and set aside the 1 August 2006 Decision[1] of the Court of Appeals (CA) and its Resolution dated 31 January 2007[2] in CA-G.R. SP No. 81635.

In the questioned Decision, the appellate court affirmed with modification the Decision promulgated on 7 January 2004[3] by the Construction Industry Arbitration Commission (CIAC), thru a three member Arbitral Tribunal[4] in CIAC Case No. 14-2003 entitled "*First United Constructors Corporation v. National Housing Authority*," that granted an arbitral award in favor of respondent First United Constructors Corporation (FUCC); and in its assailed Resolution, refused to reconsider its Decision.

The Facts

From the Petition,[5] the Comment[6] thereon of respondent, petitioner's Reply,[7] and their respective Annexes,[8] particularly

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[1] Penned by Associate Justice Godardo A. Jacinto with Associate Justices Edgardo P. Cruz and Jose Catral Mendoza (now a member of this Court), concurring; *rollo*, pp. 85-109.

[2] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Jose C. Mendoza (now a member of this Court) and Myrna Dimaranan Vidal, concurring; Annex "B" of Petition; *id.* at 110-116.

[3] *Id.* at 944-979, Annex "X" of Petition. Records, Folder no. 2, Expanding Envelope no. 3.

[4] *Id.*, Composed of Atty. Jacinto M. Butalid, Chairman, and Ms. Felicitas A. Pio Roda and Mr. Lauro M. Cruz, Members.

[5] *Id.* at 16-77.

[6] *Id.* at 1195-1285.

[7] *Id.*, Vol II, pp. 2-23.

[8] *Id.*, Vol. I, pp. 84-1179; 1287-1360, Annexes "A" to "EE" of Petition and Annexes "1" to "13" of Comment.

the Complaint[9] of respondent, petitioner's Answer[10] and the Joint Stipulations[11] of the parties incorporated as Admitted Facts in the Supplemental Terms of Reference,[12] all filed with the CIAC, and from the CA Decision and the CIAC Decision, the Court gathers the following relevant facts and antecedents:

Respondent FUCC was the contractor of Phase I of the Freedom Valley Resettlement Project (the FVR Project or the Project) of petitioner NHA.[13]

The FVR Project was a proposed resettlement site for informal settlers of Metro Manila. Conceived in May 1996, it was the subject of a Memorandum of Agreement entered into by and among the Housing & Urban Development Coordinating Council (HUDCC), the Department of Environment & Natural Resources (DENR), the Metro Manila Development Authority (MMDA) and the Marilaque Commission.[14]

The FVR Project sits on a 750-hectare property reserved as a resettlement site for the landless and homeless residents of Metro Manila under Presidential Proclamation No. 799 dated 3 June 1996, situated in *Sitio Boso-Boso, Brgy*. San Jose, Antipolo City.[15]

Phase I of the FVR Project called for the development of an area of roughly 300 hectares of the resettlement site into 7,500 home lots of 60 to 80 square meters per lot in three (3) residential Clusters, namely: Cluster 1, Cluster 2 and Cluster 3.[16]

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[9] Annex "Q" of Petition, *id.* at 428-510.

[10] Annex "S" of Petition, *id.* at 518-686.

[11] Annex "C" of Petition, *id.* at 117-142.

[12] Annex "E" of Petition, *id.* at 149-152.

[13] Annex "F" of Petition, *id.* at 153.

[14] Annex "C" of Petition, *id.* at 118.

[15] *Id.*

[16] *Id.* at 118-119.

FUCC won the public bidding for the works contract of the FVR Project conducted by NHA on 26 February 1998 with a bid price of ₱568,595,780.00.[17]

The work consisted principally of bulk earthworks and the construction of roads, drainage, water supply and sewerage systems, slope protection and bridge structures, as well as survey works, titling of the lots and other off-site works.[18]

On 2 March 1998, NHA issued a Notice of Award[19] for Phase I of the FVR Project to FUCC.

On 10 March 1998, NHA and FUCC entered into a "*Contract for Land Development of Freedom Valley Resettlement Project, Phase I, Sitio Boso-Boso, Bgy. San Jose, Antipolo, Rizal*"[20] (the "Contract") that covered the terms of the agreement between the parties for the works contract of Phase I of the FVR Project.

The work duration stipulated in the Contract was three hundred sixty five (365) days. The contract amount was the bid price of FUCC, or ₱568,595,780.00.[21]

FUCC commenced actual contract works on 16 March 1998. Counting 365 days, the original contract expiration date was 15 March 1999.[22]

Unfortunately, the FVR Project suffered various work suspensions and delays, so much so that the project was not

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[17] *Id.* at 119, Item 3.1 of the Joint Stipulations, presents a summary of the bids, as follows:

FUCC	₱ 568,595,780.00
New San Jose Builders	₱ 569,234,466.00
Atlantic Erectors/ Consuelo/ Linear	₱ 612,933,834.26
R-II Builders	₱ 619,934,334.00
FF Cruz & Co.	₱ 699,888,000.00

[18] Annex "C" of Petition, *id.* at 119.

[19] Annex "G" of Petition, *id.* at 157-159.

[20] Annex "F" of Petition, *id.* at 153-156.

[21] Article III of Contract, id at 154.

[22] Annex "C" of Petition, *id.* at 120.

completed on 15 March 1999.[23] There were also changes in the scope of work that necessitated the issuance of variation orders, specifically *Variation Order No. 1*,[24] and *Variation Order No. 2*,[25] which delayed the completion of the project further.

Variation Order No. 1 reduced the number of home lots to be generated, from 7,500 – under the original development plan – to only 4,980. *Variation Order No. 2* further reduced that number to 4,032. These changes in the scope of work resulted in the reduction of the contract price from the original ₱568,595,780.00 to ₱488,393,466.98.[26]

Because of the delays engendered by the suspension orders and the changes in the scope of the contract works, NHA granted time extensions to FUCC, to wit: an additional 279 calendar days under *Time Extension No. 1*;[27] another extension of 200

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[23] The CIAC record shows that NHA issued *Partial Suspension Order No. 1* dated 23 June 1998 (*Cf.* Expanding Envelope no. 1, 2nd folder of 4 Annex "K" of Complaint); *Suspension Order No. 1* dated 31 July 1998 (*Cf.* Annex "O" of Complaint); and *Suspension Order No. 2* dated 13 October 1999 (*Cf.* Annex "V" of Complaint).

Partial Suspension Order No. 1 was issued due to the continued resistance of farmers/planters and other residents in the area of the FVR Project (See also Item No. 12.1.1 of Joint Stipulations, *rollo*, Vol. I, pp. 122-123).

Suspension Order No. 1 came after the DENR issued a cease and desist order effective until an Environmental Compliance Certificate for the Project could be secured by NHA (See also Items Nos. 12.2.1 and 12.2.2 of Joint Stipulations, *rollo*, Vol. I, p. 123).

Suspension Order No. 2 was issued to stop the works and development of Cluster 3 until revisions of the plans could be made to avoid the occurrence of an incident similar to the Cherry Hills landslide, in light of the report submitted by the Geohazard Assessment Team of the Mines and Geosciences Bureau (MGB) after heavy rains triggered landslides at Cluster 3 (See also Items Nos. 12.3.1, 12.3.2 and 12.3.3 of Joint Stipulations, *rollo*, Vol. I, pp. 124 and 126).

[24] *Rollo*, Vol. I, issued on 15 September 1999; Annex "I" of Petition, pp. 163-171.

[25] Issued on 4 December 2000; Annex "I-1" of Petition, *id.* at 172-176.

[26] Annex "I-1" of Petition, *id.* at 174.

[27] Annex "H" of Petition, *id.* at 160.

calendar days in conjunction with the issuance of *Variation Order No. 2*;[28] and finally, 200 more calendar days under *Resumption Order No. 2*.[29] All told, a total of 679 calendar days were added to the original work duration stipulated in the Contract. From 15 March 1999, the contract completion date was moved, initially, to 19 December 1999, and finally, to 11 November 2001.[30]

In the course of the contract works, FUCC submitted five (5) Progress Billings, all of which were paid by NHA, to wit: Progress Billing No. 1[31] in the amount of ₱52,707,464.21, for the period 16 March to 30 June 1998; Progress Billing No. 2[32] in the amount of ₱14,343,039.55, for the period 1 July to 31 December 1998; Progress Billing No. 3[33] in the amount of ₱47,329,827.89, for the period 1 January to 15 October 1999; Progress Billing No. 4[34] in the amount of ₱114,494,481.30, for the period 16 October 1999 to 31 January 2001; and Progress Billing No. 5[35] in the amount of ₱42,333,109.23, for the period 31 January to 30 June 2001.

The FVR Project was never completed as envisioned and planned because NHA abandoned the original concept of the Project. In a Resolution passed on 25 September 2001,[36] the Board of Directors of NHA reclassified the FVR Project from a resettlement site of informal settlers into a mixed-market site and services type of project, and terminated the Contract.[37]

[28] Annex "H-1" of Petition, *id.* at 161.

[29] Annex "H-2" of Petition, *id.* at 162.

[30] Annex "H-2" of Petition, *id.* at 162.

[31] Annex "K" of Petition, *id.* at 180.

[32] Annex "K-1" of Petition, *id.* at 197.

[33] Annex "K-2" of Petition, *id.* at 213.

[34] Annex "K-3" of Petition, *id.* at 233.

[35] Annex "K-4" of Petition, *id.* at 244.

[36] Records, Annex "ZZZ" of Complaint, 3rd folder of four, Expanding Envelope No. 1, Resolution No. 4450.

[37] *Rollo*. See Letter of NHA dated 17 October 2001, Annex "L" of Petition, p. 256.

In a letter dated 17 October 2001,[38] NHA formally advised FUCC of the termination of the Contract.

NHA terminated the Contract under the "Contractor Not at Fault" clause of the General Conditions of the Contract.[39]

At the time the Contract was terminated, FUCC had various claims pending with NHA in connection with the FVR Project.

It appears that over a period of almost five (5) years, FUCC pleaded and negotiated with various NHA officials for the payment of these claims but its pleas fell on deaf ears.[40]

This impelled FUCC to pursue its claims before the CIAC pursuant to Article XVII[41] of the Contract by filing a Complaint[42] against NHA on 17 July 2003. The case was docketed as CIAC Case No.14-2003 entitled "*First United Constructors Corporation vs. National Housing Authority.*"

In its Complaint, FUCC prayed thus:

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[38] *Id.*

[39] *Id.* Clause 3.04.06 of the General Conditions covering Termination of Contract by the Authority (Contractor not at fault) provides: "The Authority may terminate the Contract upon ten (10) days written notice to the Contractor, if it is found that reasons beyond the control of either the Authority or Contractor make it impossible or against the Authority's interest to complete the work."

[40] See paragraph 1.2 of FUCC's Complaint, *id.* at 433.

[41] Records, 1st Expanding Envelope, Folder no. 2, Article XVII provides thus: "Should there be any dispute or controversy in connection with this Contract or difference between the parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to the Construction Industry Arbitration Commission (CIAC) created by Executive Order No. 1008, implementing Presidential Decree No. 1746 and R.A. 876, as amended, however (sic), that the arbitration proceedings shall be without prejudice to the right of the AUTHORITY to rescind, or terminate this Contract in accordance with provisions of the following paragraph."

[42] *Rollo*, pp. 428-509.

WHEREFORE, it is respectfully prayed that after proper arbitration proceedings, claimant be adjudged entitled to the payment of its claims, as follows:

1) Payment for Accomplished Works Not Yet Billed in the amount of ₱9,672,784.98;

2) Payment for the Cost of Materials, Equipment, Facilities, *etc*. Included for the Project in the amount of ₱4,801,992.82;

3) Payment for Price Escalation in the amount of ₱27,794,126.25;

4) Payment for Price Adjustment in the amount of ₱14,768,770.22;

5) Payment for Disengagement Costs in the amount of ₱83,242,365.73;

6) Payment for Idle Equipment in the amount of ₱142,780,800.00;

7) Payment for Interest on Idle Equipment in the amount of ₱44,262,048.00;

8) Payment for Attorney's Fees equivalent to Ten Percent (10%) of the total of the foregoing claims; and

9) Payment of Twelve Percent (12%) interest on the total arbitration award from the date of promulgation of judgment until fully paid.

Other reliefs just and equitable are likewise prayed for.[43]

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal) to adjudicate FUCC's claims.

NHA initially filed a Motion to Dismiss,[44] claiming that FUCC had failed to exhaust all administrative remedies, which was opposed by FUCC. In an Order dated 8 September 2003, the CIAC Arbitral Tribunal denied the motion and ordered NHA to file its answer to FUCC's Complaint.[45]

In its Answer,[46] NHA raised the following defenses, *viz*: FUCC had no right of action since its recourse to arbitration

[43] See Prayer, Complaint in Arbitration, *id.* at 507-509.

[44] Annex "R" of Petition, *id.* at 512-516.

[45] CA *rollo*, Vol. II, pp 729-730. Records, Expanding Envelope no. 3, Folder no. 1.

[46] *Rollo*, pp. 556-561.

was premature; there was no actual suspension of contract works notwithstanding the suspension orders issued by NHA; the Contract was not unilaterally terminated by NHA; FUCC's Progress Billing No. 6 should only be for the amount of ₱6,496,926.29; FUCC's claim for Price Escalation for Progress Billings Nos. 1 to 5 came too late in the day, and that the amount that should be paid is only ₱26,297,951.62 and payable only after FUCC procured the required surety bond; and the claims for Payment for Cost of Materials, Equipment and Facilities, Disengagement Cost, Cost of Idle Equipment and interests thereon, are non-arbitrable issues. By way of counter-claim, NHA prayed that it be allowed to recover from FUCC the amount of ₱38 Million, which represents the remaining balance or unliquidated portion of the ₱85.2 Million that NHA had advanced to FUCC at the start of the FVR Project.

The issues having been joined, the CIAC Arbitral Tribunal called the parties to a Preliminary Conference. The parties subsequently agreed upon a Terms of Reference[47] and a Supplemental Terms of Reference[48] to guide the CIAC Arbitral Tribunal in the arbitration process and in the resolution of the case. The parties also submitted to the CIAC Arbitral Tribunal their "Joint Stipulations,"[49] which were incorporated in the Supplemental Terms of Reference as "Admitted Facts."[50]

Under the Terms of Reference and the Supplemental Terms of Reference, the CIAC Arbitral Tribunal was called upon to resolve the following issues to determine the validity of FUCC's claims against NHA, to wit:

1. Did Claimant exhaust all administrative remedies before filing this arbitration case?

    1.1 Is claimant's recourse to arbitration premature?

2. Is claimant entitled to its claims for:

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[47] Annex "D" of Petition, *id.* at 143.

[48] Annex "E" of Petition, *id.* at 149-152.

[49] Annex "C" of Petition, *id.* at 117-142.

[50] See p. 1 of Supplemental Terms of reference, *id.* at 149.

2.1 payment for accomplished works not yet billed (Progress Billing No. 6)? If so, how much?

2.1.1 Is the submission by the Claimant of the files and folders covering the unpaid claims of the planters/farmers necessary for the processing of its claim for accomplished works not yet billed (Progress Billing No. 6)?

2.2 payment for cost of materials, equipment, pro-rated cost of facilities constructed for the project, *etc*.? If so, how much?

2.2.1 Whether or not these claims are arbitrable or not [sic]

2.3 Price Escalation? If so, how much?

2.4 Price Adjustment? If so, how much?

2.5 Disengagement Costs? If so, how much?

2.5.1 Whether or not this claim is arbitrable or not [sic]

2.6 Idle Equipment? If so, how much?

2.6.1 Whether or not this claim is arbitrable or not [sic]

2.6.2 Was there actual or physical suspension of the works for the period covered by the suspension orders?

2.7 Interest on Idle Equipment? If so, how much?

3. Is Respondent entitled to the recoupment of the remaining portion of the advance payment made for the Project?

4. Are the parties entitled to their respective claims for interest on the total arbitration amount that would be adjudged in their own favor?

4.1 If so at what rate and from what period?

5. Who between the parties is liable for the cost of arbitration?

6. Whether or not the termination of the Contract is unilateral

6.1 Whether or not the Claimant opposed, contested or protested the termination

7. Who caused the alleged delays in the processing or payment of Claimant FUCC's claims, if any?

8. Did Claimant FUCC procure a Payment Guarantee Bond (Surety Bond) from either the GSIS or any bona fide private surety company?

9. Was the procurement by Claimant FUCC of the Payment Guarantee Bond (Surety Bond) a condition for the payment of its claims for Progress Billing No. 6 and Price Escalation for Progress Billing Nos. 1 to 5?[51]

To prove its claims, FUCC presented one witness in the person of Engr. Ben S. Dumaliang (Engr. Dumaliang), the Project Director of FUCC for the FVR Project, and submitted his Affidavit in Question-and-Answer Form dated 4 November 2003,[52] which served as the witness' direct testimony. On the basis of said affidavit, Engr. Dumaliang was cross-examined by NHA's counsel.[53]

FUCC adopted and marked Annexes "A" to "GGGGGG" of its Complaint as Exhibits "A" to "GGGGGG" and submitted the same as part of its documentary evidence. FUCC likewise marked the documents attached to the Affidavit in Question-and-Answer Form of Engr. Dumaliang as Exhibits "HHHHHH" to "RRRRRR" and likewise submitted the same as part of its documentary evidence.[54] FUCC thereafter rested its case.

To prove its defenses and counter-claim, NHA likewise presented only one witness in the person of Engr. Mariano E. Raner III (Engr. Raner), the Special Project Director of the FVR Project, and submitted his Affidavit dated 2 December

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[51] Pages 2 to 3 of Terms of Reference and p. 1 of Supplemental Terms of Reference, *id.* at 144-145 and 149.

[52] Annex "U" of Petition, *id.* at 692-805.

[53] See p. 19 of Petition, *id.* at 34.

[54] *Id.*

2003[55] in lieu of his direct testimony. Engr. Raner was cross-examined by FUCC's counsel on the basis of said Affidavit.[56]

NHA marked 21 pieces of documentary evidence and submitted the same as Exhibits "1" to "21,"[57] and thereafter rested its case.

On 7 January 2004, the CIAC Arbitral Tribunal promulgated its Decision[58] (CIAC Decision) containing findings and rulings on substantially all of the issues presented by the parties, and rendering an award in favor of FUCC, as follows:

AWARD

WHEREFORE, on the basis of the foregoing findings and rulings, an award is hereby rendered in favor of Claimant, FIRST UNITED CONSTRUCTORS CORPORATION, and against the Respondent, NATIONAL HOUSING AUTHORITY ordering the latter to pay the former the total of the following amounts, less the amount for recoupment of the balance of the advance payment including the interest viz;

1) ₱hp 7,384,534.22 representing payment for Billing No. 6;

2) ₱hp 989,325.27 representing interest of No. 1 above;

3) ₱4,677,680.00 representing payment for cost of materials, equipment, facilities;

4) ₱415,993.13 representing interest of No. 3 above;

5) ₱26,297,951.62 representing payment for Price Escalation of PB Nos. 1-5;

6) ₱1,863,191.86 representing interest of No. 5 above;

7) ₱14,768,770.22 representing payment for Price Adjustment of PB Nos. 5 & 6;

8) ₱1,847,512.46 representing interest of No. 7 above;

9) ₱65,842,309.72 representing payment for Disengagement Costs;

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[55] Annex "V" of Petition, *id.* at 806-819.

[56] See p. 20 of Petition, *id.* at 35.

[57] Annexes "W" to "W-20" of Petition, *id.* at 820-943.

[58] *Id.* at 945-979.

10) ₱7,468,141.43 representing interest of No. 9 above;

11) ₱131,948,674.56 representing payment of Idle Equipment;

12) ₱36,634,736.09 representing interest of No. 11 above.

₱300,138,820.59 gross total award in favor of Claimant

13) ₱ * * * * * * * * representing12% interest of the gross total award of ₱300,138,820.59, from the date of promulgation of this decision, and until it is fully paid.

Note: * * * * * * * *is to be determined upon execution of judgment.

Award to Respondent's counter-claim:

1) ₱37,951,201.14 representing the recoupment of the balance of Advance payment made to the Claimant.

2) ₱455,414.41 representing interest of No. 1 above.

₱38,406,615.55 balance of recoupment plus interest.

Net Award to be paid by Respondent to the Claimant;

₱300,138,820.59 Gross Award of Claimant's Claims

Less ₱ 38,406,615.55 Balance of recoupment plus interest

₱261,732,205.04 Net Award to be paid by Respondent to Claimant.

Finally, the Respondent is hereby ordered to pay Claimant, one-half of the cost of arbitration in the amount of ₱768,219.76, as its share in the arbitration cost, which was advanced by the Claimant during the pendency of this case.[59]

On 30 January 2004, NHA appealed the CIAC Decision to the Court of Appeals by filing a Petition for Review Under Rule 43 (With Prayer for Restraining Order & Injunctive Writ),[60] which was docketed thereat as CA-G.R. SP No. 81635.[61]

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[59] See pp. 36 to 37 of CIAC Decision dated 7 January 2004, *id.* at 978-979.

[60] Annex "Y" of Petition, *id.* at 980-1024.

[61] See p. 22 of Petition, *id.* at 37.

NHA's prayer for a Temporary Restraining Order (TRO) to prevent the execution of the CIAC Decision was granted by the Court of Appeals in a Resolution dated 14 April 2004.[62]

Upon the lapse of the TRO, NHA filed an Urgent Motion for Early Resolution of its application for the issuance of a Writ of Preliminary Injunction, which was similarly granted by the Court of Appeals in a Resolution dated 8 July 2004.[63] The Writ of Preliminary Injunction issued by the appellate court enjoined "respondent and the agency *a quo* from executing the disputed decision during the pendency of [the] petition or until further order of the Court."[64]

On 26 February 2004, or prior to the issuance of the TRO, the CIAC issued in favor of FUCC a Writ of Execution of the arbitral award. Accordingly, Mr. Cristobal Florendo, Sheriff IV of the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court in Quezon City, who was appointed as the Implementing Sheriff, issued and served Notices of Garnishment on the Land Bank of the Philippines (Land Bank), the Development Bank of the Philippines (DBP), the Philippine National Bank (PNB), the Veterans Bank of the Philippines (Veterans Bank), the Bureau of Treasury, and on the Government Security and Insurance Service Savings Bank. The Implementing Sheriff later served Orders of Delivery of Money on the Land Bank, DBP, and the Bureau of Treasury.[65]

Petitioner filed a Motion to Lift Garnishment and for the Issuance of Writ of Preliminary Mandatory Injunction on the ground that the service of the Notices of Garnishment violated the Resolution dated 14 April 2004 (directing the issuance of a TRO) and the Resolution dated 8 July 2004 (granting the issuance

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[62] CA *rollo*, Vol II, pp. 1355-1366.

[63] *Rollo*, Annex "Z" of Petition, pp. 1026-1033.

[64] *Id.*

[65] See pp. 8 to 9 of CA Decision, *id.* at 92-93.

of a Writ of Preliminary Injunction) to enjoin the execution of the arbitral award. This motion was denied by the Court of Appeals in a Resolution dated 13 December 2004.[66]

Petitioner subsequently filed a Very Urgent Motion to Lift Writ of Garnishment citing essentially the same grounds as the previous motion.[67]

Instead of merely acting upon the Very Urgent Motion to Lift Writ of Garnishment, the Court of Appeals resolved the main petition and promulgated the Decision dated 1 August 2006[68] that affirmed with modification the CIAC Decision.[69] The appellate court denied petitioner's Very Urgent Motion to Lift Writ of Garnishment permanently[70] and lifted the Writ of Preliminary Injunction it had earlier issued. The decretal portion of the CA Decision reads, thus:

> WHEREFORE, under the premises, we hereby dispose of this case as follows:
>
> 1. The following portions of the arbitral award are hereby AFFIRMED, thus:
>
> > WHEREFORE, on the basis of the foregoing findings and rulings, an award is hereby rendered in favor of Claimant, FIRST UNITED CONSTRUCTORS CORPORATION, and against the Respondent, NATIONAL HOUSING AUTHORITY ordering the latter to pay the former the total of the following amounts, less the amount for recoupment of the balance of the advance payment including the interest, viz:
> >
> > 1) ₱7,384,534.22 representing payment for Billing No. 6;
> >
> > 2) ₱989,325.27 representing interest (on) No. 1 above;
> >
> > 3) ₱4,667,680.00 representing payment for cost of materials, equipment, facilities;

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[66] CA *rollo*, Vol. IV, pp. 2449-2452.

[67] *Rollo*, p. 94.

[68] *Id.* at 85-109.

[69] *Id.* at 945-979.

[70] See p. 10 of CA Decision, *id.* at 94.

4) ₱415,993.00 representing interest (on) No. 3 above;

5) ₱26,297,951.62 representing payment for Price Escalation of PB Nos. 1-5;

6) ₱1,863,191.86 representing interest (on) No. 5 above;

7) ₱14,768,770.22 representing payment for Price Adjustment of PB Nos. 5 & 6;

8) ₱1,847,512.46 representing interest (on) No. 7 above;

9) ₱131,948,674.56 representing payment for Idle Equipment; and

10) ₱36,634,736.09 representing interest on No. 11 above

x x x x x x x x x

Award to Respondent's (herein petitioner's) counter-claim:

1)₱37,951,201.14	representing the recoupment of the balance of advance payment made to the claimant
2)₱455,414.41	representing interest on No.1 above
₱38,406,615.55	balance of recoupment plus interest

x x x x x x x x x

Finally, the Respondent (herein petitioner) is hereby ordered to pay to Claimant (herein respondent) one-half of the cost of arbitration the amount of ₱768,219.76, as its share in the arbitration cost, which was advanced by the claimant during the pendency of this case.

2. Determination of the correct amount to be paid by petitioner as disengagement costs and the interest due thereon is hereby **REMANDED** to the CIAC.

3. Computation of the total award in favor of respondent and the 12% interest due thereon is also **REMANDED** to the CIAC, with instruction that said 12% interest be computed from finality of this decision.

4. Computation of the net award which petitioner must pay respondent by deducting the gross total award for petitioner from the gross total award for petitioner [sic] from the gross total award with interest for respondent is also REMANDED to the CIAC.

Accordingly, with the foregoing disposition, the Writ of Preliminary Injunction earlier issued against respondent herein is hereby LIFTED.

On 17 August 2006, the CIAC submitted its Compliance[71] to the remand orders of the Court of Appeals, showing the re-computed arbitral award in favor of FUCC.[72]

On 24 August 2006, NHA filed an Omnibus Motion dated 22 August 2006[73] that incorporated its Motion for Reconsideration of the CA Decision dated 1 August 2006 and its Motion to Require the CIAC to Explain and to Hold in Abeyance the Re-Computation of Award.

FUCC, on the other hand, filed a Motion to Act on the Compliance submitted by the CIAC, while the Land Bank filed an Urgent Manifestation/ Motion for Clarification for the appellate court to determine whether the bank could legally release the frozen funds of NHA.[74]

The Court of Appeals directed the parties to file their respective comment to the cross-motions and to the manifestation of Land Bank, and thereafter considered the issues submitted for resolution.[75]

On 31 January 2007, the Court of Appeals issued a Resolution[76] denying petitioner's Omnibus Motion that included its Motion for Reconsideration of the CA Decision dated 1 August 2006. The appellate court did not act on the Compliance submitted by the CIAC and on petitioner's Motion to Require the CIAC

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[71] Annex "BB" of Petition, *id.* at 1034-1041.

[72] Page 25 of Petition and p. 85 of Comment, *id.* at 40 and1279.

[73] Annex "CC" of Petition, *id.* at 1056-1087.

[74] See p. 26 of Petition, *id.* at 41.

[75] *Id.*

[76] *Id.* at 111-116.

to Explain and to Hold in Abeyance the Re-Computation of Award. With respect to the Urgent Manifestation/Motion for Clarification of Land Bank, the appellate court directed Land Bank to "forthwith release to respondent the garnished fund of petitioner not exceeding ₱147,894,629.24 in partial satisfaction of [the] Court's decision dated 1 August 2006."[77] The dispositive portion of the Resolution reads thus:

> WHEREFORE, for lack of merit, petitioner's Omnibus Motion is **DENIED**. Respondent's Motion to Act on the Compliance submitted by CIAC *Ex Abundante Cautelam* and petitioner's Urgent Motion for Issuance of Temporary Restraining or Preliminary Injunctive Writ are merely **NOTED**.
>
> With respect to its Urgent Manifestation/ Motion for Clarification, the Land Bank of the Philippines is **DIRECTED** to forthwith release to respondent the garnished fund of petitioner not exceeding ₱147,894,629.24 in partial satisfaction of this Court's decision dated August 1, 2006, upon filing of a good and sufficient bond by respondent in the sum of ₱150,000,000.00 to answer for the restitution of the former amount and reparation of damages to petitioner should said decision be reversed, whether totally or partially.[78]

Undaunted, NHA filed the present Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. Petitioner prays that this Court reverse and set aside the CA Decision dated 1 August 2006 and the Resolution dated 31 January 2007 claiming, in the main, that in promulgating the questioned Decision and Resolution, the Court of Appeals allegedly "egregiously overlooked, ignored or disregarded many discernible, indisputable facts or circumstances of weight and significance" that would allegedly have "logically altered the result of the case" had they "been judiciously considered."[79]

The Issues

According to petitioner, instead of those alleged "indisputable facts or circumstances," the appellate court's findings were

[77] See p. 6 of CA Resolution, *id.* at 116.

[78] *Id.*

[79] See p. 27 of Petition, *id.* at 42.

"premised merely on manifestly wrong presumptions, surmises, mistaken or improbable inferences and misapprehension of facts."[80] Specifically, petitioner claims that the Court of Appeals committed a grave and substantial error of judgment:

I

WHEN IT AFFIRMED THE AWARD FOR PROGRESS BILLING NO. 6 AND PRICE ESCALATION FOR PROGRESS BILLING NOS. 1 TO 5 DESPITE THE INDISPUTABLE OR ADMITTED FACT THAT RESPONDENT FUCC DID NOT POST ANY PERFORMANCE BOND, WHICH IS DECIDEDLY A CONDITION PRECEDENT FOR THE PAYMENT OF THESE CLAIMS.

II

WHEN IT AFFIRMED THE AWARD FOR PROGRESS BILLING NO. 6 IN THE AMOUNT OF ₱7,384,534.22 DESPITE THE MANIFEST OR CLEAR FACT THAT RESPONDENT FUCC'S CLAIM FOR SAID BILLING WAS ONLY ₱6,496,926.29.

III

WHEN IT AFFIRMED THE AWARD FOR COST OF MATERIALS, EQUIPMENT AND FACILITIES IN THE AMOUNT OF ₱4,677,680.00 AND DISENGAGEMENT COST ON THE BASIS OF AN OBVIOUSLY ILLOGICAL AND ERRONEOUS INTERPRETATION OF EXHIBIT "19."

IV

WHEN IT AFFIRMED THE AWARD FOR IDLE EQUIPMENT IN THE AMOUNT OF ₱131,948,674.56 NOTWITHSTANDING THE CLEAR AND PATENT FACT THAT RESPONDENT FUCC'S EQUIPMENT NEVER WENT IDLE.

V

WHEN IT AFFIRMED THE AWARD FOR COST OF MATERIALS, EQUIPMENT AND FACILITIES,

[80] See pp. 27-28 of Petition, *id.* at 42-43.

DISENGAGEMENT COST AND IDLE EQUIPMENT DESPITE THE CLEAR OR MANIFEST FACT THAT THESE CLAIMS WERE NON-ARBITRABLE AT THE TIME THE COMPLAINT WAS FILED ON 17 JULY 2003.

VI

WHEN IT RULED THAT RESPONDENT FUCC DID NOT CONSENT TO THE TERMINATION OF THE PROJECT NOTWITHSTANDING THE GLARING FACT THAT RESPONDENT FUCC DID NOT PROTEST THE TERMINATION AND HAD EVEN STOPPED IMPLEMENTING THE WORKS ON ITS OWN VOLITION EVEN BEFORE ITS RECEIPT OF THE NOTICE OF TERMINATION.[81]

The Ruling of the Court

We deny the petition for lack merit.

I. Re: Payment Guarantee Bond as Condition Precedent for Payment of Progress Billing No. 6 and Price Escalation for Progress Billings Nos. 1 to 5

Petitioner questions the award for Progress Billing No. 6 in the amount of ₱7,384,534.22 and for Price Escalation for Progress Billings Nos. 1 to 5 in the amount of ₱26,297,951.62.

In sustaining these items of award granted by the CIAC to FUCC, the Court of Appeals ratiocinated as follows:

> Petitioner's sole objection to the award of ₱7,384,534.22 as payment for Progress Billing No. 6 and ₱26,297,951.62 as payment of price escalation for Progress Billing Nos. 1-5 is that these claims did not become ripe for adjudication for failure of respondent to fulfill a condition *sine qua non*, which is the filing of a payment guarantee bond. Without this bond, respondent had no right of action against petitioner at the time of filing of the complaint in arbitration. x x x
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> Without question, the filing of a bond is a condition for the payment of the foregoing claims of respondent. We do not accept

[81] See pp. 28-29 of Petition, *id.* at 43-44.

the reasoning of the CIAC that this requirement was rendered moot and academic by its granting of said claim; that sort of reasoning begs the question. However, we agree with CIAC that respondent's omission to file bond was excusable. On October 4, 2002, respondent proposed an arrangement under which it would submit its bond only when petitioner is about to release the check but that petitioner will hold on to it until respondent's bond is received and verified. Respondent was prompted to make this request in view of its unfavorable cash flow position, a dire situation it found itself in when the project was pre-terminated. x x x As found by CIAC, petitioner never responded to this request, giving rise to the presumption that it had not denied it. x x x. This presumption holds considering that, even at this stage, petitioner never explained its inaction.

Thus, we sustain the award of ₱7,384,534.22 as payment for Progress Billing No. 6 and ₱26,297,951.62 as payment of price escalation for Progress Billing Nos. 1-5. However, consistent with the provisions of the Contract, we require the latter to post the requisite bond in the manner arranged by respondent with petitioner.[82]

Petitioner assails what it sees as a "flip-flopping" of the Court of Appeals, *i.e.* for ruling in one breath that "(w)ithout question, the filing of a bond is a condition for the payment of the foregoing claims of respondent," but pronouncing in another that "we agree with CIAC that respondent's omission to file bond was excusable," only to qualify in the third breath that "consistent with the provisions of the Contract, we require the latter to post the requisite bond in the manner arranged by respondent with petitioner,"[83] and asserts that the posting of the bond is a government requirement that cannot be excused under both the law and the Contract (citing Articles VII and VIII thereof), and is simply indispensable.[84] In fact, according to petitioner, it is a condition precedent for the payment of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5. And since FUCC allegedly failed to comply with this condition precedent, it had no existing

[82] Pages 14-15 of CA Decision, *id.* at 98-99.

[83] See pp. 29-30 of Petition, *id.* at 44-45.

[84] See p. 32 of Petition, *id.* at 47.

or accrued cause of action to compel NHA to pay the two (2) claims.[85]

Respondent counters that the Payment Guarantee Bond was required by NHA at the inception of the Project as a condition for the release of the advance payment to FUCC in the amount ₱85.2 Million,[86] and not as a requirement for the processing or release of FUCC's Progress Billings;[87] that the Payment Guarantee Bond expired without the entire advance payment being recouped by NHA because of the many work suspensions and delays suffered by the FVR Project; and that FUCC tried to renew the bond but the GSIS refused because the Contract for the FVR Project had already been terminated as of 16 October 2001.[88] It is respondent's submission that since its inability to submit a renewed Payment Guarantee Bond from the GSIS was NHA's very own act of terminating the Contract, NHA cannot use the same as reason not to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5.[89]

We have meticulously examined the record *vis-à-vis* the submissions of the parties and find no reason to disturb the ruling of the Court of Appeals.

The record shows that at the start of the FVR Project, FUCC received from NHA an advance payment for mobilization in the amount of ₱85.2 Million, or fifteen percent (15%) of the contract cost.[90] There is no dispute that this advance payment was to be recouped by NHA from FUCC by taking partial amounts from the progress payments to FUCC. There is likewise no dispute that to secure the recoupment of this advance payment,

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[85] See p. 30 of Petition, *id.* at 45.

[86] See Paragraph 16.1 of Comment, *id.* at 1208.

[87] See Paragraph 16.3 of Comment, *id.* at 1209-1210.

[88] See Paragraph 16.2 of Comment, *id.* at 1209.

[89] See Paragraph 16.3 of Comment, *id.* at 1209-1210.

[90] See Paragraph 16.1 of Comment; and p. 34 of Petition, *id.* at 49 and 1208.

