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DETERMINED IN THE

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OF THE

PHILIPPINES

FROM

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SUPREME COURT
MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 4955. September 12, 2011]

ANTONIO CONLU, *complainant, vs.* **ATTY. IRENEO AREDONIA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATION; THE FAILURE TO FILE A BRIEF RESULTING IN THE DISMISSAL OF AN APPEAL CONSTITUTES INEXCUSABLE NEGLIGENCE OF THE LAWYER.— It must be remembered that a retained counsel **is expected to serve the client with competence and diligence**. This duty includes not merely reviewing the cases entrusted to the counsel's care and giving the client sound legal advice, but also properly representing the client in court, attending scheduled hearings, **preparing and filing required pleadings**, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. The lawyer should not be sitting idly by and leave the rights of the client in a state of uncertainty. The failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence. This default translates to a violation of the injunction of Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility.

2. ID.; ID.; ID.; BY ASKING SEVERAL EXTENSIONS OF TIME TO SUBMIT COMMENT REQUIRED, BUT WITHOUT INTENTION

TO SO SUBMIT, THE LAWYER HAS EFFECTIVELY TRIFLED WITH THE COURT'S PROCESSES, IF NOT ITS LIBERALITY.— After requesting and securing no less than three (3) extensions of time to file his comment, he simply closed, so to speak, communication lines. And when ordered to give an explanation through a show-cause directive for not complying, he asked for and was granted a 30-day extension. But the required comment never came. When the Court eventually directed the NBI to arrest him, he just left his last known address and could not be located. The Court's patience has been tested to the limit by what in hindsight amounts to a lawyer's impudence and disrespectful bent. At the minimum, members of the legal fraternity owe courts of justice respect, courtesy and such other becoming conduct so essential in the promotion of orderly, impartial and speedy justice. What Atty. Ireneo has done was the exact opposite. What is clear to the Court by now is that Ireneo was determined all along not to submit a comment and, in the process, delay the resolution of the instant case. By asking several extensions of time to submit one, but without the intention to so submit, Ireneo has effectively trifled with the Court's processes, if not its liberality. This cannot be tolerated. It cannot be allowed to go unpunished, if the integrity and orderly functioning of the administration of justice is to be maintained. And to be sure, Atty. Ireneo can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts. Manifestly, he has fallen short of the diligence required of every member of the Bar.

3. ID.; ATTORNEYS; DISBARMENT AND DISCIPLINE; WHEN SUSPENSION FROM THE PRACTICE OF LAW IS APPLICABLE; CASE AT BAR.— A lawyer may be disbarred or suspended for gross misconduct or for transgressions defined by the rules as grounds to strip a lawyer of professional license. Considering, however, the serious consequences of either penalty, the Court will exercise its power to disbar or suspend only upon a clear, convincing, and satisfactory proof of misconduct that seriously affects the standing of a lawyer as an officer of the court and as member of the bar. x x x We deem it fitting that Atty. Ireneo be suspended from the practice of law for a period of one year, up from the penalty recommended by the IBP Board of Governors. This should serve as a constant

reminder of his duty to respect courts of justice and to observe that degree of diligence required by the practice of the legal profession. His being a first offender dictates to large degree this leniency. x x x **WHEREFORE**, respondent Atty. Ireneo Aredonia, Jr. is declared **GUILTY** of inexcusable negligence, attempting to mislead the appellate court, misuse of Court processes, and willful disobedience to lawful orders of the Court. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year effective upon his receipt of this Resolution, with **WARNING** that a repetition of the same or similar acts will be dealt with more severely. Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts throughout the country.

4. CIVIL LAW; DAMAGES; CLAIM FOR DAMAGES IS NOT PROPER IN A PROCEEDING FOR DISBARMENT OR SUSPENSION; RATIONALE.— The prayer for damages cannot be granted. Let alone the fact that Antonio chose not to file his position paper before the IBP-CBD and, therefore, was unable to satisfactorily prove his claim for damages, a proceeding for disbarment or suspension is not in any sense a civil action; it is undertaken and prosecuted for public welfare. It does not involve private interest and affords no redress for private grievance.

R E S O L U T I O N

VELASCO, JR., *J.*:

Before the Court is a complaint[1] for disbarment with a prayer for damages instituted by Antonio Conlu (Antonio) against Atty. Ireneo Aredonia, Jr. (Atty. Ireneo) on grounds of gross negligence and dereliction of sworn duty.

Antonio was the defendant in Civil Case No. 1048, a suit for *Quieting of Title and Recovery of a Parcel of Land* commenced before the Regional Trial Court (RTC) in Silay City, Negros Occidental.[2] He engaged the services of Atty. Ireneo to represent him in the case. On March 16, 1995, the

[1] *Rollo*, pp. 1-6, dated September 14, 1998.

RTC rendered judgment[3] adverse to Antonio. Therefrom, Atty. Ireneo, for Antonio, appealed to the Court of Appeals (CA) whereat the recourse was docketed as CA-G.R. CV No. 50075.

The CA, per its Resolution of February 10, 1997, eventually dismissed the appeal for non-filing of the appellant's brief within the reglementary period. Antonio got wind of the dismissal from his wife who verified the status of the case when she happened to be in Manila. When confronted about the dismissal action, Atty. Ireneo promised to seek reconsideration, which he did, but which the appellate court later denied for belated filing of the motion.

In that motion[4] he prepared and filed, Atty. Ireneo averred receiving the adverted February 10, 1997 CA Resolution[5] only on April 25, 1997, adding in this regard that the person in the law office who initially received a copy of said resolution was not so authorized. However, the CA denied the motion for having been filed out of time. As the CA would declare in a subsequent resolution dated December 3, 1997, there was a valid receipt by Atty. Ireneo, as shown by the registry return card with his signature, of a copy of the CA's February 10, 1997 Resolution. Accordingly, as the CA wrote, the motion for reconsideration of the February resolution which bore the mailing date May 8, 1997 cannot but be considered as filed way out of time.

In light of these successive setbacks, a disgusted Antonio got the case records back from Atty. Ireneo and personally filed on October 13, 1997 another motion for reconsideration. By Resolution of December 3, 1997, the CA again denied[6] this motion for the reason that the prejudicial impact of the belated filing by his former counsel of the first motion for reconsideration binds Antonio.

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[2] *Id.* at 43-48, Complaint dated December 14, 1983.

[3] *Id.* at 18-22.

[4] *Id.* at 23-25, dated May 5, 1997.

[5] *Id.* at 167.

[6] *Id.* at 27-29.

Forthwith, Antonio elevated his case to the Court on a petition for *certiorari* but the Court would later dismiss the petition and his subsequent motion to reconsider the denial.

Such was the state of things when Antonio lodged this instant administrative case for disbarment with a prayer for damages. To support his claim for damages, Antonio asserts having suffered sleepless nights, mental torture and anguish as a result of Atty. Ireneo's erring ways, besides which Antonio also lost a valuable real property subject of Civil Case No. 1048.

Following Atty. Ireneo's repeated failure to submit, as ordered, his comment, a number of extensions of time given notwithstanding,[7] the Court referred the instant case, docketed as Administrative Case No. 4955, to its Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

Acting on OBC's Report and Recommendation[8] dated November 23, 2000, the Court, by Resolution of January 31, 2001, directed Atty. Ireneo to show cause within ten (10) days from notice—later successively extended via Resolutions dated July 16 and 29, 2002—why he should not be disciplinarily dealt with or held in contempt for failing to file his comment and to comply with the filing of it.

In separate resolutions, the Court (a) imposed on Atty. Ireneo a fine of PhP 2,000;[9] (b) ordered his arrest but which the National Bureau of Investigation (NBI) cannot effect for the reason: "whereabouts unknown";[10] (c) considered him as having waived his right to file comment; and (d) referred the administrative case to the Integrated Bar of the Philippines (IBP) for report,

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[7] *Id.* at 118 (Motion for Extension of Time to File Comment, dated December 14, 1998), at 121 (Motion for Second and Last Extension of Time to File Comment, dated December 23, 1998), at 124-125 (Motion to be Furnished Documents/Clarification and Extension of Time, dated January 13, 1999), and at 128-129 (Motion for Reconsideration).

[8] *Id.* at 175-179.

[9] *Id.* at 187.

[10] *Id.* at 195.

investigation and recommendation.[11]

At the IBP, Atty. Ireneo desisted from addressing his administrative case, his desistance expressed by not attending the mandatory conference or filing the required position paper. On the basis of the pleadings, the IBP-Commission on Bar Discipline (CBD) found Ireneo liable for violating Canon 1, Rules 1.01 and 1.03 and Canon 18, Rule 18.03 of the Code of Professional Responsibility and recommended his suspension from the practice of law for a period of six (6) months, with warning. The salient portions of the investigating commissioner's *Report and Recommendation*[12] read as follows:

> Uncontroverted and uncontested are respondent's inability to file appellant's Brief, his futile attempts to mislead the Court of Appeals that he did not personally received [sic] the resolution of dismissal. His filing of the Motion for Reconsideration five (5) months late. [sic]
>
> Aggravated by his failure to file his comment in the instant administrative complaint despite his numerous motions for extension to file the same. [sic]
>
> He is even adamant to comply with the show cause order of the bar confidant. The series of snobbish actuations in several resolution of the Supreme Court enjoining him to make the necessary pleading. [sic]

By Resolution No. XVIII-2008-523, the IBP Board of Governors adopted and approved said report and recommendation of the CBD.[13]

We agree with the inculpatory findings of the IBP but not as to the level of the penalty it recommended.

Res ipsa loquitur. Atty. Ireneo had doubtless been languid in the performance of his duty as Antonio's counsel. He

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[11] *Id.* at 210.

[12] Dated September 1, 2008.

[13] Dated October 9, 2008.

neglected, without reason, to file the appellant's brief before the CA. He failed, in short, to exert his utmost ability and to give his full commitment to maintain and defend Antonio's right. Antonio, by choosing Atty. Ireneo to represent him, relied upon and reposed his trust and confidence on the latter, as his counsel, to do whatsoever was legally necessary to protect Antonio's interest, if not to secure a favorable judgment. Once they agree to take up the cause of a client, lawyers, regardless of the importance of the subject matter litigated or financial arrangements agreed upon, owe fidelity to such cause and should always be mindful of the trust and confidence reposed on them.[14] And to add insult to injury, Atty. Ireneo appeared not to have taken any effort to personally apprise Antonio of the dismissal of the appeal, however personally embarrassing the cause for the dismissal might have been. As mentioned earlier, Antonio came to know about the outcome of his appeal only after his wife took the trouble of verifying the case status when she came to Manila. By then, all remedies had been lost.

It must be remembered that a retained counsel **is expected to serve the client with competence and diligence**. This duty includes not merely reviewing the cases entrusted to the counsel's care and giving the client sound legal advice, but also properly representing the client in court, attending scheduled hearings, **preparing and filing required pleadings**, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. The lawyer should not be sitting idly by and leave the rights of the client in a state of uncertainty.[15]

The failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence.[16] This default translates to a violation of the injunction of Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility, respectively providing:

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[14] Canon 17, Code of Professional Responsibility, as cited *Angalan v. Delante*, A.C. No. 7181, February 6, 2009, 578 SCRA 113, 127.

[15] *Overgaard v. Valdez*, A.C. No. 7902, March 31, 2009, 582 SCRA 567, 578.

[16] *Perla Cia. De Seguros, Inc. v. Saquilabon*, 337 Phil. 555 (1997).

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03 — A lawyer shall not neglect a matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

As if his lack of candor in his professional relationship with Antonio was not abhorrent enough, Atty. Ireneo tried to mislead the appellate court about the receipt of a copy of its February 10, 1997 Resolution dismissing the appeal in CA-G.R. CV No. 50075. He denied personally receiving such copy, but the CA found and declared that he himself received said copy. The CA arrived at this conclusion thru the process of comparing Atty. Ireneo's signature appearing in the pleadings with that in the registry return card. Both signatures belong to one and the same person. Needless to stress, Atty. Ireneo had under the premises indulged in deliberate falsehood, contrary to the self-explanatory prescriptions of Canon 1, Rule 1.01 and Canon 10, Rule 10.01, which provide:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCEDURES.

Rule 1.01 — **A lawyer shall not engage in** unlawful, **dishonest**, immoral or **deceitful conduct**.

x x x x x x x x x

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; **nor shall he mislead**, or allow **the Court** to be misled **by any artifice**. (Emphasis supplied.)

We cannot write *finis* to this case without delving into and addressing Atty. Ireneo's defiant stance against the Court as demonstrated by his repetitive disregard of its resolution to file his comment on the basic complaint. After requesting and securing no less than three (3) extensions of time to file his comment, he simply closed, so to speak, communication lines. And when ordered to give an explanation through a show-cause directive for not complying, he asked for and was granted a 30-day extension. But the required comment never came. When the Court eventually directed the NBI to arrest him, he just left his last known address and could not be located.

The Court's patience has been tested to the limit by what in hindsight amounts to a lawyer's impudence and disrespectful bent. At the minimum, members of the legal fraternity owe courts of justice respect, courtesy and such other becoming conduct so essential in the promotion of orderly, impartial and speedy justice. What Atty. Ireneo has done was the exact opposite. What is clear to the Court by now is that Ireneo was determined all along not to submit a comment and, in the process, delay the resolution of the instant case. By asking several extensions of time to submit one, but without the intention to so submit, Ireneo has effectively trifled with the Court's processes, if not its liberality. This cannot be tolerated. It cannot be allowed to go unpunished, if the integrity and orderly functioning of the administration of justice is to be maintained. And to be sure, Atty. Ireneo can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts.[17] Manifestly, he has fallen short of the diligence required of every member of the Bar. The pertinent Canon of the Code of Professional Responsibility provides:

CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

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[17] *Stemmerik v. Mas*, A.C. No. 8010, June 16, 2009, 589 SCRA 114, 119.

x x x x x x x x x

Rule 12.03 — **A lawyer shall not, after obtaining extensions of time to file pleadings**, memoranda or briefs, **let the period lapse without submitting the same or offering an explanation for his failure to do so**.

Rule 12.04 — **A lawyer shall not unduly delay a case**, impede the execution of a judgment or **misuse Court processes**. (Emphasis supplied.)

A lawyer may be disbarred or suspended for gross misconduct or for transgressions defined by the rules as grounds to strip a lawyer of professional license.[18] Considering, however, the serious consequences of either penalty, the Court will exercise its power to disbar or suspend only upon a clear, convincing, and satisfactory proof of misconduct that seriously affects the standing of a lawyer as an officer of the court and as member of the bar.

In *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*,[19] the Court penalized a lawyer who failed to file a pre-trial brief and other pleadings, such as position papers, leading to the dismissal of the case with six months suspension. In *Soriano v. Reyes*,[20] We meted a one-year suspension on a lawyer for inexcusable negligence, the latter having failed to file a pre-trial brief leading to the dismissal of the case and failure to prosecute in another case, and omitting to apprise complainant of the status of the two cases with assurance of his diligent attention to them.

In this case, Atty. Ireneo should be called to task for the interplay of the following: his inexcusable negligence that resulted in the dismissal of Antonio's appeal, coupled by his lack of candor in not apprising Antonio of the status of his appealed case; his attempt to mislead the CA in a vain bid to evade the

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[18] *Fernandez v. De Ramos-Villalon*, A.C. No. 7084, February 27, 2009, 580 SCRA 310, 319; citing *Concepcion v. Fandiño, Jr.*, A.C. No. 3677, June 21, 2000, 334 SCRA 137.

[19] A.C. No. 5760, September 30, 2005, 471 SCRA 111.

[20] A.C. No. 4676, May 4, 2006, 489 SCRA 328.

consequence of the belated filing of a motion for reconsideration; and, last but not least, his cavalier disregard of the Court's directives primarily issued to resolve the charges brought against him by Antonio. We deem it fitting that Atty. Ireneo be suspended from the practice of law for a period of one year, up from the penalty recommended by the IBP Board of Governors. This should serve as a constant reminder of his duty to respect courts of justice and to observe that degree of diligence required by the practice of the legal profession. His being a first offender dictates to large degree this leniency.

The prayer for damages cannot be granted. Let alone the fact that Antonio chose not to file his position paper before the IBP-CBD and, therefore, was unable to satisfactorily prove his claim for damages, a proceeding for disbarment or suspension is not in any sense a civil action; it is undertaken and prosecuted for public welfare. It does not involve private interest and affords no redress for private grievance.[21]

WHEREFORE, respondent Atty. Ireneo Aredonia, Jr. is declared *GUILTY* of inexcusable negligence, attempting to mislead the appellate court, misuse of Court processes, and willful disobedience to lawful orders of the Court. He is hereby *SUSPENDED* from the practice of law for a period of one (1) year effective upon his receipt of this Resolution, with *WARNING* that a repetition of the same or similar acts will be dealt with more severely. Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts throughout the country.

SO ORDERED.

Peralta, Abad, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

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[21] *Bellosillo v. Board of Governors of the Integrated Bar of the Philippines*, G.R. No. 126980, March 31, 2006, 486 SCRA 152, 162; citing *Uy v. Gonzales*, Adm. Case No. 5280, March 30, 2004, 426 SCRA 422, 430.

[*] Additional member per Special Order No. 1076 dated September 6, 2011.

FIRST DIVISION

[G.R. No. 156185. September 12, 2011]

CATALINA B. CHU, THEANLYN B. CHU, THEAN CHING LEE B. CHU, THEAN LEEWN B. CHU, and MARTIN LAWRENCE B. CHU, *petitioners, vs.* **SPOUSES FERNANDO C. CUNANAN and TRINIDAD N. CUNANAN, BENELDA ESTATE DEVELOPMENT CORPORATION, and SPOUSES AMADO E. CARLOS and GLORIA A. CARLOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COMPROMISE AGREEMENT; DEFINED AND CONSTRUED.— A *compromise agreement* is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It encompasses the objects specifically stated therein, although it may include other objects by necessary implication, and is binding on the contracting parties, being expressly acknowledged as a juridical agreement between them. It has the effect and authority of *res judicata* upon the parties. In the construction or interpretation of a *compromise agreement*, the intention of the parties is to be ascertained from the agreement itself, and effect should be given to that intention. Thus, the *compromise agreement* must be read as a whole.

2. ID.; ID.; ID.; SPLITTING A SINGLE CAUSE OF ACTION IS EXPRESSLY PROHIBITED; VIOLATION IN CASE AT BAR.— Splitting a single cause of action is the act of dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions upon them. A single cause of action or entire claim or demand cannot be split up or divided in order to be made the subject of two or more different actions. Thus, Section 4, Rule 2 of the *Rules of Court* expressly prohibits splitting of a single cause of action. x x x The petitioners were not at liberty to split their demand to enforce or rescind the *deed of sale with assumption of mortgage* and to prosecute piecemeal or present only a portion

of the grounds upon which a special relief was sought under the *deed of sale with assumption of mortgage*, and then to leave the rest to be presented in another suit; otherwise, there would be no end to litigation. Their splitting violated the policy against multiplicity of suits, whose primary objective was to avoid unduly burdening the dockets of the courts. Their contravention of the policy merited the dismissal of Civil Case No. 12251 on the ground of bar by *res judicata*.

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; DEFINED AND CONSTRUED.— *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation –*interest reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same cause – *nemo debet bis vexari pro una et eadem causa.* A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness.

4. ID.; ID.; ID.; ID.; ELEMENTS.— Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. Yet, in order that *res judicata* may bar the institution of a subsequent action, the

following requisites must concur:– (*a*) the former judgment must be final; (*b*) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (*c*) it must be a judgment on the merits; and (*d*) there must be between the first and second actions (*i*) identity of parties, (*ii*) identity of the subject matter, and (*iii*) identity of cause of action.

APPEARANCES OF COUNSEL

Herminio M. Surla and *Ernesto L. Pineda* for petitioners.
Efren Galang for Benelda Estate Dev't. Corp.
Quioc & Quioc Law Office for Sps. Cunanan.
Enriquez & Flores Law Firm for Sps. Carlos.

D E C I S I O N

BERSAMIN, *J.*:

If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.[1]

We review the decision promulgated on November 19, 2002,[2] whereby the Court of Appeals (CA) dismissed the petitioners' amended complaint in Civil Case No. 12251 of the Regional Trial Court, Branch 41, in San Fernando City, Pampanga (RTC) for being barred by *res judicata*.

Antecedents

On September 30, 1986, Spouses Manuel and Catalina Chu (Chus) executed a *deed of sale with assumption of mortgage*[3] involving their five parcels of land situated in Saguin, San Fernando

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[1] Section 4, Rule 2, *Rules of Court.*

[2] *Rollo*, pp. 49-56; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of the Court), with Associate Justice Godardo A. Jacinto (retired) and Associate Justice Mario L. Guariña III, concurring.

[3] CA *rollo*, pp. 55-57.

City, Pampanga, registered under Transfer Certificate of Title (TCT) No. 198470-R, TCT No. 198471-R, TCT No. 198472-R, TCT No. 198473-R, and TCT No. 199556-R, all of the Office of the Registry of Deeds of the Province of Pampanga, in favor of Trinidad N. Cunanan (Cunanan) for the consideration of ₱5,161,090.00. They also executed a so-called *side agreement,* whereby they clarified that Cunanan had paid only ₱1,000,000.00 to the Chus despite the Chus, as vendors, having acknowledged receiving ₱5,161,090.00; that the amount of ₱1,600,000.00 was to be paid directly to Benito Co and to Security Bank and Trust Company (SBTC) in whose favor the five lots had been mortgaged; and that Cunanan would pay the balance of ₱2,561.90.00 within three months, with a grace period of one month subject to 3%/month interest on any remaining unpaid amount. The parties further stipulated that the ownership of the lots would remain with the Chus as the vendors and would be transferred to Cunanan only upon complete payment of the total consideration and compliance with the terms of the *deed of sale with assumption of mortgage*.[4]

Thereafter, the Chus executed a *special power of attorney* authorizing Cunanan to borrow ₱5,161,090.00 from any banking institution and to mortgage the five lots as security, and then to deliver the proceeds to the Chus net of the balance of the mortgage obligation and the downpayment.[5]

Cunanan was able to transfer the title of the five lots to her name without the knowledge of the Chus, and to borrow money with the lots as security without paying the balance of the purchase price to the Chus. She later transferred two of the lots to Spouses Amado and Gloria Carlos (Carloses) on July 29, 1987. As a result, on March 18, 1988, the Chus caused the annotation of an *unpaid vendor's lien* on three of the lots. Nonetheless, Cunanan still assigned the remaining three lots to Cool Town Realty on May 25, 1989 despite the annotation.[6]

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[4] *Id.,* pp. 58-60.

[5] *Id.,* pp. 61-62.

[6] *Id.,* pp. 87-92.

In February 1988, the Chus commenced Civil Case No. G-1936 in the RTC to recover the unpaid balance from Spouses Fernando and Trinidad Cunanan (Cunanans). Five years later, on April 19, 1993, the Chus amended the complaint to seek the annulment of the *deed of sale with assumption of mortgage* and of the TCTs issued pursuant to the deed, and to recover damages. They impleaded Cool Town Realty and Development Corporation (Cool Town Realty), and the Office of the Registry of Deeds of Pampanga as defendants in addition to the Cunanans.[7]

Considering that the Carloses had meanwhile sold the two lots to Benelda Estate Development Corporation (Benelda Estate) in 1995, the Chus further amended the complaint in Civil Case No. G-1936 to implead Benelda Estate as additional defendant. In due course, Benelda Estate filed its answer with a motion to dismiss, claiming, among others, that the amended complaint stated no cause of action because it had acted in good faith in buying the affected lots, exerting all efforts to verify the authenticity of the titles, and had found no defect in them. After the RTC denied its motion to dismiss, Benelda Estate assailed the denial on *certiorari* in the CA, which annulled the RTC's denial for being tainted with grave abuse of discretion and dismissed Civil Case No. G-1936 as against Benelda Estate. On March 1, 2001, the Court upheld the dismissal of Civil Case No. G-1936 in G.R. No. 142313 entitled *Chu, Sr. v. Benelda Estate Development Corporation*.[8]

On December 2, 1999, the Chus, the Cunanans, and Cool Town Realty entered into a *compromise agreement*,[9] whereby the Cunanans transferred to the Chus their 50% share in "all the parcels of land situated in Saguin, San Fernando, Pampanga" registered in the name of Cool Town Realty "for and in consideration of the full settlement of their case." The RTC

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[7] *Id.*, pp. 153-162.

[8] 353 SCRA 424.

[9] CA *rollo*, pp. 103-105.

approved the *compromise agreement* in a partial decision dated January 25, 2000.[10]

Thereafter, on April 30, 2001, the petitioners herein (*i.e.*, Catalina Chu and her children) brought another suit, Civil Case No. 12251, against the Carloses and Benelda Estate,[11] seeking the cancellation of the TCTs of the two lots in the name of Benelda Estate, and the issuance of new TCTs in their favor, plus damages.

The petitioners amended their complaint in Civil Case No. 12251 on February 4, 2002 to implead the Cunanans as additional defendants.[12]

The Cunanans moved to dismiss the amended complaint based on two grounds, namely: (*a*) bar by prior judgment, and (*b*) the claim or demand had been paid, waived, and abandoned. Benelda Estate likewise moved to dismiss the amended complaint, citing as grounds: (*a*) forum shopping; (*b*) bar by prior judgment, and (*c*) failure to state a cause of action. On their part, the Carloses raised affirmative defenses in their answer, namely: (*a*) the failure to state a cause of action; (*b*) *res judicata* or bar by prior judgment; and (*c*) bar by statute of limitations.

On April 25, 2002, the RTC denied both motions to dismiss,[13] holding that the amended complaint stated a cause of action against all the defendants; that the action was not barred by *res judicata* because there was no identity of parties and subject matter between Civil Case No.12251 and Civil Case No. G-1936; and that the Cunanans did not establish that the petitioners had waived and abandoned their claim or that their claim had been paid by virtue of the *compromise agreement*, pointing out that the *compromise agreement* involved only the three parcels of land registered in the name of Cool Town Realty.[14]

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[10] *Id.*, pp. 107-110.

[11] Records, Vol. I, pp. 2-17.

[12] *Id.*, pp. 229-246.

[13] *Id.*, pp. 381-385.

[14] *Id.*, p. 384.

The Cunanans sought reconsideration, but their motion was denied on May 31, 2002.[15]

On September 2, 2002, the Cunanans filed a petition for *certiorari* in the CA (SP-72558), assailing the RTC's denial of their motion to dismiss and motion for reconsideration.[16]

On November 19, 2002, the CA promulgated its decision,[17] granting the petition for *certiorari* and nullifying the challenged orders of the RTC. The CA ruled that the *compromise agreement* had ended the legal controversy between the parties with respect to the cause of action arising from the *deed of sale with assumption of mortgage* covering all the five parcels of land; that Civil Case No. G-1936 and Civil Case No.12251 involved the violation by the Cunanans of the same legal right under the *deed of sale with assumption of mortgage*; and that the filing of Civil Case No.12251 contravened the rule against splitting of a cause of action, and rendered Civil Case No.12251 subject of a motion to dismiss based on bar by *res judicata*. The CA disposed thusly:

> WHEREFORE, premises considered, the present petition for *certiorari* is hereby GIVEN DUE COURSE and the writ prayed for, accordingly GRANTED. Consequently, the challenged Orders of the respondent court denying the motions to dismiss are hereby ANNULLED and SET ASIDE and a new one is hereby rendered DISMISSING the Amended Complaint in Civil Case No. 12251.
>
> No costs.
>
> SO ORDERED.[18]

Hence, this appeal.

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[15] Records, Vol. II, p. 500.

[16] CA *rollo*, pp. 2-24.

[17] *Supra*, note 2.

[18] CA *rollo*, p. 202.

Issue

Was Civil Case No. 12251 barred by *res judicata* although the *compromise agreement* did not expressly include Benelda Estate as a party and although the *compromise agreement* made no reference to the lots now registered in Benelda Estate's name?

Ruling

We deny the petition for review.

I

The petitioners contend that the *compromise agreement* did not apply or extend to the Carloses and Benelda Estate; hence, their Civil Case No. 12251 was not barred by *res judicata*.

We disagree.

A *compromise agreement* is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[19] It encompasses the objects specifically stated therein, although it may include other objects by necessary implication,[20] and is binding on the contracting parties, being expressly acknowledged as a juridical agreement between them.[21] It has the effect and authority of *res judicata* upon the parties.[22]

In the construction or interpretation of a *compromise agreement*, the intention of the parties is to be ascertained from the agreement itself, and effect should be given to that intention.[23] Thus, the *compromise agreement* must be read as a whole.

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[19] Article 2028, *Civil Code*.

[20] Article 2036, *Civil Code*.

[21] *National Commercial Bank of Saudi Arabia v. Court of Appeals*, G.R. No. 124267, January 17, 2005, 448 SCRA 340, 345.

[22] *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 157592, October 17, 2008, 569 SCRA 360, 371.

[23] *Adriatico Consortium, Inc. v. Land Bank*, G.R. No. 187838, December 23, 2009, 609 SCRA 403.

The following pertinent portions of the *compromise agreement* indicate that the parties intended to thereby settle *all* their claims against each other, to wit:

1. That the defendants SPOUSES TRINIDAD N. CUNANAN and FERNANDO C. CUNANAN **for and in consideration of the full settlement of their case in the above-entitled case**, hereby TRANSFER, DELIVER, and CONVEY unto the plaintiffs all their rights, interest, benefits, participation, possession and ownership which consists of FIFTY (50%) percent share on all the parcels of land situated in Saguin, San Fernando Pampanga now registered in the name of defendant, COOL TOWN REALTY & DEVELOPMENT CORPORATION, as particularly evidenced by the corresponding Transfer Certificates of Titles xxx

x x x x x x x x x

6. That the plaintiffs and the defendant herein are waiving, abandoning, surrendering, quitclaiming, releasing, relinquishing **any and all their respective claims against each other as alleged in the pleadings they respectively filed in connection with this case**.[24] (bold emphasis supplied)

The intent of the parties to settle *all* their claims against each other is expressed in the phrase *any and all their respective claims against each other as alleged in the pleadings they respectively filed in connection with this case*, which was broad enough to cover *whatever* claims the petitioners might assert based on the *deed of sale with assumption of mortgage*.

There is no question that the *deed of sale with assumption of mortgage* covered all the five lots, to wit:

WHEREAS, the VENDORS are willing to sell the above-described properties and the VENDEE is willing to buy the same at FIFTY FIVE (₱55.00) PESOS, Philippine Currency, per square meter, or a total consideration of FIVE MILLION ONE HUNDRED SIXTY ONE THOUSAND and NINETY (₱5,161,090.00) PESOS, Philippine Currency.[25]

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[24] CA *rollo*, pp. 103-105.

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

To limit the *compromise agreement* only to the three lots mentioned therein would contravene the avowed objective of Civil Case No. G-1936 to enforce or to rescind the entire *deed of sale with assumption of mortgage*. Such interpretation is akin to saying that the Cunanans *separately* sold the five lots, which is not the truth. For one, Civil Case No. G-1936 did not demand separate amounts for each of the purchased lots. Also, the *compromise agreement* did not state that the value being thereby transferred to the petitioners by the Cunanans corresponded only to that of the *three* lots.

Apparently, the petitioners were guilty of splitting their single cause of action to enforce or rescind the *deed of sale with assumption of mortgage.* Splitting a single cause of action is the act of dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions upon them.[26] A single cause of action or entire claim or demand cannot be split up or divided in order to be made the subject of two or more different actions.[27] Thus, Section 4, Rule 2 of the *Rules of Court* expressly prohibits splitting of a single cause of action, *viz*:

> Section 4. *Splitting a single cause of action; effect of.* — If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. (4a)

The petitioners were not at liberty to split their demand to enforce or rescind the *deed of sale with assumption of mortgage* and to prosecute piecemeal or present only a portion of the grounds upon which a special relief was sought under the *deed of sale with assumption of mortgage*, and then to leave the rest to be presented in another suit; otherwise, there would be no

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[26] *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89; citing *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991, 193 SCRA 732.

[27] *Tuttle v. Everhot Heater Co., Inc*., 249 N.W. 467 (1933).

end to litigation.[28] Their splitting violated the policy against multiplicity of suits, whose primary objective was to avoid unduly burdening the dockets of the courts. Their contravention of the policy merited the dismissal of Civil Case No. 12251 on the ground of bar by *res judicata*.

Res judicata means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment.[29] The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated. It has been appropriately said that the doctrine is a rule pervading every well-regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation –*interest reipublicae ut sit finis litium*; the other, the hardship on the individual that he should be vexed twice for one and the same cause – *nemo debet bis vexari pro una et eadem causa.* A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquillity and happiness.[30]

Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit.[31] The foundation principle upon which the doctrine rests

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[28] *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336; *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89.

[29] *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, G.R. No. 101783, January 23, 2002, 374 SCRA 262, 272.

[30] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252.

[31] *Dela Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576.

is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[32]

Yet, in order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur:– (*a*) the former judgment must be final; (*b*) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (*c*) it must be a judgment on the merits; and (*d*) there must be between the first and second actions (*i*) identity of parties, (*ii*) identity of the subject matter, and (*iii*) identity of cause of action.[33]

The first requisite was attendant. Civil Case No. G-1936 was already terminated under the *compromise agreement*, for the judgment, being upon a compromise, was immediately final and unappealable. As to the second requisite, the RTC had jurisdiction over the cause of action in Civil Case No. G-1936 for the enforcement or rescission of the *deed of sale with assumption of mortgage*, which was an action whose subject matter was not capable of pecuniary estimation. That the *compromise agreement* explicitly settled the entirety of Civil Case No. G-1936 by resolving all the claims of the parties against each other indicated that the third requisite was also satisfied.[34]

But was there an identity of parties, of subject matter, and of causes of action between Civil Case No.G-1936 and Civil Case No. 12251?

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[32] *Republic v. Court of Appeals*, G.R. No. 101115, August 22, 2002, 387 SCRA 549.

[33] *Custodio v. Corrado*, G.R. No. 146082, July 30 2004, 435 SCRA 500; *Carlet v. Court of Appeals*, G.R. No. 114275, July 7, 1997, 275 SCRA 97; *Suarez v. Court of Appeals*, G.R. No. 83251, January 23, 1991, 193 SCRA 183; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. 66059-60, December 4, 1989, 179 SCRA 728.

[34] *Uy v. Chua*, G.R. No. 183965, September 18, 2009, 600 SCRA 806, 817.

There is identity of parties when the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action litigating for the same thing and under the same title and in the same capacity.[35] The requirement of the identity of parties was fully met, because the Chus, on the one hand, and the Cunanans, on the other hand, were the parties in both cases *along with their respective privies*. The fact that the Carloses and Benelda Estate, defendants in Civil Case No. 12251, were not parties in the *compromise agreement* was inconsequential, for they were also the privies of the Cunanans as transferees and successors-in-interest. It is settled that the absolute identity of parties was not a condition *sine qua non* for *res judicata* to apply, because a shared identity of interest sufficed.[36] Mere substantial identity of parties, or even community of interests between parties in the prior and subsequent cases, even if the latter were not impleaded in the first case, was sufficient.[37]

As to identity of the subject matter, both actions dealt with the properties involved in the *deed of sale with assumption of mortgage*. Identity of the causes of action was also met, because Case No. G-1936 and Civil Case No. 12251 were rooted in one and the *same* cause of action – the failure of Cunanan to pay in full the purchase price of the five lots subject of the *deed of sale with assumption of mortgage*. In other words, Civil Case No. 12251 reprised Civil Case No. G-1936, the only difference between them being that the petitioners alleged in the former that Benelda Estate was "not also a purchaser for value and in good faith."[38]

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[35] *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237.

[36] *Cruz v. Court of Appeals*, G.R. No. 135101, May 31, 2000, 332 SCRA 747.

[37] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179.

[38] CA *rollo*, p. 39.

In fine, the rights and obligations of the parties *vis-à-vis* the five lots were all defined and governed by the *deed of sale with assumption of mortgage*, the only contract between them. That contract was single and indivisible, as far as they were concerned. Consequently, the Chus could not properly proceed against the respondents in Civil Case No. 12251, despite the silence of the *compromise agreement* as to the Carloses and Benelda Estate, because there can only be one action where the contract is entire, and the breach total, and the petitioners must therein recover all their claims and damages.[39] The Chus could not be permitted to split up a single cause of action and make that single cause of action the basis of several suits.[40]

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision promulgated in CA-G.R. SP No. 72558.

The petitioners shall pay the costs of suit.

SO ORDERED.

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

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[39] *Blossom & Co. v. Manila Gas Corporation*, 55 Phil. 226, 240 (1930); *Bachrach Motor Co., Inc. v. Icarangal*, 68 Phil. 287 (1939).

[40] *Santos v. Moir*, 36 Phil. 350, 359 (1917); *Rubio de Larena v. Villanueva*, 53 Phil. 923, 927 (1928); *Lavarro v. Labitoria*, 54 Phil. 788 (1930).

[*] In lieu of Justice Martin S. Villarama, Jr. per raffle of August 31, 2011.

FIRST DIVISION

[G.R. No. 170486. September 12, 2011]

SWIFT FOODS, INC., *petitioner, vs.* **SPOUSES JOSE MATEO, JR. and IRENE MATEO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* BY WAY OF EXCEPTION, REVIEW OF THE FACTS IS NECESSARY FOR PROPER DISPOSITION OF THE CASE.— From a reading of the decisions below, it appears that the trial and appellate courts side-stepped this issue of breach. Both Decisions did not make categorical findings on the matter. Instead, they pronounced that respondents' actions, *whether violative of the written contract or not*, were justified because petitioner neglected to inform respondents of their duties under the warehousing agreement and to conduct trainings and seminars to orient respondents to warehouse operations. According to the lower courts, it was petitioner's negligence that made the novice warehouse operators easy prey to petitioner's erring employees, and petitioner should have monitored its employees better to avoid the situation. The error in the Decisions below is apparent. They failed to decide the main question of whether respondents breached the contract. It is for this reason that this Court, which generally does not review facts, is pressed to make its own findings for a proper disposition of the case.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; THE PARTY GUILTY OF NEGLIGENCE IN THE PERFORMANCE OF ONE'S OBLIGATION IS LIABLE FOR DAMAGES; CASE AT BAR.— [O]ne's newness to the business is not an excuse to violate the clear terms of one's contract. A seasoned businessman such as Jose (who admitted in open court to having several successful businesses) should have been alert to the dangers of contravening the clear terms of one's contract. He should not have deviated from the procedure provided in the contract in the absence of any amendment therein. At the very least, ordinary diligence required him to inquire with the head office

whether the changes being introduced by Buhain or Enfestan were proper or authorized. Respondents' total reliance on the word of petitioner's sales personnel, contrary to the written contract, is a clear act of negligence. A contract is the law between the parties and those who are guilty of negligence in the performance of their obligations are liable for damages.

3. ID.; DAMAGES; NOMINAL DAMAGES; MAY BE AWARDED TO VINDICATE THE INJURED PARTY'S RIGHTS IN CASE OF BREACH OF CONTRACT BUT ACTUAL DAMAGES HAVE NOT BEEN ESTABLISHED.— In these situations where there has been a breach of contract but actual damages have not been established, nominal damages may be awarded to vindicate the injured party's rights. Considering that the respondents did not perform or even take efforts to fully comply with their duties and obligations under the warehousing agreement, it is only just that they be ordered to return ₱150,000.00 as nominal damages which is an approximation of whatever benefit they received from such agreement.

4. ID.; ID.; MORAL DAMAGES; TO BE ENTITLED THERETO, BAD FAITH MUST BE PROVEN; BAD FAITH, DEFINED. — Considering petitioner's wrongful retention of respondents' titles, we affirm the lower courts' award of moral damages in favor of respondents. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith." "Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose." Respondents were able to prove that petitioner acted in bad faith in keeping the titles despite its knowledge that there was no bond or real estate mortgage to justify its retention thereof. Petitioner knew that it needed a real estate mortgage to keep the titles, as shown by the fact that its officer even went to respondents' home to try to obtain their signatures to a deed of real estate mortgage (without success). Despite its failure to obtain such bond, petitioner bull-headedly kept the titles. The Court, however, finds the sum awarded as moral damages excessive under the circumstances. The Court believes that the amount of ₱50,000.00 as moral damages is reasonable and sufficient.

Moral damages are not punitive in nature and not intended to enrich the claimant at the expense of the defendant.

5. ID.; ID.; INTERESTS; INTEREST RATE IMPOSABLE ON THE CASH BOND, MODIFIED.— [T]he Court finds basis for modifying the trial and the appellate courts' disposition regarding the interest rate imposable on the cash bond. Since the bond is not a loan or a forbearance of money, the interest rate should only be six percent (6%) per annum from May 17, 1999, which is the date of judicial demand. The interest rate of twelve percent (12%) per annum shall apply from the finality of judgment until its full satisfaction.

APPEARANCES OF COUNSEL

Barba Villamor Lagrosa & Perez Law Offices for petitioner.
S.Q. Jarapa Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A review of the facts of the case is necessary when the courts below fail to make findings that are necessary for a proper disposition of the case.

Before the Court is a Petition for Review[1] of the November 15, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 73368. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION, in that the trial court's award of attorney's fees to the [respondents] is deleted for lack of basis.

SO ORDERED.[3]

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[1] *Rollo*, pp. 19-43.

[2] CA *rollo*, pp. 249-263; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Amelita G. Tolentino.

[3] CA Decision, p. 14; *id.* at 262.

The affirmed ruling of the trial court contained the following disposition:

> WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of [respondents] SPS. JOSE & IRENE MATEO and against [petitioner] SWIFT FOODS, INC., directing [petitioner] to:
>
> 1. **RETURN** the Owner's Duplicate Copies of Transfer Certificates of Title Nos. T-19808 P(M), T-19809 P(M) and T-19810 P(M) of the Registry of Deeds of Bulacan immediately;
>
> 2. **RETURN** ₱100,000.00 cash bond upon the finality of this Decision with interest at twelve [percent] (12%) per annum from the filing of this Complaint until fully satisfied;
>
> 3. **PAY** to [respondents] the following amounts, to wit:
>
> a. Two Hundred Forty Three Thousand (₱243,000.00) Pesos as actual damages representing the warehousing fees from May 13, 1996 up to June 30, 1997;
>
> b. Two Hundred Thousand (₱200,000.00) Pesos as moral damages;
>
> c. One Hundred Thousand (₱100,000.00) Pesos for and as attorney's fees; and
>
> d. Cost of suit.
>
> SO ORDERED.[4]

Factual antecedents

Petitioner Swift Foods, Inc. (Swift) is a corporation engaged in the manufacture, sale, and distribution of animal feeds.

Respondent-spouses Jose and Irene Mateo (respondents) are businessmen engaged in a dealership in poultry and feeds supply and a trucking business in San Jose Del Monte, Bulacan.

In 1984, the two parties entered into a Trucking Agreement whereby respondents' trucks hauled Swift's feeds from its central office in Pioneer Street in Mandaluyong City to its various

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[4] RTC Decision, p. 4; Records, p. 463; penned by Judge Santiago G. Estrella.

warehouses in Luzon. Under this agreement, respondents deposited cash bonds of ₱100,000.00 per truck. Several years into their contract, only one truck of respondents remained under contract but Swift maintained respondents' cash bond of ₱100,000.00. Respondents requested the return of the excess cash bond but the same was inexplicably denied by Swift.

In June 1995, respondent Jose Mateo (Jose) spoke with Swift's Feeds Sales Supervisor, Efren Buhain[5] (Buhain), regarding the possible lease of Jose's warehouse for the storage of Swift's feeds products. The two agreed and on July 5, 1995, Jose signed the Warehousing Agreement, which was to remain in force for a two-year period.[6] The signatory for Swift was its Vice-President for Feed Operations, Edward R. Acosta.[7] While the warehousing agreement required Jose to post a bond to secure his faithful compliance with his obligations,[8] both parties nonetheless proceeded with the enforcement of the contract even without compliance with such requirement.

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[5] Direct Testimony of Jose Mateo dated October 4, 1999, p. 11.

[6] *Id.* at 19.

[7] Records, p. 191.

[8] *Id.* The agreement states:

XII – BOND TO SECURE FAITHFUL COMPLIANCE

It is agreed and understood that the WAREHOUSE OPERATORS shall post a bond acceptable to [Swift] which may either be surety bond, or a certificate of time deposit, or a cash bond, or a property bond in the amount of ONE MILLION (₱1,000,000.00) PESOS. In case of surety bond, only surety bonds issued by an accredited bonding company of [Swift] are acceptable. In case of time deposit, it shall be issued by a major commercial bank, and that the same shall be properly assigned in favor of [Swift]. Cash bond will earn an annual interest of 10%. In case of property bond, the same shall be subject to the proper appraisal by [Swift].

This bond, in any of the forms mentioned, shall answer for whatever obligation the WAREHOUSE OPERATORS may have with [Swift]. Notwithstanding the foregoing, [Swift] will not be precluded from bringing any action against the WAREHOUSE OPERATORS as it may be entitled under the law.

In the same month, Swift began delivering feeds to respondents' warehouse.[9] Swift's booking salesman, Rosalino Enfestan[10] (Enfestan), worked closely with respondents in the warehouse operations, even supervising the work of respondents' *bodegero*, Vicente Mateo (Vicente).[11] To properly document the movement of the stocks, Swift, through Enfestan gave respondents two kinds of warehouse documents: the Daily Warehouse Stock Report (DWSR), which is the inventory of incoming stocks, and the Warehouse Issue Slip (WIS), which is a receipt for released stocks.[12] According to Swift, the WIS should contain the signature of the sales personnel as proof that the latter received the released stocks, in accordance with Paragraph V of the agreement. According to Jose, Wilfredo Pacres (Wilfredo), Swift's National Feed Sales Manager, would sometimes inspect respondents' warehouse and the warehouse documents.[13]

On February 16, 1996, seven months into the contract, the respondents in apparent compliance with the bond requirement, delivered three land titles to Swift.[14] The acknowledgment receipt issued by Swift for the surrendered titles stated that these were "collateral for feeds warehousing."[15] The receipt was duly signed by Swift officials and by respondent Jose.

On May 9, 1996, Swift's personnel, Wilfredo and Jasmine Pena, conducted an audit of the stocks stored in respondents' warehouse. They went over the warehousing documents (*i.e.*, WIS and DWSR) and counted the remaining stocks. A comparison

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[9] Direct Testimony of Jose Mateo dated October 4, 1999, p. 12.

[10] Also referred to as EMFESTAN in some parts of the records.

[11] Direct Testimony of Jose Mateo dated October 4, 1999, p. 28.

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

[13] Direct Testimony of Jose Mateo dated October 25, 1999, pp. 3-4.

[14] TCT Nos. T-19810 P(M), T-19809 P(M), T-19808 P(M), Records, pp. 367-372.

[15] *Id.* at 11.

of the two warehouse documents revealed one missing bag, which respondent Jose duly paid on the same day.[16]

On May 20, 1996, however, Swift informed respondents that it was terminating their contract effective May 13, 1996 because of respondents' violations of their Warehousing Agreement.[17] Swift explained that, under Paragraph V of the Warehousing Agreement, the warehouse operator should only release stocks to Swift's sales personnel after the latter presents a clearance to withdraw stocks.[18] This was to ensure that Swift's stocks

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[16] *Id.* at 202-203.

[17] *Id.* at 75. The letter reads thus:

Dear Mr. Mateo:

We are writing to your good office to inform you that we shall terminate our warehousing agreement effective May 13, 1996.

This was due to violation [sic] committed in our Warehousing Contract of Agreement. Violation covers the following provisions:

Provision I – Ownership of Stocks

Provision IV – Liability for Stocks Shortage

Provision V – Receipts and Issuance of Stocks

The monthly rental of ₱18,000.00 per month shall likewise be on hold starting April & May, this shall be applied to the three months advance deposit we have done last year. May we also request that the remaining ₱18,000.00 from the 3 months advance be return [sic] to SFI.

Thank you very much for the kind support and understanding.

Very truly yours,

(Signed)

Wilfredo H. Pacres

National Feeds Sales Manager

[18] *Id.* at 190. The pertinent paragraph is reproduced below:

V – RECEIPTS AND ISSUANCE OF STOCKS

The WAREHOUSE OPERATORS shall duly acknowledge all incoming deliveries from [Swift] signing on the corresponding Delivery Receipts and Waybills.

The WAREHOUSE OPERATORS shall issue stocks, duly documented, to all feeds salesmen assigned in the area, which stock may be issued only upon presentment of the clearance to withdraw stocks.

would only be released to authorized individuals and Swift could collect payment accordingly. Contrary to this provision, respondents released stocks without the necessary clearance to withdraw and without the participation of Swift's sales personnel. The violations were evident from the WIS which did ***not*** contain the signatures of Swift's sales personnel. The absence of the sales personnel's signature meant that the warehouseman released stocks, *without the participation of Swift's sales personnel, and without any written authority from Swift*. These unauthorized releases caused Swift a cash shortage of around ₱2 million, for which respondents should be held liable.[19] Swift then retained respondents' three land titles until the latter shall have fully complied with their obligation. It cited as its basis Paragraph XII of the Warehousing Agreement, which states that the "bond x x x shall answer for whatever obligation the warehouse operator may have with [Swift]."[20]

Respondents denied violating the terms of the warehousing agreement. They explained their actions as mere obeisance to Buhain and Enfestan's instructions to release the stocks directly to customers. As proof of these instructions, respondents presented the handwritten letter they received from Buhain[21] authorizing them to release the stocks directly to customers. Respondents maintained that Buhain and Enfestan should answer for the cash shortages. Expecting their explanation to be satisfactory, respondents demanded that Swift return their three land titles.[22] When Swift did not accede to their demand,[23] respondents filed

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Under no circumstances that the WAREHOUSE OPERATORS shall issue any stocks to any person, including themselves without any prior written authority from [Swift]. In any event all stocks withdrawals must pass thru the authorized feeds salesman of [Swift]. (Emphasis supplied.)

[19] *Id.* at 209-210.

[20] *Id.* at 191.

[21] *Id.* at 235.

[22] *Id.* at 12-13.

[23] *Id.* at 14-15.

a complaint against Swift for the surrender of their certificates of title with damages.[24]

Respondents' complaint alleged that petitioner is retaining respondents' titles without legal justification. They maintained that the alleged cash shortage is attributable to petitioner's negligence in the supervision of its sales personnel. Respondents claimed actual damages from petitioner consisting of the monthly rentals for the unexpired term of the contract for the unjustified termination of their warehousing agreement.

Respondents then filed an Amended Complaint.[25] They included an additional cause of action, whereby respondents asserted that petitioner is in possession of respondents' cash bond, worth ₱100,000.00, under their expired trucking agreement. Respondents argued that petitioner had no right to retain the bond because the trucking agreement had already expired and respondents did not incur liabilities under the said trucking agreement that may be chargeable to the cash bond.

Petitioner countered in its Answer that it was respondents' breach of the clear written terms of the agreement which facilitated the unauthorized sales committed by the sales personnel.[26] It was respondents who were well aware that petitioner's sales personnel were not following the procedure set out in the warehousing agreement. It was therefore incumbent upon them to have alerted petitioner to the matter. Respondents' failure to do so constitutes bad faith in the performance of their contractual obligations.[27]

Ruling of the Regional Trial Court[28]

The trial court ruled in favor of respondents and ordered petitioner to return the three land titles. The RTC held that

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[24] *Id.* at 2-6.

[25] *Id.* at 64-72.

[26] *Id.* at 95-96.

[27] *Id.* at 96.

[28] *Id.* at 460-463.

respondents did not breach the Warehousing Agreement for which their titles may be answerable. They merely followed the instructions given to them by Swift's sales personnel, which instructions they had no reason to doubt. Since respondents were first-time warehouse operators, they could not have been presumed to have any knowledge of the warehouse operating procedures. It was therefore incumbent upon Swift to have conducted training and seminars for respondents. It was Swift's failure to conduct such trainings for respondents that allowed the Swift sales personnel to take advantage of the novice warehouse operators. Moreover, Swift should recover their cash shortages from its own employees who appear to have malversed the same.

In the absence of a breach of contract, Swift was not justified in prematurely terminating the warehouse agreement. For this, it was ordered by the court to pay respondents the unrealized warehousing fees for the remaining duration of the contract.

Since Swift did not allege damages incurred pursuant to the trucking agreement, it is not justified in keeping the ₱100,000.00 cash bond beyond its purpose. Thus, the trial court ordered petitioner to return respondent's cash bond.[29]

The trial court also ordered petitioner to pay ₱100,000.00 as attorney's fees and ₱200,000.00 as moral damages, as well as costs of suit.[30]

Petitioner appealed the adverse Decision. It argued that the trial court erred in finding respondents free of any liability under the warehousing agreement. Respondents were not justified in contravening the written terms of their agreement. Their contractual breach is clear and their bond, consisting of the three land titles, is properly answerable for the damages caused to petitioner.

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[29] RTC Decision, p. 3; *id.* at 462.

[30] RTC Decision, p. 4; *id.* at 463.

Ruling of the Court of Appeals[31]

The CA disagreed with petitioner. First, the CA held that petitioner had no basis for terminating the Warehousing Agreement. The CA observed that petitioner did not bring the alleged contractual breach to respondents' attention. Its silence can be taken as its condonation of respondents' acts.[32] Having condoned these acts for several months, petitioner's sudden unilateral termination of the warehouse agreement was tainted with bad faith for which petitioner should be held liable for damages.[33]

Second, petitioner failed to prove its allegation that respondents incurred cash shortages that can be charged against the surrendered titles. The CA noted petitioner's utter failure to present the Audit Report, which could have proven the existence and extent of the cash shortage. Moreover, it failed to present the original or duplicate originals of the WIS. Weighing the evidence on record, the CA ruled that the shortages appear to be attributable to petitioner's employees, Buhain and Enfestan, not to respondents. Thus, petitioner has no justification for withholding respondents' titles and was ordered to return the same to respondents.[34]

The CA also found sufficient basis for the trial court's award of moral damages to respondents in the amount of ₱200,000.00.[35] The CA, however, deleted the award of attorney's fees to respondents for lack of basis.[36]

Hence, this petition.

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[31] CA *rollo*, pp. 249-263.

[32] CA Decision, pp. 9-10; *id.* at 257-258.

[33] *Id.* at 11-12; *id.* at 259-260.

[34] *Id.* at 10-11; *id.* at 258-259.

[35] *Id.* at 12-13; *id.* at 260-261.

[36] *Id.* at 13-14; *id.* at 261-262. The spouses Mateo did not appeal the deletion of attorney's fees and the same became final and was recorded in the Book of Entries of Judgments on December 5, 2005 (*Id.* at 319).

Petitioner's arguments

Petitioner assails the CA Decision that petitioner has no right to withhold respondents' land titles.

Petitioner points out that respondent Jose and his *bodegero*, Vicente, admitted in open court that they issued stocks directly to customers without a prior written clearance from the petitioner and without obtaining the signature of the sales personnel on the WIS. Respondents' irregular practice constitutes a breach of the contract, which caused substantial financial losses to petitioner and is chargeable against respondents' collateral.[37]

Petitioner likewise assails the CA Decision for relieving respondents of all the blame and finding petitioner's sales personnel responsible for the incurred cash shortage. Petitioner insists that respondents did not present admissible proof of the sales personnel's culpability.[38]

Petitioner maintains that the CA erred in ordering petitioner to return respondents' cash bond of ₱100,000.00 under an alleged trucking agreement. Petitioner argues that there was no basis for the said Decision given that respondents never presented such agreement and any proof of the delivery of the cash bond to petitioner. It invoked the Best Evidence Rule that when the contents of a document are in issue, the best evidence thereof is the original document which contains all the terms between the contracting parties.[39]

Respondents' arguments

Respondents pray for the dismissal of the petition on the ground that it raises factual issues, which is beyond the province of a Rule 45 petition for review.[40]

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[37] Petitioner's Memorandum, pp. 9-13; *rollo*, pp. 149-153.

[38] *Id.* at 13-19; *id.* at 153-159.

[39] *Id.* at 25-26; *id.* at 165-166.

[40] Respondents' Memorandum, *id.* at 192-194.

With respect to the allegation that releasing stocks without prior written authority constitutes a breach of the Warehousing Agreement, respondents replied that the breach was caused by petitioner itself when it never issued any written authority for the release of stocks. Moreover, petitioner was content to receive the collections from the sales of respondents' warehouse, without questioning the absence of prior written authorizations.[41]

Respondents maintain that petitioner failed to prove respondents' liability for cash shortages. The photocopies of the WIS were inadmissible because petitioner could not adequately explain why the originals were lost. Moreover, petitioner could not present the audit report on the cash shortages despite its contention that such report exists.[42]

As for the failure to present the Trucking Agreement in court, respondents argue that petitioner never objected to respondent Jose's testimony regarding the existence of the same and the delivery of the cash bond to petitioner. Thus, respondents maintain that this is a question of fact that was raised for the first time in the appeal.[43]

Issue

Whether the CA erred in its appreciation of the evidence.

Our Ruling

This case involves respondents' complaint against Swift to surrender their land titles. Swift refused to return the titles on the ground that they were being held as security for respondents' liabilities for their breach of the warehousing agreement. Respondents denied incurring any liability under the agreement. Thus, at the heart of the case is the issue of whether respondents committed a breach of the warehousing agreement for which they may be held liable to Swift.

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[41] *Id.* at 195-196.

[42] *Id.* at 197-198.

[43] *Id.* at 204.

From a reading of the decisions below, it appears that the trial and appellate courts side-stepped this issue of breach. Both Decisions did not make categorical findings on the matter. Instead, they pronounced that respondents' actions, *whether violative of the written contract or not*, were justified because petitioner neglected to inform respondents of their duties under the warehousing agreement and to conduct trainings and seminars to orient respondents to warehouse operations. According to the lower courts, it was petitioner's negligence that made the novice warehouse operators easy prey to petitioner's erring employees, and petitioner should have monitored its employees better to avoid the situation. The error in the Decisions below is apparent. They failed to decide the main question of whether respondents breached the contract. It is for this reason that this Court, which generally does not review facts, is pressed to make its own findings for a proper disposition of the case.

The *vinculum* that binds respondents and petitioner is their contract, denominated as a warehousing agreement. Under the said contract, the parties agreed that petitioner will pay respondents a monthly warehousing fee of ₱18,000.00, and in return, respondents will warehouse petitioner's stocks and be accountable for all the stocks duly received and released by them.[44] Their contract also required respondents to post a bond to answer for whatever obligations they may have with petitioner.[45]

The agreement also provided the procedures that respondents should observe "in order to promote an effective and efficient warehouse operation."[46] For the purpose of this disposition, the relevant procedural provision is Paragraph V, to wit:

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[44] Records, p. 189.

[45] *Id.* at 191.

[46] *Id.* The whole provision is reproduced below:

XIV- OTHER PROVISIONS

It is agreed and understood that all existing Standard Operating Procedures, Circulars and Directives, and those which may hereafter be issued by [Swift] shall be observed by the WAREHOUSE OPERATORS in order to promote an effective and efficient warehouse operations [sic], [Swift] shall, from time

V- RECEIPTS AND ISSUANCE OF STOCKS

The WAREHOUSE OPERATORS shall duly acknowledge all incoming deliveries from [Swift] signing on the corresponding Delivery Receipts and Waybills.

The WAREHOUSE OPERATORS shall issue stocks, duly documented, to all feeds salesmen assigned in the area, which stocks may be issued only upon presentment of the clearance to withdraw stocks.

Under no circumstanc[e] that the WAREHOUSE OPERATORS shall issue any stocks to any person, including themselves without any prior written authority from [Swift]. In any event all stocks withdrawals must pass thru the authorized feeds salesman of [Swift].[47]

The foregoing provision of the Warehousing Agreement states that the warehouseman should only release stocks to Swift's sales personnel who present a clearance to withdraw stocks.

The records reveal that, contrary to this provision, respondents released stocks without the necessary clearance. They admitted in court that they never required a clearance prior to the release of stocks. Moreover, they admitted that there were times when they released stocks directly to customers and not to petitioner's sales personnel. When asked to explain his actions which were in contrast to his contractual undertakings, respondent Jose admitted not reading, much less understanding, the warehouse agreement. He simply followed all the verbal instructions given to him by Buhain and Enfestan. Thus, respondents' breach of Paragraph V of the Warehousing Agreement is clear.

These admissions were ignored by the trial and appellate courts, which seemed to brush off Jose's negligence as understandable because he was a novice in the warehousing business. But one's newness to the business is not an excuse to violate the clear terms of one's contract. A seasoned businessman such as Jose (who admitted in open court to having several

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to time, provide the WAREHOUSE OPERATORS such Operating Procedures, Circulars, and Directives.

[47] *Id.* at 190.

successful businesses) should have been alert to the dangers of contravening the clear terms of one's contract. He should not have deviated from the procedure provided in the contract in the absence of any amendment therein. At the very least, ordinary diligence required him to inquire with the head office whether the changes being introduced by Buhain or Enfestan were proper or authorized. Respondents' total reliance on the word of petitioner's sales personnel, contrary to the written contract, is a clear act of negligence. A contract is the law between the parties and those who are guilty of negligence in the performance of their obligations are liable for damages.[48]

Worse, the real reason why respondent Jose did not notice the dubious nature of the procedures being introduced by the Swift personnel was his total ignorance of his obligations under the warehousing agreement. He admitted not reading the agreement, which was a total abdication of his duties. Unless a contracting party cannot read or does not understand the language in which the agreement was written, he is presumed to know the import of his contract and is bound thereby.[49] Not having alleged any of the foregoing, respondent Jose has no excuse for his actions. It was his nonchalance to his contractual duties and obligations, which facilitated the malfeasance of petitioner's personnel and exposed petitioner to undue risks.

Having come to the finding of breach, we come to the determination of respondents' liability. Swift maintains that, due to respondents' unauthorized stock releases, it was unable to collect the payments for 4,444 bags of feeds, the price of which amounts to ₱2,197,063.00.[50] What Swift is trying to recover are actual damages, which is only awarded to the extent that pecuniary loss had been proven.[51] Unfortunately for Swift, it miserably failed to prove its actual damage.

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[48] CIVIL CODE, Article 1170.

[49] CIVIL CODE, Article 1332.

[50] Records, p. 99.

[51] CIVIL CODE, Article 2199.

According to Paragraph IV of the Warehouse Agreement, Swift's "claims x x x against the operators shall be based on prevailing price list at the time of loss."[52] The records show that Swift failed to prove the existence and extent of the alleged shortages for which respondents are being held liable. It did not even attempt to show in court the prevailing price of the feeds that respondents released. The least that Swift could have done was to produce the audit report to serve as basis of its claims against respondents. As it is, Swift only presented the WIS that did not contain the signatures of the sales personnel, which is only proof that respondents violated paragraph V of the warehouse agreement, but is not sufficient proof of the damages caused by the violation.

In these situations where there has been a breach of contract but actual damages have not been established, nominal damages may be awarded to vindicate the injured party's rights.[53] Considering that the respondents did not perform or even take efforts to fully comply with their duties and obligations under the warehousing agreement, it is only just that they be ordered to return ₱150,000.00 as nominal damages which is an approximation of whatever benefit they received from such agreement.

As for the land titles surrendered by respondents, the Court determines that Swift has no basis for retaining the same as "collateral for feeds warehousing."[54] While the warehousing agreement stipulated that the respondents shall post a bond (which may be in the form of a property bond), this was merely a future undertaking that did not actually materialize. Although the respondents delivered their land titles to Swift, they did not actually execute any bond agreement or security instrument (such as real estate mortgage). In the absence of such bond

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[52] Records, p. 190.

[53] CIVIL CODE, Article 2221; *Lufthansa German Airlines v. Court of Appeals*, 313 Phil. 503, 526 (1995).

[54] Records, p. 11.

agreement or security instrument, it cannot be said that a bond has actually been posted or constituted. Besides, even assuming *arguendo* that the real properties served as collateral, petitioner cannot just appropriate them in view of the prohibition against *pactum commissorium*.[55]

Considering petitioner's wrongful retention of respondents' titles, we affirm the lower courts' award of moral damages in favor of respondents. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith."[56] "Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose."[57] Respondents were able to prove that petitioner acted in bad faith in keeping the titles despite its knowledge that there was no bond or real estate mortgage to justify its retention thereof. Petitioner knew that it needed a real estate mortgage to keep the titles, as shown by the fact that its officer even went to respondents' home to try to obtain their signatures to a deed of real estate mortgage (without success).[58] Despite its failure to obtain such bond, petitioner bull-headedly kept the titles.

The Court, however, finds the sum awarded as moral damages excessive under the circumstances.[59] The Court believes that

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[55] A *pactum commissorium* is a stipulation that the creditor can appropriate or dispose of the things given to the creditor by way of security. Article 2088 of the Civil Code declares such stipulations null and void.

[56] *Ace Haulers Corporation v. Court of Appeals*, 393 Phil. 220, 230 (2000).

[57] *Balbuena v. Sabay*, G.R. No. 154720, September 4, 2009, 598 SCRA 215, 227.

[58] Direct Testimony of Jose Mateo dated October 25, 1999, pp. 9-13; Direct Testimony of David Ulep, September 20, 2001, pp. 7-11.

[59] CIVIL CODE, Article 2216.

the amount of ₱50,000.00 as moral damages is reasonable and sufficient. Moral damages are not punitive in nature and not intended to enrich the claimant at the expense of the defendant.[60]

As for the cash bond of ₱100,000.00 still held by petitioner despite the termination of the trucking agreement, the Court affirms the trial and appellate courts' findings that the same has been duly established. Petitioner did not deny receiving the cash bond. Neither did it allege that it has already returned the cash bond, nor did it allege that respondents incurred liabilities under the trucking agreement for which the bond may answer. The inevitable conclusion is that it remains indebted to respondents for the said cash bond. Moreover, such debt was impliedly admitted by petitioner when it stated in its Answer[61] that it had agreed to offset the amount it ***owes*** respondent under the cash bond with respondents' liability for breaching the warehousing agreement.

Nevertheless, the Court finds basis for modifying the trial and the appellate courts' disposition regarding the interest rate imposable on the cash bond.[62] Since the bond is not a loan or a forbearance of money, the interest rate should only be six percent (6%) per annum from May 17, 1999,[63] which is the date of judicial demand. The interest rate of twelve percent (12%) per annum shall apply from the finality of judgment until its full satisfaction.[64]

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[60] *Spouses Paguyo v. Astorga*, 507 Phil. 36, 56-58 (2005); *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172602, October 30, 2006, 506 SCRA 266, 278.

[61] Answer to Amended Complaint, Records, p. 93.

[62] Records, p. 64.

[63] In the absence of evidence of extrajudicial demand, CIVIL CODE, Article 1169.

[64] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED.* The November 15, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 73368 is *REVERSED AND SET ASIDE* insofar as it found SWIFT FOODS, INC. liable to the spouses Jose Mateo, Jr. and Irene Mateo for actual damages. Instead, the spouses Jose Mateo, Jr. and Irene Mateo are ordered to *PAY* SWIFT FOODS, INC. the amount of *₱150,000.00* by way of *NOMINAL DAMAGES*, which amount may be offset (to the extent applicable) against the monetary award in favor of spouses Jose Mateo, Jr. and Irene Mateo.

The rest of the assailed Decision of the Court of Appeals is *AFFIRMED with the MODIFICATIONS*, to wit:

1. The legal interest imposed on the *₱100,0000.00* cash bond shall be at the rate of six percent (6%) per annum from May 17, 1999 and at the rate of twelve percent (12%) per annum from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied;

2. The award of moral damages in favor of spouses Jose Mateo, Jr. and Irene Mateo is *REDUCED* to *₱50,000.00*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187728. September 12, 2011]

CHURCHILLE V. MARI and the PEOPLE OF THE PHILIPPINES, *petitioners, vs.* **HON. ROLANDO L. GONZALES, Presiding Judge, Regional Trial Court, Branch 39, Sogod, Southern Leyte, and PO1 RUDYARD PALOMA *y* TORRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; RELAXATION OF THE RULE ON OBSERVANCE OF HIERARCHY OF COURTS, PROPER IN CASE AT BAR.— Firstly, petitioners failed to observe the doctrine on hierarchy of courts. In *Garcia v. Miro*, the Court, quoting *Vergara, Sr. v. Suelto*, ruled thus: **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is, and should continue, to be the policy in this regard, a policy that courts and lawyers must strictly observe.** On this point alone, the petition is already dismissible. However, on several occasions, this Court found compelling reasons to relax the rule on observance of hierarchy of courts. In *Pacoy v. Cajigal*, the Court opted not to strictly apply said doctrine, since the

issue involved is double jeopardy, considered to be one of the most fundamental constitutional rights of an accused. Hence, the Court also finds sufficient reason to relax the rule in this case as it also involves the issue of double jeopardy, necessitating a look into the merits of the petition.

2. ID.; CIVIL PROCEDURE; TRIAL; THE ONLY DELAYS THAT MAY BE EXCLUDED FROM THE TIME LIMIT WITHIN WHICH TRIAL MUST COMMENCE ARE THOSE RESULTING FROM PROCEEDINGS CONCERNING THE ACCUSED; TIME DURING WHICH THE PETITION FOR TRANSFER OF VENUE FILED BY THE PRIVATE COMPLAINANT IS PENDING, NOT EXCLUDED.— A careful reading of Section 3, Rule 119 of the Rules of Court would show that the only delays that may be excluded from the time limit within which trial must commence are those resulting from **proceedings concerning the accused**. The time involved in the proceedings in a petition for transfer of venue can only be excluded from said time limit if it was the accused who instituted the same. Hence, in this case, the time during which the petition for transfer of venue filed by the private complainant is pending, cannot be excluded from the time limit of thirty (30) days from receipt of the pre-trial order imposed in Section 1, Rule 119 of the Rules of Court.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ABSENT IN CASE AT BAR.— Petitioners are likewise mistaken in their notion that mere pendency of their petition for transfer of venue should interrupt proceedings before the trial court. Such situation is akin to having a pending petition for *certiorari* with the higher courts. In *People v. Hernandez*, the Court held that "delay resulting from extraordinary remedies against interlocutory orders" must be read in harmony with Section 7, Rule 65 of the Rules of Court which provides that the "[p]etition [under Rule 65] shall not interrupt the course of the principal case **unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case**." The trial court was then correct and acting well within its discretion when it refused to grant petitioners' motions for postponement mainly because of the pendency of their petition for transfer of venue.

APPEARANCES OF COUNSEL

Felicen Jakosalem Law Office for petitioners.
Romeo D. Tagra for private respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Order[1] of the Regional Trial Court of Sogod, Southern Leyte (RTC), dated January 16, 2009, dismissing the criminal case for rape against PO1 Rudyard Paloma *y* Torres (private respondent), and the Resolution[2] dated March 16, 2009, denying petitioners' motion for reconsideration, be annulled and set aside.

The records reveal the following antecedent facts.

On October 25, 2004, petitioner AAA, private complainant below, executed a sworn statement before an Investigator of the 8th Regional Office, Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG) in Tacloban City, where she stated that she was raped by herein private respondent on October 10, 2004 at her boarding house at Sogod, Southern Leyte. A preliminary investigation of the case was commenced on November 4, 2004 before the Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Sogod. A warrant of arrest was issued against private respondent, so he voluntarily surrendered to the Chief of Police of Sogod on November 18, 2004 and was then incarcerated at the Sogod Municipal Jail.

On November 20, 2004, private respondent filed a Motion for Bail. Hearings on the motion commenced on December 7, 2004, but petitioner failed to appear. Only private respondent presented evidence. Thus, on March 16, 2005, the MCTC of

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[1] Penned by Rolando L. Gonzales, Presiding Judge, RTC, Br. 39, Sogod, Southern Leyte; *rollo*, pp. 80-81.

[2] *Id.* at 88-93.

Sogod issued an Order allowing private respondent to post bail set at ₱200,000.00. After posting a surety bond, private respondent was released from confinement.

Pursuant to the issuance of A.M. No. 05-8-26, divesting first-level courts of authority to conduct preliminary investigation of criminal complaints cognizable by Regional Trial Courts, records of the subject case were transmitted to the Provincial Prosecutor's Office of Southern Leyte.[3] The Prosecutor's Office issued a Resolution dated May 26, 2008, finding probable cause against private respondent and, accordingly, an Information for Rape was filed on June 11, 2008. A warrant of arrest was immediately issued against private respondent.

On June 27, 2008, private respondent was committed to detention[4] and, on June 30, 2008, the RTC issued an Order[5] stating that accused had voluntarily surrendered to the Office of the Clerk of Court and arraignment was set for July 31, 2008. In the meantime, on July 3, 2008, private respondent filed a Motion to Admit Cash Bond in Lieu of Surety Bond; thus, in an Order dated July 10, 2008, the RTC cancelled the July 31, 2008 schedule for arraignment and reset the arraignment and hearing on said motion for August 20, 2008. At said scheduled date for arraignment and hearing on the motion, nobody appeared for the prosecution. Hence, the RTC issued the Order[6] dated August 20, 2008 resetting the arraignment for October 31, 2008 and stating that:

> x x x this Court hereby orders the public prosecutor x x x and/or his assistant prosecutor x x x to appear and prosecute this case on the next scheduled hearing from arraignment up to the termination of the trial of this case otherwise this Court will order the dismissal of this case for failure to prosecute or *nolle prosequi*.[7]

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[3] MCTC records, pp. 378-379.

[4] RTC records, p. 25.

[5] *Id.* at 26.

[6] *Id.* at 91-92.

[7] *Id.* at 92.

On October 28, 2008, petitioner AAA, private complainant below, filed through her private counsel, a Motion for Cancellation of Hearing,[8] manifesting that Atty. Pedro Felicen, Jr. had been granted the authority to prosecute by the Provincial Prosecutor and praying that the scheduled arraignment on October 31, 2008 be cancelled due to the pendency of private complainant's petition for transfer of venue before this Court. The authorized private prosecutor did not appear on said hearing date. The hearing on October 31, 2008 proceeded as the RTC ruled, in its Order[9] issued on the same day, that unless restrained by a higher court, the mere pendency of a petition for transfer of venue is not sufficient reason to suspend the proceedings. Moreover, counsel for accused invoked the accused's right to a speedy trial and, thus, private respondent was arraigned in the presence of the Provincial Prosecutor who was designated by the RTC to represent the prosecution for the purpose of arraignment. Pre-trial was set for November 13, 2008. Nevertheless, said schedule for pre-trial was cancelled (per Order[10] dated November 4, 2008) as the Presiding Judge of the RTC had to attend a PHILJA Seminar, and pre-trial was reset to November 24, 2008. On November 24, 2008, the day of the pre-trial itself, the private prosecutor again filed a Motion for Cancellation of Hearing, again using as justification the pendency of the petition for transfer of venue. The RTC issued an Order on even date, reading as follows:

> During the scheduled pre-trial conference of this case, the public prosecutors of Leyte, the private prosecutor and the private complainant failed to appear despite proper notices sent [to] them. A motion for cancellation of hearing was filed by the authorized private prosecutor, Pedro Felicen, Jr. for reasons stated therein to which this Court finds to be not meritorious, hence, the same is denied. x x x the public prosecutor as well as the counsel for the accused were directed to make their oral comments on the first endorsement of the Hon. Deputy Court Administrator, regarding the motion to transfer venue of this case to any of the RTC, at Tacloban City, x x x.

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[8] *Id.* at 193-195.

[9] *Id.* at 199-200.

[10] *Id.* at 206.

x x x Thereafter, the pre trial proceeded by discussing matters concerning the amicable settlement, plea bargaining agreement, stipulation of facts, pre-marking of documentary exhibits, number of witnesses, trial dates and nature of the defense. There being no other matters to discuss on pre-trial in order to expedite the early disposition of this case, the pre-trial proper is now deemed terminated.[11]

The said Order also scheduled the initial hearing for trial on the merits for December 12, 2008. On December 12, 2008, no one appeared for the prosecution, prompting counsel for accused private respondent to move for dismissal of the case on the ground of failure to prosecute. Private respondent's motion to dismiss was denied per Order[12] dated December 12, 2008, and hearing was reset to January 16, 2009.

Again, on the very day of the January 16, 2009 hearing, the private prosecutor filed an Urgent Motion for Cancellation of Hearing, stating that it was only on January 14, 2009 that he was furnished a copy of the notice of the January 16, 2009 hearing and he had to attend a previously scheduled hearing for another case he was handling, set for the very same date. Thus, in the Order dated January 16, 2009, the RTC disposed, thus:

x x x Again notably absent are the private prosecutor, the two public prosecutors designated by the Department of Justice to prosecute this case as well as the private complainant herself.

A last minute urgent motion to reset was filed by the private prosecutor, but the same is denied being in violation of the three (3) day rule in filing written postponements. After hearing the arguments coming from both the public prosecutor assigned to this Court and counsel for the defense, the Court deems it proper to act on the urgency of the matter prayed for by the said counsel. Considering that the accused has been languishing in jail since June, 2008 up to the present and to allow him to stay in jail for a single minute, it is quite unreasonable and would violate his right to speedy trial.

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[11] *Id.* at 218.

[12] *Id.* at 260-261.

WHEREFORE, finding the motion of the counsel for the accused to be based on grounds that are meritorious, this Court pursuant to x x x the rule on speedy trial (RA 8433) [should be "8493"] hereby orders this case dismissed for failure of the prosecution to prosecute or *nolle prosequi*.[13]

Petitioners filed a motion for reconsideration, but the RTC denied the same per Resolution dated March 16, 2009.

Hence, the present petition for *certiorari*, alleging that public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rashly and precipitately dismissing the rape case against private respondent. Respondents counter that there was no grave abuse committed by the trial court and setting aside the dismissal of the rape case would put private respondent in double jeopardy.

The Court finds the petition bereft of merit.

Firstly, petitioners failed to observe the doctrine on hierarchy of courts. In *Garcia v. Miro*,[14] the Court, quoting *Vergara, Sr. v. Suelto*,[15] ruled thus:

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the**

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[13] *Id.* at 273-274.

[14] G.R. No. 167409, March 20, 2009, 582 SCRA 127.

[15] G.R. No. 74766, December 21, 1987, 156 SCRA 753.

writ's procurement must be presented. This is, and should continue, to be the policy in this regard, a policy that courts and lawyers must strictly observe.[16] (Emphasis supplied.)

On this point alone, the petition is already dismissible. However, on several occasions, this Court found compelling reasons to relax the rule on observance on hierarchy of courts. In *Pacoy v. Cajigal*,[17] the Court opted not to strictly apply said doctrine, since the issue involved is double jeopardy, considered to be one of the most fundamental constitutional rights of an accused. Hence, the Court also finds sufficient reason to relax the rule in this case as it also involves the issue of double jeopardy, necessitating a look into the merits of the petition.

Petitioners insist that the RTC dismissed the criminal case against private respondent too hurriedly, despite the provision in Section 10 of the Speedy Trial Act of 1998 (Republic Act No. 8493), now incorporated in Section 3, Rule 119 of the Rules of Court, to wit:

> SEC. 3. *Exclusions.* — The following periods of delay shall be excluded in computing the time within which trial must commence:
>
> (a) Any period of **delay resulting from other proceedings concerning the <u>accused</u>**, including but not limited to the following:
>
> x x x x x x x x x
>
> (5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
>
> x x x x x x x x x[18]

A careful reading of the above rule would show that the only delays that may be excluded from the time limit within which trial must commence are those resulting from **proceedings concerning the <u>accused</u>**. The time involved in the proceedings

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[16] *Garcia v. Miro, supra* note 14, at 131-132.

[17] G.R. No. 157472, September 28, 2007, 534 SCRA 338.

[18] Emphasis and underscoring supplied.

in a petition for transfer of venue can only be excluded from said time limit if it was the accused who instituted the same. Hence, in this case, the time during which the petition for transfer of venue filed by the private complainant is pending, cannot be excluded from the time limit of thirty (30) days from receipt of the pre-trial order imposed in Section 1, Rule 119 of the Rules of Court.

The records reveal that the 30-day time limit set by Section 1, Rule 119 of the Rules of Court had, in fact, already been breached. The private prosecutor received the Pre-trial Order[19] dated November 24, 2008 on December 3, 2008, while the Provincial Prosecutor received the same on December 2, 2008.[20] This means that at the latest, trial should have commenced by January 2, 2009, or if said date was a Sunday or holiday, then on the very next business day. Yet, because of the prosecution's failure to appear at the December 12, 2008 hearing for the initial presentation of the prosecution's evidence, the RTC was constrained to reset the hearing to January 16, 2009, which is already beyond the 30-day time limit. Nevertheless, the prosecution again failed to appear at the January 16, 2009 hearing. Indeed, as aptly observed by the RTC, petitioners showed recalcitrant behavior by obstinately refusing to comply with the RTC's directives to commence presentation of their evidence. Petitioners did not even show proper courtesy to the court, by filing motions for cancellation of the hearings on the very day of the hearing and not even bothering to appear on the date they set for hearing on their motion. As set forth in the narration of facts above, the prosecution appeared to be intentionally delaying and trifling with court processes.

Petitioners are likewise mistaken in their notion that mere pendency of their petition for transfer of venue should interrupt proceedings before the trial court. Such situation is akin to having a pending petition for *certiorari* with the higher courts. In *People*

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[19] RTC records, pp. 223-225.

[20] See Registry Receipts, RTC records, attached to the dorsal portion of p. 225.

v. Hernandez,[21] the Court held that "delay resulting from extraordinary remedies against interlocutory orders" must be read in harmony with Section 7, Rule 65 of the Rules of Court which provides that the "[p]etition [under Rule 65] shall not interrupt the course of the principal case **unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case**."[22] The trial court was then correct and acting well within its discretion when it refused to grant petitioners' motions for postponement mainly because of the pendency of their petition for transfer of venue.

The trial court cannot be faulted for refusing to countenance delays in the prosecution of the case. The Court's ruling in *Tan v. People*[23] is quite instructive, to wit:

> An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14 (2) of Article III of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.
>
> Following the policies incorporated under the 1987 Constitution, Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," was enacted, with Section 6 of said act limiting the trial period to 180 days from the first day of trial. Aware of problems resulting in the clogging of court dockets, the Court implemented

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[21] G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688.

[22] *Id.* at 713.

[23] G.R. No. 173637, April 21, 2009, 586 SCRA 139.

the law by issuing Supreme Court Circular No. 38-98, which has been incorporated in the 2000 Rules of Criminal Procedure, Section 2 of Rule 119.

In *Corpuz v. Sandiganbayan*, the Court had occasion to state —

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. *Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.*
>
> While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

The Court emphasized in the same case that:

> A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.
>
> In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x.
>
> Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. x x x.

Exhaustively explained in *Corpuz v. Sandiganbayan*, an accused's right to speedy trial is deemed violated only when the proceeding is attended by *vexatious, capricious, and oppressive delays*. **In determining whether petitioner was deprived of this right, the factors to consider and balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.**

x x x x x x x x x

We emphasize that in determining the right of an accused to speedy trial, courts are required to do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. A mere mathematical reckoning of the time involved is clearly insufficient, and particular regard must be given to the facts and circumstances peculiar to each case.[24]

Here, it must be emphasized that private respondent had already been deprived of his liberty on two occasions. First, during the preliminary investigation before the MCTC, when he was incarcerated from November 18, 2004 to March 16, 2005, or a period of almost four months; then again, when an Information had already been issued and since rape is a non-bailable offense, he was imprisoned beginning June 27, 2008 until the case was dismissed on January 16, 2009, or a period of over 6 months. Verily, there can be no cavil that deprivation of liberty for any duration of time is quite oppressive. Because of private respondent's continued incarceration, any delay in trying the case would cause him great prejudice. Thus, it was absolutely vexatious and oppressive to delay the trial in the subject criminal case to await the outcome of petitioners' petition for transfer of venue, especially in this case where there is no temporary restraining order or writ of preliminary injunction issued by a higher court against herein public respondent from further proceeding in the case.

Hence, the Court does not find any grave abuse of discretion committed by the trial court in dismissing the case against private respondent for violation of his constitutional right to speedy trial.

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[24] *Id.* at 151-155. (Emphasis supplied).

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 189579. September 12, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO ORJE *y* BORCE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ELEMENTS.— The following are the elements of rape as provided under Art. 266-A of the Revised Penal Code (RPC), as amended: (1) that the accused had carnal knowledge of a woman; and (2) the accused accomplished such act (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. ID.; ID.; ID.; MAY BE PROSECUTED *DE OFICIO*; AN AFFIDAVIT OF DESISTANCE BY THE COMPLAINING WITNESS IS NOT BY ITSELF A GROUND FOR THE DISMISSAL OF A RAPE ACTION OVER WHICH THE COURT HAS ALREADY ASSUMED JURISDICTION.— Rape is no longer considered a personal criminal offense listed as among the crimes against chastity defined and punishable under Title 11 of the RPC, as amended. Republic Act No. (RA) 8353, or the *Anti-Rape Law of 1997*, has reclassified rape as

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[*] Designated additional member per Special Order No. 1028 dated June 21, 2011.

a crime against persons. In effect, rape may now be prosecuted *de oficio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution. As corollary proposition, an affidavit of desistance by the complaining witness is not, by itself, a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AFFIDAVITS OF DESISTANCE; LOOKED UPON WITH DISFAVOR; EXPLAINED.— Courts look with disfavor on affidavits of desistance and/or retraction. In *People v. Bation*, We explained why: x x x [An affidavit of desistance] can easily be secured from poor and ignorant witnesses, usually for monetary considerations and because it is quite incredible that after going through the process of having the accused apprehended by the police, positively identifying him as the rapist, and enduring humiliation and examination of her private parts, the victim would suddenly declare that the wrongful act of the accused does not merit prosecution. And still another reason: [A]n affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. **There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge**. x x x As long as the complaining witness musters the test of credibility and consistency, her testimony deserves full faith and confidence and cannot be discarded. And if such testimony is clear and credible to establish the crime beyond reasonable doubt, a conviction of rape based on it may lie even if she subsequently retracted her earlier testimony. So it must be here. As We ruled: A retraction x x x is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.

4. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; MINORITY AND RELATIONSHIP QUALIFIED THE RAPE IN CASE AT BAR; PENALTY.— In all, the commission of

rape by accused-appellant has been sufficiently established. As earlier indicated, the parties have stipulated during the pre-trial that AAA, then 16 years of age when the incident occurred, is accused-appellant's biological daughter. AAA's age and her relationship with accused-appellant were alleged in the information and AAA testified to these facts. Thus, the RTC correctly convicted accused-appellant of qualified rape as defined and penalized by Art. 266-B of the RPC. x x x With the abolition of the death penalty by RA 9346, the penalty for qualified rape is *reclusion perpetua*. The imposition of the penalty of *reclusion perpetua* by the RTC without eligibility for parole is correct.

5. CIVIL LAW; DAMAGES; PECUNIARY LIABILITY OF THE ACCUSED IN CASE AT BAR.— The Court affirms the award of PhP 75,000 as civil indemnity and PhP 75,000 as moral damages. Civil indemnity *ex delicto* is mandatory on the finding that rape was committed, while moral damages are assessable upon such finding without need of proof. The presence of aggravating circumstance entitles the offended party to exemplary damages. Thus, We also affirm the award for exemplary damages, but, pursuant to established jurisprudence, in the amount of PhP 30,000, up from the PhP 25,000 fixed by the RTC and affirmed by the CA.

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 August 10, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03234, which affirmed the February 4, 2008 Decision of the Regional Trial Court (RTC), Branch 106 in Quezon City, in Criminal Case No. Q-05-136600. The RTC found accused Joselito Orje guilty beyond reasonable doubt of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

The Facts

The information charging the accused with rape reads as follows:

That on or about the 1st day of September, 2005, in Quezon City, Philippines, the above-named accused, being then the father, did then and there, willfully, unlawfully and feloniously, by means of force and intimidation have sexual intercourse with one [AAA],[1] his own daughter, a minor 16 years old, inside their residence located at [XXX], this City, against her will and without consent, thereby degrading or demeaning the intrinsic worth and dignity of the said offended party as a human being.

CONTRARY TO LAW.[2]

Accused pleaded not guilty to the above charge. During the pre-trial, the parties stipulated on the following relevant facts:

(1) AAA is accused's biological daughter;
(2) AAA was only 16 years old at the time of the alleged rape incident, subject to the presentation of her original certificate of live birth; and
(3) Accused and AAA were staying in the same house at the time of the alleged incident.

The prosecution later presented AAA's Certificate of Live Birth (Exhibit "E").[3]

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[1] The name and other personal circumstances tending to establish the victim's identity and those of her immediate family are withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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

[3] *Id.* at 43.

Version of the Prosecution

At the trial, the prosecution presented, as witnesses, AAA and medico-legal officer Police Inspector Edilberto Antonio (P/Insp. Antonio).

AAA testified sleeping in their house and waking up at around six o'clock in the evening of September 1, 2005 with the feeling of something heavy pressing on her body. It turned out to be her father, the accused, on top of her. At that point, accused proceeded to strip her of her shorts, then her underwear and then inserted his penis into her vagina. She attempted to shout and struggled to break free, but her efforts proved futile at the start as he was holding her hands and covering her mouth at the same time. Eventually, however, she succeeded in extricating herself and got hold of a chair which she threw at the accused.[4]

AAA further narrated that two days after that harrowing incident, accused slapped her for arriving home late. Thereafter, AAA repaired to her bedroom and took a bath. As she was combing her hair after her bath, accused suddenly came up from behind and started to fondle her breasts. This turn of events prompted AAA to run to her cousin (BBB) for help and, in the latter's house, AAA confided what she had just gone through. BBB informed her parents who, in turn, reported the matter to the police. Accused's arrest followed.[5]

AAA also testified that, apart from the above incidents, accused also molested her in December 2003 and again on March 15, 2004. She, however, kept both painful episodes to herself out of fear that her father would make good on his threat to kill her mother. AAA likened the abuse she received in the hands of her father to being treated as a prostitute. On the witness stand, she stated wanting her father to land in jail for what he had done to her.[6]

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[4] *Id.*

[5] *Id.* at 44.

[6] *Id.*

Marked as Exhibit "B" and adduced in evidence was Medico-Legal Report No. M-3314-05 dated September 9, 2005, containing, among others, the following entries: "Findings: hymen, Presence of deep healed laceration at 2, 4, 7 or 8 o'clock position. Conclusion: Genetal [sic] examination [conducted on AAA] shows clear evidence of penetrating trauma."[7] This means, according to P/Insp. Antonio, that something entered or was inserted into AAA's vagina causing lacerations. The depth of the hymenal lacerations indicates, so P/Insp. Antonio testified, a forceful insertion or penetration of something into the vagina.[8]

Version of the Defense

The defense called to the witness stand AAA who earlier executed a *Sinumpaang Salaysay* (hereinafter referred to also as affidavit of desistance), in which she expressed her desire to desist from pursuing the sham case against her father. As she explained while testifying this time, the rape incidents never happened. AAA pointed to her aunt, CCC, as having compelled her to falsely accuse her father to get back at him for leaving the family when AAA was barely nine years old. AAA also testified being mad at the appellant for the slap she got after arriving home late one rainy night.[9]

Dated December 16, 2005, the *Sinumpaang Salaysay* partly reads as follows:

Na aking pong iniuurong ang aking habla sa aking ama na si Joselito Orge [sic], sa kasong rape;

Na wala pong katotohanan ang aking habla laban sa kanya. Na ang lumabas na positibong resulta tungkol sa pagkapilas ng aking pagkababae ay gawa naming ng aking kasintahan;

Na mahal ko po ang aking mga magulang, na ang aking habla laban sa aking ama ay dahil lamang sa galit sa kanya matapos na ako'y kanyang pagalitan;

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[7] *Id.* at 45.

[8] *Id.*

[9] *Id.* at 12.

Na ako po ay handing magpatawad sa aking ama sa kanyang nagawa sa akin at ako'y handa naring humingi ng tawad sa kanya sa aking mga kamalian;

Na ang aking sinumpaang salaysay ay buong puso kong lalagdaan ng walang pananakot, pangako o ano mang katumbas na halaga kapalit na pag-urong ko sa habla.[10]

The Rulings of the RTC and CA

On February 4, 2008, the RTC rendered judgment finding accused guilty beyond reasonable doubt of the crime charged, disposing as follows:

IN VIEW WHEREOF, accused JOSELITO ORJE *y* BORCE is hereby found guilty beyond reasonable doubt of the crime of RAPE under Art. 266-A, in relation to R.A. 7610, and he is sentenced to suffer the penalty of *RECLUSION PERPETUA* without eligibility for parole; to pay the private complainant the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages. No costs.

SO ORDERED.[11]

The trial court appreciated in its Decision the twin qualifying aggravating circumstances of minority and relationship.

On appeal, the CA affirmed[12] the RTC's Decision, noting AAA's unequivocal testimony in court while responding to questions from the prosecuting fiscal on the rape incidents. For reasons articulated in its Decision dated August 10, 2009, the CA, just like the RTC, gave short shrift to AAA's recantation.[13]

On August 24, 2009, accused filed a Notice of Appeal, which the CA gave due course to and directed the elevation of the records

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[10] *Id.* at 12-13.

[11] *Id.* at 54. Penned by Judge Angelene Mary W. Quimpo-Sale.

[12] *Rollo*, p. 14. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Romeo F. Barza.

[13] *Id.* at 12.

to this Court. In response to a Resolution for the submission of supplemental briefs, if they so desired, the parties, by separate manifestations, informed the Court that they are no longer submitting supplemental briefs, but are each maintaining their positions and arguments in their respective briefs filed with the CA.

The Issue

The sole issue, as raised and argued before the CA, boils down to the question of whether or not the prosecution has established accused-appellant's guilt beyond the reasonable doubt.

This Court's Ruling

It should be stressed at the outset that while it is not a trier of facts and is not wont to winnow and re-asses anew the evidence adduced below, it still behooves the Court, in criminal cases falling under its review jurisdiction pursuant to Article VIII, Section 5(2) of the Constitution,[14] to take a careful and hard look at the testimony given in rape cases. The Court is constantly mindful of the pernicious consequences that a rape charge bears on both the accused and the private complainant.[15] It exposes both to humiliation, hatred and anxieties, more so if the element of kinship comes into the picture. And to stress familiar dicta, an accusation for rape can be made with facility, albeit difficult to prove, but more difficult for the accused, though innocent, to disprove, and that conviction in rape cases usually rests solely on the basis of the testimony of the offended party.[16] This attitude of caution and circumspection becomes all the more compelling in this case in light of the recantation of a key witness, the victim herself.

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[14] SEC. 5. The Supreme Court shall have the following powers: x x x (2) Review, revise, reverse, modify or affirm on appeal or *certiorari* x x x final judgments and orders of lower court: x x x (d) All criminal cases in which the penalty imposed in *reclusion perpetua* or higher.

[15] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318.

[16] *People v. Bidoc*, G.R. No. 169430, October 21, 2006, 506 SCRA 481.

We deny the appeal.

The following are the elements of rape as provided under Art. 266-A of the Revised Penal Code (RPC), as amended: (1) that the accused had carnal knowledge of a woman; and (2) the accused accomplished such act (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[17]

In determining whether the elements of rape have been established by the prosecution, courts recognize that conviction or acquittal depends almost always entirely on the credibility of the victim's testimony, the crime being ordinarily perpetrated in seclusion[18] and only the participants can testify as to its occurrence.[19]

Hence, the matter of AAA's credibility is front and foremost before the Court.

That credibility, accused-appellant urges, has been shattered to pieces by her recantation of her previous testimony. The Court is not persuaded.

When called by the prosecution to testify on January 20, 2006, AAA pointed at accused-appellant as the person who raped her. There can be no mistake about the identification as she and accused-appellant were family, living under the same roof. Her testimony, as uniformly found by the trial and appellate courts, was clear, categorical and straightforward and withstood an intense cross-examination. It was observed, too, that consistency on material points marked her recollection of the details of the sexual molestation, including how she struggled, at that precise time, to free herself from her father's hold. Her

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[17] *People v. Quintal*, G.R. No. 184170, February 2, 2011.

[18] *People v. Macapagal, Jr.*, G.R. No. 155335, July 14, 2005, 463 SCRA 387.

[19] *People v. Painitan*, G.R. No. 137665, January 16, 2001, 349 SCRA 266, 279.

claim of being a rape victim found corroboration by the medical findings of the examining medico-legal officer. We reproduce a portion of AAA's direct testimony on January 20, 2006:

Fiscal Mangente

Q On September 1, 2005, about 6:00 o'clock in the evening do you recall if there was any unusual incident that happened?

A There was.

Q Where were you then at that particular date and time?

A I was at home.

Q Could you tell us what was that unusual incident [that] happened while you were inside your residence?

A I was then sleeping and my siblings [were] outside the house. My father was inside the house and it was me and my father who were inside the house.

Q Could you tell this court where you were living then?

A x x x x x x x x x

Q What happened while you were sleeping in your house with your father?

A I felt that he suddenly approached me and put himself on top of me.

Q When you realized that your father [was] putting himself on top of you what did you do if any?

A I was struggling and while I was struggling he held my two hands and I was not able to move anymore.

Q What other things did your father do aside from putting his hands in your mouth?

ATTY. ALMONTE

There was no mention that the hands of the accused [were] put in the mouth, what was stated by the witness was he held her hands and [she] was not able to move.

FISCAL MANGENTE

Q After holding your hands what other things did accused do if any?

A He closed my mouth [with] his hands and I felt that his private part was put inside my private part.

Q [Did] you have any clothing at the time that you said your father was putting his private part [in] your private part?
A Yes, sir.

Q Could you tell us what was your clothing at that time?
A T-shirt.

Q And how about underwear?
A Short[s].

Q So, while your father was doing that to you what did you do?
A I was crying.

Q Did you shout for help?
A I could not shout because one of his hands covered my mouth.

Q So, after that incident what did you do, if any?
A I [ran] away from him.[20]

We fully agree with the findings of the RTC, as affirmed by the CA, that accused-appellant sexually abused AAA in the early hours of the evening of September 1, 2005. Both courts were correct in giving credence to AAA's positive testimony the first time around notwithstanding her retraction of her previous testimonies and the allegations contained in her affidavit of desistance. Indeed, there is no cogent reason to deviate from their findings as to AAA's credibility as a prosecution witness and the weight and value they accorded her sworn accounts.

Rape is no longer considered a personal criminal offense listed as among the crimes against chastity defined and punishable under Title 11 of the RPC, as amended. Republic Act No. (RA) 8353, or the *Anti-Rape Law of 1997*, has reclassified rape as a crime against persons.[21] In effect, rape may now be prosecuted *de oficio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution.[22] As corollary

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[20] TSN, January 20, 2006, p. 4.

[21] *People v. Lindo*, G.R. No. 189818, August 09, 2010, 627 SCRA 519, 526.

[22] *People v. Castel*, G.R. No. 171164, November 28, 2008, 572 SCRA 642, 676.

proposition, an affidavit of desistance by the complaining witness is not, by itself, a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.[23]

Courts look with disfavor on affidavits of desistance and/or retraction.[24] In *People v. Bation*, We explained why:

> x x x [An affidavit of desistance] can easily be secured from poor and ignorant witnesses, usually for monetary considerations and because it is quite incredible that after going through the process of having the accused apprehended by the police, positively identifying him as the rapist, and enduring humiliation and examination of her private parts, the victim would suddenly declare that the wrongful act of the accused does not merit prosecution.[25]

And still another reason:

> [A]n affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. **There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge**.[26] (Emphasis added.)

Accused-appellant cannot plausibly bank on AAA's affidavit of desistance, complemented by her testimony for the defense, as an exonerating vehicle for his dastardly act. Other than the retraction or desistance affidavit, nothing in the records would show any other circumstance of substance accepted by the trial court that would becloud the veracity of AAA's earlier inculpating testimony.

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[23] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 664.

[24] *People v. Soriano*, G.R. No. 178325, February 22, 2008, 546 SCRA 514, 521; citing *People v. Alicante*, 388 Phil. 233, 258 (2000).

[25] G.R. Nos. 134769-71, October 12, 2001, 367 SCRA 211, 231.

[26] *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682.

As long as the complaining witness musters the test of credibility and consistency, her testimony deserves full faith and confidence and cannot be discarded. And if such testimony is clear and credible to establish the crime beyond reasonable doubt, a conviction of rape based on it may lie even if she subsequently retracted her earlier testimony. So it must be here. As We ruled:

> A retraction x x x is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[27]

As the appellate court correctly held, citing case law, AAA's testimony deserves full credence, notwithstanding her subsequent retraction. We are reproducing with approval what the CA wrote in this regard:

> Mere retraction by a witness or complainant of her testimony does not necessarily vitiate the original testimony or statement. x x x The previous testimony and the subsequent one must be carefully compared and the circumstances under which each was given and the reason and motives for the change carefully scrutinized. The veracity of each statement or testimony must be tested by the credibility of the witness, which is left for the judge to decide. Only when there exists special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld. x x x
>
> In this case, AAA alleged in her affidavit of desistance that she fabricated the case against her father because she got angry when he slapped her for [coming] x x x home late at night and that she was just induced and forced by her aunt, CCC, to file a case for rape because the latter was so mad at her father for leaving her mother for eight (8) years. We do not agree. It must be emphasized that a daughter, especially one in her minority, would not accuse her own father of such unspeakable crime as incestuous rape had she really

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[27] *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 649-650.

not been aggrieved. AAA withstood all the rigors of the case. x x x If it was true that she merely made up the charge, she should have been bothered by her conscience at the sight of her father in prison. It was only when she returned to her family's custody that she made the retraction. Before that, she maintained her story that she was raped and withstood cross-examination.

As to the allegation that her aunt only forced her to file a complaint for rape, it should be noted that it was AAA who sought for her cousin's [CCC's daughter] help and not the other way around. x x x During her testimony, [AAA] was always accompanied by the DWSD social worker and not once did CCC appear when AAA was testifying. Besides no aunt x x x would possibly wish to stamp a minor falsely with the stigma that follows rape only for the purpose of punishing someone for a flimsy reason that doesn't even concern her personally.[28]

Indeed, a daughter angered by a single slapping incident and an aunt who wishes to get back at a brother-in-law for abandoning his family would not typically go so far as to falsely accuse a man of rape. Normal human experience does not support such behavioral decisions of frightful implication consequence. Given the stigma of a public trial where the humiliating details of sexual molestation and the embarrassing findings of the medical-legal are laid bare before the court, it is, to be sure, unthinkable, if not entirely preposterous, for a daughter of tender years to concoct a tale of rape against her own father if her motive were other than to have the culprit punished.

But the trial court gave the simple but arguably the more compelling reason why AAA's affidavit of desistance should altogether be rejected. According to the RTC, AAA executed the document on December 16, 2005, or two months after the rape incident happened. Yet, when AAA testified on January 20, 2006 against accused-appellant, no mention was made whatsoever of the affidavit, much less of its contents which attributed her loss of virginity to what she and her purported boyfriend did together. During her January 20, 2006 testimony, AAA minced no words in venting her anger against accused-appellant and

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[28] *Rollo,* p. 13; citing Appellee's Brief, CA *rollo,* pp. 75-76.

about her wish to see him in prison as a consequence of a guilty verdict. AAA's responses to the public prosecutor's questions speak for themselves:

FISCAL MANGENTE:

Q: How do you express yourself about what you felt about your father?
A: I am ashamed.

Q: After your father have done this to you and you know that there will legal consequences, if ever the court would be able to decide this case and your father will be convicted and there will be a penalty imposed on him you are still willing to push through with the complaint of yours?
A: Yes sir

Q: Why?
A: Because of what he did to me '*sobrang baboy*'.

Q: And you could not forgive your father ….?
A: I can forgive my father but I cannot accept that he is going to be free. I want him to be imprisoned.[29]

In all, the commission of rape by accused-appellant has been sufficiently established. As earlier indicated, the parties have stipulated during the pre-trial that AAA, then 16 years of age when the incident occurred, is accused-appellant's biological daughter. AAA's age and her relationship with accused-appellant were alleged in the information and AAA testified to these facts. Thus, the RTC correctly convicted accused-appellant of qualified rape as defined and penalized by Art. 266-B of the RPC, thus:

ART. 266-B. Penalties. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent x x x

[29] TSN, January 20, 2006, pp. 2-8.

With the abolition of the death penalty by RA 9346, the penalty for qualified rape is *reclusion perpetua*. The imposition of the penalty of *reclusion perpetua* by the RTC without eligibility for parole is correct.

Pecuniary Liability

The Court affirms the award of PhP 75,000 as civil indemnity and PhP 75,000 as moral damages. Civil indemnity *ex delicto* is mandatory on the finding that rape was committed, while moral damages are assessable upon such finding without need of proof.[30] The presence of aggravating circumstance entitles the offended party to exemplary damages. Thus, We also affirm the award for exemplary damages, but, pursuant to established jurisprudence, in the amount of PhP 30,000,[31] up from the PhP 25,000 fixed by the RTC and affirmed by the CA.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03234 finding accused-appellant guilty beyond reasonable doubt of qualified rape is *AFFIRMED* with the *MODIFICATION* that the amount of exemplary damages is increased to PhP 30,000.

SO ORDERED.

Peralta, Bersamin,[*] *Abad,* and *Villarama, Jr.,*[**] *JJ.*, concur.

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[30] *People v. Malibiran*, G.R. No. 173471, March 17, 2009, 581 SCRA 655.

[31] *People v. Combate*, G.R. No. 189301, December 15, 2010.

[*] Additional member per Raffle dated September 7, 2011.

[**] Additional member per Special Order No. 1076 dated September 6, 2011.

THIRD DIVISION

[G.R. No. 195005. September 12, 2011]

ROSANA ASIATICO *y* STA. MARIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE TRIAL AND APPELLATE COURTS DESERVE GREAT WEIGHT AND ARE DEEMED CONCLUSIVE AND BINDING.— Settled is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error. Since Rosana failed to show any arbitrariness, palpable error or capriciousness on the findings of fact of the trial and appellate courts, these findings deserve great weight and are deemed conclusive and binding. Besides, an assiduous review of the records at hand shows that the CA did not err in affirming Rosana's conviction.

2. CRIMINAL LAW; ILLEGAL POSSESSION OF REGULATED OR PROHIBITED DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. All these elements were duly established by the prosecution. Rosana was found to have in her possession 0.05 gram of *shabu*. There was nothing in the records showing that she had authority to possess it. Jurisprudence also teaches Us that mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation. Rosana also failed to present contrary evidence to rebut her possession of the *shabu*.

3. ID.; ID.; CHAIN OF CUSTODY OF THE SEIZED PROHIBITED DRUGS, ESTABLISHED IN CASE AT BAR.— [T]he chain of custody of the seized prohibited drugs was adequately established in the instant case x x x. Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. Here, there was substantial compliance with the law and the integrity of the drugs seized from Rosana was preserved.

4. ID.; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF *SHABU*; PENALTY; MODIFICATION OF PENALTY, PROPER IN CASE AT BAR; DISCUSSED.— As to the propriety of the penalties imposed, We, however, modify them for they are not in accord with the Indeterminate Sentence Law (ISL). Sec. 11(3) of RA 9165 provides that illegal possession of less than five (5) grams of *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 (PhP 300,000) to four hundred thousand pesos (PhP 400,000). The imposed fine of PhP 300,000 is proper under the premises. As regards the imprisonment sentence, the courts *a quo* erred in imposing a straight penalty of "imprisonment of twelve (12) years and one day." Sec. 1 of the ISL mandates that, in case of a special law, the accused shall be sentenced "to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." Thus, applying the ISL to the imposable penalties under Sec. 11(3) of RA 9165, We find, under the circumstances, the penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, to be proper.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 which seeks to reverse and set aside the August 31, 2010 Decision[2] and January 6, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 31146. The assailed decision affirmed the Joint Decision[4] of the Regional Trial Court (RTC), Branch 214 in Mandaluyong City, dated March 12, 2007, convicting petitioner Rosana Asiatico *y* Sta. Maria (Rosana) of illegal possession of dangerous drugs penalized under Section 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, while the assailed resolution denied Rosana's motion for reconsideration.

Petitioner Rosana and her co-accused Aldrin Estrella *y* Sta. Maria (Aldrin) were charged in two (2) separate Informations with violation of Sec. 11, Art. II of RA 9165 before the RTC. Insofar as pertinent to this petition, We shall quote the Information against petitioner Rosana only in Criminal Case No. MC-05-8917-D, which reads:

That on or about the 19th day of January 2005, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this 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 her possession, custody and control one (1) heat-sealed transparent plastic containing 0.05 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known

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[1] *Rollo*, pp. 11-30.

[2] *Id.* at 90-102. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Antonio L. Villamor and Amy C. Lazaro-Javier.

[3] *Id.* at 122.

[4] *Id.* at 52-56. Penned by Judge Edwin D. Sorongon.

as "*shabu*," a dangerous drug, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.[5]

On March 8, 2005, upon arraignment, Rosana pleaded not guilty to the above charge.

During trial, the prosecution presented Police Senior Inspector Isidro Carino (P/SInsp. Carino), Police Officer 1 Sadjid Angara (PO1 Angara), and PO1 Antonio Madlangbayan (PO1 Madlangbayan). However, the testimony of P/SInsp. Carino, the forensic chemist, was dispensed with upon stipulation by the parties.

The facts as found by the CA are as follows:

The prosecution tends to establish the following:

Around 8:00 p.m. of January 19, 2005, an informant went to the office of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) in Mandaluyong City to report the illegal drug trade of accused-appellant *alias* "Joy" and Aldrin *alias* "Amok" in Barangay Bagong Silang. Based on that report, PO3 Victor Santos formed a team to conduct a buy-bust operation. The team was composed of PO2 Jorge Gorgonia who was assigned as team leader, and PO1 Sadjid Angara (PO1 Angara), PO1 Antonio Madlangbayan (PO1 Madlangbayan), PO1 Rommel Alfaro, PO1 Oscar Escudero and PO1 Pedro Sangada, as back-up. PO1 Angara was designated as poseur-buyer. The removal of PO1 Angara's cap was the pre-arranged signal to signify the consummation of the transaction.

Thereafter, the buy-bust team proceeded to the target area with the informant. They parked their mobile car along Daang Bakal Street and proceeded to strategical locations. PO1 Angara and the informant headed to J. Luna Street where accused-appellant was allegedly selling "*shabu*." The informant spotted accused-appellant and together with PO1 Angara, they approached her. He introduced PO1 Angara as buyer of "*shabu*." PO1 Angara wanted to buy three hundred pesos (₱300) worth of "*shabu*." The accused-appellant only had two hundred pesos (₱200) worth in her possession but she assured PO1 Angara

[5] *Id.* at 52-53.

that more supplies were coming. After a few minutes, Aldrin arrived in the scene and showed them two (2) plastic sachets containing three hundred pesos (₱300) worth of "*shabu*." All of a sudden, Aldrin decided to back out then whispered to accused appellant that there was something bulging on the waist of poseur-buyer. PO1 Angara sensed that his disguise was discovered and he immediately performed the pre-arranged signal by removing his cap. PO1 Madlangbayan immediately advanced to arrest accused appellant and Aldrin.

PO1 Madlangbayan frisked accused-appellant and recovered one (1) plastic sachet from her. PO1 Angara frisked Aldrin and recovered two (2) plastic sachets from him. The officers informed the accused-appellant and Aldrin of their constitutional rights. Thereafter, PO1 Madlangbayan separately wrapped the recovered plastic sachets with newspapers and labeled them "Joy" and "Ako", respectively. The police officers brought the accused-appellant and Aldrin to the Mandaluyong Medical Center for examination. After which, they were turned over to the police station.

The defense presented the following version:

In the evening of January 19, 2005, accused-appellant and her cousin, Aldrin were in her house located at 466 Juan Luna St., Mandaluyong City. Her nephew and niece were also with them at that time. They were preparing for dinner when a number of armed policemen in civilian clothes forcibly entered their house and searched it. Accused-appellant and Aldrin were accused of selling illegal drugs. Both of them were then brought to their headquarters for questioning. They were asked the whereabouts of a certain "Toto" but they could not give any information because they do not know him. As a result, they were detained and then charged for illegal possession of drugs. However, they only saw the said drugs at the Drug Enforcement Unit (DEU) office. Both vehemently denied the allegations against them.[6]

After trial on the merits, the RTC found Rosana and Aldrin guilty beyond reasonable doubt of the crime charged and sentenced each to suffer the penalty of imprisonment of twelve (12) years and one (1) day and a fine of PhP 300,000.[7]

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[6] *Id.* at 92-94.

[7] *Id.* at 56.

The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is rendered as follows:

a) In Criminal Case No. MC-05-8917-D accused **ROSANA ASIATICO *y* STA. MARIA** is hereby found **guilty beyond reasonable doubt** of unlawfully possessing 0.05 grams of *shabu* in violation of Section 11, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY and to pay a fine of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.**

b) In Criminal Case No. MC-05-8918-D accused **ALDRIN ESTRELLA *y* STA. MARIA** is hereby found **guilty beyond reasonable doubt** of unlawfully possessing two (2) heat-sealed transparent plastic sachets each containing 0.05 grams of *shabu* in violation of Section 11, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY and to pay a fine of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.**

Further, let the physical evidence subject matter of this case be confiscated and forfeited in favor of the Government and the same be turned over to PDEA for proper disposition.

SO ORDERED.[8]

Only Rosana appealed.

On August 31, 2010, the CA sustained the judgment of conviction by the RTC, ruling that the prosecution sufficiently established the elements of illegal possession of dangerous drugs, through the testimony of PO1 Angara.[9] And, contrary to Rosana's contention, the appellate court ruled that non-compliance with the procedure on the custody and disposition of confiscated or seized dangerous drugs in Sec. 21 of RA 9165 does not *ipso facto* invalidate the seizure, and will neither render her arrest illegal nor make the seized drugs inadmissible as evidence, for what is material is that the integrity and evidentiary value of the drugs seized from her were properly preserved and

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[8] *Id.*

[9] *Id.* at 95-98.

safeguarded.[10] In fine, the CA found that the prosecution has sufficiently shown the unbroken chain of custody of the *shabu* specimen confiscated from Rosana.[11]

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the March 12, 2007 Decision of the Regional Trial Court (RTC), Branch 214 of Mandaluyong City, convicting accused-appellant Rosana Asiatico *y* Sta. Maria guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165 and sentencing her to an imprisonment of twelve (12) years and one (1) day and ordering her to pay a fine of ₱300,000.00 in Criminal Case No. MC-05-8917-D, is hereby **AFFIRMED.**
>
> SO ORDERED.[12]

The CA denied Rosana's motion for reconsideration. Hence, We have this petition.

The issues raised in the instant petition are:

> I
>
> WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN FAVOR OF THE PETITIONER.
>
> II
>
> WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUG.[13]

In resolving the issues, Rosana asks Us to delve into the factual matters of the case. Settled is the rule that factual findings of the appellate court affirming those of the trial court are binding

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[10] *Id.* at 99.

[11] *Id.* at 100.

[12] *Id.* at 102.

[13] *Id.* at 19-20.

on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[14] Since Rosana failed to show any arbitrariness, palpable error or capriciousness on the findings of fact of the trial and appellate courts, these findings deserve great weight and are deemed conclusive and binding. Besides, an assiduous review of the records at hand shows that the CA did not err in affirming Rosana's conviction.

For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[15] All these elements were duly established by the prosecution. Rosana was found to have in her possession 0.05 gram of *shabu.* There was nothing in the records showing that she had authority to possess it. Jurisprudence also teaches Us that mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation.[16] Rosana also failed to present contrary evidence to rebut her possession of the *shabu*.

Moreover, the chain of custody of the seized prohibited drugs was adequately established in the instant case, as aptly pointed out by the CA:

> x x x PO1 Angara and PO1 Madlangbayan testified on the seizure of the three (3) plastic sachets from the possession of the accused-appellant and Aldrin. PO1 Madlangbayan testified that the recovered pieces of evidence were separately wrapped and marked (TSN dated October 11, 2005, p. 12).

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[14] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011; citing *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709.

[15] *Id.*

[16] *Id.*; citing *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 513.