NHA required FUCC to post a Payment Guarantee Bond in the amount of ₱85.2 Million issued by GSIS prior to the release of the advance payment.[91]

It appears that before NHA could recoup from FUCC the entire advance payment, the Payment Guarantee Bond expired. This, at a time when NHA had yet to recover some ₱38 Million out of the ₱85.2 Million advance payment.[92]

FUCC tried to renew and pay for the extension of the bond but GSIS refused because the Contract for the FVR Project had already been terminated as of 16 October 2001.[93]

Because of the inability of FUCC to submit a renewed Payment Guarantee Bond from GSIS, NHA refused to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5.[94]

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[91] In Paragraph 16.1 of its Comment, respondent alleges as follows: The bond spoken of in the questioned Decision of the Court of Appeals is the **Payment Guarantee Bond** which the NHA required FUCC to post at the inception of the FVR Project to secure the liquidation or recoupment of the advance payment for mobilization in the amount of ₱85.2 Million (equivalent to 15 % of the contract cost) that FUCC received from the NHA. The bond was a condition for the release of the advance payment to FUCC. As agreed upon between the parties, the advance payment was to be recouped by taking partial amounts from the progress payments to FUCC. But nowhere in the contract documents does it state that the Payment Guarantee Bond is a requirement for the processing or release of FUCC's Progress Billings, *id.* at 1208.

The following allegation appears in page 33-34 of NHA's Petition; *id.* at 48-49: "x x x As earlier stated, the procurement or posting of a Payment Guarantee (or Performance) Bond is both a legal and contractual requirement that cannot be excused nor waived, least of all by an entity – like petitioner NHA – performing a vital governmental mandate or function and publicly accountable for every single cent spent in its operations. Such bond, to put it curtly, is a safety net mechanism to ensure recovery of NHA's ₱38 Million claim for recoupment, which represents the remaining portion of the ₱85.2 Million (equivalent to 15% of the contract cost) advance payment for mobilization that it still had to recover from or apply to the project billings (See Par. 54 of Affidavit dated 2 December 2003 of Engr. Mariano E. Raner III, *id.* at 816.

[92] See page 34 of Petition, *id.* at 49.

[93] See Paragraph 16.2 of Comment, *id.* at 1209.

[94] See Paragraph 16.3 of Comment, *id.* at 1209-1210.

In two letters, one dated 23 May 2002,[95] the other dated 6 June 2002,[96] both addressed to the NHA General Manager, FUCC appealed for help in the payment of these claims and proposed to procure an alternative surety bond from a private surety firm accredited by the Insurance Commission to secure the balance of the advance payment still to be recouped by NHA.[97]

As both letters drew no response from NHA, FUCC wrote a third letter dated 13 June 2002[98] reiterating its proposal to submit a bond from a private surety company instead of a renewed Payment Guarantee Bond from the GSIS. It wrote thus:

> The unexpected termination of the contract has already caused untold injury to the contractor. May we request NHA not to add insult to the injury by allowing the private surety bond and by subsequently releasing our claim for price escalation.[99]

NHA finally replied[100] and acceded to FUCC's proposal provided that the private surety company was among the top five (5) firms as endorsed by the Insurance Commission.[101]

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[95] Annex "1" of Comment; (Note: The existence and/or due execution and authenticity of this letter is admitted by the NHA [*Cf.* Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), *id.* at 1287.

[96] Annex "2" of Comment; (Note: The existence and/or due execution and authenticity of this letter is likewise admitted by the NHA [*Cf.* Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), *id.* at 1288.

[97] See Paragraphs 16.4 and 16.5 of Comment, *id.* at 1210-1211.

[98] Annex "3" of Comment; (Note: The existence and/or due execution and authenticity of this letter is also admitted by the NHA [*Cf.* Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), *id.* at 1289.

[99] See Paragraph 16.6 of Comment, *id.* at 1211-1212.

[100] See Letter of NHA GM dated 24 June 2002, Annex "M" of Petition, *id.* at 257.

[101] See Paragraph 16.6 of Comment, *id.* at 1211-1212.

FUCC immediately wrote back[102] and provided NHA with a list of the top five non-life insurance companies as endorsed by the Insurance Commission, and sought approval to procure a surety bond from any one of the firms, but preferably from Malayan Insurance Company, Inc.[103]

The foregoing evidence of record indisputably establish that FUCC made the offer to submit a surety bond from a private surety company instead of a renewed Payment Guarantee Bond issued by the GSIS just so NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. This offer was contained in three (3) successive letters: the first dated 23 May 2002,[104] the second dated 6 June 2002,[105] and the third dated 13 June 2002.[106]

When NHA acceded to FUCC's proposal in the letter dated 24 June 2002,[107] it accepted FUCC's offer but qualified its acceptance by imposing the condition that the surety firm be among the top five surety firms as endorsed by the Insurance Commission. This qualified acceptance constituted a counter-offer[108] which FUCC immediately accepted by way of the letter dated 3 July 2002.[109] In that letter, FUCC submitted to NHA

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[102] See FUCC's letter to NHA dated 03 July 2002, Annex "4" of Comment; (Note: The existence and/or due execution and authenticity of this letter and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), *id.* at 1290.

[103] See Paragraph 16.6 of Comment, *id.* at 1211-1212.

[104] *Id.* at 1287.

[105] *Id.* at 1288.

[106] *Id.* at 1289.

[107] *Id.* at 257.

[108] See Art. 1319 of the Civil Code, which provides as follows: "Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer."

[109] *Rollo*, p. 1290.

the names of the top five surety companies from where it intended to obtain the surety bond. Thus, a perfected agreement was reached between the parties, to wit: that FUCC would submit a surety bond from one of the top five private surety companies to secure the balance of the advance payment still to be recouped by NHA, while NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. There was a perfected agreement because the contractual elements of consent, object certain and cause had concurred.[110]

The evidence on record further show that the parties subsequently reconciled their computations and agreed on the amount of ₱26,297,951.62 as payment for Price Escalation for Progress Billing Nos. 1 to 5.[111] In fact, in the letter dated 2 October 2002,[112] NHA advised FUCC that it would "proceed with the processing of the escalation payment subject to the submission [of] the Surety Bond covering the balance for the recoupment of the advanced payment for mobilization."[113] In response, FUCC wrote NHA a letter dated 4 October 2002[114] requesting that it be allowed to submit the surety bond "immediately before [the] release by NHA of the check for the price escalation," with the understanding that "until the bond is released and verified, NHA will hold the check," "owing to the unfavorable cash flow position of the project brought

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[110] Pursuant to Article 1318 of the Civil Code which provides thus:

"Art. 1318 There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established."

[111] *Rollo*. See Letter of FUCC to NHA dated 25 September 2002, Annex "6" of Comment, and letter of NHA to FUCC dated 2 October 2002, Annex "7" of Comment, confirming that the computations for FUCC's claim for Price Escalation had already been completed and resulted to the gross amount of ₱26,297,951.62. See also Paragraph 19 of Comment, pp. 1292-1293 and 1222-1223.

[112] Annex "N" of Petition, *id.* at 258.

[113] *Id*.

[114] Annex "DD" of Petition, *id.* at 1178.

about by the untimely termination of the contract."[115] Since NHA did not respond to FUCC's request nor object thereto, respondent assumed that NHA had tacitly accepted the same,[116] a stance supported by the CIAC and affirmed by the Court of Appeals in this wise:

> As found by CIAC, petitioner never responded to this request, giving rise to the presumption that it had not denied it. x x x This presumption holds considering that, even at this stage, petitioner never explained its inaction.[117]

Indeed, petitioner has not explained its inaction even in the instant petition. It merely posits that "its silence cannot give rise to the presumption that it had accepted the counter-proposal" of FUCC[118] (referring to the request contained in the letter of FUCC dated 4 October 2002),[119] which it claims to be "a counter-proposal to the counter-proposal of petitioner NHA" (referring to the letter dated 24 June 2002).[120]

But this stance is untenable. As discussed above, the letter of NHA dated 24 June 2002, containing a qualified acceptance of FUCC's offer to submit a surety bond from a private surety company, constituted a counter-offer or a "counter-proposal," if you will, which was already accepted by FUCC in the letter dated 3 July 2002.[121] Thus, when FUCC wrote NHA the letter dated 4 October 2002,[122] there was no more "counter-proposal" on the table to speak of. FUCC wrote that letter in response to the letter of NHA dated 2 October 2002[123] to make a

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[115] See Paragraph 21 of Comment, *id.* at 1223.

[116] See p. 94 of the Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang, *id.* at 783.

[117] See p. 14 of the CA Decision, *id.* at 98.

[118] See p. 35 of Petition, *id.* at 50.

[119] *Id.* at 1178.

[120] *Id.* at 257.

[121] *Id.* at 1290.

[122] *Id.* at 1178.

[123] *Id.* at 258.

reasonable request on a mere matter of procedure: that it be allowed to submit the surety bond only when the check payment for its claim for price escalation is about to be released, with the understanding that NHA will hold on to the check until it had received and verified the surety bond.

The intended purpose of the surety bond is self-evident: to ensure that NHA would be able to recover the unrecouped balance of the advance payment in the still substantial sum of ₱38 Million. Understandably, NHA wanted the surety bond posted before releasing further payments to FUCC. Clearly, therefore, for as long as the surety bond was to be posted and properly verified before any check payment to FUCC could be released, the bond would have served its purpose. This was precisely the arrangement sought by FUCC. Thus, NHA had no reason to refuse FUCC's request contained in the letter dated 4 October 2002,[124] which is presumably the reason why it remained silent and gave no response, giving rise to the correct presumption that it had tacitly agreed to FUCC's request.

Based on the foregoing disquisition, the Court cannot subscribe to the asseveration of petitioner that FUCC had no existing or accrued cause of action to compel NHA to pay its claims for payment of Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5 at the time it filed its Complaint since FUCC allegedly failed to comply with a condition precedent or *sine qua non* for the payment of said claims – the posting of the Payment Guarantee (or Performance) Bond.[125]

Cause of action is defined as an act or omission by which a party violates the right of another. A complaint is deemed to have stated a cause of action provided it has indicated the following: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or the omission of the defendant in violation of the said legal right.[126]

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[124] *Id.* at 1178.

[125] See p. 30 of Petition, *id.* at 45.

[126] *Philrock, Inc. v. Construction Industry Arbitration Commission*, 412 Phil. 236, 247 (2001).

Respondent had the right to be paid its claim for Price Escalation for Progress Billing Nos. 1 to 5 after NHA recognized the validity of the claim and reconciled its computations with FUCC on the correct amount of price escalation to be paid. In fact, NHA had expressed readiness to process the payment of the claim. As regards Progress Billing No. 6, petitioner similarly recognized the validity of this claim. Indeed, petitioner does not contest the right of private respondent to be paid Progress Billing No. 6. What it contests is merely the amount thereof, insisting that FUCC is only entitled to an award of ₱6,496,926.29 as against the amount of ₱7,384,534.22 awarded by the CIAC.[127]

Petitioner's subsequent refusal to process and pay these claims despite FUCC's willingness to submit a surety bond to secure the balance of the advance payment still to be recouped by NHA – as the parties had agreed upon – which bond would be submitted when the check payment for the claim is about to be released, clearly constitutes a violation by NHA of FUCC's right to be paid these acknowledged and recognized claims. Thus, respondent had an accrued cause of action against petitioner for these claims at the time it filed its Complaint, the constitutive elements of which are clearly set forth therein.

There is nothing to support petitioner's stance that the "posting of the Payment Guarantee (or Performance) Bond is decidedly a condition precedent" or *sine qua non* for the payment of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5.[128] The Court notes, upon a close examination of the Contract, that there is no provision therein that requires FUCC to post a Payment Guarantee Bond as an indispensable condition for the recognition of the validity of its claim for price escalation or for the processing and payment of its progress billings. Nor does the Contract refer to any other document from where such a condition may be inferred.

The source of FUCC's obligation to post a surety bond as a substitute for the GSIS-issued Payment Guarantee Bond is

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[127] *Rollo*. See p. 36 of Petition, p. 51.

[128] See p. 30 of Petition, *id.* at 45.

not the Contract but the subsequent agreement between the parties, to wit: that FUCC would submit a surety bond from one of the top five private surety companies to secure the balance of the advance payment still to be recouped by NHA, while NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. And the timing of the posting of the bond was, as requested by FUCC in the letter dated 4 October 2002,[129] tacitly agreed to by NHA: that FUCC would post the requisite bond only when the check payments for its acknowledged claims are about to be released, with the understanding that NHA will hold on to the checks until it had received and verified the surety bond.

Petitioner's reference to Article VII and VIII of the Contract to support its allegation that "(t)he procurement or posting of a Payment Guarantee (or Performance) Bond is a government requirement that cannot be excused under both law and Contract"[130] is misplaced. Article VII refers to the Performance Bond in the amount of ₱28,429,789.00 posted by FUCC to guarantee the faithful performance of its scope of work,[131] which is decidedly different from the Payment Guarantee Bond in the amount of ₱85.2 Million which NHA required FUCC to procure from GSIS and to post prior to the release of the advance payment in the amount of ₱85.2 Million. A reading of Article VIII entitled CONTRACTOR'S ALL RISKS INSURANCE, on the other hand, readily reveals that it has no relation at all to the Payment Guarantee Bond required by NHA to cover the recoupment of the advance payment to FUCC.[132]

It appears that petitioner pounced upon, and took out of context, the Court of Appeals ruling that "(w)ithout question, the filing of a bond is a condition for the payment of the foregoing claims of respondent" to argue that since FUCC "failed to comply with a condition precedent or *sine qua non* for the payment

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[129] *Id.* at 1178.

[130] See p. 32 of Petition, *id.* at 47.

[131] See Article VII of Contract, *id.* at 154.

[132] See Article VIII of Contract, *id.* at 155.

of said claims", FUCC had no cause of action against NHA at the time it filed the Complaint. Read in the proper context, the "payment" spoken of in the CA Decision actually pertains to the physical act of releasing the check payments of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5.

The word "payment" is a noun that is used in two (2) general senses: as "money paid," *i.e.* an amount of money that is paid or due to be paid; or as the "act of paying," *i.e.* the act of paying money, or fact of being paid.[133] In the case at bar, the word "payment" was obviously used by the Court of Appeals in the sense of the "act of paying," or more exactly, with respect to the mechanical act of releasing the check payments for FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. The Court of Appeals decreed that NHA may release the "payment" (meaning, the checks processed by NHA for FUCC's claims) provided FUCC would "post the requisite bond in the manner arranged by respondent with petitioner." [134]

The evidence on record indubitably show that even as FUCC was ready to post the requisite bond in the manner agreed upon by the parties, NHA still refused to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. In fine, and for emphasis, FUCC had an accrued cause of action to compel NHA to pay these claims at the time it filed its Complaint.

II. Re: Amount of FUCC's Claim for Progress Billing No. 6

Petitioner ascribes grave error to the Court of Appeals for affirming the award made by CIAC for Progress Billing No. 6 in the amount of ₱7,384,534.22 when FUCC's claim for said billing was allegedly only ₱6,496,926.29.

Anent this alleged error by the appellate court, it appears that FUCC originally submitted to NHA an Abstract of Physical

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[133] Microsoft Encarta Dictionary, 2006 Edition.

[134] *Rollo*, vol. I, Annex "A" of Petition, CA Decision, pp. 98-99.

Accomplishment in support of Progress Billing No. 6, showing that its physical accomplishments during the period 1 July 2001 to 21 November 2001, amounted to ₱6,496,926.29.[135] However, what FUCC attached to its Complaint[136] was a different Abstract of Physical Accomplishment showing that its accomplished works under Progress Billing No. 6 totalled ₱7,384,534.22.[137]

According to petitioner, "(i)f ever [it] is legally liable to pay respondent FUCC for Progress Billing No. 6, it should pay only the amount of ₱6,496,926.29, and not ₱7,384,534.22,"[138] as the Abstract of Physical Accomplishments marked and offered as Exhibit "15" was submitted by FUCC itself, through its then authorized representative, Engineer Edgardo S. De la Cruz, who had affixed his conformity thereon, to support its claim for payments for the said accomplishments.[139] Petitioner also cites the direct testimony of its sole witness, Engr. Raner, to the effect that "(t)he only Abstract of Physical Accomplishment for Progress Billing No. 6 that was signed by FUCC and NHA is Exhibit '15', in which the amount agreed by both parties was ₱6,496,926.29." According to Engr. Raner, "(t)he alleged 'new Abstract of Physical Accomplishment for Progress Billing No. 6 could only be a fabricated document."[140]

The Court notes that a perusal of the Abstract of Physical Accomplishments offered in evidence by FUCC as Exhibit "IIII" reveals that it was also signed by both parties, just like the Abstract of Physical Accomplishments offered in evidence by NHA as Exhibit "15". In his testimony, FUCC's sole witness, Engr. Dumaliang, explained that many Abstracts for Physical

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[135] Exhibit "15" of NHA attached as Annex "W-14" of Petition, *id.* at 917-925.

[136] As Annex "IIII" of the Complaint. Annex "IIII" was later marked and offered as Exhibit "IIII" for FUCC, *id.* at 1294-1303.

[137] *Id.*, Exhibit "IIII" of FUCC attached as Annex "8" of Comment.

[138] See p. 36 of Petition, *id.* at 51.

[139] *Id.*

[140] See p. 11 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, *id.* at 816.

Accomplishments were caused to be prepared by NHA with different reduced amounts reflected thereon, which explains the apparently oscillating figures for Progress Billing No. 6. Engr. Dumaliang admitted that FUCC might have indeed also signed Exhibit "15". [141] In short, FUCC does not disown Exhibit "15". It is FUCC's stance that both Exhibit "IIII" and Exhibit "15" are duly executed documents but Exhibit "IIII". which it alleges was submitted later, supersedes Exhibit "15" and contains the correct amount of FUCC's accomplished works under Progress Billing No. 6.[142]

These conflicting claims between the parties – as to the correct amount that petitioner is legally liable to pay respondent for Progress Billing No. 6 – was resolved by the CIAC in favor of FUCC. The CIAC found that "the amount of ₱7,384,534.22 governs over the claim of NHA in its Exhibit "15" for the amount of ₱6,496,926.29." According to the CIAC, both Exhibit "IIII" and Exhibit "15" were signed by the representatives of FUCC and NHA. However, below the signatures in Exhibit "15" are handwritten notations saying that "such document is not final but conditional." The pertinent portion of the CIAC Decision reads thus:

> The Arbitral Tribunal finds the abstract of Physical Accomplishment for Progress Billing No. 6 in Exhibit "IIII" submitted by FUCC in the amount of ₱7,384,534.22 governs over the claim of NHA in its Exhibit "15" for the amount of ₱6,496,926.29 (see Stipulated Facts No. 25.1.2).
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> The Arbitral Tribunal's finding is based on the signature by a representative of FUCC in Exhibit "IIII" together with that of NHA representative (Mr. Borlagdan, Head Tech. Staff of FVRP), while in Exhibit "15" the signatures of both the NHA and FUCC representatives had handwritten notations below their respective signatures, both signifying that such document is not final but conditional. Exhibit "15" therefore is not controlling because of the signatures therein with handwritten conditions signifying further claims.[143]

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[141] See pp. 82 to 83 of the Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang, *id.* at 772-773.

[142] See p. 38 of Comment, *id.* at 1232.

[143] See p. 18 of CIAC Decision dated 7 January 2004, *id.* at 962.

As this finding of fact by the CIAC was affirmed by the Court of Appeals, and it being apparent that the CIAC arrived at said finding after a thorough consideration of the evidence presented by both parties, the same may no longer be reviewed by this Court. The all too-familiar rule is that the Court will not, in a petition for review on *certiorari*, entertain matters factual in nature, save for the most compelling and cogent reasons, like when such factual findings were drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd.[144] This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes.[145] Indeed, settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.[146]

III. Re: Award for Cost of Materials, Equipment and Facilities

Petitioner questions the propriety of the award for Cost of Materials, Equipment and Facilities in the amount of ₱4,677,680.00.

This award has two components: (1) an award in the amount of ₱132,470.00 representing the cost of materials delivered by FUCC to the project site but were not utilized due to the termination of the Contract; and (2) an award in the amount

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[144] *R-II Builders, Inc. v. Construction Industry Arbitration Commission*, 511 Phil. 523, 534 (2005) citing *Sunshine Finance and Investment Corp. v. IAC*, G.R. Nos. 74070-71, 28 October 1991, 203 SCRA 210 and *Go v. Court of Appeals and Moldex Products*, G.R. No. 158922, 28 May 2004, 430 SCRA 358.

[145] See Section 4 of E.O. No. 1008, dated 4 February 1985.

[146] *Public Estates Authority v. Elpidio Uy*, 423 Phil. 407, 416 (2001) citing *Cagayan Robina Sugar Milling Co. v. Court of Appeals*, 396 Phil. 830, 840 (2000).

of ₱4,545,182.82 representing the pro-rated cost of the facilities constructed by FUCC to support field operations for the FVR Project.[147]

Central to the resolution of the question raised by petitioner is Exhibit "19",[148] an NHA 'Internal Routing Slip' dated 17 November 1997 transmitted by the Manager of the Southern Luzon and Bicol (SLB) Region to the Chairman of NHA's PBAC, which reads as follows:

"INTERNAL ROUTING SLIP

SUBJECT: MINIMUM REQUIRED OWNED EQUIPMENT AND KEY STAFF RE: LAND DEVELOPMENT OF FREEDOM VALLEY RESETTLEMENT PROJECT (PHASE 1), SITIO BOSO-BOSO, BGY.SAN JOSE, ANTIPOLO, RIZAL

FOR/TO	:	FROM	:	DATE	:	SIGNATURE
The Chairman PBAC	:	The Manager SLB	:	17 November 1997	:	NEOFITO A. HERNANDEZ

Submitted herewith is a listing of the minimum required owned equipment and key staff for the Land Development of Freedom Valley Resettlement Project (Phase I) located at Sitio Boso-Boso, Bgy. San Jose, Antipolo, Rizal.

A. EQUIPMENT	NO. OF EQUIPMENTS
1. Tractors,crawler-type with dozer	6
2. Loaders, crawler-type	3
3. Grader, motorized	6
4. Road Roller, vibratory, smooth drum	6
5. Plate Compactor, vibratory	3
6. Backhoe, hydraulic, crawler-mounted	6
7. Slipform Concrete Paver	1
8. Wet-mix Concrete Batching Plant	1
9. Concrete Vibrator	6
10. Dump Trucks	8

[147] *Rollo*, Vol. I. See p. 15 of CA Decision, p. 99.

[148] Annex "W-18" of Petition, *id.* at 940-941.

11. Air compressor, portable	1
12. Pneumatic Breakers, hand held	2
13. Water Pump	3
14. Generator Sets, 500 KVA, total	1
15. Welding Machines	2
16. Water Trucks	3
17. Chain Saw	2
18. Concrete Cutter	1
19. Concrete Mixer, one bagger	1
20. Service Vehicles	4
21. Cranes	4
22. Transit Mixers	4
23. Total Stations	1
TOTAL	75

B. KEY STAFF	NO. OF MANPOWER
1. Project Manager	1
2. Project Engineers	3
3. Field Engineers	10
4. Sanitary Engineer	1
5. Electrical Engineer	1
6. Mechanical Engineer	1
7. Geodetic Engineer	1
8. Architects	2
9. Draftsmen	2
10. Foremen	6
11. Administrative Officer	1
12. Finance Officer	1
13. Liaison Officer	1
14. Purchasing Officer	1
15. Warehouseman	1
16. Clerk Typist	1
17. Drivers	4
18. Heavy Equipment Operators	25
19. Utilitymen	2
20. Heavy Equipment Mechanics	4
21. Instrument Men	3
22. Survey Aides	9
TOTAL	81”

According to the Court of Appeals, this Internal Memo shows that NHA itself "determined the minimum equipment and key staff to be mobilized for the project," and since "the project was pre-terminated, respondent is justified in seeking recovery of a portion of the costs already incurred." Thus:

> x x x. Petitioner's own Exh.'19' shows that it determined the minimum equipment and key staff to be mobilized for the project x x x. It is implicit in these requirements that the infrastructure to house such equipment and personnel (including NHA personnel) and facilitate their mobilization within the project site were also expected to be provided by respondent. Hence, when respondent invested into such infrastructure, it did so with the expectation to recover such costs at the end of the project. As the project was pre-terminated, respondent is justified in seeking recovery of a portion of the costs already incurred.[149]

The appellate court thus affirmed the award made by the CIAC to FUCC in the amount of ₱4,545,182.82 representing the pro-rated cost of the facilities constructed by FUCC to support its field operations for the FVR Project *(i.e.*; the second component under the award for Cost of Materials, Equipment and Facilities, and for Disengagement Costs). The appellate court also affirmed the award in the amount of ₱132,470.00 representing cost of materials delivered by FUCC to the project site but were not utilized due to the termination of the Contract (*i.e.*; the first component under the award for Cost of Materials, Equipment and Facilities, and for Disengagement Costs), upon the finding that NHA was solely to be blamed for the lack of inventory of the unutilized materials.[150]

Petitioner disputes the holding of the Court of Appeals and maintains in the instant petition that it is not legally liable to pay FUCC for Cost of Materials, Equipment and Facilities, and for Disengagement Costs because NHA could not have dictated upon FUCC what equipment and key staff to mobilize in the FVR Project, as it was FUCC, logically being the contractor,

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[149] See p. 16 of CA Decision dated 1 August 2006, *id.* at 100.

[150] *Id.* at 99.

which determined the kind and number of equipment that should be deployed for the Project.[151] According to petitioner, Exhibit "19" was transmitted by the Manager of the SLB Region to the PBAC Chairman in preparation for the public bidding of the FVR Project. The SLB Manager listed "the minimum required equipment and key staff that a participating contractor should own (as contradistinguished from 'mobilize')" to insure that no "fly-by-night" or puny contractor would participate in the bidding, as "(t)he capability of the contractor to build the Project is known by the equipment he owns."[152]

In short, it is petitioner's submission that Exhibit "19" was not meant to dictate – and could not have dictated – the kind and number of equipment and key staff that FUCC should mobilize and/or actually mobilized for the FVR Project. It was issued by the Manager of the SLB Region to the PBAC Chairman merely to serve as a checklist on the minimum required number of equipment and key staff that a would-be contractor for the Project should own. Petitioner claims that there is a "whale of difference" between "owning" and "mobilizing," and that this difference "completely escaped" the Court of Appeals when it scrutinized Exhibit "19".[153] Since NHA had allegedly nothing to do with the deployment of FUCC's equipment and machineries for the FVR Project, it should not be made accountable for the dire consequences, if any, of FUCC's business decision or judgment in procuring, maintaining, constructing or dismantling these equipment and facilities, *etc*.[154]

Petitioner's arguments fail to persuade. The Court subscribes to the view expressed by private respondent that in a government infrastructure project, the department or agency that owns the project dictates not only what facilities, equipment and key technical staff the contractor should mobilize, it dictates as well the financial resources the contractor should muster for the

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[151] See p. 40 of Petition, *id.* at 55.

[152] See p. 39 of Petition, *id.* at 54.

[153] *Id.* at 54-55.

[154] See p. 41 of Petition, *id.* at 56.

project, the bonds, guarantees and sureties it should put up, the plans, specifications, schedule, and the manner by which it should prosecute the contract works, how it should bill for completed works, how it should document and claim variation orders, *etc*.[155]

Indeed, this appears to be so in the case of the FVR Project. The very Contract entered into by the parties (which appears to be a standard form contract with the blank spaces appropriately filled up) specifies the duration of the contract works and the bonds, guarantees and sureties to be put up by FUCC,[156] and expressly states that, among other documents, the following shall form part of the Contract, to wit: plans, specifications, certificate of availability of funds, concurrence of lending institutions, duly approved program of work and cost estimates, PERT/CPM or equivalent schedule of work, *etc*.,[157] all of which demonstrate that NHA, as the owner of the FVR Project, had full control over its implementation. This would certainly have included dictating or imposing, as it were, the minimum equipment and key staff that had to be mobilized by FUCC to undertake the contract works. Otherwise, NHA would have been remiss in its duty to ensure that the Project would be implemented properly and the people's money spent wisely. Indeed, there are rules and guidelines for the implementation of government contracts[158] that procuring entities must follow to promote transparency and ensure that all contracts are performed strictly according to specifications.[159]

Be that as it may, even if Exhibit "19" was indeed issued merely to serve as a checklist on the minimum required number

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[155] See pp. 43 to 44 of Comment, *id*. at 1237-1238.

[156] Refer to Articles VII, VIII and IX of the Contract, *id*. at 154-155.

[157] Refer to Article XI of the Contract, *id*. at 155.

[158] See Section 42 of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act," and the Implementing Rules and Regulations promulgated pursuant to Section 75 of said Republic Act No. 9184.

[159] See Section 3 (a) and (e) of the Implementing Rules and Regulations of RA 9184.

of equipment and key staff that a would-be contractor for the FVR Project should own, the document indubitably establishes that FUCC – which was awarded the Contract for the Project – could not have but assembled and mobilized a huge complement of men, materials and equipment to be able to undertake the FVR Project consisting, at the very least, of the equipment and key staff listed in said Exhibit "19," which were the "minimum required" by NHA. Whether FUCC owned the equipment or merely rented them does not alter the fact that it had to provide the infrastructure to house such equipment and key personnel within the project site to support its field operations. FUCC undoubtedly poured in money to put up such infrastructure, with the expectation that it would be able to recover the costs thereof at the end of the Project. Thus, when the FVR Project was terminated due to no fault of FUCC, respondent was eminently "justified in seeking recovery of a portion of the costs already incurred"[160] for such infrastructure, as correctly held by the Court of Appeals.

The Court notes that in ruling as it did, the Court of Appeals merely affirmed the finding of the CIAC that "(w)hen the whole amount of the contract for facilities is not paid due to the termination of said contract which is caused not at contractor's fault, the Contractor should be paid the pro-rated balance having prepared the facilities for the whole project."[161] The Court further notes that the amount of this award for the pro-rated cost of the facilities constructed by FUCC to support its field operations for the FVR Project – ₱4,545,182.82; as well as the amount of the award for the cost of the unutilized materials delivered by FUCC to the project site – ₱132,470.00, were not plucked out of thin of air. They were meticulously derived by the CIAC based on the evidence submitted to the Arbitral Tribunal, as is readily apparent from the following pertinent portion of the CIAC Decision:

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[160] See p. 16 of CA Decision dated 1 August 2006, Annex "A" of Petition, *rollo*, Vol. I, p. 100.

[161] *Rollo*. See p. 21 of CIAC Decision dated 7 January 2004, p. 965.

The work item in the contract for facilities had the corresponding amount. When the whole amount of the contract for facilities is not paid due to the termination of said contract which is caused **not at contractor's fault,** the Contractor should be paid the pro-rated balance having prepared the facilities for the whole project. These are consequences made in good faith and for usage in the project.

The construction facilities to support field operations are mandatory and necessary in the implementation of the project where the contract usually provides in a form of mobilization at the project start, and those needed during the full operation stage, *e.g.* laboratory, etc., and demobilization at the close of the project.

In the claim of FUCC, it included the Land Development of Heavy Equipment Yard, Office and Model Houses, Container Vans, Warehouse, Barracks, Shops, Working Areas, Water Supply and Electrical Works. This involves the total amount of ₱12,297,722.46.

The FUCC is asking the pro-rated amount of this ₱12,297,722.46 computed as follows:

Balance of Works, divided by the cost of the whole works, multiplied by the cost of facilities, thus;

$$\frac{₱568,595,780.00 \text{ less } ₱358,445,341.30}{₱568,595,780.00} \times ₱12,296,722.46$$

This will result to ₱4,545,182.82 which the Arbitral Tribunal supports as the valid claim of FUCC for component b) of its claim, or for facilities.

For the two components a) and b) for materials and facilities, NHA should pay FUCC the total of ₱132,498.00 plus ₱4,545,182.82 or the total of ₱4,677,680.00 and not ₱4,801,992.82 as previously claimed by FUCC.[162]

It must be pointed out that nowhere in the instant petition does petitioner contest the foregoing formula and the figures used by the CIAC or the amounts of the awards derived therefrom. Petitioner merely proffers the argument that NHA had nothing to do with the deployment of equipment and machineries and, hence, should not be made accountable for

[162] *Id.*

the consequences of FUCC's business judgment or decisions as regards their procurement, mobilization or maintenance. But both the CIAC and the Court of Appeals have spoken. And the CIAC's factual finding that FUCC ought to be paid the total amount of ₱4,677,680.00 for the Cost of Materials, Equipment and Facilities remains uncontested. This factual finding, which was affirmed by the Court of Appeals, must be accorded respect and finality by this Court, consistent with the settled rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.[163]

IV. Re: Award for Idle Equipment

Petitioner asseverates that the award for Idle Equipment in the amount of ₱131,948,674.56 "is not legally owing" to FUCC and will "unjustly enrich FUCC at the expense of petitioner NHA" because no "perdition [was] suffered by respondent FUCC from idle equipment," as there was allegedly "no actual or physical suspension of the contract works that occurred."[164]

Verily, the determination of whether or not FUCC is entitled to an award for Idle Equipment hinges on a factual issue: whether or not there was actual or physical suspension of the contract works at the FVR Project.

The CIAC Arbitral Tribunal found that there was such actual or physical suspension of the contract works – a finding not disturbed by the Court of Appeals. This Court could very well just simply say that there is no cause to review, must less overturn this finding of fact, invoking the established rule that in petitions for review on *certiorari*, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.[165]

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[163] *Public Estates Authority v. Elpidio Uy*, *Supra* note 146.

[164] *Rollo*. See p. 41 of Petition, p. 56.

[165] *Calang v. People*, G.R. 190696, 3 August 2010, 626 SCRA 679, 682-683.

But considering that the award for Idle Equipment involves a substantial sum – ₱131,948,674.56 – and if only to ascertain that the factual findings of the CIAC are indeed not devoid of support by the evidence on record, the Court shall examine at length the nature of this award and the bases of the findings of the CIAC Arbitral Tribunal and the judgment of the Court of Appeals.

First, it must be emphasized that FUCC's claim for Idle Equipment is limited to the period from 10 June 1998, when NHA issued *Partial Suspension Order No. 1*, up to 15 March 1999, the original expiration date of the Contract. This time frame is clearly defined in FUCC's Complaint.[166] The same time frame is also acknowledged by the CIAC as the period circumscribed by FUCC's claim for Idle Equipment.[167]

To support its claim for Idle Equipment, FUCC attached to its Complaint a Summary (marked and offered in evidence as

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[166] *Rollo*, pp. 498-499 and 501. See Paragraph 4.35 of Complaint, which contains the following allegation: "As heretofore shown, the FVR Project was subjected to work suspensions and suffered various delays all traceable to the faults and/or acts or omissions of the NHA, to the gross negligence, plain incompetence or simple lack of concern of its officials, and to the abject refusal of its technical team to cooperate with FUCC on the field. Because of these work suspensions and delays, a large part of FUCC's huge assembly of plant, equipment, tools, materials and manpower were rendered idle and unproductive since 10 June 1998. FUCC incurred a huge cost for its idle equipment which, as of 15 March 1999 – the original expiry date of the contract – amounted to ₱142,780,800.00 x x x."

See also Paragraph 4.40 that alleges as follows: "In the meantime, the original contract period for the FVR Project expired on 15 March 1999. On 12 April 1999, FUCC wrote the NHA a letter and appended thereto a summary of the cost of its idle equipment from 10 June 1998, when Partial Suspension Order No. 1 was issued, suspending all works at Cluster 2, up to 15 March 1999, the expiry date of the original contract period. The total cost of idle equipment as of 15 March 1999 amounted to ₱142,780,800.00. x x x."

[167] Records. See p. 28 of CIAC Decision dated 7 January 2004, Folder no. 2, Expanding Envelope no. 3, where the following appears: "The claims of FUCC for payment of idle equipment pertains to the equipments rendered idle due to the Partial Suspension Order No. 1, effective 10 June 1998 and until the original contract time expiration on 15 March 1999. x x x The total claim by FUCC for payment of Idle Equipment was ₱142,780,800.00."

Exhibit "QQQQQ") showing the equipment that were rendered idle and unproductive during the period 10 June 1998 to 15 March 1999, the duration of their idleness, their rates per hour, and the cost of idleness per kind of equipment. The cost of idle equipment added up to a total of ₱142,780,800.00.[168]

In its Answer, NHA sought to defeat FUCC's claim by interposing the defense that there is no basis for the award of Idle Equipment because there was no actual or physical suspension of the contract works as shown allegedly by the Abstracts of Physical Accomplishment for Progress Billings Nos. 1, 2, 3, 4 and 5 of FUCC.[169]

During the presentation of evidence, FUCC's sole witness, Engr. Ben S. Dumaliang testified that *Partial Suspension Order No. 1* was never lifted because NHA was not able to fully address the farmers'/planters' demands and/or contain their resistance; and that although *Partial Suspension Order No. 1* mentions only the suspension of works at Cluster 2, it effectively stopped all contract works in both Clusters 1 and 2, allowing FUCC to prosecute the FVR Project only in Cluster 3. According to Engr. Dumaliang, he "saw with [his] own two eyes in [his] thrice a week visits to the project site that there was practically no contract works going on in Clusters 1 and 2." [170] Thus:

"Q : The parties have stipulated that all works at Cluster 2 were suspended effective 10 June 1998 due to the continued resistance of farmers/planters and other residents within the area to the FVR Project, under Partial Suspension Order No. 1. When was this suspension lifted?