Upon reaching their station in Mandaluyong City, PO1 Angara and PO1 Madlangbayan turned over the specimen to the investigator on duty who instructed them to mark the plastic sachets (TSN of PO1 Madlangbayan dated October 11, 2005, p. 14). The marking "RSA" was placed on the plastic sachet recovered from [Rosana] while the two (2) plastic sachets seized from Aldrin were marked with "ASE-1" and "ASE-2". Thereafter, PO1 Angara delivered the seized pieces of evidence to the Philippine National Police (PNP) Crime Laboratory, Eastern Police District Crime Laboratory Office, St. Francis Street, Mandaluyong City (Records, p. 200) where the same were subjected to laboratory examination by forensic chemist Police Senior Inspector Isidro L. Carino (Records, p. 199). And finally, the subsequent turn over thereof to the trial prosecutor (Records, p. 198) and the transfer of the custody of the subject specimen to the court *a quo* when formally offered in evidence by the prosecution (Records, p. 188).[17] x x x

Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[18] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.[19] Here, there was substantial compliance with the law and the integrity of the drugs seized from Rosana was preserved.

Hence, We affirm the assailed decision.

As to the propriety of the penalties imposed, We, however, modify them for they are not in accord with the Indeterminate Sentence Law (ISL).[20]

Sec. 11(3) of RA 9165 provides that illegal possession of less than five (5) grams of *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 (PhP 300,000) to four hundred thousand pesos (PhP 400,000).

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[17] *Rollo*, pp. 100-101.

[18] *People v. Castro*, G.R. No. 194836, June 15, 2011.

[19] *Id.*

[20] Republic Act No. 4103.

The imposed fine of PhP 300,000 is proper under the premises. As regards the imprisonment sentence, the courts *a quo* erred in imposing a straight penalty of "imprisonment of twelve (12) years and one day." Sec. 1 of the ISL mandates that, in case of a special law, the accused shall be sentenced "to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." Thus, applying the ISL to the imposable penalties under Sec. 11(3) of RA 9165, We find, under the circumstances, the penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, to be proper.[21]

WHEREFORE, the CA's August 31, 2010 Decision and January 6, 2011 Resolution in CA-G.R. CR No. 31146 are *AFFIRMED* with the *MODIFICATION* that petitioner Rosana Asiatico is sentenced to the *indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.*

SO ORDERED.

Peralta, Abad, Villarama, Jr.,[*] and *Mendoza, JJ,* concur.

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[21] See *Balarbar v. People*, G.R. No. 187483, April 14, 2010, 618 SCRA 283, 288.

[*] Additional member per Special Order No. 1076 dated September 6, 2011.

EN BANC

[A.M. No. P-10-2765. September 13, 2011]
(Formerly A.M. No. 09-11-199-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EVELYN G. ELUMBARING, Clerk of Court II, 1st Municipal Circuit Trial Court, Carmen-Sto. Tomas-Braulio E. Dujali, Davao del Norte,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; DUTY-BOUND TO PERFORM THEIR DUTIES AND RESPONSIBILITIES WITH FULL COMPLIANCE AS CUSTODIANS OF THE COURT'S FUNDS, REVENUES, RECORDS, PROPERTIES AND PREMISES.— Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the Clerks of Court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodians of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.

2. ID.; ID.; ID.; ID.; ID.; ADMINISTRATIVE CIRCULAR NO.3-2000; COMMANDS THAT ALL FIDUCIARY COLLECTIONS SHALL BE DEPOSITED IMMEDIATELY WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK; VIOLATED BY FREQUENT DELAY IN REMITTING COURT COLLECTIONS.— Elumbarings frequent delay in remitting court collections was in complete violation of Administrative Circular No. 3-2000 dated June 15, 2000 which commands that all fiduciary collections shall

be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank.

3. ID.; ID.; ID.; ID.; ID.; MANDATORY NATURE OF CIRCULARS ON DEPOSITS OF COLLECTIONS; CANNOT BE OVERRIDEN BY PROTESTATION OF GOOD FAITH.— The [c]irculars on deposits of collections are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Elumbaring liable thereto.

4. ID.; ID.; ID.; DISHONESTY; CLASSIFIED AS A GRAVE OFFENSE; PENALTY IS DISMISSAL EVEN FOR THE FIRST OFFENSE.— Under Section 22 of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.

D E C I S I O N

PER CURIAM:

This administrative matter stemmed from the financial audit of the books of accounts of the Municipal Circuit Trial Court (MCTC), Carmen-Sto. Tomas–Braulio E. Dujali, Davao Del Norte conducted by the Audit Team (Team) of the Court Management Office, Office of the Court Administrator (OCA) on November 18, 2008. The audit covered the accountability period of Clerk of Court Evelyn G. Elumbaring (Elumbaring), Clerk of Court II, from May 1985 to October 31, 2008.

The audit was prompted by the Commission on Audit's Audit Observation Memorandum dated May 25, 2007 which showed that Elumbaring has failed to submit financial reports since March 2006.[1]

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[1] *Rollo,* p. 1.

During the Team's preliminary cash count, it revealed an initial cash shortage of ₱90,719.00; thus, the Team proceeded with a more detailed examination of the books of accounts.[2]

Based on the available documents, the audit report yielded the following results:[3]

I. Cash Examination and Inventory of Accountable Forms
A. Cash Count

x x x x x x x x x

Total Cash on Hand presented ₱ 40,020.00
Less: Total Undeposited Collections ₱ 113,739.00
- SAJF (for periods June- Nov. 18, 2008) – (₱54,472.60)
- JDF (for periods August-November 18, 2008) – (₱22,051.40)
- FF (for periods November 3-18, 2008) – (₱21,000.00)
- STF (for periods June–November 18, 2008) – (₱16,000.00)
- LRF (for periods August-November 18, 2008) – (₱215.00)
Cash on Hand- for Refund to Cashbonds to parties in -
CC # 10359-08 OR# 8065563 ₱ 2,000.00
CC # 9851-05 OR # 4363475 ₱15,000.00 ₱ 17,000.00

Balance of Accountability – shortage ₱ ***90,719.00***

II. For the Clerk of Court's General Fund (COCGF), Special Allowance for the Judiciary Fund (SAJF), Judiciary Development Fund (JDF) and Mediation Fund (MF):

	COGF 01/01/96 - 11/10/03	SAJF 11/11/03 - 10/31/08	JDF 05/01/85 - 10/31/08	MF 11/01/03 – 10/31/08
Total Collections	₱164,546.50	₱ 180,760.97	₱ 933,874.88	₱ 57,000.00
Total Deposits	₱164,716.50	₱ 27,404.50	₱ 843,296.65	₱ 55,500.00
Balance	₱ (170.00)	₱ 153,356.47	₱ 90,578.23	₱ 1,500.00
Less: Deposit in Transit - 11/05/08				₱ 1,500.00
Balance of Accountability	**₱ (170.00)**	**₱ 153,356.47**	**₱ 90,578.23**	**₱ 0.00**

[2] *Id.*

[3] *Id.*

III. For the Trust Fund Deposits:

Unwithdrawn Fiduciary Fund as of October 31, 2008	₱ 886,918.00
Total Collections (Sept. 2002-Oct. 2008) –	₱ 3,363,518.00
Less: Total Withdrawals (same period) -	₱ 2,476,600.00
Unwithdrawn Fiduciary Fund as of October 31, 2008:	(₱ 886,918.00)
Adjusted Bank Balance as of October 31, 2008	801,377.55
Adjusted Bank Balance as of October 31, 2008	
LBP S/A No. 1741-1010-72	
Bank Balance as of October 31, 2008	₱ 816,102.62
Less: Unwithdrawn Interest	14,725.07
Adjusted Bank Balance as of October 31, 2008:	(₱ 801,377.55)
Balance of Accountability	***₱ 85,540.45***

IV. Delay in the remittances:

Fund	Date of Collections	Date Deposited	No. of Months of Delay
GF	December 1996-July 1998	July 1998	6 months
	September-October 1998	Nov. 1998	2 months
	December 1999-April 2000	June 2000	6 months
	May 2000- February 2001	March 2001	9 months
	Nov. 2001-December 2001	April 2002	4 months
	January 2002- March 2003	April 2003	14 months
	April 2003-November 2003	Dec. 2003	7 months
SAJ	December 2003-July 2004	August 2004	8 months
Fund	Sept. 2004-February 2005	February 2005	5 months
	September 2005-January 2006	January 2006	3 months
	June 2006	July 2006	1 month
	February 2007-April 2007	May 2007	2 months
	July 2007-October 2007	Not deposited	
	December 2007-January 2008	Not deposited	
	April 2008	Not deposited	
	June 2008-October 2008	Not deposited	
JDF	August 1991-July 1993	August 1993	22 months

	April 2000-August 2000	Dec. 2000	8 months
	Sept. 2000-February 2001	March 2001	5 months
	November-Dec. 2001	April 2002	4 months
	Jan 2002-March 2003	May 2003	15 months
	April 2003-Sept. 2003	Dec. 2003	4 months
	October 2003-July 2004	August 2004	9 months
	Sept 2007-Jan. 2008	February 2008	4 months
	August 2008-Oct. 2008	Not deposited	

The Team discovered that the computed shortages in the SAJF and JDF amounting to ₱153,356.47 and ₱90,578.23, respectively, resulted from the accumulated non-remittance of these collections. Moreover, the official cashbooks for these funds disclosed that the last remittances made by Elumbaring for SAJF and JDF were for the months of July 2008 and August 2008, respectively, and the same do not tally with the actual balance of her undeposited collections.[4]

The Team observed that Elumbaring engaged in the practice of lapping[5] collection and remittances. The JDF collections were not deposited in full. Likewise, the collections were deposited beyond the reglementary period prescribed in court-issued circulars. In fact, most of her collections were deposited only after two or three months.[6]

Moreover, the Team also discovered that Elumbaring withdrew cash bonds upon issuance of a court order, but failed to refund the same to the bondsman or accused and, instead, kept in her possession for 20 days or more. It appeared that Elumbaring did not release the same due to the bondsman's/accused's failure to either show up or produce valid identification cards. The Team, however, concluded that Elumbaring's continuous

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[4] *Id.* at 2.

[5] Lapping: a covering of a current cash shortage by deferring the deposit of funds received until a later date. (Webster Third New International Dictionary, 1986 Copyright, p. 1272)

[6] *Id.* at 2.

possession of the withdrawn bonds for a long period of time, without even redepositing the same to the court's fiduciary fund account and with no safety vault for proper safekeeping, showed that she had, at the very least, temporarily appropriated said money for personal use.[7]

In her Explanation, Elumbaring disputed the Team's findings, yet submitted machine-validated deposit slips showing that the shortages in the JDF and SAJF amounting to ₱90,578.23 and ₱153,356.47 were duly deposited on November 28, 2008.[8]

Futhermore, to restitute the computed shortages of Eighty-Five Thousand Five Hundred Forty Pesos and 45/100 (₱85,540.45) in the Fiduciary Fund, Elumbaring deposited the amounts of ₱21,000.00 and ₱50,000.00, on November 19 and 28, 2008, respectively. Thus, only the amount of ₱14,540.45 remained in her balance of accountability.[9]

In a Memorandum dated February 2, 2009, Elumbaring was directed to: (1) explain why no administrative charges shall be filed against her for her failure to remit the JDF and SAJF collections in full and within the reglementary period; (2) submit valid documents to support the withdrawals of the unauthorized withdrawals amounting to ₱995,200,00, or otherwise restitute the same; and (3) restitute the balance of her accountability in the Court's Fiduciary Fund amounting to ₱14,540.45.

In her Compliance, Elumbaring admitted that she failed to remit her judiciary collections in full within the reglementary period and acknowledged that she had no legitimate excuse for such failure. She, however, claimed that there is no Land Bank Branch in Carmen, Davao Del Norte; the nearest LBP is located in Panabo City, which is 6 kms or approximately 30 minutes away from MCTC Carmen, Davao Del Norte.

Elumbaring likewise argued that she does not know how to operate a computer and relied on the court personnel to do the

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[7] *Id.* at 15.

[8] *Id.* at 27.

[9] *Id.* at 28.

financial reports. She also claimed that it was not stated in her job description as clerk of court that she will act as the "financial accountable officer." She said that if she had known earlier, she would not have applied for the position as she knew she was not suited for that kind of work.[10]

Thus, in a Memorandum to the Chief Justice, dated November 11, 2009, the OCA found Elumbaring guilty of Dishonesty and Malversation of Public Funds for her failure to deposit her collections within the prescribed period and, accordingly, recommended her dismissal from the service.

The OCA confirmed that Elumbaring already submitted valid documents to support the unauthorized withdrawals of cash bonds amounting to ₱995,200,00. Likewise, the aggregate amount of ₱329,475.15 consisting of: ₱85,540.45 for the Fiduciary Fund, ₱153,356.47 for the SAJF, and ₱90,578.23 for JDF have already been deposited on November 19 and 28, 2008, respectively. On April 6, 2009, she deposited the shortage of ₱14,540.45 to the Fiduciary Fund.[11] In sum, the OCA manifested that Elumbaring was able to restitute the whole amount of her accountabilities in the court collections.[12]

On January 27, 2010, as recommended by the OCA, the Court resolved to:

(1) REDOCKET this matter as a regular administrative case against Evelyn G. Elumbaring, Clerk of Court II, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, for gross dishonesty and malversation of public funds;

(2) REQUIRE Clerk of Court Elumbaring to MANIFEST whether she is willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, within ten (10) days from notice; and

(3) DIRECT Hon. Evalyn Arellano-Morales, Presiding Judge, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, to:

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[10] *Id.* at 5.

[11] *Id.* at 29.

[12] *Id.* at 5.

(a) DESIGNATE a competent and honest Officer-in-Charge to handle effectively the financial transactions of the court to avoid repetition of dissipation of the court funds;

(b) STUDY and IMPLEMENT an effective internal control to safeguard and handle effectively the financial transaction of the court;

(c) MONITOR all financial transactions of the court in strict adherence to the issuances of the Supreme Court in the proper handling of all judiciary funds to avoid the incurrence of infractions committed by Clerk of Court Elumbaring.

In her Manifestation dated March 30, 2010, respondent Elumbaring admitted that she committed the irregularities discovered during the audit and asked forgiveness from the Court. She claimed that she was able to restitute the whole amount. She then begs the Court for leniency and compassionate justice, and that she be allowed to retire or resign instead.

On July 21, 2010, the Court considered the instant complaint submitted for resolution on the basis of the pleadings/records already filed as required in the Resolution dated January 27, 2010.

RULING

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof.[13] It is the Clerks of Court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodians of the court's funds and revenues, records, properties and premises.[14] They are the

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[13] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan*, 465 Phil. 24, 34 (2004).

[14] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408 and *Office of the Court Administrator v. Galo*, A.M. No. P-93-989, September 21, 1999, 314 SCRA 705.

chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties make them liable for any loss, shortage, destruction or impairment of such funds and property.[15]

There is no question as to Elumbaring's guilt as she herself admitted her transgressions. The records speak for itself, as it was clearly shown that: (1) she had been remiss in the submission of her financial reports since March 2006 which violated OCA Circular No. 54-2004 and OCA No. 50-95; (2) she failed to immediately remit court collections pertaining to SAJF and JDF, amounting to ₱153,356.47 and ₱90,578.23, respectively, which resulted to shortages and untallied court collections; (3) she had repeatedly engaged in the practice of *lapping* to cover up the misuse of court collections; (4) she failed to deposit the court collections within the reglementary period as most of her collections were deposited only after two or three months; and (4) she failed to immediately refund the cash bonds to the bondsman/accused even after its withdrawal, or deposit the same to the Fiduciary Fund.

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

II. Procedural Guidelines

A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures.

x x x x x x x x x

[15] *OCA v. Caballero*, A.M. No. P-05-2064, March 2, 2010, 614 SCRA 21, 38.

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

x x x **x x x** **x x x**

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

x x x x x x x x x

B. General Fund (GF)

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

x x x (Emphasis ours)

These Circulars are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Elumbaring liable thereto.

We will reiterate anew that it is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government

depositories, the various funds they have collected because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

Likewise, the practice of respondent in offsetting her collection is not allowed under accounting and auditing rules and regulations.[16] By failing to properly remit the cash collections constituting public funds, she violated the trust reposed in her as disbursement officer of the Judiciary. Likewise, her claim that she did not know that she is the accountable officer for the court collections does not convince Us. Clerks of Court are presumed to know their duty to immediately deposit with the authorized government depositories the various funds they receive, for they are not supposed to keep funds in their personal possession. Her failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds.[17]

Under Section 22 of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.[18]

Time and time again, this Court has stressed that those charged with the dispensation of justice – from the presiding judge to the lowliest clerk – are circumscribed with a heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above

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[16] *Soria v. Oliveros*, 497 Phil. 709, 724 (2005).

[17] See *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC, Tacloban City*, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50, 61.

[18] *Id.*

all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[19] Thus, this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities.

WHEREFORE, respondent *EVELYN G. ELUMBARING*, Clerk of Court II, MCTC, Carmen-Sto. Tomas-Braulio E. Dujali, Davao Del Norte, is hereby found *GUILTY* of *DISHONESTY.* She is ordered *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

SO ORDERED.

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

del Castillo and *Reyes, JJ.,* are on leave.

Perez, J., no part. Acted as Court Administrator.

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[19] *In Re: Report of COA on the Shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City*, 348 Phil. 1, 9 (1998); *In Re: Delayed Remittance of Collections of Odtuhan,* 445 Phil. 220, 224 (2003); *Office of the Court Administrator v. Galo,* 373 Phil. 483, 490 (1999); *Cosca v. Palaypayon,* A.M. No. MTJ-92-721, September 30, 1994, 273 SCRA 249, 269.

THIRD DIVISION

[A.M. No. P-11-2970. September 14, 2011]
(Formerly OCA I.P.I. No. 10-3568-P)

DOLORES C. SELIGER, *complainant, vs.* **ALMA P. LICAY, Clerk of Court, Municipal Circuit Trial Court, San Juan, La Union,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; RULE LAID DOWN IN SECTION 10(1) OF RULE 141 OF THE RULES OF COURT, VIOLATED IN CASE AT BAR.— The Court agrees with the OCA that respondent violated the rule laid down in Section 10 (l) of Rule 141 which provides: In addition to the fees hereinabove fixed, the amount of One Thousand (₱1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand (₱1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court-authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the clerk of court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit. While it is true that Section 10 (l) of Rule 141 allows the deposit of ₱1,000.00 pesos to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoenas and other court processes to be issued relative to the trial of the

case, the rule requires said court personnel to first make an estimate of the travel expenses before they can collect the said amount, and, thereafter, submit before the court, a statement of liquidation.

2. ID.; ID.; ID.; ID.; ID.; SUPREME COURT CIRCULAR NOS. 26-27 WHICH MANDATES THE ISSUANCE OF OFFICIAL RECEIPTS FOR PAYMENTS RECEIVED, VIOLATED IN CASE AT BAR.— When respondent decided to issue an acknowledgement receipt instead of an official receipt, she violated Supreme Court Circular Nos. 26-27 dated May 5, 1997 which mandates the issuance of official receipts for payments received. The said circular states: Section 113. Issuance of official receipt – for proper accounting and control of revenues, no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. This receipt may be in the form of stamps x x x or officially numbered receipts, subject to proper custody and accountability. Her explanation that the acknowledgment receipt was sufficient since the process server fee she collected was not part of the JDF, SAJ or subjected to any fund allocation was not a valid justification for her non-compliance with the court circular. She violated the trust and confidence reposed in her as cashier and disbursement officer of the court. The Court will not tolerate any conduct, act or omission by any court employee violating the norm of public accountability and diminishing or tending to diminish the faith of the people in the Judiciary.

3. ID.; ID.; ID.; LESS GRAVE OFFENSES; SIMPLE MISCONDUCT; PENALTY IN CASE AT BAR.— Under Section 22, Rule XIV of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, simple misconduct is classified as less grave offense with a penalty ranging from suspension for one (1) month and one (1) day to six (6) months, for the first offense, to dismissal, for the second offense. Considering that this is the first infraction of respondent, the Court deems it proper to reduce the penalty.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from an affidavit-complaint filed by Dolores C. Seliger *(complainant)* on December 13, 2010 with the Office of the Court Administrator *(OCA)* charging Alma P. Licay *(respondent)*, Clerk of Court, Municipal Circuit Trial Court, San Juan, La Union *(MCTC)*, with misconduct, irregularity in the performance of duty, violation of Republic Act *(R.A.)* No. 3019 otherwise known as The Anti-Graft and Corrupt Practices Act, fraud, and illegal exaction.

In her affidavit-complaint,[1] complainant alleged that respondent was the wife of Venecio A. Licay *(Venecio)*, the defendant in Civil Case No. 510 for collection of sum of money with damages, which she had filed in court where respondent worked as Clerk of Court; that respondent collected and received from her the amount of One Thousand (₱1,000.00) Pesos purportedly as process server fee; and that instead of issuing an official receipt, respondent issued an acknowledgment receipt.

She further averred that respondent slept on her job and deliberately delayed the service of summons to Venecio.

In its 1st Indorsement[2] dated October 5, 2009, the OCA directed the respondent to comment on the affidavit-complaint.

In her Comment,[3] respondent admitted collecting the said amount and reasoned out that Section 10 of Administrative Circular No. 35-2004, as amended, provides for the payment of ₱1,000.00 to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoenas and other court processes that would be issued relative to the trial of the case. She further explained that since the process server fee did not fall under the Judiciary

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[1] *Rollo*, pp. 2-3.

[2] *Id*. at 14.

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

Development Fund *(JDF)* or the Special Allowance for the Judiciary *(SAJ)* or subject to any fund allocation, the issuance of an acknowledgment receipt was sufficient.

Respondent claimed that she had no corrupt motive in issuing the acknowledgment receipt and insisted that she did not appropriate the said amount for her personal benefit.

Furthermore, respondent asserted that she had no wrongful intent to delay the proceedings relative to Civil Case No. 510. While it was part of her duty to issue the service of summons, the actual service of summons was the responsibility of the process server.

The OCA, in its Report dated May 17, 2011, found respondent guilty of simple misconduct and recommended that the administrative complaint be docketed as a regular administrative matter and that she be fined in the amount of ₱1,000.00, with a warning that a repetition of the same offense would be dealt with more severely.

In the same report, the OCA stated that complainant failed to substantiate her charges relating to corruption and to the alleged deliberate delay in the service of summons to Venecio.

After careful consideration, the Court adopts the findings and recommendations of the OCA.

The Court agrees with the OCA that respondent violated the rule laid down in Section 10 (l) of Rule 141 which provides:

> In addition to the fees hereinabove fixed, the amount of One Thousand (₱1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand (₱1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court-authorized person shall submit to the court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the clerk of court shall release the money to said sheriff

or process server. After service, a statement of liquidation shall be submitted to the court for approval. After rendition of judgment by the court, any excess from the deposit shall be returned to the party who made the deposit.

While it is true that Section 10 (l) of Rule 141 allows the deposit of ₱1,000.00 pesos to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoenas and other court processes to be issued relative to the trial of the case, the rule requires said court personnel to first make an estimate of the travel expenses before they can collect the said amount, and, thereafter, submit before the court, a statement of liquidation.

As Clerk of Court of MCTC, respondent performs a very delicate function.[4] She acts as cashier and disbursement officer of the court, and is entrusted to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same.[5] Corollary, she is expected to possess a high degree of discipline and efficiency in the performance of these functions.[6]

When respondent decided to issue an acknowledgement receipt instead of an official receipt, she violated Supreme Court Circular Nos. 26-27 dated May 5, 1997 which mandates the issuance of official receipts for payments received. The said circular states:

Section 113. Issuance of official receipt – for proper accounting and control of revenues, no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. This receipt may be in the form of stamps x x x or officially numbered receipts, subject to proper custody and accountability.

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[4] *Collection of fee for transportation allowance without proper receipt by Clerk of Court Marciana Apas-Pilapil, Municipal Circuit Trial Court, Liloan, Cebu, in Civil Case No. 605-R,* A.M. No. P-08-2434, March 3, 2008, 547 SCRA 303, 308.

[5] *Office of the Court Administrator v. Pacheco,* A.M. No. P-02-1625, August 4, 2010, 626 SCRA 686, 697.

[6] *Neri v. Hurtado,* A.M. No. RTJ-00-1584, February 18, 2004, 423 SCRA 200, 204.

Her explanation that the acknowledgment receipt was sufficient since the process server fee she collected was not part of the JDF, SAJ or subjected to any fund allocation was not a valid justification for her non-compliance with the court circular. She violated the trust and confidence reposed in her as cashier and disbursement officer of the court. The Court will not tolerate any conduct, act or omission by any court employee violating the norm of public accountability and diminishing or tending to diminish the faith of the people in the Judiciary.[7]

A public office is a public trust and all public officers and employees must at all times be accountable to the people, and this Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the judiciary.[8]

Under Section 22, Rule XIV of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, simple misconduct is classified as less grave offense with a penalty ranging from suspension for one (1) month and one (1) day to six (6) months, for the first offense, to dismissal, for the second offense. Considering that this is the first infraction of respondent, the Court deems it proper to reduce the penalty.

WHEREFORE, the Court finds respondent Alma P. Licay, Clerk of Court, Municipal Circuit Trial Court, San Juan, La Union, *GUILTY* of simple misconduct and imposes on her the penalty of *FINE* in the amount of One Thousand (₱1,000.00) Pesos with a *STERN WARNING* that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.,* concur.

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[7] *Rebong v. Tengco*, A.M. No. P-07-2338, April 7, 2010, 617 SCRA 460, 471.

[8] *Lirios v. Oliveros*, 323 Phil. 318, 323 (1996).

[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[A.M. No. P-11-2977. September 14, 2011]
(Formerly OCA I.P.I. No. 09-3254-P)

COL. MAURICIO A. SANTIAGO, JR. (Ret.), *complainant, vs.* **ARTHUR M. CAMANGYAN, Process Server, Regional Trial Court, Branch 29, Toledo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; PROCESS SERVERS; IMPORTANCE OF THE ROLE OF A PROCESS SERVER; EXPOUNDED.— As a process server, it is the duty of respondent to ensure that court notices are promptly served upon the parties. Given the nature of his duty, respondent must perform his assigned tasks with dedication, efficiency and utmost responsibility. In the case of *Alvarez v. Bulao*, the Court expounded on the importance of the role of a process server, thus: The duties of process servers are vital to the machinery of the justice system. Utmost care is required in the performance of their functions. They must see to it that summonses, writs and other court processes are duly and expeditiously served upon the parties, consistent with the constitutional mandate of speedy and fair dispensation of justice. To be sure, the wheels of justice will not run without the cooperation of court personnel composed of, among others, process servers. Thus, there is no room for any lackadaisical attitude that would show inefficiency and incompetence.

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO SERVE NOTICE TO COMPLAINANT WAS CONSIDERED NOT DELIBERATE AND MALICIOUS.— In the present case, respondent admitted that he failed to serve the Notice of Pre-Trial Conference and Pre-trial to complainant. He explained, however, that he was instructed by Judge Estrera not to serve the notice to complainant anymore because the latter was already informed through their phone conversation of the scheduled hearing and that his presence in the office was indispensable in view of the judicial

audit that was being conducted by the Supreme Court personnel. With the Judge himself directing respondent not to serve the notice anymore, he could not do otherwise. To disregard the instruction of the Judge might be considered as insubordination. Under the circumstances, the Court considers his failure as not deliberate and malicious.

D E C I S I O N

MENDOZA, *J.*:

This administrative case arose from a letter-complaint filed by Col. Mauricio A. Santiago, Jr. (Ret.) *(complainant)* on September 17, 2009 with the Office of the Court Administrator *(OCA)* charging Arthur M. Camangyan *(respondent)*, Process Server, Regional Trial Court, Branch 29, Toledo City *(RTC)*, with neglect of duty relative to Civil Case No. T-2083.

In his letter,[1] complainant alleged that he was the respondent in the aforesaid case for Declaration of Nullity of Marriage; that Judge Cesar O. Estrera *(Judge Estrera)*, RTC Presiding Judge, issued a Notice setting the pre-trial conference and pre-trial of the said case on August 13, 2009 at 2:00 o'clock in the afternoon; that respondent intentionally, deliberately and with malicious intent did not serve him a copy of the notice but his wife and her counsel were duly furnished a copy thereof; that had he not telephoned Judge Estrera on August 7, 2009 at around 2:30 o'clock in the afternoon, he would not have known of the scheduled pre-conference and pre-trial; that justice would have been denied him because of the deliberate, malicious and corrupt act of respondent; and that respondent might tamper or steal the evidence he already submitted to the court in support of his defense.

In its 1st Indorsement[2] dated October 5, 2009, the OCA directed respondent to comment on the letter-complaint.

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[1] *Rollo*, pp. 2-3.

[2] *Id.* at 11.

In his counter-affidavit,[3] respondent denied the allegations for being speculative, fallacious and baseless. He asserted that the complaint was an overreaction and an unnecessary display of temper and superiority. Respondent claimed that, most of the time, complainant would demonstrate arrogance as manifested in his Answer to the Complaint in Civil Case No. T-2083 and when complainant showed him his firearm after he served the summons. Respondent averred that his failure to serve a copy of the notice to complainant was not deliberate and malicious. He explained that he was supposed to personally serve a copy of the notice the following day but he was told by Judge Estrera that there was no need to serve the notice since he already informed the complainant of the scheduled hearing. He further averred that his presence in the office, at that time, was necessary because the Supreme Court was conducting a judicial audit in connection with the retirement of Judge Estrera.

As to the allegations of corruption, tampering and stealing of evidence, respondent countered that these were unsubstantiated, outrageous and a clear manifestation of distrust in the court. He claimed that after complainant's Answer was received by the court on April 14, 2009, it was attached to the records of the case and there was no way for him to steal or tamper it.

In its Report[4] dated May 2, 2011, the OCA opined that respondent was guilty of simple neglect of duty and recommended that he be fined in the amount of One Thousand Pesos (₱1,000.00) with a stern warning that a repetition of the same or similar act in the future will be dealt with more severely.

The Court opts to give the respondent the benefit of the doubt and deems that no penalty be imposed upon him.

As a process server, it is the duty of respondent to ensure that court notices are promptly served upon the parties. Given the nature of his duty, respondent must perform his assigned

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[3] *Id.* at 13-16.

[4] *Id.* at 30-32.

tasks with dedication, efficiency and utmost responsibility.[5] In the case of *Alvarez v. Bulao*,[6] the Court expounded on the importance of the role of a process server, thus:

> The duties of process servers are vital to the machinery of the justice system. Utmost care is required in the performance of their functions. They must see to it that summonses, writs and other court processes are duly and expeditiously served upon the parties, consistent with the constitutional mandate of speedy and fair dispensation of justice. To be sure, the wheels of justice will not run without the cooperation of court personnel composed of, among others, process servers. Thus, there is no room for any lackadaisical attitude that would show inefficiency and incompetence.

In the present case, respondent admitted that he failed to serve the Notice of Pre-Trial Conference and Pre-trial to complainant. He explained, however, that he was instructed by Judge Estrera not to serve the notice to complainant anymore because the latter was already informed through their phone conversation of the scheduled hearing and that his presence in the office was indispensable in view of the judicial audit that was being conducted by the Supreme Court personnel. With the Judge himself directing respondent not to serve the notice anymore, he could not do otherwise. To disregard the instruction of the Judge might be considered as insubordination.

Under the circumstances, the Court considers his failure as not deliberate and malicious.

Nevertheless, respondent is reminded to perform his duty diligently for the orderly administration of justice. There is a need to serve the notice on the complainant not only to make the act official but also to enable him to make the proper return to reflect what transpired. The possibility that the complainant might deny that he had been so informed by the Judge is not remote. Next time, the Court will not be as tolerant and will not

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[5] *Carreon v. Ortega*, A.M. No. P-05-1979, November 27, 2006, 508 SCRA 136, 144.

[6] 512 Phil. 26, 32 (2005).

hesitate to impose the proper sanctions should he neglect to perform his duties in the future.

WHEREFORE, respondent Arthur M. Camangyan, Process Server, Regional Trial Court, Branch 29, Toledo City, is hereby *ADMONISHED* for his failure to perform his duty with a *WARNING* that a repetition of the same or similar act in the future would be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 152500. September 14, 2011]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **SANDIGANBAYAN (Second Division), TOURIST DUTY FREE SHOPS, INC., BANK OF AMERICA and RIZAL COMMERCIAL BANKING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELUCIDATED.— *Res judicata* exists when the following elements are present: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and

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[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

second actions, identity of parties, subject matter, and cause of action. Obviously, the third requisite is wanting. *Res judicata* or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.

2. ID.; ID.; ACTIONS; DISMISSAL OF ACTIONS; DISMISSAL WITHOUT PREJUDICE; INDICATES THE ABSENCE OF A DECISION ON THE MERITS AND LEAVES THE PARTIES FREE TO LITIGATE THE MATTER IN A SUBSEQUENT ACTION AS THOUGH THE DISMISSED ACTION HAD NOT BEEN COMMENCED.— As the dismissal of G.R. No. 74302 was without prejudice, it was not a judgment on the merits. A judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point. The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced. In other words, the discontinuance of a case not on the merits does not bar another action on the same subject matter. TDFSI thus re-filed the case to the Sandiganbayan in a petition for injunction docketed as Civil Case No. 0142 assailing anew the validity of the Sequestration and Freeze Orders.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE FINDINGS OF FACT AND OPINION OF A COURT WHEN ISSUING OR DENYING THE WRIT OF PRELIMINARY INJUNCTION ARE INTERLOCUTORY IN NATURE.— To be sure, the provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident. The findings of fact and opinion of a court when issuing (or denying) the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated. Thus, the May 27, 1986 interlocutory order of the Court died with the dismissal of the main case in G.R. No. 74302. The right of TDFSI to re-file the main case carries with it its right to apply for the provisional remedies available under the Rules of Court.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ESTABLISHED IN CASE AT BAR.— We hold that the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the questioned preliminary injunctive writ. The grounds relied upon by the Sandiganbayan are not sufficient to warrant the issuance of said writ. The documentary evidence listed above merely show that TDFSI is a corporation, that a sequestration order signed by a PCGG Commissioner was issued against it, and that no action for recovery of ill-gotten wealth was filed by PCGG against TDFSI at the time the inquiry was made.

5. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES FOR THE ISSUANCE OF AN INJUNCTIVE RELIEF; ABSENT IN CASE AT BAR.— [T]wo (2) requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage. Otherwise stated, before a writ of preliminary injunction may be issued, there must be a clear showing that there exists a right to be protected and that the acts against which the writ is to be directed are violative of established right. Without making a definitive conclusion as to the validity of the Sequestration and Freeze Orders being the main issue in Civil Case No. 0142 which is yet to be decided by the Sandiganbayan, we conclude that the pieces of evidence enumerated above do not, in any way, show that TDFSI has a right to be protected and that the implementation of the Sequestration and Freeze Orders is violative of its rights.

6. POLITICAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); EXTENT OF PCGG'S POWER TO IMPLEMENT SEQUESTRATION AND FREEZE ORDERS; NATURE AND PURPOSE OF SEQUESTRATION AND FREEZE ORDERS, EXPLAINED.— In *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG,* the Court has already described the nature and purpose of Sequestration and Freeze Orders and the extent of the PCGG's power to implement the same, and we quote: By the clear terms of the law, the power of the PCGG to sequester property claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said

property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities" – for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same – until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. x x x A "freeze order" [on the other hand] prohibits the person having possession or control of property alleged to constitute "ill-gotten wealth" from transferring, conveying, encumbering or otherwise depleting or concealing such property, or from assisting or taking part in its transfer, encumbrance, concealment, or dissipation. In other words, it commands the possessor to hold the property and conserve it subject to the orders and disposition of the authority decreeing such freezing. In this sense, it is akin to a garnishment by which the possessor or ostensible owner of property is enjoined not to deliver, transfer, or otherwise dispose of any effects or credits in his possession or control, and thus becomes in a sense an involuntary depositary thereof. Pending the determination of whether or not the subject properties are "ill-gotten," there is an obvious and imperative need for preliminary, provisional measures to prevent concealment, disappearance, destruction, dissipation, or loss of the assets and properties subject of the suits, or to restrain or foil acts that may render moot and academic, or effectively hamper, delay or negate efforts to recover the same. The implementation of these orders should, therefore, not be restrained unless there is a clear ground to do so. More so in this case, considering that the Sandiganbayan's conclusions are contrary to established jurisprudence.

7. ID.; ID.; ID.; SEQUESTRATION AND FREEZE ORDERS SIGNED BY ONLY ONE COMMISSIONER AND ISSUED PRIOR TO THE ADOPTION OF THE PCGG RULES AND REGULATIONS CANNOT BE INVALIDATED.— It has been

settled in a number of cases that Sequestration and Freeze Orders signed by only one Commissioner and issued prior to the adoption of the PCGG Rules and Regulations cannot be invalidated. The PCGG Rules and Regulations were promulgated on April 11, 1986. Section 3 thereof requires that the sequestration order be issued upon the authority of at least two Commissioners. The questioned Sequestration Order was, however, issued on March 11, 1986 prior to the promulgation of the PCGG Rules and Regulations. Consequently, we cannot reasonably expect the PCGG to abide by said rules which were nonexistent at the time the subject orders were issued by then Commissioner Mary Concepcion Bautista.

8. ID.; ID.; ID.; PROPERTY OWNERS HAVE THE "OPPORTUNITY TO CONTEST" ACTIONS OR ORDERS OF SEQUESTRATION ISSUED BY THE PCGG; CASE AT BAR.— Among the rights explicitly acknowledged in *Bataan Shipyard & Engineering Co., Inc. v. PCGG* is that the owners of properties have the "opportunity to contest" actions or orders of sequestration issued by the PCGG. That "opportunity to contest" includes resort to the courts as in Civil Case No. 0142. In that case, which is the main case where the questioned preliminary injunctive writ is an incident, the parties' respective evidence are presented for the final determination of the validity of the questioned Sequestration and Freeze Orders. The Court is yet to determine whether the requisites for the valid issuance of said Orders are present.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Agcaoili & Associates for Bank of America.
Siguion Reyna Montecillo & Ongsiako for RCBC.

D E C I S I O N

PERALTA, *J.*:

Assailed in this Petition for *Certiorari* and Prohibition with Urgent Prayer for Temporary Restraining Order and/or Writ of

Preliminary Injunction[1] under Rule 65 of the Rules of Court filed by the Presidential Commission on Good Government (PCGG) are the following Orders of the Sandiganbayan: (1) Resolution[2] dated July 26, 2001 granting Tourist Duty Free Shops, Inc.'s (TDFSI's) motion for the issuance of a writ of preliminary mandatory and prohibitory injunction against the implementation of the Sequestration Order dated March 11, 1986 upon the posting of a bond in the amount of ₱100,000.00; (2) The Writ of Preliminary Mandatory Injunction and Preliminary Injunction[3] dated August 3, 2001;[4] (3) Resolution[5] dated October 5, 2001 holding in abeyance the resolution of PCGG's motion for reconsideration and suspending the implementation of the writ of preliminary mandatory and prohibitory injunction; (4) Resolution[6] dated January 23, 2002 denying PCGG's motion for reconsideration and omnibus motion and increasing the amount of the injunction bond to ₱1million; (5) Order[7] dated January 23, 2002 setting the pre-trial and trial of the case; and (6) Order dated January 24, 2002 resetting the trial.[8]

The facts of the case are as follows:

By virtue of Presidential Decree (P.D.) No. 1193,[9] as amended by P.D. No. 1394,[10] then President Ferdinand E. Marcos

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[1] *Rollo*, pp. 2-140.

[2] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Edilberto G. Sandoval and Raoul V. Victorino, concurring; *rollo*, pp. 142-147.

[3] Also referred to as preliminary mandatory and prohibitory injunction.

[4] *Rollo*, pp. 148-149.

[5] *Id.* at 150-151.

[6] *Id.* at 152-165.

[7] *Id.* at 166.

[8] *Id.* at 167.

[9] Authorizing the Tourist Duty Free Shops, Inc. to Establish and Operate Duty and Tax Free Stores and Requiring it to Pay Franchise Tax in Lieu of All Other Taxes; records, vol. I, pp. 10-12.

[10] Amending Presidential Decree No. 1193 by Authorizing the Tourist

authorized TDFSI to establish, operate and maintain duty and tax free stores at all international airports and seaports, as well as at selected hotels, tourist resorts, and commercial or trading centers throughout the country.

On March 11, 1986, the PCGG issued to TDFSI a Sequestration Order[11] signed by then Commissioner Mary Concepcion Bautista which reads as follows:

March 11, 1986

The Manager
Tourist Duty Free Shops, Inc.
Food Terminal, Inc. Compound
Taguig, Metro Manila

Sir:

The Presidential Commission on Good Government, by authority of the President of the Philippines, has decided to sequester the facilities, assets and funds of Tourist Duty Free Shops, Inc. in order to prevent any dispositions thereof to the prejudice of the people. You are hereby ordered to refrain from:

1. entering into new contracts or transactions;
2. making any disbursements of funds of the corporation, except in the ordinary course of business and for the payment of salaries of legitimate employees which are due; and
3. withdrawing funds from the accounts of the corporation, or its branches or subsidiaries.

Please preserve all the records of the corporation, and do not remove or allow the removal of any documents or other records.

Very truly yours,

(SGD.) MARY CONCEPCION BAUTISTA
Commissioner

Duty Free Shops, Inc. to Establish Only the Customs Bonded Warehouse, Exempting it From the Duties and Taxes Imposed by Presidential Decrees Nos. 1352 and 1352-A, and for Other Purposes; *id.* at 13-14.

[11] Records, Vol. I, p. 83.

On March 11, 1986, the PCGG issued a Freeze Order[12] directing the Manager of Rizal Commercial Banking Corporation (RCBC) to freeze any withdrawals, transfers or remittances from the funds of TDFSI in the said bank.

On May 2, 1986, TDFSI filed before the Court a Petition for *Certiorari*, Prohibition and Injunction with Preliminary Injunction and/or Restraining Order[13] to annul and stop the enforcement of the Sequestration Order. The case was docketed as G.R. No. 74302.

On May 27, 1986, the Court issued a Resolution[14] in favor of PCGG and against TDFSI, the dispositive portion of which reads:

Accordingly, the Court Resolved as follows:

(1) The sequestration order of all the assets of petitioner stands and, therefore, no temporary restraining order will issue against the same;

(2) The respondent Commission's order authorizing the Philippine Tourism Authority to conduct an audit and inventory of petitioner's goods likewise stands and no temporary restraining order will issue against the same, provided that petitioner Company will be entitled to a sufficient number of representatives as it may designate to be present to protect its interest in the taking of such audit and inventory;

(3) After the completion of such audit and inventory by the Philippine Tourism Authority within the period of five (5) days from notice hereof, petitioner TDFSI shall be permitted to undertake the following activities under the supervision of respondent Commission's authorized representatives: (a) to dispose and sell all its existing stocks in the ordinary course of business at such reasonable number of outlets as may be determined by respondent Commission. All proceeds of such sales shall at the end of the day be turned over to the respondent Commission's duly-authorized representatives. The respondent Commission in turn shall hold the same in trust and deposit such proceeds in special trust account so designated; and (b) to pay

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[12] *Rollo*, Vol. I, (G.R. No. 74302), p. 37.

[13] Records, Vol. I, pp. 421-453.

[14] *Id.* at 416-420.

by means of checks issued by and countersigned by the respondent Commission's fiscal agent, or comptroller or duly-authorized representatives so designated, ordinary operational expenses such as payrolls, rentals, utilities, *etc.*

It is understood that no new contracts or transactions may be entered into by petitioner, nor shall any payment for accounts of, suppliers be made, except with the approval of the Commission.

Finally, the Court directs the Clerk of Court to deliver the three (3) keys deposited with the Court to respondent Commission's duly-authorized representative x x x[15]

Upon the issuance of Executive Order No. 14[16] and on petition[17] of TDFSI, the Court issued a Resolution[18] dated October 8, 1991 dismissing the petition in G.R. No. 74302 without prejudice to the filing of a case before the Sandiganbayan. The resolution had become final and executory on October 16, 1991 and was recorded in the Book of Entries of Judgments.[19]

Meanwhile, on July 21, 1987, the Republic of the Philippines, represented by the PCGG, filed a Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages[20] against Bienvenido Tantoco, Bienvenido R. Tantoco, Jr., Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda, Dominador Santiago, Ferdinand E. Marcos and Imelda R. Marcos. The case was docketed as Civil Case No. 0008.

On December 18, 1991, following the dismissal of G.R. No. 74302, TDFSI filed a Complaint for Injunction and Specific Performance with Prayer for Issuance of Restraining Order and/

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[15] *Id.* at 516-517.

[16] Defining the Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business associates, Dummies, Agents and Nominees.

[17] *Rollo*, Vol. II, (G.R. No. 74302), pp. 794-796.

[18] *Id.* at 797.

[19] *Id.* at 803.

[20] Records, Vol. II, pp. 985-1112.

or Preliminary Mandatory and Prohibitory Injunction[21] against the PCGG, Bank of America (BA) and RCBC before the Sandiganbayan. The case was docketed as Civil Case No. 0142.[22]

In its Complaint, TDFSI assailed the Sequestration Order, having been signed by only one of the five PCGG Commissioners and having been issued without the requisite investigation. Considering that no action had been filed for the recovery of TDFSI's assets, funds and properties, and no list of the sequestered assets had been made, TDFSI claimed that the Sequestration Order was deemed automatically lifted.[23] It also questioned PCGG's act of preventing RCBC and BA from allowing TDFSI to withdraw from its accounts without the approval of the PCGG. In support of the prayer for the issuance of a restraining order and/or a writ of preliminary mandatory and prohibitory injunction, TDFSI claimed that the continued refusal of RCBC and BA to allow withdrawal of its funds without PCGG's approval has prevented TDFSI from investing its own funds in money-making ventures and, unless remedied upon, stands to suffer irreparable damage in the form of lost opportunities.[24]

On June 15, 1992, the Sandiganbayan issued a Resolution[25] dismissing Civil Case No. 0142 without prejudice to the re-filing of the proper motions in Civil Case No. 0008. Civil Case No. 0142 was dismissed allegedly because the issues are intimately related with those raised in Civil Case No. 0008 such that the resolution of the issues raised in the former might render inutile or nugatory any future determination and resolution of the merits of the causes of action in the latter case. TDFSI's motion for reconsideration was likewise denied on September 23, 1992.[26]

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[21] Records, Vol. I, pp. 1-7.

[22] Also referred to in the record of the case as SB No. 0142.

[23] Records, Vol. I, pp. 1-4.

[24] *Id.* at 5.

[25] Penned by Associate Justice Romeo M. Escareal, with Associate Justices Jose S. Balajadia and Nathaniel M. Gorospe, concurring; *id.* at 223-231.

[26] Records, Vol. I, pp. 297-311.

When elevated to the Court in G.R. No. 107395, we reversed and set aside the above resolutions on January 26, 2000.[27] The Court held that the elements of *litis pendentia* were absent. It explained that there is no identity of parties and causes of action. It also concluded that any decision that may be rendered in any of the two cases cannot constitute *res judicata* on the other.

Consequently, Civil Case No. 0142 was remanded for further proceedings. On July 26, 2001, the Sandiganbayan issued the first assailed Resolution[28] granting TDFSI's motion for the issuance of a writ of preliminary mandatory and prohibitory injunction. The dispositive portion of the resolution is quoted below for easy reference:

> ACCORDINGLY, and finding merit, the Motion of plaintiff for the issuance of a writ of preliminary mandatory injunction and preliminary injunction is hereby granted upon posting of a bond in the amount of One Hundred Thousand (₱100,000.00), Pesos. Defendant-PCGG is enjoined from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court.
>
> As regard to the defendant-banks, considering that it has no reason to prevent plaintiff from withdrawing funds with them or transacting business with them and there exist a contract separate and distinct from the issue/s under consideration, they are likewise enjoined, until further orders from this Court, from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and said defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.
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> SO ORDERED.[29]

While recognizing the PCGG's authority to issue the Sequestration Order to carry out its vital task of recovering justly and expeditiously ill-gotten wealth, the Sandiganbayan

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[27] 380 Phil. 328 (2000).

[28] *Supra* note 2.

[29] *Rollo*, pp. 146-147.

found that the continued implementation of said Order would greatly cause irreparable damage to TDFSI. The court held that in issuing the Sequestration Order against TDFSI, PCGG did not observe the Rules and Regulations implementing Executive Order Nos. 1[30] and 2.[31] It explained that no investigation was conducted, no notice nor opportunity to adduce evidence was given to TDFSI, and no public hearing was conducted. More importantly, the court observed that the Sequestration Order was signed by only one of the PCGG Commissioners, which is violative of its own Rules and Regulations dated April 11, 1986.

On August 3, 2001, the assailed Writ of Preliminary Mandatory Injunction and Preliminary Injunction[32] was issued, the pertinent portion of which reads:

> NOW THEREFORE, you (defendant Presidential Commission on Good Government), your officers, agents, representatives and/or persons acting upon your orders or, in your place or stead, are hereby ***ENJOINED*** from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court **and** as regards the defendant-banks (Bank of America and Rizal Commercial Banking Corp.) your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are **likewise *ENJOINED*** until further orders from this Court from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.[33] (Emphasis supplied.)

Aggrieved, PCGG filed an Urgent Motion to Recall Writ of Preliminary Mandatory Injunction and Preliminary Injunction,[34]

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[30] Creating the Presidential Commission on Good Government.

[31] Regarding the Funds, Monies, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

[32] *Supra* note 4.

[33] *Rollo*, p. 149.

[34] Records, Vol. I, pp. 402-414.

Motion for Reconsideration,[35] and Supplemental Motion for Reconsideration.[36]

On October 5, 2001, the Sandiganbayan issued the third assailed Resolution[37] holding in abeyance the resolution of the three motions named in the preceding paragraph and other related incidents. In the same resolution, the court suspended the implementation of the writ of preliminary mandatory and prohibitory injunction in order to avoid "judicial apostacy."

On January 23, 2002, the Sandiganbayan issued the fourth assailed Resolution[38] denying PCGG's motion for reconsideration. The court held that the Sequestration Order is void for failure to comply with Executive Order No. 1 which requires the PCGG as a body to issue the order. It also explained that in G.R. No. 74302, the Court did not decide with finality the issue of whether or not the assets and funds in question are ill-gotten wealth of the Marcoses.

On even date, the Sandiganbayan issued the fifth assailed Order[39] setting the case for pre-trial. The sixth assailed Order[40] was issued on January 24, 2002, resetting the trial of the case.

For failure to obtain a favorable decision, PCGG comes before the Court in this Petition for *Certiorari* and Prohibition with Temporary Restraining Order and/or Writ of Preliminary Injunction based on the following grounds:

WHETHER RESPONDENT COURT ACTED ARBITRARILY AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED ORDERS AND PROCEEDED TO CONDUCT THE PRE-TRIAL/ TRIAL OF CIVIL CASE NO. 0142, CONSIDERING THAT:

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[35] *Id.* at 454-480.

[36] *Id.* at 541-548.

[37] *Supra* note 5.

[38] *Supra* note 6.

[39] *Supra* note 7.

[40] *Supra* note 8.

I.

THE HONORABLE COURT *EN BANC* HAD ALREADY SUSTAINED IN ITS RESOLUTION DATED JANUARY 26, 1986 IN G.R. NO. 74302 THE VALIDITY OF THE ISSUANCE OF THE SEQUESTRATION ORDER: AND, RELEVANTLY, IN G.R. NO. 107395, THE HONORABLE COURT DENIED A SIMILAR APPLICATION FOR AN INJUNCTIVE WRIT FILED BY TDFSI TO ENJOIN THE ENFORCEMENT OF THE SUBJECT SEQUESTRATION ORDER.

II.

IN VIEW OF THE PRONOUNCEMENT OF THE HONORABLE COURT IN G.R. NO. 74302 AS WELL AS THE JUDICIAL ADMISSIONS IN CIVIL CASE NO. 0008, IT COULD NO LONGER BE DISPUTED THAT THE FUNDS OF TDFSI SUBJECT OF THE ASSAILED WRIT OF SEQUESTRATION CONSTITUTE ILL-GOTTEN WEALTH OF THE MARCOSES.

III.

ASSUMING *ARGUENDO* THAT THE ISSUE OF THE VALIDITY OF THE SEQUESTRATION ORDER COULD STILL BE RE-LITIGATED, IT IS ALREADY SETTLED IN LIGHT OF G.R. NO. 74302, THAT SEQUESTRATION ORDERS SIGNED BY ONE COMMISSIONER BUT ISSUED PRIOR TO THE ADOPTION OF THE PCGG RULES ARE VALID, AND THAT CORPORATE ENTITIES MERELY CONSTITUTING THE *RES* IN RECOVERY OF ILL-GOTTEN WEALTH CASES NEED NOT BE IMPLEADED AS PARTY DEFENDANTS THEREIN.

IV.

THE ASSAILED ORDERS OF RESPONDENT COURT, PARTICULARLY THE GRANT OF THE INJUNCTIVE WRIT, AMOUNT TO A PREJUDGMENT OF CIVIL CASE NO. 0142 AND RENDERS NUGATORY ANY JUDGMENT THAT MAY EVENTUALLY BE PROMULGATED BY RESPONDENT COURT IN THAT CASE.

V.

THE INJUNCTIVE WRIT WAS ISSUED IN UTTER DISREGARD OF THE BASIC REQUIREMENTS THAT: (A) THE APPLICANT MUST HAVE A CLEAR AND

UNMISTAKEABLE LEGAL RIGHT; AND (B) THE APPLICANT WILL SUSTAIN IRREPARABLE DAMAGE OR INJURY UNLESS THE INJUNCTIVE WRIT IS ISSUED.

VI.

THE AMOUNT OF THE BOND FIXED BY RESPONDENT COURT IS DEVOID OF ANY BASIS AND IS NOT SUFFICIENT TO COVER WHATEVER DAMAGES THE PCGG AND THE FILIPINO PEOPLE MAY SUFFER AS A RESULT OF THE ISSUANCE OF THE INJUNCTIVE WRIT.

VII.

THE POSTING OF A COUNTERBOND BY PCGG CANNOT OPERATE TO ESTOP THE LATTER FROM QUESTIONING THE ASSAILED ORDERS CONSIDERING THAT PCGG POSTED IT OUT OF SHEER NECESSITY AND URGENCY UPON RESPONDENT COURT'S ORDER IN ORDER TO IMMEDIATELY EFFECT THE LIFTING OF THE INJUNCTIVE WRIT AND THEREBY PREVENT THE DISSIPATION OF THE SEQUESTERED ASSETS, WITHOUT, HOWEVER, WAIVING THE GROUNDS RAISED IN ITS MOTION FOR RECONSIDERATION AND SUPPLEMENTAL MOTION FOR RECONSIDERATION.

VIII.

THE ISSUANCE OF THE INJUNCTIVE WRITS CAUSED AND WILL CONTINUE TO CAUSE GRAVE AND IRREPARABLE DAMAGE AND PREJUDICE TO THE REPUBLIC AND THE FILIPINO PEOPLE AT LARGE, CONTRARY TO AND IN EVIDENT DISAVOWAL OF THE PCGG'S CONSTITUTIONALLY AND STATUTORILY ENSHRINED MANDATE OF RECOVERING THE ILL-GOTTEN WEALTH OF THE MARCOSES AND THEIR CRONIES.

IX.

THE ASSAILED ORDERS OF RESPONDENT COURT, PARTICULARLY THE DENIAL OF PCGG'S MOTION FOR ACCOUNTING OF THE FUNDS AND DEPOSITS SUBJECT OF THE SEQUESTRATION ORDER, AMOUNT TO A CAPRICIOUS, WHIMSICAL AND UTTER ABDICATION OF RESPONDENT COURT'S DUTY AS LEGAL CUSTODIAN OF THOSE FUNDS AND DEPOSITS, TO PRESERVE THEM AS

THE WRIT THE DETERMINATION OF RESPONDENT COURT IN CIVIL CASE NO. 0008 AS TO WHETHER THEY ARE ILL-GOTTEN WEALTH OR LAWFULLY ACQUIRED PROPERTIES.[41]

The petition is meritorious.

A perusal of the records of the case and the pleadings submitted before the Court would show that the PCGG and TDFSI have thoroughly argued for and against the validity of the Sequestration Order in support of their respective positions. However, we would like to stress that we are confronted only with the preliminary issue of the propriety of the issuance by the Sandiganbayan of the writ of preliminary mandatory and prohibitory injunction against the implementation of the March 11, 1986 Sequestration Order of the PCGG directed against TDFSI. The validity of the Sequestration Order is yet to be decided by the Sandiganbayan in Civil Case No. 0142.

PCGG insists that in issuing the injunctive writ, the Sandiganbayan contravened and overturned the Court's resolution in G.R. No. 74302 which denied TDFSI's similar application for an injunctive writ and affirmed the validity of the Sequestration Order.[42] PCGG points out that the reasons cited for the issuance of the injunctive writ were the very same grounds that were already invoked, considered and passed upon in the earlier case. The issuance of the injunctive writ is, therefore, violative of the principles of *res judicata, litis pendentia* and law of the case.[43] In other words, TDFSI could not assail anew the validity of the Sequestration Order.

We do not agree.

This Court's May 27, 1986 Resolution in G.R. No. 74302 clearly states that it merely disposed of the preliminary issue of whether or not the Court should grant TDFSI's prayer for the issuance of a temporary restraining order against the PCGG's

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[41] *Rollo*, pp. 876-879.

[42] *Id.* at 881-882.

[43] *Id.* at 883.

Sequestration and Freeze Orders. It appears that after the issuance of the above resolution and upon the issuance of Executive Order No. 14 vesting the Sandiganbayan with the exclusive and original jurisdiction over ill-gotten wealth cases to be prosecuted by the PCGG with the assistance of the Office of the Solicitor General, TDFSI filed a petition to dismiss the case which the Court granted. Apparently, the case was dismissed by the Court without prejudice to its re-filing with the Sandiganbayan. Clearly, there is no final determination yet of the validity of the assailed Sequestration and Freeze Orders. The May 27, 1986 Resolution relied on by PCGG is only an interlocutory order and an incident of the dismissed case. PCGG cannot therefore rely on the principles of *res judicata*, *litis pendentia* or law of the case.

Res judicata exists when the following elements are present: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and cause of action.[44] Obviously, the third requisite is wanting. *Res judicata* or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.[45]

As the dismissal of G.R. No. 74302 was without prejudice, it was not a judgment on the merits. A judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point. The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced.[46] In other words, the discontinuance of a case not

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[44] *Cruz v. Caraos*, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 524-525.

[45] *Id.* at 524.

[46] *Id.* at 525.

on the merits does not bar another action on the same subject matter.[47] TDFSI thus re-filed the case to the Sandiganbayan in a petition for injunction docketed as Civil Case No. 0142 assailing anew the validity of the Sequestration and Freeze Orders.

To be sure, the provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident.[48] The findings of fact and opinion of a court when issuing (or denying) the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated.[49] Thus, the May 27, 1986 interlocutory order of the Court died with the dismissal of the main case in G.R. No. 74302. The right of TDFSI to re-file the main case carries with it its right to apply for the provisional remedies available under the Rules of Court.

Although the principles of *res judicata*, *litis pendentia* and law of the case are inapplicable to set aside the assailed resolutions and writ of preliminary mandatory and prohibitory injunction, we hold that the issuance of writ of *certiorari* and prohibition is proper.

In support of its prayer for the issuance of a writ of preliminary mandatory and prohibitory injunction, TDFSI presented before the court *a quo* the following documentary evidence: (1) the Complaint filed by TDFSI with the court below in Civil Case No. 0142;[50] (2) The General Information Sheet of TDFSI;[51] (3) Presidential Decree No. 1193;[52] (4) Presidential Decree No. 1394;[53] (5) The Sequestration Order;[54] (6) Correspondence

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[47] *Heirs of Enrique Diaz, represented by Aurora T. Diaz v. Elinor A. Virata, in her capacity as the Administratrix of the Estate of Antenor Virata*, G.R. No. 162037, August 7, 2006, 498 SCRA 141, 166.

[48] *G & S Transport Corp. v. CA*, 432 Phil. 7, 27 (2002).

[49] *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856, 867 (2001).

[50] Records, Vol. I, pp. 1-7.

[51] *Id.* at 8-9.

[52] *Id.* at 10-12.

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

[54] *Id.* at 15.

between TDFSI and Bank of America;[55] (7) Letter of TDFSI addressed to the Sandiganbayan inquiring from the latter whether or not an action for recovery of ill-gotten wealth against TDFSI has been filed by the PCGG;[56] and (8) a Certification from the Sandiganbayan that as of a particular date, no such action has been filed.[57] PCGG, on the other hand, did not present any evidence.

Based on the foregoing evidence, the Sandiganbayan declared the Sequestration and Freeze Orders null and void and used such nullity as a justification for the issuance of the questioned writ of preliminary mandatory and prohibitory injunction. Specifically, it concluded that said Orders are invalid on the following grounds: (1) no investigation was conducted by the PCGG before the issuance of the Sequestration and Freeze Orders; (2) even if there was an investigation, no notice or opportunity to adduce evidence was given to TDFSI; (3) no public hearing was conducted; (4) the Sequestration and Freeze Orders were signed by only one Commissioner; (5) the Sequestration and Freeze Orders contained no explanation as to why they were issued; and (6) the Sequestration and Freeze Orders were automatically lifted, since there was actually no case for recovery of ill-gotten wealth filed because TDFSI was not impleaded as a defendant.

We hold that the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the questioned preliminary injunctive writ. The grounds relied upon by the Sandiganbayan are not sufficient to warrant the issuance of said writ. The documentary evidence listed above merely show that TDFSI is a corporation, that a sequestration order signed by a PCGG Commissioner was issued against it, and that no action for recovery of ill-gotten wealth was filed by PCGG against TDFSI at the time the inquiry was made.

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

[56] *Id.* at 81.

[57] *Id.* at 82.

Section 3, Rule 58 of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*:

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

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

(c) That a party, court or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[58]

From the foregoing, it can be inferred that two (2) requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[59] Otherwise stated, before a writ of preliminary injunction may be issued, there must be a clear showing that there exists a right to be protected and that the acts against which the writ is to be directed are violative of established right.[60]

Without making a definitive conclusion as to the validity of the Sequestration and Freeze Orders being the main issue in Civil Case No. 0142 which is yet to be decided by the Sandiganbayan, we conclude that the pieces of evidence enumerated above do not, in any way, show that TDFSI has a right to be protected and that the implementation of the Sequestration and Freeze Orders is violative of its rights.

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[58] *Phil. Pharmawealth, Inc. v. Pfizer, Inc.*, G.R. No. 167715, November 17, 2010, 635 SCRA 140, 149-150.

[59] *Id.* at 150.

[60] *G & S Transport Corp. v. CA*, *supra* note 48.

In *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*,[61] the Court has already described the nature and purpose of Sequestration and Freeze Orders and the extent of the PCGG's power to implement the same, and we quote:

> By the clear terms of the law, the power of the PCGG to sequester property claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities" – for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same – until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. x x x
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> A "freeze order" [on the other hand] prohibits the person having possession or control of property alleged to constitute "ill-gotten wealth" from transferring, conveying, encumbering or otherwise depleting or concealing such property, or from assisting or taking part in its transfer, encumbrance, concealment, or dissipation. In other words, it commands the possessor to hold the property and conserve it subject to the orders and disposition of the authority decreeing such freezing. In this sense, it is akin to a garnishment by which the possessor or ostensible owner of property is enjoined not to deliver, transfer, or otherwise dispose of any effects or credits in his possession or control, and thus becomes in a sense an involuntary depositary thereof.[62]

Pending the determination of whether or not the subject properties are "ill-gotten," there is an obvious and imperative need for preliminary, provisional measures to prevent concealment,

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[61] 234 Phil. 180 (1987).

[62] *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*, 234 Phil. 180, 207-208 (1987).

disappearance, destruction, dissipation, or loss of the assets and properties subject of the suits, or to restrain or foil acts that may render moot and academic, or effectively hamper, delay or negate efforts to recover the same.[63] The implementation of these orders should, therefore, not be restrained unless there is a clear ground to do so. More so in this case, considering that the Sandiganbayan's conclusions are contrary to established jurisprudence.

It has been settled in a number of cases that Sequestration and Freeze Orders signed by only one Commissioner and issued prior to the adoption of the PCGG Rules and Regulations cannot be invalidated. The PCGG Rules and Regulations were promulgated on April 11, 1986. Section 3[64] thereof requires that the sequestration order be issued upon the authority of at least two Commissioners. The questioned Sequestration Order was, however, issued on March 11, 1986 prior to the promulgation of the PCGG Rules and Regulations. Consequently, we cannot reasonably expect the PCGG to abide by said rules which were nonexistent at the time the subject orders were issued by then Commissioner Mary Concepcion Bautista.[65]

The Court notes that on July 21, 1987, the Republic of the Philippines, represented by the PCGG, filed a Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages against the Marcoses and the alleged stockholders and owners of TDFSI docketed as Civil Case No. 0008. While no case had been commenced against TDFSI itself, it has been a well-established doctrine that as to corporations allegedly organized with ill-gotten wealth but are not themselves guilty of

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[63] *Id.*

[64] SECTION 3. *Who may issue.* – A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

[65] *Republic of the Philippines v. Sandiganbayan*, 336 Phil. 304, 318 (1997).

misappropriation, fraud or other illicit conduct, there is no need to implead them. Their impleading is not proper on the strength alone of their being formed with ill-gotten funds, absent any other particular wrongdoing on their part.[66] And even in cases where there is a need to implead the sequestered corporation as indispensable or necessary party, its sequestration is not rendered *functus officio*, since it is a mere technical defect which can be cured at any stage of the proceedings.[67] The Sandiganbayan cannot, therefore, nullify the Sequestration and Freeze Orders on this basis alone.

Among the rights explicitly acknowledged in *Bataan Shipyard & Engineering Co., Inc. v. PCGG*[68] is that the owners of properties have the "opportunity to contest" actions or orders of sequestration issued by the PCGG.[69] That "opportunity to contest" includes resort to the courts as in Civil Case No. 0142.[70] In that case, which is the main case where the questioned preliminary injunctive writ is an incident, the parties' respective evidence are presented for the final determination of the validity of the questioned Sequestration and Freeze Orders. The Court is yet to determine whether the requisites for the valid issuance of said Orders are present.

In view of the foregoing disquisition and considering that the pre-trial and trial of the case had been completed before the Sandiganbayan, we need not discuss the other issues raised by the PCGG.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The Resolution dated July 26, 2001, October 5, 2001, January 23, 2002 and the Writ of Preliminary Mandatory

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[66] *Id.* at 314.

[67] *Id.* at 315.

[68] *Supra* note 61.

[69] *Presidential Commission on Good Government v. Tan*, G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 480.

[70] *Id.* at 483-484.

Injunction and Preliminary Injunction dated August 3, 2001 are hereby *SET ASIDE*. Consequently, the Sequestration Order dated March 11, 1986 directed against Tourist Duty Free Shops, Inc. and the Freeze Order issued subsequent thereto, *STAND* subject to the final outcome of Civil Case No. 0142.

The Sandiganbayan is *DIRECTED* to resolve Civil Case No. 0142 with dispatch.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 161030. September 14, 2011]

JOSE FERNANDO, JR., ZOILO FERNANDO, NORMA FERNANDO BANARES, ROSARIO FERNANDO TANGKENCGO, HEIRS OF TOMAS FERNANDO, represented by ALFREDO V. FERNANDO, HEIRS OF GUILLERMO FERNANDO, represented by Ronnie H. Fernando, HEIRS OF ILUMINADA FERNANDO, represented by Benjamin Estrella and HEIRS OF GERMOGENA FERNANDO, *petitioners, vs.* **LEON ACUNA, HERMOGENES FERNANDO, HEIRS OF SPOUSES ANTONIO FERNANDO and FELISA CAMACHO, represented by HERMOGENES FERNANDO,** *respondents.*

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[*] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); IMPRESCRIPTIBILITY AND INDEFEASIBILITY OF TORRENS TITLE.— Section 47 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, states that "[n]o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." Thus, the Court has held that the right to recover possession of registered land is imprescriptible because possession is a mere consequence of ownership.

2. ID.; ID.; ID.; ID.; RIGHT TO RECOVER POSSESSION OF REGISTERED PROPERTY MAY BE LOST BY THE REGISTERED LANDOWNER THROUGH THE EQUITABLE PRINCIPLE OF LACHES.— [I]n *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*, the Court had recognized the jurisprudential thread regarding the exception to the foregoing doctrine that while it is true that a Torrens title is indefeasible and imprescriptible, the registered landowner may lose his right to recover possession of his registered property by reason of laches. Thus, in *Heirs of Batiog Lacamen v. Heirs of Laruan*, the Court had held that while a person may not acquire title to the registered property through continuous adverse possession, in derogation of the title of the original registered owner, the heir of the latter, however, may lose his right to recover back the possession of such property and the title thereto, by reason of laches.

3. ID.; ID.; ID.; ID.; ID.; LACHES; DEFINED; ELEMENTS.— Laches means the failure or neglect for an unreasonable and unexplained length of time to do that which, by observance of due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right either has abandoned or declined to assert it. Laches thus operates as a bar in equity. The essential elements of laches are: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (b) delay in asserting complainant's rights after he had knowledge of defendant's acts and after he has had the

opportunity to sue; (c) lack of knowledge or notice by defendant that the complainant will assert the right on which he bases his suit; and (d) injury or prejudice to the defendant in the event the relief is accorded to the complainant.

4. ID.; OBLIGATIONS AND CONTRACTS; TRUSTS; IMPLIED TRUSTS; A CASE OF.— [W]e uphold the finding of the Court of Appeals that the title of petitioners' ascendants wrongfully included lots belonging to third persons. Indeed, petitioners' ascendants appeared to have acknowledged this fact as they were even the ones that prayed for the cadastral court to subdivide Lot 1303 as evident in the November 29, 1929 Decision. We concur with the Court of Appeals that petitioners' ascendants held the property erroneously titled in their names under an implied trust for the benefit of the true owners. Article 1456 of the Civil Code provides: ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

5. ID.; ID.; ID.; ID.; ACTION FOR RECONVEYANCE; ESSENCE.— As aptly observed by the appellate court, the party thus aggrieved has the right to recover his or their title over the property by way of reconveyance while the same has not yet passed to an innocent purchaser for value. As we held in *Medizabel v. Apao*, the essence of an action for reconveyance is that the certificate of title is respected as incontrovertible. What is sought is the transfer of the property, in this case its title, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right. It is settled in jurisprudence that mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title.

6. ID.; ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD; ELUCIDATED.— An action for reconveyance of registered land based on implied trust prescribes in ten (10) years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the

property. However, this Court has ruled that the ten-year prescriptive period applies only when the person enforcing the trust is not in possession of the property. If a person claiming to be its owner is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason is that the one who is in actual possession of the land claiming to be its owner may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.

7. ID.; PROPERTY; OWNERSHIP; RIGHT OF ACCESSION; PRINCIPLE OF ACCRETION; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— The principle [of accretion] is embodied in Article 457 of the Civil Code which states that "[t]o the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters." We have held that for Article 457 to apply the following requisites must concur: (1) that the deposit be gradual and imperceptible; (2) that it be made through the effects of the current of the water; and (3) that the land where accretion takes place is adjacent to the banks of rivers. The character of the *Sapang Bayan* property was not shown to be of the nature that is being referred to in the provision which is an accretion known as *alluvion* as no evidence had been presented to support this assertion.

8. ID.; ID.; PROPERTY OF PUBLIC DOMINION; RIVERS AND THEIR NATURAL BEDS; ABSENT ANY PROVISION OF LAW VESTING OWNERSHIP THEREOF, THE SAME CONTINUE TO BELONG TO THE STATE; APPLICATION.— Even assuming that *Sapang Bayan* was a dried-up creek bed, under Article 420, paragraph 1 and Article 502, paragraph 1 of the Civil Code, rivers and their natural beds are property of public dominion. In the absence of any provision of law vesting ownership of the dried-up river bed in some other person, it must continue to belong to the State. x x x [O]n the basis of the law and jurisprudence on the matter, *Sapang Bayan* cannot be adjudged to any of the parties in this case.

APPEARANCES OF COUNSEL

Cresenciano C. Santiago for petitioners.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated November 24, 2003 of the Court of Appeals in *CA-G.R. CV No. 75773*, entitled "*Jose Fernando, Jr., et al. v. Heirs of Germogena Fernando, et al.*," which reversed and set aside the Decision[2] dated May 16, 2002 of Branch 84, Regional Trial Court (RTC) of Malolos, Bulacan in Civil Case No. 256-M-97.

At the heart of this controversy is a parcel of land covered by Original Certificate of Title (OCT) No. RO-487 (997)[3] registered in the names of Jose A. Fernando, married to Lucila Tinio, and Antonia A. Fernando, married to Felipe Galvez, and located in San Jose, Baliuag, Bulacan. When they died intestate, the property remained undivided. Petitioners herein – namely, Jose Fernando, Jr., Zoilo Fernando, Norma Fernando Banares, Rosario Fernando Tangkencgo, the heirs of Tomas Fernando, the heirs of Guillermo Fernando, the heirs of Iluminada Fernando and the heirs of Germogena Fernando – are the heirs and successors-in-interest of the deceased registered owners. However, petitioners failed to agree on the division of the subject property amongst themselves, even after compulsory conciliation before the *Barangay Lupon*.

Thus, petitioners, except for the heirs of Germogena Fernando, filed a Complaint[4] for partition on April 17, 1997 against the heirs of Germogena Fernando. In the Complaint, plaintiffs alleged, among others, that they and defendants are common descendants

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[1] *Rollo*, pp. 26-44; penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang, concurring.

[2] CA *rollo*, pp. 31-38.

[3] Records, Vol. 1, pp. 6-7.

[4] *Id.* at 2-5.

and compulsory heirs of the late spouses Jose A. Fernando and Lucila Tinio, and the late spouses Antonia A. Fernando and Felipe Galvez. They further claimed that their predecessors-in-interest died intestate and without instructions as to the disposition of the property left by them covered by OCT No. RO-487 (997). There being no settlement, the heirs are asking for their rightful and lawful share because they wish to build up their homes or set up their business in the respective portions that will be allotted to them. In sum, they prayed that the subject property be partitioned into eight equal parts, corresponding to the hereditary interest of each group of heirs.

In their Answer[5] filed on May 20, 1997, defendants essentially admitted all of the allegations in the complaint. They alleged further that they are not opposing the partition and even offered to share in the expenses that will be incurred in the course of the proceedings.

In his Complaint in Intervention[6] filed on January 12, 1998, respondent Leon Acuna (Acuna) averred that in the Decision[7] dated November 29, 1929 of the Cadastral Court of Baliuag, Bulacan, the portion of the property identified as Lot 1303 was already adjudicated to: (a) Antonio Fernando, married to Felisa Camacho; (b) spouses Jose Martinez and Gregoria Sison; (c) spouses Ignacio de la Cruz and Salud Wisco; and (d) Jose Fernando, married to Lucila Tinio, the petitioners' predecessor-in-interest. He likewise claimed that in a 1930 Decision of the Cadastral Court, the portion identified as Lot 1302 was also already adjudicated to other people as well.

Respondent Acuna further alleged that Salud Wisco, through her authorized attorney-in-fact, Amador W. Cruz, sold her lawful share denominated as Lot 1303-D with an area of 3,818 square meters to Simeon P. Cunanan,[8] who in turn sold the same piece

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

[6] *Id.* at 80-85.

[7] *Id.* at 88-89.

[8] *Id.* at 91.

of land to him as evidenced by a Deed of Sale.[9] He also belied petitioners' assertion that the subject property has not been settled by the parties after the death of the original owners in view of the Decision[10] dated July 30, 1980 of the Court of First Instance (CFI) of Baliuag, Bulacan, in LRC Case No. 80-389 which ordered the Register of Deeds of Bulacan to issue the corresponding certificates of title to the claimants of the portion of the subject property designated as Lot 1302.[11] Norma Fernando, one of the petitioners in the instant case, even testified in LRC Case No. 80-389. According to respondent Acuna, this circumstance betrayed bad faith on the part of petitioners in filing the present case for partition.

Respondent Acuna likewise averred that the action for partition cannot prosper since the heirs of the original owners of the subject property, namely Rosario, Jose Jr., Norma, Tomas, Guillermo, Leopoldo, Hermogena, Illuminada and Zoilo, all surnamed Fernando, and Lucila Tinio, purportedly had already sold their respective one-tenth (1/10) share each in the subject property to Ruperta Sto. Domingo Villasenor for the amount of ₱35,000.00 on January 25, 1978 as evidenced by a "*Kasulatan sa Bilihang Patuluyan*."[12] He added that he was in possession of the original copy of OCT No. RO-487 (997) and that he had not commenced the issuance of new titles to the subdivided lots because he was waiting for the owners of the other portions of the subject property to bear their respective shares in the cost of titling.

Subsequently, a Motion for Intervention[13] was filed on June 23, 1998 by respondent Hermogenes Fernando (Hermogenes),

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[9] *Id.* at 92.

[10] *Id.* at 93-98.

[11] It would appear from the annotation of said July 30, 1980 Decision on the back of OCT No. RO-487 (997) that Lot 1302 was further subdivided into Lots 1302-A to 1302-J with petitioners' ascendant Jose Fernando allocated Lot 1302-D.

[12] Records, Vol. 1, p. 99.

[13] *Id.* at 137-138.

for himself and on behalf of the heirs of the late spouses, Antonio A. Fernando and Felisa Camacho. According to him, in the July 30, 1980 Decision of the CFI of Bulacan, their predecessors-in-interest had already been adjudged owners of Lots 1302-A, 1302-F, 1302-G,[14] 1302-H and 1302-J of OCT No. RO-487 (997) and any adverse distribution of the properties would cause respondents damage and prejudice. He would also later claim, in his Answer-in-Intervention,[15] that the instant case is already barred by *res judicata* and, should be dismissed.

In the interest of substantial justice, the trial court allowed the respondents to intervene in the case.

The plaintiffs and defendants jointly moved to have the case submitted for judgment on the pleadings on May 7, 1999.[16] However, the trial court denied said motion in a Resolution[17] dated August 23, 1999 primarily due to the question regarding the ownership of the property to be partitioned, in light of the intervention of respondents Acuna and Hermogenes who were claiming legal right thereto.

In their Manifestation[18] filed on April 12, 2000, petitioners affirmed their execution of a Deed of Sale in favor of Ruperta Sto. Domingo Villasenor in 1978, wherein they sold to her 1,000 square meters from Lot 1303 for the sum of ₱35,000.00.

After the pre-trial conference, trial ensued. On September 19, 2000, petitioner Elizabeth Alarcon testified that they (plaintiffs) are not claiming the entire property covered by OCT No. RO-487 (997) but only the area referred to as Lot 1303 and *Sapang Bayan*. She also admitted that Lot 1302 had already been divided into ten (10) sublots and allocated to various owners pursuant

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[14] In the dispositive portion of said 1980 Decision, Lot 1302-G was adjudicated to Antonia A. Fernando.

[15] Records, Vol. 1, pp. 149-152.

[16] *Id.* at 165.

[17] *Id.* at 185-188.

[18] *Id.* at 264-266.

to the July 30, 1980 Decision of the CFI of Baliuag, Bulacan and these owners already have their own titles. She likewise claimed that the entire area consisting of Lot 1303 and *Sapang Bayan* is based on the subdivision plan of Lot 1303. She admitted that plaintiffs' predecessor-in-interest was only allocated a portion of Lot 1303 based on the said plan. However, she claimed that the November 29, 1929 Decision subdividing Lot 1303 was never implemented nor executed by the parties.[19]

Petitioner Norma Fernando testified on October 3, 2000 that she is one of the children of Jose A. Fernando and Lucila Tinio. She affirmed that plaintiffs were only claiming Lot 1303 and *Sapang Bayan*. She also testified that *Sapang Bayan* was supposedly included in Lot 1302 and was previously a river until it dried up. Unlike Lot 1302, the rest of the property was purportedly not distributed. She likewise averred that she is aware of a November 29, 1929 Decision concerning the distribution of Lot 1303 issued by the cadastral court but insisted that the basis of the claims of the petitioners over Lot 1303 is the title in the name of her ascendants and not said Decision.[20]

On November 16, 2000, as previously directed by the trial court and agreed to by the parties, counsel for respondent Hermogenes prepared and submitted an English translation of the November 29, 1929 Decision. The same was admitted and marked in evidence as Exhibit "X"[21] as a common exhibit of the parties. The petitioners also presented Alfredo Borja, the Geodetic Engineer who conducted a relocation survey of the subject property.

After plaintiffs rested their case, respondent Hermogenes testified on December 7, 2000. In his testimony, he claimed to know the plaintiffs and defendants as they were allegedly his relatives and neighbors. He confirmed that according to the November 29, 1929 Decision, portions of Lot 1303 was designated

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[19] Records, Vol. 2, pp. 7-65; TSN, September 19, 2000.

[20] *Id.* at 97-129; TSN, October 3, 2000.

[21] *Id.* at 155-156.

as Lots 1303-A, 1303-B, 1303-C and 1303-D which were adjudicated to certain persons, including Jose Fernando, while the rest of Lot 1303 was adjudicated to his parents, Antonio A. Fernando married to Felisa Camacho. According to respondent Hermogenes, his family's tenant and the latter's children occupied the portion of Lot 1303 allotted to his (Hermogenes) parents while the rest of Lot 1303 was occupied by the persons named in the said November 29, 1929 Decision. He admitted, however, that nobody among the purported possessors of Lot 1303 registered the lots assigned to them in the Decision.[22]

On January 18, 2001, respondent Hermogenes presented a witness, Engineer Camilo Vergara who testified that the subject land is divided into Lots 1302 and 1303 with a creek dividing the two lots known as *Sapang Bayan*. He also identified a Sketch Plan numbered as PSD-45657 and approved on November 11, 1955.[23] During the hearing on January 30, 2001, respondent Hermogenes made an oral offer of his evidence and rested his case. On the same date, respondent Acuna, in lieu of his testimony, offered for the parties to simply stipulate on the due execution and authenticity of the Deeds of Sale dated April 6, 1979 and December 28, 1980, showing the transfer of Lot 1303-D from Salud Wisco to Simeon Cunanan and subsequently to respondent Acuna. When counsel for plaintiffs and defendants agreed to the stipulation, albeit objecting to the purpose for which the deeds of sale were offered, the trial court admitted Acuna's exhibits and Acuna rested his case.[24]

On February 15, 2001, plaintiffs recalled Norma Fernando as a rebuttal witness. In her rebuttal testimony, she identified the tax declaration[25] over the said property in the name of Jose A. Fernando; an official receipt[26] dated October 3, 1997 issued

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[22] *Id.* at 201-237; TSN, December 7, 2000.

[23] *Id.* at 258-296; TSN, January 18, 2001.

[24] *Id.* at 330-340; TSN, January 30, 2001.

[25] *Id.* at 429.

[26] *Id.* at 430.

by the Office of the Treasurer of the Municipality of Baliuag, Bulacan for payment of real property taxes from 1991 to 1997; and a real property tax clearance[27] dated October 6, 1997, to show that plaintiffs have allegedly been paying the real property taxes on the entire property covered by OCT No. RO-487 (997). However, she further testified that they were now willing to pay taxes only over the portion with an area of 44,234 square meters, which is included in their claim.[28]

In a Decision dated May 16, 2002, the trial court ruled that plaintiffs and defendants (petitioners herein) were indeed the descendants and successors-in-interest of the registered owners, Jose A. Fernando (married to Lucila Tinio) and Antonia Fernando (married to Felipe Galvez), of the property covered by OCT No. RO-487 (997). After finding that the parties admitted that Lot 1302 was already distributed and titled in the names of third persons per the July 30, 1980 Decision of the CFI of Baliuag, Bulacan the trial court proceeded to rule on the allocation of Lot 1303 and *Sapang Bayan*.

With respect to Lot 1303, the trial court found that the November 29, 1929 Decision of the Cadastral Court, adjudicating said lot to different persons and limiting Jose Fernando's share to Lot 1303-C, was never implemented nor executed despite the lapse of more than thirty years. Thus, the said decision has already prescribed and can no longer be executed. The trial court ordered the reversion of Lot 1303 to the ownership of spouses Jose A. Fernando and Lucila Tinio and spouses Antonia A. Fernando and Felipe Galvez under OCT No. RO-487 (997) and allowed the partition of Lot 1303 among petitioners as successors-in-interest of said registered owners. Excluded from the partition, however, were the portions of the property which petitioners admitted had been sold or transferred to Ruperta Sto. Domingo Villasenor and respondent Acuna.

As for the ownership of *Sapang Bayan*, the trial court found that the same had not been alleged in the pleadings nor raised

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[27] *Id.* at 431.

[28] *Id.* at 352-360; TSN, February 15, 2001.

as an issue during the pre-trial conference. Also, according to the trial court, the parties failed to clearly show whether *Sapang Bayan* was previously a dry portion of either Lot 1302 or Lot 1303. Neither was there any proof that *Sapang Bayan* was a river that just dried up or that it was an accretion which the adjoining lots gradually received from the effects of the current of water. It was likewise not established who were the owners of the lots adjoining *Sapang Bayan*. The trial court concluded that none of the parties had clearly and sufficiently established their claims over *Sapang Bayan*.

The dispositive portion of the May 16, 2002 Decision of the trial court reads:

> WHEREFORE, all the foregoing considered, judgment is hereby rendered ordering the reversion of Lot 1303, except the portions allotted to Acuna and Ruperta Sto. Domingo Villasenor, to the ownership of Jose Fernando and Lucia Tinio and Antonia Fernando and Felipe Galvez under OCT No. 997 and thereafter allowing the partition of said Lot 1303 among the plaintiffs and the defendants as successors-in-interest of Jose and Lucia as well as Antonia and Felipe after the settlement of any inheritance tax, fees, dues and/or obligation chargeable against their estate.[29]

All the parties, with the exception of respondent Acuna, elevated this case to the Court of Appeals which rendered the assailed November 24, 2003 Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the decision dated May 16, 2002, of the Regional Trial Court of Malolos, Bulacan, Third Judicial Region, Branch 84, in Civil Case No. 256-M-97, is hereby REVERSED and SET ASIDE and the complaint dated April 17, 1997 filed by plaintiffs-appellants is dismissed. Costs against plaintiffs-appellants.[30]

Hence, plaintiffs and defendants in the court *a quo* elevated the matter for our review through the instant petition.

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[29] CA *rollo*, pp. 37-38.

[30] *Rollo*, p. 44.

Petitioner raises the following issues for consideration:

1. Whether or not the ownership of Lot 1303 and the Sapang Bayan portion of the piece of land covered by O.C.T. No. RO-487 (997) or Plan Psu-39080 should revert to the descendants and heirs of the late spouses Jose Fernando and Lucila Tinio and Antonia Fernando, married to Felipe Galvez;

2. Whether or not a title registered under the Torrens system, as the subject original certificate of title is the best evidence of ownership of land and is a notice against the world.[31]

The petition is without merit.

Petitioners based their claims to the disputed areas designated as Lot 1303 and *Sapang Bayan* on their ascendants' title, OCT No. RO-487 (997), which was issued on February 26, 1927 in the name of Jose A. Fernando married to Lucila Tinio and Antonia A. Fernando married to Felipe Galvez. The Court now rules on these claims *in seriatim*.

Petitioners' claim with respect to Lot 1303

As the records show, in the November 29, 1929 Decision of the Cadastral Court of Baliuag, Bulacan (in Cadastral Record No. 14, GLRO Cad. Record No. 781) which was written in Spanish, Lot 1303 had already been divided and adjudicated to spouses Jose A. Fernando and Lucila Tinio; spouses Antonia A. Fernando and Felipe Galvez; spouses Antonio A. Fernando and Felisa Camacho; spouses Jose Martinez and Gregoria Sison; and spouses Ignacio de la Cruz and Salud Wisco from whom respondent Acuna derived his title. The English translation of the said November 29, 1929 Decision was provided by respondent Hermogenes and was adopted by all the parties as a common exhibit designated as Exhibit "X". The agreed English translation of said Decision reads:

Lot No. 1303 – This lot is decreed in record No. 448, G.L.R.O. Record No. 25414 and actually with Original Certificate No. 997 (exhibited today) in the name of Jose A. Fernando and Antonia A.

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[31] Records, Vol. 2, p. 12.

Fernando, who now pray that said lot be subdivided in accordance with the answers recorded in the instant cadastral record, and the sketch, Exh. "A", which is attached to the records.

A part or portion of the lot has been claimed by Antonio A. Fernando, of legal age, married to Felisa Camacho; another portion by the spouses Jose Martinez and Gregoria Sison; another portion by Antonia A. Fernando, of legal age, married to Felipe Galvez; another portion by Jose A. Fernando, of legal age, married to Lucila Tinio; and another portion by the spouses Ignacio de la Cruz and Salud Wisco, both of legal age. The part claimed by the spouses Jose A. Martinez and Gregoria Sison is Lot 1303-A of Exh. A; the part claimed by Antonia A. Fernando is Lot 1303-B of said exhibit; the part claimed by Jose A. Fernando is Lot 1303-C of said exhibit, and the part claimed by the spouses Ignacio de la Cruz and Salud Wisco is Lot 1303-D of the aforementioned Exhibit.

The subdivision of said lot is hereby ordered, separating from the same the portions that correspond to each of the claimants, which portions are known as Lots 1303-A, 1303-B, 1303-C, and 1303-D in the sketch, Exh. "A", and once subdivided, are adjudicated in favor of the spouses, Jose Martinez and Gregoria Sison, of legal age, Lot No. 1303-A, in favor of Antonia A. Fernando, of legal age, married to Felipe Galvez, Lot No. 1303-B; in favor of Jose A. Fernando, of legal age, married to Lucila Tinio, Lot 1303-C; in favor of the spouses Ignacio de la Cruz and Salud Wisco, of legal age, Lot 1303-D; and the rest of Lot 1303 is adjudged in favor of Antonio A. Fernando married to Felisa Camacho. It is likewise ordered that once the subdivision plan is approved, the same be forwarded by the Director of Lands to this Court for its final decision.

It is ordered that the expense for mentioned subdivision, shall be for the account of the spouses Jose Martinez and Gregoria Sison, Antonia A. Fernando, Jose A. Fernando, the spouses Ignacio de la Cruz and Salud Wisco, and Antonio A. Fernando.[32]

From the foregoing, it would appear that petitioners' ascendants themselves petitioned for the cadastral court to divide Lot 1303 among the parties to the 1929 case and they were only allocated Lots 1303-B and 1303-C. Still, as the trial court noted, the November 29, 1929 Decision was never fully implemented in

[32] *Id.* at 155-156.

the sense that the persons named therein merely proceeded to occupy the lots assigned to them without having complied with the other directives of the cadastral court which would have led to the titling of the properties in their names. Nonetheless, it is undisputed that the persons named in the said November 29, 1929 Decision and, subsequently, their heirs and assigns have since been in peaceful and uncontested possession of their respective lots for more than seventy (70) years until the filing of the suit for partition on April 17, 1997 by petitioners which is the subject matter of this case. Respondent Hermogenes, who testified that petitioners were his relatives and neighbors, further affirmed before the trial court that the persons named in the November 29, 1929 Decision took possession of their respective lots:

ATTY. VENERACION:

Q – This Jose A. Fernando married to Lucila Tinio, you testified earlier are the parents of the plaintiffs. Did they take possession of lot 1303-C?

A – Yes, sir. They took possession.

Q – Did they take possession of the other lots?

A – No. Yes, the portion…

Q – The other lots in the name of the other persons. Did they take possession of that?

A – Yes, they took took possession of the other… No, sir.

Q – I am asking you whether they took possession, the children…

ATTY. SANTIAGO:

The questions are already answered, your Honor.

ATTY. VENERACION:

What is the answer?

ATTY. SANTIAGO:

It's in the record.

COURT:

> The persons named in the Decision already took possession of the lots allotted to them as per that Decision. So that was already answered. Anything else?

ATTY. VENERACION;

> No more question, Your Honor.[33]

It is noteworthy that petitioners do not dispute that the November 29, 1929 Decision of the cadastral court already adjudicated the ownership of Lot 1303 to persons other than the registered owners thereof. Petitioners would, nonetheless, claim that respondents' purported failure to execute the November 29, 1929 Decision over Lot 1303 (*i.e.*, their failure to secure their own titles) meant that the entire Lot 1303 being still registered in the name of their ascendants rightfully belongs to them. This is on the theory that respondents' right to have the said property titled in their names have long prescribed.

On this point, we agree with the appellate court.

Section 47 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, states that "[n]o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." Thus, the Court has held that the right to recover possession of registered land is imprescriptible because possession is a mere consequence of ownership.[34]

However, in *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*,[35] the Court had recognized the jurisprudential thread regarding the exception to the foregoing doctrine that while it is true that a Torrens title is indefeasible and imprescriptible, the registered landowner may lose his right to recover possession of his registered property by reason of laches.

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[33] TSN, December 7, 2000, pp. 28-29.

[34] *Umbay v. Alecha*, 220 Phil. 103, 107 (1985).

[35] G.R. No. 150654, December 13, 2007, 540 SCRA 100, 107.

Thus, in *Heirs of Batiog Lacamen v. Heirs of Laruan*,[36] the Court had held that while a person may not acquire title to the registered property through continuous adverse possession, in derogation of the title of the original registered owner, the heir of the latter, however, may lose his right to recover back the possession of such property and the title thereto, by reason of laches.

In the more recent case of *Bartola M. Vda. De Tirona v. Encarnacion*,[37] we similarly held that while jurisprudence is settled on the imprescriptibility and indefeasibility of a Torrens title, there is equally an abundance of cases where we unequivocally ruled that registered owners may lose their right to recover possession of property through the equitable principle of laches.

Laches means the failure or neglect for an unreasonable and unexplained length of time to do that which, by observance of due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert his right either has abandoned or declined to assert it. Laches thus operates as a bar in equity.[38] The essential elements of laches are: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (b) delay in asserting complainant's rights after he had knowledge of defendant's acts and after he has had the opportunity to sue; (c) lack of knowledge or notice by defendant that the complainant will assert the right on which he bases his suit; and (d) injury or prejudice to the defendant in the event the relief is accorded to the complainant.[39]

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[36] 160 Phil. 615, 622 (1975).

[37] G.R. No. 168902, September 28, 2007, 534 SCRA 394, 409.

[38] *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394, 415, citing *Isabela Colleges, Inc. v. Heirs of Nieves Tolentino-Rivera*, 397 Phil. 955, 969 (2000).

[39] *Olegario v. Mari*, G.R. No. 147951, December 14, 2009, 608 SCRA 134, 147.

In view of respondents' decades long possession and/or ownership of their respective lots by virtue of a court judgment and the erstwhile registered owners' inaction and neglect for an unreasonable and unexplained length of time in pursuing the recovery of the land, assuming they retained any right to recover the same, it is clear that respondents' possession may no longer be disturbed. The right of the registered owners as well as their successors-in-interest to recover possession of the property is already a stale demand and, thus, is barred by laches.

In the same vein, we uphold the finding of the Court of Appeals that the title of petitioners' ascendants wrongfully included lots belonging to third persons.[40] Indeed, petitioners' ascendants appeared to have acknowledged this fact as they were even the ones that prayed for the cadastral court to subdivide Lot 1303 as evident in the November 29, 1929 Decision. We concur with the Court of Appeals that petitioners' ascendants held the property erroneously titled in their names under an implied trust for the benefit of the true owners. Article 1456 of the Civil Code provides:

> ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

As aptly observed by the appellate court, the party thus aggrieved has the right to recover his or their title over the property by way of reconveyance while the same has not yet passed to an innocent purchaser for value.[41] As we held in *Medizabel v. Apao*,[42] the essence of an action for reconveyance is that the certificate of title is respected as incontrovertible. What is sought is the transfer of the property, in this case its

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[40] *Rollo*, p. 42.

[41] *Id.*, citing *Huang v. Court of Appeals*, G.R. No. 108525, September 13, 1994, 236 SCRA 420; *Vda. De Esconde v. Court of Appeals*, 323 Phil. 81 (1996).

[42] G.R. No. 143185, February 20, 2006, 482 SCRA 587, 608.

title, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right. It is settled in jurisprudence that mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title.[43]

We cannot subscribe to petitioners' argument that whatever rights or claims respondents may have under the November 29, 1929 Decision has prescribed for their purported failure to fully execute the same. We again concur with the Court of Appeals in this regard. An action for reconveyance of registered land based on implied trust prescribes in ten (10) years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property. However, this Court has ruled that the ten-year prescriptive period applies only when the person enforcing the trust is not in possession of the property. If a person claiming to be its owner is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason is that the one who is in actual possession of the land claiming to be its owner may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.[44]

Petitioners' claim with respect to Sapang Bayan

As for the issue of the ownership of *Sapang Bayan*, we sustain the appellate court insofar as it ruled that petitioners failed to substantiate their ownership over said area. However, we find that the Court of Appeals erred in ruling that the principle of accretion is applicable. The said principle is embodied in Article 457 of the Civil Code which states that "[t]o the owners of lands adjoining the banks of rivers belong the accretion which

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[43] *Pineda v. Court of Appeals*, 456 Phil. 732, 748 (2003), citing *Lee Tek Sheng v. Court of Appeals*, 354 Phil. 556, 561-562 (1998).

[44] *Medizabel v. Apao, supra* note 42.

they gradually receive from the effects of the current of the waters." We have held that for Article 457 to apply the following requisites must concur: (1) that the deposit be gradual and imperceptible; (2) that it be made through the effects of the current of the water; and (3) that the land where accretion takes place is adjacent to the banks of rivers.[45] The character of the *Sapang Bayan* property was not shown to be of the nature that is being referred to in the provision which is an accretion known as *alluvion* as no evidence had been presented to support this assertion.

In fact from the transcripts of the proceedings, the parties could not agree how *Sapang Bayan* came about. Whether it was a gradual deposit received from the river current or a dried-up creek bed connected to the main river could not be ascertained.

Even assuming that *Sapang Bayan* was a dried-up creek bed, under Article 420, paragraph 1[46] and Article 502, paragraph 1[47] of the Civil Code, rivers and their natural beds are property of public dominion. In the absence of any provision of law vesting ownership of the dried-up river bed in some other person, it must continue to belong to the State.

We ruled on this issue in *Republic v. Court of Appeals*,[48] to wit:

The lower court cannot validly order the registration of Lots 1 and 2 in the names of the private respondents. These lots were portions of the bed of the Meycauayan river and are therefore classified as property of the public domain under Article 420 paragraph 1 and

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[45] *Republic v. Court of Appeals*, 217 Phil. 483, 489 (1984).

[46] Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; x x x.

[47] Art. 502. The following are of public dominion:

(1) Rivers and their natural beds; x x x.

[48] *Supra* note 45.

Article 502, paragraph 1 of the Civil Code of the Philippines. They are not open to registration under the Land Registration act. The adjudication of the lands in question as private property in the names of the private respondents is null and void.[49]

Furthermore, in *Celestial v. Cachopero*,[50] we similarly ruled that a dried-up creek bed is property of public dominion:

> A creek, like the Salunayan Creek, is a recess or arm extending from a river and participating in the ebb and flow of the sea. As such, under Articles 420(1) and 502(1) of the Civil Code, the Salunayan Creek, including its natural bed, is property of the public domain which is not susceptible to private appropriation and acquisitive prescription. And, absent any declaration by the government, that a portion of the creek has dried-up does not, by itself, alter its inalienable character.[51]

Therefore, on the basis of the law and jurisprudence on the matter, *Sapang Bayan* cannot be adjudged to any of the parties in this case.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The assailed Decision dated November 24, 2003 of the Court of Appeals in CA-G.R. CV No. 75773 is hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[49] *Id.* at 491.

[50] 459 Phil. 903 (2003).

[51] *Id.* at 928.

THIRD DIVISION

[G.R. No. 164181. September 14, 2011]

NISSAN MOTORS PHILS., INC., *petitioner, vs.* **VICTORINO ANGELO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE NOT INFALLIBLE AND WILL BE SET ASIDE IF THEY FAIL THE TEST OF ARBITRARINESS.— [F]actual findings of administrative agencies are not infallible and will be set aside if they fail the test of arbitrariness. In the present case, the findings of the CA differ from those of the Labor Arbiter and the NLRC. The Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; SERIOUS MISCONDUCT; REQUISITES.— One of the just causes enumerated in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

3. ID.; ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE; REQUISITES.— One of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the

employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.

4. ID.; ID.; ID.; ID.; ID.; GROSS AND HABITUAL NEGLECT OF DUTIES; ELUCIDATED.— Neglect of duty, to be a ground for dismissal, must be both gross and habitual. In finding that petitioner was able to adduce evidence that would justify its dismissal of respondent, the NLRC correctly ruled that the latter's failure to turn over his functions to someone capable of performing the vital tasks which he could not effectively perform or undertake because of his heart ailment or condition constitutes gross neglect. x x x Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business.

5. ID.; ID.; ID.; ID.; THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL IS FOR JUST AND VALID CAUSE.— It must be emphasized at this point that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal. In this case, both the Labor Arbiter and the NLRC were not amiss in finding that the dismissal of respondent was legal or for a just cause based on substantial evidence presented by petitioner. Substantial evidence, which is the quantum of proof required in labor cases, is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

6. ID.; ID.; ID.; ID.; AS A GENERAL RULE, AN EMPLOYEE WHO HAS BEEN DISMISSED FOR ANY OF THE JUST CAUSES IS NOT ENTITLED TO SEPARATION PAY; EXCEPTION.— [A]lthough the dismissal was legal, respondent

> is still entitled to a separation pay as a measure of financial assistance, considering his length of service and his poor physical condition which was one of the reasons he filed a leave of absence. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to separation pay. Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee dismissed for just causes on the basis of equity. This concept has been thoroughly discussed in *Solidbank Corporation v. NLRC*, thus: The reason that the law does not statutorily grant separation pay or financial assistance in instances of termination due to a just cause is precisely because the cause for termination is due to the acts of the employee. In such instances, however, **this Court, inspired by compassionate and social justice, has in the past awarded financial assistance to dismissed employees when circumstances warranted such an award**.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for petitioner.

Banzuela Rebanal and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review[1] dated July 10, 2004 of petitioner Nissan Motors Phils., Inc. (Nissan) assailing the Decision[2] dated March 24, 2004 of the Court of Appeals (CA) and the latter's Resolution[3] dated June 9, 2004.

The records contain the following antecedent facts:

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[1] *Rollo*, pp. 3-220.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring; *rollo*, pp. 28-36.

[3] *Id.* at 54.

Respondent Victorino Angelo was employed by Nissan on March 11, 1989 as one of its payroll staff. On April 7 to 17, 2000, respondent was on sick leave, thus, he was not able to prepare the payroll for the said period. Again, on April 27 and 28, 2000, respondent was on an approved vacation leave which again resulted in the non-preparation of the payroll for that particular period.

On May 8, 2000, respondent received a Memorandum[4] from the petitioner containing the following:

> This is to inform you that the Company is considering your dismissal from employment on the grounds of **serious misconduct, willful disobedience and gross neglect of duties**.
>
> It appears that on April 10, 2000, Monday, which was the supposed cut-off date for payroll purposes for the April 15 payroll, you went home early without finishing your work and requested for a referral letter from the company clinic to E. Delos Santos Hospital claiming that you are not feeling well.
>
> On April 11, Tuesday, you did not report for work, without any notice to the company or to any of your immediate superior section head, department head and division head. A phone call was made to your home, but the company could not make any contact.
>
> On April 12, Wednesday, you reported for work but went home early claiming that you were again not feeling well. You were reminded of the coming payday on Friday, April 14, and you said you will be able to finish it on time and that you will just continue/finish your work the following day.
>
> On April 13, Thursday, you again did not report for work without any notice to the company just like what you did last Tuesday. Your immediate superior, sensing that you did not finish your task, tried to contact you but to no avail, as you were residing in Novaliches and your home phone was not in order. So we decided to open your computer thru the help of our IT people to access the payroll program.
>
> On April 14, Friday (payday), we were still doing the payroll thru IT because we could not contact you. Later in the day, the Company decided to release the payroll of employees the following day as

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[4] *Rollo*, pp. 98-101. (Emphasis supplied.)

we already ran out of time and the Company just based the net pay of the employees on their March 15 payroll. Naturally, the amount released to the employees were not accurate as some got more than (sic), while some got less than what they were supposed to receive.

Consequently, many employees got angry, as the Company paid on a Saturday, (in practice we do not release salary on a Saturday as it is always done in advance, *i.e.*, Friday) and majority got lesser amount than what they were supposed to receive. In addition, the employees were not given their payslip where they can base the net pay they received.

When you reported for work on Tuesday, April 18, we had a meeting and you were advised to transfer your payroll task to your immediate superior, which you agreed. The time table agreement was 2 payroll period, meaning April 30 and May 15 payroll.

Still on April 18, Tuesday, you filed an application for vacation leave due to your son's graduation on April 27 and 28. Because it is again payroll time, we advised that your leave will be approved on the condition that you will ensure that the payroll is finished on time and [you] will make a proper turn over to your immediate superior before your leave. You agreed and your leave was approved.

On April 24, Monday, you were reminded you should start on your payroll task because you will be on leave starting April 27, Thursday, you said yes.

On April 25, Tuesday, you were again reminded on finishing the payroll and the turn over again and you said yes.

On April 26, Wednesday, you were again reminded on the same matter and, in fact, Mr. AA del Rosario reminded you also on the matter about 5:30 p.m. And you promised him that the task will be finished by tomorrow (sic) and will just leave the diskette in your open drawer. You were left in the office until 6:00 p.m.

On April 27, Thursday, you were already on leave and your superior, Mr. M. Panela, found out that the diskette only contained the amount and name of employees, but not the account number. Likewise, the deductions from salaries was not finished, the salaries of contractuals, apprentices were also not finished. Since the bank only reads account numbers of employees, we experienced delay in the payroll processing. You even promised to call the office *i.e.*, M Panela to give additional instructions not later than 12:00 noon on the same day, but you did

not do so. In fact, the direct phone line of Mr. AA del Rosario was given to you by your officemate so you can call the office directly and not thru long distance.

On April 28, Friday, after exhaustive joint efforts done by Welfare Management Section and IT Division, we were able to finally release the payroll thru the bank, but many employees got lower amount than what they have expected, as in fact at least 43 employees out of 360 got salaries below ₱1,000.00, among them about 10 people got no salary primarily due to wrong deduction and computation done by you. Again, many people got angry to the management's inefficient handling of their payroll.

On May 2, Tuesday, you did not report for work, again you said you are not feeling well, but the information to us came very late at about noon time.

On May 3, Wednesday, you reported for work, and was instructed to finish the payslips for the payroll periods April 15 and April 30. You said yes, and you promised not to go home on that day without finishing the payslips. Later, you decided on your own to just compute the payslip on a monthly basis instead of the usual semi-monthly basis as is the customary thing to do. As a result thereof, an error in the tax withholding happened and again resulted in another confusion and anger among employees, as in fact for two (2) consecutive days, May 3 and May 4, the plant workers refused to render overtime.

As a consequence of all these, the manufacturing employees, numbering about 350 people or about 65% of [Nissan's total population], since April 16, have started to decline rendering overtime work, saying after their 15 days of work they received only less than ₱200 while some even received only ₱80.

The manufacturing operation was hampered completely in the month of April and the first week of May because of these several incidents. In sum, the company has suffered massive loss of opportunity to sell because of failure to produce in the production area due to non-availability of workers rendering overtime, high absenteeism rate among plant direct workers primarily due to the payroll problem. It came at a time when NMPI sales [are] just starting to pick up due to the introduction of the new model Sentra Exalta. The loss is simply too overwhelming.

Accordingly, you are hereby given a period of three (3) days from receipt hereof to submit your written answer.

In the meantime, you are hereby placed on preventive suspension effective immediately.

A hearing will be conducted by Mr. AA del Rosario, on May 13, 2000 at 9:00 a.m. at the Company's conference room (Fairlady).

Respondent filed a Complaint[5] for illegal suspension with the Department of Labor and Employment (DOLE) on May 12, 2000.

Petitioner conducted an investigation on May 13, 2000, and concluded that respondent's explanation was untrue and insufficient. Thus, on June 13, 2000, petitioner issued a Notice of Termination.[6]

Respondent amended his previous complaint against petitioner on June 22, 2000, to include the charge of illegal dismissal.[7] On September 29, 2000, the Labor Arbiter rendered a Decision[8] dismissing respondent's complaint for lack of merit. Undaunted, respondent brought the case to the National Labor Relations Commission (NLRC), which eventually rendered a Resolution[9] dated February 14, 2002 dismissing the appeal and affirming the Labor Arbiter's Decision. Respondent's motion for reconsideration of the NLRC resolution was subsequently denied on May 13, 2002.[10]

Aggrieved, respondent filed a petition for *certiorari*[11] under Rule 65 of the Rules of Court with the CA and the latter granted

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[5] Records, p. 1.

[6] *Id.* at 37.

[7] *Id.* at 7.

[8] *Id.* at 108-118.

[9] *Id.* at 153-161.

[10] *Id.* at 192-193.

[11] CA *rollo*, pp. 2-148.

the same petition in its Decision dated March 24, 2004, the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED. The assailed resolutions dated February 14, 2002 and May 13, 2002 are REVERSED and SET ASIDE. The petitioner is hereby reinstated and the private respondents are ordered to pay him backwages from the time of his illegal dismissal.
>
> SO ORDERED.

Unsatisfied with the decision of the CA, Nissan filed a motion for reconsideration, which was denied by the same court in a Resolution dated June 9, 2004.

Thus, the present petition, to which the petitioner cites the following grounds:

A

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT OVERTURNED THE FACTUAL FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC WHICH ARE BASED ON SUBSTANTIAL EVIDENCE.

B

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT DISREGARDED PRIVATE RESPONDENT'S SERIOUS MISCONDUCT AND INSUBORDINATION, AND DECIDED THE CASE ONLY ON THE CHARGE OF GROSS AND HABITUAL NEGLIGENCE.

C

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN IGNORING PRIVATE RESPONDENT'S MISCONDUCT WHICH, IF EVER IT DOES NOT JUSTIFY DISMISSAL BECAUSE OF HIS 11-YEAR SERVICE NONETHELESS LIMITS THE AWARD OF BACKWAGES.[12]

The petition is meritorious.

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[12] *Rollo,* pp. 12-13.

Petitioner argues that the factual findings of the Labor Arbiter and the NLRC should have been accorded respect by the CA as they are based on substantial evidence. However, factual findings of administrative agencies are not infallible and will be set aside if they fail the test of arbitrariness.[13] In the present case, the findings of the CA differ from those of the Labor Arbiter and the NLRC. The Court, in the exercise of its equity jurisdiction, may look into the records of the case and re-examine the questioned findings.[14]

The Labor Code provides that an employer may terminate the services of an employee for a just cause.[15] Petitioner, the employer in the present case, dismissed respondent based on allegations of serious miscounduct, willful disobedience and gross neglect.

One of the just causes enumerated in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct.[16] It is the transgression of some established and definite rule of

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[13] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, 494 Phil. 697, 716 (2005), citing *Philippine Airlines, Inc. v. National Labor Relations Commission*, 344 Phil. 860, 873 (1997), citing *Zarate, Jr. v. Olegario*, 331 Phil. 278 (1996).

[14] *Id.*

[15] 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.

[16] *Philippine Long Distance Telephone Company v. Bolso*, G.R. No. 159701, August 17, 2007, 530 SCRA 550, 559-560.

action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[17] Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[18] Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[19]

Going through the records, this Court found evidence to support the allegation of serious misconduct or insubordination. Petitioner claims that the language used by respondent in his Letter-Explanation is akin to a manifest refusal to cooperate with company officers, and resorted to conduct which smacks of outright disrespect and willful defiance of authority or insubordination. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant.[20] The Letter-Explanation[21] partly reads:

Again, it's not negligence on my part and I'm not alone to be blamed. It's negligence on your part [Perla Go] and A.A. Del Rosario *kasi, noong pang April 1999 ay alam ninyo na hindi ako ang dapat may responsibilidad ng payroll kundi ang Section Head eh bakit hindi ninyo pinahawak sa Section Head noon pa. Pati kaming dalawa sa payroll, kasama ko si Thelma. Tinanggal nyo si Thelma. Hindi nyo ba naisip na kailangan dalawa ang tao sa payroll para pag absent*

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[17] *Id.* at 560.

[18] *Id.*, citing Dept. of Labor Manual, Sec. 4343.01, cited in C.A. AZUCENA, *The Labor Code with Comments and Cases*, Volume Two, (Fifth Edition, 2004) p. 604.

[19] *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 727, citing *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, 387 Phil. 250, 261 (2000).

[20] *Philippine Long Distance Telephone Company v. Bolso, supra* note 16, at 560.

[21] Records, pp. 58-59.

ang isa ay may gagawa. Dapat noon nyo pa naisip iyan. Ang tagal kong gumawa ng trabahong hindi ko naman dapat ginagawa.

This Court finds the above to be grossly discourteous in content and tenor. The most appropriate thing he could have done was simply to state his facts without resorting to such strong language. Past decisions of this Court have been one in ruling that accusatory and inflammatory language used by an employee to the employer or superior can be a ground for dismissal or termination.[22]

Another just cause cited by the petitioner is willful disobedience. One of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge.[23] This allegation of willful disobedience can still be adduced and proven from the same Letter-Explanation cited earlier.

Petitioner also dismissed respondent because of gross or habitual negligence. Neglect of duty, to be a ground for dismissal, must be both gross and habitual.[24] In finding that petitioner was able

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[22] See *St. Mary's College v. National Labor Relations Commission*, 260 Phil. 63, 67 (1990); *Garcia v. Manila Times*, G.R. No. 99390, July 5, 1991, 224 SCRA 399, 403; *Asian Design and Manufacturing Corp. v. Department of Labor and Employment*, 226 Phil. 20, 23 (1986).

[23] *Escobin v. National Labor Relations Commission*, 351 Phil. 973, 995 (1998), citing *Mañebo v. National Labor Relations Commission*, G.R. No. 107721, January 10, 1994, 229 SCRA 240, 249-250; *Stolt-Nielsen Marine Services (Phils.), Inc. vs. National Labor Relations Commission*, 328 Phil. 161, 167 (1996); *AHS/Philippines, Inc. v. Court of Appeals*, 327 Phil. 129, 139 (1996).

[24] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 205, citing *National Sugar Refineries Corporation v. National Labor Relations Commission*, 350 Phil. 119, 127 (1998).

to adduce evidence that would justify its dismissal of respondent, the NLRC correctly ruled that the latter's failure to turn over his functions to someone capable of performing the vital tasks which he could not effectively perform or undertake because of his heart ailment or condition constitutes gross neglect. It stated that:

x x x Be it mentioned and emphasized that complainant cannot be faulted for his absences incurred on 10, 11, 13, 14, 17, 27 and 28 of April 2000 as he went on official leave on said dates. Except for the last two dates mentioned (27 and 28 April 2000), health problem compelled complainant to be on sick leave of absence on the foregoing dates. It is not the complainant's liking, in other words, to be afflicted with any form of heart ailment which actually caused him to incur such leave of absences. Complainant's pellucid fault, however, lies on his failure to effect the "much-needed" turn over of functions to someone capable of performing the vital task(s) which he could not effectively perform or undertake because of his heart ailment or condition. Indeed, the trouble(s) "felt" by management and the employees concerned on the payday of 15 April 2000 may seem justified under the circumstances as complainant indeed has gotten ill and in fact went on sick leave of absence prior to said payday. The same, however, certainly does not hold true as to the trouble(s) and chaos felt and which occurred on the payday of 30 April 2000 as diligence and prudence logically and equitably required complainant to have effected the necessary turn over of his functions to someone capable of taking over his assigned task(s) even perhaps on a merely temporary basis. The preparation of payroll, especially that of a big business entity such as herein respondent company, certainly involves serious, diligent, and meticulous attention of the employee tasked of performing such function and a company definitely could not let either negligence or absence of the employee concerned get in the way of the performance of the undertaking of such, otherwise, serious repercussion(s) would be the logical and unavoidable consequences; such is what befell the respondents. Be it mentioned at this juncture that under the circumstances herein then prevailing, it would seem just logical and in keeping with the natural "reflexes," so to speak, of a business entity, to require an incapable employee tasked to perform a vital function, to effect the necessary turn over of functions of such employee to someone capable. Be it further emphasized, however, that even assuming that no formal directive was given by the company to the employee concerned for the turn over of the

latter's functions, said employee should have taken the initiative of so doing considering the importance of the task(s) he is performing. Hence, failure to do so would clearly be tantamount to serious neglect of duty, a valid ground in terminating employment relations.[25]

Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latter's business.[26]

It must be emphasized at this point that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal.[27] In this case, both the Labor Arbiter and the NLRC were not amiss in finding that the dismissal of respondent was legal or for a just cause based on substantial evidence presented by petitioner. Substantial evidence, which is the quantum of proof required in labor cases, is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

However, although the dismissal was legal, respondent is still entitled to a separation pay as a measure of financial assistance, considering his length of service and his poor physical condition

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[25] *Rollo*, pp. 148-149.