A : It was never lifted because the NHA was never able to fully address the demands and/or contain the resistance of the farmers/planters and other residents within the area.

Q : What contract works were affected by this suspension?

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[168] *Rollo*. See Paragraph 4.35 of Complaint, pp. 498-499.

[169] See Paragraph 96 of Answer, *id.* at 550.

[170] *Id.* at 696.

A : Although Partial Suspension Order No. 1 only mentions the suspension of works at Cluster 2, it effectively stopped all contract works in both Clusters 1 and 2, allowing FUCC to prosecute the FVR Project only in Cluster 3.

Q : According to the NHA, even with the issuance of Partial Suspension Order No. 1, there was no actual or physical suspension of the contract works, particularly in Clusters 2 and 3. What can you say about this?

A : That is not true. There was actual suspension of contract works in Clusters 1 and 2. I know this of my own personal knowledge being the Project Director of FUCC for the FVR Project. As I said earlier, FUCC was able to prosecute the project only in Cluster 3. I saw with my own two eyes in my thrice a week visits to the project site that there was no [sic] practically no contract works going on in Clusters 1 and 2.

Q : But FUCC collected from and was paid the amount of ₱52.2 M for works done during the period supposedly covered by Partial Suspension Order No. 1. According to the NHA, this shows that there was no actual or physical suspension of the works. What can you say about this claim?

A : This ₱52.2 M was payment made by NHA to FUCC under Progress Billing No. 1 for works actually accomplished during the period 16 March up to 30 June 1998. Partial Suspension Order No. 1 became effective only on 10 June 1998. By that time, FUCC had been working for almost three (3) months and had accomplished a lot. Hence, the fact that it was paid ₱52.2M under Progress Billing No. 1 does not prove that there was no actual or physical suspension of the contract works because of Partial Suspension Order No. 1."[171]

NHA's sole witness, Engr. Mariano E. Raner III, on the other hand, testified that *Partial Suspension Order No. 1* was lifted on 13 June 1999.[172] Engr. Raner reiterated NHA's

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[171] See p. 4 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, *id.* at 696.

[172] See paragraph 16, p. 3 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, *id.* at 808.

stance that there was no actual or physical suspension of the contract works as shown by the Abstracts of Physical Accomplishment submitted by FUCC in support of its Progress Billings Nos. 1, 2, 3 and 4.[173]

The CIAC Arbitral Tribunal found for FUCC and in the Decision dated 7 January 2004 rendered an award for Idle Equipment in the amount of ₱131,948,674.56.

The CIAC Arbitral Tribunal debunked NHA's proposition that the Abstracts of Physical Accomplishments and the payments made to FUCC under the Progress Billings show that there was no actual or physical suspension of the contract works by pointing out: (1) that the work accomplishments under Progress Billing No. 1 were done during the first three (3) months of the Contract (*i.e.* from 16 March 1998 up to June 1998) or before the issuance of *Partial Suspension Order No. 1* on 10 June 1998; (2) that the work items covered by Progress Billing No. 2 were mostly for slope protection, which were also partially done before the issuance of *Partial Suspension Order No. 1;* and (3) that the accomplishments under Progress Billing No. 3 also consisted of slope protection and other items of work that did not involve the use of the equipment that went idle. The CIAC Arbitral Tribunal also gave credence to the testimony of Engr. Dumaliang that he saw with his own eyes that there was no equipment activity for the period 10 June 1998 to 15 March 1999.[174] The pertinent portions of the CIAC Decision dated 7 January 2004 are reproduced hereunder as follows:

> NHA on the other hand contested the claim for payment of Idle Equipment with the principal reason that there was no actual or physical suspension of the contract works during the Partial Suspension Order No.1, which was proven by the payments of Progress Billings Nos. 1, 2, 3, 4, and 5, showing the items of works done in the Abstract of Accomplishment, supporting the said Billings. x x x

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[173] See paragraph 59, p. 12 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, *id.* at 817.

[174] Records. See pp. 29 to 30 of CIAC Decision dated 7 January 2004, Expanding Envelope no. 3, Folder no. 2.

In the Affidavit of the NHA's lone witness, Mr. Raner III, it stated that the alleged 25 February 1999 meeting was "a blatant lie," because there was never a meeting on such date, more so that there was no agreement to pay the Idle Equipment claims. This allegations of the lone witness for NHA had been addressed and countered in the various letters that were never denied by the various officials of NHA who received the letters without any question, x x x except by the lone witness who only call it a blatant lie during the pendency of this case.

Upon perusal of the records in this case, it showed that in Admitted Fact No. 21, the period[s] for each billings [sic], are as follows;

> Billing No. 1 – 16 March 1998 to 30 June 1998
> Billing No. 2 – 01 July 1998 to 31 December 1998
> Billing No. 3 – 01 January 1999 to 15 October 1999
> Billing No. 4 – 16 October 1999 to 31 January 2001
> Billing No. 5 – 31 January 2001 to 31 June 2001

Gleaned from this data, only Billings [sic] Nos. 1, 2, and 3 are affected in the claims for payment of Idle Equipment. However, in Billing No. 1, the period from 16 March 1998 to June 1998 is not affected in the claim for payment of Idle Equipments. Likewise, in Billing No. 3, the period from 15 March 1999 (original contract expiry date) to 15 October 1999 is also not affected in the claim for payment of Idle Equipment. This is because the claims for payment of Idle Equipment is from 10 June 1998 to 15 March 1999.

It was alleged by NHA's lone witness, that there were works in Billings [sic] Nos. 1 to 5 described in the Abstract of Accomplishments attached therein, showing activities during the Partial Suspension period of 10 June 1998 to 15 March 1999.

This allegation of NHA was countered by the lone witness of FUCC that the Billing No. 1 were [sic] accomplishments for the first three years of the contract, done long before the issuance of Partial Suspension order No. 1. And that Billing No. 2 were [sic] composed of work items for slope protections, also partially done before the issuance of Partial Suspension No. 1. For Billing No. 3, the accomplishments, as records will bear, are mostly slope protections and other work items not involving the use of equipments.

Further, the lone witness for the FUCC testified categorically that he had visited the project thrice a week for the whole contract

duration, and saw from [sic] his own eyes that there was no equipment activity for the period 10 June 1998 to 15 March 1999.

The above facts had been addressed in sufficient details regarding the issue as to whether there was actual or physical suspension of works for the period covered by the Partial Work Suspension Order No. 1. To discuss activities within the other Suspension Orders is immaterial to the issue.[175]

After ruling that there was actual or physical suspension of contract works in the FVR Project that left idle the large complement of hardware, machinery, tools and equipment mobilized by FUCC, the CIAC Arbitral Tribunal then proceeded to derive the value of the award for Idle Equipment in this wise:

It is noted that the period from 10 June 1998 when Suspension Order No. 1 was in effect, to 15 March 1999 when the original contract expired, is 278 days that FUCC claimed for payment of the Idle Equipment.

In the claim of payment for Idle Equipment for the 278 day period, FUCC listed 12-Bulldozers, 6-Backhoes, 2-Payloaders, 3-Graders, 3-Roadrollers, 4-Dump Trucks, 1-Water Truck, 1-Conc. Batching Plant, and 3-Transit Mixers, all working at the average of 2.224 hours per day for 278 days. The respective modified ACEL rates in Exhibit "TTTTT" was [sic] applied for the corresponding equipment, such that the total claims amounted to ₱142,780,800.00 (Exhibit "QQQQQ").[176]

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Perusal of the records in this case showed that the listed equipment and number of units in the claim for payment of Idle Equipment, are far below the "Minimum Required Owned Equipment x x x", as listed during the bidding, except that of the Bulldozers. Instead of only six (6) bulldozers required, the claim for payment of Idle Equipment had twelve (12) bulldozers (see Exhibit "19").

The Arbitral Tribunal concluded that the claim for payment of Idle Equipment by FUCC is meritorious, except the 12 bulldozers which

[175] *Id.* at 30.

[176] See p. 28 of CIAC Decision, dated 7 January 2004, Expanding Envelope No. 3, Folder no. 2, *id.*

should be reduced to 6 bulldozers in the computations of the payment. This is because the increase of bulldozers from 6 to 12 is a business discretion of FUCC, decided at the start of the project, which does not bind the Owner, especially that it resulted to non-use for almost one year.

The corresponding amount for the excess six bulldozers to be deducted is equal to 6 bulldozers multiplied by 298 days and by the rental rate of ₱2,920.00 per hour, further multiplied by 2.224 hours per day will result to ₱10,832,125.44. This should be deducted from the claimed total of ₱142,780,800.00 and will result to **₱131,948,674.56**.[177]

It cannot be gainsaid that the CIAC Arbitral Tribunal sifted through the evidence presented by both parties before making the finding of fact that there was actual or physical suspension of the contract works that rendered the huge complement of FUCC's machineries and equipment idle and unproductive during the period 10 June 1998 up to 15 March 1999. Further, the CIAC Arbitral Tribunal painstakingly scrutinized the documents submitted by FUCC to support its claim for Idle Equipment before arriving at the amount of ₱131,948,674.56 as its award for Idle Equipment, which is less than FUCC's claim of ₱142,780,800.00. Clearly, the factual findings of the CIAC are based on substantial evidence on record, which are referred to in the CIAC Decision.

For example, the CIAC refers to the testimony of FUCC's sole witness, Engr. Dumaliang, to support its finding that the physical accomplishments subject of Progress Billing No. 1 were actually done during the first 3 months of the works contract (from March to June 1998), or before the issuance of Partial Suspension Order No. 1 on 10 June 1998,[178] which testimony is unrebutted.

Reference is also made to the following testimony of Engr. Dumaliang, which is similarly unrebutted, pertaining to the physical accomplishments under Progress Billing Nos. 2 and 3, which

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[177] *Rollo*. See p. 30 of CIAC Decision dated 7 January 2004, p. 972.

[178] See p. 4 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, *id.* at 696.

belies the stance of NHA that there was no actual or physical suspension of the contract works, to wit:

"Q: Again, the NHA claims that even with the issuance of Suspension Order No. 1 due to the CDO issued by the DENR, no actual or physical suspension of works was implemented. In fact, according to the NHA, FUCC collected and was paid ₱16.1 M under Progress Billing No. 2 for the period 01 July to 31 December 1998 and ₱57 M under Progress Billing No. 3 for the period 01 January to 15 October 1999, or during the supposed period of the suspension order. What is your reaction to this?

A : For a period of almost one year, or from 31 July 1998 up to 15 June 1999, all of the contract works were actually and physically suspended because of Suspension Order No. 1. However, FUCC was allowed to do mitigating slope protection and drainage works in Cluster 3. The amount of ₱16.1 M paid to FUCC under Progress Billing No. 2 was payment for: (1) works accomplished before the suspension which were not paid under Progress Billing No. 1; and (2) for slope protection and drainage works which were allowed by the CDO issued by the DENR. Upon the other hand, the amount of ₱57 M paid to FUCC under Progress Billing No. 3 was payment for: (1) slope excavation and drainage works done before the suspension but which were not paid because the covering variation order (Variation Order No.1) had not yet been issued then; and (2) for slope protection works, consisting of gabions and riprap, which were necessary to prevent further damage to the project while the suspension was in effect. Verily, these payments do not prove that there was no actual or physical suspension of the contract works because of Suspension Order No. 1." [179]

It thus comes as no surprise that the Court of Appeals affirmed the award of the CIAC for Idle Equipment in its Decision dated 1 August 2006,[180] where the appellate court additionally pointed out that petitioner had in fact acknowledged its liability to FUCC for standby cost. Thus:

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[179] See p. 6 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, *id.* at 698.

[180] *Id.* at 85-109.

Petitioner further disclaims liability for the amount of ₱131,948,674.56 awarded to respondent as payment for idle equipment. It argues that there is nothing in the contract or in PD 1594 and its implementing rules which allows such award.

We are inclined, however, to agree with respondent that petitioner had acknowledged its liability for standby cost. Its officer-in-charge Engr. Raner wrote in his 8 June 1999 Memorandum regarding the fact-finding being conducted by the Office of Ombudsman, thus:

> There is another compelling reason for the expeditious resumption of the works. The contractor is claiming compensation for the large fleet of equipment, plant and facilities rendered idle and unproductive due to suspension. The contractor has billed us some ₱142 M for the period June 1998 to March 1999.
>
> This claim is of course subject to evaluation of its merits, but under the General Conditions of the contract, the contractor may be entitled to such compensation.' x x x

Engr. Raner affirmed the foregoing statement when he testified on 9 December 2003.[181] x x x

The Court notes that Engr. Raner did affirm the recommendation contained in his Compliance Report to the Ombudsman[182] when he testified on cross-examination during the hearing before the CIAC Arbitral Tribunal held on 9 December 2003. Thus:

"ATTY. ALMADRO:

You recall, Mr. Witness, that the Ombudsman fact-finding report focused on the fact that there was a delay in the project and that the Ombudsman wanted it immediately [resumed] because the FVR Project was a funded project of the government and the Ombudsman felt that every day of delay was causing so much cost to the government and reflecting a poor administration of a …project and in your report, one of your recommendations was, in fact, to make sure that works would actually resume immediately, is that correct?

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[181] See pp. 16 to 17 of CA Decision dated 1 August 2006, *id.* at 100-101.

[182] See Exhibit "HHHHHH", Annex "9" of Comment, *id*. at 1304-1308.

ENGR. RANER III:

Yes.

ATTY. ALMADRO:

In fact, in Item 1 again of this report, there is a paragraph here and I would like to quote for the record, "there is another compelling reason for the expeditious resumption of the works. The contractor is claiming compensation for the large fleet of equipment, plant and facilities rendered idle unproductive due to suspension. The contractor has billed us ₱142 M for the period June 1998 to March 1999. This claim is of course subject to evaluation of its merits, but under the general conditions of the contract, the contractor may be entitled to such compensation." So you were well aware that there was a claim amounting to ₱142 Million as of June 1999 in connection with the idle equipment of the contractor?

ENGR. RANER III:

The claim that was expressed, we were informed at that time verbally.

ATTY. ALMADRO:

So you became aware at that time that is why it is your sentiments …

ENGR. RANER III:

Yes.

ATTY. ALMADRO:

And you stated here that the contractor may be entitled to such compensation, at that time you felt there was a basis for this claim.

ENGR. RANER III:

Yes. At that time, I felt there was a need to address the claim but as far as my level of position in the project is concerned, my authority is but to recommend. If there will be recommendations that I'll be submitting, of course, that will be subject to evaluation by management."[183]

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[183] See pp. 11 to 12 of TSN of the hearing held on 9 December 2003 attached as Annex "10" of Comment, *id.* at 1319-1320.

Citing the case of ***Public Estates Authority vs. Elpidio Uy, et al.,***[184] where this Court affirmed the disputed arbitral award of CIAC (a portion of which was for payment of the standby or idle time of equipment), the Court of Appeals sustained the award for Idle Equipment and held that payment for standby time due to prolonged work suspension is legally tenable.

This Court cannot but agree with the holding of the Court of Appeals. More so because the CIAC – which carefully considered the conflicting claims of the parties and painstakingly scrutinized both the oral and documentary evidence of record – possesses the required expertise in the field of construction arbitration, as we had pointed out in the cited case of ***Elpidio Uy***. In that case, as in this case, we find no ground to disturb the arbitral award of the CIAC. Settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.[185] Whatever questions there may be regarding the legality of an award for "standby time" or Idle Equipment is put to rest by the case of ***Elpidio Uy***.

In the instant petition, NHA reiterates and insists that FUCC does not deserve an award for Idle Equipment because FUCC was "actually and continuously performing contract works" on the FVR Project from 16 March 1999 to 21 November 2001; that its equipment "never went idle"; and that it was paid for its contract works during this period.[186]

As heretofore shown, this stance of NHA was found to be untenable by the CIAC Arbitral Tribunal whose factual findings were affirmed by the Court of Appeals. Further, the argument that FUCC continuously performed contract works on the FVR Project from 16 March 1998 to 21 November 2001 so that its

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[184] *Supra* note 146.

[185] *Id*.

[186] *Rollo*. Annexes "K", "K-1", "K-2", "K-3" and "K-4" thereof, pp. 56-58; 180; 197; 213; and 244.

equipment never went idle is flawed because FUCC's claim for Idle Equipment is circumscribed within the period from 10 June 1998 to 15 March 1999 only. Quite obviously, works performed before 16 March 1998 and after 15 March 1999 are of no moment and are totally irrelevant to FUCC's claim for Idle Equipment.

Petitioner dwells at length on the Batching Plant of FUCC to show that FUCC's machineries and equipment never went idle.[187] But this is woefully misplaced because, and this bears repeating: FUCC's claim for Idle Equipment is only for the period 10 June 1998, when the contract works were first suspended by *Partial Suspension Order No. 1*, up to 15 March 1999, the original expiry date of the Contract, and not from 16 March 1998 to 21 November 2001, as petitioner adamantly insists in the present petition. Therefore, and as correctly pointed out by respondent, even if FUCC had in fact used its machinery and equipment after 15 March 1999 for other endeavors, it would not in any way affect the validity of FUCC's claim for Idle Equipment.

V. Re: Whether or Not Claims for Cost of Materials, Equipment and Facilities, Disengagement Costs and Idle Equipment are Arbitrable by the CIAC

The CIAC granted an award to FUCC for Disengagement Costs in the total amount of ₱65,842,309.72. This award has 3 components, to wit:

(1) Foregone Equipment Rental	₱34,216,692.90
(2) Extended Overhead Costs	10,541,872.27
(3) Foregone Income	21,083,744.55
TOTAL	₱65,842,309.72[188]

Foregone Equipment Rental was derived by the CIAC by multiplying the equipment hours and rate of rental per hour,

[187] See pp. 43 to 51 of Petition, *id.* at 58-66.

[188] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.

and further multiplying by the number of equipment for each respective type of equipment mobilized by FUCC for FVR Project, as presented in Exhibit "NNNNN".[189] The equipment hours is an estimate of the number of hours each of the equipment would still be used to construct the remaining works of the Project had the Contract not been terminated. Thus, the reckoning point of Foregone Equipment Rental is the date of termination of the Contract, or as of 17 October 2001. For had the Contract not been terminated, FUCC would have used the equipment listed in Exhibit "NNNNN" to complete the Project and would have been paid therefor. Gone therefore was that payment which should have been income for FUCC.

As explained by respondent, Foregone Equipment Rental is different from the award for Idle Equipment, which pertains to the recovery of the huge loss incurred by FUCC when a large part of its complement of machinery and equipment were rendered idle during the period from 10 June 1998, when the contract works were first suspended, up to 15 March 1999, the original expiry date of the contract. The two items of award – Idle Equipment and Foregone Equipment Rental – are not only of different natures, their reckoning periods are not the same. Hence, they cannot overlap.[190]

FUCC sought to be paid ₱47,400,000.00 for Foregone Equipment Rental, but after assessment and appraisal, the CIAC Arbitral Tribunal awarded only the amount of ₱34,216,692.90 for this claim.[191]

With regard to Extended Overhead Costs, the CIAC awarded to FUCC the amount of ₱10,541,872.27, which it derived by multiplying the value of the remaining contract works for the FVR Project (which the CIAC determined to be ₱210,837,445.49) by 5%, the standard rate of overhead used in the industry. Thus: ₱210,837,445.49 x .05 = ₱10,541,872.27.[192]

[189] See p. 26 of CIAC Decision dated 7 January 2004, *id.* at 970.

[190] See pp. 66 to 67 of Comment, *id.* at 1260-1261.

[191] See p. 26 of CIAC Decision dated 7 January 2004, *id.* at 970.

[192] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.

Extended Overhead Costs cover costs and expenses for manpower, utilities, and other similar services or resources that were already committed, delivered, paid for or expended for the totality of the FVR Project, but which can no longer be recovered because of the termination of the Contract.[193] It is different from the Cost of Facilities and Equipment, which pertains to the prorated cost of the facilities FUCC constructed to support the field operations for the entire FVR Project (*i.e.*; the heavy equipment yard, office and model houses, container vans/ warehouses, shops, kitchen and other working areas, *etc*.) that it also expected to recover at the end of the project, but which similarly can no longer be recovered because of the termination of the Contract.[194]

For the award of Foregone Income, the CIAC multiplied the value of the remaining contract works (₱210,837,445.49) by 10%, instead of using the usual rate of profit in the industry, which is 12% for contracts not exceeding ₱100,000,000.00. The CIAC justified the applied 10% rate of profit since it is also an industry practice that a lesser percentage of profit is allowed for bigger projects. Under the circumstances this is fair enough. Thus: ₱210,837,445.49 x .10 = ₱21,083,744.55.[195] Foregone Income represents the profit that FUCC would still have earned had the FVR Project been completed – now gone.[196]

In the Decision dated 1 August 2006, the Court of Appeals affirmed the CIAC's award for Foregone Income, but remanded to the CIAC for re-computation the awards for Foregone Equipment Rental and Extended Overhead Costs.[197] It remanded the award for Foregone Equipment Rental because "it is not shown how CIAC or respondent arrived at the correct number of hours each type of equipment is still subject to rent." Also,

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[193] See p. 65 to 66 of Comment, *id.* at 1259-1260.

[194] *Id*.

[195] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.

[196] See p. 66 of Comment, *id.* at 1260.

[197] See dispositive portion of CA Decision dated 1 August 2006, *id.* at 107-108.

the appellate court wanted to make sure that the period subject to Foregone Equipment Rental "already excluded the period subject to standby cost"[198] or, in short, that the award for Idle Equipment and the award for Foregone Equipment Rental did not overlap.

In the Compliance dated 17 August 2006,[199] the CIAC emphasized that NHA never disputed FUCC's claim for Foregone Equipment Rental[200] and disclosed that "(i)n preparation of the CIAC's decision, the members of the arbitral tribunal lengthily deliberated the disengagement issue, more importantly in the correct number of hours each type of equipment which [sic] is still subject to rental, and the possibility of overlapping the dates of the rental claimed for idle period with the claim for the period in the foregone equipment rental."[201] According to the CIAC, "it was well noted at the outset, that the claim for rental of idle equipment for the period **10 June 1998 to 15 March 1999** x x x could never overlap with the claim for foregone rental of equipment in the claim for disengagement costs, which period will be reckoned starting from the date of contract termination x x x **until the project should have been completed**, if not terminated."[202] The CIAC then proceeded to show exactly how it computed and arrived at **₱34,216,692.90** as the correct amount of the award for Foregone Equipment Rental.

As regards the award for Extended Overhead Costs, the Court of Appeals ordered a remand for itemization and re-computation to "guard against a possible double claim," referring to cost of facilities and equipment which, according to the appellate court, "does not seem to be any different from respondent's claim for extended overhead costs."[203]

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[198] See p. 19 of CA Decision dated 1 August 2006, *id.* at 103.

[199] *Id.* at 1034.

[200] See p. 5 of Compliance dated 17 August 2006, *id.* at 1038.

[201] See p. 3 of Compliance dated 17 August 2006, *id.* at 1036.

[202] *Id.*

[203] See p. 20 of CA Decision dated 1 August 2006, *id.* at 104.

In the Compliance dated 17 August 2006,[204] the CIAC explained that "(i)n the construction industry practice, overhead cost is 5% of the project cost."[205] Since the final contract amount for the FVR Project was ₱488,393,466.98 and the amount already paid by NHA to FUCC was ₱271,207,922.18, then the balance of the contract works still to be done to complete the Project at the time of termination, according to the CIAC, was ₱217,185,544.80. Therefore, the Extended Overhead Costs should be 5% of ₱217,185,544.80, or **₱10,859,274.24**,[206] which is slightly different from the original figure of ₱10,541,872.27, owing to the re-computed value of the remaining contract works, which became ₱217,185,544.80 instead of ₱210,837,445.49.

The Court of Appeals did not order the remand and re-computation of the third component, Foregone Income, but since the value of the remaining contract works was re-computed by CIAC to be ₱217,185,544.80 instead of ₱210,837,445.49, then Foregone Income, which was derived by the CIAC by multiplying the value of the remaining contract works by 10%, should be: ₱217,185,544.80 x .10 = ₱21,718,554.48.

In this regard, we note that the CIAC – as pointed out by respondent – indeed committed a glaring typographical error in the Compliance dated 17 August 2006 when it wrote that the award for Foregone Income is ₱25,300,493.46.[207] This is a wrong figure. The correct figure for Foregone Income should be ₱21,718,554.48.

Therefore, as re-computed by the CIAC pursuant to the remand orders contained in the Decision of the Court of Appeals dated 1 August 2006, and taking note that the correct figure for Foregone Income is ₱21,718,554.48, not ₱25,300,493.46, the total amount of the award to FUCC for Disengagement Costs is **₱66,794,521.62**, itemized as follows:

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[204] *Id.* at 1034.

[205] See p. 5 of Compliance dated 17 August 2006, *id.* at 1038.

[206] *Id.*

[207] *Id.*

(4) Foregone Equipment Rental	₱34,216,692.90
(5) Extended Overhead Costs	10,859,274.24
(6) Foregone Income	21,718,554.48
TOTAL	**₱66,794,521.62**

The record shows that after the CIAC submitted its Compliance on 17 August 2006, NHA filed an Omnibus Motion dated 22 August 2006[208] that incorporated its Motion for Reconsideration of the Decision dated 1 August 2006, and its Motion to Require the CIAC to Explain and to Hold in Abeyance the Re-Computation of Award.

The Court examined the record and notes that petitioner had not, either in its petition with the Court of Appeals, or in the Omnibus Motion, or in the instant petition, assailed the correctness of the amounts of the award for the three components of the Disengagement Costs derived by CIAC. As the CIAC itself emphasized, NHA never disputed FUCC's claim for Foregone Equipment Rental and the amount of award thus reached by the CIAC.

What petitioner questioned before the Court of Appeals – in its Omnibus Motion – was merely the legal basis of the award for Disengagement Costs, reiterating the argument that NHA could not have dictated what equipment and key staff to mobilize for the FVR Project, as it was FUCC alone which determined the kind and number of equipment to be deployed for the Project.[209] But the Omnibus Motion was denied by the Court of Appeals in the Resolution dated 31 January 2007.[210]

This Court, therefore, finds no cogent reason to disturb the total amount of the award for Disengagement Costs derived and re-computed by the CIAC, as summarized and shown above.

The Court is aware that in the Resolution dated 31 January 2007, the Court of Appeals did not act upon the Compliance submitted by the CIAC on 17 August 2006 as it "was made by

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[208] *Id.* at 1056.

[209] See pp. 26 to 27 of Omnibus Motion dated 22 August 2006, *id.* at 1080-1081.

[210] *Id.* at 111-116.

only two arbitrators." According to the Court of Appeals, it "cannot be considered an award of the Arbitral Tribunal," citing Section 16.2 of the Revised Rules of Procedure Governing Construction Arbitration (the "Revised CIAC Rules"), in relation to Section 10.4 thereof.[211]

We do not agree with the Court of Appeals in this regard. The Compliance is not an award, let alone the "Final award" spoken of in Section 16.2 of the Revised CIAC Rules. The CIAC Arbitral Tribunal already rendered a "Final award" in the Decision dated 7 January 2004. The Compliance merely clarifies and presents a re-computation of some items of the "Final award." It does not alter or supersede the "Final award" nor purport to be a new award. Further, Section 10.4 of the Revised CIAC Rules states that in case any Arbitrator should resign, *etc.*, the "CIAC may, within five days from the occurrence of a vacancy x x x, appoint a substitute(s) to be chosen." The use of the permissive "may," rather than the mandatory "shall" indicates that the appointment of a third member of the CIAC Arbitral Tribunal is not indispensable for the tribunal to discharge its functions. The records show that a vacancy in the Arbitral Tribunal occurred with the demise of Lauro M. Cruz. Nothing in the Revised CIAC Rules prevents the remaining two members – who constitute a majority – from complying with the remand orders of the Court of Appeals. The Court thus gives *imprimatur*

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[211] See p. 4 of Resolution dated 31 January 2007, *id.* at 114.

Section 16.2 of the Revised Rules of Procedure Governing Construction Arbitration provides as follows:

"SECTION 16.2. Form of Award – The Final Award shall be in writing and signed by the Arbitral Tribunal. A dissent from the decision of the majority or a portion thereof shall be in writing and signed by the dissenting member."

Section 10.4 reads thus:

"SECTION 10.4. *Vacancies* – If any Arbitrator should resign, be incapacitated, refuse or be unable, or be disqualified for any reason to perform the duties of his office, CIAC may, within five (5) days from the occurrence of a vacancy or refusal/inability to accept appointment, appoint a substitute(s) to be chosen."

and deems as approved the Compliance submitted by the CIAC. We find that it sufficiently complies with the remand orders contained in the CA Decision dated 1 August 2006 and presents a correct method of computation of the arbitral award.

In the present petition, the sole issue presented by petitioner against the award for Disengagement Costs is that Disengagement Costs, like the Cost of Materials, Equipment and Facilities, and Idle Equipment are business losses which were non-arbitrable under the *CIAC Rules of Procedure Governing Construction Arbitration*, which was in place at the time FUCC filed its Complaint on 17 July 2003. According to petitioner, the Court of Appeals gravely erred when it sustained the CIAC (which ruled that there is no basis to exclude claims for business losses), and held in the Decision dated 1 August 2006 as follows:

> We agree with CIAC. In fact, we need not indulge in hair-splitting anymore. In *Gammon Philippines, Inc. versus Metro Rail Transit* (G.R. No. 144792, January 31, 2006), the Supreme Court held that there is no basis for the exclusion of claims for business losses from the jurisdiction of CIAC. It explained:
>
> > Relevantly, while the above-quoted provision of the Rules of Procedure Governing Construction Arbitration lists as non-arbitrable issues claims for opportunity/business losses and attorney's fees, this provision was not carried over to the Revised Rules of Procedure Governing Construction Arbitration which was approved on November 19, 2005. Such omission is not without good reason. EO 1008 itself excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC. (Emphasis added)
>
> Moreover, as pointed out by respondent, the second paragraph of Sec. 2 allows claims for unrealized expected profits and those arising from the rescission or termination of a contract. x x x (pp. 1576-1577, *Rollo*) Certainly, the claims sought to be satisfied in this case arose from the early termination of the Contract which deprived respondent of the prospect to make profit out of the investment it had already poured into the venture. It makes sense that respondent

should be allowed to recover what opportunity it may have lost, especially when it was not to blame for the aborted contract.[212]

We need not belabor this issue any further. As the appellate court correctly points out, we have already categorically ruled in ***Gammon Philippines, Inc. vs. Metro Rail Transit***,[213] that there is no basis for the exclusion of claims for business losses from the jurisdiction of CIAC because Executive Order No. 1008 (EO 1008), the law that created the CIAC, "excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC."

The nature and bases of the awards for Disengagement Costs consisting of three components, namely: Foregone Equipment Rental, Extended Overhead Costs and Foregone Income; and the awards for Cost of Materials, Equipment and Facilities, and Idle Equipment have been discussed at length. They are either business or opportunity losses or foregone profits that resulted from, or are the necessary consequences of, the termination of the Contract. They arose from and are inextricably linked to the construction dispute between NHA and FUCC that was the subject of arbitration proceedings before the CIAC. We find and so hold that they are arbitrable claims within the ambit of Section 4 of EO 1008, which defines the jurisdiction of the CIAC. Thus:

> SECTION 4. *Jurisdiction*.—The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises [sic] before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

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[212] See pp. 12 to 13 of CA Decision dated 1 August 2006, *id.* at 96-97.

[213] G.R. No. 144792, 31 January 2006, 481 SCRA 209, 224.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Section 4 provides that "(t)he jurisdiction of the CIAC may include but is not limited to x x x," underscoring the expansive character of the CIAC's jurisdiction. Very clearly, the CIAC has jurisdiction over a broad range of issues and claims arising from construction disputes, including but not limited to claims for unrealized profits and opportunity or business losses. What EO 1008 emphatically excludes is only disputes arising from employer-employee relationships.

Section 2, Article IV of the previous *CIAC Rules of Procedure Governing Construction Arbitration* cited by petitioner, which purports to exclude claims for business losses,[214] contravenes EO 1008 and is a patent nullity; it is void *ab initio.* In legal contemplation, that section of the previous CIAC Rules never acquired force and effect and cannot be applied to this case. What applies is Section 2.1 of the *Revised Rules of Procedures Governing Construction Arbitration* that was promulgated on 19 November 2005. Indeed, and as pointed out by the Court of Appeals in the Resolution dated 31 January 2007, CIAC Resolution No. 02-2006 ("Defining the Coverage of the Revised Rules of

[214] Section 2 of the previous CIAC Rules of Procedure Governing Construction Arbitration provides as follows:

"Sec. 2. *Non-arbitrable Issues* – Pursuant to Section 4 of Executive Order no. 1008, claims for moral damages, exemplary damages, opportunity / business losses in addition to liquidated damages and attorney's fees are not abitrable except when the parties acquiesce or mutually agree to submit the same for arbitration and to abide by the decision of the arbitrator thereon.

Claims for unrealized expected profits (built-in in the contract price) and issues on rescission or termination of a contract, however, are arbitrable."

Procedure Governing Construction Arbitration") states that "the Revised Rules shall be applicable to all pending cases upon its effectivity on 15 December 2005 and all cases which are to be filed thereafter."[215] This case was filed on 17 July 2003 and was pending as of 15 December 2005.

But even granting for the moment that Section 2, Article IV of the previous CIAC Rules is a valid provision that may be applied to the case at bar, still the CIAC was eminently correct in ruling that under the first paragraph of Section 2, Article IV, only "opportunity/business losses in addition to liquidated damages" are not arbitrable. When the opportunity/ business losses are sought independently of liquidated damages, as in the instant case, they are perforce arbitrable.[216] This ruling of the CIAC was upheld by the Court of Appeals in the Decision dated 1 August 2006. The Court sees no reason to hold otherwise.

VI. Re: Whether or Not the Termination of Contract for FVR Project was Unilateral

Was the termination of the Contract for the FVR Project a unilateral act of NHA?

"Without doubt", said the Court of Appeals, thusly:

"This brings us to the next assigned error. Petitioner insists that it should not be made to bear all the consequence of the termination of the project for respondent consented to it. It gave its tacit consent by not protesting the termination. x x x Moreover, even if it were true that the termination was unilateral on the part of petitioner, the latter is excused from any liability because the termination was due to reasons beyond its control. x x x.

Such argument is futile. Respondent could not have consented, tacitly or otherwise, to the termination of the project because that decision was made entirely by petitioner's board of directors. Its September 25, 2001 Resolution No. 4450, reclassifying the project into a mixed-market site and services project, is clear evidence that respondent had no participation whatsoever in the formulation of

[215] *Rollo*. See p. 2 of Resolution dated 31 January 2007, p. 112.

[216] See p. 20 of CIAC Decision dated 7 January 2004, *id.* at 964.

the decision. Without doubt, the termination of the project was unilateral.

It was also due to factors well within the control of petitioner. While geological or geophysical conditions in the project site rendered work difficult, the Mines and Geosciences Bureau (MGB) investigated landslides in the area merely for revision of the design plan of the project. x x x Petitioner, however, did not act on this recommendation despite repeated requests by respondent."[217]

We find no cogent reason to disturb this finding of the Court of Appeals. The evidence on record plainly reveals that the decision to terminate the Contract and to redraft the FVR Project as a mixed-use development under a joint venture scheme with interested parties was made by NHA's Board of Directors – alone. There is no showing – and petitioner does not allege – that FUCC's consent was sought by the Board of Directors directly or indirectly, through responsible officers of NHA, before Resolution No. 4450[218] was passed. Neither is there any showing – and petitioner does not allege – that NHA made formal representations with FUCC to negotiate the termination of the Contract for the FVR Project.

What the records reveal, according to the CIAC, is that "(i)n a letter dated 16 October 2001, a Memorandum by the OIC of the FVR Project, recommended for the termination of the Contract. The approval of this Memorandum was recommended by Neofito A. Hernandez, NHA Manager for Southern Luzon/ Bicol, and was approved by Edgardo D. Pamintuan, NHA General Manager (Exhibit "1"). The following day, 17 October 2001, the NHA General Manager advised FUCC of the termination of the Contract, citing among others that FUCC should 'x x x immediately stop the ongoing works and avoid further expenses including the provision of vehicles and other services for the NHA Project Team'."[219]

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[217] CA Decision, pp. 20-21 dated 1 August 2006, *id.* at 104-105.

[218] *Supra* note 28.