[26] *Genuino Ice Company, Inc. v. Magpantay*, *supra* note 24, at 206, citing *JGB & Associates v. National Labor Relations Commission*, 324 Phil. 747, 754 (1996); *Chua v. National Labor Relations Commission*, 493 Phil. 399, 408 (2005).

[27] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, July 31, 2006, 497 SCRA 361, 383, citing *Royal Crown Internationale v. National Labor Relations Commission*, G.R. No. 78085, October 16, 1989, 178 SCRA 569, 578.

[28] RULES OF COURT, Rule 133, Sec. 5.

which was one of the reasons he filed a leave of absence. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[29] of the Labor Code is not entitled to separation pay.[30] Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee dismissed for just causes on the basis of equity.[31] This concept has been thoroughly discussed in *Solidbank Corporation v. NLRC,*[32] thus:

> The reason that the law does not statutorily grant separation pay or financial assistance in instances of termination due to a just cause is precisely because the cause for termination is due to the acts of the employee. In such instances, however, **this Court, inspired by compassionate and social justice, has in the past awarded financial assistance to dismissed employees when circumstances warranted such an award**.

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[29] 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.

[30] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Sec. 7. *Termination of employment by employer*. – The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective bargaining agreement with the employer or voluntary employer policy or practice.

[31] *Solidbank Corporation v. National Labor Relations Commission*, G.R. No. 165951, March 30, 2010, 617 SCRA 161, 175, citing *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 663-664 (2005).

[32] *Id.* at 175-176. (Emphasis supplied).

In *Central Philippines Bandag Retreaders, Inc. v. Diasnes*,[33] this Court discussed the parameters of awarding separation pay to dismissed employees as a measure of financial assistance, *viz*:

> To reiterate our ruling in Toyota, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family - grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[34]

Thus, in *Philippine Commercial International Bank v. Abad*,[35] this Court, having considered the circumstances present therein and as a measure of social justice, awarded separation pay to a dismissed employee for a just cause under Article 282. The same concession was given by this Court in *Aparente, Sr. v. National Labor Relations Commission*[36] *and Tanala v. National Labor Relations Commission*.[37]

WHEREFORE, the Petition for Review dated July 10, 2004 of petitioner Nissan Motors Phils., Inc. is hereby *GRANTED*. Consequently, the Decision dated March 24, 2004 of the Court of Appeals and the latter's Resolution dated June 9, 2004 are hereby *REVERSED AND SET ASIDE* and the Decision dated

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[33] G.R. No. 163607, July 14, 2008, 558 SCRA 194.

[34] *Id.* at 207.

[35] *Supra* note 31.

[36] 387 Phil. 96 (2000).

[37] 322 Phil. 343 (1996).

September 29, 2000 of the Labor Arbiter and its Resolution dated February 14, 2002 are hereby *REINSTATED* with the *MODIFICATION* that petitioner shall award respondent his separation pay, the computation of which shall be based on the prevailing pertinent laws on the matter.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Sereno,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 164682. September 14, 2011]

JOEL GALZOTE *y* SORIAGA, *petitioner, vs.* **JONATHAN BRIONES and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; REMEDY AVAILABLE TO A PARTY FROM A DENIAL OF A MOTION TO QUASH.— A preliminary consideration in this case relates to the propriety of the chosen legal remedies availed of by the petitioner in the lower courts to question the denial of his motion to quash. In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not

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[*] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

only as an error committed by the trial court but as an added ground to overturn the latter's ruling.

2. ID.; ID.; A DENIAL OF A MOTION TO QUASH IS AN INTERLOCUTORY ORDER AND IS NOT APPEALABLE; AN APPEAL FROM AN INTERLOCUTORY ORDER IS NOT ALLOWED UNDER SECTION 1 (b) RULE 41 OF THE RULES OF COURT.— The petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash *via* a special civil action for *certiorari* under Rule 65 of the Rules of Court. As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1(b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above.

3. ID.; ID.; WHEN IS A CRIMINAL INFORMATION SUFFICIENT IN FORM AND SUBSTANCE.— A facial examination of the criminal information against the petitioner shows it to be valid and regular on its face considering its conformity with the guidelines under Section 6, Rule 110 of the 2000 Revised Rules of Criminal Procedure. This section provides: SEC. 6. *Sufficiency of complaint or information.* - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. When an offense is committed by more than one person, all of them shall be included in the complaint or information. Under the circumstances, the criminal information is sufficient in form and substance for it states: (a) the name of the petitioner as the accused; (b) the offense of robbery as the designated offense committed; (c) the manner on how the offense of robbery was committed and the petitioner's participation were alleged with particularity; and (d) the date and the place of the commission of the robbery were also stated therein. Thus, as the RTC correctly ruled, the petitioner can be properly tried under the allegations of the information.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESORT THERETO MUST BE FIRMLY GROUNDED ON COMPELLING REASONS.—A direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial justice"; the promotion of public welfare and public policy; cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof"; or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for *certiorari*. In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.

5. ID.; ID.; ID.; NO COMPELLING REASON TO JUSTIFY RESORT TO A PETITION FOR *CERTIORARI* IN CASE AT BAR; THE GROUND CITED IN THE MOTION TO QUASH IS AN EXTRANEOUS MATTER THAT HAS NO BEARING AND IS IRRELEVANT TO THE VALIDITY OF THE CRIMINAL INFORMATION FILED AGAINST THE ACCUSED.— We find no compelling reason to justify a resort to a petition for *certiorari* against the orders of the MeTC as the petitioner failed to show that the factual circumstances of his case fall under any of the above exceptional circumstances. The MeTC in fact did not commit any grave abuse of discretion as its denial of the motion to quash was consistent with the existing rules and applicable jurisprudence. The ground used by the petitioner in his motion to quash (*i.e.*, that his co-conspirator had been convicted of an offense lesser than the crime of robbery) is not among the exclusive grounds enumerated under Section 3, Rule 117 of the 2000 Revised Rules of Criminal Procedure that warrant the quashal of a criminal information. This ground, too, is an extraneous matter that has no bearing and is irrelevant to the validity of the criminal information filed against the accused; the designated purpose of a motion to quash is to assail the validity of the criminal

information (or criminal complaint) for defects or defenses *apparent on the face of the information*.

6. ID.; ID.; ID.; PETITION FOR *CERTIORARI* NOT PROPER REMEDY TO QUESTION TRIAL COURT'S ORDER IN CASE AT BAR.— To proceed to the merits of the CA resolution that is the main subject of this review, we find no reversible error in the CA's dismissal of the petitioner's petition for *certiorari* assailing the RTC's order; the petition was both procedurally and substantively infirm. We find that the petition for *certiorari* filed with the CA was a wrong legal remedy to question the RTC order. The petition for *certiorari* filed by the petitioner before the RTC was an original action whose resulting decision is a ***final order*** that completely disposed of the petition; the assailed CA resolution was in all respect a ruling on the propriety of the petition for *certiorari* filed with the RTC. Hence, the petitioner's remedy was to appeal the RTC order to the CA pursuant to Section 2, Rule 41 of the Rules of Court: SEC. 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. Given the plain, speedy and adequate remedy of appeal, the petitioner cannot avail of the remedy of *certiorari*. Even on the substantive aspect, the petition for *certiorari* filed with the CA must fail considering the petitioner's failure to show any justifiable reason for his chosen mode of review. In addition, we find no grave abuse of discretion committed by the RTC since it was merely affirming a correct ruling of denial by the MeTC of the petitioner's motion to quash.

7. ID.; ID.; ID.; A PARTY CANNOT BE ALLOWED TO DELAY LITIGATION BY FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 BASED ON SCANT ALLEGATIONS OF GRAVE ABUSE OF DISCRETION.— As a final word, we cannot allow a party to delay litigation by filing a petition for *certiorari* under Rule 65 based on scant allegations of grave abuse of discretion. We repeat that it is only in the presence of extraordinary circumstances where a resort to a petition for *certiorari* is proper. Under the circumstances,

the petitioner's recourses cannot but be dilatory moves that deserve sanction from this Court.

APPEARANCES OF COUNSEL

Albarico & Albarico Law Offices for petitioner.
The Solicitor General for public respondent.
Ma. Yvette O. Navarro for private respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the twin resolutions[1] of the Court of Appeals (*CA*) dated April 30, 2004 and July 23, 2004 in CA-G.R. SP No. 76783. The assailed April 30, 2004 resolution dismissed the petition for *certiorari* filed by Joel S. Galzote (*petitioner*), while the challenged July 23, 2004 resolution denied his motion for reconsideration.

ANTECEDENT FACTS

On January 23, 1997, the prosecution filed an Information for robbery in an uninhabited place against the petitioner before the Metropolitan Trial Court (*MeTC*), Branch 1, Manila. The accusatory portion of the Information reads:

The undersigned accuses JOEL GALZOTE *Y* SORIAGA of the crime of Robbery in an Uninhabited Place, committed as follows:

That on or about July 22, 1996, in the City of Manila, Philippines, the said accused, conspiring and confederating with one ROSENDO OQUINA *Y* ESMALI who is already charged with the same offense with the Metropolitan Trial Court of Manila, docketed as Criminal Case No. 304765, did then and there willfully, unlawfully and feloniously, with intent of gain, by means of force upon things, break into and enter the Administration Office of the Prince Town Inn

[1] *Rollo*, pp. 22-31; penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justice Salvador J. Valdez, Jr. and Associate Justice Rebecca de Guia-Salvador.

Corporation located at Valenzuela Street, Sta. Mesa, this City, which is an uninhabited place, by then and there destroying the Jipson board ceiling of the said establishment with the use of a fan knife and passing through the same, an opening not intended for entrance or egress, and once inside, and without the knowledge and consent of the owner thereof, took, stole and carried away cash money in the amount of ₱109,000.00 belonging to said Prince Town Inn Corporation, to the damage and prejudice of said owner in the aforesaid amount of ₱109,000.00, Philippine Currency [sic].

Contrary to law.[2]

The petitioner moved to quash the above information by alleging that it was patently irregular and fatally flawed in form and in substance. The MeTC denied the petitioner's motion to quash in its order of September 15, 1997.[3] Likewise, the MeTC denied the petitioner's motion for reconsideration of the order of denial.[4]

Via a petition for *certiorari*,[5] the petitioner elevated the unfavorable ruling of the MeTC to the Regional Trial Court (*RTC*), Branch 8, Manila. The petitioner argued that the MeTC committed grave abuse of discretion in not granting his motion to quash. Respondent Jonathan Briones (*respondent*) moved to dismiss the petition for *certiorari*, arguing that: (a) the petitioner failed to prosecute the petition for an unreasonably long period of time; (b) a petition for *certiorari* is not the proper remedy to address the denial of a motion to quash; and (c) the MeTC did not abuse its discretion in denying the petitioner's motion to quash.[6]

In its order[7] of March 22, 2002, the RTC granted the respondent's motion and dismissed the petition for *certiorari*.

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[2] Records, p. 27.

[3] *Rollo*, pp. 74-75.

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

[5] Records, pp. 16-23.

[6] *Id.* at 35-42.

[7] *Rollo*, pp. 79-80.

The RTC also denied the motion for reconsideration filed by the petitioner.[8]

The petitioner filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 76783. The CA dismissed the petition in its resolution of April 30, 2004.[9]

The CA held that the petitioner lost his right to appeal when he failed to appeal within the 15-day reglementary period under Rule 41 of the Revised Rules of Court. The CA explained that the petitioner should have filed an appeal, instead of a special civil action for *certiorari*, upon receipt of the RTC's denial of his motion for reconsideration. The CA also noted that the petitioner failed to implead the *People of the Philippines* as party-respondent in his petition.

The CA saw no merit in the petitioner's argument that the lower courts erred in denying his motion to quash. It explained that the allegation of conspiracy in his case need not be alleged with particularity since it was not charged as an offense in itself, but only as a manner of incurring criminal liability. The fact that the petitioner's alleged co-conspirator had been convicted of the lesser offense of malicious mischief in another case is not a bar to the petitioner's prosecution for the crime of robbery.

The petitioner moved to reconsider this resolution, but the CA denied his motion in its resolution[10] dated July 23, 2004.

THE PETITION

In the present petition for review on *certiorari*, the petitioner claims that his recourse to a petition for *certiorari* before the CA was proper. He argues that both the MeTC and the RTC committed grave abuse of discretion when they denied his motion to quash. He alleges that the trial courts failed to see that the information filed against him was flawed both in form and in substance.

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[8] Order of March 19, 2003; *id.* at 81-82.

[9] *Id.* at 22-28.

[10] *Id.* at 31.

The petitioner additionally claims that his failure to implead the *People of the Philippines* as party-respondent was not fatal to his petition.

THE COURT'S RULING

We **deny** the petition for lack of merit.

Remedy from the Denial of a Motion to Quash

A preliminary consideration in this case relates to the propriety of the chosen legal remedies availed of by the petitioner in the lower courts to question the denial of his motion to quash. In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.

In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash *via* a special civil action for *certiorari* under Rule 65 of the Rules of Court.

As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1(b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy.[11] The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above.

Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial

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[11] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341.

justice";[12] the promotion of public welfare and public policy;[13] cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof";[14] or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for *certiorari*.[15]

In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.

At the RTC

We find no compelling reason to justify a resort to a petition for *certiorari* against the orders of the MeTC as the petitioner failed to show that the factual circumstances of his case fall under any of the above exceptional circumstances. The MeTC in fact did not commit any grave abuse of discretion as its denial of the motion to quash was consistent with the existing rules and applicable jurisprudence. The ground used by the petitioner in his motion to quash (*i.e.*, that his co-conspirator had been convicted of an offense lesser than the crime of robbery) is not among the exclusive grounds enumerated under Section 3, Rule 117 of the 2000 Revised Rules of Criminal Procedure that warrant the quashal of a criminal information.[16]

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[12] *Curata v. Philippine Ports Authority*, G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214, 313.

[13] *Ibid*.

[14] *Supra* note 11, at 361.

[15] *Ibid.*, citing *Mead v. Hon. Argel, etc., et al.*, 200 Phil. 650, 656 (1982); *Yap v. Lutero*, 105 Phil. 1307, 1308 (1959); and *Pineda and Ampil Manufacturing Co. v. Bartolome, et al.*, 95 Phil. 930, 937 (1954) which cited *People v. Zulueta*, 89 Phil. 752, 756 (1951).

[16] Section 3, Rule 117 enumerates the grounds for the quashal of a complaint or information, as follows:

This ground, too, is an extraneous matter that has no bearing and is irrelevant to the validity of the criminal information filed against the accused; the designated purpose of a motion to quash is to assail the validity of the criminal information (or criminal complaint) for defects or defenses *apparent on the face of the information*.[17] A facial examination of the criminal information against the petitioner shows it to be valid and regular on its face considering its conformity with the guidelines under Section 6, Rule 110 of the 2000 Revised Rules of Criminal Procedure. This section provides:

SEC. 6. *Sufficiency of complaint or information.* - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

Under the circumstances, the criminal information is sufficient in form and substance for it states: (a) the name of the petitioner

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(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[17] *Los Baños v. Pedro*, G.R. No. 173588, April 22, 2009, 586 SCRA 303.

as the accused; (b) the offense of robbery as the designated offense committed; (c) the manner on how the offense of robbery was committed and the petitioner's participation were alleged with particularity; and (d) the date and the place of the commission of the robbery were also stated therein. Thus, as the RTC correctly ruled, the petitioner can be properly tried under the allegations of the information.

The CA Resolution

To proceed to the merits of the CA resolution that is the main subject of this review, we find no reversible error in the CA's dismissal of the petitioner's petition for *certiorari* assailing the RTC's order; the petition was both procedurally and substantively infirm.

We find that the petition for *certiorari* filed with the CA was a wrong legal remedy to question the RTC order. The petition for *certiorari* filed by the petitioner before the RTC was an original action whose resulting decision is a ***final order*** that completely disposed of the petition;[18] the assailed CA resolution was in all respect a ruling on the propriety of the petition for *certiorari* filed with the RTC. Hence, the petitioner's remedy was to appeal the RTC order to the CA pursuant to Section 2, Rule 41 of the Rules of Court:

SEC. 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.

Given the plain, speedy and adequate remedy of appeal, the petitioner cannot avail of the remedy of *certiorari*.[19]

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[18] See *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 139.

[19] *Uy Kiao Eng v. Lee*, G.R. No. 176831, January 15, 2010, 610 SCRA 211.

Even on the substantive aspect, the petition for *certiorari* filed with the CA must fail considering the petitioner's failure to show any justifiable reason for his chosen mode of review. In addition, we find no grave abuse of discretion committed by the RTC since it was merely affirming a correct ruling of denial by the MeTC of the petitioner's motion to quash.

As a final word, we cannot allow a party to delay litigation by filing a petition for *certiorari* under Rule 65 based on scant allegations of grave abuse of discretion.[20] We repeat that it is only in the presence of extraordinary circumstances where a resort to a petition for *certiorari* is proper.[21] Under the circumstances, the petitioner's recourses cannot but be dilatory moves that deserve sanction from this Court.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit, and accordingly *AFFIRM* the challenged resolutions of the Court of Appeals dated April 30, 2004 and July 23, 2004 in CA-G.R. SP No. 76783. Treble costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), del Castillo,[*] *Perez,* and *Sereno, JJ.*, concur.

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[20] *Santos v. People*, *supra* note 11.

[21] *Ibid.*

[*] Designated as Acting Member of the Second Division vice Associate Justice Bienvenido L. Reyes per Special Order No. 1077 dated September 12, 2011.

SECOND DIVISION

[G.R. No. 165287. September 14, 2011]

ARMANDO BARCELLANO, *petitioner, vs.* **DOLORES BAÑAS, represented by her son and Attorney-in-fact CRISPINO BERMILLO,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; LEGAL REDEMPTION; WITHOUT A WRITTEN NOTICE, THE PERIOD OF THIRTY DAYS WITHIN WHICH THE RIGHT OF LEGAL PRE-EMPTION MAY BE EXERCISED, DOES NOT START.— Nothing in the records and pleadings submitted by the parties shows that there was a written notice sent to the respondents. Without a written notice, the period of thirty days within which the right of legal pre-emption may be exercised, does not start. The indispensability of a written notice had long been discussed in the early case of *Conejero v. Court of Appeals,* penned by Justice J.B.L. Reyes: With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which Article of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive. This is the same ruling in *Verdad v. Court of Appeals*: The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status. Lately, in *Gosiengfiao Guillen v. the Court of Appeals*, this Court again emphasized the mandatory character of a written notice in legal redemption: From these premises, we ruled that "*[P]etitioner-heirs have*

not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run." These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.**

2. ID.; ID.; ID.; ID.; THE *ALONZO* CASE IS NOT APPLICABLE IN CASE AT BAR; THE STRICT LETTER OF ARTICLE 1623 OF THE NEW CIVIL CODE MUST APPLY AND A DEPARTURE THEREFROM SHOULD ONLY BE FOR EXTRAORDINARY REASONS.— The petitioner argues that the only purpose behind Art. 1623 of the New Civil Code is to ensure that the owner of the adjoining land is actually notified of the intention of the owner to sell his property. To advance their argument, they cited *Destrito v. Court of Appeals* as cited in *Alonzo v. Intermediate Appellate Court*, where this Court pronounced that written notice is no longer necessary in case of actual notice of the sale of property. The *Alonzo* case does not apply to this case. There, we pronounced that the disregard of the mandatory written rule was an exception due to the peculiar circumstance of the case. x x x Without the "peculiar circumstances" in the present case, *Alonzo* cannot find application. The impossibility in *Alonzo* of the parties' not knowing about the sale of a portion of the property they were actually occupying is not presented in this case. The strict letter of the law must apply. That a departure from the strict letter should only be for extraordinary reasons is clear from the second sentence of Art. 1623 that "*The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners."*

3. ID.; ID.; ID.; ID.; IF THE INTENT OF THE LAW HAS BEEN TO INCLUDE VERBAL NOTICE OR ANY OTHER MEANS OF INFORMATION AS SUFFICIENT TO GIVE THE EFFECT OF THE NOTICE, THERE WOULD HAVE BEEN NO NECESSITY OR REASON TO SPECIFY IN THE ARTICLE THAT SAID NOTICE BE IN WRITING.— Justice

Edgardo Paras, referring to the origins of the requirement, would explain in his commentaries on the New Civil Code that despite actual knowledge, the person having the right to redeem is **STILL** entitled to the written notice. Both the letter and the spirit of the New Civil Code argue against any attempt to widen the scope of the "written notice" by including therein any other kind of notice such as an oral one, or by registration. If the intent of the law has been to include verbal notice or any other means of information as sufficient to give the effect of this notice, there would have been no necessity or reason to specify in the article that said notice be in writing, for under the old law, a verbal notice or mere information was already deemed sufficient.

4. ID.; ID.; ID.; ID.; WHERE THE LAW SPEAKS IN CLEAR AND CATEGORICAL LANGUAGE, THERE IS NO ROOM FOR INTERPRETATION, THERE IS ONLY ROOM FOR APPLICATION.— Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. The law is clear in this case, there must first be a written notice to the family of Bañas. *Absolute Sentencia Expositore Non Indiget*, when the language of the law is clear, no explanation of it is required.

APPEARANCES OF COUNSEL

Brotamonte Law Office for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is an appeal by *certiorari*[1] from the Decision[2] of the Fifteenth Division of the Court of Appeals in CA-G.R. CV No. 67702 dated 26 February 2004, granting the petition of Dolores Bañas, herein respondent, to reverse and set aside the Decision[3] of the lower court.

The dispositive portion of the assailed decision reads:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The decision of the court *a quo* is hereby REVERSED AND SET ASIDE and in its stead another one is rendered GRANTING to petitioner-appellants the right to redeem the subject property for the amount of Php 60,000.00 within thirty (30) days from the finality of this decision.

The facts as gathered by the court follow:

Respondent Bañas is an heir of Bartolome Bañas who owns in fee simple Lot 4485, PLS-722-D situated in Hindi, Bacacay, Albay. Adjoining the said lot is the property of Vicente Medina (Medina), covered by Original Certificate of Title No. VH-9094, with an area of 1,877 square meters. On 17 March 1997, Medina offered his lot for sale to the adjoining owners of the property, the heirs of Bartolome Bañas, including herein respondent Dolores Bañas, Crispino Bermillo (Bermillo) and Isabela Bermillo-Beruela (Beruela)[4] Crispino Bermillo, as the representative of

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Vicente Q. Roxas and Mariano C. del Castillo (now a member of this Court), concurring. *Rollo*, pp. 108-112.

[3] Dated 26 February 2004.

[4] Testimony of Isabela Beruela. TSN, 16 February 1999, p. 6.

his family, agreed to the offer of Medina, the sale to take place after the harvest season.[5]

On 3 April 1997, Medina sold the property to herein petitioner Armando Barcellano for ₱60,000.00. The following day, the heirs of Bañas learned about the sale and went to the house of Medina to inquire about it.[6] Medina confirmed that the lot was sold to Barcellano. The heirs conveyed their intention to redeem the property but Medina replied that there was already a deed of sale executed between the parties.[7] Also, the Bañas heirs failed to tender the ₱60,000.00 redemption amount to Medina.[8]

Aggrieved, the heirs went to the Office of the *Barangay* Council on 5 April 1997.[9] Medina sent only his tenant to attend the proceeding. On 9 April 1997, the Bañas heirs and Barcellano, with neither Medina nor his tenant in attendance, went to the Office of the *Barangay* Council to settle the dispute. According to one of the Bañas heirs, Barcellano told them that he would be willing to sell the property but for a higher price of ₱90,000.00.[10] Because the parties could not agree on the price and for failure to settle the dispute, the *Lupon* issued a Certification to File Action.[11]

On 24 October 1997, Dolores Bañas filed an action for Legal Redemption before the Regional Trial Court. However, on 5 February 1998, the petition was withdrawn on the ground that:

> xxx considering the present worse economic situation in the country, petitioner opted that the amount they are supposed to pay for the redemption be readily available for their immediate and emergency needs.

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[5] Testimony of Vicente Medina. TSN, 14 July 1999, p. 6.

[6] *Id.*; Testimony of Isabela Beruela. TSN, 16 February 1999, p. 6.

[7] *Id.* at 7.

[8] Testimony of Vicente Medina. TSN, 14 July 1999, p. 6.

[9] Testimony of Isabella Beruela. TSN, 16 February 1999, p. 8.

[10] *Id.*

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

On 11 March 1998, Dolores Bañas, as represented by Bermillo, filed another action[12] for Legal Redemption. It was opposed by Barcellano insisting that he complied with the provisions of Art. 1623 of the New Civil Code but Bañas failed to exercise her right within the period provided by law.

Trial ensued. On 15 March 2000, the trial court dismissed the complaint of the Bañas heirs for their failure to comply with the condition precedent of making a formal offer to redeem and for failure to file an action in court together with the consignation of the redemption price within the reglementary period of 30 days.[13] The dispositive portion reads:

> WHEREFORE, premises considered, the complaint is hereby ordered DISMISSED.

On appeal, the Court of Appeals reversed and set aside the ruling of the lower court and granted the heirs the right to redeem the subject property. The appellate court ruled that the filing of a complaint before the *Katarungang Pambarangay* should be considered as a notice to Barcellano and Medina that the heirs were exercising their right of redemption over the subject property; and as having set in motion the judicial process of legal redemption.[14] Further, the appellate court ruled that a formal offer to redeem, coupled with a tender of payment of the redemption price, and consignation are proper only if the redemptioner wishes to avail himself of his right of redemption in the future. The tender of payment and consignation become inconsequential when the redemptioner files a case to redeem the property within the 30-day period.[15]

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[12] The action was originally titled as *Heirs of Bartolome Bañas v. Armando Barcellano and Vicente Medina* but it was later amended as *Dolores Bañas v. Armando Barcellano and Vicente Medina* because the Original Certificate of Title was issued in the name of Dolores Bañas married to Bartolome Bañas only.

[13] Decision of RTC. *Rollo*, p. 56.

[14] CA Decision. *Id.* at 112.

[15] *Id.* at 113.

Hence, this Petition for Review on *Certiorari*.

In this petition, Barcellano questions the ruling of the appellate court for being contrary to the admitted facts on record and applicable jurisprudence.

The Court's Ruling

Barcellano maintains that the written notice required under Art. 1623 to be given to adjoining owner was no longer necessary because there was already actual notice. Further, he asserts that the appellate court erred in ruling that the tender of payment of the redemption price and consignation are not required in this case, effectively affirming that the respondents had validly exercised their right of redemption. Lastly, he questions as erroneous the application of Presidential Decree No. 1508, otherwise known as "*Establishing a System of Amicably Settling Disputes at the Barangay Level,*" thereby ruling that the filing by the heirs of the complaint before the *Barangay* was an exercise of right of redemption.

We need only to discuss the requirement of notice under Art. 1623 of the New Civil Code, which provides that:

> The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

Nothing in the records and pleadings submitted by the parties shows that there was a written notice sent to the respondents. Without a written notice, the period of thirty days within which the right of legal pre-emption may be exercised, does not start.

The indispensability of a written notice had long been discussed in the early case of *Conejero v. Court of Appeals,*[16] penned by Justice J.B.L. Reyes:

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[16] 123 Phil. 605, 610 (1966).

With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which Article of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive.

This is the same ruling in *Verdad v. Court of Appeals*:[17]

The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.

Lately, in *Gosiengfiao Guillen v. the Court of Appeals*,[18] this Court again emphasized the mandatory character of a written notice in legal redemption:

From these premises, we ruled that *"[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run."* These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.** (Emphasis supplied)

The petitioner argues that the only purpose behind Art. 1623 of the New Civil Code is to ensure that the owner of the adjoining land is actually notified of the intention of the owner to sell his property. To advance their argument, they cited *Destrito v. Court of Appeals* as cited in *Alonzo v. Intermediate*

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[17] 326 Phil. 601, 607 (1996).

[18] G.R. No. 159755, 18 June 2009, 589 SCRA 399.

Appellate Court,[19] where this Court pronounced that written notice is no longer necessary in case of actual notice of the sale of property.

The *Alonzo* case does not apply to this case. There, we pronounced that the disregard of the mandatory written rule was an exception due to the peculiar circumstance of the case. Thus:

> In the face of the established facts, we cannot accept the private respondents' pretense that they were unaware of the sales made by their brother and sister in 1963 and 1964. By requiring written proof of such notice, we would be closing our eyes to the obvious truth in favor of their palpably false claim of ignorance, thus exalting the letter of the law over its purpose. The purpose is clear enough: to make sure that the redemptioners are duly notified. We are satisfied that in this case the other brothers and sisters were actually informed, although not in writing, of the sales made in 1963 and 1964, and that such notice was sufficient.
>
> Now, when did the 30-day period of redemption begin?
>
> While we do not here declare that this period started from the dates of such sales in 1963 and 1964, we do say that sometime between those years and 1976, when the first complaint for redemption was filed, the other co-heirs were actually informed of the sale and that thereafter the 30-day period started running and ultimately expired. This could have happened any time during the interval of thirteen years, when none of the co-heirs made a move to redeem the properties sold. By 1977, in other words, when Tecla Padua filed her complaint, the right of redemption had already been extinguished because the period for its exercise had already expired.

The following doctrine is also worth noting:

> While the general rule is, that to charge a party with laches in the assertion of an alleged right it is essential that he should have knowledge of the facts upon which he bases his claim, yet if the circumstances were such as should have induced inquiry, and the means of ascertaining the truth were readily available upon inquiry, but the party neglects to make it, he will be chargeable with laches, the same as if he had known the facts.

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[19] 234 Phil. 267 (1987).

It was the perfectly natural thing for the co-heirs to wonder why the spouses Alonzo, who were not among them, should enclose a portion of the inherited lot and build thereon a house of strong materials. This definitely was not the act of a temporary possessor or a mere mortgagee. This certainly looked like an act of ownership. Yet, given this unseemly situation, none of the co-heirs saw fit to object or at least inquire, to ascertain the facts, which were readily available. It took all of *thirteen* years before one of them chose to claim the right of redemption, but then it was already too late.[20]

x x x x x x x x x

The co-heirs in this case were undeniably informed of the sales although no notice in writing was given them. And there is no doubt either that the 30-day period began and ended during the 14 years between the sales in question and the filing of the complaint for redemption in 1977, without the co-heirs exercising their right of redemption. These are the justifications for this exception.

The Court clarified that:

We realize that in arriving at our conclusion today, we are deviating from the strict letter of the law, which the respondent court understandably applied pursuant to existing jurisprudence. The said court acted properly as it had no competence to reverse the doctrines laid down by this Court in the above-cited cases. In fact, and this should be clearly stressed, we ourselves are not abandoning the De Conejero and Buttle doctrines. What we are doing simply is adopting an exception to the general rule, in view of the peculiar circumstances of this case.[21] (Emphasis supplied)

Without the "peculiar circumstances" in the present case, *Alonzo* cannot find application. The impossibility in *Alonzo* of the parties' not knowing about the sale of a portion of the property they were actually occupying is not presented in this case. The strict letter of the law must apply. That a departure from the strict letter should only be for extraordinary reasons is clear

[20] *Id.* at 274-275.

[21] *Id.* at 275.

from the second sentence of Art. 1623 that *"The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners."*

Justice Edgardo Paras, referring to the origins of the requirement, would explain in his commentaries on the New Civil Code that despite actual knowledge, the person having the right to redeem is **STILL** entitled to the written notice. Both the letter and the spirit of the New Civil Code argue against any attempt to widen the scope of the "written notice" by including therein any other kind of notice such as an oral one, or by registration. If the intent of the law has been to include verbal notice or any other means of information as sufficient to give the effect of this notice, there would have been no necessity or reason to specify in the article that said notice be in writing, for under the old law, a verbal notice or mere information was already deemed sufficient.[22]

Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[23] Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. The law is clear in this case, there must first be a written notice to the family of Bañas.

Absolute Sentencia Expositore Non Indiget, when the language of the law is clear, no explanation of it is required.[24]

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[22] Edgardo L. Paras, Book V, *CIVIL CODE OF THE PHILIPPINES*, pp. 280-281 (1998-2000).

[23] *Cebu Portland Cement Co. v. Municipality of Naga*, 133 Phil. 695, 699 (1968); Ruben E. Agpalo, *STATUTORY CONSTRUCTION*, p. 62 (2003).

[24] Rolando A. Suarez, *STATUTORY CONSTRUCTION*, p. 171 (2007).

We find no need to rule on the other issues presented by the petitioner. The respondent Bañas has a perfect right of redemption and was never in danger of losing such right even if there was no redemption complaint filed with the *barangay*, no tender of payment or no consignation.

WHEREFORE, the appeal is *DENIED*. The 26 February 2004 Decision of the Court of Appeals in CA-G.R. CV No. 67702, granting to petitioner-appellants the right to redeem the subject property for the amount of Php60,000.00 within thirty (30) days from the finality of this decision is hereby *AFFIRMED*. No cost.

SO ORDERED.

Carpio (Chairperson), Brion, Abad,[*] and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165748. September 14, 2011]

HEIRS OF POLICRONIO M. URETA, SR., namely: CONRADO B. URETA, MACARIO B. URETA, GLORIA URETA-GONZALES, ROMEO B. URETA, RITA URETA-SOLANO, NENA URETA-TONGCUA, VENANCIO B. URETA, LILIA URETA-TAYCO, and HEIRS OF POLICRONIO B. URETA, JR., namely: MIGUEL T. URETA, RAMON POLICRONIO T. URETA, EMMANUEL T. URETA, and BERNADETTE T. URETA, *petitioners, vs.* **HEIRS OF LIBERATO M. URETA, namely: TERESA F. URETA, AMPARO URETA-CASTILLO, IGNACIO F. URETA, SR., EMIRITO F. URETA, WILKIE F. URETA, LIBERATO**

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[*] Per Special Order No. 1077-A dated 12 September 2011.

F. URETA, JR., RAY F. URETA, ZALDY F. URETA, and MILA JEAN URETA CIPRIANO; HEIRS OF PRUDENCIA URETA PARADERO, namely: WILLIAM U. PARADERO, WARLITO U. PARADERO, CARMENCITA P. PERLAS, CRISTINA P. CORDOVA, EDNA P. GALLARDO, LETICIA P. REYES; NARCISO M. URETA; VICENTE M. URETA; HEIRS OF FRANCISCO M. URETA, namely: EDITA T. URETA-REYES and LOLLIE T. URETA-VILLARUEL; ROQUE M. URETA; ADELA URETA-GONZALES; HEIRS OF INOCENCIO M. URETA, namely: BENILDA V. URETA, ALFONSO V. URETA II, DICK RICARDO V. URETA, and ENRIQUE V. URETA; MERLINDA U. RIVERA; JORGE URETA; ANDRES URETA, WENEFREDA U. TARAN; and BENEDICT URETA, *respondents.*

[G.R. No. 165930. September 14, 2011]

HEIRS OF LIBERATO M. URETA, namely: TERESA F. URETA, AMPARO URETA-CASTILLO, IGNACIO F. URETA, SR., EMIRITO F. URETA, WILKIE F. URETA, LIBERATO F. URETA, JR., RAY F. URETA, ZALDY F. URETA, and MILA JEAN URETA CIPRIANO; HEIRS OF PRUDENCIA URETA PARADERO, namely: WILLIAM U. PARADERO, WARLITO U. PARADERO, CARMENCITA P. PERLAS, CRISTINA P. CORDOVA, EDNA P. GALLARDO, LETICIA P. REYES; NARCISO M. URETA; VICENTE M. URETA; HEIRS OF FRANCISCO M. URETA, namely: EDITA T. URETA-REYES and LOLLIE T. URETA-VILLARUEL; ROQUE M. URETA; ADELA URETA-GONZALES; HEIRS OF INOCENCIO M. URETA, namely: BENILDA V. URETA, ALFONSO V. URETA II, DICK RICARDO V. URETA, and ENRIQUE V. URETA; MERLINDA U. RIVERA; JORGE URETA; ANDRES URETA, WENEFREDA U. TARAN; and BENEDICT URETA, *petitioners, vs.* **HEIRS OF POLICRONIO M. URETA, SR., namely: CONRADO**

B. URETA, MACARIO B. URETA, GLORIA URETA-GONZALES, ROMEO B. URETA, RITA URETA-SOLANO, NENA URETA-TONGCUA, VENANCIO B. URETA, LILIA URETA-TAYCO, and HEIRS OF POLICRONIO B. URETA, JR., namely: MIGUEL T. URETA, RAMON POLICRONIO T. URETA, EMMANUEL T. URETA, and BERNADETTE T. URETA, *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ABSOLUTELY SIMULATED CONTRACTS; THE TRANSFER IN CASE AT BAR IS PURELY FOR TAXATION PURPOSES, WITHOUT INTENDING TO TRANSFER OWNERSHIP OVER THE SUBJECT LANDS.— The Court finds no cogent reason to deviate from the finding of the CA that the Deed of Sale is null and void for being absolutely simulated. The Civil Code provides: Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement." *Valerio v. Refresca* is instructive on the matter of simulation of contracts: In absolute simulation,there is a colorable contract but it has no substance as the parties have no intention to be bound by it.The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is

absolutely binding and enforceable between the parties and their successors in interest. Lacking, therefore, in an absolutely simulated contract is consent which is essential to a valid and enforceable contract. Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham. Similarly, in this case, Alfonso simulated a transfer to Policronio purely for taxation purposes, without intending to transfer ownership over the subject lands.

2. ID.; ID.; ID.; THE PRIMARY CONSIDERATION IN DETERMINING THE TRUE NATURE OF A CONTRACT IS THE INTENTION OF THE PARTIES; PETITIONER'S PREDECESSOR-IN-INTEREST NEVER EXERCISED ANY RIGHTS PERTAINING TO AN OWNER OVER THE SUBJECT LANDS.— The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties. The true intention of the parties in this case was sufficiently proven by the Heirs of Alfonso. The Heirs of Alfonso established by a preponderance of evidence that the Deed of Sale was one of the four (4) absolutely simulated Deeds of Sale which involved no actual monetary consideration, executed by Alfonso in favor of his children, Policronio, Liberato, and Prudencia, and his second wife, Valeriana, for taxation purposes. x x x The other Deeds of Sale executed by Alfonso in favor of his children Prudencia and Liberato, and second wife Valeriana, all bearing the same date of execution, were duly presented in evidence by the Heirs of Alfonso, and were uncontested by the Heirs of Policronio. The lands which were the subject of these Deeds of Sale were in fact included in the Deed of Extra-Judicial Partition executed by all the heirs of Alfonso, where it was expressly stipulated: That the above-named Amparo U. Castillo, Prudencia U. Paradero, Conrado B. Ureta and Merlinda U. Rivera do hereby recognize and acknowledge as a fact that the properties presently declared in their respective names or in the names of their respective parents and are included in the foregoing instrument are actually the properties of the

deceased Alfonso Ureta and were transferred only for the purpose of effective administration and development and convenience in the payment of taxes and, therefore, all instruments conveying or affecting the transfer of said properties are null and void from the beginning. As found by the CA, Alfonso continued to exercise all the rights of an owner even after the execution of the Deeds of Sale. It was undisputed that Alfonso remained in possession of the subject lands and enjoyed their produce until his death. No credence can be given to the contention of the Heirs of Policronio that their father did not take possession of the subject lands or enjoyed the fruits thereof in deference to a Filipino family practice. Had this been true, Policronio should have taken possession of the subject lands after his father died. On the contrary, it was admitted that neither Policronio nor his heirs ever took possession of the subject lands from the time they were sold to him, and even after the death of both Alfonso and Policronio. It was also admitted by the Heirs of Policronio that the tenants of the subject lands never turned over the produce of the properties to Policronio or his heirs but only to Alfonso and the administrators of his estate. Neither was there a demand for their delivery to Policronio or his heirs. Neither did Policronio ever pay real estate taxes on the properties, the only payment on record being those made by his heirs in 1996 and 1997 ten years after his death. In sum, Policronio never exercised any rights pertaining to an owner over the subject lands.

3. ID.; ID.; ID.; IT IS CLEAR THAT THE PARTIES DID NOT INTEND TO BE BOUND AT ALL, AND AS SUCH, THE DEED OF SALE PRODUCED NO LEGAL EFFECTS AND DID NOT ALTER THE JURIDICAL SITUATION OF THE PARTIES.— The most protuberant index of simulation of contract is the complete absence of an attempt in any manner on the part of the ostensible buyer to assert rights of ownership over the subject properties. Policronio's failure to take exclusive possession of the subject properties or, in the alternative, to collect rentals, is contrary to the principle of ownership. Such failure is a clear badge of simulation that renders the whole transaction void. It is further telling that Policronio never disclosed the existence of the Deed of Sale to his children. This, coupled with Policronio's failure to exercise any rights

pertaining to an owner of the subject lands, leads to the conclusion that he was aware that the transfer was only made for taxation purposes and never intended to bind the parties thereto. As the above factual circumstances remain unrebutted by the Heirs of Policronio, the factual findings of the RTC, which were affirmed by the CA, remain binding and conclusive upon this Court. It is clear that the parties did not intend to be bound at all, and as such, the Deed of Sale produced no legal effects and did not alter the juridical situation of the parties. The Deed of Sale is, therefore, void for being absolutely simulated pursuant to Article 1409 (2) of the Civil Code.

4. ID.; ID.; ID.; SINCE THE DEED OF SALE IS VOID, THE SUBJECT PROPERTIES WERE PROPERLY INCLUDED IN THE DEED OF EXTRA-JUDICIAL PARTITION OF THE ESTATE OF ALFONSO.— For guidance, the following are the most fundamental characteristics of void or inexistent contracts: 1) As a general rule, they produce no legal effects whatsoever in accordance with the principle "*quod nullum est nullum producit effectum*." 2) They are not susceptible of ratification. 3) The right to set up the defense of inexistence or absolute nullity cannot be waived or renounced. 4) The action or defense for the declaration of their inexistence or absolute nullity is imprescriptible. 5) The inexistence or absolute nullity of a contract cannot be invoked by a person whose interests are not directly affected. Since the Deed of Sale is void, the subject properties were properly included in the Deed of Extra-Judicial Partition of the estate of Alfonso.

5. ID.; ID.; ID.; THE DEED OF SALE LACKS CONSIDERATION. — For lack of consideration, the Deed of Sale is once again found to be void. It states that Policronio paid, and Alfonso received, the ₱2,000.00 purchase price on the date of the signing of the contract: That I, ALFONSO F. URETA, x x x for and in consideration of the sum of TWO THOUSAND (₱2,000.00) PESOS, Philippine Currency, to me in hand **paid** by POLICRONIO M. URETA, x x x, do hereby CEDE, TRANSFER, and CONVEY, by way of absolute sale, x x x six (6) parcels of land x x x. Although, on its face, the Deed of Sale appears to be supported by valuable consideration, the RTC found that there was no money involved in the sale. This finding was affirmed by the CA in ruling that the sale is

void for being absolutely simulated. Considering that there is no cogent reason to deviate from such factual findings, they are binding on this Court. It is well-settled in a long line of cases that where a deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void for lack of consideration. Thus, although the contract states that the purchase price of ₱2,000.00 was paid by Policronio to Alfonso for the subject properties, it has been proven that such was never in fact paid as there was no money involved. It must, therefore, follow that the Deed of Sale is void for lack of consideration. Given that the Deed of Sale is void, it is unnecessary to discuss the issue on the inadequacy of consideration.

6. ID.; ID.; ID.; PRIOR ACTION, UNNECESSARY; A SIMULATED CONTRACT OF SALE IS NULL AND VOID AND NO INDEPENDENT ACTION TO RESCIND OR ANNUL THE CONTRACT IS NECESSARY, IT MAY BE TREATED AS NON-EXISTENT FOR ALL PURPOSES.— A simulated contract of sale is without any cause or consideration, and is, therefore, null and void; in such case, no independent action to rescind or annul the contract is necessary, and it may be treated as non-existent for all purposes. A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification. A void contract produces no effect whatsoever either against or in favor of anyone; it does not create, modify or extinguish the juridical relation to which it refers. Therefore, it was not necessary for the Heirs of Alfonso to first file an action to declare the nullity of the Deed of Sale prior to executing the Deed of Extra-Judicial Partition.

7. ID.; ID.; ID.; THE RIGHT TO SET UP THE NULLITY OF A VOID OR NON-EXISTENT CONTRACT IS NOT LIMITED TO THE PARTIES, AS IN THE CASE OF ANNULLABLE OR VOIDABLE CONTRACTS; IT IS EXTENDED TO THIRD PERSONS WHO ARE AFFECTED BY THE CONTRACT.— Article 1311 and Article 1421 of the Civil Code provide: Art. 1311. Contracts take effect only between the parties, their assigns and heirs, x x x Art. 1421. The defense of illegality of contracts is not available to third persons whose interests are not directly affected. The right to set up the nullity

of a void or non-existent contract is not limited to the parties, as in the case of annullable or voidable contracts; it is extended to third persons who are directly affected by the contract. Thus, where a contract is absolutely simulated, even third persons who may be prejudiced thereby may set up its inexistence. The Heirs of Alfonso are the children of Alfonso, with his deceased children represented by their children (Alfonso's grandchildren). The Heirs of Alfonso are clearly his heirs and successors-in-interest and, as such, their interests are directly affected, thereby giving them the right to question the legality of the Deed of Sale.

8. ID.; SPECIAL CONTRACTS; AGENCY; CASES WHEN A SPECIAL POWER OF ATTORNEY IS NECESSARY; A PARTITION AMONG HEIRS IS NOT LEGALLY DEEMED A CONVEYANCE OF REAL PROPERTY RESULTING IN OWNERSHIP THEREBY REQUIRING A SPECIAL POWER OF ATTORNEY.— This Court finds that Article 1878 (5) and (15) is inapplicable to the case at bench. It has been held in several cases that partition among heirs is not legally deemed a conveyance of real property resulting in change of ownership. It is not a transfer of property from one to the other, but rather, it is a confirmation or ratification of title or right of property that an heir is renouncing in favor of another heir who accepts and receives the inheritance. It is merely a designation and segregation of that part which belongs to each heir. The Deed of Extra-Judicial Partition cannot, therefore, be considered as an act of strict dominion. Hence, a special power of attorney is not necessary. In fact, as between the parties, even an oral partition by the heirs is valid if no creditors are affected. The requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir.

9. ID.; CONTRACTS; VOIDABLE CONTRACTS; THE HEIR'S FAILURE TO OBTAIN AUTHORITY FROM HIS CO-HEIRS TO SIGN THE DEED OF EXTRA-JUDICIAL PARTITION IN THEIR BEHALF DID NOT RESULT IN HIS INCAPACITY TO GIVE CONSENT SO AS TO RENDER

THE CONTRACT VOIDABLE, BUT, IN FACT, VALID BINDING AND ENFORCEABLE AGAINST ALL THE HEIRS FOR HAVING GIVEN THEIR CONSENT TO THE CONTRACT.— Neither is Article 1390 (1) applicable. Article 1390 (1) contemplates the incapacity of a party to give consent to a contract. What is involved in the case at bench though is not Conrado's incapacity to give consent to the contract, but rather his lack of authority to do so. Instead, Articles 1403 (1), 1404, and 1317 of the Civil Code find application to the circumstances prevailing in this case. They are as follows: Art. 1403. The following contracts are unenforceable, unless they are ratified: (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers; Art. 1404. Unauthorized contracts are governed by Article 1317 and the principles of agency in Title X of this Book. Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him. A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. Such was similarly held in the case of *Badillo v. Ferrer*: The Deed of Extrajudicial Partition and Sale is not a voidable or an annullable contract under Article 1390 of the New Civil Code. Article 1390 renders a contract voidable if one of the parties is incapable of giving consent to the contract or if the contracting party's consent is vitiated by mistake, violence, intimidation, undue influence or fraud. x x x The deed of extrajudicial parition and sale is an unenforceable or, more specifically, an unauthorized contract under Articles 1403(1) and 1317 of the New Civil Code. Therefore, Conrado's failure to obtain authority from his co-heirs to sign the Deed of Extra-Judicial Partition in their behalf did not result in his incapacity to give consent so as to render the contract voidable, but rather, it rendered the contract valid but unenforceable against Conrado's co-heirs for having been entered into without their authority. A closer review of the evidence on record, however, will show that the Deed of Extra-Judicial Partition is not unenforceable but, in fact, valid, binding and enforceable against

all the Heirs of Policronio for having given their consent to the contract. Their consent to the Deed of Extra-Judicial Partition has been proven by a preponderance of evidence.

10. ID.; ID.; THERE IS NO NEED TO REMAND THE CASE TO THE COURT OF ORIGIN FOR PARTITION CONSIDERING THAT THE DEED OF SALE HAS BEEN FOUND VOID AND THE DEED OF EXTRA-JUDICIAL PARTITION VALID, WITH THE CONSENT OF ALL THE HEIRS DULY GIVEN.— The Deed of Extra-Judicial Partition is in itself valid for complying with all the legal requisites, as found by the RTC, to wit: A persual of the Deed of Extra-judicial Partition would reveal that all the heirs and children of Alfonso Ureta were represented therein; that nobody was left out; that all of them received as much as the others as their shares; that it distributed all the properties of Alfonso Ureta except a portion of parcel 29 containing an area of 14,000 square meters, more or less, which was expressly reserved; that Alfonso Ureta, at the time of his death, left no debts; that the heirs of Policronio Ureta, Sr. were represented by Conrado B. Ureta; all the parties signed the document, was witnessed and duly acknowledged before Notary Public Adolfo M. Iligan of Kalibo, Aklan; that the document expressly stipulated that the heirs to whom some of the properties were transferred before for taxation purposes or their children, expressly recognize and acknowledge as a fact that the properties were transferred only for the purpose of effective administration and development convenience in the payment of taxes and, therefore, all instruments conveying or effecting the transfer of said properties are null and void from the beginning (Exhs. 1-4, 7-d). Considering that the Deed of Sale has been found void and the Deed of Extra-Judicial Partition valid, with the consent of all the Heirs of Policronio duly given, there is no need to remand the case to the court of origin for partition.

11. ID.; SUCCESSION; INAPPLICABILITY OF ARTICLE 842 OF THE NEW CIVIL CODE; THE SAID PROVISION REFERS TO THE PRINCIPLE OF FREEDOM OF DISPOSITION BY WILL; WHAT IS INVOLVED IN CASE AT BAR IS NOT A DISPOSITION BY WILL BUT BY DEED OF SALE.— Article 842 of the Civil Code provides: Art. 842. One who has no compulsory heirs may dispose by will of all

his estate or any part of it in favor of any person having capacity to succeed. One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of said heirs. This article refers to the principle of freedom of disposition by will. What is involved in the case at bench is not a disposition by will but by Deed of Sale. Hence, the Heirs of Alfonso need not first prove that the disposition substantially diminished their successional rights or unduly prejudiced their legitimes.

12. ID.; ID.; PRETERITION; DEFINED; A CONCEPT OF TESTAMENTARY SUCCESSION AND REQUIRES A WILL; DOES NOT APPLY IN CASE AT BAR SINCE NO WILL IS INVOLVED.— Their posited theory on preterition is no longer viable. It has already been determined that the Heirs of Policronio gave their consent to the Deed of Extra-Judicial Partition and they have not been excluded from it. Nonetheless, even granting that the Heirs of Policronio were denied their lawful participation in the partition, the argument of the Heirs of Alfonso would still fail. Preterition under Article 854 of the Civil Code is as follows: Art. 854.The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious. If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation. Preterition has been defined as the total omission of a compulsory heir from the inheritance. It consists in the silence of the testator with regard to a compulsory heir, omitting him in the testament, either by not mentioning him at all, or by not giving him anything in the hereditary property but without expressly disinheriting him, even if he is mentioned in the will in the latter case. Preterition is thus a concept of testamentary succession and requires a will. In the case at bench, there is no will involved. Therefore, preterition cannot apply.

13. ID.; PRESCRIPTION; AS THE DEED OF SALE IS A VOID CONTRACT, THE ACTION FOR DECLARATION OF ITS NULLITY, EVEN IF FILED 21 YEARS AFTER ITS EXECUTION, CANNOT BE BARRED BY PRESCRIPTION

FOR IT IS IMPRESCRIPTIBLE.— Article 1410 of the Civil Code provides: Art. 1410. The action for the declaration of the inexistence of a contract does not prescribe. This is one of the most fundamental characteristics of void or inexistent contracts. As the Deed of Sale is a void contract, the action for the declaration of its nullity, even if filed 21 years after its execution, cannot be barred by prescription for it is imprescriptible. Furthermore, the right to set up the defense of inexistence or absolute nullity cannot be waived or renounced. Therefore, the Heirs of Alfonso cannot be precluded from setting up the defense of its inexistence.

14. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; REQUIRES THE EXISTENCE OF A VALID WRITTEN AGREEMENT; CASE AT BAR.— The failure of the Deed of Sale to express the true intent and agreement of the parties was clearly put in issue in the Answer of the Heirs of Alfonso to the Complaint. It was alleged that the Deed of Sale was only made to lessen the payment of estate and inheritance taxes and not meant to transfer ownership. The exception in paragraph (b) is allowed to enable the court to ascertain the true intent of the parties, and once the intent is clear, it shall prevail over what the document appears to be on its face. As the true intent of the parties was duly proven in the present case, it now prevails over what appears on the Deed of Sale. The validity of the Deed of Sale was also put in issue in the Answer, and was precisely one of the issues submitted to the RTC for resolution. The operation of the parol evidence rule requires the existence of a valid written agreement. It is, thus, not applicable in a proceeding where the validity of such agreement is the fact in dispute, such as when a contract may be void for lack of consideration. Considering that the Deed of Sale has been shown to be void for being absolutely simulated and for lack of consideration, the Heirs of Alfonso are not precluded from presenting evidence to modify, explain or add to the terms of the written agreement.

15. ID.; ID.; TESTIMONIAL EVIDENCE; HEARSAY EVIDENCE MAY BE GIVEN CREDENCE AND PROBATIVE VALUE WHEN NO OBJECTION IS MADE TO ITS ADMISSIBILITY AND THERE ARE OTHER PIECES OF EVIDENCE PRESENTED OR OTHER CIRCUMSTANCES PREVAILING

TO SUPPORT THE FACT IN ISSUE.— It has indeed been held that hearsay evidence whether objected to or not cannot be given credence for having no probative value. This principle, however, has been relaxed in cases where, in addition to the failure to object to the admissibility of the subject evidence, there were other pieces of evidence presented or there were other circumstances prevailing to support the fact in issue. In *Top-Weld Manufacturing, Inc. v. ECED S.A.*, this Court held: Hearsay evidence alone may be insufficient to establish a fact in an injunction suit (Parker v. Furlong, 62 P. 490) but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves. (Smith v. Delaware & Atlantic Telegraph & Telephone Co., 51 A 464). Although we should warn of the undesirability of issuing judgments solely on the basis of the affidavits submitted, where as here, said affidavits are overwhelming, uncontroverted by competent evidence and not inherently improbable, we are constrained to uphold the allegations of the respondents regarding the multifarious violations of the contracts made by the petitioner. In the case at bench, there were other prevailing circumstances which corroborate the testimony of Amparo Castillo. *First*, the other Deeds of Sale which were executed in favor of Liberato, Prudencia, and Valeriana on the same day as that of Policronio's were all presented in evidence. *Second*, all the properties subject therein were included in the Deed of Extra-Judicial Partition of the estate of Alfonso. *Third*, Policronio, during his lifetime, never exercised acts of ownership over the subject properties (as he never demanded or took possession of them, never demanded or received the produce thereof, and never paid real estate taxes thereon). *Fourth*, Policronio never informed his children of the sale. As the Heirs of Policronio failed to controvert the evidence presented, and to timely object to the testimony of Amparo Castillo, both the RTC and the CA correctly accorded probative weight to her testimony.

APPEARANCES OF COUNSEL

SV Ramos Law Office for Heirs of Policronio M. Ureta, Sr., *et al.*

Ma. Regina Mercedes B. Gatmaytan for Heirs of Liberato M. Ureta.

D E C I S I O N

MENDOZA, *J.*:

These consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assail the April 20, 2004 Decision[1] of the Court of Appeals *(CA)*, and its October 14, 2004 Resolution[2] in C.A.-G.R. CV No. 71399, which affirmed with modification the April 26, 2001 Decision[3] of the Regional Trial Court, Branch 9, Kalibo, Aklan *(RTC)* in Civil Case No. 5026.

The Facts

In his lifetime, Alfonso Ureta *(Alfonso)* begot 14 children, namely, Policronio, Liberato, Narciso, Prudencia, Vicente, Francisco, Inocensio, Roque, Adela, Wenefreda, Merlinda, Benedicto, Jorge, and Andres. The children of Policronio *(Heirs of Policronio)*, are opposed to the rest of Alfonso's children and their descendants *(Heirs of Alfonso)*.

Alfonso was financially well-off during his lifetime. He owned several fishpens, a fishpond, a *sari-sari* store, a passenger jeep, and was engaged in the buying and selling of copra. Policronio, the eldest, was the only child of Alfonso who failed to finish schooling and instead worked on his father's lands.

Sometime in October 1969, Alfonso and four of his children, namely, Policronio, Liberato, Prudencia, and Francisco, met at the house of Liberato. Francisco, who was then a municipal judge, suggested that in order to reduce the inheritance taxes, their father should make it appear that he had sold some of his

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[1] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justice B.A. Adefuin-De La Cruz and Associate Justice Arturo D. Brion (now a member of this Court), concurring.

[2] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justice Ruben T. Reyes and Associate Justice Arturo D. Brion (now a member of this Court), concurring.

[3] *Rollo* (G.R. No. 165748), pp. 75-81.

lands to his children. Accordingly, Alfonso executed four (4) Deeds of Sale covering several parcels of land in favor of Policronio,[4] Liberato,[5] Prudencia,[6] and his common-law wife, Valeriana Dela Cruz.[7] The Deed of Sale executed on October 25, 1969, in favor of Policronio, covered six parcels of land, which are the properties in dispute in this case.

Since the sales were only made for taxation purposes and no monetary consideration was given, Alfonso continued to own, possess and enjoy the lands and their produce.

When Alfonso died on October 11, 1972, Liberato acted as the administrator of his father's estate. He was later succeeded by his sister Prudencia, and then by her daughter, Carmencita Perlas. Except for a portion of parcel 5, the rest of the parcels transferred to Policronio were tenanted by the Fernandez Family. These tenants never turned over the produce of the lands to Policronio or any of his heirs, but to Alfonso and, later, to the administrators of his estate.

Policronio died on November 22, 1974. Except for the said portion of parcel 5, neither Policronio nor his heirs ever took possession of the subject lands.

On April 19, 1989, Alfonso's heirs executed a Deed of Extra-Judicial Partition,[8] which included all the lands that were covered by the four (4) deeds of sale that were previously executed by Alfonso for taxation purposes. Conrado, Policronio's eldest son, representing the Heirs of Policronio, signed the Deed of Extra-Judicial Partition in behalf of his co-heirs.

After their father's death, the Heirs of Policronio found tax declarations in his name covering the six parcels of land. On

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[4] Exhibit "G", records, p. 349.

[5] Exhibit "5", *id.* at 526.

[6] Exhibit "11", *id.* at 528.

[7] Exhibit "6", *id.* at 527.

[8] Exhibit "7", *id.* at 529-539.

June 15, 1995, they obtained a copy of the Deed of Sale executed on October 25, 1969 by Alfonso in favor of Policronio.

Not long after, on July 30, 1995, the Heirs of Policronio allegedly learned about the Deed of Extra-Judicial Partition involving Alfonso's estate when it was published in the July 19, 1995 issue of the Aklan Reporter.

Believing that the six parcels of land belonged to their late father, and as such, excluded from the Deed of Extra-Judicial Partition, the Heirs of Policronio sought to amicably settle the matter with the Heirs of Alfonso. Earnest efforts proving futile, the Heirs of Policronio filed a Complaint for Declaration of Ownership, Recovery of Possession, Annulment of Documents, Partition, and Damages[9] against the Heirs of Alfonso before the RTC on November 17, 1995 where the following issues were submitted: (1) whether or not the Deed of Sale was valid; (2) whether or not the Deed of Extra-Judicial Partition was valid; and (3) who between the parties was entitled to damages.

The Ruling of the RTC

On April 26, 2001, the RTC dismissed the Complaint of the Heirs of Policronio and ruled in favor of the Heirs of Alfonso in a decision, the dispositive portion of which reads:

> WHEREFORE, the Court finds that the preponderance of evidence tilts in favor of the defendants, hence the instant case is hereby DISMISSED.
>
> The counterclaims are likewise DISMISSED.
>
> With costs against plaintiffs.
>
> SO ORDERED.

The RTC found that the Heirs of Alfonso clearly established that the Deed of Sale was null and void. It held that the Heirs of Policronio failed to rebut the evidence of the Heirs of Alfonso, which proved that the Deed of Sale in the possession of the former was one of the four (4) Deeds of Sale executed by

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[9] *Rollo* (G.R. No. 165748), pp. 51-65.

Alfonso in favor of his 3 children and second wife for taxation purposes; that although tax declarations were issued in the name of Policronio, he or his heirs never took possession of the subject lands except a portion of parcel 5; and that all the produce were turned over by the tenants to Alfonso and the administrators of his estate and never to Policronio or his heirs.

The RTC further found that there was no money involved in the sale. Even granting that there was, as claimed by the Heirs of Policronio, ₱2,000.00 for six parcels of land, the amount was grossly inadequate. It was also noted that the aggregate area of the subject lands was more than double the average share adjudicated to each of the other children in the Deed of Extra-Judicial Partition; that the siblings of Policronio were the ones who shared in the produce of the land; and that the Heirs of Policronio only paid real estate taxes in 1996 and 1997. The RTC opined that Policronio must have been aware that the transfer was merely for taxation purposes because he did not subsequently take possession of the properties even after the death of his father.

The Deed of Extra-Judicial Partition, on the other hand, was declared valid by the RTC as all the heirs of Alfonso were represented and received equal shares and all the requirements of a valid extra-judicial partition were met. The RTC considered Conrado's claim that he did not understand the full significance of his signature when he signed in behalf of his co-heirs, as a gratutitous assertion. The RTC was of the view that when he admitted to have signed all the pages and personally appeared before the notary public, he was presumed to have understood their contents.

Lastly, neither party was entitled to damages. The Heirs of Alfonso failed to present testimony to serve as factual basis for moral damages, no document was presented to prove actual damages, and the Heirs of Policronio were found to have filed the case in good faith.

The Ruling of the CA

Aggrieved, the Heirs of Policronio appealed before the CA, which rendered a decision on April 20, 2004, the dispositive portion of which reads as follows:

> WHEREFORE, the appeal is ***PARTIALLY GRANTED***. The appealed Decision, dated 26 April 2001, rendered by Hon. Judge Dean R. Telan of the Regional Trial Court of Kalibo, Aklan, Branch 9, is hereby ***AFFIRMED with MODIFICATION***:
>
> 1.) The Deed of Sale in favor of Policronio Ureta, Sr., dated 25 October 1969, covering six (6) parcels of land is hereby declared ***VOID*** for being ***ABSOLUTELY SIMULATED***;
>
> 2.) The Deed of Extra-Judicial Partition, dated 19 April 1989, is ***ANNULLED***;
>
> 3.) The claim for actual and exemplary damages are ***DISMISSED*** for lack of factual and legal basis.
>
> The case is hereby ***REMANDED*** to the court of origin for the proper partition of ALFONSO URETA's Estate in accordance with Rule 69 of the 1997 Rules of Civil Procedure. No costs at this instance.
>
> SO ORDERED.

The CA affirmed the finding of the RTC that the Deed of Sale was void. It found the Deed of Sale to be absolutely simulated as the parties did not intend to be legally bound by it. As such, it produced no legal effects and did not alter the juridical situation of the parties. The CA also noted that Alfonso continued to exercise all the rights of an owner even after the execution of the Deed of Sale, as it was undisputed that he remained in possession of the subject parcels of land and enjoyed their produce until his death.

Policronio, on the other hand, never exercised any rights pertaining to an owner over the subject lands from the time they were sold to him up until his death. He never took or attempted to take possession of the land even after his father's death, never demanded delivery of the produce from the tenants, and never paid realty taxes on the properties. It was also noted

that Policronio never disclosed the existence of the Deed of Sale to his children, as they were, in fact, surprised to discover its existence. The CA, thus, concluded that Policronio must have been aware that the transfer was only made for taxation purposes.

The testimony of Amparo Castillo, as to the circumstances surrounding the actual arrangement and agreement between the parties prior to the execution of the four (4) Deeds of Sale, was found by the CA to be unrebutted. The RTC's assessment of the credibility of her testimony was accorded respect, and the intention of the parties was given the primary consideration in determining the true nature of the contract.

Contrary to the finding of the RTC though, the CA annulled the Deed of Extra-Judicial Partition due to the incapacity of one of the parties to give his consent to the contract. It held that before Conrado could validly bind his co-heirs to the Deed of Extra-Judicial Partition, it was necessary that he be clothed with the proper authority. The CA ruled that a special power of attorney was required under Article 1878 (5) and (15) of the Civil Code. Without a special power of attorney, it was held that Conrado lacked the legal capactiy to give the consent of his co-heirs, thus, rendering the Deed of Extra-Judicial Partition voidable under Article 1390 (1) of the Civil Code.

As a consequence, the CA ordered the remand of the case to the RTC for the proper partition of the estate, with the option that the parties may still voluntarily effect the partition by executing another agreement or by adopting the assailed Deed of Partition with the RTC's approval in either case. Otherwise, the RTC may proceed with the compulsory partition of the estate in accordance with the Rules.

With regard to the claim for damages, the CA agreed with the RTC and dismissed the claim for actual and compensatory damages for lack of factual and legal basis.

Both parties filed their respective Motions for Reconsideration, which were denied by the CA for lack of merit in a Resolution dated October 14, 2004.

In their Motion for Reconsideration, the Heirs of Policronio argued that the RTC violated the best evidence rule in giving credence to the testimony of Amparo Castillo with regard to the simulation of the Deed of Sale, and that prescription had set in precluding any question on the validity of the contract.

The CA held that the oral testimony was admissible under Rule 130, Section 9 (b) and (c), which provides that evidence *aliunde* may be allowed to explain the terms of the written agreement if the same failed to express the true intent and agreement of the parties thereto, or when the validity of the written agreement was put in issue. Furthermore, the CA found that the Heirs of Policronio waived their right to object to evidence *aliunde* having failed to do so during trial and for raising such only for the first time on appeal. With regard to prescription, the CA ruled that the action or defense for the declaration of the inexistence of a contract did not prescribe under Article 1410 of the Civil Code.

On the other hand, the Heirs of Alfonso argued that the Deed of Extra-Judicial Partition should not have been annulled, and instead the preterited heirs should be given their share. The CA reiterated that Conrado's lack of capacity to give his co-heirs' consent to the extra-judicial settlement rendered the same voidable.

Hence, the present Petitions for Review on *Certiorari*.

The Issues

The issues presented for resolution by the Heirs of Policronio in **G.R. No. 165748** are as follows:

I.

Whether the Court of Appeals is correct in ruling that the Deed of Absolute Sale of 25 October 1969 is void for being absolutely fictitious and in relation therewith, may parol evidence be entertained to thwart its binding effect after the parties have both died?

Assuming that indeed the said document is simulated, whether or not the parties thereto including their successors in interest

are estopped to question its validity, they being bound by Articles 1412 and 1421 of the Civil Code?

II.

Whether prescription applies to bar any question respecting the validity of the Deed of Absolute Sale dated 25 October 1969? Whether prescription applies to bar any collateral attack on the validity of the deed of absolute sale executed 21 years earlier?

III.

Whether the Court of Appeals correctly ruled in nullifying the Deed of Extrajudicial Partition because Conrado Ureta signed the same without the written authority from his siblings in contravention of Article 1878 in relation to Article 1390 of the Civil Code and in relation therewith, whether the defense of ratification and/or preterition raised for the first time on appeal may be entertained?

The issues presented for resolution by the Heirs of Alfonso in **G.R. No. 165930** are as follows:

I.

Whether or not grave error was committed by the Trial Court and Court of Appeals in declaring the Deed of Sale of subject properties as absolutely simulated and null and void thru parol evidence based on their factual findings as to its fictitious nature, and there being waiver of any objection based on violation of the parol evidence rule.

II.

Whether or not the Court of Appeals was correct in holding that Conrado Ureta's lack of capacity to give his co-heirs' consent to the Extra-Judicial Partition rendered the same voidable.

III.

Granting *arguendo* that Conrado Ureta was not authorized to represent his co-heirs and there was no ratification, whether or not the Court of Appeals was correct in ordering the remand of the case to the Regional Trial Court for partition of the estate of Alfonso Ureta.

IV.

Since the sale in favor of Policronio Ureta Sr. was null and void *ab initio*, the properties covered therein formed part of the estate of the late Alfonso Ureta and was correctly included in the Deed of Extrajudicial Partition even if no prior action for nullification of the sale was filed by the heirs of Liberato Ureta.

V.

Whether or not the heirs of Policronio Ureta Sr. can claim that estoppel based on Article 1412 of the Civil Code as well as the issue of prescription can still be raised on appeal.

These various contentions revolve around two major issues, to wit: (1) whether the Deed of Sale is valid, and (2) whether the Deed of Extra-Judicial Partition is valid. Thus, the assigned errors shall be discussed jointly and in *seriatim*.

The Ruling of the Court

Validity of the Deed of Sale

Two veritable legal presumptions bear on the validity of the Deed of Sale: (1) that there was sufficient consideration for the contract; and (2) that it was the result of a fair and regular private transaction. If shown to hold, these presumptions infer *prima facie* the transaction's validity, except that it must yield to the evidence adduced.[10]

As will be discussed below, the evidence overcomes these two presumptions.

Absolute Simulation

First, the Deed of Sale was not the result of a fair and regular private transaction because it was absolutely simulated.

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[10] *Manila Banking Corporation v. Silverio*, 504 Phil. 17, 25-26 (2005), citing *Suntay v. Court of Appeals*, 321 Phil. 809 (1995) and RULES OF COURT, Rule 131, Sec. 3 (r) and (p).

The Heirs of Policronio argued that the land had been validly sold to Policronio as the Deed of Sale contained all the essential elements of a valid contract of sale, by virtue of which, the subject properties were transferred in his name as evidenced by the tax declaration. There being no invalidation prior to the execution of the Deed of Extra-Judicial Partition, the probity and integrity of the Deed of Sale should remain undiminished and accorded respect as it was a duly notarized public instrument.

The Heirs of Policronio posited that his loyal services to his father and his being the eldest among Alfonso's children, might have prompted the old man to sell the subject lands to him at a very low price as an advance inheritance. They explained that Policronio's failure to take possession of the subject lands and to claim their produce manifests a Filipino family practice wherein a child would take possession and enjoy the fruits of the land sold by a parent only after the latter's death. Policronio simply treated the lands the same way his father Alfonso treated them - where his children enjoyed usufructuary rights over the properties, as opposed to appropriating them exclusively to himself. They contended that Policronio's failure to take actual possession of the lands did not prove that he was not the owner as he was merely exercising his right to dispose of them. They argue that it was an error on the part of the CA to conclude that ownership by Policronio was not established by his failure to possess the properties sold. Instead, emphasis should be made on the fact that the tax declarations, being indicia of possession, were in Policronio's name.

They further argued that the Heirs of Alfonso failed to appreciate that the Deed of Sale was clear enough to convey the subject parcels of land. Citing jurisprudence, they contend that there is a presumption that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration,[11] and where there is no doubt as to the intention of the parties to a contract, the literal meaning of the

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[11] *Gatmaitan v. Court of Appeals*, G.R. No. 76500, August 2, 1991, 200 SCRA 38.

stipulation shall control.[12] Nowhere in the Deed of Sale is it indicated that the transfer was only for taxation purposes. On the contrary, the document clearly indicates that the lands were sold. Therefore, they averred that the literal meaning of the stipulation should control.

The Court disagrees.

The Court finds no cogent reason to deviate from the finding of the CA that the Deed of Sale is null and void for being absolutely simulated. The Civil Code provides:

Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

Valerio v. Refresca[13] is instructive on the matter of simulation of contracts:

In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. However, if the parties state a false cause in the contract to conceal their real agreement, the contract is relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest.

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[12] *Ascalon v. Court of Appeals*, 242 Phil. 265 (1988).

[13] G.R. No. 163687, March 28, 2006, 485 SCRA 494, 500-501; citing *Loyola v. Court of Appeals*, 383 Phil. 171 (2000), and *Balite v. Lim*, 487 Phil. 281 (2004).

Lacking, therefore, in an absolutely simulated contract is consent which is essential to a valid and enforceable contract.[14] Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham.[15] Similarly, in this case, Alfonso simulated a transfer to Policronio purely for taxation purposes, without intending to transfer ownership over the subject lands.

The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[16] The true intention of the parties in this case was sufficiently proven by the Heirs of Alfonso.

The Heirs of Alfonso established by a preponderance of evidence[17] that the Deed of Sale was one of the four (4) absolutely simulated Deeds of Sale which involved no actual monetary

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[14] *Manila Banking Corporation v. Silverio*, *supra* note 10 at 27, citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850 (1998).

[15] *Tongoy v. Court of Appeals*, 208 Phil. 95, 113 (1983); citing *Rodriguez v. Rodriguez*, 127 Phil. 294, 301-302 (1967).

[16] *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 367.

[17] RULES OF COURT, Rule 133, Sec. 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

consideration, executed by Alfonso in favor of his children, Policronio, Liberato, and Prudencia, and his second wife, Valeriana, for taxation purposes.

Amparo Castillo, the daughter of Liberato, testified, to wit:

Q: Now sometime in the year 1969 can you recall if your grandfather and his children [met] in your house?

A: Yes sir, that was sometime in October 1969 when they [met] in our house, my grandfather, my late uncle Policronio Ureta, my late uncle Liberato Ureta, my uncle Francisco Ureta, and then my auntie Prudencia Ureta they talk[ed] about, that idea came from my uncle Francisco Ureta to [sell] some parcels of land to his children to lessen the inheritance tax whatever happened to my grandfather, actually no money involved in this sale.

Q: Now you said there was that agreement, verbal agreement. [W]here were you when this Alfonso Ureta and his children gather[ed] in your house?

A: I was near them in fact I heard everything they were talking [about]

x x x x x x x x x

Q: Were there documents of sale executed by Alfonso Ureta in furtherance of their verbal agreement?

A: Yes sir.

Q: To whom in particular did your grandfather Alfonso Ureta execute this deed of sale without money consideration according to you?

A: To my uncle Policronio Ureta and to Prudencia Ureta Panadero.

Q: And who else?

A: To Valeriana dela Cruz.

Q: How about your father?

A: He has.[18]

[18] TSN, April 6, 1998, pp. 9-10.

The other Deeds of Sale executed by Alfonso in favor of his children Prudencia and Liberato, and second wife Valeriana, all bearing the same date of execution, were duly presented in evidence by the Heirs of Alfonso, and were uncontested by the Heirs of Policronio. The lands which were the subject of these Deeds of Sale were in fact included in the Deed of Extra-Judicial Partition executed by all the heirs of Alfonso, where it was expressly stipulated:

> That the above-named Amparo U. Castillo, Prudencia U. Paradero, Conrado B. Ureta and Merlinda U. Rivera do hereby recognize and acknowledge as a fact that the properties presently declared in their respective names or in the names of their respective parents and are included in the foregoing instrument are actually the properties of the deceased Alfonso Ureta and were transferred only for the purpose of effective administration and development and convenience in the payment of taxes and, therefore, all instruments conveying or affecting the transfer of said properties are null and void from the beginning.[19]

As found by the CA, Alfonso continued to exercise all the rights of an owner even after the execution of the Deeds of Sale. It was undisputed that Alfonso remained in possession of the subject lands and enjoyed their produce until his death. No credence can be given to the contention of the Heirs of Policronio that their father did not take possession of the subject lands or enjoyed the fruits thereof in deference to a Filipino family practice. Had this been true, Policronio should have taken possession of the subject lands after his father died. On the contrary, it was admitted that neither Policronio nor his heirs ever took possession of the subject lands from the time they were sold to him, and even after the death of both Alfonso and Policronio.

It was also admitted by the Heirs of Policronio that the tenants of the subject lands never turned over the produce of the properties to Policronio or his heirs but only to Alfonso and the administrators of his estate. Neither was there a demand for their delivery to Policronio or his heirs. Neither did Policronio

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[19] Exhibit "7-d", records, p. 533.

ever pay real estate taxes on the properties, the only payment on record being those made by his heirs in 1996 and 1997 ten years after his death. In sum, Policronio never exercised any rights pertaining to an owner over the subject lands.

The most protuberant index of simulation of contract is the complete absence of an attempt in any manner on the part of the ostensible buyer to assert rights of ownership over the subject properties. Policronio's failure to take exclusive possession of the subject properties or, in the alternative, to collect rentals, is contrary to the principle of ownership. Such failure is a clear badge of simulation that renders the whole transaction void.[20]

It is further telling that Policronio never disclosed the existence of the Deed of Sale to his children. This, coupled with Policronio's failure to exercise any rights pertaining to an owner of the subject lands, leads to the conclusion that he was aware that the transfer was only made for taxation purposes and never intended to bind the parties thereto.

As the above factual circumstances remain unrebutted by the Heirs of Policronio, the factual findings of the RTC, which were affirmed by the CA, remain binding and conclusive upon this Court.[21]

It is clear that the parties did not intend to be bound at all, and as such, the Deed of Sale produced no legal effects and did not alter the juridical situation of the parties. The Deed of Sale is, therefore, void for being absolutely simulated pursuant to Article 1409 (2) of the Civil Code which provides:

Art. 1409. The following contracts are inexistent and void from the beginning:

x x x x x x x x x

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[20] *Manila Banking Corporation v. Silverio, supra* note 10 at 31, citing *Suntay v. Court of Appeals*, 321 Phil. 809 (1995); *Santiago v. Court of Appeals*, 343 Phil. 612 (1997); *Cruz v. Bancom Finance Corporation*, 429 Phil. 225 (2002); and *Ramos v. Heirs of Ramos*, 431 Phil. 337 (2002).

[21] *Samala v. Court of Appeals*, 467 Phil. 563, 568 (2004).

(2) Those which are absolutely simulated or fictitious;

x x x x x x x x x

For guidance, the following are the most fundamental characteristics of void or inexistent contracts:

1) As a general rule, they produce no legal effects whatsoever in accordance with the principle "*quod nullum est nullum producit effectum.*"

2) They are not susceptible of ratification.

3) The right to set up the defense of inexistence or absolute nullity cannot be waived or renounced.

4) The action or defense for the declaration of their inexistence or absolute nullity is imprescriptible.

5) The inexistence or absolute nullity of a contract cannot be invoked by a person whose interests are not directly affected.[22]

Since the Deed of Sale is void, the subject properties were properly included in the Deed of Extra-Judicial Partition of the estate of Alfonso.

Absence and Inadequacy of Consideration

The second presumption is rebutted by the lack of consideration for the Deed of Sale.

In their Answer,[23] the Heirs of Alfonso initially argued that the Deed of Sale was void for lack of consideration, and even granting that there was consideration, such was inadequate. The Heirs of Policronio counter that the defenses of absence or inadequacy of consideration are not grounds to render a contract void.

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[22] *Tongoy v. Court of Appeals*, *supra* note 15; *Manila Banking Corporation v. Silverio*, 504 Phil. 17, 33 (2005).

[23] *Rollo* (G.R. No. 165748), pp. 69-70.

The Heirs of Policronio contended that under Article 1470 of the Civil Code, gross inadequacy of the price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. Citing jurisprudence, they argued that inadequacy of monetary consideration does not render a conveyance inexistent as liberality may be sufficient cause for a valid contract, whereas fraud or bad faith may render it either rescissible or voidable, although valid until annulled.[24] Thus, they argued that if the contract suffers from inadequate consideration, it remains valid until annulled, and the remedy of rescission calls for judicial intervention, which remedy the Heirs of Alfonso failed to take.

It is further argued that even granting that the sale of the subject lands for a consideration of ₱2,000.00 was inadequate, absent any evidence of the fair market value of the land at the time of its sale, it cannot be concluded that the price at which it was sold was inadequate.[25] As there is nothing in the records to show that the Heirs of Alfonso supplied the true value of the land in 1969, the amount of ₱2,000.00 must thus stand as its saleable value.

On this issue, the Court finds for the Heirs of Alfonso.

For lack of consideration, the Deed of Sale is once again found to be void. It states that Policronio paid, and Alfonso received, the ₱2,000.00 purchase price on the date of the signing of the contract:

> That I, ALFONSO F. URETA, x x x for and in consideration of the sum of TWO THOUSAND (₱2,000.00) PESOS, Philippine Currency, to me in hand **paid** by POLICRONIO M. URETA, x x x, do hereby CEDE, TRANSFER, and CONVEY, by way of absolute sale, x x x six (6) parcels of land x x x.[26] [Emphasis ours]

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[24] *Morales Development Company, Inc. v. Court of Appeals*, 137 Phil. 307 (1969).

[25] *Acabal v. Acabal*, 494 Phil. 528 (2005).

[26] Exhibit "G", records, p. 349.

Although, on its face, the Deed of Sale appears to be supported by valuable consideration, the RTC found that there was no money involved in the sale.[27] This finding was affirmed by the CA in ruling that the sale is void for being absolutely simulated. Considering that there is no cogent reason to deviate from such factual findings, they are binding on this Court.

It is well-settled in a long line of cases that where a deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void for lack of consideration.[28] Thus, although the contract states that the purchase price of ₱2,000.00 was paid by Policronio to Alfonso for the subject properties, it has been proven that such was never in fact paid as there was no money involved. It must, therefore, follow that the Deed of Sale is void for lack of consideration.

Given that the Deed of Sale is void, it is unnecessary to discuss the issue on the inadequacy of consideration.

Parol Evidence and Hearsay

The Heirs of Policronio aver that the rules on parol evidence and hearsay were violated by the CA in ruling that the Deed of Sale was void.

They argued that based on the parol evidence rule, the Heirs of Alfonso and, specifically, Amparo Castillo, were not in a position to prove the terms outside of the contract because they were not parties nor successors-in-interest in the Deed of Sale in question. Thus, it is argued that the testimony of Amparo Castillo violates the parol evidence rule.

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[27] *Rollo* (G.R. No. 165748), p. 79; and TSN, April 6, 1998, p. 9.

[28] *Montecillo v. Reynes*, 434 Phil. 456, 469 (2002); citing *Ocejo Perez & Co. v. Flores*, 40 Phil. 921 (1920); *Mapalo v. Mapalo*, 123 Phil. 979 (1966); *Vda. de Catindig v. Roque*, 165 Phil. 707 (1976); *Rongavilla v. Court of Appeals*, 355 Phil. 721 (1998); and *Yu Bu Guan v. Ong*, 419 Phil. 845 (2001).

Stemming from the presumption that the Heirs of Alfonso were not parties to the contract, it is also argued that the parol evidence rule may not be properly invoked by either party in the litigation against the other, where at least one of the parties to the suit is not a party or a privy of a party to the written instrument in question and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby.[29]

Their arguments are untenable.

The objection against the admission of any evidence must be made at the proper time, as soon as the grounds therefor become reasonably apparent, and if not so made, it will be understood to have been waived. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer.[30] In this case, the Heirs of Policronio failed to timely object to the testimony of Amparo Castillo and they are, thus, deemed to have waived the benefit of the parol evidence rule.

Granting that the Heirs of Policronio timely objected to the testimony of Amparo Castillo, their argument would still fail.

Section 9 of Rule 130 of the Rules of Court provides:

Section 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

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[29] *Lechugas v. Court of Appeals*, 227 Phil. 310 (1986).

[30] RULES OF COURT, Rule 132, Sec. 36.

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

[Emphasis ours]

Paragraphs (b) and (c) are applicable in the case at bench.

The failure of the Deed of Sale to express the true intent and agreement of the parties was clearly put in issue in the Answer[31] of the Heirs of Alfonso to the Complaint. It was alleged that the Deed of Sale was only made to lessen the payment of estate and inheritance taxes and not meant to transfer ownership. The exception in paragraph (b) is allowed to enable the court to ascertain the true intent of the parties, and once the intent is clear, it shall prevail over what the document appears to be on its face.[32] As the true intent of the parties was duly proven in the present case, it now prevails over what appears on the Deed of Sale.

The validity of the Deed of Sale was also put in issue in the Answer, and was precisely one of the issues submitted to the RTC for resolution.[33] The operation of the parol evidence rule requires the existence of a valid written agreement. It is, thus, not applicable in a proceeding where the validity of such agreement is the fact in dispute, such as when a contract may be void for lack of consideration.[34] Considering that the Deed of Sale has been shown to be void for being absolutely simulated and for lack of consideration, the Heirs of Alfonso are not precluded

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[31] *Rollo* (G.R. No. 165748), pp. 66-74.

[32] *Premier Insurance v. Intermediate Appellate Court*, 225 Phil. 370, 381 (1986); citing *Labasan v. Lacuesta*, 175 Phil. 216 (1978).

[33] *Rollo* (G.R No. 165748), p. 77.

[34] Herrera, *Remedial Law*, Vol. V, pp. 208-209, [1999].

from presenting evidence to modify, explain or add to the terms of the written agreement.

The Heirs of Policronio must be in a state of confusion in arguing that the Heirs of Alfonso may not question the Deed of Sale for not being parties or successors-in-interest therein on the basis that the parol evidence rule may not be properly invoked in a proceeding or litigation where at least one of the parties to the suit is not a party or a privy of a party to the written instrument in question and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby. If their argument was to be accepted, then the Heirs of Policronio would themselves be precluded from invoking the parol evidence rule to exclude the evidence of the Heirs of Alfonso.

Indeed, the applicability of the parol evidence rule requires that the case be between parties and their successors-in-interest.[35] In this case, both the Heirs of Alfonso and the Heirs of Policronio are successors-in-interest of the parties to the Deed of Sale as they claim rights under Alfonso and Policronio, respectively. The parol evidence rule excluding evidence *aliunde*, however, still cannot apply because the present case falls under two exceptions to the rule, as discussed above.

With respect to hearsay, the Heirs of Policronio contended that the rule on hearsay was violated when the testimony of Amparo Castillo was given weight in proving that the subject lands were only sold for taxation purposes as she was a person alien to the contract. Even granting that they did not object to her testimony during trial, they argued that it should not have been appreciated by the CA because it had no probative value whatsoever.[36]

The Court disagrees.

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[35] *Lechugas v. Court of Appeals*, 227 Phil. 310, 319 (1986).

[36] *Eugenio v. Court of Appeals*, G.R. No. 103737, December 15, 1994, 239 SCRA 207.

It has indeed been held that hearsay evidence whether objected to or not cannot be given credence for having no probative value.[37] This principle, however, has been relaxed in cases where, in addition to the failure to object to the admissibility of the subject evidence, there were other pieces of evidence presented or there were other circumstances prevailing to support the fact in issue. In *Top-Weld Manufacturing, Inc. v. ECED S.A.*,[38] this Court held:

> Hearsay evidence alone may be insufficient to establish a fact in an injunction suit (Parker v. Furlong, 62 P. 490) but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves. (Smith v. Delaware & Atlantic Telegraph & Telephone Co., 51 A 464). Although we should warn of the undesirability of issuing judgments solely on the basis of the affidavits submitted, where as here, said affidavits are overwhelming, uncontroverted by competent evidence and not inherently improbable, we are constrained to uphold the allegations of the respondents regarding the multifarious violations of the contracts made by the petitioner.

In the case at bench, there were other prevailing circumstances which corroborate the testimony of Amparo Castillo. *First*, the other Deeds of Sale which were executed in favor of Liberato, Prudencia, and Valeriana on the same day as that of Policronio's were all presented in evidence. *Second*, all the properties subject therein were included in the Deed of Extra-Judicial Partition of the estate of Alfonso. *Third*, Policronio, during his lifetime, never exercised acts of ownership over the subject properties (as he never demanded or took possession of them, never demanded or received the produce thereof, and never paid real estate taxes thereon). *Fourth*, Policronio never informed his children of the sale.

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[37] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[38] 222 Phil. 424, 437 (1985).

As the Heirs of Policronio failed to controvert the evidence presented, and to timely object to the testimony of Amparo Castillo, both the RTC and the CA correctly accorded probative weight to her testimony.

Prior Action Unnecessary

The Heirs of Policronio averred that the Heirs of Alfonso should have filed an action to declare the sale void prior to executing the Deed of Extra-Judicial Partition. They argued that the sale should enjoy the presumption of regularity, and until overturned by a court, the Heirs of Alfonso had no authority to include the land in the inventory of properties of Alfonso's estate. By doing so, they arrogated upon themselves the power of invalidating the Deed of Sale which is exclusively vested in a court of law which, in turn, can rule only upon the observance of due process. Thus, they contended that prescription, laches, or estoppel have set in to militate against assailing the validity of the sale.

The Heirs of Policronio are mistaken.

A simulated contract of sale is without any cause or consideration, and is, therefore, null and void; in such case, no independent action to rescind or annul the contract is necessary, and it may be treated as non-existent for all purposes.[39] A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification. A void contract produces no effect whatsoever either against or in favor of anyone; it does not create, modify or extinguish the juridical relation to which it refers.[40] Therefore, it was not necessary for the Heirs of Alfonso to first file an action to declare the nullity of the Deed of Sale prior to executing the Deed of Extra-Judicial Partition.

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[39] *Ocejo Perez & Co. v. Flores*, 40 Phil. 921 (1920); *De Belen v. Collector of Customs*, 46 Phil. 241 (1924); *Gallion v. Gayares*, 53 Phil. 43 (1929); *Escutin v. Escutin*, 60 Phil. 922 (1934); *Gonzales v. Trinidad*, 67 Phil. 682 (1939); *Portugal v. IAC*, 242 Phil. 709 (1988).

[40] *Tongoy v. Court of Appeals*, *supra* note 15.

Personality to Question Sale

The Heirs of Policronio contended that the Heirs of Alfonso are not parties, heirs, or successors-in-interest under the contemplation of law to clothe them with the personality to question the Deed of Sale. They argued that under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs. Thus, the genuine character of a contract which personally binds the parties cannot be put in issue by a person who is not a party thereto. They posited that the Heirs of Alfonso were not parties to the contract; neither did they appear to be beneficiaries by way of assignment or inheritance. Unlike themselves who are direct heirs of Policronio, the Heirs of Alfonso are not Alfonso's direct heirs. For the Heirs of Alfonso to qualify as parties, under Article 1311 of the Civil Code, they must first prove that they are either heirs or assignees. Being neither, they have no legal standing to question the Deed of Sale.

They further argued that the sale cannot be assailed for being barred under Article 1421 of the Civil Code which provides that the defense of illegality of a contract is not available to third persons whose interests are not directly affected.

Again, the Court disagrees.

Article 1311 and Article 1421 of the Civil Code provide:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, x x x

Art. 1421. The defense of illegality of contracts is not available to third persons whose interests are not directly affected.

The right to set up the nullity of a void or non-existent contract is not limited to the parties, as in the case of annullable or voidable contracts; it is extended to third persons who are directly affected by the contract. Thus, where a contract is absolutely simulated, even third persons who may be prejudiced thereby

may set up its inexistence.[41] The Heirs of Alfonso are the children of Alfonso, with his deceased children represented by their children (Alfonso's grandchildren). The Heirs of Alfonso are clearly his heirs and successors-in-interest and, as such, their interests are directly affected, thereby giving them the right to question the legality of the Deed of Sale.

Inapplicability of Article 842

The Heirs of Policronio further argued that even assuming that the Heirs of Alfonso have an interest in the Deed of Sale, they would still be precluded from questioning its validity. They posited that the Heirs of Alfonso must first prove that the sale of Alfonso's properties to Policronio substantially diminished their successional rights or that their legitimes would be unduly prejudiced, considering that under Article 842 of the Civil Code, one who has compulsory heirs may dispose of his estate provided that he does not contravene the provisions of the Civil Code with regard to the legitime of said heirs. Having failed to do so, they argued that the Heirs of Alfonso should be precluded from questioning the validity of the Deed of Sale.

Still, the Court disagrees.

Article 842 of the Civil Code provides:

> Art. 842. One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.
>
> One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of said heirs.

This article refers to the principle of freedom of disposition by will. What is involved in the case at bench is not a disposition by will but by Deed of Sale. Hence, the Heirs of Alfonso need not first prove that the disposition substantially diminished their successional rights or unduly prejudiced their legitimes.

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[41] *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 46-47 (1986); Tolentino, *Civil Code of the Philippines*, Vol. IV, p. 643, [2002].

Inapplicability of Article 1412

The Heirs of Policronio contended that even assuming that the contract was simulated, the Heirs of Alfonso would still be barred from recovering the properties by reason of Article 1412 of the Civil Code, which provides that if the act in which the unlawful or forbidden cause does not constitute a criminal offense, and the fault is both on the contracting parties, neither may recover what he has given by virtue of the contract or demand the performance of the other's undertaking. As the Heirs of Alfonso alleged that the purpose of the sale was to avoid the payment of inheritance taxes, they cannot take from the Heirs of Policronio what had been given to their father.

On this point, the Court again disagrees.

Article 1412 of the Civil Code is as follows:

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Article 1412 is not applicable to fictitious or simulated contracts, because they refer to contracts with an illegal cause or subject-matter.[42] This article presupposes the existence of a cause, it cannot refer to fictitious or simulated contracts which are in reality non-existent.[43] As it has been determined that the Deed of Sale is a simulated contract, the provision cannot apply to it.

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[42] *Sta. Romana v. Imperio*, 122 Phil. 1001, 1007 (1965); Tolentino, *Civil Code of the Philippines*, Vol. IV, p. 634, (2002).

[43] *Gonzales v. Trinidad*, 67 Phil. 682, 683-684 (1939); *Castro v. Escutin*, 179 Phil. 277, 284 (1979).

Granting that the Deed of Sale was not simulated, the provision would still not apply. Since the subject properties were included as properties of Alfonso in the Deed of Extra-Judicial Partition, they are covered by corresponding inheritance and estate taxes. Therefore, tax evasion, if at all present, would not arise, and Article 1412 would again be inapplicable.

Prescription

From the position that the Deed of Sale is valid and not void, the Heirs of Policronio argued that any question regarding its validity should have been initiated through judicial process within 10 years from its notarization in accordance with Article 1144 of the Civil Code. Since 21 years had already elapsed when the Heirs of Alfonso assailed the validity of the Deed of Sale in 1996, prescription had set in. Furthermore, since the Heirs of Alfonso did not seek to nullify the tax declarations of Policronio, they had impliedly acquiesced and given due recognition to the Heirs of Policronio as the rightful inheritors and should, thus, be barred from laying claim on the land.

The Heirs of Policronio are mistaken.

Article 1410 of the Civil Code provides:

Art. 1410. The action for the declaration of the inexistence of a contract does not prescribe.

This is one of the most fundamental characteristics of void or inexistent contracts.[44]

As the Deed of Sale is a void contract, the action for the declaration of its nullity, even if filed 21 years after its execution, cannot be barred by prescription for it is imprescriptible. Furthermore, the right to set up the defense of inexistence or absolute nullity cannot be waived or renounced.[45] Therefore, the Heirs of Alfonso cannot be precluded from setting up the defense of its inexistence.

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[44] *Tongoy v. Court of Appeals, supra* note 15; *Manila Banking Corporation v. Silverio,* 504 Phil. 17, 33 (2005).

[45] *Id.*

Validity of the Deed of Extra-Judicial Partition

The Court now resolves the issue of the validity of the Deed of Extra-Judicial Partition.

Unenforceability

The Heirs of Alfonso argued that the CA was mistaken in annulling the Deed of Extra-Judicial Partition due to the incapacity of Conrado to give the consent of his co-heirs for lack of a special power of attorney. They contended that what was involved was not the capacity to give consent in behalf of the co-heirs but the authority to represent them. They argue that the Deed of Extra-Judicial Partition is not a voidable or an annullable contract under Article 1390 of the Civil Code, but rather, it is an unenforceable or, more specifically, an unauthorized contract under Articles 1403 (1) and 1317 of the Civil Code. As such, the Deed of Extra-Judicial Partition should not be annulled but only be rendered unenforceable against the siblings of Conrado.

They further argued that under Article 1317 of the Civil Code, when the persons represented without authority have ratified the unauthorized acts, the contract becomes enforceable and binding. They contended that the Heirs of Policronio ratified the Deed of Extra-Judicial Partition when Conrado took possession of one of the parcels of land adjudicated to him and his siblings, and when another parcel was used as collateral for a loan entered into by some of the Heirs of Policronio. The Deed of Extra-Judicial Partition having been ratified and its benefits accepted, the same thus became enforceable and binding upon them.

The Heirs of Alfonso averred that granting *arguendo* that Conrado was not authorized to represent his co-heirs and there was no ratification, the CA should not have remanded the case to the RTC for partition of Alfonso's estate. They argued that the CA should not have applied the Civil Code general provision on contracts, but the special provisions dealing with succession and partition. They contended that contrary to the ruling of the CA, the extra-judicial partition was not an act of strict dominion, as it has been ruled that partition of inherited land is not a

conveyance but a confirmation or ratification of title or right to the land.[46] Therefore, the law requiring a special power of attorney should not be applied to partitions.

On the other hand, the Heirs of Policronio insisted that the CA pronouncement on the invalidity of the Deed of Extra-Judicial Partition should not be disturbed because the subject properties should not have been included in the estate of Alfonso, and because Conrado lacked the written authority to represent his siblings. They argued with the CA in ruling that a special power of attorney was required before Conrado could sign in behalf of his co-heirs.

The Heirs of Policronio denied that they ratified the Deed of Extra-Judicial Partition. They claimed that there is nothing on record that establishes that they ratified the partition. Far from doing so, they precisely questioned its execution by filing a complaint. They further argued that under Article 1409 (3) of the Civil Code, ratification cannot be invoked to validate the illegal act of including in the partition those properties which do not belong to the estate as it provides another mode of acquiring ownership not sanctioned by law.

Furthermore, the Heirs of Policronio contended that the defenses of unenforceability, ratification, and preterition are being raised for the first time on appeal by the Heirs of Alfonso. For having failed to raise them during the trial, the Heirs of Alfonso should be deemed to have waived their right to do so.

The Court agrees in part with the Heirs of Alfonso.

To begin, although the defenses of unenforceability, ratification and preterition were raised by the Heirs of Alfonso for the first time on appeal, they are concomitant matters which may be taken up. As long as the questioned items bear relevance and close relation to those specifically raised, the interest of justice would dictate that they, too, must be considered and resolved. The rule that only theories raised in the initial

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[46] *Barcelona v. Barcelona*, 100 Phil. 251, 255 (1956).

proceedings may be taken up by a party thereto on appeal should refer to independent, not concomitant matters, to support or oppose the cause of action.[47]

In the RTC, the Heirs of Policronio alleged that Conrado's consent was vitiated by mistake and undue influence, and that he signed the Deed of Extra-Judicial Partition without the authority or consent of his co-heirs.

The RTC found that Conrado's credibility had faltered, and his claims were rejected by the RTC as gratuitous assertions. On the basis of such, the RTC ruled that Conrado duly represented his siblings in the Deed of Extra-Judicial Partition.

On the other hand, the CA annulled the Deed of Extra-Judicial Partition under Article 1390 (1) of the Civil Code, holding that a special power of attorney was lacking as required under Article 1878 (5) and (15) of the Civil Code. These articles are as follows:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x x x x x x

(15) Any other act of strict dominion.

Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

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[47] *Borbon II v. Servicewide Specialists, Inc.*, 328 Phil. 150, 160 (1996).

This Court finds that Article 1878 (5) and (15) is inapplicable to the case at bench. It has been held in several cases[48] that partition among heirs is not legally deemed a conveyance of real property resulting in change of ownership. It is not a transfer of property from one to the other, but rather, it is a confirmation or ratification of title or right of property that an heir is renouncing in favor of another heir who accepts and receives the inheritance. It is merely a designation and segregation of that part which belongs to each heir. The Deed of Extra-Judicial Partition cannot, therefore, be considered as an act of strict dominion. Hence, a special power of attorney is not necessary.

In fact, as between the parties, even an oral partition by the heirs is valid if no creditors are affected. The requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir.[49]

Neither is Article 1390 (1) applicable. Article 1390 (1) contemplates the incapacity of a party to give consent to a contract. What is involved in the case at bench though is not Conrado's incapacity to give consent to the contract, but rather his lack of authority to do so. Instead, Articles 1403 (1), 1404, and 1317 of the Civil Code find application to the circumstances prevailing in this case. They are as follows:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

Art. 1404. Unauthorized contracts are governed by Article 1317 and the principles of agency in Title X of this Book.

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[48] *Barcelona v. Barcelona*, 100 Phil. 251, 255 (1956); *Maestrado v. Court of Appeals*, 384 Phil. 418, 432 (2000); *Castro v. Miat*, 445 Phil. 282 297-298 (2003), citing *Pada-Kilario v. Court of Appeals*, 379 Phil. 515 (2000).

[49] *Maestrado v. Court of Appeals*, 384 Phil. 418, 432 (2000).

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Such was similarly held in the case of *Badillo v. Ferrer*:

> The Deed of Extrajudicial Partition and Sale is not a voidable or an annullable contract under Article 1390 of the New Civil Code. Article 1390 renders a contract voidable if one of the parties is incapable of giving consent to the contract or if the contracting party's consent is vitiated by mistake, violence, intimidation, undue influence or fraud. x x x
>
> The deed of extrajudicial partition and sale is an unenforceable or, more specifically, an unauthorized contract under Articles 1403(1) and 1317 of the New Civil Code.[50]

Therefore, Conrado's failure to obtain authority from his co-heirs to sign the Deed of Extra-Judicial Partition in their behalf did not result in his incapacity to give consent so as to render the contract voidable, but rather, it rendered the contract valid but unenforceable against Conrado's co-heirs for having been entered into without their authority.

A closer review of the evidence on record, however, will show that the Deed of Extra-Judicial Partition is not unenforceable but, in fact, valid, binding and enforceable against all the Heirs of Policronio for having given their consent to the contract. Their consent to the Deed of Extra-Judicial Partition has been proven by a preponderance of evidence.

Regarding his alleged vitiated consent due to mistake and undue influence to the Deed of Extra-Judicial Partition, Conrado testified, to wit:

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[50] 236 Phil. 438, 447-448 (1987).

Q: Mr. Ureta you remember having signed a document entitled deed of extra judicial partition consisting of 11 pages and which have previously [been] marked as Exhibit I for the plaintiffs?

A: Yes sir.

Q: Can you recall where did you sign this document?

A: The way I remember I signed that in our house.

Q: And who requested or required you to sign this document?

A: My aunties.

Q: Who in particular if you can recall?

A: *Nay* Pruding Panadero.

Q: You mean that this document that you signed was brought to your house by your Auntie Pruding Pa[r]adero [who] requested you to sign that document?

A: When she first brought that document I did not sign that said document because I [did] no[t] know the contents of that document.

Q: How many times did she bring this document to you [until] you finally signed the document?

A: Perhaps 3 times.

Q: Can you tell the court why you finally signed it?

A: Because the way she explained it to me that the land of my grandfather will be partitioned.

Q: When you signed this document were your brothers and sisters who are your co-plaintiffs in this case aware of your act to sign this document?

A: They do not know.

x x x x x x x x x

Q: After you have signed this document did you inform your brothers and sisters that you have signed this document?

A: No I did not.[51]

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[51] TSN, October 1, 1997, pp. 4-6.

x x x x x x x x x

Q: Now you read the document when it was allegedly brought to your house by your aunt Pruding Pa[r]adero?

A: I did not read it because as I told her I still want to ask the advise of my brothers and sisters.

Q: So do I get from you that you have never read the document itself or any part thereof?

A: I have read the heading.

x x x x x x x x x

Q: And why is it that you did not read all the pages of this document because I understand that you know also how to read in English?

A: Because the way *Nay* Pruding explained to me is that the property of my grandfather will be partitioned that is why I am so happy.

x x x x x x x x x

Q: You mean to say that after you signed this deed of extra judicial partition up to the present you never informed them?

A: Perhaps they know already that I have signed and they read already the document and they have read the document.

Q: My question is different, did you inform them?

A: The document sir? I did not tell them.

Q: Even until now?

A: Until now I did not inform them.[52]

This Court finds no cogent reason to reverse the finding of the RTC that Conrado's explanations were mere gratuitous assertions not entitled to any probative weight. The RTC found Conrado's credibility to have faltered when he testified that perhaps his siblings were already aware of the Deed of Extra-Judicial Partition. The RTC was in the best position to judge the credibility of the witness' testimony. The CA also recognized

[52] *Id.* at 8-11.

that Conrado's consent was not vitiated by mistake and undue influence as it required a special power of attorney in order to bind his co-heirs and, as such, the CA thereby recognized that his signature was binding to him but not with respect to his co-heirs. Findings of fact of the trial court, particularly when affirmed by the CA, are binding to this Court.[53]

Furthermore, this Court notes other peculiarities in Conrado's testimony. Despite claims of undue influence, there is no indication that Conrado was forced to sign by his aunt, Prudencia Paradero. In fact, he testified that he was happy to sign because his grandfather's estate would be partitioned. Conrado, thus, clearly understood the document he signed. It is also worth noting that despite the document being brought to him on three separate occasions and indicating his intention to inform his siblings about it, Conrado failed to do so, and still neglected to inform them even after he had signed the partition. All these circumstances negate his claim of vitiated consent. Having duly signed the Deed of Extra-Judicial Partition, Conrado is bound to it. Thus, it is enforceable against him.

Although Conrado's co-heirs claimed that they did not authorize Conrado to sign the Deed of Extra-Judicial Partition in their behalf, several circumstances militate against their contention.

First, the Deed of Extra-Judicial Partition was executed on April 19, 1989, and the Heirs of Policronio claim that they only came to know of its existence on July 30, 1995 through an issue of the Aklan Reporter. It is difficult to believe that Conrado did not inform his siblings about the Deed of Extra-Judicial Partition or at least broach its subject with them for more than five years from the time he signed it, especially after indicating in his testimony that he had intended to do so.

Second, Conrado retained possession of one of the parcels of land adjudicated to him and his co-heirs in the Deed of Extra-Judicial Partition.

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[53] *Philippine Rabbit Bus Lines Inc. v. Macalinao*, 491 Phil. 249, 255 (2005).

Third, after the execution of the partition on April 19, 1989 and more than a year before they claimed to have discovered the existence of the Deed of Extra-Judicial Partition on July 30, 1995, some of the Heirs of Policronio, namely, Rita Solano, Macario Ureta, Lilia Tayco, and Venancio Ureta executed on June 1, 1994, a Special Power of Attorney[54] in favor of their sister Gloria Gonzales, authorizing her to obtain a loan from a bank and to mortgage one of the parcels of land adjudicated to them in the Deed of Extra-Judicial Partition to secure payment of the loan. They were able to obtain the loan using the land as collateral, over which a Real Estate Mortgage[55] was constituted. Both the Special Power of Attorney and the Real Estate Mortgage were presented in evidence in the RTC, and were not controverted or denied by the Heirs of Policronio.

Fourth, in the letter dated August 15, 1995, sent by the counsel of the Heirs of Policronio to the Heirs of Alfonso requesting for amicable settlement, there was no mention that Conrado's consent to the Deed of Extra-Judicial Partition was vitiated by mistake and undue influence or that they had never authorized Conrado to represent them or sign the document on their behalf. It is questionable for such a pertinent detail to have been omitted. The body of said letter is reproduced hereunder as follows:

Greetings:

Your nephews and nieces, children of your deceased brother Policronio Ureta, has referred to me for appropriate legal action the property they inherited from their father consisting of six (6) parcels of land which is covered by a Deed of Absolute Sale dated October 25, 1969. These properties ha[ve] already been transferred to the name of their deceased father immediately after the sale, machine copy of the said Deed of Sale is hereto attached for your ready reference.

Lately, however, there was published an Extra-judicial Partition of the estate of Alfonso Ureta, which to the surprise of my clients included the properties already sold to their father before the death

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[54] Exhibit "2", records, p. 524.

[55] Exhibit "3", *id.* at 525.

of said Alfonso Ureta. This inclusion of their property is erroneous and illegal because these properties were covered by the Deed of Absolute Sale in favor of their father Policronio Ureta no longer form part of the estate of Alfonso Ureta. Since Policronio Ureta has [sic] died in 1974 yet, these properties have passed by hereditary succession to his children who are now the true and lawful owners of the said properties.

My clients are still entitled to a share in the estate of Alfonso Ureta who is also their grandfather as they have stepped into the shoes of their deceased father Policronio Ureta. But this estate of Alfonso Ureta should already exclude the six (6) parcels of land covered by the Deed of Absolute Sale in favor of Policronio Ureta.

My clients cannot understand why the properties of their late father [should] be included in the estate of their grandfather and be divided among his brothers and sisters when said properties should only be divided among themselves as children of Policronio Ureta.

Since this matter involves very close members of the same family, I have counseled my clients that an earnest effort towards a compromise or amicable settlement be first explored before resort to judicial remedy is pursued. And a compromise or amicable settlement can only be reached if all the parties meet and discuss the problem with an open mind. To this end, I am suggesting a meeting of the parties on September 16, 1995 at 2:00 P.M. at B Place Restaurant at C. Laserna St., Kalibo, Aklan. It would be best if the parties can come or be represented by their duly designated attorney-in-fact together with their lawyers if they so desire so that the problem can be discussed unemotionally and intelligently.

I would, however, interpret the failure to come to the said meeting as an indication that the parties are not willing to or interested in amicable settlement of this matter and as a go signal for me to resort to legal and/or judicial remedies to protest the rights of my clients.

Thank you very much.[56]

Based on the foregoing, this Court concludes that the allegation of Conrado's vitiated consent and lack of authority to sign in behalf of his co-heirs was a mere afterthought on the part of the Heirs of Policronio. It appears that the Heirs of Policronio

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[56] Exhibit "A", *id.* at 335-336.

were not only aware of the existence of the Deed of Extra-Judicial Partition prior to June 30, 1995 but had, in fact, given Conrado authority to sign in their behalf. They are now estopped from questioning its legality, and the Deed of Extra-Judicial Partition is valid, binding, and enforceable against them.

In view of the foregoing, there is no longer a need to discuss the issue of ratification.

Preterition

The Heirs of Alfonso were of the position that the absence of the Heirs of Policronio in the partition or the lack of authority of their representative results, at the very least, in their preterition and not in the invalidity of the entire deed of partition. Assuming there was actual preterition, it did not render the Deed of Extra-Judicial Partition voidable. Citing Article 1104 of the Civil Code, they aver that a partition made with preterition of any of the compulsory heirs shall not be rescinded, but the heirs shall be proportionately obliged to pay the share of the person omitted. Thus, the Deed of Extra-Judicial Partition should not have been annulled by the CA. Instead, it should have ordered the share of the heirs omitted to be given to them.

The Heirs of Alfonso also argued that all that remains to be adjudged is the right of the preterited heirs to represent their father, Policronio, and be declared entitled to his share. They contend that remand to the RTC is no longer necessary as the issue is purely legal and can be resolved by the provisions of the Civil Code for there is no dispute that each of Alfonso's heirs received their rightful share. Conrado, who received Policronio's share, should then fully account for what he had received to his other co-heirs and be directed to deliver their share in the inheritance.

These arguments cannot be given credence.

Their posited theory on preterition is no longer viable. It has already been determined that the Heirs of Policronio gave their consent to the Deed of Extra-Judicial Partition and they have not been excluded from it. Nonetheless, even granting that the

Heirs of Policronio were denied their lawful participation in the partition, the argument of the Heirs of Alfonso would still fail.

Preterition under Article 854 of the Civil Code is as follows:

> Art. 854. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious.
>
> If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation.

Preterition has been defined as the total omission of a compulsory heir from the inheritance. It consists in the silence of the testator with regard to a compulsory heir, omitting him in the testament, either by not mentioning him at all, or by not giving him anything in the hereditary property but without expressly disinheriting him, even if he is mentioned in the will in the latter case.[57] Preterition is thus a concept of testamentary succession and requires a will. In the case at bench, there is no will involved. Therefore, preterition cannot apply.

Remand Unnecessary

The Deed of Extra-Judicial Partition is in itself valid for complying with all the legal requisites, as found by the RTC, to wit:

> A persual of the Deed of Extra-judicial Partition would reveal that all the heirs and children of Alfonso Ureta were represented therein; that nobody was left out; that all of them received as much as the others as their shares; that it distributed all the properties of Alfonso Ureta except a portion of parcel 29 containing an area of 14,000 square meters, more or less, which was expressly reserved; that Alfonso Ureta, at the time of his death, left no debts; that the heirs of Policronio Ureta, Sr. were represented by Conrado B. Ureta; all the parties signed the document, was witnessed and duly

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[57] *Neri v. Akutin*, 72 Phil. 322, 325 (1914); *Maninang v. Court of Appeals*, 199 Phil. 640, 647 (1982).

acknowledged before Notary Public Adolfo M. Iligan of Kalibo, Aklan; that the document expressly stipulated that the heirs to whom some of the properties were transferred before for taxation purposes or their children, expressly recognize and acknowledge as a fact that the properties were transferred only for the purpose of effective administration and development convenience in the payment of taxes and, therefore, all instruments conveying or effecting the transfer of said properties are null and void from the beginning (Exhs. 1-4, 7-d).[58]

Considering that the Deed of Sale has been found void and the Deed of Extra-Judicial Partition valid, with the consent of all the Heirs of Policronio duly given, there is no need to remand the case to the court of origin for partition.

WHEREFORE, the petition in G.R. No. 165748 is *DENIED*. The petition in G.R. No. 165930 is *GRANTED*. The assailed April 20, 2004 Decision and October 14, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 71399, are hereby *MODIFIED* in this wise:

(1) The Deed of Extra-Judicial Partition, dated April 19, 1989, is *VALID*, and

(2) The order to remand the case to the court of origin is hereby *DELETED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.*, concur.

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[58] *Rollo* (G.R. No. 165748), p. 80.