[219] *Rollo*. See pp. 33 to 34 of CIAC Decision dated 7 January 2004, pp. 975-976.

The foregoing findings of the CIAC support the stance of respondent that NHA unilaterally terminated the Contract; that FUCC was presented with a *fait accompli*, and there was nothing more that it could do to stop the unilateral termination of the Contract.[220]

Moreover, as aptly held by the Court of Appeals, the termination was "due to factors well within the control of petitioner."[221] Hence, NHA cannot invoke Clause 3.04.06 of the General Conditions of the Contract, which provides that "(t)he Authority may terminate the Contract upon (10) days written notice to the Contractor, if it is found that reasons beyond the control of either the Authority or Contractor make it impossible or against the Authority's interest to complete the work."[222]

Petitioner argues in the instant petition that "(t)he geological or geographical make up of the Project site is one reason that made it physically difficult – if not impossible – to pursue the FVR Project," and that "(i)t was precisely for this reason that the Project was re-classified from a resettlement to a mixed-used [sic] project."[223]

But as correctly observed by respondent, NHA, as Project owner, was supposed to have known the geological or geographical make-up and the potential hazards of the project site, and should have taken these into account in the original development plan for the FVR Project. It appears that NHA failed to conduct a complete feasibility study and comprehensive technical evaluation of the FVR Project before embarking thereon. Thus, it had to suspend the project and revise the development plans in the middle of the contract works to avert a tragedy, in light of the findings of the MGB, and eventually had to abandon the project.[224]

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[220] See Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, *id.* at 692-805.

[221] See p. 20 of CA Decision dated 1 August 2006, *id.* at 104.

[222] See p. 34 of CIAC Decision dated 7 January 2004, *id.* at 976.

[223] See p. 59 of Petition, *id.* at 74.

[224] See pp. 83 to 84 of Comment, *id.* at 1277-1278.

Further, while petitioner now claims that the geological or geographical make up of the Project site made it physically difficult – if not impossible – to pursue the FVR Project, which reason is allegedly beyond its control, this reason was never articulated in the letter dated 17 October 2001. In that letter, the NHA General Manager simply advised FUCC of the termination of the Contract and directed that FUCC should immediately stop the ongoing works and avoid further expenses.

It would appear to the Court that this pretended reason was belatedly and purposely foisted to place the termination within the ambit of the cited Clause 3.04.06. But not only is the reason unavailing, it is utterly misplaced because the letter dated 17 October 2001 does not comply with the 10 day written notice to the contractor required by the very Clause 3.04.06 that petitioner invokes. This letter-notice of NHA imposes an immediate termination with its stern admonition that FUCC should "immediately stop the ongoing works and avoid further expenses including the provision of vehicles and other services for the NHA Project Team."

In *Home Development Mutual Fund vs. Court of Appeals*, G.R. No. 118972, 3 April 1998, the Court held that requirements of contracts as to ***notice*** – as to the *time of giving*, *form*, and *manner of service* thereof – must be strictly observed because in an obligation where a period is designated, it is presumed to have been established for the benefit of both the contracting parties**.** Thus:

> The law mandates that Obligations arising from contracts have the force of ***law*** between the contracting parties and should be complied with in good faith.
>
> Did petitioners comply with their contractual obligation in good faith, when they served the requisite written notice to private respondents nine (9) days after the expiration of the Agreement? The answer to this crucial question is in the negative.
>
> The second clause of the contractual provision in dispute is to the effect that written notice of termination should be served at least thirty (30) days in advance. As a rule, the *method* of terminating a contract is primarily determined by the stipulation of the parties.

Thus, the requirements of contracts as to ***notice*** - as to the *time of giving, form*, and *manner of service* thereof - must be strictly observed because in an obligation where a period is designated, it is presumed to have been established for the benefit of both the contracting parties. Thus, the unilateral termination of the contract in question by the herein petitioners is violative of the ***principle of mutuality of contracts*** ordained in Art. 1308 of the New Civil Code. (Emphasis supplied)

Indeed, even if NHA is permitted to invoke Clause 3.04.06 of the General Conditions of the Contract, its own failure to comply with the notice requirement thereof – being violative of the principle of mutuality of contracts – resulted in the unilateral termination of the Contract.

In any case, and quite importantly, NHA failed to present evidence to buttress its stance that the termination of the Contract was due to factors beyond its control as to justify the application of Clause 3.04.06. On the contrary, the fact that the NHA Board resolved to redraft the FVR Project as a mixed-use development under a joint venture scheme with interested parties shows that NHA had other options at hand and could have chosen to negotiate with FUCC to amend the Contract instead of deciding to terminate the same. The conclusion is ineluctable: the termination of the Contract was well within the control of NHA, as correctly held by the Court of Appeals.

Petitioner posits that the letter of FUCC to NHA dated 27 August 2001[225] reveals that FUCC explicitly, if not expressly, welcomed or accepted the termination of the FVR Project with alacrity.[226] The letter reads thus:

May we formally inform you that we have refrained from implementing the works under our FVR contract pursuant to your instructions that our contract will be terminated and that project costs should now be contained.

We were advised that NHA has found FVR to be unsuitable for squatter settlement owing to its unfavorable geology and terrain. It

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[225] Annex "EE" of Petition, *id.* at 1179.

[226] See p. 57 of Petition, *id.* at 72.

is therefore being redrafted for mixed-use development on a joint venture scheme.

This was conveyed to us by the Office of the General Manager and the same was confirmed by the SLB Manager and the FVR Officer-in-Charge.

Indeed, several prospective parties have inspected the site for a possible joint venture engagement with National Housing Authority.[227]

The Court does not agree. We believe that the letter cannot be read in isolation but should be understood in relation to the situation of the parties and juxtaposed against the contemporaneous events then affecting the FVR Project. The records show that at the time the letter was sent, FUCC had pending claims against NHA. It had a pending claim for payment of Idle Equipment in the amount of ₱142,780,800.00,[228] and a pending claim for payment of Price Adjustment in the amount of ₱15 Million.[229]

According to respondent, NHA wanted FUCC to resume the contract works for the FVR Project full blast but FUCC refused citing as reason NHA's failure to settle its pending claims, particularly its claim for Price Adjustment. During this

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[227] *Id*.

[228] The record shows that as early as 19 June 1998, FUCC already advised NHA that its bulldozers and other equipment had been rendered idle because of the suspension of the contract works. On 3 March 1999, FUCC requested a partial payment by way of compensation for its idle resources. On 12 April 1999, FUCC wrote NHA a letter with a summary of the cost of its idle equipment in the amount of ₱142,780,800.00 as of 15 March 1999. On 28 April 1999, FUCC wrote another letter following up its claim for Idle Equipment. This was followed by the letter dated 3 August 1999, and then another letter dated 28 October 1999 (See pp. 68 to 72 of Complaint), *id.* at 499-503.

[229] The record shows that on 13 June 2000, FUCC requested NHA for the adjustment of contract prices which was later formalized in a letter dated 11 August 2000. In a Memorandum dated 22 February 2001, Engr. Raner recommended the approval of the claim but the recommendation was not acted upon. FUCC followed up this claim for Price Adjustment in the letters dated 17 April 2001, 23 May 2001 and 22 June 2001 (See pp. 45 to 48 of Complaint), *id.* at 476-479.

time, talk was rife that NHA would terminate the contract and redraft the FVR Project as a mixed-use development under a joint venture with interested parties. In late August 2001, FUCC was verbally instructed to refrain from implementing the contract works as the termination of the Contract was imminent. It was at this point that FUCC wrote the letter dated 27 August 2001 advising NHA that it had "refrained from implementing" the contract works "pursuant to your instructions that our contract will be terminated and that project costs should now be contained."[230]

Respondent explains that it wrote the letter to put on record an added justification for its earlier refusal to resume the contract works full blast. Since there was already a verbal instruction to refrain from implementing the contract works as the termination of the Contract was purportedly imminent, it simply did not make sense for FUCC to be spending more for the FVR Project which would only end up as an added claim against NHA, with no clear prospects of being immediately paid.[231]

Viewed in this light, *i.e.*: that FUCC indeed had pending claims with NHA for the payment of substantial amounts that had remained unpaid despite repeated follow-ups, FUCC's "immediately stopping the contract works even before its receipt of the Notice of Termination" [232]– as petitioner puts it – does not show tacit consent on the part of FUCC to the termination of the Contract.

VII. Re: Errors in Computation

In its Comment, respondent pointed out that errors were committed by the CIAC when it complied with the remand orders of the Court of Appeals in the Decision dated 1 August 2006. One such error, as earlier noted, is the amount of the award for Foregone Income. Instead of the correct amount of **₱21,718,554.48**, what appears in the Compliance is the wrong figure of ₱25,300,493.46. This error appears to be purely typographical.

[230] See pp. 76 to 77 of Comment, *id.* at 1270-1271.

[231] See p. 77 of Comment, *id.* at 1271.

[232] See p. 57 of Petition, *id.* at 72.

Respondent identified another error: an error of omission relating to the computation of interest on the other items of award granted to FUCC. The Compliance shows that the CIAC Arbitral Tribunal correctly re-computed the 6% interest on Foregone Equipment Rental using as reckoning dates: (1) 9 January 2002, the date of demand by FUCC against NHA for the claim, as the beginning date; and (2) 1 August 2006, or the day of the promulgation of the Decision of the Court of Appeals, as the final date, as this was the day the final arbitral award in favour of FUCC became executory.[233]

But the CIAC Arbitral Tribunal inadvertently omitted to re-compute the 6% interest on each of the other awards using the same final date of 1 August 2006. We refer specifically to: (1) the 6% interest on the award for Progress Billing No. 6; (2) the 6% interest on the award for Cost of Materials, Equipment, Facilities, *etc*.; (3) the 6% interest on the award for Price Escalation; 4) the 6% interest on the award for Price Adjustment; and (5) the 6% interest on the award for Idle Equipment.

As reflected in the CIAC Decision dated 7 January 2004, the 6% interest on each of these awards was reckoned by the CIAC from the date of demand up to 1 December 2003 only.[234] In light of the CA Decision dated 1 August 2006, the CIAC should have re-computed the 6% interest on each of these awards from the date of demand up to 1 August 2006. In short, the CIAC inadvertently omitted to account for the 6% interest accruing from an additional period of 973 days (*i.e.*; there are 973 days from 1 December 2003 up to 1 August 2006) for each of these awards.

The Court takes judicial notice that Mathematics is an exact science.[235] As the aforesaid error of omission is susceptible

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[233] See p. 6 of Compliance dated 17 August 2006, *id.* at 1039.

[234] See pp. 19, 22-23, 25 and 31 of CIAC Decision dated 7 January 2004, *id.* at 963; 966-967; 969 and 973.

[235] The Supreme Court held that things of common knowledge, of which courts take judicial notice of, are matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or matters which are generally accepted by mankind as true and are capable of ready and

of correction using a straightforward mathematical formula already laid down by the CIAC in its Decision,[236] which formula has never been questioned by petitioner, and considering further that petitioner has not interposed any objection to the proposition of respondent that the oversight committed by the CIAC in the Compliance ought to be corrected, the Court shall no longer remand this case to the CIAC for re-computation but shall proceed to re-compute the same. Needless to state, such a remand would not serve any useful purpose but will only delay the final disposition of this case.

Based on the mathematical formula already laid down by the CIAC:

(1) the 6% interest on the award for Progress Billing No. 6 is re-computed as follows:[237]

$$\frac{815 + \mathbf{973}}{365} \times ₱7,384,534.22 \times .06 = ₱2,170,446.11$$

(2) the 6% interest on the award for Cost of Materials, Equipment, Facilities, *etc*. is re-computed as follows:[238]

$$\frac{541 + \mathbf{973}}{365} \times ₱4,677,680.00 \times .06 = ₱1,164,165.62$$

(3) the 6% interest on the award for Price Escalation is re-computed as follows:[239]

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unquestioned demonstration. [See *Expert Travel & Tours, Inc. v. Court of Appeals*, 498 Phil. 191, 206 (2005)].

[236] *Rollo.* A common formula was used by the CIAC in computing the interest on the various awards as may be gleaned from the computation shown on pp. 19, 22-23, 25 and 31 of CIAC Decision dated 7 January 2004, pp. 963; 966-967; 969 and 973.

[237] Compare to the computation on p. 19 of CIAC Decision dated 7 January 2004, *id.* at 963.

[238] Compare to the computation on p. 22 of CIAC Decision dated 7 January 2004, *id.* at 966.

[239] Compare to the computation on p. 23 of CIAC Decision dated 7 January 2004, *id.* at 967.

$$\frac{431+\mathbf{973}}{365} \times ₱26,297,951.62 \times .06 = ₱6,069,423.14$$

(4) the 6% interest on the award for Price Adjustment is re-computed as follows:[240]

$$\frac{761+\mathbf{973}}{365} \times ₱14,768,770.22 \times .06 = ₱4,209,706.45$$

(5) the 6% interest on the award for Idle Equipment is re-computed as follows[241]:

$$\frac{1689+\mathbf{973}}{365} \times ₱131,948,674.56 \times .06 = ₱57,739,293.97$$

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 1 August 2006, which upheld with modification the Decision of the Construction Industry Arbitration Commission in CIAC Case No. 14-2003, and the Resolution dated 31 January 2007, as modified with the pronouncement that the Compliance submitted by the CIAC on 17 August 2006 is deemed approved, are *AFFIRMED*. The final arbitral award in favour of FUCC as re-computed and corrected in accordance with the remand orders of the Court of Appeals, to summarized hereunder, to wit:

(1) Award for Progress Billing No. 6, ₱7,384,534.22;

(2) 6% Interest on Award for Progress Billing No. 6, ₱2,170,446.11;

(3) Award for Cost of Materials, Equipment, Facilities, *etc*. ₱4,677,680.00;

(4) 6% Interest on Award for Cost of Materials, Equipment, Facilities, *etc*., ₱1,164,165.62;

(5) Award for Price Escalation, ₱26,297,951.62;

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[240] Compare to the computation on p. 25 of CIAC Decision dated 7 January 2004, *id.* at 969.

[241] Compare to the computation on p. 31 of CIAC Decision dated 7 January 2004, *id.* at 973.

(6) 6% Interest on Award for Price Escalation, ₱6,069,423.14;

(7) Award for Price Adjustment, ₱14,768,770.22;

(8) 6 % Interest on Award for Price Adjustment, ₱4,209,706.45;

(9) Award for Idle Equipment, ₱131,948,674.56;

(10) 6% Interest on Award for Idle Equipment, ₱57,739,293.97;

(11) Award for Disengagement Costs, ₱70,376,467.60;[242]

(12) 6% Interest on Award for Foregone Equipment Rental, ₱19,238,797.99[243]

With costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *Bersamin,* [**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179243. September 7, 2011]

JOSEPH ANTHONY M. ALEJANDRO, FIRDAUSI I.Y. ABBAS, CARMINA A. ABBAS and MA. ELENA GO FRANCISCO, *petitioners, vs.* **ATTY. JOSE A. BERNAS, ATTY. MARIE LOURDES SIA-BERNAS, FERNANDO AMOR, EDUARDO AGUILAR, JOHN DOE and PETER DOE,** *respondents.*

[242] Please refer to pp. 5-6 of Compliance dated 17 August 2006, *id.* at 1038-1039.

[243] Please refer to p. 7 of Compliance dated 17 August 2006, *id.* at 1040.

* Associate Justice Diosdado M. Peralta is designated Additional Member as per Special Order No. 1074 dated 6 September 2011.

** Associate Justice Lucas P. Bersamin is designated Additional Member as per Special Order No. 1066-A dated 23 August 2011.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; AS A RULE, THE SUPREME COURT DOES NOT INTERFERE WITH THE PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE; RATIONALE.— It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the DOJ, as reviewer of the findings of public prosecutors. To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. The court's duty in an appropriate case is confined to the determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.

2. ID.; ID.; ID.; PROBABLE CAUSE; DEFINED AND CONSTRUED.— Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. x x x Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. It is, therefore, imperative upon the prosecutor to relieve the accused from the pain of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.

3. ID.; ID.; ID.; PURPOSE THEREOF.— A preliminary investigation is conducted for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect

him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.

4. CRIMINAL LAW; GRAVE COERCION; THE DEGREE OF INTIMIDATION REQUIRED, EXPLAINED; NOT PRESENT IN CASE AT BAR.— In the crime of grave coercion, violence through material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party is an essential ingredient. x x x We find that the mere presence of the security guards is insufficient to cause intimidation to the petitioners. There is intimidation when one of the parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent. Material violence is not indispensable for there to be intimidation. Intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient.

5. ID.; UNJUST VEXATION; WHEN PRESENT.— The second paragraph of Article 287 of the Revised Penal Code which defines and provides for the penalty of unjust vexation is broad enough to include any human conduct which, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. Nevertheless, Amor and Aguilar may disprove petitioners' charges but such matters may only be determined in a full-blown trial on the merits where the presence or absence of the elements of the crime may be thoroughly passed upon.

APPEARANCES OF COUNSEL

Abbas Alejandro-Abbas Francisco & Associates for petitioners.
Bernas Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Court

of Appeals (CA) Decision[1] dated May 23, 2007 and Resolution[2] dated August 8, 2007 in CA-G.R. SP No. 94229.

The facts of the case follow.

Petitioner Joseph Anthony M. Alejandro (Alejandro) is the lessee-purchaser of condominium unit No. 2402 (the Unit), 4th Floor, Discovery Center Condominium in Pasig City under the Contract of Lease with Option to Purchase[3] with the lessor-seller Oakridge Properties, Inc. (OPI). On October 15, 2000, Alejandro sub-leased the Unit to the other petitioners Firdausi I.Y. Abbas (Firdausi), Carmina M. Alejandro-Abbas (Carmina) and Ma. Elena Go Francisco (Ma. Elena) to be used as a law office.[4] However, a defect in the air-conditioning unit prompted petitioners to suspend payments until the problem is fixed by the management.[5] Instead of addressing the defect, OPI instituted an action for ejectment before the Metropolitan Trial Court (MeTC) of Pasig City,[6] against Alejandro for the latter's failure to pay rentals. The case was docketed as Civil Case No. 9209. Alejandro, for his part, interposed the defense of justified suspension of payments.[7]

In the meantime, the Discovery Center Condominium Corporation (DCCC) was organized to administer the Discovery Center Condominium independent of OPI. Respondent Fernando Amor (Amor) was appointed as the Property Manager of DCCC.

During the pendency of the ejectment case, or on June 10, 2004, OPI, allegedly through respondent Atty. Marie Lourdes Sia-Bernas (Sia-Bernas), ordered that the Unit be padlocked.

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose Catral Mendoza (now a member of this Court) and Ramon M. Bato, Jr., concurring; *rollo*, pp. 36-48.

[2] *Rollo*, p. 50.

[3] Records, pp. 129-151.

[4] *Id.* at 125.

[5] CA *rollo*, p. 439.

[6] Branch 69.

[7] Records, p. 153.

In an Order[8] dated June 11, 2004 the MeTC directed OPI to remove the padlock of the Unit and discontinue the inventory of the properties. The order was reiterated when the MeTC issued a Temporary Restraining Order in favor of Alejandro. However, on August 11, 2004, at 8:00 in the evening, OPI, allegedly through respondent Atty. Jose Bernas, again padlocked the Unit. The padlocking was allegedly executed by Amor, as property manager, and respondent Eduardo Aguilar (Aguilar) as head of the security unit, together with security officers John Doe and Peter Doe. Respondents, likewise, cut off the electricity, water and telephone facilities on August 16, 2004.[9]

On August 17, 2004, the MeTC rendered a Decision[10] in the ejectment case in favor of Alejandro and against OPI. The court found Alejandro's suspension of payment justified. The decision was, however, reversed and set aside by the Regional Trial Court[11] whose decision was in turn affirmed[12] by the CA.

On October 27, 2004, petitioners filed a criminal complaint[13] for grave coercion against respondents Bernas, Sia-Bernas, Amor, Aguilar, Peter Doe and John Doe with the Office of the City Prosecutor (OCP) of Pasig. The case was docketed as I.S. No. PSG 04-10-13650. In their Joint Affidavit-Complaint,[14] petitioners claimed that the padlocking of the Unit was illegal, felonious and unlawful which prevented them from entering the premises.[15] Petitioners also alleged that said padlocking and the cutting off

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[8] *Id.* at 166.

[9] *Id.* at 126-127.

[10] *Id.* at 153-163.

[11] Branch 268, Pasig City. The case was docketed as Civil Case No. 2712. The decision was embodied in an Omnibus Order dated June 27, 2007; *id*. at 80-587.

[12] The case was docketed as CA-G.R. SP No. 95241. The CA rendered the Decision on September 29, 2008; *id.* at 591-617.

[13] Embodied in a Joint Affidavit-Complaint, records, pp. 125-128.

[14] Records, pp. 125-128.

[15] *Id.* at 87.

of facilities had unduly prejudiced them and thus constituted grave coercion.[16]

In their Counter-Affidavit,[17] Bernas and Sia-Bernas averred that the elements of grave coercion were not alleged and proven by petitioners. They also claimed that nowhere in petitioners' complaint was it alleged that respondents employed violence which is an essential element of grave coercion.

In addition to the above defenses, Amor and Aguilar maintained that petitioners did not allege that the former actually prevented the latter to enter the Unit. They added that petitioners in fact gained access to the Unit by forcibly destroying the padlock.[18]

On March 22, 2005, the OCP issued a Resolution,[19] the pertinent portion of which reads:

> Wherefore, respondents Fernando Amor and Eduardo Aguilar are charged with unjust vexation and the attached information be filed with the Metropolitan Trial Court of Pasig City. Bail is not necessary unless required by the Court.
>
> The charges against respondents Jose Bernas and Marie Lourdes Sia-Bernas is dismissed for insufficiency of evidence.[20]

The OCP held that respondents could not be charged with grave coercion as no violence was employed by the latter. In padlocking the leased premises and cutting off of facilities, respondents Amor and Aguilar were found to be probably guilty of the crime of unjust vexation.[21]

Aggrieved, petitioners appealed to the Secretary of the Department of Justice (DOJ), but the appeal was dismissed[22]

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[16] *Id.* at 388-389.

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

[18] *Id.* at 170-174.

[19] *Id.* at 119-124.

[20] *Id.* at 124.

[21] *Id.* at 123.

[22] Embodied in a Resolution dated December 15, 2005, *id.* at 263-264.

for their failure to comply with Section 12, paragraph (b) of Department Circular No. 70. The DOJ Secretary, acting through Undersecretary Ernesto L. Pineda, explained that petitioners failed to submit a legible true copy of the joint counter-affidavit of some of the respondents. Petitioners' motion for reconsideration[23] was likewise denied in a Resolution[24] dated April 3, 2006. He denied the motion after a careful re-evaluation of the record of the case *vis-à-vis* the issues and arguments raised by petitioners.

Undaunted, petitioners elevated the matter to the CA that rendered the assailed decision[25] on May 23, 2007. The appellate court recognized the DOJ's authority to dismiss the petition on technicality pursuant to its rules of procedure. The CA explained that while the DOJ dismissed the petition on mere technicality, it re-evaluated the merits of the case when petitioners filed their motion for reconsideration. On whether or not there was probable cause for the crime of grave coercion, the CA answered in the negative. It held that the mere presence of the security guards was insufficient to cause intimidation.[26] The CA likewise denied petitioners' motion for reconsideration on August 8, 2007.[27]

Hence, this petition based on the following grounds:

WHETHER OR NOT THE RULING IN THE CASE OF *SY VS. DEPARTMENT OF JUSTICE* (G.R. NO. 166315, DECEMBER 14, 2006), WHEREIN THE HIGHEST COURT OF THE LAND DEVIATED FROM THE NON-INTERFERENCE POLICY WITH THE PROSECUTORIAL ARM OF THE GOVERNMENT BY HOLDING THAT THERE IS GRAVE ABUSE OF DISCRETION IF THE RECORDS CLEARLY SHOW *PRIMA FACIE* EVIDENCE OF THE CRIME CHARGED, IS APPLICABLE TO THE INSTANT CASE,

1. given that there is more than ample evidence of the padlocking;

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[23] Records, pp. 231-233.

[24] *Id.* at 266-267.

[25] *Supra* note 1.

[26] *Rollo*, pp. 42-48.

[27] *Supra* note 2.

2. the padlocking has been admitted in no uncertain terms by Respondents;

3. the padlock was ordered removed by the court

WHETHER OR NOT THERE WAS GRAVE ABUSE OF DISCRETION, TANTAMOUNT [TO] LACK OF OR EXCESS OF JURISDICTION WHEN THE COURT OF APPEALS DENIED THE PETITION DESPITE SHOWING OF *PRIMA FACIE* CASE OF GRAVE COERCION.

WHETHER OR NOT SUBJECT RESOLUTION OF THE DOJ IS ANOMALOUS BECAUSE THE GROUND OF DISMISSAL WAS FABRICATED WHICH NECESSITATES A JUDICIAL REVIEW OF SAID RESOLUTION.

WHETHER OR NOT GRAVE COERCION CAN BE COMMITTED THROUGH INTIMIDATION ALONE WITHOUT VIOLENCE.[28]

Petitioners claim that there is sufficient evidence on record to prove the fact of padlocking and cutting off of facilities thereat.[29] They insist that the allegations and evidence presented in the Joint Affidavit-Complaint are sufficient to sustain a finding of probable cause for grave coercion irrespective of any defense that may be put up by respondents.[30] Finally, petitioners maintain that although violence was not present during the commission of the acts complained of, there was sufficient intimidation by the mere presence of the security guards.[31]

In their Comment,[32] respondents aver that petitioners raised issues of grave abuse of discretion which are improper in a petition for review on *certiorari* under Rule 45. They also argue that the CA aptly held that petitioners failed to establish probable cause to hold them liable for grave coercion. They do not agree with petitioners that the mere presence of security guards constituted intimidation amounting to grave coercion. Finally, they insist that there is no legal impediment to cause the padlocking

[28] *Rollo*, p. 17.

[29] *Id.* at 21.

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

[31] *Id.* at 29.

[32] *Id.* at 453-501.

and repossession of the Unit as a valid exercise of proprietary right under the contract of lease.

In their Reply,[33] petitioners assail the propriety of the dismissal of their appeal before the DOJ Secretary on technicality.

The petition must fail.

The propriety of the dismissal of petitioners' appeal before the DOJ Secretary has been thoroughly explained by the CA. We quote with approval the CA ratiocination in this wise:

> It was also incorrect for petitioners to claim that the dismissal was on mere technicality, and that the Department of Justice no longer studied the appeal on the merits. The motion for reconsideration shows that the records were carefully re-evaluated. However, the same conclusion was reached, which was the dismissal of the appeal. The first resolution was a dismissal on technicality but the motion for reconsideration delved on the merits of the case, albeit no lengthy explanation of the DOJ's dismissal of the appeal was inked on the resolution. It was already a demonstration of the DOJ's finding that no probable cause exists x x x[34]

Besides, petitioners' failure to attach the required documents in accordance with the DOJ rules renders the appeal insufficient in form and can thus be dismissed outright.[35] Moreover, when the case was elevated to the CA, the latter ruled not only on the procedural aspect of the case but also on the merit of the determination of probable cause.

The next question then is whether the CA correctly sustained the DOJ's conclusion that there was no probable cause to indict respondents of grave coercion. We answer in the affirmative.

It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the DOJ, as reviewer of the findings

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[33] *Id.* at 516-523.

[34] *Id.* at 45.

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

of public prosecutors.[36] To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[37] The court's duty in an appropriate case is confined to the determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[38]

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[39] As held in *Sy v. Secretary of Justice*,[40] citing *Villanueva v. Secretary of Justice*:[41]

> [Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based in opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[42]

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[36] *First Women's Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 644.

[37] *Ladlad v. Velasco*, G.R. Nos. 172070-72 and 172074-76, June 1, 2007, 523 SCRA 318, 335.

[38] *First Women's Credit Corporation v. Baybay*, *supra* note 36, at 644-645.

[39] *Navarra v. Office of the Ombudsman*, G.R. No. 176291, December 4, 2009, 607 SCRA 355, 363; *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 96.

[40] *Supra*.

[41] G.R. No. 162187, November 18, 2005, 475 SCRA 495.

[42] *Sy v. Secretary of Justice*, *supra* note 39, at 96-97.

For grave coercion to lie, the following elements must be present:

1. that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong;
2. that the prevention or compulsion is effected by violence, threats or intimidation; and
3. that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.[43]

Admittedly, respondents padlocked the Unit and cut off the electricity, water and telephone facilities. Petitioners were thus prevented from occupying the Unit and using it for the purpose for which it was intended, that is, to be used as a law office. At the time of the padlocking and cutting off of facilities, there was already a case for the determination of the rights and obligations of both Alejandro, as lessee and OPI as lessor, pending before the MeTC. There was in fact an order for the respondents to remove the padlock. Thus, in performing the acts complained of, Amor and Aguilar had no right to do so.

The problem, however, lies on the second element. A perusal of petitioners' Joint Affidavit-Complaint shows that petitioners merely alleged the fact of padlocking and cutting off of facilities to prevent the petitioners from entering the Unit. For petitioners, the commission of these acts is sufficient to indict respondents of grave coercion. It was never alleged that the acts were effected by violence, threat or intimidation. Petitioners belatedly alleged that they were intimidated by the presence of security guards during the questioned incident.

We find that the mere presence of the security guards is insufficient to cause intimidation to the petitioners.

There is intimidation when one of the parties is compelled by a reasonable and well-grounded fear of an imminent and

[43] *Navarra v. Office of the Ombudsman*, *supra* note 39; *Sy v. Secretary of Justice*, *supra* note 39 at 97.

grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent. [44] Material violence is not indispensable for there to be intimidation. Intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient.[45]

In this case, petitioners claim that respondents padlocked the Unit and cut off the facilities in the presence of security guards. As aptly held by the CA, it was not alleged that the security guards committed anything to intimidate petitioners, nor was it alleged that the guards were not customarily stationed there and that they produced fear on the part of petitioners. To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.[46] Here, the petitioners, who were allegedly intimidated by the guards, are all lawyers who presumably know their rights. The presence of the guards in fact was not found by petitioners to be significant because they failed to mention it in their Joint Affidavit-Complaint. What they insist is that, the mere padlocking of the Unit prevented them from using it for the purpose for which it was intended. This, according to the petitioners, is grave coercion on the part of respondents.

The case of *Sy v. Secretary of Justice*,[47] cited by petitioners, is not applicable in the present case. In *Sy*, the respondents therein, together with several men, armed with hammers, ropes, axes, crowbars and other tools, arrived at the complainants' residence and ordered them to vacate the building because they were going to demolish it. Intimidated by respondents and their demolition team, complainants were prevented from peacefully occupying their residence and were compelled to leave against their will. Thus, respondents succeeded in implementing the demolition, while complainants watched helplessly as their building

[44] *Lee v. Court of Appeals*, G.R. No. 90423, September 6, 1991, 201 SCRA 405, 408. Civil Code, Art. 1335.

[45] *People v. Alfeche, Jr.*, G.R. No. 102070, July 23, 1992, 211 SCRA 770, 779.

[46] *Lee v. Court of Appeals*, *Supra* note 44. Civil Code, Art. 1335.

[47] *Supra* note 39.

was torn down. The Court thus found that there was *prima facie* showing that complainants were intimidated and that there was probable cause for the crime of grave coercion.

On the contrary, the case of *Barbasa v. Tuquero*[48] applies. In *Barbasa*, the lessor, together with the head of security and several armed guards, disconnected the electricity in the stalls occupied by the complainants-lessees because of the latter's failure to pay the back rentals. The Court held that there was no violence, force or the display of it as would produce intimidation upon the lessees' employees when the cutting off of electricity was effected. On the contrary, the Court found that it was done peacefully and that the guards were there not to intimidate them but to prevent any untoward or violent event from occurring in the exercise of the lessor's right under the contract. We reach the same conclusion in this case.

In the crime of grave coercion, violence through material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party is an essential ingredient.[49]

Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[50] While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[51] It is, therefore, imperative upon the prosecutor to relieve the accused from the pain of going through

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[48] G.R. No. 163898, December 23, 2008, 575 SCRA 102.

[49] *Id.* at 109; *People v. Alfeche, Jr.*, *supra* note 45, at 780.

[50] *Borlongan, Jr. v. Peña*, G.R. No. 143591, May 5, 2010, 620 SCRA 106, 130; *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 294.

[51] *Ching v. Secretary of Justice*, G.R. No. 164317, February 6, 2006,

a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.[52]

A preliminary investigation is conducted for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.[53]

Notwithstanding the DOJ's conclusion that respondents cannot be charged with grave coercion, it ordered the filing of information for unjust vexation against Amor, the Property Manager of DCCC and Aguilar as head of the security division. We find the same to be in order.

Petitioners' Joint Affidavit-Complaint adequately alleged the elements of unjust vexation. The second paragraph of Article 287 of the Revised Penal Code which defines and provides for the penalty of unjust vexation is broad enough to include any human conduct which, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person.[54] Nevertheless, Amor and Aguilar may disprove petitioners' charges but such matters may only be determined in a full-blown trial on the merits where the presence or absence of the elements of the crime may be thoroughly passed upon.[55]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated May 23, 2007 and Resolution dated August 8, 2007 in CA-G.R. SP No. 94229, are *AFFIRMED*.

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481 SCRA 609, 629-630; *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 410.

[52] *R.R. Paredes v. Calilung*, G.R. No. 156055, March 5, 2007, 517 SCRA 369, 395.

[53] *Okabe v. Hon. Gutierrez*, 473 Phil. 758, 780 (2004); *Baltazar v. People*, *supra* note 50, at 292-293.

[54] *Maderazo v. People*, G.R. No. 165065, September 26, 2006, 503 SCRA 234, 247.

[55] *Sy v. Secretary of Justice*, *supra* note 39, at 99.

SO ORDERED.

Corona,[*] *C.J., Leonardo-de Castro,*[**] *Abad,* and *Villarama, Jr.,*[***] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 186412. September 7, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ORLITO VILLACORTA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, DETERMINATION THEREOF BY THE TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT IS ACCORDED FULL WEIGHT AND CREDIT; PRESENT IN CASE AT BAR.— To begin with, it is fundamental that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect. Such determination made by the trial court proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor. x x x We have ruled time and again that where the prosecution eyewitness was

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* Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated July 19, 2010.

** Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated August 31, 2011.

*** Designated as an additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076 dated September 6, 2011.

familiar with both the victim and accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, then her version of the story deserves much weight.

2. ID.; ID.; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES. — Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated, regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

3. CRIMINAL LAW; SLIGHT PHYSICAL INJURIES; IN THE ABSENCE OF INTENT TO KILL, THE CRIME COMMITTED IS SLIGHT PHYSICAL INJURIES WHEN THE PROXIMATE CAUSE OF DEATH IS THE TETANUS INFECTION AND NOT THE STAB WOUND INFLICTED UPON THE VICTIM; ELUCIDATED IN CASE AT BAR.— [T]here is merit in the argument proferred by Villacorta that in the event he is found to have indeed stabbed Cruz, he should only be held liable for slight physical injuries for the stab wound he inflicted upon Cruz. The proximate cause of Cruz's death is the tetanus infection, and not the stab wound. Proximate cause has been defined as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." x x x There had been an interval of 22 days between the date of the stabbing and the date when Cruz was rushed to San Lazaro Hospital, exhibiting symptoms of severe tetanus infection. If Cruz acquired severe tetanus infection from the stabbing, then the symptoms would have appeared a lot sooner than 22 days later. As the Court noted in *Urbano*, severe tetanus infection has a short incubation period, less than 14 days; and those that exhibit symptoms with two to three days from the injury, have one hundred percent (100%) mortality. Ultimately, we can only deduce that Cruz's stab wound was merely the remote cause, and its subsequent infection with tetanus might have been the proximate cause of Cruz's death. The infection of Cruz's stab wound by tetanus was an efficient intervening cause later or between the time Cruz was stabbed to the time of his death. However, Villacorta is not totally without criminal liability. Villacorta is guilty of slight

physical injuries under Article 266(1) of the Revised Penal Code for the stab wound he inflicted upon Cruz. Although the charge in the instant case is for murder, a finding of guilt for the lesser offense of slight physical injuries may be made considering that the latter offense is necessarily included in the former since the essential ingredients of slight physical injuries constitute and form part of those constituting the offense of murder. We cannot hold Villacorta criminally liable for attempted or frustrated murder because the prosecution was not able to establish Villacorta's intent to kill. x x x The intent must be proved in clear and evident manner to exclude every possible doubt as to the homicidal (or murderous) intent of the aggressor. The *onus probandi* lies not on accused-appellant but on the prosecution. The inference that the intent to kill existed should not be drawn in the absence of circumstances sufficient to prove this fact beyond reasonable doubt. When such intent is lacking but wounds were inflicted, the crime is not frustrated murder but physical injuries only.

4. ID.; ID.; IMPOSABLE PENALTY.— The penalty of *arresto menor* spans from one (1) day to thirty (30) days. The Indeterminate Sentence Law does not apply since said law excludes from its coverage cases where the penalty imposed does not exceed one (1) year. With the aggravating circumstance of treachery, we can sentence Villacorta with imprisonment anywhere within *arresto menor* in the maximum period, *i.e.*, twenty-one (21) to thirty (30) days. Consequently, we impose upon Villacorta a straight sentence of thirty (30) days of *arresto menor*; but given that Villacorta has been in jail since July 31, 2002 until present time, already way beyond his imposed sentence, we order his immediate release.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES MAY BE RECOVERED IN CRIMINAL OFFENSES RESULTING IN PHYSICAL INJURIES.— Under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss. Pursuant to previous jurisprudence, an award of Five Thousand Pesos (₱5,000.00) moral damages is appropriate for less serious, as well as slight physical injuries.

6. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED AND CONSTRUED. – Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms which tend directly or especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. To reiterate, the essence of qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus, depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor. Likewise, even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

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.*:

On appeal is the Decision[1] dated July 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02550, which affirmed the Decision[2] dated September 22, 2006 of the Regional Trial Court (RTC), Branch 170, of Malabon, in Criminal Case No. 27039-MN, finding accused-appellant Orlito Villacorta (Villacorta) guilty of murder, and sentencing him to suffer the penalty of

[1] *Rollo*, pp. 2-16; penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring.

[2] CA *rollo*, pp. 58-60; penned by Presiding Judge Benjamin T. Antonio.

reclusion perpetua and to pay the heirs of Danilo Cruz (Cruz) the sum of ₱50,000.00 as civil indemnity, plus the costs of suit.

On June 21, 2002, an Information[3] was filed against Villacorta charging him with the crime of murder, as follows:

> That on or about 23rd day of January 2002, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharpened bamboo stick, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one DANILO SALVADOR CRUZ, thereby inflicting upon the victim serious wounds which caused his immediate death.

When arraigned on September 9, 2002, Villacorta pleaded not guilty.[4]

During trial, the prosecution presented as witnesses Cristina Mendeja (Mendeja) and Dr. Domingo Belandres, Jr. (Dr. Belandres).

Mendeja narrated that on January 23, 2002, she was tending her *sari-sari* store located at C-4 Road, Bagumbayan, Navotas. Both Cruz and Villacorta were regular customers at Mendeja's store. At around two o'clock in the morning, while Cruz was ordering bread at Mendeja's store, Villacorta suddenly appeared and, without uttering a word, stabbed Cruz on the left side of Cruz's body using a sharpened bamboo stick. The bamboo stick broke and was left in Cruz's body. Immediately after the stabbing incident, Villacorta fled. Mendeja gave chase but failed to catch Villacorta. When Mendeja returned to her store, she saw her neighbor Aron removing the broken bamboo stick from Cruz's body.[5] Mendeja and Aron then brought Cruz to Tondo Medical Center.[6]

Dr. Belandres was Head of the Tetanus Department at the San Lazaro Hospital. When Cruz sustained the stab wound on

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[3] Records, p. 1.

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

[5] TSN, October 20, 2003, pp. 2-9.

[6] Records, p. 72.

January 23, 2002, he was taken to the Tondo Medical Center, where he was treated as an out-patient. Cruz was only brought to the San Lazaro Hospital on February 14, 2002, where he died the following day, on February 15, 2002. While admitting that he did not personally treat Cruz, Dr. Belandres was able to determine, using Cruz's medical chart and diagnosis, that Cruz died of tetanus infection secondary to stab wound.[7] Dr. Belandres specifically described the cause of Cruz's death in the following manner:

> The wound was exposed x x – spurs concerted, the patient developed difficulty of opening the mouth, spastivity of the body and abdominal pain and the cause of death is hypoxic encephalopathy – neuro transmitted – due to upper G.I. bleeding x x x. Diagnosed of Tetanus, Stage III.[8]

The prosecution also intended to present Dr. Deverni Matias (Dr. Matias), who attended to Cruz at the San Lazaro Hospital, but the prosecution and defense agreed to dispense with Dr. Matias' testimony based on the stipulation that it would only corroborate Dr. Belandres' testimony on Cruz dying of tetanus.

For its part, the defense presented Villacorta himself, who denied stabbing Cruz. Villacorta recounted that he was on his way home from work at around two o'clock in the morning of January 21, 2002. Upon arriving home, Villacorta drank coffee then went outside to buy cigarettes at a nearby store. When Villacorta was about to leave the store, Cruz put his arm around Villacorta's shoulder. This prompted Villacorta to box Cruz, after which, Villacorta went home. Villacorta did not notice that Cruz got hurt. Villacorta only found out about Cruz's death upon his arrest on July 31, 2002.[9]

On September 22, 2006, the RTC rendered a Decision finding Villacorta guilty of murder, qualified by treachery. The dispositive portion of said Decision reads:

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[7] TSN, May 5, 2003, pp. 1-11; Dr. Domingo Belandres, Jr. was also referred to as Dr. Domingo Melendres, Jr. in the TSN.

[8] *Id.* at 6.

[9] TSN, March 6, 2006, pp. 2-5.

WHEREFORE, in the light of the foregoing, the Court finds accused Orlito Villacorta guilty beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of Danilo Cruz the sum of ₱50,000.00 as civil indemnity for the death of said victim plus the costs of suit.[10]

Villacorta, through his counsel from the Public Attorney's Office (PAO), filed a notice of appeal to assail his conviction by the RTC.[11] The Court of Appeals directed the PAO to file Villacorta's brief, within thirty days from receipt of notice.

Villacorta filed his Appellant's Brief[12] on May 30, 2007; while the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief[13] on October 2, 2007.

On July 30, 2008, the Court of Appeals promulgated its Decision affirming *in toto* the RTC judgment of conviction against Villacorta.

Hence, Villacorta comes before this Court *via* the instant appeal.

Villacorta manifested that he would no longer file a supplemental brief, as he was adopting the Appellant's Brief he filed before the Court of Appeals.[14] The OSG, likewise, manifested that it was no longer filing a supplemental brief. [15]

In his Appellant's Brief, Villacorta raised the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

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[10] CA *rollo*, p. 60.

[11] Records, p. 144.

[12] CA *rollo*, pp. 37-57.

[13] *Id.* at 67-96.

[14] *Rollo*, pp. 30-32.

[15] *Id.* at 35.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III

ASSUMING *ARGUENDO* THAT THE ACCUSED COMMITTED A CRIME, HE COULD ONLY BE HELD LIABLE FOR SLIGHT PHYSICAL INJURIES.[16]

Villacorta assails the credibility of Mendeja, an eyewitness to the stabbing incident. It was Mendeja who positively identified Villacorta as the one who stabbed Cruz in the early morning of January 23, 2002. Villacorta asserts that Mendeja's account of the stabbing incident is replete with inconsistencies and incredulities, and is contrary to normal human experience, such as: (1) instead of shouting or calling for help when Villacorta allegedly stabbed Cruz, Mendeja attempted to run after and catch Villacorta; (2) while, by Mendeja's own account, there were other people who witnessed the stabbing and could have chased after Villacorta, yet, oddly, only Mendeja did; (3) if Cruz was stabbed so swiftly and suddenly as Mendeja described, then it would have been physically improbable for Mendeja to have vividly recognized the perpetrator, who immediately ran away after the stabbing; (4) after the stabbing, both Villacorta and Cruz ran in opposite directions; and (5) Mendeja had said that the bamboo stick, the alleged murder weapon, was left at her store, although she had also stated that the said bamboo stick was left embedded in Cruz's body. Villacorta maintains that the aforementioned inconsistencies are neither trivial nor inconsequential, and should engender some doubt as to his guilt.

We are not persuaded.

To begin with, it is fundamental that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect. Such determination made by the trial court proceeds from its first-hand opportunity to

[16] CA *rollo*, p. 39.

observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[17]

In this case, both the RTC and the Court of Appeals gave full faith and credence to the testimony of prosecution witness Mendeja. The Court of Appeals rejected Villacorta's attempts to impugn Mendeja's testimony, thus:

> Appellant's reason for concluding that witness Mendeja's testimony is incredible because she did not shout or call for help and instead run after the appellant, fails to impress the Court because persons who witness crimes react in different ways.
>
> > "x x x the makings of a human mind are unpredictable; people react differently and there is no standard form of behavior when one is confronted by a shocking incident.
>
> Equally lacking in merit is appellant's second reason which is, other persons could have run after the appellant after the stabbing incident. As explained by witness Mendeja, the other person whom she identified as Aron was left to assist the appellant who was wounded. Further, the stabbing occurred at 2:00 o'clock in the morning, a time when persons are expected to be asleep in their house, not roaming the streets.
>
> His [Villacorta's] other argument that the swiftness of the stabbing incident rendered impossible or incredible the identification of the assailant cannot likewise prosper in view of his admission that he was in the store of witness Mendeja on January 23, 2002 at 2:00 o'clock in the morning and that he assaulted the victim by boxing him.
>
> Even if his admission is disregarded still the evidence of record cannot support appellant's argument. Appellant and the victim were known to witness Mendeja, both being her friends and regular customers. There was light in front of the store. An opening in the store measuring 1 and ¼ meters enables the person inside to see persons outside, particularly those buying articles from the store. The victim was in front of the store buying bread when attacked. Further, immediately after the stabbing, witness Mendeja ran after

[17] *People v. Mayingque*, G.R. No. 179709, July 6, 2010, 624 SCRA 123, 140.

the appellant giving her additional opportunity to identify the malefactor. Thus, authorship of the attack can be credibly ascertained.[18]

Moreover, Villacorta was unable to present any reason or motivation for Mendeja to fabricate such a lie and falsely accuse Villacorta of stabbing Cruz on January 23, 2002. We have ruled time and again that where the prosecution eyewitness was familiar with both the victim and accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, then her version of the story deserves much weight.[19]

The purported inconsistencies in Mendeja's testimony pointed out by Villacorta are on matters that have no bearing on the fundamental fact which Mendeja testified on: that Villacorta stabbed Cruz in the early morning of January 23, 2002, right in front of Mendeja's store.

In the face of Mendeja's positive identification of Villacorta as Cruz's stabber, Villacorta could only muster an uncorroborated denial. Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated, regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[20]

Hence, we do not deviate from the foregoing factual findings of the RTC, as affirmed by the Court of Appeals.

Nevertheless, there is merit in the argument proffered by Villacorta that in the event he is found to have indeed stabbed Cruz, he should only be held liable for slight physical injuries for the stab wound he inflicted upon Cruz. The proximate cause of Cruz's death is the tetanus infection, and not the stab wound.

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[18] CA *rollo*, pp. 9-10.

[19] *People v. Alcantara*, 471 Phil. 690, 700 (2004).

[20] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 211.

Proximate cause has been defined as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred."[21]

In this case, immediately after he was stabbed by Villacorta in the early morning of January 23, 2002, Cruz was rushed to and treated as an out-patient at the Tondo Medical Center. On February 14, 2002, Cruz was admitted to the San Lazaro Hospital for symptoms of severe tetanus infection, where he died the following day, on February 15, 2002. The prosecution did not present evidence of the emergency medical treatment Cruz received at the Tondo Medical Center, subsequent visits by Cruz to Tondo Medical Center or any other hospital for follow-up medical treatment of his stab wound, or Cruz's activities between January 23 to February 14, 2002.

In *Urbano v. Intermediate Appellate Court*,[22] the Court was confronted with a case of very similar factual background as the one at bar. During an altercation on October 23, 1980, Urbano hacked Javier with a bolo, inflicting an incised wound on Javier's hand. Javier was treated by Dr. Meneses. On November 14, 1980, Javier was rushed to the hospital with lockjaw and convulsions. Dr. Exconde, who attended to Javier, found that Javier's serious condition was caused by tetanus infection. The next day, on November 15, 1980, Javier died. An Information was filed against Urbano for homicide. Both the Circuit Criminal Court and the Intermediate Appellate Court found Urbano guilty of homicide, because Javier's death was the natural and logical consequence of Urbano's unlawful act. Urbano appealed before this Court, arguing that Javier's own negligence was the proximate cause of his death. Urbano alleged that when Dr. Meneses examined Javier's wound, he did not find any tetanus infection and that Javier could have acquired the tetanus germs when he returned to work on his farm only two (2) weeks after sustaining his injury. The Court granted Urbano's appeal.

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[21] *Calimutan v. People*, 517 Phil. 272, 284 (2006).

[22] 241 Phil. 1 (1988).

We quote extensively from the ratiocination of the Court in *Urbano*:

The issue, therefore, hinges on whether or not there was an efficient intervening cause from the time Javier was wounded until his death which would exculpate Urbano from any liability for Javier's death.

We look into the nature of tetanus-

"The *incubation period of tetanus, i.e., the time between injury and the appearance of unmistakable symptoms, ranges from 2 to 56 days. However, over 80 percent of patients become symptomatic within 14 days. A short incubation period indicates severe disease, and when symptoms occur within 2 or 3 days of injury the mortality rate approaches 100 percent*.

"Non-specific premonitory symptoms such as restlessness, irritability, and headache are encountered occasionally, but the commonest presenting complaints are pain and stiffness in the jaw, abdomen, or back and difficulty swallowing. As the disease progresses, stiffness gives way to rigidity, and patients often complain of difficulty opening their mouths. In fact, trismus is the commonest manifestation of tetanus and is responsible for the familiar descriptive name of lockjaw. As more muscles are involved, rigidity becomes generalized, and sustained contractions called risus sardonicus. The intensity and sequence of muscle involvement is quite variable. In a small proportion of patients, only local signs and symptoms develop in the region of the injury. In the vast majority, however, most muscles are involved to some degree, and the signs and symptoms encountered depend upon the major muscle groups affected.

"*Reflex spasm usually occur within 24 to 72 hours of the first symptoms, an interval referred to as the onset time*. As in the case of the incubation period, a short onset time is associated with a poor prognosis. Spasms are caused by sudden intensification of afferent stimuli arising in the periphery, which increases rigidity and causes simultaneous and excessive contraction of muscles and their antagonists. Spasms may be both painful and dangerous. As the disease progresses, minimal or inapparent stimuli produce more intense and longer lasting spasms with increasing frequency. Respiration may be impaired by laryngospasm or tonic contraction of respiratory muscles

which prevent adequate ventilation. Hypoxia may then lead to irreversible central nervous system damage and death.

"*Mild tetanus is characterized by an incubation period of at least 14 days and an onset time of more than 6 days.* Trismus is usually present, but dysphagia is absent and generalized spasms are brief and mild. Moderately severe tetanus has a somewhat shorter incubation period and onset time; trismus is marked, dysphagia and generalized rigidity are present, but ventilation remains adequate even during spasms. The criteria for severe tetanus include a short incubation time, and an onset time of 72 hrs., or less, severe trismus, dysphagia and rigidity and frequent prolonged, generalized convulsive spasms. (Harrison's Principle of Internal Medicine, 1983 Edition, pp. 1004-1005; Emphasis supplied)

Therefore, medically speaking, the reaction to tetanus found inside a man's body depends on the incubation period of the disease.

In the case at bar, Javier suffered a 2-inch incised wound on his right palm when he parried the bolo which Urbano used in hacking him. This incident took place on October 23, 1980. After 22 days, or on November 14, 1980, he suffered the symptoms of tetanus, like lockjaw and muscle spasms. The following day, November 15, 1980, he died.

If, therefore, the wound of Javier inflicted by the appellant was already infected by tetanus germs at the time, it is more medically probable that Javier should have been infected with only a mild case of tetanus because the symptoms of tetanus appeared on the 22nd day *after* the hacking incident or *more than 14 days* after the infliction of the wound. Therefore, the *onset time should have been more than six days*. Javier, however, died on the second day from the *onset time*. The more credible conclusion is that at the time Javier's wound was inflicted by the appellant, the severe form of tetanus that killed him was not yet present. Consequently, Javier's wound could have been infected with tetanus after the hacking incident. Considering the circumstance surrounding Javier's death, his wound could have been infected by tetanus 2 or 3 or a few but not 20 to 22 days before he died.[23]

The incubation period for tetanus infection and the length of time between the hacking incident and the manifestation of severe tetanus infection created doubts in the mind of the Court

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

that Javier acquired the severe tetanus infection from the hacking incident. We explained in *Urbano* that:

> The rule is that the death of the victim must be the *direct, natural, and logical consequence of the wounds inflicted upon him by the accused*. (*People v. Cardenas, supra*) And since we are dealing with a criminal conviction, the proof that the accused caused the victim's death must convince a rational mind *beyond reasonable doubt*. The medical findings, however, lead us to a distinct possibility that the infection of the wound by tetanus was an efficient intervening cause later or between the time Javier was wounded to the time of his death. The infection was, therefore, distinct and foreign to the crime. (*People v. Rellin*, 77 Phil. 1038).
>
> Doubts are present. There is a likelihood that the wound was but the *remote* cause and its subsequent infection, for failure to take necessary precautions, with tetanus may have been the *proximate* cause of Javier's death with which the petitioner had nothing to do. As we ruled in *Manila Electric Co. v. Remoquillo, et al*. (99 Phil. 118).
>
> > "A prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated, and efficient cause of the injury, even though such injury would not have happened but for such condition or occasion. If no danger existed in the condition except because of the independent cause, such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the instances, which result in injury because of the prior defective condition, such subsequent act or condition is the proximate cause." (45 C.J. pp. 931-932). (at p. 125)[24]

We face the very same doubts in the instant case that compel us to set aside the conviction of Villacorta for murder. There had been an interval of 22 days between the date of the stabbing and the date when Cruz was rushed to San Lazaro Hospital, exhibiting symptoms of severe tetanus infection. If Cruz acquired severe tetanus infection from the stabbing, then the symptoms would have appeared a lot sooner than 22 days later. As the Court noted in *Urbano*,

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

severe tetanus infection has a short incubation period, less than 14 days; and those that exhibit symptoms with two to three days from the injury, have one hundred percent (100%) mortality. Ultimately, we can only deduce that Cruz's stab wound was merely the remote cause, and its subsequent infection with tetanus might have been the proximate cause of Cruz's death. The infection of Cruz's stab wound by tetanus was an efficient intervening cause later or between the time Cruz was stabbed to the time of his death.

However, Villacorta is not totally without criminal liability. Villacorta is guilty of slight physical injuries under Article 266(1) of the Revised Penal Code for the stab wound he inflicted upon Cruz. Although the charge in the instant case is for murder, a finding of guilt for the lesser offense of slight physical injuries may be made considering that the latter offense is necessarily included in the former since the essential ingredients of slight physical injuries constitute and form part of those constituting the offense of murder.[25]

We cannot hold Villacorta criminally liable for attempted or frustrated murder because the prosecution was not able to establish Villacorta's intent to kill. In fact, the Court of Appeals expressly observed the lack of evidence to prove such an intent beyond reasonable doubt, to wit:

> Appellant stabbed the victim only once using a sharpened bamboo stick, hitting him on the left side of the body and then immediately fled. The instrument used is not as lethal as those made of metallic material. The part of the body hit is not delicate in the sense that instant death can ensue by reason of a single stab wound. The assault was done only once. Thus, there is doubt as to whether appellant had an intent to kill the victim, which should be resolved in favor of the appellant. x x x.[26]

The intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal (or murderous) intent of the aggressor. The *onus probandi* lies not on accused-appellant but on the prosecution. The inference that the intent

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[25] *People v. Vicente*, 423 Phil. 1065, 1078 (2001).

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

to kill existed should not be drawn in the absence of circumstances sufficient to prove this fact beyond reasonable doubt. When such intent is lacking but wounds were inflicted, the crime is not frustrated murder but physical injuries only.[27]

Evidence on record shows that Cruz was brought to Tondo Medical Center for medical treatment immediately after the stabbing incident. Right after receiving medical treatment, Cruz was then released by the Tondo Medical Center as an out-patient. There was no other evidence to establish that Cruz was incapacitated for labor and/or required medical attendance for more than nine days. Without such evidence, the offense is only slight physical injuries.[28]

We still appreciate treachery as an aggravating circumstance, it being sufficiently alleged in the Information and proved during trial.

The Information specified that "accused, armed with a sharpened bamboo stick, with intent to kill, **treachery** and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one DANILO SALVADOR CRUZ x x x."

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms which tend directly or especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. To reiterate, the essence of qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus, depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.[29] Likewise,

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[27] *People v. Pagador*, 409 Phil. 338, 351-352 (2001).

[28] *Li v. People*, 471 Phil. 128, 150 (2004).

[29] *People v. Casta*, G.R. No. 172871, September 16, 2008, 565 SCRA 341, 356-357.

even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[30]

Both the RTC and the Court of Appeals found that treachery was duly proven in this case, and we sustain such finding. Cruz, the victim, was attacked so suddenly, unexpectedly, and without provocation. It was two o'clock in the morning of January 23, 2002, and Cruz, who was out buying bread at Mendeja's store, was unarmed. Cruz had his guard down and was totally unprepared for an attack on his person. Villacorta suddenly appeared from nowhere, armed with a sharpened bamboo stick, and without uttering a word, stabbed Cruz at the left side of his body, then swiftly ran away. Villacorta's treacherous mode of attack left Cruz with no opportunity at all to defend himself or retaliate.

Article 266(1) of the Revised Penal Code provides:

ART. 266. *Slight physical injuries and maltreatment.* – The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party from labor from one to nine days, or shall require medical attendance during the same period.

The penalty of *arresto menor* spans from one (1) day to thirty (30) days.[31] The Indeterminate Sentence Law does not apply since said law excludes from its coverage cases where the penalty imposed does not exceed one (1) year.[32] With the aggravating circumstance of treachery, we can sentence Villacorta with imprisonment anywhere within *arresto menor* in the maximum period, *i.e.*, twenty-one (21) to thirty (30) days. Consequently, we impose upon Villacorta a straight sentence of thirty (30)

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[30] *People v. Napalit*, G.R. No. 181247, March 19, 2010, 616 SCRA 245, 252.

[31] Revised Penal Code, Article 27.

[32] *People v. Tan*, 411 Phil. 813, 843 (2001).

days of *arresto menor*; but given that Villacorta has been in jail since July 31, 2002 until present time, already way beyond his imposed sentence, we order his immediate release.

Under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss. Pursuant to previous jurisprudence, an award of Five Thousand Pesos (₱5,000.00) moral damages is appropriate for less serious, as well as slight physical injuries.[33]

WHEREFORE, the Decision dated July 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02550, affirming the Decision dated September 22, 2006 of the Regional Trial Court, Branch 170, of Malabon, in Criminal Case No. 27039-MN, is *REVERSED* and *SET ASIDE*. A new judgment is entered finding Villacorta *GUILTY* beyond reasonable doubt of the crime of slight physical injuries, as defined and punished by Article 266 of the Revised Penal Code, and sentenced to suffer the penalty of thirty (30) days *arresto menor*. Considering that Villacorta has been incarcerated well beyond the period of the penalty herein imposed, the Director of the Bureau of Prisons is ordered to cause Villacorta's immediate release, unless Villacorta is being lawfully held for another cause, and to inform this Court, within five (5) days from receipt of this Decision, of the compliance with such order. Villacorta is ordered to pay the heirs of the late Danilo Cruz moral damages in the sum of Five Thousand Pesos (₱5,000.00).

SO ORDERED.

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

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[33] *Aradillos v. Court of Appeals*, 464 Phil. 650, 679 (2004); *People v. Loreto*, 446 Phil. 592, 614 (2003).

THIRD DIVISION

[G.R. No. 187887. September 7, 2011]

PAMELA FLORENTINA P. JUMUAD, *petitioner, vs.* **HI-FLYER FOOD, INC. and/or JESUS R. MONTEMAYOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES; GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; EXCEPTIONS.— It is a hornbook rule that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. While this rule is strictly adhered to in labor cases, the same rule, however, admits exceptions. These include: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT BY EMPLOYER; NEGLECT OF DUTY AND BREACH OF TRUST AND CONFIDENCE, AS GROUNDS; DISTINGUISHED.— Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the

employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. It has been said that a single or an isolated act of negligence cannot constitute as a just cause for the dismissal of an employee. To be a ground for removal, the neglect of duty must be both *gross* and *habitual*. On the other hand, breach of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized. It should be noted, however, that the finding of guilt or innocence in a charge of gross and habitual neglect of duty does not preclude the finding of guilty or innocence in a charge of breach of trust and confidence. Each of the charges must be treated separately, as the law itself has treated them separately. To repeat, to warrant removal from service for gross and habitual neglect of duty, it must be shown that the negligence should not merely be *gross*, but also *habitual*. In breach of trust and confidence, so long as it is shown there is some basis for management to lose its trust and confidence and that the dismissal was not used as an occasion for abuse, as a subterfuge for causes which are illegal, improper, and unjustified and is genuine, that is, not a mere afterthought intended to justify an earlier action taken in bad faith, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

3. ID.; ID.; MANAGERIAL EMPLOYEE; MERE EXISTENCE OF THE GROUNDS FOR THE LOSS OF TRUST AND CONFIDENCE JUSTIFIES DISMISSAL.— As correctly noted by the appellate court, Jumuad executed management policies and had the power to discipline the employees of KFC branches in her area. She recommended actions on employees to the head office. Pertinent is Article 212 (m) of the Labor Code defining a managerial employee as one who is vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees. Based on established facts, the mere existence of

the grounds for the loss of trust and confidence justifies petitioner's dismissal. Pursuant to the Court's ruling in *Lima Land, Inc. v. Cuevas*, as long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed. In the present case, the CER's reports of Hi-Flyer show that there were anomalies committed in the branches managed by Jumuad. On the principle of *respondeat superior* or command responsibility alone, Jumuad may be held liable for negligence in the performance of her managerial duties. She may not have been directly involved in causing the cash shortages in KFC-Bohol, but her involvement in not performing her duty monitoring and supporting the day to day operations of the branches and ensure that all the facilities and equipment at the restaurant were properly maintained and serviced, could have truly prevented the whole debacle from ever occurring.

4. ID.; ID.; MANAGEMENT PREROGATIVE TO DISCIPLINE EMPLOYEES AND IMPOSE APPROPRIATE PENALTIES, UPHELD. — As the employer, Hi-Flyer has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations. So long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, the employer's exercise of its management prerogative must be upheld. In this case, Hi-Flyer exercised in good faith its management prerogative as there is no dispute that it has lost trust and confidence in her and her managerial abilities, to its damage and prejudice. Her dismissal, was therefore, justified. x x x The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes

the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to its interests.

5. CIVIL LAW; OBLIGATIONS; THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO A CAR LOAN AGREEMENT IS NOT A PROPER ISSUE IN A LABOR DISPUTE.— As for Jumuad's claim for the reimbursement of the 40% of the value of the car loan subsidized by Hi-Flyer under its car loan policy, the same must also be denied. The rights and obligations of the parties to a car loan agreement is not a proper issue in a labor dispute but in a civil one. It involves the relationship of debtor and creditor rather than employee-employer relations. Jurisdiction, therefore, lies with the regular courts in a separate civil action.

APPEARANCES OF COUNSEL

Ybanez Senica & Bernido Law Office for petitioner.
Santiago & Santiago for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the April 20, 2009 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 03346, which reversed the August 10, 2006 Decision[2] and the November 29, 2007 Resolution[3] of the National Labor Relations Commission, 4th Division *(NLRC)*, in NLRC Case

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[1] *Rollo*, pp. 445-464. Penned by Associate Justice Rodil V. Zalameda with the concurrence of Associate Justice Amy C. Lazaro-Javier and Associate Justice Francisco P. Acosta.

[2] *Id.* at 304-323.

[3] *Id.* at 348-349.

No. V-000813-06. The NLRC Decision and Resolution affirmed *in toto* the Decision[4] of the Labor Arbiter Julie C. Ronduque *(LA)* in RAB Case No. VII-10-2269-05 favoring the petitioner.

The Facts:

On May 22, 1995, petitioner Pamela Florentina P. Jumuad *(Jumuad)* began her employment with respondent Hi-Flyer Food, Inc. *(Hi-Flyer)*, as management trainee. Hi-Flyer is a corporation licensed to operate Kentucky Fried Chicken *(KFC)* restaurants in the Philippines. Based on her performance through the years, Jumuad received several promotions until she became the area manager for the entire Visayas-Mindanao 1 region, comprising the provinces of Cebu, Bacolod, Iloilo and Bohol.[5]

Aside from being responsible in monitoring her subordinates, Jumuad was tasked to: 1) be highly visible in the restaurants under her jurisdiction; 2) monitor and support day-to-day operations; and 3) ensure that all the facilities and equipment at the restaurant were properly maintained and serviced.[6] Among the branches under her supervision were the KFC branches in Gaisano Mall, Cebu City *(KFC-Gaisano)*; in Cocomall, Cebu City *(KFC-Cocomall)*; and in Island City Mall, Bohol *(KFC-Bohol)*.

As area manager, Jumuad was allowed to avail of Hi-Flyer's car loan program,[7] wherein forty *(40%)* percent of the total loanable amount would be subsidized by Hi-Flyer and the remaining sixty *(60%)* percent would be deducted from her salary. It was also agreed that in the event that she would resign or would be terminated prior to the payment in full of the said car loan, she could opt to surrender the car to Hi-Flyer or to pay the full balance of the loan.[8]

In just her first year as Area Manager, Jumuad gained distinction and was awarded the 3rd top area manager nationwide. She

[4] *Id.* at 213-227.

[5] *Id.* at 50-52.

[6] *Id.* at 492.

[7] *Id.* at 106-111.

[8] *Id.* at 106-111.

was rewarded with a trip to Singapore for her excellent performance.[9]

On October 4, 2004, Hi–Flyer conducted a food safety, service and sanitation audit at KFC-Gaisano. The audit, denominated as CHAMPS Excellence Review *(CER)*, revealed several sanitation violations, such as the presence of rodents and the use of a defective chiller for the storage of food.[10] When asked to explain, Jumuad first pointed out that she had already taken steps to prevent the further infestation of the branch. As to why the branch became infested with rodents, Jumuad faulted management's decision to terminate the services of the branch's pest control program and to rely solely on the pest control program of the mall. As for the defective chiller, she explained that it was under repair at the time of the CER.[11] Soon thereafter, Hi-Flyer ordered the KFC-Gaisano branch closed.

Then, sometime in June of 2005, Hi-Flyer audited the accounts of KFC-Bohol amid reports that certain employees were covering up cash shortages. As a result, the following irregularities were discovered: 1) cash shortage amounting to ₱62,290.85; 2) delay in the deposits of cash sales by an average of three days; 3) the presence of two sealed cash-for-deposit envelopes containing paper cut-outs instead of cash; 4) falsified entries in the deposit logbook; 5) lapses in inventory control; and 6) material product spoilage.[12] In her report regarding the incident, Jumuad disclaimed any fault in the incident by pointing out that she was the one responsible for the discovery of this irregularity.[13]

On August 7, 2005, Hi-Flyer conducted another CER, this time at its KFC-Cocomall branch. Grout and leaks at the branch's kitchen wall, dried up spills from the marinator, as well as a live rat under postmix, and signs of rodent gnawing/infestation

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[9] *Id.* at 52.

[10] *Id.* at 136-137.

[11] *Id.* at 523-524.

[12] *Id.* at 138-147.

[13] *Id.* at 451-454.

were found.[14] This time, Jumuad explained to management that she had been busy conducting management team meetings at the other KFC branches and that, at the date the CER was conducted, she had no scheduled visit at the KFC-Cocomall branch.[15]

Seeking to hold Jumuad accountable for the irregularities uncovered in the branches under her supervision, Hi-Flyer sent Jumuad an Irregularities Report[16] and Notice of Charges[17] which she received on September 5, 2005. On September 7, 2005 Jumuad submitted her written explanation.[18] On September 28, 2005, Hi-Flyer held an administrative hearing where Jumuad appeared with counsel. Apparently not satisfied with her explanations, Hi-Flyer served her a Notice of Dismissal[19] dated October 14, 2005, effecting her termination on October 17, 2005.

This prompted Jumuad to file a complaint against Hi-Flyer and/or Jesus R. Montemayor *(Montemayor)* for illegal dismissal before the NLRC on October 17, 2005, praying for reinstatement and payment of separation pay, 13th month pay, service incentive leave, moral and exemplary damages, and attorney's fees. Jumuad also sought the reimbursement of the amount equivalent to her forty percent (40%) contribution to Hi-Flyer's subsidized car loan program.

While the LA found that Jumuad was not completely blameless for the anomalies discovered, she was of the view that the employer's prerogative to dismiss or layoff an employee "must be exercised without abuse of discretion" and "should be tempered with compassion and understanding."[20] Thus, the dismissal

[14] *Id.* at 154-156.

[15] *Id.* at 471-472.

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

[17] *Id.* at 162.

[18] *Id.* at 164-166.

[19] *Id.* at 89.

[20] *Id.* at 298.

was too harsh considering the circumstances. After finding that no serious cause for termination existed, the LA ruled that Jumuad was illegally dismissed. The LA disposed:

> WHEREFORE, VIEWED FROM THE FOREGOING PREMISES, judgment is hereby rendered declaring complainant's dismissal as ILLEGAL. Consequently, reinstatement not being feasible, respondents HI-FLYER FOOD, INC. AND OR JESUS R. MONTEMAYOR are hereby ordered to pay, jointly and severally, complainant PAMELA FLORENTINA P. JUMUAD, the total amount of THREE HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED PESOS (₱336,400.00), Philippine currency, representing Separation Pay, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.
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> Further, same respondents are ordered to reimburse complainant an amount equivalent to 40% of the value of her car loaned pursuant to the car loan entitlement memorandum.
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> Other claims are DISMISSED for lack of merit.[21]

Both Jumuad and Hi-Flyer appealed to the NLRC. Jumuad faulted the LA for not awarding backwages and damages despite its finding that she was illegally dismissed. Hi-Flyer and Montemayor, on the other hand, assailed the finding that Jumuad was illegally dismissed and that they were solidarily liable therefor. They also questioned the orders of the LA that they pay separation pay and reimburse the forty percent (40%) of the loan Jumuad paid pursuant to Hi-Flyer's car entitlement program.

Echoing the finding of the LA that the dismissal of Jumuad was too harsh, the NLRC affirmed *in toto* the LA decision dated August 10, 2006. In addition, the NLRC noted that even before the Irregularities Report and Notice of Charges were given to Jumuad on September 5, 2005, two (2) electronic mails *(e-mails)* between Montemayor and officers of Hi-Flyer showed that Hi-Flyer was already determined to terminate Jumuad. The first e-mail[22] read:

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[21] *Id.* at 300.

[22] *Id.* at 90.

From: Jess R. Montemayor
Sent: Tuesday, August 16, 2005 5:59 PM
To: bebe chaves; Maria Judith N. Marcelo; Jennifer Coloma Ravela; Bernard Joseph A. Velasco
Cc: Odjie Belarmino; Jesse D. Cruz
Subject: RE: 049 KFC Cocomall – Food Safety Risk/Product Quality Violation

I agree if the sanctions are light we should change them. In the case of Pamela however, the fact that Cebu Colon store had these violations is not the first time this incident has happened in her area. The Bohol case was also in her area and maybe these two incidents is enough grounds already for her to be terminated or maybe asked to resign instead of being terminated.

I know if any Ops person serves expired product this is ground for termination. I think serving off specs products such as this lumpy gravy in the case of Coco Mall should be grounds for termination. How many customers have we lost due to this lumpy clearly out of specs gravy? 20 customers maybe.

Jess.

The second e-mail,[23] sent by one Bebe Chaves of Hi-Flyer to Montemayor and other officers of Hi-Flyer, reads:

From: bebe chaves

Sent: Sat 9/3/2005 3:45 AM
To: Maria Judith N. Marcelo
CC: Jennifer Coloma Ravela; Goodwin Belarmino; Jess R. Montemayor
Subject: RE: 049 KFC Cocomall – Food Safety Risk/Product Quality Violation
Jojo,

Just an update of our meeting yesterday with Jennifer. After having reviewed the case and all existing documents, we have decided that there is enough ground to terminate her services. IR/Jennifer are working hand in hand to service due notice and close the case.

[23] *Id.* at 91.

According to the NLRC, these e-mails were proof that Jumuad was denied due process considering that no matter how she would refute the charges hurled against her, the decision of Hi-Flyer to terminate her would not change.[24]

Sustaining the order of the LA to reimburse Jumuad the amount equivalent to 40% of the value of the car loan, the NLRC explained that Jumuad enjoyed this benefit during her period of employment as Area Manager and could have still enjoyed the same if not for her illegal dismissal.[25]

Finally, the NLRC held that the active participation of Montemayor in the illegal dismissal of Jumuad justified his solidary liability with Hi-Flyer.