[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

FIRST DIVISION

[G.R. No. 173038. September 14, 2011]

ELENA JANE DUARTE, *petitioner, vs.* **MIGUEL SAMUEL A.E. DURAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PETITION FOR REVIEW WAS TIMELY FILED WITH THE COURT OF APPEALS APPLYING THE "FRESH PERIOD RULE."— To standardize the appeal periods and afford litigants fair opportunity to appeal their cases, we ruled in *Neypes v. Court of Appeals* that litigants must be given a fresh period of 15 days within which to appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration under Rules 40, 41, 42, 43 and 45 of the Rules of Court. This ruling, as we have said in *Fil-Estate Properties, Inc. v. Homena-Valencia*, retroactively applies even to cases pending prior to the promulgation of *Neypes* on September 14, 2005, there being no vested rights in the rules of procedure. Since the instant case was pending in the CA at the time *Neypes* was promulgated, respondent is entitled to a fresh period of 15 days, counted from May 27, 2004, the date respondent received the RTC Order dated May 13, 2004 denying his motion for reconsideration of the RTC Decision dated March 19, 2004 or until June 11, 2004, within which to file his Petition for Review with the CA. Thus, we find that when he filed the Petition for Review with the CA on June 1, 2004, his period to appeal had not yet lapsed.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; ORAL CONTRACT OF SALE BETWEEN THE PARTIES, ESTABLISHED.— As to whether there was a contract of sale between the parties, we hold that there was, and the absence of a written contract of sale does not mean otherwise. A contract of sale is perfected the moment the parties agree upon the object of the sale, the price, and the terms of payment. Once perfected, the parties are bound by it whether the contract is verbal or in writing because no form is required. Contrary to the view of petitioner,

the Statute of Frauds does not apply in the present case as this provision applies only to executory, and not to completed, executed or partially executed contracts. In this case, the contract of sale had been partially executed because the possession of the laptop was already transferred to petitioner and the partial payments had been made by her. Thus, the absence of a written contract is not fatal to respondent's case. Respondent only needed to show by a preponderance of evidence that there was an oral contract of sale, which he did by submitting in evidence his own affidavit, the affidavit of his witness Dy, the receipt dated February 18, 2002 and the demand letter dated July 29, 2002. As regards the receipt dated February 18, 2002, we agree with petitioner that it is not an actionable document. Hence, there was no need for her to deny its genuineness and due execution under oath. Nonetheless, we find no error on the part of the CA in giving full weight and credence to it since it corroborates the testimonies of respondent and his witness Dy that there was an oral contract of sale between the parties. With regard to petitioner's denial of the receipt of the demand letter dated July 29, 2002, we believe that this did not overturn the presumption of regularity that the letter was delivered and received by the addressee in the regular course of the mail considering that respondent was able to present the postmaster's certification stating that the letter was indeed sent to the address of petitioner. Bare denial of receipt of a mail cannot prevail over the certification of the postmaster, whose official duty is to send notices of registered mail. As we see it then, the evidence submitted by respondent weigh more than petitioner's bare denials. Other than her denials, no other evidence was submitted by petitioner to prove that the laptop was not sold but was only given as security for respondent's loan. What adds doubt to her story is the fact that from the first week of March 2002, the time she allegedly decided not to buy the laptop, up to the time the instant case was filed against her, she did not exert any effort to recover from respondent the payment of the alleged loan. Her inaction leads us to conclude that the alleged loan was a mere afterthought. All told, no error can be attributed to the CA in finding that there was a contract of sale between the parties.

3. ID.; DAMAGES; ATTORNEY'S FEES; THE FACT THAT IT IS 70% OF THE PRINCIPAL AMOUNT CLAIMED IS OF

NO MOMENT AS THE AMOUNT OF ATTORNEY'S FEES IS DISCRETIONARY UPON THE COURT AS LONG AS IT IS REASONABLE.— Neither do we find any error in the award of attorney's fees and litigation expenses. Article 2208 of the Civil Code enumerates the legal grounds which justify or warrant the grant of attorney's fees and expenses of litigation, among which is when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. The reason for the award of attorney's fees and litigation expenses, however, must be set forth in the decision of the court and not in the dispositive portion only. In this case, the factual and legal bases for the award were set forth in the body of the MTCC Decision dated June 2, 2003, to wit: x x x As the defendant refused to satisfy plaintiff's just and valid claim, the latter was compelled to litigate and engage the services of counsel to protect his interest and in the process, incurred litigation expenses. The award of attorney's fees in the amount of ₱5,000.00 is also reasonable and not excessive considering that this case, a simple collection of a measly sum of ₱7,000.00, has dragged for almost a decade and even had to reach this Court only because petitioner refused to pay. The fact that it is 70% of the principal amount claimed is of no moment as the amount of attorney's fees is discretionary upon the court as long as it is reasonable.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
May S. Aguilar for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Preponderance of evidence only requires that evidence be greater or more convincing than the opposing evidence.[1]

[1] *Booc v. Five Star Marketing Co., Inc.*, G.R. No. 157806, November 22, 2007, 538 SCRA 42, 52.

Assailed in this Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court are the October 26, 2005 Decision[3] and May 22, 2006 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 84461.

Factual Antecedents

This petition arose from a suit[5] for collection of sum of money filed by respondent Miguel Samuel A.E. Duran[6] against petitioner Elena Jane Duarte with Branch 5 of the Municipal Trial Court in Cities (MTCC), Cebu.

According to respondent, on February 14, 2002, he offered to sell a laptop computer for the sum of ₱15,000.00 to petitioner thru the help of a common friend, Josephine Dy (Dy).[7] Since petitioner was undecided, respondent left the laptop with petitioner for two days.[8] On February 16, 2002, petitioner told respondent that she was willing to buy the laptop on installment.[9] Respondent agreed; thus, petitioner gave ₱5,000.00 as initial payment and promised to pay ₱3,000.00 on February 18, 2002 and ₱7,000.00 on March 15, 2002.[10] On February 18, 2002, petitioner gave her second installment of ₱3,000.00 to Dy, who signed the handwritten receipt[11] allegedly made by petitioner as proof of

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[2] *Rollo*, pp. 4-169 with Annexes "A" to "R" inclusive.

[3] *Id.* at 32-37; penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

[4] *Id.* at 53-unpaged; penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Isaias P. Dicdican and Pampio A. Abarintos.

[5] Docketed as Civil Case R-46283.

[6] Known to petitioner as Sam Estevanez; *rollo*, p. 109.

[7] *Id.* at 33.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] February 18, 2002

Received from ELENA JANE A. DUARTE the amt. of Three Thousand Pesos Only (₱3,000.00) as second payment of Compaq Laptop amounting to

payment.[12] But when Dy returned to get the remaining balance on March 15, 2002, petitioner offered to pay only ₱2,000.00 claiming that the laptop was only worth ₱10,000.00.[13] Due to the refusal of petitioner to pay the remaining balance, respondent thru counsel sent petitioner a demand letter dated July 29, 2002.[14]

Petitioner, however, denied writing the receipt dated February 18, 2002,[15] and receiving the demand letter dated July 29, 2002.[16] Petitioner claimed that there was no contract of sale.[17] Petitioner said that Dy offered to sell respondent's laptop but because petitioner was not interested in buying it, Dy asked if petitioner could instead lend respondent the amount of ₱5,000.00.[18] Petitioner agreed and in turn, Dy left the laptop with petitioner.[19] On February 18, 2002, Dy came to get the laptop but petitioner refused to give it back because the loan was not yet paid.[20] Dy then asked petitioner to lend an additional amount of ₱3,000.00 to respondent who allegedly was in dire need of money.[21] Petitioner gave the money under agreement that the amounts she lent to respondent would be considered as partial payments for the laptop in case she decides to buy it.[22] Sometime in the first

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Fifteen Thousand Pesos (₱15,000.00). First payment was given last Saturday Feb. 16 Five Thousand Pesos (₱5,000.00) total amt. given is (₱8,000.00) Eight Thousand only. The balance of Seven Thousand will be given on March 15, 2002.

(signed)
Joy M. Dy
Authorized by SAM ESTEVANEZ (*Id.* at 65).

[12] *Id.* at 33.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 99.

[16] *Id.* at 109.

[17] *Id.*

[18] *Id.* at 108.

[19] *Id.*

[20] *Id.* at 108-109.

[21] *Id.* at 109.

[22] *Id.*

week of March 2002, petitioner informed respondent that she has finally decided not to buy the laptop.[23] Respondent, however, refused to pay and insisted that petitioner purchase the laptop instead.[24]

Ruling of the Municipal Trial Court in Cities

On June 2, 2003, the MTCC rendered a Decision[25] in favor of respondent. It found the receipt dated February 18, 2002 and the testimonies of respondent and his witness, Dy, sufficient to prove that there was a contract of sale between the parties.[26] Thus:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay plaintiff the following measure of damages:
>
> (a) Actual damages in the amount of Seven Thousand (₱7,000.00) Pesos with interest thereon at 12% per annum from July 29, 2002 until fully paid;
>
> (b) Attorney's fees in the amount of Five Thousand (₱5,000.00) Pesos; and
>
> (c) Litigation expenses in the amount of Three Thousand (₱3,000.00) Pesos.
>
> SO ORDERED.[27]

Ruling of the Regional Trial Court

On appeal,[28] the Regional Trial Court (RTC) of Cebu, Branch 12, reversed the MTCC Decision. Pertinent portions of the Decision,[29] including the dispositive portion, read:

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[23] *Id.*

[24] *Id.*

[25] *Id.* at 107-111; penned by Judge Oscar D. Andrino.

[26] *Id.* at 110.

[27] *Id.* at 111.

[28] Docketed as Civil Case No. CEB-29351.

[29] *Rollo*, pp. 112-114; penned by Presiding Judge Aproniano B. Taypin.

x x x x x x x x x

As shown in the records of the case, this Court finds the alleged receipt issued by the witness Josephine Dy [in] her own handwriting a mere product of machination, trickery and self-serving. It shows no proof of conformity or acknowledgment on the part of the defendant that indeed she agreed on the stipulations. Thus, it cannot be given any credence and ultimately, did not bind her.

x x x x x x x x x

WHEREFORE, the assailed Decision is **REVERSED and SET ASIDE**. The defendant Elena Jane Duarte is hereby directed to return the computer laptop to plaintiff Miguel Samuel A.E. Duran and plaintiff is directed to return the money borrowed from defendant.

SO ORDERED.[30]

Respondent moved for reconsideration but the same was denied by the RTC in an Order[31] dated May 13, 2004.

Ruling of the Court of Appeals

On June 1, 2004, respondent filed a Petition for Review[32] with the CA. Finding the petition meritorious, the CA reversed the RTC Decision and reinstated the Decision of the MTCC. The CA said that the RTC erred in not giving weight and credence to the demand letter dated July 29, 2002 and the receipt dated February 18, 2002.[33] The CA pointed out that petitioner failed to overturn the presumption that the demand letter dated July 29, 2002 sent by respondent's counsel by registered mail was received by her.[34] Neither was she able to deny under oath the genuineness and due execution of the receipt dated February 18, 2002.[35] Thus, the *fallo* of the Decision[36] reads:

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[30] *Id.* at 113-114.

[31] *Id.* at 115.

[32] *Id.* at 116-129.

[33] *Id.* at 34-35.

[34] *Id.* at 36.

[35] *Id.* at 35-36.

[36] *Id.* at 32-37.

WHEREFORE, premises considered, the petition for review is hereby **GRANTED.** The decision of the Regional Trial Court, Branch 12, Cebu City is **REVERSED** and the judgment of Municipal Trial Court in Cities Branch 5, Cebu City is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.[37]

Petitioner filed a Motion for Reconsideration[38] which the CA denied in a Resolution[39] dated May 22, 2006.

Issues

Hence, the present recourse by petitioner raising five issues, to wit:

I. Whether x x x the [CA] committed grave error in not resolving the issue as to whether or not the petition for review that respondent filed in the said court was filed out of time.

II. Whether x x x the [CA] committed grave error when it reinstated the judgment of the [MTCC], Branch 5, Cebu City which awarded excessive attorney's fees and litigation expenses without factual and legal justification since the awards were merely stated in the dispositive portion of the decision and the factual and legal bases thereof were not discussed in the text thereof.

III. Whether x x x the [CA] committed grave error in holding that the denial by the petitioner of a receipt of the demand letter, sent through registered mail has not overturned the principal presumption of regularity in the performance of duty.

IV. Whether x x x the [CA] committed grave error in holding that a "receipt" which does not contain the signature of the petitioner is an actionable document.

V. Whether x x x the [CA] committed grave error in holding that the evidence available confirm the existence of a contract of sale.[40]

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[37] *Id.* at 37.

[38] *Id.* at 38-51.

[39] *Id.* at 53-unpaged.

[40] *Id.* at 212.

Summed up, the issues boil down to: (1) the timeliness of the filing of the Petition for Review with the CA; (2) the existence of a contract of sale; and (3) respondent's entitlement to attorney's fees and litigation expenses.

Petitioner's Arguments

Petitioner contends that the filing of the Petition for Review with the CA on June 1, 2004 was beyond the reglementary period.[41] Records show that respondent received a copy of the RTC Decision on March 25, 2004, filed a Motion for Reconsideration on April 12, 2004 since April 9 and 10 were holidays and April 11, 2004 was a Sunday, and received a copy of the RTC Order denying his Motion for Reconsideration on May 27, 2004.[42] Thus, he only had one day left from May 27, 2004 within which to file a Petition for Review with the CA.[43]

Petitioner likewise denies the existence of a contract of sale, insisting that the laptop was not sold to her but was given as a security for respondent's debt. To prove that there was no contract of sale, petitioner calls attention to respondent's failure to present a written contract of sale.[44] She claims that under the Statute of Frauds, a contract of sale to be enforceable must be in writing.[45] She also imputes error on the part of the CA in giving weight and credence to the receipt dated February 18, 2002 and the demand letter dated July 29, 2002.[46] She claims that the receipt dated February 18, 2002, which she denies having written, is not an actionable document; thus, there was no need for her to deny under oath its genuineness and due execution.[47] Furthermore, she claims that her denial of the

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[41] *Id.* at 214.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 226.

[45] *Id.* at 225-226.

[46] *Id.* at 219-224.

[47] *Id.* at 221.

receipt of the demand letter dated July 29, 2002 shifted the burden upon respondent to prove that the letter was indeed received by her.[48] As to the attorney's fees and litigation expenses, petitioner contends that these were not discussed in the MTCC Decision but were only stated in the dispositive portion and that the amount of ₱5,000.00 is excessive considering that it is 70% of the principal amount claimed by respondent.[49]

Respondent's Arguments

Respondent, on the other hand, argues that his Petition for Review was timely filed with the CA because he has 15 days from receipt of the RTC Order dated May 13, 2004 within which to file a Petition for Review with the CA under Section 1[50] of Rule 42 of the Rules of Court.[51] Respondent defends the ruling of the CA by arguing that the receipt dated February 18, 2002 is an actionable document, and thus, petitioner's failure to deny under oath its genuineness and due execution constitutes an admission thereof.[52] In addition, petitioner's denial of the receipt of the demand letter dated July 29, 2002 cannot overcome

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[48] *Id.* at 219.

[49] *Id.* at 215-218.

[50] Section 1. *How appeal taken*; *time for filing*. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[51] *Rollo*, p. 257.

[52] *Id.* at 238.

the presumption that the said letter was received in the regular course of mail.[53] Respondent likewise points out that the Statute of Frauds does not apply in the instant case.[54] Finally, respondent claims that the award of attorney's fees and litigation expenses are not excessive and that the factual and legal bases of the award were stated in the body of MTCC Decision.[55]

Our Ruling

The Petition lacks merit.

The Petition for Review was timely filed with the CA

To standardize the appeal periods and afford litigants fair opportunity to appeal their cases, we ruled in *Neypes v. Court of Appeals*[56] that litigants must be given a fresh period of 15 days within which to appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration under Rules 40, 41, 42, 43 and 45 of the Rules of Court.[57] This ruling, as we have said in *Fil-Estate Properties, Inc. v. Homena-Valencia*,[58] retroactively applies even to cases pending prior to the promulgation of *Neypes* on September 14, 2005, there being no vested rights in the rules of procedure.[59]

Since the instant case was pending in the CA at the time *Neypes* was promulgated, respondent is entitled to a fresh period of 15 days, counted from May 27, 2004, the date respondent received the RTC Order dated May 13, 2004 denying his motion for reconsideration of the RTC Decision dated March 19, 2004 or until June 11, 2004, within which to file his Petition for

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[53] *Id.* at 245.

[54] *Id.*

[55] *Id.* at 250-252.

[56] 506 Phil. 613 (2005).

[57] *Id.* at 626.

[58] G.R. No. 173942, June 25, 2008, 555 SCRA 345.

[59] *Id.* at 349.

Review with the CA. Thus, we find that when he filed the Petition for Review with the CA on June 1, 2004, his period to appeal had not yet lapsed.

There was a contract of sale between the parties

As to whether there was a contract of sale between the parties, we hold that there was, and the absence of a written contract of sale does not mean otherwise. A contract of sale is perfected the moment the parties agree upon the object of the sale, the price, and the terms of payment.[60] Once perfected, the parties are bound by it whether the contract is verbal or in writing because no form is required.[61] Contrary to the view of petitioner, the Statute of Frauds does not apply in the present case as this provision applies only to executory, and not to completed, executed or partially executed contracts.[62] In this case, the contract of sale had been partially executed because the possession of the laptop was already transferred to petitioner and the partial payments had been made by her. Thus, the absence of a written contract is not fatal to respondent's case. Respondent only needed to show by a preponderance of evidence that there was an oral contract of sale, which he did by submitting in evidence his own affidavit, the affidavit of his witness Dy, the receipt dated February 18, 2002 and the demand letter dated July 29, 2002.

As regards the receipt dated February 18, 2002, we agree with petitioner that it is not an actionable document. Hence, there was no need for her to deny its genuineness and due execution under oath. Nonetheless, we find no error on the part of the CA in giving full weight and credence to it since it corroborates the testimonies of respondent and his witness Dy that there was an oral contract of sale between the parties.

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[60] *Ainza v. Sps. Padua*, 501 Phil. 295, 299 (2005).

[61] *De los Reyes v. Court of Appeals*, 372 Phil. 522, 534 (1999).

[62] *Clemeno, Jr. v. Lobregat*, 481 Phil. 336, 350 (2004).

With regard to petitioner's denial of the receipt of the demand letter dated July 29, 2002, we believe that this did not overturn the presumption of regularity that the letter was delivered and received by the addressee in the regular course of the mail considering that respondent was able to present the postmaster's certification[63] stating that the letter was indeed sent to the address of petitioner. Bare denial of receipt of a mail cannot prevail over the certification of the postmaster, whose official duty is to send notices of registered mail.[64]

As we see it then, the evidence submitted by respondent weigh more than petitioner's bare denials. Other than her denials, no other evidence was submitted by petitioner to prove that the laptop was not sold but was only given as security for respondent's loan. What adds doubt to her story is the fact that from the first week of March 2002, the time she allegedly decided not to buy the laptop, up to the time the instant case was filed against her, she did not exert any effort to recover from respondent the payment of the alleged loan. Her inaction leads us to conclude that the alleged loan was a mere afterthought.

All told, no error can be attributed to the CA in finding that there was a contract of sale between the parties.

The award for attorney's fees and litigation expenses was proper

Neither do we find any error in the award of attorney's fees and litigation expenses.

Article 2208[65] of the Civil Code enumerates the legal grounds which justify or warrant the grant of attorney's fees and expenses

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[63] *Rollo*, p. 152.

[64] *Aportadera, Sr. v. Court of Appeals*, 242 Phil. 420, 425 (1988).

[65] Article 2208 of the Civil Code provides:

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

(1) When exemplary damages are awarded;

of litigation, among which is when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[66] The reason for the award of attorney's fees and litigation expenses, however, must be set forth in the decision of the court and not in the dispositive portion only.[67] In this case, the factual and legal bases for the award were set forth in the body of the MTCC Decision dated June 2, 2003, to wit:

> x x x As the defendant refused to satisfy plaintiff's just and valid claim, the latter was compelled to litigate and engage the services of counsel to protect his interest and in the process, incurred litigation expenses.[68]

The award of attorney's fees in the amount of ₱5,000.00 is also reasonable and not excessive considering that this case, a simple collection of a measly sum of ₱7,000.00, has dragged for almost a decade and even had to reach this Court only because petitioner refused to pay. The fact that it is 70% of the principal amount claimed is of no moment as the amount of attorney's fees is discretionary upon the court as long as it is reasonable.[69]

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(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;

x x x x x x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered;

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[66] *Poliand Industrial Limited v. National Development Co.*, 505 Phil. 27, 69 (2005).

[67] *Mercury Drug Corporation v. Baking*, G.R. No. 156037, May 25, 2007, 523 SCRA 184, 192.

[68] *Rollo*, p. 111.

[69] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 364.

Finally, although not raised as an issue, we find it necessary to modify the legal interest rate imposed on the principal amount claimed. Since the claim involves an obligation arising from a contract of sale and not a loan or forbearance of money, the interest rate should be six percent (6%) per annum of the amount claimed from July 29, 2002.[70] The interest rate of twelve percent (12%) per annum, however, shall apply from the finality of judgment until the total amount awarded is fully paid.[71]

WHEREFORE, the petition is hereby *DENIED*. The assailed October 26, 2005 Decision and May 22, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 84461 are hereby *AFFIRMED with MODIFICATION* as to the legal interest imposed on the principal amount claimed. The legal interest shall be at the rate of six percent (6%) per annum from July 29, 2002 and at the rate of twelve percent (12%) per annum from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied.

SO ORDERED.

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

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[70] *Tropical Homes, Inc. v. Court of Appeals*, 338 Phil. 930, 943-945 (1997), citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[71] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

FIRST DIVISION

[G.R. No. 175299. September 14, 2011]

REPUBLIC OF THE PHILIPPINES, represented by the Department of Public Works and Highways, through the Hon. Secretary, HERMOGENES EBDANE, *petitioner, vs.* **ALBERTO A. DOMINGO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; GROUNDS; LACK OF JURISDICTION; REFERS TO EITHER LACK OF JURISDICTION OVER THE PERSON OF THE DEFENDING PARTY OR OVER THE SUBJECT MATTER OF THE CLAIM.— Section 1, Rule 47 of the Rules of Court provides for the remedy of annulment by the Court of Appeals of judgments or final orders and resolutions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Under the first paragraph of Section 2, Rule 47 of the Rules of Court, the annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. As a ground for annulment of judgment, lack of jurisdiction refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.

2. ID.; ID.; SUMMONS; DEFINED.— Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person. Jurisdiction over the person of the defendant is acquired through coercive process, generally by the service of summons issued by the court, or through the defendant's voluntary appearance or submission to the court.

3. ID.; ID.; ID.; SERVICE UPON PUBLIC CORPORATIONS; WHEN THE DEFENDANT IS THE REPUBLIC OF THE PHILIPPINES, SERVICE MAY BE EFFECTED ON THE OFFICE OF THE SOLICITOR GENERAL (OSG).— Section 13, Rule 14 of the Rules of Court states that: SEC. 13.

Service upon public corporations. – **When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General**; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. Jurisprudence further instructs that when a suit is directed against an unincorporated government agency, which, because it is unincorporated, possesses no juridical personality of its own, the suit is against the agency's principal, *i.e.*, the State. In the similar case of *Heirs of Mamerto Manguiat v. Court of Appeals*, where summons was served on the Bureau of Telecommunications which was an agency attached to the Department of Transportation and Communications, we held that: Rule 14, Section 13 of the 1997 Rules of Procedure provides: SEC. 13. *Service upon public corporations*. — When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. It is clear under the Rules that where the defendant is the Republic of the Philippines, service of summons must be made on the Solicitor General. **The BUTEL is an agency attached to the Department of Transportation and Communications** created under E.O. No. 546 on July 23, 1979, and is in charge of providing telecommunication facilities, including telephone systems to government offices. It also provides its services to augment limited or inadequate existing similar private communication facilities. It extends its services to areas where no communication facilities exist yet; and assists the private sector engaged in telecommunication services by providing and maintaining backbone telecommunication network. **It is indisputably part of the Republic, and summons should have been served on the Solicitor General.**

4. ID.; ID.; ID.; ID.; THE SUMMONS IN CASE AT BAR SHOULD HAVE BEEN SERVED ON THE OFFICE OF THE SOLICITOR GENERAL SINCE THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) AND ITS REGIONAL OFFICE ARE MERELY THE AGENTS OF THE REPUBLIC, WHICH IS THE REAL PARTY IN

INTEREST IN CIVIL CASE NO. 333-M-2002.— In the instant case, the Complaint for Specific Performance with Damages filed by Domingo specifically named as defendant the DPWH Region III. As correctly argued by the Republic, the DPWH and its regional office are merely the agents of the former (the Republic), which is the real party in interest in Civil Case No. 333-M-2002. Thus, as mandated by Section 13, Rule 14 of the Rules of Court, the summons in this case should have been served on the OSG. Quite inexplicably, the Court of Appeals failed to apply, *nay*, to even consider, the provisions of Section 13, Rule 14 of the Rules of Court in rendering its assailed Decision. A perusal of the Decision dated May 19, 2006 shows that the appellate court mainly dissertated regarding the functions and organizational structures of the DPWH and the OSG, as provided for in the Revised Administrative Code of 1987, in an attempt to demonstrate the relationship between the DPWH and its regional offices, as well as to refute the claim that the service of summons upon the Republic should be made exclusively upon the OSG. Such an oversight on the part of the Court of Appeals is most unfortunate given the relevance and materiality of Section 13, Rule 14 of the Rules of Court to the instant case, in addition to the fact that the Republic itself quoted the aforesaid provision in its petition before the appellate court.

5. ID.; ID.; ID.; ID.; THE REPUBLIC IS NOT ESTOPPED FROM RAISING THE ISSUE OF JURISDICTION IN VIEW OF THE VOLUNTARY ENTRY OF APPEARANCE OF THE OSG; IT IS THE DUTY OF THE PLAINTIFF TO IMPLEAD THE PROPER DEFENDANT AND CAUSE THE SERVICE OF SUMMONS TO BE MADE UPON THE OFFICER MANDATED BY LAW.— The Court, nonetheless, subscribes to the ruling of the Court of Appeals that the Republic is not estopped from raising the issue of jurisdiction in the case at bar in view of the alleged entry of appearance of the OSG, in behalf of the Republic, in the other civil cases supposedly filed by Domingo against the DPWH Region III. As held by the appellate court, the other civil cases presumably pertained to transactions involving Domingo and the DPWH Region III, which were totally different from the contracts involved in the instant case. The fact that the OSG entered its appearance in the other civil cases, notwithstanding that the summons therein were

only served upon the DPWH Region III, has no bearing in the case now before us. All this indicates is that, despite the improper service of summons in these other civil cases, there appeared to be notice to the OSG and voluntary appearance on the latter's part. Here, there was no indication, and Domingo did not insist otherwise, that the OSG had any notice of the filing of Civil Case No. 333-M-2002. Domingo speculates that, in the subsequent civil actions against the DPWH Region III, the latter most likely brought the said cases to the attention of the OSG. On the other hand, Domingo opines that the DPWH Region III apparently neglected to inform the OSG of the pendency of Civil Case No. 333-M-2002. Accordingly, Domingo asserted that he should not be faulted therefor. The Court disagrees. Domingo ought to bear in mind that it is the duty of the plaintiff to implead all the necessary or indispensable parties for the complete determination of the action. It was, thus, incumbent upon him to name and implead the proper defendant in this case, *i.e.*, the Republic, and cause the service of summons to be made upon the officer mandated by law, that is, the OSG. As Domingo failed to discharge this burden, he cannot now be allowed to shift the blame on the DPWH Region III or hold in estoppel the OSG.

6. ID.; ID.; ID.; ID.; SINCE THE TRIAL COURT FAILED TO ACQUIRE JURISDICTION OVER THE PERSON OF THE REPUBLIC, THE PROCEEDINGS HAD BEFORE THE TRIAL COURT AND ITS DECISION ARE NULL AND VOID.— In sum, the Court holds that the Republic was not validly served with summons in Civil Case No. 333-M-2002. Hence, the RTC failed to acquire jurisdiction over the person of the Republic. Consequently, the proceedings had before the trial court and its Decision dated February 18, 2003 are hereby declared void. In accordance with Section 7, Rule 47 of the Rules of Court, a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. In view of the above ruling of the Court declaring the nullity of the proceedings in the RTC, the Court shall no longer pass upon the other issues raised by the parties in the instant petition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
J.C. Cruz Law Office for respondent.

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, the Court is called upon to reverse and set aside the Decision[2] dated May 19, 2006 and the Resolution[3] dated October 25, 2006 of the Court of Appeals in CA-G.R. SP No. 78813, as well as to declare null and void the Decision[4] dated February 18, 2003 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 18, in Civil Case No. 333-M-2002.

As culled from the records, the factual antecedents of the case are as follows:

On April 26, 2002, herein respondent Alberto A. Domingo filed a Complaint for Specific Performance with Damages[5] against the Department of Public Works and Highways (DPWH), Region III, which was docketed as Civil Case No. 333-M-2002 in the RTC of Malolos, Bulacan, Branch 18. Domingo averred that from April to September 1992, he entered into seven contracts with the DPWH Region III for the lease of his construction equipment to said government agency.[6] The lease contracts were allegedly executed in order to implement the emergency projects of the DPWH Region III, which aimed to control the flow of

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[1] *Rollo*, pp. 9-31.

[2] *Id.* at 32-45; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Elvi John S. Asuncion and Noel G. Tijam, concurring.

[3] *Id.* at 46-48.

[4] *Id.* at 73-80; penned by Presiding Judge Victoria C. Fernandez-Bernardo.

[5] Records, Vol. I, pp. 3-24.

[6] *Id.*, Vol. III, pp. 2-3, 40-41, 75-76, 112-114, 171-173, 230-231, and 261-262.

lahar from Mt. Pinatubo in the adjacent towns in the provinces of Tarlac and Pampanga. After the completion of the projects, Domingo claimed that the unpaid rentals of the DPWH Region III amounted to ₱6,320,163.05. Despite repeated demands, Domingo asserted that the DPWH Region III failed to pay its obligations. Domingo was, thus, compelled to file the above case for the payment of the ₱6,320,163.05 balance, plus ₱200,000.00 as moral and compensatory damages, ₱100,000.00 as exemplary damages, and ₱200,000.00 as attorney's fees.[7]

Thereafter, summons was issued by the RTC. The Proof of Service[8] of the Sheriff dated May 9, 2002 stated, thus:

PROOF OF SERVICE

The undersigned personally served the copy of the Summons together with the complaint issued in the above-entitled case upon defendant The Department of Public Works and Highways, Region III, San Fernando Pampanga on May 6, 2002 through Nora Cortez, Clerk III of said office as shown by her signature and stamped mark received by said office appearing on the original Summons.

WHEREFORE, the original Summons respectfully returned to the Court "DULY SERVED", for its record and information.

Malolos, Bulacan, May 9, 2002.

Subsequently, on July 30, 2002, Domingo filed a Motion to Declare Defendant in Default[9] in view of the failure of the DPWH Region III to file a responsive pleading within the reglementary period as required under the Rules of Court. During the hearing of the motion on August 8, 2002, the RTC directed the counsel of Domingo to submit proof of service of said motion on the DPWH Region III. Thereafter, the motion was deemed submitted for resolution.[10] Counsel for Domingo

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[7] *Id.*, Vol. I, pp. 22-23.

[8] *Id.* at 41.

[9] *Id.* at 42-43.

[10] *Id.* at 46.

timely filed a Manifestation,[11] showing compliance with the order of the trial court.

In an Order[12] dated September 2, 2002, the RTC declared the DPWH Region III in default and thereafter set the date for the reception of Domingo's evidence *ex parte*.

After the *ex parte* presentation of Domingo's evidence, the RTC rendered judgment on February 18, 2003, finding that:

> From the evidence presented by [Domingo], testimonial and documentary, it was convincingly proven that [Domingo] is entitled to the relief prayed for.
>
> In his seven causes of actions, [Domingo] has religiously undertaken what is incumbent upon him in the contracts of lease signed by both [Domingo] and [the DPWH Region III]. As a matter of course, the [DPWH Region III] has the duty to pay [Domingo] the amount equivalent to the services performed by [Domingo] which [in] this case now amount to ₱6,320,163.05 excluding interest.
>
> Considering that there was a long delay in the payment of the obligation on the part of the [DPWH Region III], Article 2209 of the New Civil Code finds application as to imputation of legal interest at six (6%) percent per annum, in the absence of stipulation of interest on the amount due.
>
> With respect to the claim for attorney's fees, although as a general rule, attorney's fees cannot be rewarded because of the policy that no premium should be placed on the right to litigate, this rule does not apply in the case at bar in the face of the stubborn refusal of [the DPWH Region III] to respect the valid claim of [Domingo] x x x. Award of attorney's fees in the amount of ₱30,000.00 appears proper. Moreover, as to [the] demand for moral and exemplary damages, the same are hereby denied for lack of persuasive and sufficient evidence.[13]

Thus, the RTC disposed:

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[11] *Id.* at 47-49.

[12] *Id.* at 50.

[13] *Rollo*, p. 79.

Wherefore, premises considered, judgment is hereby rendered in favor of plaintiff Alberto Domingo and against defendant DPWH Region III, ordering defendant to pay plaintiff:

1. the sum of Six Million Three Hundred Twenty Thousand One Hundred Sixty[-]Three and 05/100 Pesos (₱6,320,163.05) representing the principal obligation of the defendant plus interest at six percent (6%) per annum from 1993 until the obligation is fully paid;

2. to pay attorney's fees in the total amount of Thirty Thousand Pesos (₱30,000.00) and

3. to pay the costs of suit.[14]

On March 12, 2003, Domingo filed a Motion for Issuance of Writ of Execution,[15] asserting that the DPWH Region III failed to file an appeal or a motion for new trial and/or reconsideration despite its receipt of a copy of the RTC decision on February 19, 2003. On March 20, 2003, the RTC granted the aforesaid motion of Domingo.[16] A Writ of Execution[17] was then issued on March 24, 2003, commanding the sheriff to enforce the RTC Decision dated February 18, 2003.

On August 27, 2003, the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), filed with the Court of Appeals a Petition for Annulment of Judgment with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction.[18] The petition was docketed as CA-G.R. SP No. 78813. The Republic argued that it was not impleaded as an indispensable party in Civil Case No. 333-M-2002. The seven contracts sued upon in the trial court stated that they were entered into by the Regional Director, Assistant Regional Director and/or Project Manager of the DPWH

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[14] *Id.* at 80.

[15] Records, Vol. I, pp. 76-78.

[16] *Id.* at 79.

[17] *Id.* at 80-81.

[18] CA *rollo*, pp. 1-30.

Region III for and in behalf of the Republic of the Philippines, which purportedly was the real party to the contract. Moreover, the Republic averred that, under the law, the statutory representatives of the government for purposes of litigation are either the Solicitor General or the Legal Service Branch of the Executive Department concerned. Since no summons was issued to either of said representatives, the trial court never acquired jurisdiction over the Republic. The absence of indispensable parties allegedly rendered null and void the subsequent acts of the trial court because of its lack of authority to act, not only as to the absent parties, but even as to those present. The Republic prayed for the annulment of the RTC Decision dated February 18, 2003 and the dismissal of the said case, without prejudice to the original action being refiled in the proper court.

On May 19, 2006, the Court of Appeals promulgated its decision, dismissing the Petition for Annulment of Judgment filed by the Republic. The appellate court elaborated that:

> The hair-splitting distinction being made by [the Republic] between the DPWH as a department under the Republic, and the Regional Office of the DPWH fails to persuade Us. Instead, We uphold [Domingo's] position that the regional office is an extension of the department itself and service of summons upon the former is service upon the latter. x x x.
>
> x x x x x x x x x
>
> x x x [A] regional office of the DPWH is part of the composition of the department itself and is therefore, not an entity that is altogether separate from the department. This conclusion lends credence to [Domingo's] position that service of summons upon the regional office is service upon the department itself because the former is essentially part of the latter. Indeed, what militates heavily against [the Republic's] theory is the simple fact that the regional office is not a different entity at all, but, as can be gleaned from the manner of its creation, a part of the department itself, so much so that it does not even have a juridical personality of its own. x x x.
>
> Anent the claim that the procedure for service of summons upon the Republic was not followed because service should have been made on the OSG or the Legal Service Department of the DPWH,

We are likewise not persuaded. A perusal of the Revised Administrative Code of the Philippines suggests nothing of this import. x x x.

x x x x x x x x x

Clearly, nothing [in the functions of the OSG] remotely suggests that service of summons upon the Republic should be made exclusively on the OSG. What the [provisions] merely state is that the OSG will represent the government in all proceedings involving it. It cannot be deduced nor implied from this, however, that summons should be served upon it alone.

The same conclusion applies to the legal service branch of the DPWH, as there is also nothing in the law that suggests that service of summons on the DPWH should be made upon it alone. x x x.

x x x x x x x x x

Obviously, petitioner's conclusion that the proper procedure for service of summons was not observed is a mere conjecture because We find nothing in the provisions invoked by it that such indeed is the procedure sanctioned by law. We are thus inclined to give more credence to [the Republic's] argument that it was the regional office's fault if it failed to bring the subject case to the attention of the OSG for proper representation. To allow it to benefit from its own omission in order to evade its just and valid obligation would be the height of injustice.

Finally, anent the argument that the Republic is estopped from questioning the jurisdiction of the trial court, We rule in the negative. The existence of another case against the regional office of the DPWH where the OSG appeared is of no moment as it concerns a totally different transaction. Thus, it would be erroneous for Us to rule on that basis alone, that the OSG is already acknowledging the service of summons upon the regional office, especially considering the categorical stand taken by the OSG on the matter in the case now before Us. Be that as it may, however, We still rule, as We have discussed above, that [Domingo's] position is more impressed with merit.

WHEREFORE, in view of the foregoing, the instant Petition for Annulment of Judgment is hereby DISMISSED.[19]

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[19] *Rollo*, pp. 37-45.

The Republic filed a Motion for Reconsideration[20] of the above decision, but the Court of Appeals denied the same in the assailed Resolution dated October 25, 2006.

Consequently, the Republic filed the instant petition before this Court. In a Resolution[21] dated February 19, 2007, we denied the Republic's petition for failure to properly verify the petition and that the *jurat* in the verification and certification against forum shopping did not contain any competent evidence of the affiant's identity. In addition, the Integrated Bar of the Philippines (IBP) dues payment (under IBP O.R. No. 663485) of one of the counsels who signed the petition was not updated. The Republic filed a Motion for Reconsideration[22] of the above resolution.[23] On July 2, 2007, the Court resolved[24] to grant the Republic's motion, thereby reinstating its petition.

In assailing the judgment of the Court of Appeals, the Republic brings to fore the following arguments:

I.

If in the act by which the Republic consents to be sued, no designation is made as to the officer to be served with summons, then the process can only be served upon the Solicitor General.

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[20] CA *rollo*, pp. 158-165.

[21] *Rollo*, p. 129.

[22] *Id.* at 130-149.

[23] In brief, the Republic proffered the following reasons: (a) the OSG's authority to administer oaths in matters of official business is derived from Presidential Decree No. 1347, hence, the Notarial Law or the 2004 Rules on Notarial Practice, including the approved forms of the 2004 Rules on Notarial Practice, is not particularly applicable to the said office; (b) the petition was properly verified and the identity and signature of affiant Hermogenes Ebdane was confirmed by the Solicitor/Officer of the OSG administering the oath; (c) IBP O.R. No. 663485 of Solicitor Edgar R. Tupas was paid for the Calendar Year 2006; and (d) substantial compliance with the Rules merits a liberal construction of the Rules with the instant case being determined on its merits rather than on technicality or procedural imperfections. (*Rollo*, pp. 130-131.)

[24] *Rollo*, pp. 158-159.

[II.]

The State is not bound by the errors or mistakes of its agents.

III.

Respondent can recover on the government contracts sued upon in Civil Case No. [3]33-M-2002 only on a quantum *meruit* basis.[25]

In essence, the primary issue that must be resolved in the instant petition is whether the Court of Appeals correctly dismissed the Petition for Annulment of Judgment filed by the Republic.

Section 1, Rule 47[26] of the Rules of Court provides for the remedy of annulment by the Court of Appeals of judgments or final orders and resolutions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Under the first paragraph of Section 2, Rule 47[27] of the Rules of Court, the annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. As a ground for annulment of judgment, lack of jurisdiction refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[28]

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[25] *Id.* at 263.

[26] Section 1 of Rule 47 reads:

SEC. 1. *Coverage*. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

[27] Section 2 of Rule 47 provides:

SEC. 2. *Grounds for annulment*. – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

[28] *Republic of the Philippines v. "G" Holdings, Inc.*, G.R. No. 141241, November 22, 2005, 475 SCRA 608, 617-618.

In the petition at bar, the Republic argues that the RTC failed to acquire jurisdiction over the former. The Republic reiterates that the service of summons upon the DPWH Region III alone was insufficient. According to the Republic, the applicable rule of procedure in this case is Section 13, Rule 14 of the Rules of Court, which mandates that when the defendant is the Republic of the Philippines, the service of summons may be effected on the Office of the Solicitor General (OSG). The DPWH and its regional office are simply agents of the Republic, which is the real party in interest in Civil Case No. 333-M-2002. The Republic posits that, since it was not impleaded in the case below and the RTC did not acquire jurisdiction over it, the proceedings in Civil Case No. 333-M-2002 are null and void.

On the other hand, Domingo argues that the DPWH Region III is part of the DPWH itself; hence, a suit against the regional office is a suit against the said department and the Republic as well. Domingo stresses that the case he filed was against the Republic, that is, against the DPWH Region III, and it was clear that the summons and a copy of the complaint was duly served on the said regional office. Likewise, Domingo submits that the Republic is estopped from raising the issue of jurisdiction in the instant case given that he has filed two other civil actions for specific performance and damages against the DPWH Region III and, in the said cases, the OSG formally entered its appearance for and in behalf of the Republic. Domingo alleges that the foregoing action of the OSG proved that it recognized the validity of the service of summons upon the DPWH Region III and the jurisdiction of the trial court over the said regional office.

The Court finds merit in the Republic's petition.

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person. Jurisdiction over the person of the defendant is acquired through coercive process, generally by the service of summons issued

by the court, or through the defendant's voluntary appearance or submission to the court.[29]

Section 13, Rule 14 of the Rules of Court states that:

> SEC. 13. *Service upon public corporations*. – **When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General**; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. (Emphasis ours.)

Jurisprudence further instructs that when a suit is directed against an unincorporated government agency, which, because it is unincorporated, possesses no juridical personality of its own, the suit is against the agency's principal, *i.e.*, the State.[30] In the similar case of *Heirs of Mamerto Manguiat v. Court of Appeals*,[31] where summons was served on the Bureau of Telecommunications which was an agency attached to the Department of Transportation and Communications, we held that:

> Rule 14, Section 13 of the 1997 Rules of Procedure provides:
>
> > SEC. 13. *Service upon public corporations*. — When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct.
>
> It is clear under the Rules that where the defendant is the Republic of the Philippines, service of summons must be made on the Solicitor General. **The BUTEL is an agency attached to the Department of Transportation and Communications** created

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[29] *Guiguinto Credit Cooperative, Inc. v. Torres*, G.R. No. 170926, September 15, 2006, 502 SCRA 182, 189-190.

[30] *Philippine Rock Industries, Inc. v. Board of Liquidators*, 259 Phil. 650, 655-656 (1989). See also *Farolan, Jr. v. Court of Tax Appeals*, G.R. No. 42204, January 21, 1993, 217 SCRA 298, 306.

[31] G.R. Nos. 150768 and 160176, August 20, 2008, 562 SCRA 422.

under E.O. No. 546 on July 23, 1979, and is in charge of providing telecommunication facilities, including telephone systems to government offices. It also provides its services to augment limited or inadequate existing similar private communication facilities. It extends its services to areas where no communication facilities exist yet; and assists the private sector engaged in telecommunication services by providing and maintaining backbone telecommunication network. **It is indisputably part of the Republic, and summons should have been served on the Solicitor General.**

We now turn to the question of whether summons was properly served according to the Rules of Court. Petitioners rely solely on the sheriff's return to prove that summons was properly served. We quote its contents, *viz*:

> "THIS IS TO CERTIFY that on the 19th day of May 1999, the undersigned caused the service of Summons and Complaint upon defendant J.A. Development Corporation at the address indicated in the summons, the same having been received by a certain Jacqueline delos Santos, a person employed thereat, of sufficient age and discretion to receive such process, who signed on the lower portion of the Summons to acknowledge receipt thereof.
>
> Likewise, copy of the Summons and Complaint was served upon defendant Bureau of Telecommunications at the address indicated in the Summons, a copy of the same was received by a certain Cholito Anitola, a person employed thereat, who signed on the lower portion of the Summons to acknowledge receipt thereof."

It is incumbent upon the party alleging that summons was validly served to prove that all requirements were met in the service thereof. We find that this burden was not discharged by the petitioners. **The records show that the sheriff served summons on an ordinary employee and not on the Solicitor General. Consequently, the trial court acquired no jurisdiction over BUTEL, and all proceedings therein are null and void**.[32] (Emphases supplied.)

In the instant case, the Complaint for Specific Performance with Damages filed by Domingo specifically named as defendant the DPWH Region III. As correctly argued by the Republic,

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

the DPWH and its regional office are merely the agents of the former (the Republic), which is the real party in interest in Civil Case No. 333-M-2002. Thus, as mandated by Section 13, Rule 14 of the Rules of Court, the summons in this case should have been served on the OSG.

Quite inexplicably, the Court of Appeals failed to apply, *nay*, to even consider, the provisions of Section 13, Rule 14 of the Rules of Court in rendering its assailed Decision. A perusal of the Decision dated May 19, 2006 shows that the appellate court mainly dissertated regarding the functions and organizational structures of the DPWH and the OSG, as provided for in the Revised Administrative Code of 1987, in an attempt to demonstrate the relationship between the DPWH and its regional offices, as well as to refute the claim that the service of summons upon the Republic should be made exclusively upon the OSG. Such an oversight on the part of the Court of Appeals is most unfortunate given the relevance and materiality of Section 13, Rule 14 of the Rules of Court to the instant case, in addition to the fact that the Republic itself quoted the aforesaid provision in its petition before the appellate court.[33]

The Court, nonetheless, subscribes to the ruling of the Court of Appeals that the Republic is not estopped from raising the issue of jurisdiction in the case at bar in view of the alleged entry of appearance of the OSG, in behalf of the Republic, in the other civil cases supposedly filed by Domingo against the DPWH Region III. As held by the appellate court, the other civil cases presumably pertained to transactions involving Domingo and the DPWH Region III, which were totally different from the contracts involved in the instant case. The fact that the OSG entered its appearance in the other civil cases, notwithstanding that the summons therein were only served upon the DPWH Region III, has no bearing in the case now before us. All this indicates is that, despite the improper service of summons in these other civil cases, there appeared to be notice to the OSG and voluntary appearance on the latter's part.

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[33] CA *rollo*, p. 12.

Here, there was no indication, and Domingo did not insist otherwise, that the OSG had any notice of the filing of Civil Case No. 333-M-2002. Domingo speculates that, in the subsequent civil actions against the DPWH Region III, the latter most likely brought the said cases to the attention of the OSG. On the other hand, Domingo opines that the DPWH Region III apparently neglected to inform the OSG of the pendency of Civil Case No. 333-M-2002. Accordingly, Domingo asserted that he should not be faulted therefor. The Court disagrees. Domingo ought to bear in mind that it is the duty of the plaintiff to implead all the necessary or indispensable parties for the complete determination of the action.[34] It was, thus, incumbent upon him to name and implead the proper defendant in this case, *i.e.*, the Republic, and cause the service of summons to be made upon the officer mandated by law, that is, the OSG. As Domingo failed to discharge this burden, he cannot now be allowed to shift the blame on the DPWH Region III or hold in estoppel the OSG.

In sum, the Court holds that the Republic was not validly served with summons in Civil Case No. 333-M-2002. Hence, the RTC failed to acquire jurisdiction over the person of the Republic. Consequently, the proceedings had before the trial court and its Decision dated February 18, 2003 are hereby declared void.

In accordance with Section 7, Rule 47[35] of the Rules of Court, a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court.

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[34] *Nery v. Leyson*, 393 Phil. 644, 655 (2000).

[35] Section 7, Rule 47 provides:

SEC. 7. *Effect of judgment*. – A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

In view of the above ruling of the Court declaring the nullity of the proceedings in the RTC, the Court shall no longer pass upon the other issues raised by the parties in the instant petition.

WHEREFORE, the petition is *GRANTED*. The Decision dated May 19, 2006 and the Resolution dated October 25, 2006 of the Court of Appeals in CA-G.R. SP No. 78813 are *REVERSED*. The Decision dated February 18, 2003 of the Regional Trial Court of Malolos, Bulacan, Branch 18, in Civil Case No. 333-M-2002 is hereby *ANNULLED* and *SET ASIDE*, without prejudice to the filing of the original action in the proper Regional Trial Court.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179593. September 14, 2011]

UNIVERSITY OF THE EAST, *petitioner, vs.* **UNIVERSITY OF THE EAST EMPLOYEES' ASSOCIATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; WHILE A SECOND MOTION FOR RECONSIDERATION IS GENERALLY A PROHIBITED PLEADING, THE COURT DOES NOT DISCOUNT INSTANCES WHEN IT MAY AUTHORIZE THE SUSPENSION OF THE RULES SO AS TO ALLOW THE RESOLUTION THEREOF IN CASES OF EXTRAORDINARILY PERSUASIVE REASONS SUCH AS WHEN THE DECISION IS A NULLITY.— Indeed, a second

MR as a rule, is generally a prohibited pleading. The Court, however, does not discount instances when it may authorize the suspension of the rules of procedure so as to allow the resolution of a second motion for reconsideration, in cases of extraordinarily persuasive reasons such as when the decision is a patent nullity. Time and again, the Court has upheld the theory that the rules of procedure are designed to secure and not to override substantial justice. These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.

2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS; APPLICABLE ONLY IF THE GRANT OF BENEFITS IS FOUNDED ON AN EXPRESS POLICY OR HAS RIPENED INTO A PRACTICE OVER A LONG PERIOD OF TIME WHICH IS CONSISTENT AND DELIBERATE.— The Court agrees with petitioner UE that the change in the distribution of the 70% incremental proceeds from tuition fee increase from equal sharing to percentage of salaries is not a diminution of benefits. Its distribution to covered employees based on equal sharing scheme cannot be considered to have ripened into a company practice that the respondents have a right to demand. Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer, thus, said benefits cannot be reduced, diminished, discontinued or eliminated by the latter. This principle against diminution of benefits, however, is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate. It does not contemplate the continuous grant of unauthorized or irregular compensation but it presupposes that a company practice, policy and tradition favourable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof. In sum, the benefit must be

characterized by regularity, voluntary and deliberate intent of the employer to grant the benefits over a significant period of time.

3. ID.; ID.; ID.; ID.; THE DISTRIBUTION OF THE 70% INCREMENTAL PROCEEDS IN CASE AT BAR BASED ON EQUAL SHARING SCHEME CANNOT BE HELD TO HAVE RIPENED INTO A COMPANY PRACTICE THAT THE RESPONDENTS HAVE A RIGHT TO DEMAND.— In the case at bench, contrary to UEEA's claim, the distribution of the 70% incremental proceeds based on equal sharing scheme cannot be held to have ripened into a company practice that the respondents have a right to demand. Jurisprudence is replete with the rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice. Even if UE had been continuously distributing the 70% incremental proceeds based on equal sharing scheme to all its covered employees, the same could not have ripened into a vested right because such grant would not have been characterized by a deliberate and voluntary act on the part of the petitioner.

4. ID.; ID.; ID.; ID.; THE GRANT BY AN EMPLOYER OF BENEFITS THROUGH AN ERRONEOUS APPLICATION OF THE LAW DUE TO ABSENCE OF CLEAR ADMINISTRATIVE GUIDELINES IS NOT CONSIDERED A VOLUNTARY ACT WHICH CANNOT BE UNILATERALLY DISCONTINUED.— As pronounced by the Court in the case of *Globe Mackay Cable and Radio Corporation v. NLRC*, the grant by an employer of benefits through an erroneous application of the law due to absence of clear administrative guidelines is not considered a voluntary act which cannot be unilaterally discontinued. Here, no vested rights accrued to respondents. R.A. No. 6728 simply mandates that the 70% incremental proceeds arising from tuition fee increases should go to the payment of salaries, wages, allowances, and other benefits of the teaching and non-teaching personnel except administrators who are principal stockholders of the school. As to the manner of its distribution, however, the law is silent. The letter of then DECS Secretary Armand Fabella, correctly stated that the discretion on what distribution scheme to adopt is vested upon the school authorities. In fact,

the school can distribute the entire 70% for an across-the-board salary increase, for merit increase and/or for allowances or other benefits. The only limitations provided are [1] the benefit must accrue to specific individual school personnel; and [2] the benefit once given for a specific year cannot be revoked for that same year.

5. ID.; ID.; PRESCRIPTION OF CLAIMS; RESPONDENT'S RIGHT TO QUESTION THE DISTRIBUTION OF INCREMENTAL PROCEEDS FOR SCHOOL YEAR (SY) 1994-1995 HAS ALREADY PRESCRIBED.— The Court agrees with UE and holds that UEEA's right to question the distribution of the incremental proceeds for SY 1994-1995 has already prescribed. Article 291 of the Labor Code provides that money claims arising from an employer-employee relationship must be filed within three (3) years from the time the cause of action accrued. In the present case, the cause of action accrued when the distribution of the incremental proceeds based on percentage of salary of the covered employees was discussed in the tripartite meeting held on June 19, 1995. UEEA did not question the manner of its distribution and only on April 27, 1999 did it file an action based therein. Hence, prescription had set in.

APPEARANCES OF COUNSEL

Bausa Ampil Suarez Paredes & Bausa for petitioner.
Estrada & Associates Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court assailing the February 26, 2007 Decision[1] and September 5, 2007 Resolution[2] of the Court of Appeals

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[1] *Rollo*, pp. 61-74. Penned by Justice Mariflor P. Punzalan Castillo and concurred in by Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosmari D. Carandang.

[2] *Id.* at 76-77.

(CA), in CA-G.R. SP No. 90740, which set aside the February 28, 2005 Decision and May 31, 2005 Resolution of the National Labor Relations Commission *(NLRC)* in NLRC-NCR-00-04-05015-99. The dispositive portion of the CA decision reads:

> WHEREFORE, the instant petition is GRANTED. The Decision dated 28 February 2005 and Resolution dated 31 May 2005 rendered by the NLRC are SET ASIDE. The final resolutions dated 29 April 2004 and 24 August 2004 hereby REMAIN in effect.
>
> SO ORDERED.[3]

Facts of the Case

Petitioner University of the East *(UE)* is an educational institution duly organized and existing under Philippine laws. On the other hand, respondent University of the East Employees' Association *(UEEA)* is a duly registered labor union of the rank-and-file employees of UE.

It appears from the records that prior to school year *(SY)* 1983-1984, the 70% incremental proceeds from tuition fee increases as mandated by Presidential Decree No. 451 (P.D. No. 451), as amended, was distributed by UE in proportion to the average number of academic and non-academic personnel. The distribution scheme became the subject of an Agreement[4] dated October 18, 1983 signed by the management, faculty association and respondent.[5] Starting SY 1994-1995, however, the 70% incremental proceeds from the tuition fee increase was distributed by UE to its covered employees based on a new formula of percentage of salary.

Not in conformity, UEEA, thru its president Ernesto C. Verceles *(Verceles)*, sent a letter[6] dated December 22, 1994 to then UE President, Dr. Rosalina S. Cajucom *(Dr. Cajucom)*, questioning

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[3] *Id.* at 73.

[4] Records, volume 1, p. 66.

[5] Annex "C" of the Petition, *id.* at 78.

[6] *Rollo*, p. 81.

the manner of distribution of the employees' share in the 1994-1995 tuition fee increase. The letter reads:

Dear President Cajucom:

This is with reference to the recent distribution of the employees' share in the 1994-95 tuition fee increase.

We understand that the University unilaterally instituted a partial distribution of FIVE PERCENT (5%) only of the basic wage of employees, faculty members and administration personnel.

This, to our mind, is quite irregular and unfair in view of the following considerations:

1.) We have all along instituted the practice of having a Tripartite Meeting where the three (3) sectors involved, *i.e.* management, faculty and employees' representatives go over the incremental proceeds that have been realized and come to an agreement on the distribution of the share whether partial or total in nature;

2.) The accepted and traditional practice was that for every ₱1.00 per share of faculty members based on the "full load equivalent," management personnel and rank-and-file employees receive ₱100.00 a month;

3.) Using as a basis 5% of the wages of University personnel entitled thereto besides being a departure from past practices, creates that unfair situation where those who have higher salaries receive more to the prejudice of low salaried employees and faculty members;

4.) There is an existing Tripartite Agreement, with a xerox copy attached hereto as ANNEX "A", clearly specifying the agreed manner of distribution. Even [if] the May 17, 1994 letter to UE President Rosa[lina] Cajucom by then Secretary of Education, Culture and Sports Armand V. Fabella, states under the third paragraph thereof that 'the discretion is vested upon the school authorities xxx,' but, in the same breath, the Secretary qualifies the distribution or manner of remittance thereof with the phrase "(except where it forms part of a collective bargaining agreement but accrues to school personnel in any case) xxx." In this light, Article XX Section 5 of our past and current CBAs provide succinctly that:

> "The UNIVERSITY agrees to continue the implementation of all benefits hitherto enjoyed by the employees not embodied herein and are the subject of communication between the

UNIVERSITY and the ASSOCIATION provided they are not inconsistent with the provisions of the Agreement or of the Labor Code. All other existing clauses, covenants, provisions or agreements shall remain in force."

We, therefore, urge the University to rectify the aforementioned erroneous, unfair and irregular distribution instituted last December 13, 1994.

We believe that you may have been misled by your staff in so arriving at such objectionable manner of distributing our tuition fee shares. We therefore hope that in the spirit of the season, the University thru your good self would institute the necessary correction, thereby affording our lower salaried employees and faculty members the means to have a more meaningful Christmas celebration.

x x x x x x x x x

On February 23, 1995, UEEA sent another letter[7] to the UE President reiterating its earlier objection to the distribution scheme of the 70% incremental proceeds from the tuition fee increase and requested a tripartite conference among management, faculty, administration, and rank-and-file representatives to address the issue.

On June 19, 1995, a tripartite meeting was held among the representatives of management, faculty union and UEEA. In the said meeting, it was agreed that the distribution of the incremental proceeds would now be based on percentage of salary, and not anymore on the average number of personnel. The Minutes[8] of the June 19, 1995 meeting was signed and attested to by UEEA officers who attended.