Both Jumuad and Hi-Flyer sought reconsideration of the NLRC Decision but their respective motions were denied on November 29, 2007.[26]

Alleging grave abuse of discretion on the part of the NLRC, Hi-Flyer appealed the case before the CA in Cebu City.

On April 20, 2009, the CA rendered the subject decision reversing the decision of the labor tribunal. The appellate court disposed:

> WHEREFORE, in view of the foregoing, the Petition is GRANTED. The Decision of the National Labor Relations Commission (4th Division) dated 28 September 2007 in NLRC Case No. V-000813-06 (RAB Case No. VII-10-2269-05, as well as the Decision dated 10 August 2006 of the Honorable Labor Arbiter Julie C. Ronduque, and the 29 November 2006 Resolution of the NLRC denying petitioner's Motion for Reconsideration dated 08 November 2007, are hereby REVERSED and SET ASIDE.
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> No pronouncement as to costs.
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> SO ORDERED.[27]

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[24] *Id.* at 318-319.

[25] *Id.* at 321.

[26] *Id.* at 348-349.

[27] *Id.* at 464.

Contrary to the findings of the LA and the NLRC, the CA was of the opinion that the requirements of substantive and procedural due process were complied with affording Jumuad an opportunity to be heard first, when she submitted her written explanation and then, when she was informed of the decision and the basis of her termination.[28] As for the e-mail exchanges between Montemayor and the officers of Hi-Flyer, the CA opined that they did not equate to a predetermination of Jumuad's termination. It was of the view that the e-mail exchanges were mere discussions between Montemayor and other officers of Hi-Flyer on whether grounds for disciplinary action or termination existed. To the mind of the CA, the e-mails just showed that Hi-Flyer extensively deliberated the nature and cause of the charges against Jumuad.[29]

On the issue of loss of trust and confidence, the CA considered the deplorable sanitary conditions and the cash shortages uncovered at three of the seven KFC branches supervised by Jumuad as enough bases for Hi-Flyer to lose its trust and confidence in her.[30]

With regard to the reimbursement of the 40% of the car loan as awarded by the labor tribunal, the CA opined that the terms of the car loan program did not provide for reimbursement in case an employee was terminated for just cause and they, in fact, required that the employee should stay with the company for at least three (3) years from the date of the loan to obtain the full 40% subsidy. The CA further stated that the rights and obligations of the parties should be litigated in a separate civil action before the regular courts.[31]

The CA also exculpated Montemayor from any liability since it considered Jumuad's dismissal with a just cause and it found no evidence that he acted with malice and bad faith.[32]

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[28] *Id.* at 455.

[29] *Id.* at 454-455.

[30] *Id.* at 457.

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

[32] *Id.* at 463.

Hence, this petition on the following

GROUNDS:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLD[ING] AS VALID THE TERMINATION OF PETITIONER'S SERVICES BY RESPONDENTS.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION 4TH DIVISION OF CEBU CITY WHICH AFFIRMED THE DECISION OF LABOR ARBITER JULUE RENDOQUE.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION 4TH DIVISION OF CEBU CITY WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO REIMBURSEMENT OF FORTY PERCENT (40%) OF THE CAR VALUE BENEFITS.

It is a hornbook rule that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[33] While this rule is strictly adhered to in labor cases, the same rule, however, admits exceptions. These include: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings

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[33] *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division),* G.R. No. 153192, January 30, 2009, 577 SCRA 280.

of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[34]

In the case at bench, the factual findings of the CA differ from that of the LA and the NLRC. This divergence of positions between the CA and the labor tribunal below constrains the Court to review and evaluate assiduously the evidence on record.

The petition is without merit.

On whether Jumuad was illegally dismissed, Article 282 of the Labor Code provides:

> Art. 282. *Termination by Employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing.

Jumuad was terminated for neglect of duty and breach of trust and confidence. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. It has been said that a single or an isolated act of negligence cannot constitute as a

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[34] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249.

just cause for the dismissal of an employee.[35] To be a ground for removal, the neglect of duty must be both *gross* and *habitual*.[36]

On the other hand, breach of trust and confidence, as a just cause for termination of employment, is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.[37]

It should be noted, however, that the finding of guilt or innocence in a charge of gross and habitual neglect of duty does not preclude the finding of guilty or innocence in a charge of breach of trust and confidence. Each of the charges must be treated separately, as the law itself has treated them separately. To repeat, to warrant removal from service for gross and habitual neglect of duty, it must be shown that the negligence should not merely be *gross*, but also *habitual*. In breach of trust and confidence, so long as it is shown there is some basis for management to lose its trust and confidence and that the dismissal was not used as an occasion for abuse, as a subterfuge for causes which are illegal, improper, and unjustified and is genuine, that is, not a mere afterthought intended to justify an earlier action taken in bad faith, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

After an assiduous review of the facts as contained in the records, the Court is convinced that Jumuad cannot be dismissed on the ground of gross and habitual neglect of duty. The Court notes the apparent neglect of Jumuad of her duty in ensuring that her subordinates were properly monitored and that she had dutifully done all that was expected of her to ensure the

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[35] *St. Luke's Medical Center, Inc. and Robert Kuan v. Estrelito Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.

[36] *JGB and Associates, Inc. v. National Labor Relations Commission*, 324 Phil. 747 (1996); *Premiere Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 239.

[37] *Caingat v. NLRC*, 493 Phil. 299, 308 (2005).

safety of the consuming public who continue to patronize the KFC branches under her jursidiction. Had Jumuad discharged her duties to be highly visible in the restaurants under her jurisdiction, monitor and support the day to day operations of the branches and ensure that all the facilities and equipment at the restaurant were properly maintained and serviced, the deplorable conditions and irregularities at the various KFC branches under her jurisdiction would have been prevented.

Considering, however, that over a year had lapsed between the incidences at KFC-Gaisano and KFC-Bohol, and that the nature of the anomalies uncovered were each of a different nature, the Court finds that her acts or lack of action in the performance of her duties is not born of habit.

Despite saying this, it cannot be denied that Jumuad willfully breached her duties as to be unworthy of the trust and confidence of Hi-Flyer. First, there is no denying that Jumuad was a managerial employee. As correctly noted by the appellate court, Jumuad executed management policies and had the power to discipline the employees of KFC branches in her area. She recommended actions on employees to the head office. Pertinent is Article 212 (m) of the Labor Code defining a managerial employee as one who is vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees.

Based on established facts, the mere existence of the grounds for the loss of trust and confidence justifies petitioner's dismissal. Pursuant to the Court's ruling in *Lima Land, Inc. v. Cuevas,*[38] as long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed.

In the present case, the CER's reports of Hi-Flyer show that there were anomalies committed in the branches managed by

[38] G.R. No. 169523, June 16, 2010, 621 SCRA 36.

Jumuad. On the principle of *respondeat superior* or command responsibility alone, Jumuad may be held liable for negligence in the performance of her managerial duties. She may not have been directly involved in causing the cash shortages in KFC-Bohol, but her involvement in not performing her duty monitoring and supporting the day to day operations of the branches and ensure that all the facilities and equipment at the restaurant were properly maintained and serviced, could have truly prevented the whole debacle from ever occurring.

Moreover, it is observed that rather than taking proactive steps to prevent the anomalies at her branches, Jumuad merely effected remedial measures. In the restaurant business where the health and well-being of the consuming public is at stake, this does not suffice. Thus, there is reasonable basis for Hi-Flyer to withdraw its trust in her and dismissing her from its service.

The disquisition of the appellate court on the matter is also worth mentioning:

> In this case, there is ample evidence that private respondent indeed committed acts justifying loss of trust and confidence of Hi-Flyer, and eventually, which resulted to her dismissal from service. Private respondent's mismanagement and negligence in supervising the effective operation of KFC branches in the span of less than a year, resulting in the closure of KFC-Gaisano due to deplorable sanitary conditions, cash shortages in KFC-Bohol, in which the said branch, at the time of discovery, was only several months into operation, and the poor sanitation at KFC-Cocomall. The glaring fact that three (3) out of the seven (7) branches under her area were neglected cannot be glossed over by private respondent's explanation that there was no negligence on her part as the sanitation problem was structural, that she had been usually busy conducting management team meetings in several branches of KFC in her area or that she had no participation whatsoever in the alleged cash shortages.
>
> x x x x x x x x x

It bears stressing that both the Labor Arbiter and the NLRC found that private respondent was indeed lax in her duties. Thus, said the

NLRC: "xxx [i]t is Our considered view that xxx complainant cannot totally claim that she was not remiss in her duties xxx.[39]

As the employer, Hi-Flyer has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[40]

So long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, the employer's exercise of its management prerogative must be upheld.[41]

In this case, Hi-Flyer exercised in good faith its management prerogative as there is no dispute that it has lost trust and confidence in her and her managerial abilities, to its damage and prejudice. Her dismissal, was therefore, justified.

As for Jumuad's claim for the reimbursement of the 40% of the value of the car loan subsidized by Hi-Flyer under its car loan policy, the same must also be denied. The rights and obligations of the parties to a car loan agreement is not a proper issue in a labor dispute but in a civil one.[42] It involves the relationship of debtor and creditor rather than employee-employer relations.[43] Jurisdiction, therefore, lies with the regular courts in a separate civil action.[44]

[39] *Rollo*, pp. 457-458.

[40] *Deles, Jr. v. NLRC*, 384 Phil. 271, 281-282 (2000).

[41] *Meralco v. NLRC*, 331 Phil. 838, 847 (1996).

[42] *Nestlé Philippines, Inc. v. NLRC*, G.R. No. 85197, March 18, 1991, 195 SCRA 340.

[43] *Smart Communications, Inc. v. Astorga*, G.R. No. 148132, January 28, 2008. 524 SCRA 434.

[44] *Hongkong and Shanghai Banking Corporation, Ltd. v. Broqueza*, G.R. No. 178610, November 17, 2010.

The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to its interests.[45]

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Villarama, Jr.,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 190994. September 7, 2011]

TONGONAN HOLDINGS and DEVELOPMENT CORPORATION, *petitioner, vs.* **ATTY. FRANCISCO ESCAÑO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.

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[45] *Agabon v. National Labor Relations Commission,* 485 Phil. 248, 279 (2004).

* Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076 dated September 6, 2011.

For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; FINAL ORDER OR JUDGMENT DISTINGUISHED FROM INTERLOCUTORY ORDER.— An order or judgment of the RTC is deemed *final* when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is *interlocutory*. In *Santos v. People of the Philippines*, this Court laid down the test in finding whether an order is interlocutory or final, thus: The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside."

The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word "interlocutory" refers to "something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy."

3. ID.; ID.; ID.; RULE ON FINALITY OF JUDGMENT; THE ONLY EXCEPTIONS ARE THE SO-CALLED *NUNC PRO TUNC* ENTRIES; EXPLAINED.— 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 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. x x x Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role and purpose of the courts to resolve justiciable controversies with finality.

4. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; ESCROW ORDER IS NOT PROPER WHEN THE RIGHTS OF THE RECIPIENT OF THE JUDGMENT PROCEEDS HAD ALREADY BEEN DETERMINED; APPLICATION IN CASE AT BAR.— Indeed, this Court recognizes the inherent power of the courts to control its processes and orders and to employ all auxiliary writs, processes and other means necessary to carry its jurisdiction into effect, as embodied in the Rules of Court. An order directing the proceeds of the judgment to be deposited in escrow may be one of these auxiliary writs and processes. So, also, the act of placing property in litigation under judicial possession, whether in the hands of a receiver, an administrator, or as in this case, in a government bank, is an ancient and accepted procedure. Under the prevailing circumstances,

> however, the order to hold in escrow the entire judgment award, including the portion that should have been the just compensation of THDC as owner of the parcels of land subject of the eminent domain case, was certainly not proper. To delay the payment of just compensation is virtually tantamount to a deprivation of one's property rights. In this case, however, the rights of the petitioner were already finally determined in the main case for eminent domain. Verily, the recipient of the judgment proceeds had already been ascertained, THDC, the judgment-obligee, who has yet to receive the just compensation for the property wrested from it by the government in the exercise of its power of eminent domain. It was, therefore, manifestly unnecessary and highly irregular for the CA to order the escrow of the entire amount.

APPEARANCES OF COUNSEL

Flor Amor A. Opon for petitioner.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court filed by Tongonan Holdings and Development Corporation (*THDC*) assailing, on questions of law, the August 12, 2009 Decision[1] of the 19th Division of the Court of Appeals, Cebu City (*CA*), in CA-G.R. SP No. 03935, entitled "*Atty. Francisco Escaño, Jr. v. Hon. Apolinario Buaya, in his capacity as Presiding Judge, Regional Trial Court, Branch 35, Ormoc City and Tongonan Holdings & Development Corporation, represented by its president, Mr. Antonio Diano,*" and its December 10, 2009 Resolution denying the motion for the reconsideration thereof.

The Facts

This controversy between petitioner THDC and its erstwhile counsel, respondent Atty. Francisco Escaño, Jr. *(Atty. Escaño)*

[1] Annex A of Petition, *rollo*, pp. 25-33. Penned by Associate Justice Stephen C. Cruz with Associate Justices Florito S. Macalino and Rodil V. Zalameda, concurring.

arose from a case for eminent domain, docketed as Civil Case No. 3392-0 entitled "*Philippine National Oil Company v. Sps. Dominador and Minerva Samson*" before the Regional Trial Court, Branch 35, Ormoc City (*RTC*). THDC was named as Defendant-Intervenor in the said case, as it had purchased the subject parcels of land from the defendant spouses *(Spouses Samson)* and was represented by Atty. Escaño of the Escaño Montehermoso Oliver and Trias Law Office from February 24, 1997 to June 30, 1999. After the dissolution of the law firm, Atty. Escaño continued to represent THDC from July 1, 1999 until his services was terminated by THDC in April 2005.[2]

Eventually, in the RTC Order[3] dated November 27, 2000, THDC was awarded just compensation in the amount of ₱33,242,700.00 with legal interest at the rate of 6% per annum from the date of the filing of the complaint on June 10, 1996.

Meanwhile, Atty. Escaño sought the entry of his attorney's liens on the basis of the Memorandum of Agreement *(MOA)* dated February 24, 1997, contracted between him and THDC, stipulating the 30% professional or attorney's fees. The RTC, in its Order[4] dated June 13, 2001, declared the claim of 30% attorney's fees on the judgment as unconscionable. The amount of attorney's fees was then fixed at 15% of the judgment award in the name of the partners. On appeal, this reduction of attorney's fees was affirmed by the CA in its Decision[5] dated July 31, 2002.

Upon dismissal of PNOC's appeal in the main case in the CA, Atty. Escaño, representing THDC, moved for the execution of the RTC decision. The RTC then ordered the issuance of a writ of execution in its Order[6] dated March 11, 2005.

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[2] *Id.* at 121.

[3] *Id.* at 72.

[4] *Id.* at 81-82.

[5] *Id.* at 83.

[6] *Id.* at 108-109, Annex "O" of Petition.

Subsequently, Atty. Escaño filed an Urgent Manifestation with Motion[7] alleging that THDC had lost its juridical personality as a corporation due to the revocation of its certificate of registration. He prayed that the enforcement of the said writ of execution be held in abeyance until the termination of the NBI's investigation relative to the allegations that the RTC Decision of November 27, 2000 and the dismissal of the appeal were secured through fraud. THDC later furnished the RTC with a copy of a certification from the Securities and Exchange Commission (SEC) that the corporation had not been dissolved.

As a result, THDC terminated the services of Atty. Escaño on the ground of loss of confidence, which was approved by the RTC.

Afterward, Atty. Escaño filed a "Motion to Enter Into the Records Attorney's Lien"[8] for additional attorney's fees of 15% for his professional services, rendered after the dissolution of their law firm, from July 1, 1999 to April 29, 2005. He also asked for another 33.7% as additional attorney's fees for Atty. Lino Dumas and partners, whom he claimed to be his consultants when the case was on appeal. These amounts were on top of the 15% already finally awarded. In all, he was demanding a total of 63.7% of the judgment award.

The RTC, in its September 26, 2005 Order,[9] denied the motion and approved only the 15% Attorney's Lien on the money judgment in favor of Atty. Escaño and his former partners. It held that Atty. Escaño was not entitled to an additional compensation on the ground that when he took over the case from their law firm there was no separate contract for his legal services. The said case became his case after the partners divided all of the firm's cases among themselves; thus, the continuation of his services was still covered by the MOA previously entered between him and THDC. After his motion for reconsideration was denied on January 26, 2006, Atty. Escaño filed a Notice of Appeal.

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[7] *Id.* at 111-112, Annex "Q "of Petition.

[8] *Id.* at 122-128.

[9] *Id.* at 139-141, Annex "X" of Petition.

On April 2, 2007, the RTC gave due course to the Notice of Appeal. The pertinent portion of the order states:

> Nevertheless, in order to afford Atty. Escaño of all avenues available to him in pursuing his claim for attorney's liens, despite the fact that the main case has long become final and executory, his appeal is given due course. Despite the granting of the appeal, the execution will still proceed but the money recovered will be held in escrow until the final determination of the attorney's fees.
>
> Let the records of this case be forwarded to the Court of Appeals.
>
> SO ORDERED.[10]

THDC then filed its *Motion for Reconsideration and Motion to Dismiss Appeal* arguing that the Notice of Appeal was not the proper remedy as the order being questioned was interlocutory which could not be the subject of an appeal. It also questioned the order to hold the proceeds of the execution in escrow without any motion from the parties.

On June 25, 2007, the RTC issued a Resolution[11] granting THDC's motion and setting aside the April 2, 2007 Order. It reasoned out that the issue of attorney's fees was indeed interlocutory considering that it was only incidental to the principal action and that the claim for attorney's fees could be properly raised in another forum so as not to prejudice the main case. Atty. Escaño moved for a reconsideration of the said resolution but it was denied in an Order dated November 19, 2008.

Aggrieved, Atty. Escaño filed a Petition for *Certiorari* under Rule 65 with the CA assailing both the June 25, 2007 Resolution and November 19, 2008 Order of the RTC. His petition included a prayer to put in escrow all the proceeds of the money judgment in Civil Case No. 3392-0.

On August 12, 2009, the CA ruled that the RTC acted with grave abuse of discretion in denying the appeal. The CA concluded that giving due course to Atty. Escaño's Notice of Appeal and putting in escrow the money judgment was proper and appropriate

[10] *Id.* at 148-149, Annex "AA" of Petition.

[11] *Id.* at 156-158, Annex "CC "of Petition.

as there was still a need to determine the issue of attorney's fees. The dispositive portion of the assailed CA Decision reads:

> WHEREFORE, the petition is **GRANTED**. The orders of respondent court dated June 25, 2007 and November 19, 2008, denying petitioner's *Notice of Appeal* is **SET ASIDE**. The *Order* of the public respondent dated April 2, 2007 is **REVIVED** and is **DECLARED** immediately **EXECUTORY**.
>
> Accordingly, petitioner's *Notice of Appeal* is given due course and respondent court is **DIRECTED** to transmit the records of Civil Case No. 3392-0 to this Court for review on appeal of the Orders dated September 26, 2005 and January 26, 2006 regarding the issue of petitioner's attorney's fees.
>
> Further, public respondent is directed to put in escrow account at the local branch of the Land Bank of the Philippines the proceeds of the judgment in Civil Case No. 3392-0 not subject to existing liens, until the issues as to petitioner's attorney's fees on the basis [of] *quantum meruit* is finally resolved and until the identity of the person or persons duly authorized to receive the proceeds of the judgment in Civil Case 3392-0 are clearly established on appeal.
>
> SO ORDERED.[12]

THDC filed a motion for reconsideration of the above decision but the CA denied the same in its Resolution[13] dated December 10, 2009. Hence, on February 19, 2010, THDC interposed the present petition before this Court anchored on the following

GROUNDS

(1)

THE CA ERRONEOUSLY BASED ITS DECISION ON THE PRESUMPTION THAT THE APPEAL OF ATTY. ESCAÑO WAS PROPERLY LODGED

(2)

THE CA MISINTERPRETED AND MISAPPLIED THE MEANING OF "INTERLOCUTORY ORDER"

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[12] *Id.* at 32-33.

[13] *Id.* at 36-38, Annex "B" of Petition.

(3)

AN INTERLOCUTORY ORDER CANNOT BE APPEALED

(4)

THE CA ERRONEOUSLY RULED ON AN ISSUE THAT IT DID NOT RECOGNIZE

(5)

THE CA ERRONEOUSLY RULED ON A CAUSE OF ACTION THAT IS NOT WITHIN ITS ORIGINAL AND EXCLUSIVE JURISDICTION

(6)

THE CA ERRONEOUSLY RULED THAT THE ORDER OF THE RTC OF APRIL 2, 2007 WAS REVIVED AND FURTHER DECLARED IT TO BE IMMEDIATELY EXECUTORY

(7)

DEPRIVATION OF THE PETITIONER'S RIGHT TO DUE PROCESS.[14]

It appears from the records that on September 6, 2010, the judgment in Civil Case No. 3392-0 was duly satisfied with the full payment by PNOC of the judgment obligation. On September 22, 2010, Atty. Escaño filed before this Court an Urgent Manifestation alleging certain irregular acts of the RTC pertaining to the money judgment deposited in its fiduciary fund.

Likewise, he filed a Supplemental Manifestation with Urgent Motion for Issuance of a Cease and Desist Order dated October 4, 2010 stating that an Order dated October 1, 2010 was issued by the RTC directing the release to THDC of ₱45,454,683.68 out of the ₱53,476,098.45 proceeds of the judgment in Civil Case No. 3392-0 which was ordered to be put in escrow account. Acting on the said manifestations, this Court, in a Resolution dated October 6, 2010, issued a Temporary Restraining Order enjoining THDC and the RTC from implementing and enforcing the Order of October 1, 2010.

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[14] *Id.* at 9.

On the main issue, the Court finds the petition impressed with merit.

At the outset, Atty. Escaño alleges that the petition failed to comply with Rule 45 as it did not distinctly set forth the questions of law THDC raised before this Court, and that the seven (7) grounds raised by THDC involved questions of facts, rather than of law, which are not proper in a petition for review under Rule 45. He likewise alleges that the petition did not include clearly legible duplicate original or certified true copies of the material documents of CA-GR SP No. 03935.

In *Republic of the Philippines v. Malabanan*,[15] this Court distinguished a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[16]

A perusal of the present petition shows that the issues raised by THDC are questions of law, as the same can be resolved solely on what the law provides under the undisputed facts. The issues are the correct appreciation of Atty. Escaño's appeal, the exact meaning, interpretation and application of "interlocutory order;" the rule that an interlocutory order cannot be appealed;

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[15] G.R. No. 169067, October 6, 2010.

[16] *Id.*, citing *Leoncio v. De Vera*, G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184, citing *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 255-256, further citing *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

the legality of the CA decision on the issue of escrow; whether the CA can make a determination of an issue that it did not recognize; the legality of the CA decision on the issue of attorney's fees when there is no pending case yet on the matter; the CA's declaration in the questioned decision that the RTC Order dated April 2, 2007 is revived and immediately executory; and the question of denial of due process. All of these, indeed, are questions of law. Thus, Atty. Escaño's argument that the grounds thereof are factual is misleading.

On the issue of whether the RTC's order of denial of the motion for entry for additional attorney's fees was interlocutory or final, THDC contends that it was merely interlocutory because the issue was only collateral to the main issue of eminent domain. It submits that the main action of eminent domain could exist independently without the issue of attorney's fees. The RTC decision of November 27, 2000 did not even mention the award of attorney's fees. According to THDC, the matter of attorney's fees arose only when Atty. Escaño requested that his attorney's liens be entered into the records of the case. Thus, it insists that the orders relative to the issue of attorney's fees being interlocutory, the same cannot be the subject of appeal in accordance with the provision of Section 1(c), Rule 41 of the Revised Rules of Court.

Atty. Escaño, on the other hand, counters that the Orders of September 26, 2005 and January 26, 2006 are not interlocutory, but final orders and, therefore, appealable, as correctly ruled by the CA. He reasons that both orders finally disposed the issue of his attorney's fees before the RTC and there was nothing more to be done pertaining to the same matter.

An order or judgment of the RTC is deemed *final* when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is *interlocutory*.[17]

[17] *Sarsaba v. Vda. De Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410.

In *Santos v. People of the Philippines*, this Court laid down the test in finding whether an order is interlocutory or final, thus:

> The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside." The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word "interlocutory" refers to "something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy."[18]

In *Planters Products, Inc. v. Court of Appeals*,[19] the Court ruled that the order of the respondent trial court awarding attorney's fees in favor of a claimant-lawyer is a final order and not interlocutory. In the said case, petitioner entered into an agreement for an Omnibus Credit Line with private respondent bank. The latter engaged the services of private respondent counsel in filing a suit against the petitioner to enforce the latter's obligation under the agreement. As attorney's fees, respondent

[18] G.R. No. 173176, August 26, 2008, 563 SCRA 341, 357-358, citing *De la Cruz v. Paras*, G.R. No. L-41053, February 27, 1976, 69 SCRA 556, 560-561.

[19] G.R. No. 76591, February 6, 1991, 193 SCRA 563.

bank assigned to respondent lawyer the right to collect fees due and collectible from the petitioner under the trust receipts. Respondent bank was able to realize from the sale of the attached merchandise covered by the trust receipt agreement. In as much as respondent lawyer had not yet been paid his attorney's fees, he filed a claim for attorney's fees which was granted by the trial court.

On the basis of the aforecited distinction and applying the foregoing test, this Court is of the view that the RTC orders of September 26, 2005 and January 26, 2006 denying the claim for additional attorney's fees were final considering that the main action, which was Civil Case No. 3392-0 for eminent domain, was already final. In fact, it was the subject of several motions for execution. Thus, the RTC had nothing more to do with respect to the relative rights of the parties therein. There is nothing left for the judge to perform except to enforce the judgment.

Moreover, as correctly noted by the CA, the RTC ended with finality the issue of Atty. Escaño's attorney's fees when it rendered the aforementioned orders, having ruled that he was not entitled to it. The RTC need not resolve anything else thereby making the said orders final.

Nevertheless, both the RTC and CA were wrong when they entertained the motion of Atty. Escaño for additional attorney's fees. Indeed, the RTC was correct when it denied the same but it should have added as the more important reason that the matter of his attorney's fees was already final and could no longer be opened and litigated upon.

The reason is that the matter of attorney's fees of Atty. Escaño was already covered by a final judgment and can no longer be questioned. The issue on the matter is now *res judicata.* It must be recalled that the RTC in its Order dated June 13, 2001,[20] reduced Atty. Escaño's attorney's fees from thirty percent (30%) to fifteen percent (15%) for being "too unconscionable." This decrease in the amount of attorney's fees was sustained

[20] *Rollo,* p. 81.

by the CA on appeal in its July 31, 2002 Decision.[21] No appeal was taken from the decision of the CA. Thus, the decision of the CA on the matter of attorney's fees constituted *res judicata*.

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 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.[22] None of these exceptions is obtaining in the present case.

Litigation must at some time end, even at the risk of occasional errors. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role and purpose of the courts to resolve justiciable controversies with finality.[23]

The CA could have just dismissed the matter of additional attorney's fees outright on the ground of *res judicata*. Instead of doing so, however, it provided a semblance of propriety to it when it gave due course to Atty. Escaño's appeal. The fact that Atty. Escaño had complied with all the requirements of appeal under Rule 41 of the Revised Rules of Court is irrelevant considering that an appeal from the final and immutable judgment of the RTC is not proper. The appeal should have been dismissed on the ground that the order appealed from is not appealable

[21] *Id.* at 83.

[22] *Land Bank of the Philippines v. Listana*, G.R. No. 168105, July 27, 2011, citing *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

[23] *Edillo v. Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 602, citing *Huerta Alba Resort, Inc. v. Court of Appeals*, 394 Phil. 22, 28 (2000).

(Section 1(i) Rule 50). An appeal which requires the elevation of the entire records of the case entails a long process which would cause unnecessary delay. This, in effect, would negate an expeditious disposition of the case at bench.

The CA compounded the problem when it ordered the entire proceeds of the judgment in Civil Case No. 3392-0, not subject to existing liens, to be held in an escrow account at the local branch of the Land Bank of the Philippines. The order of the CA was anchored on the argument that the identity of the person(s) duly authorized to receive the proceeds of the judgment would still be resolved in the appeal.

Indeed, this Court recognizes the inherent power of the courts to control its processes and orders and to employ all auxiliary writs, processes and other means necessary to carry its jurisdiction into effect, as embodied in the Rules of Court. An order directing the proceeds of the judgment to be deposited in escrow may be one of these auxiliary writs and processes. So, also, the act of placing property in litigation under judicial possession, whether in the hands of a receiver, an administrator, or as in this case, in a government bank, is an ancient and accepted procedure.[24]

Under the prevailing circumstances, however, the order to hold in escrow the entire judgment award, including the portion that should have been the just compensation of THDC as owner of the parcels of land subject of the eminent domain case, was certainly not proper. To delay the payment of just compensation is virtually tantamount to a deprivation of one's property rights.

Considering the attendant circumstances, Atty. Escaño cannot validly invoke the ruling in *Go v. Go*.[25] In that case, the Court sustained the escrow order issued by the trial court to deposit the monthly rentals of the property subject therein pending the

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[24] *The Province of Bataan v. Hon. Villafuerte, Jr.*, 419 Phil. 907, 919 (2001), citing *Republic vs. Sandiganbayan*, G.R. No. 88228, June 27, 1990, 186 SCRA 864, 872 citing *Gustilo, et al. vs. Matti, et al.*, 11 Phil 611, 615 (1908).

[25] G.R. No. 183546, September 18, 2009, 600 SCRA 775.

resolution of the main action for partition or until the question of co-ownership is finally determined. In upholding the propriety of such order, the Court held that the rental deposit was the most prudent way to preserve the rights of the contending parties pending the final determination of who was lawfully entitled thereto.

In this case, however, the rights of the petitioner were already finally determined in the main case for eminent domain. Verily, the recipient of the judgment proceeds had already been ascertained, THDC, the judgment-obligee, who has yet to receive the just compensation for the property wrested from it by the government in the exercise of its power of eminent domain. It was, therefore, manifestly unnecessary and highly irregular for the CA to order the escrow of the entire amount.

Moreover, THDC's personality as a corporation was only belatedly questioned by Atty. Escaño after his failure to receive more than the 15% attorney's fees as ruled by the RTC. Records disclose that Atty. Escaño has already been awarded his attorney's fees, in accordance with the MOA he signed with THDC, which were supposed to be contingent on his client receiving its award. Atty. Escaño is now estopped to question the personality of his client. As properly argued by THDC, the CA cannot pass upon the issue of the legality of THDC as a corporation, which is not within its exclusive and original jurisdiction. Such authority belongs to the SEC, which is the agency vested with absolute jurisdiction, supervision and control over corporations as provided for in Presidential Decree No. 902-A. Furthermore, there is no pending case yet in any court of competent jurisdiction questioning THDC's juridical personality. Yet, the CA hastily issued the escrow order even when the sole pending issue in the dismissed notice of appeal was Atty. Escaño's attorney's liens. This compelling circumstance warrants a reversal of the CA decision. THDC should not be prevented from receiving its judgment-award.

To recapitulate, Atty. Escaño is not entitled to the escrow of the entire proceeds of the case. Neither is he entitled to the escrow of additional claim for attorney's fees of 15% for his

personal services after the dissolution of their law firm and 33.7% in favor of his consultant, Atty. Lino Dumas and Partners. Atty. Escaño has already collected his fees through his former law firm and is now enjoying the fruits of his labor, the uncertainty of the release of his client's award notwithstanding. He, therefore, has no more right to prevent the release of the judgment award in favor of THDC.

In fine, this Court holds that THDC, being the rightful claimant, is entitled to the proceeds of the judgment not subject to existing liens. To uphold the escrow of the full judgment award would ultimately result in patent injustice and prejudice to THDC, which, to this date, has yet to be compensated for the taking of its property. This Court is not only a court of law, but also a court of justice.[26]

WHEREFORE, the petition is *GRANTED*. The August 12, 2009 Decision and the December 10, 2009 Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. Accordingly, the RTC is ordered to allow the immediate release to the petitioner the total amount due in Civil Case No. 3392-0 not subject to existing liens.

The Temporary Restraining Order issued by the Court on October 6, 2010 is ordered *LIFTED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Villarama, Jr.,*[*] *JJ.,* concur.

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[26] *Id.*, citing *Valarao v. Court of Appeals*, G.R. No. 130347, 363 Phil. 495 (1999).

* Designated as additional member in lieu of Associate Justice Maria Lourdes P.A. Sereno, per Special Order No. 1076 dated September 6, 2011.

SECOND DIVISION

[G.R. No. 191251. September 7, 2011]

EDNA LOPEZ DELICANO, EDUARDO ALBERTO LOPEZ, MARIO DIEZ CRUZ, HOWARD E. MENESES, and CORAZON E. MENESES, *petitioners, vs.* **PECHATEN CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; THE RESPONDENT SHOULD BE RESTORED TO THE RIGHTFUL POSSESSION OF THE PROPERTY CONSIDERING THAT THE DECISION REVERSING THE JUDGMENT OF EXPROPRIATION ALREADY BECAME FINAL AND EXECUTORY.— In this case, the Court of Appeals-Special Sixth Division, in the related expropriation case entitled *City of Manila v. Pechaten Corporation*, held that the expropriation of the property was not for public use. In its Decision dated 24 March 2009, the Court of Appeals-Special Sixth Division found that the expropriation of the property pursuant to City Ordinance No. 7984 was intended for the sole benefit of the family of Virgilio Meneses. Thus, the Court of Appeals-Special Sixth Division dismissed the complaint for eminent domain. The City of Manila did not appeal the Decision, which became final and executory on 14 April 2009. Considering that the Decision of the Court of Appeals-Special Sixth Division reversing the judgment of expropriation already became final and executory, it is only proper that respondent should be restored to its rightful possession of the property in accordance with Section 11, Rule 67 of the Rules of Civil Procedure.

APPEARANCES OF COUNSEL

Renta Pe & Associates for petitioners.
Cruz Capule Macron & Nabaza Law Offices for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 13 November 2009 Amended Decision[2] of the Court of Appeals in CA-G.R. SP No. 105360. The Court of Appeals set aside its earlier Decision[3] dated 18 February 2009, which affirmed the 27 August 2008 Order of the Regional Trial Court (RTC), Branch 37, Manila.

The Facts

Respondent Pechaten Corporation (respondent) is the registered owner of a parcel of land (property) located at 852 Vicente Cruz Street, Sampaloc, Manila, and covered by Transfer Certificate of Title No. 95052 (TCT No. 95052).

In June 1993, respondent and Teodoro Alberto, Honorata Salmorin, Aquilina Hizon, and Dalmacia Meneses entered into a two-year lease contract[4] involving the property. The parties agreed that the monthly rental for the first year[5] would be ₱864, to be increased to ₱1,037 per month during the second year[6] of the contract. Subsequently, the lessees executed a waiver of their rights or interest in the lease contract in favor of Virgilio Meneses, the son of Dalmacia Meneses.

When the lease contract expired on 30 June 1995, respondent offered Virgilio Meneses to renew the lease agreement or purchase the property. Virgilio Meneses ignored the offer and failed to pay monthly rentals for the property starting July 1995.

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

[2] *Rollo*, pp. 28-46. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Hakim S. Abdulwahid and Sixto C. Marella, Jr., concurring.

[3] *Id.* at 85-99.

[4] *Id.* at 257-259.

[5] From 1 July 1993 to 30 June 1994; *id.* at 257.

[6] From 1 July 1994 to 30 June 1995; *id.*

On 6 October 1999, respondent sent a demand letter to Virgilio Meneses to vacate the property and pay the accrued rent of ₱141,032 or reasonable compensation for the use of the property. When Virgilio Meneses refused, respondent filed with the Metropolitan Trial Court (MeTC) a case for unlawful detainer with damages against Virgilio Meneses.

In his defense, Virgilio Meneses claimed that the MeTC has no jurisdiction over the ejectment suit since it was filed more than four (4) years from the time the contract expired on 30 June 1995. Virgilio Meneses argued that the remedy of respondent should have been *accion publiciana*. Furthermore, Virgilio Meneses asserted that he was not a party to the lease contract, and thus, respondent has no cause of action against him.

On 12 February 2002, the Manila MeTC-Branch 2 rendered a judgment[7] in favor of respondent, the dispositive portion of which reads:

> Wherefore, judgment is rendered ordering defendant [Virgilio Meneses], his heirs, assigns, successors-in-interest and/or any other person claiming right under him:
>
> 1. to vacate the premises located at 852 Vicente Cruz St., Sampaloc, Manila;
> 2. to pay the plaintiff corporation the amount of ₱1,200.00 per month from July 1995 until the time that defendant vacate the premises as reasonable compensation for the use and occupation of the premises;
> 3. to pay the plaintiff the amount of ₱8,000.00 as attorney's fees; and
> 4. to pay the costs.
>
> SO ORDERED.[8]

On appeal, the Manila RTC-Branch 37 affirmed the MeTC judgment. In a Decision[9] dated 30 May 2008, the Manila RTC-

[7] *Id.* at 359-362.

[8] *Id.* at 361-362.

[9] *Id.* at 382-387.

Branch 37 agreed with the MeTC that the one-year period should be reckoned from the time the last demand was made. In this case, the last demand to vacate the property was made on 6 October 1999.[10] The complaint for unlawful detainer was filed on 25 November 1999, which is within the one-year reglementary period.

Meanwhile, the City of Manila filed on 12 August 2004 a complaint for expropriation against respondent involving the property. The expropriation case, docketed as Civil Case No. 04-110675, was raffled to Manila RTC-Branch 11, which issued a Writ of Possession in favor of the City of Manila. On 27 March 2008, the Manila RTC-Branch 11 issued an Order of Expropriation in favor of the City of Manila.

Upon the death of Virgilio Meneses, he was substituted by his heirs, who are the petitioners in this case. In view of the Orders of the Manila RTC-Branch 11 involving the property in the expropriation case, petitioners filed a motion for reconsideration in the Manila RTC-Branch 37 of its Decision dated 30 May 2008. Petitioners moved to dismiss the unlawful detainer case, alleging that the case was rendered moot by virtue of the Writ of Possession issued by the Manila RTC-Branch 11 in the expropriation case involving the property. Furthermore, petitioners stated that the City of Manila had already turned over the property to them. Respondent opposed the motion, alleging that the Order dated 27 March 2008 of the Manila RTC- Branch 11, declaring that the City of Manila has the lawful right to take the property for public use, is the subject of appeal before the Court of Appeals.

On 27 August 2008, the Manila RTC-Branch 37 issued an Order partially reconsidering its Decision dated 30 May 2008. The dispositive portion of the Order reads:

WHEREFORE, the Decision dated May 30, 2008 is partially reconsidered. The Decision dated February 12, 2002 issued by the court *a quo* is MODIFIED as follows:

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[10] The RTC Decision dated 30 May 2008 erroneously stated the date of the last demand as 6 October 1996; *id.* at 387.

1. the order requiring appellant to vacate the premises located at 852 Vicente Cruz St., Sampaloc, Manila, is Set Aside for being moot and academic;
2. appellant to pay the appellee the amount of ₱1,200.00 per month from July 1995 up to February 9, 2005;
3. appellant to pay appellee the amount of ₱8,000.00 as attorney's fees; and
4. cost of suit.

SO ORDERED.[11]

Respondent filed a petition for review with the Court of Appeals, seeking to annul the Order dated 27 August 2008 of the Manila RTC-Branch 37. In its Decision dated 18 February 2009, the Court of Appeals dismissed respondent's petition and affirmed the 27 August 2008 Order of the Manila RTC-Branch 37.

Respondent filed a motion for reconsideration and a supplemental motion for reconsideration. In its supplemental motion for reconsideration, respondent attached a copy of the Decision[12] dated 24 March 2009 of the Court of Appeals-Special Sixth Division in the related expropriation case entitled *City of Manila v. Pechaten Corporation*. The Court of Appeals-Special Sixth Division reversed the Order dated 27 March 2008 of the Manila RTC-Branch 11 and dismissed the complaint for eminent domain filed by the City of Manila. Respondent alleged that the decision of the Court of Appeals-Special Sixth Division in the expropriation case, which became final and executory as of 14 April 2009,[13] is a supervening event which warrants the reconsideration of the Decision dated 18 February 2009 of the Court of Appeals in this unlawful detainer case.

The Ruling of the Court of Appeals

On 13 November 2009, the Court of Appeals promulgated its Amended Decision in favor of respondent. The Court of Appeals agreed with respondent that the dismissal of the

[11] *Id.* at 391.

[12] *Id.* at 66-83.

[13] *Id.* at 392.

expropriation case is a supervening event which warrants the reconsideration of its Decision dated 18 February 2009. The dispositive portion of the Amended Decision reads:

> WHEREFORE, premises considered, the instant Motion for Reconsideration and Supplemental Motion for Reconsideration are hereby GRANTED. Our Decision dated 18 February 2009 is hereby RECONSIDERED and SET ASIDE. Accordingly, the writ of possession issued by Branch 11 of Manila RTC in favor of the City of Manila over the subject property is hereby DISSOLVED.[14]

The Court of Appeals explained:

> This court is justified in suspending or nullifying the writ of execution issued by Manila RTC Branch 11 granting possession of the subject property to the City of Manila. An order may be suspended or nullified when a supervening event, occurring subsequent to the said order, bring about a material change in the situation of the parties. In this case, the supervening event is the finality of the decision rendered by the Special Sixth Division on the appeal from the Order of the Manila RTC Branch 11 dated 27 March 2008. The said Special Sixth Division Decision reversed and set aside the order of the RTC and accordingly dismissed the complaint for eminent domain filed by the City of Manila. This decision became final and executory as of 14 April 2009.
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> A writ of possession is an order whereby the sheriff is commanded to place a person in possession of real or personal property. The decision rendered in the expropriation case by the Special Sixth Division is a judgment on the merits – a consequence of the finality of the said judgment is the revocation of the writ of possession. The order [issuing the writ of possession] placed the City of Manila, which in turn granted the same to the Respondents [petitioners], in possession prior to the decision of the Special Sixth Division. Notwithstanding the writ of possession, title to the said property is still in the name of the Petitioner. The possession of the property must revert back to legal owner of the said property, in this case to Pechaten Corporation, because the expropriation case was also rendered final and executory.[15]

[14] *Id.* at 44.

[15] *Id.* at 43, 46.

Hence, this petition.

The Issue

The issue in this case is whether petitioners are still entitled to retain possession over the subject property despite the dismissal of the expropriation case.

The Ruling of the Court

We find the petition without merit.

Section 11, Rule 67 (Expropriation) of the Rules of Civil Procedure provides:

> Sec. 11. *Entry not delayed by appeal; effect of reversal*. – The right of the plaintiff to enter upon the property of the defendant and appropriate the same to public use or purpose shall not be delayed by an appeal from judgment. **But if the appellate court determines that plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property**, and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff. (Emphasis supplied)

In this case, the Court of Appeals-Special Sixth Division, in the related expropriation case entitled *City of Manila v. Pechaten Corporation*, held that the expropriation of the property was not for public use. In its Decision dated 24 March 2009, the Court of Appeals-Special Sixth Division found that the expropriation of the property pursuant to City Ordinance No. 7984 was intended for the sole benefit of the family of Virgilio Meneses.[16] Thus, the Court of Appeals-Special Sixth Division dismissed the complaint for eminent domain. The City of Manila did not appeal the Decision, which became final and executory on 14 April 2009.

Considering that the Decision of the Court of Appeals-Special Sixth Division reversing the judgment of expropriation already became final and executory, it is only proper that respondent

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[16] *Id.* at 79.

should be restored to its rightful possession of the property in accordance with Section 11, Rule 67 of the Rules of Civil Procedure.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 13 November 2009 Amended Decision of the Court of Appeals in CA-G.R. SP No. 105360. The Decision dated 30 May 2008 of the Manila Regional Trial Court, Branch 37, in Civil Case No. 04-108960, affirming the 12 February 2002 Judgment of the Manila Metropolitan Trial Court, Branch 2, is *REINSTATED.*

SO ORDERED.

Brion, Peralta, Perez, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 191425. September 7, 2011]

ATILANO O. NOLLORA, JR., *petitioner, vs.* PEOPLE OF THE PHILIPPINES, *respondent.*

SYLLABUS

1. CRIMINAL LAW; BIGAMY; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of the crime of bigamy are: 1. That the offender has been *legally married.* 2. That the marriage has *not been legally dissolved* or, in case his or her spouse is absent, the *absent spouse could not yet be presumed dead* according to the Civil Code. 3. That he contracts a *second* or *subsequent* marriage. 4. That the second or subsequent marriage has all the *essential requisites for validity.* The circumstances in the present case satisfy all the elements of bigamy. (1) Nollora is legally married to Pinat; (2) Nollora and Pinat's marriage has not been legally dissolved prior to the date of the second marriage; (3) Nollora admitted the existence of his second

marriage to Geraldino; and (4) Nollora and Geraldino's marriage has all the essential requisites for validity except for the lack of capacity of Nollora due to his prior marriage.

2. ID.; ID.; MUSLIM RELIGION IS NOT A DEFENSE; CASE AT BAR.— Before the trial and appellate courts, Nollora put up his Muslim religion as his sole defense. He alleged that his religion allows him to marry more than once. Granting *arguendo* that Nollora is indeed of Muslim faith at the time of celebration of both marriages, Nollora cannot deny that both marriage ceremonies were not conducted in accordance with the Code of Muslim Personal Laws, or Presidential Decree No. 1083. x x x Indeed, Article 13(2) of the Code of Muslim Personal Laws states that "[i]n case of **a marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the** [**Family Code of the Philippines, or Executive Order No. 209,** in lieu of the Civil Code of the Philippines] **shall apply.**" Nollora's religious affiliation is not an issue here. Neither is the claim that Nollora's marriages were solemnized according to Muslim law. Thus, regardless of his professed religion, Nollora cannot claim exemption from liability for the crime of bigamy.

3. ID.; ID.; THE ACCUSED MAY NOT IMPUGN THE VALIDITY OF HIS SECOND MARRIAGE TO EXTRICATE HIMSELF FROM CRIMINAL LIABILITY; APPLICATION IN CASE AT BAR.— In his petition before this Court, Nollora casts doubt on the validity of his marriage to Geraldino (second marriage). Nollora may not impugn his marriage to Geraldino in order to extricate himself from criminal liability; otherwise, we would be opening the doors to allowing the solemnization of multiple flawed marriage ceremonies. As we stated in *Tenebro v. Court of Appeals*: There is therefore a recognition written into the law itself that such a marriage, although *void ab initio*, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.

APPEARANCES OF COUNSEL

Sinforoso N. Ordiz, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 191425 is a petition for review[1] assailing the Decision[2] promulgated on 30 September 2009 as well as the Resolution[3] promulgated on 23 February 2010 by the Court of Appeals (appellate court) in CA-G.R. CR No. 31538. The appellate court affirmed the 19 November 2007 Decision[4] of Branch 215 of the Regional Trial Court of Quezon City (trial court) in Criminal Case No. Q-04-129031.

The trial court found accused Atilano O. Nollora, Jr. (Nollora) guilty of bigamy under Article 349 of the Revised Penal Code and sentenced him to suffer imprisonment. Co-accused Rowena Geraldino (Geraldino) was acquitted for the prosecution's failure to prove her guilt beyond reasonable doubt.

The Facts

The appellate court recited the facts as follows:

On August 24, 2004, Assistant City Prosecutor Raymond Jonathan B. Lledo filed an Information against Atilano O. Nollora, Jr. ("Nollora")

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

[2] *Rollo*, pp. 21-37. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring.

[3] *Id.* at 38. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring.

[4] CA *rollo*, pp. 26-33. Penned by Judge Ma. Luisa C. Quijano-Padilla.

and Rowena P. Geraldino ("Geraldino") for the crime of Bigamy. The accusatory portion of the Information reads:

> "That on or about the 8th day of December 2001 in Quezon City, Philippines, the above-named accused ATILANO O. NOLLORA, JR., being then legally married to one JESUSA PINAT NOLLORA, and as said marriage has not been legally dissolved and still subsisting, did then and there willfully, unlawfully and feloniously contract a subsequent or second marriage with her [sic] co-accused ROWENA P. GERALDINO, who knowingly consented and agreed to be married to her co-accused ATILANO O. NOLLORA, JR. knowing him to be a married man, to the damage and prejudice of the said offended party JESUSA PINAT NOLLORA."

Upon his arraignment on April 18, 2005, accused Nollora assisted by counsel, refused to enter his plea. Hence, a plea of not guilty was entered by the Court for him. Accused Geraldino, on the other hand, entered a plea of not guilty when arraigned on June 14, 2005. On even date, pre-trial conference was held and both the prosecution and defense entered the following stipulation of facts:

> "1. the validity of the first marriage between Atilano O. Nollora, Jr. and Jesusa Pinat Nollora solemnized on April 6, 1999 at Sapang Palay, San Jose del Monte;
>
> 2. that Atilano O. Nollora, Jr. contracted the second marriage with Rowena P. Geraldino on December 8, 2001 in Quezon City;
>
> 3. that in the Counter-Affidavit of Atilano O. Nollora, Jr., he admitted that he contracted the second marriage to Rowena P. Geraldino;
>
> 4. that Rowena P. Geraldino attached to her Counter-Affidavit the Certificate of Marriage with Atilano O. Nollora, Jr. dated December 8, 2001;
>
> 5. the fact of marriage of Rowena P. Geraldino with Atilano O. Nollora, Jr. as admitted in her Counter-Affidavit."

The only issue thus proffered by the prosecution for the RTC's resolution is whether or not the second marriage is bigamous. Afterwards, pre-trial conference was terminated and the case was set for initial hearing. Thereafter, trial ensued.

Evidence for the Prosecution

As culled from the herein assailed Decision, the respective testimonies of prosecution witnesses were as follows:

> "xxx (W)itness Jesusa Pinat Nollora xxx testified that she and accused Atilano O. Nollora, Jr. met in Saudi Arabia while she was working there as a Staff Midwife in King Abdulah Naval Base Hospital. Atilano O. Nollora, Jr. courted her and on April 6, 1999, they got married at the [IE]MELIF Chruch [sic] in Sapang Palay, San Jose del Monte, Bulacan (Exhibit 'A'). While working in said hospital, she heard rumors that her husband has another wife and because of anxiety and emotional stress, she left Saudi Arabia and returned to the Philippines (TSN, October 4, 2005, page 10). Upon arrival in the Philippines, the private complainant learned that indeed, Atilano O. Nollora, Jr. contracted a second marriage with co-accused Rowena P. Geraldino on December 8, 2001 (Exhibit 'B') when she secured a certification as to the civil status of Atilano O. Nollora, Jr. (Exhibit 'C') from the National Statistics Office (NSO) sometime in November 2003.
>
> Upon learning this information, the private complainant confronted Rowena P. Geraldino at the latter's workplace in CBW, FTI, Taguig and asked her if she knew of the first marriage between complainant and Atilano O. Nollora, Jr. to which Rowena P. Geraldino allegedly affirmed and despite this knowledge, she allegedly still married Atilano O. Nollora, Jr. because she loves him so much and because they were neighbors and childhood friends. Private complainant also knew that Rowena P. Geraldino knew of her marriage with Atilano O. Nollora, Jr., because when she (private complainant) was brought by Atilano O. Nollora, Jr. at the latter's residence in Taguig, Metro Manila and introduced her to Atilano O. Nollora, Jr.'s parents, Rowena P. Geraldino was there in the house together with a friend and she heard everything that they were talking about.
>
> Because of this case, private complainant was not able to return to Saudi Arabia to work as a Staff Midwife thereby losing income opportunity in the amount of ₱34,000.00 a month, more or less. When asked about the moral damages she suffered, she declared that what happened to her was a tragedy and she had entertained [thoughts] of committing suicide. She added that because of what happened to her, her mother died and

she almost got raped when Atilano O. Nollora, Jr. left her alone in their residence in Saudi Arabia. However, she declared that money is not enough to assuage her sufferings. Instead, she just asked for the return of her money in the amount of ₱50,000.00 (TSN, July 26, 2005, pages 4-14).

Prosecution witness Ruth Santos testified that she knew of the marriage between the private complainant and Atilano O. Nollora, Jr., because she was one of the sponsors in said wedding. Sometime in November 2003, she was asked by the private complainant to accompany the latter to the workplace of Rowena P. Geraldino in FTI, Taguig, Metro Manila. She declared that the private complainant and Rowena P. Geraldino had a confrontation and she heard that Rowena P. Geraldino admitted that she (Rowena) knew of the first marriage of Atilano O. Nollora, Jr. and the private complainant but she still went on to marry Atilano O. Nollora, Jr. because she loves him very much (TSN, October 24, 2005, pages 3-5).

Evidence for the Defense

The defense's version of facts, as summarized in the herein assailed Decision, is as follows:

"Accused Atilano O. Nollora, Jr. admitted having contracted two (2) marriages, the first with private complainant Jesusa Pinat and the second with Rowena P. Geraldino. He, however, claimed that he was a Muslim convert way back on January 10, 1992, even before he contracted the first marriage with the private complainant. As a [M]uslim convert, he is allegedly entitled to marry four (4) wives as allowed under the Muslim or Islam belief.

To prove that he is a Muslim convert even prior to his marriage to the private complainant, Atilano O. Nollora, Jr. presented a Certificate of Conversion dated August 2, 2004 issued by one Hadji Abdul Kajar Madueño and approved by one Khad Ibrahim A. Alyamin wherein it is stated that Atilano O. Nollora, Jr. allegedly converted as a Muslim since January 19, 1992 (Exhibit '2,' '3' and '4'). Aside from said certificate, he also presented a Pledge of Conversion dated January 10, 1992 issued by the same Hadji Abdul Kajar Madueño and approved by one Khad Ibrahim A. Alyamin (Exhibit '7').

He claimed that the private complaint knew that he was a Muslim convert prior to their marriage because she [sic] told this fact when he was courting her in Saudi Arabia and the reason why said private complainant filed the instant case was due to hatred having learned of his second marriage with Rowena P. Geraldino. She [sic] further testified that Rowena P. Geraldino was not aware of his first marriage with the private complainant and he did not tell her this fact because Rowena P. Geraldino is a Catholic and he does not want to lose her if she learns of his first marriage.

He explained that in his Marriage Contract with Jesusa Pinat, it is indicated that he was a 'Catholic Pentecostal' but that he was not aware why it was placed as such on said contract. In his Marriage Contract with Rowena P. Geraldino, the religion 'Catholic' was also indicated because he was keeping as a secret his being a Muslim since the society does not approve of marrying a Muslim. He also indicated that he was 'single' despite his first marriage to keep said first marriage a secret (TSN, January 30, 2006, pages 2-13).

Defense witness Hadji Abdul Qasar Madueño testified that he is the founder and president of Balik Islam Tableegh Foundation of the Philippines and as such president, he has the power and authority to convert any applicant to the Muslim religion. He alleged that sometime in 1992, he met accused Atilano O. Nollora, Jr. in Mabini (Manila) who was then going abroad. Atilano O. Nollora, Jr. applied to become a Muslim (Exhibit '14') and after receiving the application, said accused was indoctrinated regarding his obligations as a Muslim. On January 10, 1992, Atilano O. Nollora, Jr. embraced the Muslim faith. He was then directed to report every Sunday to monitor his development.

In the year 2004, Atilano O. Nollora, Jr. visited him and asked for a certification because of the filing of the instant case. On October 2, 2004, he issued a Certificate of Conversion wherein it is stated that Atilano O. Nollora, Jr. is a Muslim convert since January 10, 1992. Apart from the above-mentioned document, their 'Imam' also issued a Pledge of Conversion (Exhibit '7'). He declared that a Muslim convert could marry more than one according to the Holy Koran. However, before marrying his second, third and fourth wives, it is required that the consent of the first Muslim wife be secured. Thus, if the first wife is

not a Muslim, there is no necessity to secure her consent (TSN, October 9, 2006, pages 2-12).

During his cross-examinations, he declared that if a Muslim convert gets married not in accordance with the Muslim faith, the same is contrary to the teachings of the Muslim faith. A Muslim also can marry up to four times but he should be able to treat them equally. He claimed that he was not aware of the first marriage but was aware of the second. Since his second marriage with Rowena P. Geraldino was not in accordance with the Muslim faith, he advised Atilano O. Nollora, Jr. to re-marry Rowena P. Geraldino in accordance with Muslim marriage celebration, otherwise, he will not be considered as a true Muslim (TSN, June 25, 2007, pages 3-7).

Accused Rowena P. Geraldino alleged that she was only a victim in this incident of bigamous marriage. She claimed that she does not know the private complainant Jesusa Pinat Nollora and only came to know her when this case was filed. She insists that she is the one lawfully married to Atilano O. Nollora, Jr., having been married to the latter since December 8, 2001. Upon learning that Atilano O. Nollora, Jr. contracted a first marriage with the private complainant, she confronted the former who admitted the said marriage. Prior to their marriage, she asked Atilano O. Nollora, Jr. if he was single and the latter responded that he was single. She also knew that her husband was a Catholic prior to their marriage but after she learned of the first marriage of her husband, she learned that he is a Muslim convert. She also claimed that after learning that her husband was a Muslim convert, she and Atilano O. Nollora, Jr., also got married in accordance with the Muslim rites. She also belied the allegations of the private complainant that she was sought by the private complainant and that they had a confrontation where she admitted that she knew that Atilano O. Nollora, Jr. was married to the private complainant and despite this knowledge, she went on to marry him because she loved him very much. She insisted that she only came to know the private complainant when she (private complainant) filed this case (TSN, August 14, 2007, pages 2-8)."[5]

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[5] *Rollo*, pp. 22-27.

The Trial Court's Ruling

In its Decision[6] dated 19 November 2007, the trial court convicted Nollora and acquitted Geraldino.

The trial court stated that there are only two exceptions to prosecution for bigamy: Article 41[7] of the Family Code, or Executive Order No. 209, and Article 180[8] of the Code of Muslim Personal Laws of the Philippines, or Presidential Decree No. 1083. The trial court also cited Article 27 of the Code of Muslim Personal Laws of the Philippines, which provides the qualifications for allowing Muslim men to have more than one wife: "[N]o Muslim male can have more than one wife unless he can deal with them in equal companionship and just treatment as enjoined by Islamic Law and only in exceptional cases."

In convicting Nollora, the trial court's Decision further stated thus:

> The principle in Islam is that monogamy is the general rule and polygamy is allowed only to meet urgent needs. Only with the permission of the court can a Muslim be permitted to have a second wife subject to certain requirements. This is because

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[6] CA *rollo*, pp. 26-33.

[7] Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[8] Article 180. *Law applicable.* The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this Code or, before its effectivity, under Muslim law.

having plurality of wives is merely tolerated, not encouraged, under certain circumstances (Muslim Law on Personal Status in the Philippines by Amer M. Bara-acal and Abdulmajid J. Astir, 1998 First Edition, Pages 64-65). Arbitration is necessary. Any Muslim husband desiring to contract subsequent marriages, before so doing, shall notify the Shari'a Circuit Court of the place where his family resides. The clerk of court shall serve a copy thereof to the wife or wives. Should any of them objects [sic]; an Agama Arbitration Council shall be constituted. If said council fails to secure the wife's consent to the proposed marriage, the Court shall, subject to Article 27, decide whether on [*sic*] not to sustain her objection (Art. 162, Muslim Personal Laws of the Philippines).

Accused Atilano Nollora, Jr., in marrying his second wife, co-accused Rowena P. Geraldino, did not comply with the above-mentioned provision of the law. In fact, he did not even declare that he was a Muslim convert in both marriages, indicating his criminal intent. In his converting to the Muslim faith, said accused entertained the mistaken belief that he can just marry anybody again after marrying the private complainant. What is clear, therefore, is [that] a Muslim is not given an unbridled right to just marry anybody the second, third or fourth time. There are requirements that the Shari'a law imposes, that is, he should have notified the Shari'a Court where his family resides so that copy of said notice should be furnished to the first wife. The argument that notice to the first wife is not required since she is not a Muslim is of no moment. This obligation to notify the said court rests upon accused Atilano Nollora, Jr. It is not for him to interpret the Shari'a law. It is the Shari'a Court that has this authority.

In an apparent attempt to escape criminal liability, the accused recelebrated their marriage in accordance with the Muslim rites. However, this can no longer cure the criminal liability that has already been violated.

The Court, however, finds criminal liability on the person of accused Atilano Nollora, Jr., only. There is no sufficient evidence that would pin accused Rowena P. Geraldino down. The evidence presented by the prosecution against her is the allegation that she knew of the first marriage between private complainant and Atilano Nollora, Jr., is insufficient[,] being open to several interpretations. Private complainant alleged that when

she was brought by Atilano Nollora, Jr., to the latter's house in Taguig, Metro Manila, Rowena P. Geraldino was there standing near the door and heard their conversation. From this incident, private complainant concluded that said Rowena P. Geraldino was aware that she and Atilano Nollora, Jr., were married. This conclusion is obviously misplaced since it could not be reasonably presumed that Rowena P. Geraldino understands what was going on between her and Atilano Nollora, Jr. It is axiomatic that "*(E)very circumstance favoring accused's innocence must be taken into account, proof against him must survive the test of reason and the strongest suspicion must not be permitted to sway judgment" (People vs. Austria, 195 SCRA 700).* This Court, therefore, has to acquit Rowena P. Geraldino for failure of the prosecution to prove her guilt beyond reasonable doubt.

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

a) Finding accused ATILANO O. NOLLORA, JR. guilty beyond reasonable doubt of the crime of Bigamy punishable under Article 349 of the Revised Penal Code. This court hereby renders judgment imposing upon him a prison term of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum of his indeterminate sentence, to eight (8) years and one (1) day of *prision mayor*, as maximum, plus accessory penalties provided by law.

b) Acquitting accused ROWENA P. GERALDINO of the crime of Bigamy for failure of the prosecution to prove her guilt beyond reasonable doubt.

Costs against accused Atilano O. Nollora, Jr.

SO ORDERED.[9]

Nollora filed a notice of appeal and moved for the allowance of his temporary liberty under the same bail bond pending appeal. The trial court granted Nollora's motion.

Nollora filed a brief with the appellate court and assigned only one error of the trial court:

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[9] CA *rollo,* pp. 31-33.

The trial court gravely erred in finding the accused-appellant guilty of the crime charged despite the prosecution's failure to establish his guilt beyond reasonable doubt.[10]

The Appellate Court's Ruling

On 30 September 2009, the appellate court dismissed Nollora's appeal and affirmed the trial court's decision.[11]

The appellate court rejected Nollora's defense that his second marriage to Geraldino was in lawful exercise of his Islamic religion and was allowed by the Qur'an. The appellate court denied Nollora's invocation of his religious beliefs and practices to the prejudice of the non-Muslim women who married him pursuant to Philippine civil laws. Nollora's two marriages were not conducted in accordance with the Code of Muslim Personal Laws, hence the Family Code of the Philippines should apply. Nollora's claim of religious freedom will not immobilize the State and render it impotent in protecting the general welfare.

In a Resolution[12] dated 23 February 2010, the appellate court denied Nollora's motion for reconsideration. The allegations in the motion for reconsideration were a mere rehash of Nollora's earlier arguments, and there was no reason for the appellate court to modify its 30 September 2009 Decision.

Nollora filed the present petition for review before this Court on 6 April 2010.

The Issue

The issue in this case is whether Nollora is guilty beyond reasonable doubt of the crime of bigamy.

The Court's Ruling

Nollora's petition has no merit. We affirm the rulings of the appellate court and of the trial court.

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[10] *Id.* at 52.

[11] *Rollo*, pp. 21-37.

[12] *Id.* at 38.

Elements of Bigamy

Article 349 of the Revised Penal Code provides:

Art. 349. *Bigamy*. – The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The elements of the crime of bigamy are:

1. That the offender has been *legally married*.
2. That the marriage has *not been legally dissolved* or, in case his or her spouse is absent, the *absent spouse could not yet be presumed dead* according to the Civil Code.
3. That he contracts a *second* or *subsequent* marriage.
4. That the second or subsequent marriage has all the *essential requisites for validity*.[13]

The circumstances in the present case satisfy all the elements of bigamy. (1) Nollora is legally married to Pinat;[14] (2) Nollora and Pinat's marriage has not been legally dissolved prior to the date of the second marriage; (3) Nollora admitted the existence of his second marriage to Geraldino;[15] and (4) Nollora and Geraldino's marriage has all the essential requisites for validity except for the lack of capacity of Nollora due to his prior marriage.[16]

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[13] Luis B. Reyes, *THE REVISED PENAL CODE: CRIMINAL LAW* 907 (1998).

[14] Exhibit "A", Records, p. 117.

[15] TSN, 30 January 2006, p. 4.

[16] Exhibit "B", Records, p. 118. Also Article 2 of the Family Code of the Philippines, Executive Order No. 209 (1988).

Art. 2. No marriage shall be valid, unless these essential requisites are present:

(1) Legal capacity of the contracting parties who must be a male and a female; and

(2) Consent freely given in the presence of the solemnizing officer.

The marriage certificate[17] of Nollora and Pinat's marriage states that Nollora and Pinat were married at Sapang Palay IEMELIF Church, Sapang Palay, San Jose del Monte, Bulacan on 6 April 1999. Rev. Jonathan De Mesa, Minister of the IEMELIF Church officiated the ceremony. The marriage certificate[18] of Nollora and Geraldino's marriage states that Nollora and Geraldino were married at Max's Restaurant, Quezon Avenue, Quezon City, Metro Manila on 8 December 2001. Rev. Honorato D. Santos officiated the ceremony.

A certification dated 4 November 2003 from the Office of the Civil Registrar General reads:

> We certify that ATILANO JR O. NOLLORA who is alleged to have been born on February 22, 1968 from ATILANO M. NOLLORA SR and FLAVIANA OCLARIT, appears in our National Indices of Marriage for Groom for the years 1973 to 2002 with the following information:
>
> | Date of Marriage | Place of Marriage |
> |---|---|
> | a) April 06, 1999 | b) SAN JOSE DEL MONTE, BULACAN |
> | a) December 08, 2001 | b) QUEZON CITY, METRO MANILA (2nd District)[19] |

Before the trial and appellate courts, Nollora put up his Muslim religion as his sole defense. He alleged that his religion allows him to marry more than once. Granting *arguendo* that Nollora is indeed of Muslim faith at the time of celebration of both marriages,[20] Nollora cannot deny that both marriage ceremonies were not conducted in accordance with the Code of Muslim Personal Laws, or Presidential Decree No. 1083. The applicable Articles in the Code of Muslim Personal Laws read:

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[17] Exhibit "A", Records, p. 117.

[18] Exhibit "B", *id.* at 118.

[19] Exhibit "C", *id.* at 119.

[20] *Id.* at 195-198, 201, 206-207. Nollora presented various proofs of his Muslim affiliation:

Art. 14. *Nature.* - Marriage is not only a civil contract but a civil institution. Its nature, consequences and incidents are governed by this Code and the Shari'a and not subject to stipulation, except that the marriage settlements to a certain extent fix the property relations of the spouses.

Art. 15. *Essential Requisites.* - No marriage contract shall be perfected unless the following essential requisites are complied with:

(a) Legal capacity of the contracting parties;

(b) Mutual consent of the parties freely given;

(c) Offer (*ijab*) and acceptance (*qabul*) duly witnessed by at least two competent persons after the proper guardian in marriage (*wali*) has given his consent; and

(d) Stipulation of the customary dower (*mahr*) duly witnessed by two competent persons.

Art. 16. *Capacity to contract marriage.* - (1) Any Muslim male at least fifteen years of age and any Muslim female of the age of puberty or upwards and not suffering from any impediment under the provisions of this Code may contract marriage. A female is presumed to have attained puberty upon reaching the age of fifteen.

x x x.

Exhibit "1" and submarkings - Balik Islam Tableegh Foundation of the Philippines' Membership Application Form accomplished in handwritten form, dated 10 January 1992;

Exhibit "2" and submarkings - Certificate of Conversion to Islam dated 2 October 2004 issued by Hadji Abdul Hai Qahar Madueño, President of Balik Islam Tableegh Foundation of the Philippines;

Exhibit "3" and submarkings - Certificate of Conversion to Islam dated 17 December 2003 issued by Abdullah M. Al-Hamid, Director General of the Riyadh branch of the Ministry of Islamic Affairs, Endowments, Call and Guidance, Kingdom of Saudi Arabia;

Exhibits "4", "12" and "13" - Certificate of Conversion to Islam dated 17 December 2003 issued by the Civil Registry of Zamboanga City, Zamboanga del Sur; and

Exhibit "7" and submarkings – Nollora's Pledge of Conversion dated 10 January 1992 issued by Hadji Abdul Hai Qahar Madueño, President of Balik Islam Tableegh Foundation of the Philippines.

> Art. 17. *Marriage Ceremony.* - No particular form of marriage ceremony is required but the *ijab* and the *qabul* in marriage shall be declared publicly in the presence of the person solemnizing the marriage and the two competent witnesses. The declaration shall be set forth in an instrument in triplicate, signed or marked by the contracting parties and said witnesses, and attested by the person solemnizing the marriage. One copy shall be given to the contracting parties and another sent to the Circuit Registrar by the solemnizing officer who shall keep the third.
>
> Art. 18. *Authority to solemnize marriage.* - Marriage maybe solemnized:
>
> (a) By the proper *wali* by the woman to be wedded;
>
> (b) Upon the authority of the proper *wali*, by any person who is competent under Muslim law to solemnize marriage; or
>
> (c) By the judge of the *Shari'a* District Court or *Shari'a* Circuit Court or any person designated by the judge, should the proper *wali* refuse without justifiable reason, to authorize the solemnization.
>
> Art. 19. *Place of solemnization.* - Marriage shall be solemnized publicly in any mosque, office of the *Shari'a* judge, office of the Circuit Registrar, residence of the bride or her *wali*, or at any other suitable place agreed upon by the parties.
>
> Art. 20. *Specification of dower.* - The amount or value of dower may be fixed by the contracting parties (*mahr-musamma*) before, during or after the celebration of marriage. If the amount or the value thereof has not been so fixed, a proper dower (*mahr-mithl*) shall, upon petition of the wife, be determined by the court according to the social standing of the parties.

Indeed, Article 13(2) of the Code of Muslim Personal Laws states that "[i]n case of **a marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the** [**Family Code of the Philippines, or Executive Order No. 209,** in lieu of the Civil Code of the Philippines] **shall apply.**" Nollora's religious affiliation is not an issue here. Neither is the claim that Nollora's marriages were solemnized according to Muslim law. Thus, regardless of

his professed religion, Nollora cannot claim exemption from liability for the crime of bigamy.[21]

Nollora asserted in his marriage certificate with Geraldino that his civil status is "single." Moreover, both of Nollora's marriage contracts do not state that he is a Muslim. Although the truth or falsehood of the declaration of one's religion in the marriage certificate is not an essential requirement for marriage, such omissions are sufficient proofs of Nollora's liability for bigamy. Nollora's false declaration about his civil status is thus further compounded by these omissions.

> [ATTY. CALDINO:]
> Q: In your marriage contract, Mr. Witness, with Jesusa Pinat, you indicated here as your religion, Catholic Pentecostal, and you were saying that since January 10, 1992, you are already a [M]uslim convert. . . you said, Mr. Witness, that you are already a [M]uslim convert since January 10, 1992. However, in your marriage contract with Jesusa Pinat, there is no indication here that you have indicated your religion. Will you please go over your marriage contract?
>
> [NOLLORA:]
> A: When we got married, they just placed there Catholic but I didn't know why they did not place any Catholic there.
>
> x x x x x x x x x
>
> **Q: Now, Mr. Witness, I would like to call your attention with respect to your marriage contract with your co-accused in this case, Rowena Geraldino, x x x will you please tell us, Mr. Witness, considering that you said that you are already a [M]uslim convert on January 10, 1992, why in the marriage contract with Rowena Geraldino, you indicated there your religion as Catholic, Mr. Witness?**
>
> **A: Since I was a former Catholic and since I was then keeping, I was keeping it as a secret my being my Balik-Islam, that's why I placed there Catholic since I know that the society doesn't approve a Catholic to marry another, that's why I placed there Catholic as my religion, sir.**

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[21] *Supra* note 8.

Q: How about under the column, "civil status," why did you indicate there that you're single, Mr. Witness?

A: I also kept it as a secret that I was married, earlier married.[22] (Emphasis supplied)

x x x x x x x x x

[PROSECUTOR TAYLOR:]
Q: Would you die for your new religion, Mr. Nollora?

A: Yes, ma'am.

Q: If you would die for your new religion, why did you allow that your faith be indicated as Catholic when in fact you were already as you alleged [M]uslim to be put in your marriage contract?

x x x x x x x x x

[A:] I don't think there is anything wrong with it, I just signed it so we can get married under the Catholic rights [sic] because after that we even got married under the [M]uslim rights [sic], your Honor.

x x x x x x x x x

Q: Under your Muslim faith, if you marry a second wife, are you required under your faith to secure the permission of your first wife to get married?

A: Yes, ma'am.

Q: Did you secure that permission from your first wife, Jesusa Nollora?

A: I was not able to ask any permission from her because she was very mad at me, at the start, she was always very mad, ma'am.[23]

In his petition before this Court, Nollora casts doubt on the validity of his marriage to Geraldino. Nollora may not impugn his marriage to Geraldino in order to extricate himself from

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[22] TSN, 30 January 2006, pp. 11-12.

[23] TSN, 29 May 2006, pp. 6, 9-10.

criminal liability; otherwise, we would be opening the doors to allowing the solemnization of multiple flawed marriage ceremonies. As we stated in *Tenebro v. Court of Appeals*:[24]

> There is therefore a recognition written into the law itself that such a marriage, although void ab initio, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.

WHEREFORE, we *DENY* the petition. The Decision of the Court of Appeals in CA-G.R. CR No. 31538 promulgated on 30 September 2009 and the Resolution promulgated on 23 February 2010 are *AFFIRMED*. Petitioner Atilano O. Nollora, Jr. is guilty beyond reasonable doubt of Bigamy in Criminal Case No. Q-04-129031 and is sentenced to suffer the penalty of imprisonment with a term of two years, four months and one day of *prision correccional* as minimum to eight years and one day of *prision mayor* as maximum of his indeterminate sentence, as well as the accessory penalties provided by law.

Costs against petitioner Atilano O. Nollora, Jr.

SO ORDERED.

Brion, Peralta,[*] *Perez,* and *Mendoza,*[**] *JJ.,* concur.

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[24] 467 Phil. 723, 744 (2004).

[*] Designated Acting Member per Special Order No. 1074 dated 6 September 2011.

[**] Designated Acting Member per Special Order No. 1066 dated 23 August 2011.

THIRD DIVISION

[G.R. No. 192466. September 7, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALEJO TAROY *y* TARNATE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE IS JURISDICTIONAL IN CRIMINAL CASES; EXPLAINED.— Venue is jurisdictional in criminal cases. It can neither be waived nor subjected to stipulation. The right venue must exist as a matter of law. Thus, for territorial jurisdiction to attach, the criminal action must be instituted and tried in the proper court of the municipality, city, or province where the offense was committed or where any of its essential ingredients took place.

2. ID.; ID.; JUDGMENTS; ONLY MORAL CERTAINTY IS REQUIRED TO PROVE THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED.— What is necessary for the prosecution to ensure conviction is not absolute certainty but only moral certainty that the accused is guilty of the crime charged. Here, the prosecution has sufficiently proved the guilt of Taroy beyond reasonable doubt. DES' testimony is worthy of belief, she having no ill-motive to fabricate what she said against her stepfather. More, contrary to the claims of Taroy, there is nothing in the testimony of DES that would elicit suspicion as to the veracity of her story. For one thing, the fact that she did not shout for help or resist the sexual advances of Taroy does not disprove the fact that he raped her. Women who experience traumatic and terrifying experiences such as rape do not react in a uniform pattern of hysteria and breakdown.

3. CRIMINAL LAW; RAPE; AWARD OF EXEMPLARY DAMAGES, INCREASED.— While we do affirm the guilt of Taroy for the crime of rape, we modify the award of exemplary damages in accordance with *People v. Araojo*. The prosecution has sufficiently established the relationship of Taroy to the victim, as well as the minority of DES necessitating the increase of the award of exemplary damages from ₱25,000.00 to ₱30,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

Apart from the question of credibility of testimonies in a prosecution for rape, this case resolves the question of proof of the territorial jurisdiction of the trial court.

The Facts and the Case

The public prosecutor charged Alejo Taroy *y* Tarnate (Taroy) with two counts of rape in Criminal Cases 02-CR-4671 and 02-CR-4672 before the Regional Trial Court (RTC) of La Trinidad, Benguet.[1]

DES[2] was the eldest daughter of MILA[3] by her first marriage. MILA married Taroy in 1997 upon the death of her first husband.[4] The couple lived with MILA's children in Pucsusan *Barangay*, Itogon, Benguet, at the boundary of Baguio City.[5]

DES testified that she was alone in the house on August 10, 1997 doing some cleaning since her mother was at work and her two siblings were outside playing. When Taroy entered the

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[1] Branch 9.

[2] Pursuant to Republic Act 9262, otherwise known as the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials are used to represent her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[3] *Id.*

[4] Records, Vol. I, p. 99.

[5] *Id.* at 22 (TSN, July 1, 2003, p. 4).

house, he locked the door, closed the windows, removed his clothes, and ordered DES to remove hers. When she resisted, Taroy poked a knife at her head and forced her to submit to his bestial desires. Taroy warned her afterwards not to tell anyone about it, lest MILA and her siblings would suffer some harm. DES was 10 years old then.[6]

DES testified that Taroy sexually abused her again in September 1998. This time, he entered her room, locked the door, closed the windows, undressed himself, and ordered her to do the same. When she refused, Taroy pointed a knife at her. This compelled her to yield to him.

Four years later or on November 1, 2002, when DES was 15, she told her aunt and MILA about what had happened between Taroy and her. They accompanied DES to the National Bureau of Investigation to complain.

MILA and a certain Alumno testified that they later accompanied DES to the hospital for examination. MILA corroborated DES' testimony regarding how she revealed to her and an aunt the details of the rape incidents. The doctor who examined DES testified that the latter had two narrow notches in her hymen at three o'clock and five o'clock positions. She explained that these notches or V-shaped or sharp indentions over the hymenal edges suggested a history of previous blunt force or trauma possibly caused by the insertion of an erect male penis.

For the defense, Taroy denied raping DES on the occasions mentioned. He averred that the testimony was a fabrication made upon the prodding of her aunt who disliked him.

The RTC found Taroy guilty of two counts of rape and sentenced him to suffer the penalty of *reclusion perpetua*. It also ordered him to pay DES for each count: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00

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[6] *Id.* at 5, Exhibit "A".

as exemplary damages.[7] The RTC found the testimony of DES credible and worthy of belief.

Taroy challenged the Benguet RTC's jurisdiction over the crimes charged, he having testified that their residence when the alleged offenses took place was in Pucsusan *Barangay*, Baguio City. The RTC held, however, that Taroy's testimony that their residence was in Baguio City did not strip the court of its jurisdiction since he waived the jurisdictional requirement.

On January 19, 2010 the Court of Appeals (CA) affirmed the decision of the RTC.[8] The CA gave weight to the RTC's assessment of DES' credibility and found no evil motive in her. The CA also held that the prosecution has sufficiently established the jurisdiction of the RTC through the testimony of MILA, DES, and Alumno. Taroy seeks his acquittal from this Court.

The Issues Presented

The issues presented to the Court are:

1. Whether or not the RTC of La Trinidad, Benguet, has jurisdiction to hear and decide the cases of rape against Taroy; and

2. Whether or not the prosecution has proved his guilt in the two cases beyond reasonable doubt.

The Court's Rulings

One. Venue is jurisdictional in criminal cases. It can neither be waived nor subjected to stipulation. The right venue must exist as a matter of law.[9] Thus, for territorial jurisdiction to attach, the criminal action must be instituted and tried in the proper court of the municipality, city, or province where the

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[7] Decision dated March 10, 2008, CA *rollo*, pp. 60-72.

[8] Docketed as CA-G.R. CR-HC 03510.

[9] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 71, citing *People v. Casiano*, 111 Phil. 73, 93 (1961).

offense was committed or where any of its essential ingredients took place.[10]

The Informations[11] filed with the RTC of La Trinidad state that the crimes were committed in the victim and the offender's house in City Limit, Tuding, Municipality of Itogon, Province of Benguet. This allegation conferred territorial jurisdiction over the subject offenses on the RTC of La Trinidad, Benguet. The testimonies of MILA and DES as well as the affidavit of arrest[12] point to this fact. Clearly, Taroy's uncorroborated assertion that the subject offenses took place in Baguio City is not entitled to belief. Besides, he admitted during the pre-trial in the case that it was the RTC of La Trinidad that had jurisdiction to hear the case.[13] Taken altogether, that RTC's jurisdiction to hear the case is beyond dispute.

Two. What is necessary for the prosecution to ensure conviction is not absolute certainty but only moral certainty that the accused is guilty of the crime charged.[14] Here, the prosecution has sufficiently proved the guilt of Taroy beyond reasonable doubt. DES' testimony is worthy of belief, she having no ill-motive to fabricate what she said against her stepfather.

More, contrary to the claims of Taroy, there is nothing in the testimony of DES that would elicit suspicion as to the veracity of her story. For one thing, the fact that she did not shout for help or resist the sexual advances of Taroy does not disprove the fact that he raped her. Women who experience traumatic and terrifying experiences such as rape do not react in a uniform pattern of hysteria and breakdown.

Lastly, there is nothing unusual for DES to remain in the family dwelling despite the incidents that had happened to her.

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[10] See Revised Rules of Criminal Procedure, Rule 110, Section 15.

[11] Records, Vol. I, p. 1; Records, Vol. II, p. 1.

[12] *Id.* at 9.

[13] *Id.* at 15-16, Pre-Trial Order dated March 3, 2003.

[14] RULES OF COURT, Rule 133, Section 2.

She was just a child. Where else would she go except stay with her mother who happened to be married to the man who abused her?

While we do affirm the guilt of Taroy for the crime of rape, we modify the award of exemplary damages in accordance with *People v. Araojo*.[15] The prosecution has sufficiently established the relationship of Taroy to the victim, as well as the minority of DES necessitating the increase of the award of exemplary damages from ₱25,000.00 to ₱30,000.00.

WHEREFORE, this Court *DISMISSES* the appeal and *AFFIRMS* the Court of Appeals decision in CA-G.R. CR-HC 03510 dated January 19, 2010 with the *MODIFICATION* that the award of exemplary damages be increased from ₱25,000.00 to ₱30,000.00.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193577. September 7, 2011]

ANTONIO FRANCISCO, substituted by his heirs: NELIA E.S. FRANCISCO, EMILIA F. BERTIZ, REBECCA E.S. FRANCISCO, ANTONIO E.S. FRANCISCO, JR., SOCORRO F. FONTANILLA, and JOVITO E.S. FRANCISCO, *petitioners, vs.* **CHEMICAL BULK CARRIERS, INCORPORATED,** *respondent.*

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[15] G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

* Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order 1076 dated September 6, 2011.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; STANDARD OF CONDUCT, DEFINED; DEGREE OF CARE REQUIRED FROM A PHYSICALLY DISABLED PERSON, EXPLAINED.— Standard of conduct is the level of expected conduct that is required by the nature of the obligation and corresponding to the circumstances of the person, time and place. The most common standard of conduct is that of a good father of a family or that of a reasonably prudent person. To determine the diligence which must be required of all persons, we use as basis the abstract average standard corresponding to a normal orderly person. However, one who is physically disabled is required to use the same degree of care that a reasonably careful person who has the same physical disability would use. Physical handicaps and infirmities, such as blindness or deafness, are treated as part of the circumstances under which a reasonable person must act. Thus, the standard of conduct for a blind person becomes that of a reasonable person who is blind.

2. ID.; SALES; THE SELLER WITHOUT TITLE CANNOT TRANSFER A BETTER TITLE THAN HE HAS; THE EXCEPTION FROM THE GENERAL PRINCIPLE IS THE DOCTRINE OF ESTOPPEL WHERE THE OWNER OF THE GOODS IS PRECLUDED FROM DENYING THE SELLER'S AUTHORITY TO SELL.— The general principle is that a seller without title cannot transfer a better title than he has. Only the owner of the goods or one authorized by the owner to sell can transfer title to the buyer. Therefore, a person can sell only what he owns or is authorized to sell and the buyer can, as a consequence, acquire no more than what the seller can legally transfer. Moreover, the owner of the goods who has been unlawfully deprived of it may recover it even from a purchaser in good faith. Thus, the purchaser of property which has been stolen from the owner has been held to acquire no title to it even though he purchased for value and in good faith. The exception from the general principle is the doctrine of estoppel where the owner of the goods is precluded from denying the seller's authority to sell. But in order that there may be estoppel, the owner must, by word or conduct, have caused or allowed it to appear that title or authority to sell is with the seller and the buyer must have been misled to his damage.

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioners.
Virgilio B. Gesmundo for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 31 May 2010 Decision[2] and 31 August 2010 Resolution[3] of the Court of Appeals in CA G.R. CV No. 63591. In its 31 May 2010 Decision, the Court of Appeals set aside the 21 August 1998 Decision[4] of the Regional Trial of Pasig City, Branch 71 (trial court), and ordered petitioner Antonio Francisco (Francisco) to pay respondent Chemical Bulk Carriers, Incorporated (CBCI) ₱1,119,905 as actual damages. In its 31 August 2010 Resolution, the Court of Appeals denied Francisco's motion for reconsideration.

The Facts

Since 1965, Francisco was the owner and manager of a Caltex station in Teresa, Rizal. Sometime in March 1993, four persons, including Gregorio Bacsa (Bacsa), came to Francisco's Caltex station and introduced themselves as employees of CBCI. Bacsa offered to sell to Francisco a certain quantity of CBCI's diesel fuel.

After checking Bacsa's identification card, Francisco agreed to purchase CBCI's diesel fuel. Francisco imposed the following conditions for the purchase: (1) that Petron Corporation (Petron) should deliver the diesel fuel to Francisco at his business address which should be properly indicated in Petron's invoice; (2) that

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

[2] *Rollo*, pp. 7-27. Penned by Presiding Judge Andres B. Reyes, Jr., with Associate Justices Isaias P. Dicidican and Stephen C. Cruz, concurring.

[3] *Id.* at 28-30.

[4] *Id.* at 150-157. Penned by Judge Celso D. Laviña.

the delivery tank is sealed; and (3) that Bacsa should issue a separate receipt to Francisco.

The deliveries started on 5 April 1993 and lasted for ten months, or up to 25 January 1994.[5] There were 17 deliveries to Francisco and all his conditions were complied with.

In February 1996, CBCI sent a demand letter to Francisco regarding the diesel fuel delivered to him but which had been paid for by CBCI.[6] CBCI demanded that Francisco pay CBCI ₱1,053,527 for the diesel fuel or CBCI would file a complaint against him in court. Francisco rejected CBCI's demand.

On 16 April 1996, CBCI filed a complaint for sum of money and damages against Francisco and other unnamed defendants.[7] According to CBCI, Petron, on various dates, sold diesel fuel to CBCI but these were delivered to and received by Francisco. Francisco then sold the diesel fuel to third persons from whom he received payment. CBCI alleged that Francisco acquired possession of the diesel fuel without authority from CBCI and deprived CBCI of the use of the diesel fuel it had paid for. CBCI demanded payment from Francisco but he refused to pay. CBCI argued that Francisco should have known that since only Petron, Shell and Caltex are authorized to sell and distribute petroleum products in the Philippines, the diesel fuel came from illegitimate, if not illegal or criminal, acts. CBCI asserted that Francisco violated Articles 19,[8] 20,[9] 21,[10] and 22[11] of the Civil Code and that he

[5] Annexes "1" to "17", Records, pp. 11-27.

[6] *Id.* at 196.

[7] *Rollo,* pp. 77-85.

[8] ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[9] ART. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

[10] 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.

[11] ART. 22. Every person who through an act of performance by another,

should be held liable. In the alternative, CBCI claimed that Francisco, in receiving CBCI's diesel fuel, entered into an innominate contract of *do ut des* (I give and you give) with CBCI for which Francisco is obligated to pay CBCI ₱1,119,905, the value of the diesel fuel. CBCI also prayed for exemplary damages, attorney's fees and other expenses of litigation.

On 20 May 1996, Francisco filed a Motion to Dismiss on the ground of forum shopping.[12] CBCI filed its Opposition.[13] In an Order dated 15 November 1996, the trial court denied Francisco's motion.[14]

Thereafter, Francisco filed his Answer.[15] Francisco explained that he operates the Caltex station with the help of his family because, in February 1978, he completely lost his eyesight due to sickness. Francisco claimed that he asked Jovito, his son, to look into and verify the identity of Bacsa, who introduced himself as a radio operator and confidential secretary of a certain Mr. Inawat (Inawat), CBCI's manager for operations. Francisco said he was satisfied with the proof presented by Bacsa. When asked to explain why CBCI was selling its fuel, Bacsa allegedly replied that CBCI was in immediate need of cash for the salary of its daily paid workers and for petty cash. Francisco maintained that Bacsa assured him that the diesel fuel was not stolen property and that CBCI enjoyed a big credit line with Petron. Francisco agreed to purchase the diesel fuel offered by Bacsa on the following conditions:

1) Defendant [Francisco] will not accept any delivery if it is not company (Petron) delivered, with his name and address as shipping point properly printed and indicated in the invoice of Petron, and that the product on the delivery tank is sealed; [and]

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or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[12] *Rollo*, pp. 86-93.

[13] *Id.* at 94-98.

[14] *Id.* at 99.

[15] Records, pp. 97-113.

2) Although the original invoice is sufficient evidence of delivery and payment, under ordinary course of business, defendant still required Mr. Bacsa to issue a separate receipt duly signed by him acknowledging receipt of the amount stated in the invoice, for and in behalf of CBCI.[16]

During the first delivery on 5 April 1993, Francisco asked one of his sons to verify whether the delivery truck's tank was properly sealed and whether Petron issued the invoice. Francisco said all his conditions were complied with. There were 17 deliveries made from 5 April 1993 to 25 January 1994 and each delivery was for 10,000 liters of diesel fuel at ₱65,865.[17] Francisco maintained that he acquired the diesel fuel in good faith and for value. Francisco also filed a counterclaim for exemplary damages, moral damages and attorney's fees.

In its 21 August 1998 Decision, the trial court ruled in Francisco's favor and dismissed CBCI's complaint. The dispositive portion of the trial court's 21 August 1998 Decision reads:

> WHEREFORE, Judgment is hereby rendered:
>
> 1. Dismissing the complaint dated March 13, 1996 with costs.
>
> 2. Ordering plaintiff (CBCI), on the counterclaim, to pay defendant the amount of ₱100,000.00 as moral damages and ₱50,000.00 as and by way of attorney's fees.
>
> SO ORDERED.[18]

CBCI appealed to the Court of Appeals.[19] CBCI argued that Francisco acquired the diesel fuel from Petron without legal ground because Bacsa was not authorized to deliver and sell CBCI's diesel fuel. CBCI added that Francisco acted in bad faith because he should have inquired further whether Bacsa's sale of CBCI's diesel fuel was legitimate.

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[16] *Id.* at 99-100.

[17] The first delivery on 5 April 1993 was for 10,000 liters at ₱66,065; Annex "1", *id.* at 11.

[18] *Rollo*, p. 157.

[19] CA *rollo*, pp. 12-43.

In its 31 May 2010 Decision, the Court of Appeals set aside the trial court's 21 August 1998 Decision and ruled in CBCI's favor. The dispositive portion of the Court of Appeals' 31 May 2010 Decision reads:

> IN VIEW OF THE FOREGOING, the assailed decision is hereby REVERSED and SET ASIDE. Antonio Francisco is ordered to pay Chemical Bulk Carriers, Incorporated the amount of ₱1,119,905.00 as actual damages.
>
> SO ORDERED.[20]

On 15 January 2001, Francisco died.[21] Francisco's heirs, namely: Nelia E.S. Francisco, Emilia F. Bertiz, Rebecca E.S. Francisco, Antonio E.S. Francisco, Jr., Socorro F. Fontanilla, and Jovito E.S. Francisco (heirs of Francisco) filed a motion for substitution.[22] The heirs of Francisco also filed a motion for reconsideration.[23] In its 31 August 2010 Resolution, the Court of Appeals granted the motion for substitution but denied the motion for reconsideration.

Hence, this petition.

The Ruling of the Trial Court

The trial court ruled that Francisco was not liable for damages in favor of CBCI because the 17 deliveries were covered by original and genuine invoices. The trial court declared that Bacsa, as confidential secretary of Inawat, was CBCI's authorized representative who received Francisco's full payment for the diesel fuel. The trial court stated that if Bacsa was not authorized, CBCI should have sued Bacsa and not Francisco. The trial court also considered Francisco a buyer in good faith who paid in full for the merchandise without notice that some other person had a right to or interest in such diesel fuel. The trial court

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[20] *Rollo*, p. 27.

[21] CA *rollo*, p. 150.

[22] *Id.* at 120-124.

[23] *Id.* at 126-136.

pointed out that good faith affords protection to a purchaser for value. Finally, since CBCI was bound by the acts of Bacsa, the trial court ruled that CBCI is liable to pay damages to Francisco.

The Ruling of the Court of Appeals

The Court of Appeals set aside the trial court's 21 August 1998 Decision and ruled that Bacsa's act of selling the diesel fuel to Francisco was his personal act and, even if Bacsa connived with Inawat, the sale does not bind CBCI.

The Court of Appeals declared that since Francisco had been in the business of selling petroleum products for a considerable number of years, his blindness was not a hindrance for him to transact business with other people. With his condition and experience, Francisco should have verified whether CBCI was indeed selling diesel fuel and if it had given Bacsa authority to do so. Moreover, the Court of Appeals stated that Francisco cannot feign good faith since he had doubts as to the authority of Bacsa yet he did not seek confirmation from CBCI and contented himself with an improvised receipt. Francisco's failure to verify Bacsa's authority showed that he had an ulterior motive. The receipts issued by Bacsa also showed his lack of authority because it was on a plain sheet of bond paper with no letterhead or any indication that it came from CBCI. The Court of Appeals ruled that Francisco cannot invoke estoppel because he was at fault for choosing to ignore the tell-tale signs of petroleum diversion and for not exercising prudence.

The Court of Appeals also ruled that CBCI was unlawfully deprived of the diesel fuel which, as indicated in the invoices, CBCI had already paid for. Therefore, CBCI had the right to recover the diesel fuel or its value from Francisco. Since the diesel fuel can no longer be returned, the Court of Appeals ordered Francisco to give back the actual amount paid by CBCI for the diesel fuel.

The Issues

The heirs of Francisco raise the following issues:

I. WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING THAT DEFENDANT ANTONIO FRANCISCO EXERCISED THE REQUIRED DILIGENCE OF A BLIND PERSON IN THE CONDUCT OF HIS BUSINESS; and

II. WHETHER ON THE BASIS OF THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT AND ADMITTED FACTS, IT CAN BE CONCLUDED THAT THE PLAINTIFF APPROVED EXPRESSLY OR TACITLY THE TRANSACTIONS.[24]

The Ruling of the Court

The petition has no merit.

Required Diligence of a Blind Person

The heirs of Francisco argue that the Court of Appeals erred when it ruled that Francisco was liable to CBCI because he failed to exercise the diligence of a good father of a family when he bought the diesel fuel. They argue that since Francisco was blind, the standard of conduct that was required of him was that of a reasonable person under like disability. Moreover, they insist that Francisco exercised due care in purchasing the diesel fuel by doing the following: (1) Francisco asked his son to check the identity of Bacsa; (2) Francisco required direct delivery from Petron; (3) Francisco required that he be named as the consignee in the invoice; and (4) Francisco required separate receipts from Bacsa to evidence actual payment.

Standard of conduct is the level of expected conduct that is required by the nature of the obligation and corresponding to the circumstances of the person, time and place.[25] The most common standard of conduct is that of a good father of a family or that of a reasonably prudent person.[26] To determine the diligence which must be required of all persons, we use as basis the abstract average standard corresponding to a normal orderly person.[27]

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[24] *Rollo,* p. 39.

[25] CIVIL CODE, ART. 1173.

[26] CIVIL CODE, ART. 1173.

[27] Arturo M. Tolentino, *Civil Code of the Philippines*, Vol. 4 125 (1991).

However, one who is physically disabled is required to use the same degree of care that a reasonably careful person who has the same physical disability would use.[28] Physical handicaps and infirmities, such as blindness or deafness, are treated as part of the circumstances under which a reasonable person must act. Thus, the standard of conduct for a blind person becomes that of a reasonable person who is blind.

We note that Francisco, despite being blind, had been managing and operating the Caltex station for 15 years and this was not a hindrance for him to transact business until this time. In this instance, however, we rule that Francisco failed to exercise the standard of conduct expected of a reasonable person who is blind. First, Francisco merely relied on the identification card of Bacsa to determine if he was authorized by CBCI. Francisco did not do any other background check on the identity and authority of Bacsa. Second, Francisco already expressed his misgivings about the diesel fuel, fearing that they might be stolen property,[29] yet he did not verify with CBCI the authority of Bacsa to sell the diesel fuel. Third, Francisco relied on the receipts issued by Bacsa which were typewritten on a half sheet of plain bond paper.[30] If Francisco exercised reasonable diligence, he should have asked for an official receipt issued by CBCI. Fourth, the delivery to Francisco, as indicated in Petron's invoice, does not show that CBCI authorized Bacsa to sell the diesel fuel to Francisco. Clearly, Francisco failed to exercise the standard of conduct expected of a reasonable person who is blind.

Express or Tacit Approval of the Transaction

The heirs of Francisco argue that CBCI approved expressly or tacitly the transactions. According to them, there was apparent authority for Bacsa to enter into the transactions. They argue that even if the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the later

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[28] Timoteo B. Aquino, *TORTS AND DAMAGES* 92 (2001).

[29] Records, pp. 98-99.

[30] Exhibits "7" to "7-N", *id.* at 61-77.

to act as though he had full powers.[31] They insist CBCI was not unlawfully deprived of its property because Inawat gave Bacsa the authority to sell the diesel fuel and that CBCI is bound by such action. Lastly, they argue that CBCI should be considered in estoppel for failure to act during the ten month period that deliveries were being made to Francisco.

The general principle is that a seller without title cannot transfer a better title than he has.[32] Only the owner of the goods or one authorized by the owner to sell can transfer title to the buyer.[33] Therefore, a person can sell only what he owns or is authorized to sell and the buyer can, as a consequence, acquire no more than what the seller can legally transfer.[34]

Moreover, the owner of the goods who has been unlawfully deprived of it may recover it even from a purchaser in good faith.[35] Thus, the purchaser of property which has been stolen from the owner has been held to acquire no title to it even though he purchased for value and in good faith.

The exception from the general principle is the doctrine of estoppel where the owner of the goods is precluded from denying the seller's authority to sell.[36] But in order that there may be estoppel, the owner must, by word or conduct, have caused or allowed it to appear that title or authority to sell is with the seller and the buyer must have been misled to his damage.[37]

In this case, it is clear that Bacsa was not the owner of the diesel fuel. Francisco was aware of this but he claimed that Bacsa was authorized by CBCI to sell the diesel fuel. However, Francisco's claim that Bacsa was authorized is not supported

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[31] CIVIL CODE, ART. 1911.

[32] CIVIL CODE, ART. 1505.

[33] *Id.*

[34] *Nool v. Court of Appeals*, 342 Phil. 106 (1997); *Segura v. Segura*, 247-A Phil. 449 (1988).

[35] CIVIL CODE, ART. 559.

[36] CIVIL CODE, ART. 1505.

[37] *Id.*

by any evidence except his self-serving testimony. First, Francisco did not even confirm with CBCI if it was indeed selling its diesel fuel since it is not one of the oil companies known in the market to be selling petroleum products. This fact alone should have put Francisco on guard. Second, it does not appear that CBCI, by some direct and equivocal act, has clothed Bacsa with the indicia of ownership or apparent authority to sell CBCI's diesel fuel. Francisco did not state if the identification card presented by Bacsa indicated that he was CBCI's agent or a mere employee. Third, the receipt issued by Bacsa was typewritten on a half sheet of plain bond paper. There was no letterhead or any indication that it came from CBCI. We agree with the Court of Appeals that this was a personal receipt issued by Bacsa and not an official receipt issued by CBCI. Consequently, CBCI is not precluded by its conduct from denying Bacsa's authority to sell. CBCI did not hold out Bacsa or allow Bacsa to appear as the owner or one with apparent authority to dispose of the diesel fuel.

Clearly, Bacsa cannot transfer title to Francisco as Bacsa was not the owner of the diesel fuel nor was he authorized by CBCI to sell its diesel fuel. CBCI did not commit any act to clothe Bacsa with apparent authority to sell the diesel fuel that would have misled Francisco. Francisco, therefore, did not acquire any title over the diesel fuel. Since CBCI was unlawfully deprived of its property, it may recover from Francisco, even if Francisco pleads good faith.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 31 May 2010 Decision and 31 August 2010 Resolution of the Court of Appeals.

SO ORDERED.

Brion, Peralta,[*] *Perez,* and *Mendoza,*[**] *JJ.,* concur.

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[*] Designated Acting Member per Special Order No. 1074 dated 6 September 2011.

[**] Designated Acting Member per Special Order No. 1066 dated 23 August 2011.

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ATTORNEYS

Code of Professional Responsibility — All lawyers are mandated to observe and maintain the respect due to the courts. (Habawel *vs*. Court of Tax Appeals [1st Div.], G.R. No. 174759, Sept. 07, 2011) p. 582

(Habawel *vs*. Court of Tax Appeals [1st Div.], G.R. No. 174759, Sept. 07, 2011; *Del Castillo, J., dissenting opinion*) p. 582

— Lawyers may be critical of the courts and their judges provided the criticism is made in respectful terms and through legitimate channels; it is the cardinal condition of all such criticism that it shall be bona fide and shall not spill over the walls of decency and propriety. (Habawel *vs*. Court of Tax Appeals [1st Div.], G.R. No. 174759, Sept. 07, 2011) p. 582

— No attorney, no matter his great fame or high prestige, should ever brand a court or judge as grossly ignorant of the law, especially if there was no sincere or legitimate reason for doing so. *(Id.)*

— Statements in the motion for reconsideration clearly and definitely overstepped the bounds of propriety as attorneys and disregarded their sworn duty to respect the courts. *(Id.)*

— The Court has not lacked in frequently reminding the Bar that language, though forceful, must still be dignified; and though emphatic, must remain respectful as befitting advocates and in keeping with the dignity of the legal profession. *(Id.)*

warrantless search; (5) Customs search; (6) Stop and Frisk; and (7) Exigent and emergency circumstances. *(Id.)*

— "Plain view" doctrine is when objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence; when applicable. *(Id.)*

CERTIORARI

Petition for — Court will not, in a petition for review on certiorari, entertain matters factual in nature, save for the most compelling and cogent reasons. (NHA *vs*. First United Constructors Corp., G.R. No. 176535, Sept. 07, 2011) p. 621

— Errors committed in the exercise of jurisdiction are merely errors of judgment which are not proper subjects thereof. (Rom *vs*. Roxas & Co., Inc., G.R. No. 169331, Sept. 05, 2011) p. 342

CIVIL LIABILITY

Restitution — Where restitution is no longer possible, the accused is obliged to make reparation for the value of the articles taken. (People of the Phils. *vs*. Evangelio *y* Gallo, G.R. No. 181902, Aug. 31, 2011) p. 229

CLERKS OF COURT

Conduct of — Clerks of court are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice; applies not only to the court employee's norm of conduct pertaining to the discharge of his official duties, but also to his personal dealings, which must be within the parameters of morality, propriety, and decency. (Lauria-Liberato *vs*. Lelina, A.M. No. P-09-2703, Sept. 05, 2011) p. 301

— Clerks of court must show competence, honesty and probity, having been charged with safeguarding the integrity of the court and its proceedings. *(Id.)*

Illegal possession of prohibited drugs — Elements are: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. (Miclat, Jr. *y* Cerbo *vs*. People of the Phils., G.R. No. 176077, Aug. 31, 2011) p. 191

— Mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or *animus possidendi*. *(Id.)*

CONJUGAL PARTNERSHIP OF GAINS

Application — Applicability of the rules on dissolution of the conjugal partnership is without prejudice to vested rights already acquired in accordance with the Civil Code or other laws. (Heirs of Protacio Go, Sr. *vs*. Servacio, G.R. No. 157537, Sept. 07, 2011) p. 447

— Conjugal partnership of gains established before and after the effectivity of the Family Code are governed by the rules found in Chapter 4 (Conjugal Partnership of Gains) of Title IV (Property Relations Between Husband And Wife) of the Family Code. *(Id.)*

— Family Code provisions on conjugal partnership of gains apply to marriages contracted before the Family Code. *(Id.)*

Dissolution of — Upon death of either spouse, the conjugal partnership will be dissolved and an implied ordinary co-ownership ensued. (Heirs of Protacio Go, Sr. *vs*. Servacio, G.R. No. 157537, Sept. 07, 2011) p. 447

Liquidation of — Liquidation of conjugal partnership property upon termination of marriage by death shall be in the same proceeding for the settlement of the estate of the deceased. (Heirs of Protacio Go, Sr. *vs*. Servacio, G.R. No. 157537, Sept. 07, 2011) p. 447

COURT PERSONNEL

Conduct — Court employees, as public servants, are reminded that the highest sense of honesty, integrity, morality and decency is demanded in their performance of official duties and in the handling of their professional affairs; at all times, they carry, and must preserve, the court's good name and standing. (*Re*: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA, A.M. No. 2011-05-SC Sept. 6, 2011) p. 383

— Court personnel are expected to posses a high degree of work ethic, and abide by the strictest principles of ethical conduct and decorum both in their professional and private dealings. *(Id.)*

Conduct prejudicial to the best interest of the service — The employee's admissions of his infractions, the restitution made and the complainant's desistance cannot be considered as mitigating circumstances where public interest in the conduct of an employee of the judiciary and the name of the judiciary itself is involved. (*Re*: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA, A.M. No. 2011-05-SC Sept. 06, 2011) p. 383

Conduct unbecoming of a public servant — Making false accusations and sowing intrigues constitutes acts unbecoming of a public servant. (Atty. Capuchino *vs*. Apolonio, A.M. No. P-04-1771, Sept. 05, 2011) p. 287

Dishonesty — Defined as a disposition to lie, cheat, deceive or defraud. (*Re*: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA, A.M. No. 2011-05-SC Sept. 06, 2011) p. 383

— Falsification or irregularities in the keeping of time records constitutes dishonesty punishable by dismissal from service; length of service, acknowledgement of infractions and feeling of remorse, and family circumstances may

ESTAFA

Commission of — Elements of estafa under par. 2 (d), Article 315 of the Revised Penal Code are: (1) the postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficiency of funds to cover the check; and (3) damage to the payee. (People of the Phils. *vs*. Montaner, G.R. No. 184053, Aug. 31, 2011) p. 254

— Failure to deposit amount needed to cover checks that bounced gave rise to a prima facie evidence of deceit constituting false pretense or fraudulent act. *(Id.)*

ESTOPPEL

Doctrine of — An admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. (Landoil Resources Corp. *vs*. Al Rabaiah Lighting Co., G.R. No. 174720, Sept. 07, 2011) p. 570

(Rizal Commercial Banking Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 170257, Sept. 07, 2011) p. 514

— Partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers impliedly admitted the validity of those waivers. *(Id.)*

EVIDENCE

Burden of proof — The fundamental rule is that he who alleges must prove. (Union Bank of the Phils. *vs*. Sps. Rodolfo and Victoria Tiu, G.R. Nos. 173090-91, Sept. 07, 2011) p. 531

Circumstantial evidence — Sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (People of the Phils. *vs*. Evangelio *y* Gallo, G.R. No. 181902, Aug. 31, 2011) p. 229

— Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves the mode of commission of the offense. *(Id.)*

— May be committed either through a positive act of misappropriation of public funds or property, or passively through negligence. *(Id.)*

MANAGEMENT PREROGATIVE

Authority to hire — The authority to hire is likewise covered and protected by its management prerogative, the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. (St. Paul College, Q.C. *vs.* Ancheta II, G.R. No. 169905, Sept. 07, 2011) p. 497

MIGRANT WORKERS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — An accused, whether licensed or not, may still be liable for illegal recruitment for failure to reimburse expenses incurred by the worker where deployment does not actually take place; that the accused is unlicensed to recruit may be proved by POEA certification. (People of the Phils. *vs.* Ochoa, G.R. No. 173792, Aug. 31, 2011) p. 46

— R.A. No. 8042 in relation to the Labor Code and Revised Penal Code; a person may be convicted separately of illegal recruitment and estafa. *(Id.)*

MORAL DAMAGES

Award of — Granted without the necessity of additional pleadings or proof other than the fact of rape. (People of the Phils. *vs.* Evangelio *y* Gallo, G.R. No. 181902, Aug. 31, 2011) p. 229

PARTITION

Action for judicial partition — A co-owner is entitled to sell his undivided share; a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. (Heirs of Protacio Go, Sr. *vs*. Servacio, G.R. No. 157537, Sept. 07, 2011) p. 447

— The appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for partition. *(Id.)*

PLEADINGS

Complaint — Caption is not an indispensable part of the complaint. (Sps. Anselmo and Priscilla Bulaong *vs*. Gonzales, G.R. No. 156318, Sept. 05, 2011) p. 315

PRELIMINARY INVESTIGATION

Absence of — The absence of a proper preliminary investigation must be timely raised and must not have been waived. (Villarin *vs*. People of the Phils., G.R. No. 175289, Aug. 31, 2011) p. 155

Probable cause — Defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. (Alejandro *vs*. Atty. Bernas, G.R. No. 179243, Sept. 07, 2011) p. 698

— The Supreme Court does not interfere with the prosecutor's determination of probable cause. *(Id.)*

Purpose — A preliminary investigation is conducted for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. (Alejandro *vs*. Atty. Bernas, G.R. No. 179243, Sept. 07, 2011) p. 698

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