On April 27, 1999, UEEA filed a complaint before the NLRC for non-payment/underpayment of the rank-and-file employees' share of the tuition fee increases against UE pursuant to P.D. No. 451, as amended, and Republic Act *(R.A.)* No. 6728 otherwise known as *Government Assistance to Students and Teachers in Private Education Act.*

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[7] *Id.* at 83.

[8] Records, volume 1, pp. 48-49.

In its position paper,[9] UEEA alleged that starting SY 1994-1995, UE had been withholding from the rank-and-file employees a sizeable portion of their share in the tuition fee increases as mandated by P.D. No. 451, as amended. It asserted that before SY 1994-1995, shares of tuition fee increases were distributed proportionately among the management, faculty and rank-and-file employees based on equal sharing or on a share-and-share alike basis. In SY 1994-1995, however, UE arbitrarily and unilaterally distributed the tuition fee increase proceeds through percentage based on salaries, thereby reducing the shares of the rank-and-file employees, while increasing those of the management personnel.

In its reply,[10] UE denied that the implementation of the new scheme in the distribution of the 70% incremental proceeds derived from tuition fee increases starting SY 1994-1995 was made arbitrarily and/or unilaterally. It explained that the distribution scheme was only implemented after inquiry from the Department of Education, Culture and Sports *(DECS)* regarding the provision of R.A. No. 6728. DECS explained that the law was silent on the manner of the distribution of the 70% incremental proceeds and stated that discretion in the distribution was vested in the school authorities. What the law clearly required was that the incremental proceeds from the tuition fee increases should be allocated for the payment of salaries/wages, allowances and other benefits of the teaching and non-teaching personnel except the administrators who were principal stockholders of the school. Thus, UE insisted that it may distribute the entire 70% incremental proceeds for an across-the-board salary increase, or for merit increase, or for allowances and other employment benefits.

Furthermore, UE pointed out that the new distribution scheme was implemented after a tripartite meeting was held on June 19, 1995 among the representatives of the management, UE Faculty Association *(UEFA)* and the UEEA, wherein it was agreed that for SY 1994-1995, the distribution of the incremental

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[9] Vol. I, NLRC records, pp. 23-37.

[10] *Id.* at 33-41.

increase would be 9.96% of the salaries of the employees as of May 31, 1994. In fact, copies of the minutes of the meeting were distributed and signed by the participants. Hence, UEEA was estopped from questioning the distribution scheme when it accepted the benefits.

Lastly, UE asserted that the claim of the UEEA was already barred since it was filed three (3) years from the time its supposed cause of action accrued.

On September 4, 2002, Labor Arbiter Francisco A. Robles *(LA)* rendered a decision[11] favoring UEEA, the *fallo* of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent University of the East, to pay the members of University of the East Employees Association (UEEA) the amount of TWENTY-FIVE MILLION SEVEN HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-FIVE PESOS AND 40/100 (₱25,749,995.40) representing the portions of the tuition fee increases for the school year 1994-1995 and up to May 31, 2002 which were denied/withheld and/or lost by the members of the aforesaid Union as a result of the disputed distribution scheme based on percentage of salary which was arbitrarily and unilaterally adopted and implemented by the respondent. Furthermore, the respondent is hereby directed to submit to this Office a report to show compliance to the order herein stated.
>
> SO ORDERED.[12]

The LA ruled that the equal sharing distribution scheme in relation to the incremental proceeds from the tuition fee increases had been adopted as a matter of policy by UE since 1983 and was made part of its collective bargaining agreement with the UEEA. In addition, the LA noted that the existence of the said policy or practice in the university was made part of the tripartite agreement dated October 18, 1983, among UE, UEFA and UEEA. There was no evidence on record that the said agreement was superseded by another agreement between UE and UEEA.

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[11] CA *rollo*, pp. 25-58.

[12] *Id.* at 57-58.

Furthermore, UE's reliance on the letter-reply of then DECS Secretary Armand V. Fabella was misplaced as the law imposed a limitation on the extent of the discretionary authority given to the school officials such as when the disposition had been agreed upon in a collective bargaining agreement. The LA concluded that UE was legally bound to keep and maintain the established practice of distributing equally among its employees the incremental proceeds from the tuition fee increases particularly in light of the aforesaid tripartite agreement dated October 18, 1983 and the provisions of Article XX, Section 5 of the UE-UEEA collective bargaining agreement.

Undaunted, UE interposed an appeal before the NLRC. The NLRC, in its April 29, 2004 Resolution,[13] dismissed the appeal and sustained the LA decision. UE filed a motion for reconsideration but it was denied in a resolution[14] dated August 24, 2004 with a warning that no further motion for reconsideration shall be entertained.

Nonetheless, on September 20, 2004, UE filed a motion for leave to file and admit a second motion for reconsideration, incorporating therein its second motion for reconsideration. UE alleged that the NLRC resolution was not valid for failure to pass upon and consider the new and vital issues raised in its motion for reconsideration and for failure to comply with the prescribed form for NLRC resolutions pursuant to Section 13, Rule VII, NLRC New Rules of Procedure.[15]

On February 28, 2005, the NLRC gave due course to the second motion for reconsideration, reversed its earlier ruling and declared valid the distribution of the 70% incremental proceeds from tuition fee increases based on the percentage of salary of the covered employees.[16] Consequently, UEEA filed

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[13] *Id.* at 59-74.

[14] *Id.* at 76-77.

[15] *Id.* at 188-206.

[16] Raul T. Aquino, Presiding Commissioner with Victoriano R. Calaycay, concurring and Angelita A. Gacutan, dissenting; *id.* at 79-89.

a motion for reconsideration[17] but it was denied in the NLRC Resolution[18] dated May 31, 2005.

Aggrieved, UEEA filed a petition before the CA. The appellate court granted the petition and set aside the questioned decision and resolution of the NLRC.[19] The CA declared that since the second motion for reconsideration was a prohibited pleading, it did not interrupt the running of the reglementary period. Therefore, the NLRC Resolution dated August 24, 2004 became final and executory after ten (10) days from receipt of the copy thereof by the parties. Accordingly, the said resolution had attained finality and could no longer be modified in any respect, even if the modification was meant to correct what was perceived to be an erroneous conclusion of fact or law.

UE filed a motion for reconsideration of the CA decision but it was denied in a resolution[20] dated September 5, 2007. Hence, this appeal, anchored on the following:

GROUNDS:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT PETITIONER'S SECOND MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT HELD THAT THERE ARE "[NO] EXTRAORDINARY PERSUASIVE REASONS" IN THE INSTANT CASE WARRANTING THE ALLOWANCE OF A SECOND MOTION FOR RECONSIDERATION.

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[17] *Id.* at 96-119.

[18] *Id.* at 94-95.

[19] *Id.* at 515-528.

[20] *Rollo*, pp. 76-77.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE ISSUANCE OF THE ENTRY OF JUDGMENT DATED OCTOBER 15, 2004 IS NOT PREMATURE.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FOUND PETITIONER UNIVERSITY'S MOTION FOR RECONSIDERATION A "PRO FORMA" MOTION.

The issues for resolution are: (1) whether or not UE's second motion for reconsideration *(MR)* before the NLRC is a prohibited pleading; and (2) whether or not the change in the scheme of distribution of the incremental proceeds from tuition fee increase is a diminution of benefit.

UE argues that the CA erred in holding that the second MR was a prohibited pleading. It asserts that while a second MR is generally a prohibited pleading, it may be allowed in meritorious cases. Section 14 of the NLRC rules cannot be construed as to prevent the NLRC from relieving itself from patent errors in order to render justice. UE stresses that the technical rules of procedure are not meant to frustrate but to facilitate justice.[21]

UE further contends that the Court in resolving the issue on the second MR should not be too dogmatic in its ruling. It persuades the Court to adopt a complete and holistic view, taking into consideration the peculiar circumstances of the case as well as the provisions on the liberal interpretation of the rules and the inherent power of the NLRC to amend and reverse its findings and conclusions as may be necessary to render justice.[22]

Petitioner further contends that there exist extraordinary persuasive reasons warranting the allowance of the second MR. *First*, it argues that the complaint is a money claim arising from employer-employee relationship; hence, it prescribes in

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[21] *Id.* at 22-30.

[22] *Id.* at 20-22.

three (3) years. Since the complaint was filed only on April 27, 1999, more than three (3) years from the alleged violation in 1994, prescription has set in. *Second,* UE maintains that the distribution of tuition fee increase based on percentage of salary was not arbitrary and/or unilateral because the new distribution scheme was taken up and agreed upon in the tripartite meeting held on June 19, 1995 and was adopted only after consultation with the DECS Secretary Armand Fabella. *Third*, the faculty union, UE Faculty Association *(UEFA)*, a party to the Agreement dated October 18, 1983, did not complain against the new distribution scheme. *Lastly*, the new distribution scheme is in accordance with law. UE claims that the law and jurisprudence are clear that a private educational institution has the discretion on the disposition of the 70% incremental proceeds from tuition fee increase, with the only condition imposed that the proceeds should go to the salaries, wages and allowances and other benefits of teachers and non-teaching personnel.[23]

Indeed, a second MR as a rule, is generally a prohibited pleading.[24] The Court, however, does not discount instances when it may authorize the suspension of the rules of procedure so as to allow the resolution of a second motion for reconsideration, in cases of extraordinarily persuasive reasons[25] such as when the decision is a patent nullity.[26]

Time and again, the Court has upheld the theory that the rules of procedure are designed to secure and not to override substantial justice.[27] These are mere tools to expedite the decision

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[23] *Id.* at 31-44.

[24] *Jardin v. National Labor Relations Commission*, 383 Phil. 187, 195 (2000).

[25] *Alcantara v. Ponce*, 514 Phil. 222 (2005); *Tirazona v. Philippine EDS Techno-Services, Inc.*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 628, citing *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 489 (1996).

[26] *Ramos vs. NLRC*, 358 Phil. 705 (1998).

[27] *Cando v. Olazo*, G.R. No. 160741, March 22, 2007, 518 SCRA 741.

or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[28]

On the second issue, after a careful review of the records and the arguments of the parties, the Court finds the position of the petitioner meritorious.

The Court agrees with petitioner UE that the change in the distribution of the 70% incremental proceeds from tuition fee increase from equal sharing to percentage of salaries is not a diminution of benefits. Its distribution to covered employees based on equal sharing scheme cannot be considered to have ripened into a company practice that the respondents have a right to demand.

Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer, thus, said benefits cannot be reduced, diminished, discontinued or eliminated by the latter.[29] This principle against diminution of benefits, however, is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate.[30] It does not contemplate the continuous grant of unauthorized or irregular compensation but it presupposes that a company practice, policy and tradition favourable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them.[31] The test or rationale

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[28] *Peñosa v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232.

[29] Article 100 of the Labor Code.

Article 100. Prohibition against elimination or diminution of benefits. – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[30] *Barroga v. Data Center College of the Philippines*, G.R. No. 174158, June 27, 2011.

[31] *Boncodin v. National Power Corporation Employees Consolidated Union*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 628.

of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[32] In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefits over a significant period of time.[33]

In the case at bench, contrary to UEEA's claim, the distribution of the 70% incremental proceeds based on equal sharing scheme cannot be held to have ripened into a company practice that the respondents have a right to demand. Jurisprudence is replete with the rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice.[34] Even if UE had been continuously distributing the 70% incremental proceeds based on equal sharing scheme to all its covered employees, the same could not have ripened into a vested right because such grant would not have been characterized by a deliberate and voluntary act on the part of the petitioner.

As pronounced by the Court in the case of *Globe Mackay Cable and Radio Corporation v. NLRC*,[35] the grant by an employer of benefits through an erroneous application of the law due to absence of clear administrative guidelines is not considered a voluntary act which cannot be unilaterally discontinued. Here, no vested rights accrued to respondents. R.A. No. 6728 simply mandates that the 70% incremental proceeds arising from tuition fee increases should go to the payment of salaries, wages, allowances, and other benefits of the teaching and non-teaching personnel except administrators

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[32] *Metropolitan Bank and Trust Co. v. National Labor Relations Commission,* G.R. No. 152928, June 18, 2009, 589 SCRA 376, 384.

[33] *Id.* at 385.

[34] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU,* G.R. No. 170734, May 14, 2008, 554 SCRA 110, 119.

[35] G.R. No. 74156, June 29, 1988, 163 SCRA 71, 78.

who are principal stockholders of the school.[36] As to the manner of its distribution, however, the law is silent. The letter[37] of then DECS Secretary Armand Fabella, correctly stated that the discretion on what distribution scheme to adopt is vested upon the school authorities. In fact, the school can distribute the entire 70% for an across-the-board salary increase, for merit increase and/or for allowances or other benefits. The only limitations provided are [1] the benefit must accrue to specific individual school personnel; and [2] the benefit once given for a specific year cannot be revoked for that same year.

Neither can UEEA claim that the change in the distribution scheme from equal sharing to percentage of salary was done peremptorily. Verceles wrote two (2) letters dated December 22, 1994[38] and February 23, 1995,[39] to then UE President, Dr.

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[36] Sec. 5. Tuition Fee Supplement for Students in Private High School. — x x x

(2) Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: Provided, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation. For this purpose, school shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, the Department of Education, Culture and Sports and other concerned government agencies.

[37] *Rollo*, p. 80.

[38] Records, volume I, pp. 64-65.

[39] *Rollo*, p. 83.

Cajucom, questioning the change in the distribution scheme from equal sharing to percentage of salary and requesting a tripartite meeting to settle the issue.

Consequently, a tripartite meeting was held on June 19, 1995. The said meeting was attended by the representatives of the management, UEFA and UEEA. From the minutes of the meeting, the tuition fee incremental proceeds for SY 1994-95 and the manner of its distribution based on percentage of the salaries of the covered employees were discussed and UEEA representatives, namely, Salvador Blancia and Miguel Teaño, did not object. They even later signed the minutes of the meeting to signify their conformity to it.

It was likewise erroneous for UEEA to rely on the October 18, 1983 Agreement[40] which provides:

> The University of the East, represented by its Chairman of the Board and Chief Executive Officer, the UE Faculty Association (UEFA), represented by its President, and the UE Employees Association (UEEA), represented by its President, all assisted by their respective panels, hereby mutually agree:
>
> 1. That in determining the allocation of the 60% incremental proceeds from the approved increase in school fees effective school year 1982-83 among the three sectors (faculty, rank-and-file, and management personnel), the formula used in previous years shall be followed – namely, the allocation shall be in proportion to the average number of academic and non-academic personnel in the service as of the start of the first and second semesters of the school year 1982-83;
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> 2. That the proposal of the UEEA, whereby the number of academic personnel is to be determined by using the "full load equivalent", shall be adopted in allocating the 60% incremental proceeds from the approved increase in school fees effective school year 1983-84.
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> Manila, October 18, 1983.

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[40] Records, volume I, p. 66.

Clearly, the said agreement only pertains to the distribution of incremental proceeds for SY 1982-83. Besides, such agreement is deemed superseded by another agreement taken up during tripartite meeting held on June 19, 1995.

The Court agrees with UE and holds that UEEA's right to question the distribution of the incremental proceeds for SY 1994-1995 has already prescribed. Article 291 of the Labor Code provides that money claims arising from an employer-employee relationship must be filed within three (3) years from the time the cause of action accrued. In the present case, the cause of action accrued when the distribution of the incremental proceeds based on percentage of salary of the covered employees was discussed in the tripartite meeting held on June 19, 1995. UEEA did not question the manner of its distribution and only on April 27, 1999 did it file an action based therein. Hence, prescription had set in.

WHEREFORE, the petition is *GRANTED.* The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 90740 are *REVERSED* and *SET ASIDE.* The Decision of the National Labor Relations Commission dated February 28, 2005 is *REINSTATED.*

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.,* concur.

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[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

FIRST DIVISION

[G.R. No. 182397. September 14, 2011]

ALERT SECURITY AND INVESTIGATION AGENCY, INC. AND/OR MANUEL D. DASIG, *petitioners, vs.* **SAIDALI PASAWILAN, WILFREDO VERCELES AND MELCHOR BULUSAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYERS' PREROGATIVE TO SHAPE THEIR OWN WORK FORCE MUST NOT CURTAIL THE BASIC RIGHT OF EMPLOYEES TO SECURITY OF TENURE; CASE AT BAR.— As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee. x x x Although we recognize the right of employers to shape their own work force, this management prerogative must not curtail the basic right of employees to security of tenure. There must be a valid and lawful reason for terminating the employment of a worker. Otherwise, it is illegal and would be dealt with by the courts accordingly. x x x In the case at bar, respondents were relieved from their posts because they filed with the Labor Arbiter a complaint against their employer for money claims due to underpayment of wages. This reason is unacceptable and illegal. Nowhere in the law providing for the just and authorized causes of termination of employment is there any direct or indirect reference to filing a legitimate complaint for money claims against the employer as a valid ground for termination. x x x Dismissing an employee on this ground

amounts to retaliation by management for an employee's legitimate grievance without due process.

2. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT OF WORK; ELEMENTS; THE FAILURE OF AN EMPLOYEE TO REPORT FOR WORK AT THE NEW LOCATION CANNOT BE TAKEN AGAINST HIM AS AN ELEMENT OF ABANDONMENT.— Petitioners aver that respondents were merely transferred to a new post wherein the wages are adjusted to the current minimum wage standards. They maintain that the respondents voluntarily abandoned their jobs when they failed to report for duty in the new location. Assuming this is true, we still cannot hold that the respondents abandoned their posts. For abandonment of work to fall under Article 282 (b) of the Labor Code, as amended, as gross and habitual neglect of duties there must be the concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason, and second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts. As regards the second element of intent to sever the employer-employee relationship, the CA correctly ruled that: x x x the fact that petitioners filed a complaint for illegal dismissal is indicative of their intention to remain employed with private respondent considering that one of their prayers in the complaint is for re-instatement. As declared by the Supreme Court, a complaint for illegal dismissal is inconsistent with the charge of abandonment, because when an employee takes steps to protect himself against a dismissal, this cannot, by logic, be said to be abandonment by him of his right to be able to work. Further, according to Alert Security itself, respondents continued to report for work and loiter in the DOST after the alleged transfer order was issued. Such circumstance makes it unlikely that respondents have clear intention of leaving their respective jobs. In any case, there is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address. This petitioners failed to do. On the element of the failure of the employee to report for work, we also cannot accept the allegations of petitioners that respondents unjustifiably refused to report for duty in their new posts. A careful review of the records reveals that there is no showing that respondents were

notified of their new assignments. Granting that the "Duty Detail Orders" were indeed issued, they served no purpose unless the intended recipients of the orders are informed of such. The employer cannot simply conclude that an employee is *ipso facto* notified of a transfer when there is no evidence to indicate that the employee had knowledge of the transfer order. Hence, the failure of an employee to report for work at the new location cannot be taken against him as an element of abandonment.

3. ID.; ID.; ID.; RIGHT OF EMPLOYER TO TRANSFER EMPLOYEES IN THE INTEREST OF THE SERVICE; FOR A TRANSFER TO BE VALID, THERE SHOULD BE PROPER AND EFFECTIVE NOTICE TO THE EMPLOYEE CONCERNED.— We acknowledge and recognize the right of an employer to transfer employees in the interest of the service. This exercise is a management prerogative which is a lawful right of an employer. However, like all rights, there are limitations to the right to transfer employees. As ruled in the case of *Blue Dairy Corporation v. NLRC*: x x x The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. x x x In addition to these tests for a valid transfer, there should be proper and effective notice to the employee concerned. It is the employer's burden to show that the employee was duly notified of the transfer. Verily, an employer cannot reasonably expect an employee to report for work in a new location without first informing said employee of the transfer. Petitioners' insistence on the sufficiency of mere issuance of the transfer order is indicative of bad faith on their part. Besides, according to petitioners, the reason for the transfer to LRTA of the respondents was that the wages in LRTA were already adjusted to comply with the minimum wage rates. Now it is hard to believe that after being ordered to transfer to LRTA where the wages are better, the respondents would still refuse the transfer. That would mean that the respondents

refused better wages and instead chose to remain in DOST, underpaid, and go through the lengthy process of claiming and asking for minimum wage. This proposed scenario of petitioners simply does not jibe with human logic and experience.

4. MERCANTILE LAW; CORPORATION CODE; PRINCIPLE OF PIERCING THE VEIL OF CORPORATE FICTION; NOT APPLICABLE IN CASE AT BAR.— Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners. In exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Section 31, Paragraph 1 of the Corporation Code provides: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x Jurisprudence has been consistent in defining the instances when the separate and distinct personality of a corporation may be disregarded in order to hold the directors, officers, or owners of the corporation liable for corporate debts. In *McLeod v. National Labor Relations Commission*, the Court ruled: Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. x x x Further, in *Carag v. National Labor Relations Commission*, the Court clarified the *McLeod* doctrine as regards labor laws, to wit: We have already ruled in *McLeod v. NLRC* and *Spouses Santos v. NLRC* that **Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation**. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. x x x In the present case, there is no evidence to indicate that Manuel D. Dasig, as

president and general manager of Alert Security, is using the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Further, there is no showing that Alert Security has folded up its business or is reneging in its obligations. In the final analysis, it is Alert Security that respondents are after and it is also Alert Security who should take responsibility for their illegal dismissal.

APPEARANCES OF COUNSEL

Ramirez Law Office for petitioners.
Cabio Law Office & Associates for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated February 1, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99861. The appellate court reversed and set aside the January 31, 2007 Decision[2] and March 15, 2007 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter's Decision[4] finding petitioners guilty of illegal dismissal.

The facts follow.

Respondents Saidali Pasawilan, Wilfredo Verceles and Melchor Bulusan were all employed by petitioner Alert Security and Investigation Agency, Inc. (Alert Security) as security guards beginning March 31, 1996, January 14, 1997, and January 24, 1997, respectively. They were paid 165.00 pesos a day as regular

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[1] *Rollo*, pp. 101-110. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring.

[2] *Id.* at 74-79.

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

[4] *Id.* at 44-54.

employees, and assigned at the Department of Science and Technology (DOST) pursuant to a security service contract between the DOST and Alert Security.

Respondents aver that because they were underpaid, they filed a complaint for money claims against Alert Security and its president and general manager, petitioner Manuel D. Dasig, before Labor Arbiter Ariel C. Santos. As a result of their complaint, they were relieved from their posts in the DOST and were not given new assignments despite the lapse of six months. On January 26, 1999, they filed a joint complaint for illegal dismissal against petitioners.

Petitioners, on the other hand, deny that they dismissed the respondents. They claimed that from the DOST, respondents were merely detailed at the Metro Rail Transit, Inc. at the Light Rail Transit Authority (LRTA) Compound in Aurora Blvd. because the wages therein were already adjusted to the latest minimum wage. Petitioners presented "Duty Detail Orders"[5] that Alert Security issued to show that respondents were in fact assigned to LRTA. Respondents, however, failed to report at the LRTA and instead kept loitering at the DOST and tried to convince other security guards to file complaints against Alert Security. Thus, on August 3, 1998, Alert Security filed a "termination report"[6] with the Department of Labor and Employment relative to the termination of the respondents.

Upon motion of the respondents, the joint complaint for illegal dismissal was ordered consolidated with respondents' earlier complaint for money claims. The records of the illegal dismissal case were sent to Labor Arbiter Ariel C. Santos, but later returned to the Office of the Labor Arbiter hearing the illegal dismissal complaint because a Decision[7] has already been rendered in the complaint for money claims on July 14, 1999. In that decision, the complaint for money claims was

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[5] CA *rollo*, pp. 74, 78 and 81.

[6] *Id.* at 82.

[7] *Rollo*, pp. 128-138.

dismissed for lack of merit but petitioners were ordered to pay respondents their latest salary differentials.

On July 28, 2000, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision[8] on the complaint for illegal dismissal. The Labor Arbiter ruled:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainants to have been illegally dismissed. Consequently, each complainant should be paid in solidum by the respondents the individual awards computed in the body of the decision, which is hereto adopted as part of this disposition.
>
> SO ORDERED.[9]

Aggrieved, petitioners appealed the decision to the NLRC claiming that the Labor Arbiter erred in deciding a re-filed case when it was filed in violation of the prohibitions against *litis pendencia* and forum shopping. Further, petitioners argued that complainants were not illegally dismissed but were only transferred. They claimed that it was the respondents who refused to report for work in their new assignment.

On January 31, 2007, the NLRC rendered a Decision[10] ruling that Labor Arbiter Del Rosario did not err in taking cognizance of respondents' complaint for illegal dismissal because the July 14, 1999 Decision of Labor Arbiter Santos on the complaint for money claims did not at all pass upon the issue of illegal dismissal. The NLRC, however, dismissed the complaint for illegal dismissal after ruling that the fact of dismissal or termination of employment was not sufficiently established. According to the NLRC, "[the] sweeping generalization that the complainants were constructively dismissed is not sufficient to establish the existence of illegal dismissal."[11] The dispositive portion of the NLRC decision reads:

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[8] *Id.* at 44-54.

[9] *Id.* at 54.

[10] *Id.* at 74-79.

[11] *Id.* at 78.

WHEREFORE, premises considered, the respondents' appeal is hereby given due course and the decision dated July 28, 2000 is hereby REVERSED and SET-ASIDE and a new one entered DISMISSING the complaint for illegal dismissal for lack of merit.

SO ORDERED.[12]

Unfazed, respondents filed a petition for *certiorari* with the CA questioning the NLRC decision and alleging grave abuse of discretion.

On February 1, 2008, the CA rendered the assailed Decision[13] reversing and setting aside the NLRC decision and reinstating the July 28, 2000 Decision of Labor Arbiter Del Rosario. The CA ruled that Alert Security, as an employer, failed to discharge its burden to show that the employee's separation from employment was not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The CA also found that respondents were never informed of the "Duty Detail Orders" transferring them to a new post, thereby making the alleged transfer ineffective. The dispositive portion of the CA decision states:

WHEREFORE, premises considered, the January 31, 2007 decision of the NLRC is hereby **REVERSED** and **SET ASIDE** and the July 28, 2000 decision of the Labor Arbiter is hereby **REVIVED**.

SO ORDERED.[14]

Petitioners filed a motion for reconsideration, but the motion was denied in a Resolution[15] dated March 31, 2008.

Petitioners are now before this Court to seek relief by way of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

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[12] *Id.* at 78-79.

[13] *Id.* at 101-110.

[14] *Id.* at 109.

[15] *Id.* at 119.

Petitioners argue that the CA erred when it held that the NLRC committed grave abuse of discretion. According to petitioners, the NLRC was correct when it ruled that there was no sufficient basis to rule that respondents were terminated from their employment while there was proof that they were merely transferred from DOST to LRTA as shown in the "Duty Detail Orders." Verily, petitioners claim that there was no termination at all; instead, respondents abandoned their employment by refusing to report for duty at the LRTA Compound.

Further, petitioners argue that the CA erred when it reinstated the July 28, 2000 Decision of Labor Arbiter Del Rosario in its entirety. The dispositive portion of said decision ruled that respondents should be paid their monetary awards in *solidum* by Alert Security and Manuel D. Dasig, its President and General Manager. They argue that Alert Security is a duly organized domestic corporation which has a legal personality separate and distinct from its members or owners. Hence, liability for whatever compensation or money claims owed to employees must be borne solely by Alert Security and not by any of its individual stockholders or officers.

On the other hand, respondents claim that the NLRC committed a serious error in ruling that they failed to provide factual substantiation of their claim of constructive dismissal. Respondents aver that their Complaint Form[16] sufficiently constitutes the basis of their claim of illegal dismissal. Also, respondents aver that Alert Security itself admitted that respondents were relieved from their posts as security guards in DOST, albeit raising the defense that it was a mere transfer as shown by "Duty Detail Orders," which, however, were never received by respondents, as observed by the Labor Arbiter.

Essentially, the issue for resolution is whether respondents were illegally dismissed.

We rule in the affirmative.

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[16] *Id.* at 31.

As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just[17] or authorized[18] causes that must comply

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[17] **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.

[18] **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 losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

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: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half [1/2] month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

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with the due process requirements mandated[19] by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.

ART. 287. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

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

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

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article.

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

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

Nothing in this Article shall deprive any employee of benefits to which he may be entitled under existing laws or company policies or practices. (R.A. No. 8558, approved on February 26, 1998.)

[19] **ART. 277. Miscellaneous provisions.** – x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized

In *De Guzman, Jr. v. Commission on Elections*,[20] the Court, speaking of the Constitutional guarantee of security of tenure to all workers, ruled:

> x x x It only means that an employee cannot be dismissed (or transferred) from the service for causes other than those provided by law and after due process is accorded the employee. **What it seeks to prevent is capricious exercise of the power to dismiss**. x x x (Emphasis supplied.)

Although we recognize the right of employers to shape their own work force, this management prerogative must not curtail the basic right of employees to security of tenure. There must be a valid and lawful reason for terminating the employment of a worker. Otherwise, it is illegal and would be dealt with by the courts accordingly.

As stated in *Bascon v. Court of Appeals*:[21]

> x x x The employer's power to dismiss must be tempered with the employee's right to security of tenure. Time and again we have said that the preservation of the lifeblood of the toiling laborer comes before concern for business profits. Employers must be reminded

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cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

x x x x x x x x x

[20] G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197-198.

[21] G.R. No. 144899, February 5, 2004, 422 SCRA 122, 133.

to exercise the power to dismiss with great caution, for the State will not hesitate to come to the succor of workers wrongly dismissed by capricious employers.

In the case at bar, respondents were relieved from their posts because they filed with the Labor Arbiter a complaint against their employer for money claims due to underpayment of wages. This reason is unacceptable and illegal. Nowhere in the law providing for the just and authorized causes of termination of employment is there any direct or indirect reference to filing a legitimate complaint for money claims against the employer as a valid ground for termination.

The Labor Code, as amended, enumerates several just and authorized causes for a valid termination of employment. An employee asserting his right and asking for minimum wage is not among those causes. Dismissing an employee on this ground amounts to retaliation by management for an employee's legitimate grievance without due process. Such stroke of retribution has no place in Philippine Labor Laws.

Petitioners aver that respondents were merely transferred to a new post wherein the wages are adjusted to the current minimum wage standards. They maintain that the respondents voluntarily abandoned their jobs when they failed to report for duty in the new location.

Assuming this is true, we still cannot hold that the respondents abandoned their posts. For abandonment of work to fall under Article 282 (b) of the Labor Code, as amended, as gross and habitual neglect of duties there must be the concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason, and second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.[22]

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[22] *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 119724, May 31, 1999, 307 SCRA 747, 753-754, citing *Premiere Development Bank v. NLRC*, G.R. No. 114695, July 23, 1998, 293 SCRA 49, 60.

As regards the second element of intent to sever the employer-employee relationship, the CA correctly ruled that:

> x x x the fact that petitioners filed a complaint for illegal dismissal is indicative of their intention to remain employed with private respondent considering that one of their prayers in the complaint is for re-instatement. As declared by the Supreme Court, a complaint for illegal dismissal is inconsistent with the charge of abandonment, because when an employee takes steps to protect himself against a dismissal, this cannot, by logic, be said to be abandonment by him of his right to be able to work.[23]

Further, according to Alert Security itself, respondents continued to report for work and loiter in the DOST after the alleged transfer order was issued. Such circumstance makes it unlikely that respondents have clear intention of leaving their respective jobs. In any case, there is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address.[24] This petitioners failed to do.

On the element of the failure of the employee to report for work, we also cannot accept the allegations of petitioners that respondents unjustifiably refused to report for duty in their new posts. A careful review of the records reveals that there is no showing that respondents were notified of their new assignments. Granting that the "Duty Detail Orders" were indeed issued, they served no purpose unless the intended recipients of the orders are informed of such.

The employer cannot simply conclude that an employee is *ipso facto* notified of a transfer when there is no evidence to

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[23] *Rollo*, p. 108, citing *Cebu Marine Beach Resort v. National Labor Relations Commission*, G.R. No. 143252, October 23, 2003, 414 SCRA 173, 178 and *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168.

[24] *Coca-Cola Bottlers Philippines, Inc. v. Garcia*, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 374, citing *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 609; Section 2, Rule XIV, Book V of the Omnibus Implementing Rules and Regulations of the Labor Code.

indicate that the employee had knowledge of the transfer order. Hence, the failure of an employee to report for work at the new location cannot be taken against him as an element of abandonment.

We acknowledge and recognize the right of an employer to transfer employees in the interest of the service. This exercise is a management prerogative which is a lawful right of an employer. However, like all rights, there are limitations to the right to transfer employees. As ruled in the case of *Blue Dairy Corporation v. NLRC*:[25]

> x x x The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. x x x

In addition to these tests for a valid transfer, there should be proper and effective notice to the employee concerned. It is the employer's burden to show that the employee was duly notified of the transfer. Verily, an employer cannot reasonably expect an employee to report for work in a new location without first informing said employee of the transfer. Petitioners' insistence on the sufficiency of mere issuance of the transfer order is indicative of bad faith on their part.

Besides, according to petitioners, the reason for the transfer to LRTA of the respondents was that the wages in LRTA were already adjusted to comply with the minimum wage rates. Now it is hard to believe that after being ordered to transfer to LRTA where the wages are better, the respondents would still refuse

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[25] G.R. No. 129843, September 14, 1999, 314 SCRA 401, 408, citing *Phil. Telegraph and Telephone Corp. v. Laplana*, G.R. No. 76645, July 23, 1991, 199 SCRA 485, 492 and *Philippine Japan Active Carbon Corp. v. NLRC*, G.R. No. 83239, March 8, 1989, 171 SCRA 164, 168.

the transfer. That would mean that the respondents refused better wages and instead chose to remain in DOST, underpaid, and go through the lengthy process of claiming and asking for minimum wage. This proposed scenario of petitioners simply does not jibe with human logic and experience.

On the question of the propriety of holding petitioner Manuel D. Dasig, president and general manager of Alert Security, solidarily liable with Alert Security for the payment of the money awards in favor of respondents, we find petitioners' arguments meritorious.

Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners. In exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Section 31, Paragraph 1 of the Corporation Code[26] provides:

> Sec. 31. *Liability of directors, trustees or officers.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> x x x x x x x x x

Jurisprudence has been consistent in defining the instances when the separate and distinct personality of a corporation may be disregarded in order to hold the directors, officers, or owners of the corporation liable for corporate debts. In *McLeod v. National Labor Relations Commission*,[27] the Court ruled:

> Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public

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[26] Corporation Code of the Philippines, Batas Pambansa Bilang 68.

[27] G.R. No. 146667, January 23, 2007, 512 SCRA 222, 253.

convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. x x x

Further, in *Carag v. National Labor Relations Commission*,[28] the Court clarified the *McLeod* doctrine as regards labor laws, to wit:

We have already ruled in *McLeod v. NLRC*[29] and *Spouses Santos v. NLRC*[30] that **Article 212(e)**[31] **of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation**. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. x x x

In the present case, there is no evidence to indicate that Manuel D. Dasig, as president and general manager of Alert Security, is using the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Further, there is no showing that Alert Security has folded up its business or is reneging in its obligations. In the final analysis, it is Alert Security that respondents are after and it is also Alert Security who should take responsibility for their illegal dismissal.

WHEREFORE, the petition for review on *certiorari* is *DENIED.* The Decision of the Court of Appeals in CA-G.R. SP No. 99861 and the Decision dated July 28, 2000 of the Labor

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[28] G.R. No. 147590, April 2, 2007, 520 SCRA 28, 52.

[29] *Supra* note 26.

[30] G.R. No. 120944, July 23, 1998, 293 SCRA 113.

[31] Article 212(e), Labor Code of the Philippines.

ART. 212. Definitions. – x x x

x x x x x x x x x

(e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

Arbiter are *MODIFIED*. Petitioner Manuel D. Dasig is held not solidarily liable with petitioner Alert Security and Investigation, Inc. for the payment of the monetary awards in favor of respondents. Said Decision of the Court of Appeals in all other aspects is *AFFIRMED*.

With costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183349. September 14, 2011]

F&E DE CASTRO CORPORATION, ELISA DE CASTRO and FEDERICO DE CASTRO, *petitioners, vs.* **ERNESTO G. OLASO and AMPARO M. OLASO,** *respondents*.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; A STAY IN THE PROCEEDINGS IN CIVIL CASE NO. SPL-0991 IN ORDER TO GIVE WAY TO THE PROCEEDINGS IN CIVIL CASE NO. SPL-0356 IS NOT JUDICIOUS AS THERE IS NO PREJUDICIAL QUESTION; BOTH PROCEEDINGS CAN PROCEED INDEPENDENTLY OF EACH OTHER.— The Court finds no merit in the petition. A stay in the proceedings in Civil Case No. SPL-0991 in order to give way to the proceedings in Civil Case No. SPL-0356 is not judicious as there is no prejudicial question. *First*, the subject matter or *res* involved in Civil Case No. SPL-0991 is different from those in Civil Case No. SPL-0356. F&E Corporation seeks to recover subdivision lots located in Phase 1 and 1-A of Forfom's

subdivision while the Olasos seek to recover their fully paid lot in Phase VI of the same subdivision. *Second*, the parties in both cases are different. The litigation in Civil Case No. SPL-0356 is between the developer, F&E Corporation, and the subdivision owner, Forfom, while the parties in the proceedings in Civil Case No. SPL-0991 are F&E Corporation, as annotator of the Notice of *Lis Pendens* and the Olasos, as fully paid lot buyers. *Third*, the prayers are different. In Civil Case No. SPL-0991, the Olasos want to cancel the annotation of the Notice of *Lis Pendens* stamped on their certificate of title over the piece of property described as Lot 10, Block 30, Phase VI of the Villa Olympia Subdivision, which they bought from Forfom. In Civil Case No. SPL-0356, the prayer was for the delivery of the certificates of title over 37 lots situated in Phase 1 and 1-A of the same subdivision and the payment of a sum of money and damages. For said reasons, the proceedings in Civil Case No. SPL-0991 can continue independently of Civil Case No. SPL-0356. As the CA aptly observed, F&E Corporation does not assert a claim of possession or ownership over the sold and unsold lots in Phase 1 and 1-A of the Villa Olympia Subdivision when it primarily sought to collect its 40% share in the price of the development of the subdivision. F&E Corporation's action was clearly a personal action that only incidentally affected the 37 lot titles on which the corresponding notices of *lis pendens* were annotated. Hence, any judgment in Civil Case No. SPL-0356 would only affect F&E Corporation but not necessarily the Olasos. In the same manner, a cancellation of the notice of *lis pendens* in Civil Case No. SPL- 0991would have no effect on the merits of the case in Civil Case No. SPL-0356.

APPEARANCES OF COUNSEL

Aspiras & Aspiras Law Offices for petitioners.
Nelson A. Loyola for respondents.

D E C I S I O N

MENDOZA, *J.*:

Challenged in this petition for review on *certiorari* is the October 22, 2007 Decision[1] of the Court of Appeals (*CA*), which annulled and set aside the January 5, 2006 Order of the Regional Trial Court, Branch 93, San Pedro, Laguna *(RTC)*, suspending the proceedings in Civil Case No. SPL-0991 pending the final outcome of Civil Case No. SPL-0356, and its June 10, 2008 Resolution[2] denying petitioners' motion for the reconsideration thereof.

The Facts

Forfom Development Corporation *(Forfom)* is the registered owner of the 114-hectare Villa Olympia Subdivision in Barrio San Vicente, San Pedro, Laguna. On August 25, 1985, Forfom entered into a Subdivision Project Agreement with petitioner F&E De Castro Corporation *(F&E Corporation)* by which agreement the latter undertook to finance the development of Villa Olympia Subdivision into a first class residential subdivision. As consideration for the transaction, it was agreed that F&E Corporation would be entitled to 40% of the developed saleable subdivision lots while the remaining 60% would remain with Forfom.

On August 23, 1989, a Supplemental Agreement was further concluded between the parties whereby F&E Corporation undertook to complete the development of Phase I and I-A of the project within 120 days, in accordance with the original plan and amendments approved by the Housing and Land Use Regulatory Board *(HLURB)*. With the development of said phases still ongoing, Forfom entered into yet another contract

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[1] *Rollo*, pp. 32-48. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Magdangal M. De Leon and Ricardo R. Rosario.

[2] *Rollo*, pp. 47-48.

with F&E Corporation, this time for the development of Phase II of the same project. As F&E Corporation incurred delays in the completion of said phases of the project, Forfom decided to rescind the Subdivision Project Agreement, the Supplemental Agreement and the contract relative to the development of Phase II of the same subdivision project.

On March 22, 1990, at the instance of F&E Corporation, HLURB ordered Forfom, in a cease and desist order, from further selling the lots/units within the subdivision project until and unless expressly permitted to do so. Pending the investigation of the conflict between the parties, however, Forfom was able to secure an order dated June 6, 1990 from the Enforcement Office of the HLURB directing F&E Corporation to cease and desist from further developing the subject subdivision project. Over the vigorous opposition interposed by F&E Corporation, Forfom eventually took over the development and completion of Phases I, I-A and II of the Villa Olympia Subdivision.

In view of said developments, F&E Corporation demanded payment from Forfom for the expenses it purportedly incurred in the development of the subdivision project, including its 40% share in the price of the 407 developed lots already sold as well as 37 more lots as its share in the remaining 94 lots then unsold. Charging that Forfom refused to heed its demands, F&E Corporation instituted an action for "Delivery of Lot Titles, Sum of Money and Damages" which was docketed as Civil Case No. SPL-0356.

During the pendency of the case, Elisa De Castro, F&E Corporation's Vice-President and Treasurer, requested the Register of Deeds of Laguna for the annotation of an Affidavit of Adverse Claim as well as a notice of *lis pendens* on the certificates of title covering subdivision lots which were still registered in Forfom's name. Forfom sought the lifting of the notice of *lis pendens* but it was denied. Similar efforts for the cancellation of said encumbrances were exerted by individual lot buyers, among them respondents Ernesto and Amparo Olaso *(Olasos)*, but they were opposed by F&E Corporation and rejected by the Register of Deeds of Laguna.

On November 18, 2003, as buyers of Lot 10, Block 30, Phase IV of the Villa Olympia Subdivision which had already been registered in their names under Transfer Certificate of Title No. 164843, the Olasos filed a complaint for "Damages, Cancellation of *Lis Pendens* and Writ of Preliminary Injunction" against F&E Corporation, Elisa De Castro and her husband, Federico De Castro, as well as the Register of Deeds of Calamba, Laguna, which was docketed as Civil Case No. SPL-0991.

F&E Corporation filed a motion to dismiss for non-exhaustion of administrative remedies, failure to implead Forfom as an indispensable party to the controversy, forum shopping, and *litis pendentia* in view of the pendency of Civil Case No. SPL-0356.

Citing the pendency of Civil Case No. SPL-0356, F&E Corporation moved for the suspension of the proceedings in Civil Case No. SPL-0991 on the ground that the issues in the former case partook the nature of a "prejudicial question" and are determinative of those proffered in the latter.

Decision of the RTC

On January 5, 2006, the RTC issued the assailed order[3] granting F&E Corporation's motion to suspend proceedings in Civil Case No. SPL-0991. The pertinent portion of its order reads:

> The actions involved in this case and Civil Case No. SPL-0356 being civil in nature, it is quite apparent that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between the said two civil actions as indeed, the right of herein plaintiffs to the cancellation of the *lis pendens* or any lien or encumbrance of any kind annotated in TCT No. T-166472 depends primarily on the resolution of SPL-0356. The Court is of the view that where the rights of plaintiffs in this case cannot be properly determined until the questions raised in Civil Case No. SPL-0356 are settled, the more prudent course is to hold the instant case in abeyance until after a determination of SPL-0356. Indeed, in the interest of good order, the Court can very well suspend on

[3] *Id.* at 71-73.

one case pending the final outcome of another case closely interrelated or linked to the first. It cannot be denied that SPL-0356 is closely interrelated or linked to the instant case considering that the outcome in SPL-0356 will definitely affect the proceedings in this case.

Consequently, the Court hereby orders the suspension of the proceedings in the instant case pending the final outcome of Civil Case No. SPL-0356.

SO ORDERED.

Decision of the CA

On October 22, 2007, the CA rendered its decision nullifying and setting aside the assailed order of the RTC. The CA ruled, among others, that the issues litigated in Civil Case No. SPL-0356 had no bearing on Civil Case No. SPL-0991 as to warrant the RTC's suspension of the proceedings in the latter. The CA ruled that, in Civil Case No. SPL-0991, the Olasos sought the cancellation of the notice of *lis pendens* annotated on their certificate of title over the parcel of land denominated as Lot 10, Block 30, Phase IV of the Villa Olympia Subdivision which they bought from F&E Corporation.

The CA stated that although F&E Corporation earlier sued the subdivision owner, Forfom, the RTC lost sight of the fact that, in addition to the collection of sum of money and damages, the cause of action in Civil Case No. SPL-0356 was for the delivery of the certificates of title over 37 lots situated in Phases I and I-A of the same subdivision project. Therefore, it would appear that the matter of cancellation of the notice of *lis pendens* on the title of the Olasos can proceed independently of Civil Case No. SPL-0356.

It added that in primarily seeking to collect its 40% share in the sold and unsold lots in Phases I and I-A of the Villa Olympia Subdivision, F&E Corporation clearly did not assert a claim of possession or ownership over the same in Civil Case No. SPL-0356. Said action was clearly a personal action that only incidentally affected the 37 lot titles on which the corresponding notices of *lis pendens* were annotated. Hence, it would logically follow

that any judgment rendered in Civil Case No. 0356 would bind Forfom but not necessarily the Olasos. The RTC's suspension of the proceedings for the cancellation of the annotation of the notice of *lis pendens* on the Olasos' title was derogatory to the purpose for which Presidential Decree *(P.D.)* No. 957, otherwise known as "Subdivision and Condominium Buyers' Protective Decree" had been issued.

F&E Corporation's motion for reconsideration was denied prompting the latter to file this petition anchored on the following:

GROUNDS

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DISMISSING THE PETITION FILED BY SPOUSES OLASO, CONSIDERING THAT NO *LIS PENDENS* WAS EVER ANNOTATED ON THEIR TITLE. HENCE, THE PREMISE OF THEIR CAUSE OF ACTION IS NON-EXISTENT.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT UPHOLDING THE ORDER DATED JANUARY 5, 2006 OF THE HONORABLE TRIAL JUDGE FRANCISCO PAÑO SUSPENDING CIVIL CASE NO. SPL-0991, WHICH ORDER OF SUSPENSION IS IN ACCORDANCE WITH THE DOCTRINE LAID DOWN BY THE SUPREME COURT IN THE CASE OF *QUIAMBAO VS. OSORIO* (G.R. NO. 48157, MARCH 16, 1988).

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT UPHOLDING THE ORDER DATED JANUARY 5, 2006 OF THE RTC BRANCH 93 OF SAN PEDRO, LAGUNA PRESIDED OVER BY HONORABLE JUDGE FRANCISCO PAÑO IN SUSPENDING THE PROCEEDINGS CONSIDERING THAT FORFOM DEVELOPMENT CORPORATION, [WHICH] IS THE PREDECESSOR-IN-INTEREST OF SPOUSES OLASO, [HAS] ACCEPTED AS LAW OF THE CASE THE DENIAL OF ITS MOTION TO LIFT *LIS PENDENS* IN CIVIL CASE NO. SPL-0356.

In sum, the crucial issue to be resolved in this case is whether or not the CA abused its discretion in ruling against the suspension of the proceedings in Civil Case No. SPL-0991 *(action for damages, cancellation of notice of lis pendens and writ of preliminary injunction between the Olasos and F&E Corporation)* pending the litigation of Civil Case No. SPL-0356 *(action for delivery of titles, sum of money and damages between F&E Corporation and Forfom).*

F&E Corporation's Position

F&E Corporation claims that the Olasos in Civil Case No. SPL-0991 did not show any proof that a Notice of *Lis Pendens* had been annotated on their title. Thus, it prays that the case should be remanded to the CA or RTC to determine factually whether or not a Notice of *Lis Pendens* has been annotated on the subject title. It further argues that the complaint of the Olasos should have been filed with the HLURB, and not with the courts. It insists that the CA should have dismissed the petition outright for violating the rules on forum shopping and *litis pendentia*.

The Olasos' Position

The Olasos argue that this petition for review on *certiorari* filed under Rule 45 of the Revised Rules of Court should be dismissed because it raises questions of jurisdiction, and not questions of law. They likewise allege that F&E Corporation submitted a false affidavit of non-forum shopping because it had knowledge of several other cases where it is involved based on the same facts and issues and that this petition is but a clone of several others previously decided by the Court of Appeals.

The Olasos lament that they would be denied their constitutional right to speedy justice should they be required to wait for the outcome of Civil Case No. SPL-0356 before they could seek relief in Civil Case No. SPL- 0991. They assert that the subject matter or *res* involved in the two cases are distinct, separate and different considering that F&E Corporation seeks to recover lots located in Phase 1 and 1-A of Forfom's subdivision while their fully paid lot is located in Phase 6. The Olasos add that

the parties in Civil Case No. SPL-0356 are F&E Corporation as subdivision developer and Forfom as subdivision owner, while in Civil Case No. SPL-0991 they are the plaintiffs, as fully paid subdivision lot buyers, and F&E Corporation is the defendant, as the annotator of the notice of *lis pendens*.

Moreover, the Olasos call the attention of the Court to the fact that Presidential Decree No. 957 mandates the subdivision owner and developer to deliver a clean title, free from all liens and encumbrances, to a fully paid lot buyer. Hence, the annotation of a notice of *lis pendens* in their title must be deleted.

Finally, the Olasos point out that Civil Case No. SPL-0356 was filed on September 1, 1998 and Forfom has not rested its case to this date despite the lapse of several years.

The Court's Ruling

The Court finds no merit in the petition.

A stay in the proceedings in Civil Case No. SPL-0991 in order to give way to the proceedings in Civil Case No. SPL-0356 is not judicious as there is no prejudicial question.

First, the subject matter or *res* involved in Civil Case No. SPL-0991 is different from those in Civil Case No. SPL-0356. F&E Corporation seeks to recover subdivision lots located in Phase 1 and 1-A of Forfom's subdivision while the Olasos seek to recover their fully paid lot in Phase VI of the same subdivision.

Second, the parties in both cases are different. The litigation in Civil Case No. SPL-0356 is between the developer, F&E Corporation, and the subdivision owner, Forfom, while the parties in the proceedings in Civil Case No. SPL-0991 are F&E Corporation, as annotator of the Notice of *Lis Pendens* and the Olasos, as fully paid lot buyers.

Third, the prayers are different. In Civil Case No. SPL-0991, the Olasos want to cancel the annotation of the Notice of *Lis Pendens* stamped on their certificate of title over the piece of property described as Lot 10, Block 30, Phase VI of the Villa Olympia Subdivision, which they bought from Forfom. In

Civil Case No. SPL-0356, the prayer was for the delivery of the certificates of title over 37 lots situated in Phase 1 and 1-A of the same subdivision and the payment of a sum of money and damages.

For said reasons, the proceedings in Civil Case No. SPL-0991 can continue independently of Civil Case No. SPL-0356.

As the CA aptly observed, F&E Corporation does not assert a claim of possession or ownership over the sold and unsold lots in Phase 1 and 1-A of the Villa Olympia Subdivision when it primarily sought to collect its 40% share in the price of the development of the subdivision. F&E Corporation's action was clearly a personal action that only incidentally affected the 37 lot titles on which the corresponding notices of *lis pendens* were annotated. Hence, any judgment in Civil Case No. SPL-0356 would only affect F&E Corporation but not necessarily the Olasos. In the same manner, a cancellation of the notice of *lis pendens* in Civil Case No. SPL- 0991would have no effect on the merits of the case in Civil Case No. SPL-0356.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.,* concur.

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[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

THIRD DIVISION

[G.R. No. 183445. September 14, 2011]

OFFICE OF THE PRESIDENT and PRESIDENTIAL ANTI-GRAFT COMMISSION, *petitioners, vs.* **CALIXTO R. CATAQUIZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF APPELLATE COURTS CAN BE REVIEWED.— As a general rule, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Since this Court is not a trier of facts, findings of fact of the appellate court are binding and conclusive upon this Court. There are, however, several recognized exceptions to this rule, namely: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee; **(7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;** (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs, are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; DECISIONS MUST CLEARLY AND DISTINCTLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED; THE DECISION OF THE COURT OF APPEALS CONTAINS NO ANALYSIS OF THE EVIDENCE ON RECORD OR A COMPREHENSIVE DISCUSSION ON HOW THE DECISION WAS ARRIVED AT.— In this case, the findings

of the CA are contrary to those of PAGC which recommended Cataquiz' dismissal for violating Section 3(e) of R.A. No. 3019, in relation to Section 46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. 292. Likewise, the Investigating Team of the DENR also agreed that there exists evidence that could sustain a finding of respondent's violation of several laws and regulations. The result of PAGC's investigation, however, was simply brushed aside by the CA, without citing any evidence on which its findings were based. In ignoring the meticulous discussion of PAGC's conclusions and in absolving Cataquiz from any wrongdoing, the CA cavalierly declared as follows: The petitioner likewise presented to us in support of his petition the argument that he had sufficient authority to do what had been complained against him. We have examined the charges against the provisions of R.A. No. 4850 and we found that the said acts could be sustained because they were within his powers as general manager of the Laguna Lake Development Authority as implied from express powers granted to him by the law. Moreover, the records of the Authority show that transactions resulting into contracts in the Authority's trading activities have been done by previous general managers of the Authority even without prior approval by the board. Ordinary corporate practices likewise point out to the fact that a general manager, having the general management and control of its business and affairs, has implied and apparent authority to do acts or make any contracts in its behalf falling within the scope of the ordinary and usual business of the company, especially so when, relative to a contract that the petitioner had entered into with Phil-Tai Fishing and Trade Company, the Office of the Government Corporate Counsel had formally acceded thereto. As plain as that, without any analysis of the evidence on record or a comprehensive discussion on how the decision was arrived at, the CA absolved Cataquiz of the acts he was accused of committing during his service as General Manager of the LLDA. Section 14, Article VIII of the 1987 Constitution mandates that decisions must clearly and distinctly state the facts and the law on which it is based. Decisions of courts must be able to address the issues raised by the parties through the presentation of a comprehensive analysis or account of factual and legal findings of the court. It is evident that the CA failed to comply with these requirements. PAGC, in its Resolution

dated December 5, 2003, discussing each of the twelve allegations against Cataquiz, determined that he should be dismissed from the government service and that he could be held liable under Section 3(e) of R.A. No. 3019, in relation to Section 46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. No. 292.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; REQUIRED SUBSTANTIAL EVIDENCE; ESTABLISHED IN CASE AT BAR.— The one-paragraph pronouncement of the CA that Cataquiz had authority to perform the acts complained of is grossly insufficient to overturn the determination by PAGC that he should be punished for acts prejudicial to the LLDA committed during his service as General Manager of the said agency. It should be emphasized that findings of fact of administrative agencies will not be interfered with and shall be considered binding and conclusive upon this Court provided that there is substantial evidence to support such findings. Substantial evidence has been defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion" or "evidence commonly accepted by reasonably prudent men in the conduct of their affairs." After a diligent review of the evidence presented and the pleadings filed, this Court finds that there is substantial evidence to justify the conclusion of PAGC that Cataquiz should be punished with the penalty of dismissal, along with its accessory penalties, for committing acts prejudicial to the best interest of the government and for giving undue advantage to a private company in the award of fishpens.

4. ID.; ID.; ID.; ID.; THE DISMISSAL OF THE CRIMINAL CASE AGAINST RESPONDENT DOES NOT BAR THE FINDING OF ADMINISTRATIVE LIABILITY.— Cataquiz claims that the dismissal by the Ombudsman of the case against him constitutes the law of the case between him and the OP which necessitates the dismissal of the petition before this Court. At the outset, the Court would like to highlight the fact that Cataquiz never raised this issue before the CA, despite having had ample time to do so. The records show that the Ombudsman promulgated its resolution on November 30, 2004, more than three months prior to the filing by the respondent of his petition before the CA on March 2, 2005. Nevertheless, he only chose

to mention this after the CA had rendered its decision and after the submission of his comment on the petition at bench. This is evidently a desperate effort on his part to strengthen his position and support the decision of the CA exonerating him from any administrative liability. The Court has consistently ruled that issues not previously ventilated cannot be raised for the first time on appeal. Otherwise, to consider such issues and arguments belatedly raised by a party would be tantamount to a blatant disregard of the basic principles of fair play, justice and due process. Therefore, this issue does not merit the attention of the Court.

5. ID.; ID.; ID.; ID.; ADMINISTRATIVE LIABILITY IS SEPARATE AND DISTINCT FROM PENAL AND CIVIL LIABILITY. — The Ombudsman Resolution dated November 30, 2004 recommending the dismissal of the charges against him pertains only to the criminal case against him and not the administrative case, which is the subject matter of the case at bench. As can be gleaned from the Resolution, the charges referred to by the Ombudsman were for respondent's alleged violation of Section 3(b) and (c) of R.A. No. 3019 or for malversation of public funds and fraud against the public treasury. It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act. Obviously, administrative liability is separate and distinct from penal and civil liability. In the case of *People v. Sandiganbayan*, the Court elaborated on the difference between administrative and criminal liability: The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. Accordingly, the dismissal of the criminal case by the Ombudsman does not foreclose administrative action against Cataquiz. His absolution from criminal liability is not conclusive upon the OP, which subsequently found him to be administratively liable. The pronouncement made by the Ombudsman cannot serve to protect the respondent from

further administrative prosecution. A contrary ruling would be unsettling as it would undermine the very purpose of administrative proceedings, that is, to protect the public service and uphold the time-honored principle that a public office is a public trust.

6. ID.; ID.; ID.; ID.; REMOVAL OR RESIGNATION FROM OFFICE IS NOT A BAR TO A FINDING OF ADMINISTRATIVE LIABILITY.— Removal or resignation from office is not a bar to a finding of administrative liability. Despite his removal from his position, Cataquiz can still be held administratively liable for acts committed during his service as General Manager of the LLDA and he can be made to suffer the corresponding penalties. The subsequent finding by the OP that Cataquiz is guilty of the charges against him with the imposition of the penalty of dismissal and its corresponding accessory penalties is valid. It cannot be disputed that Cataquiz was a presidential appointee. As such, he was under the direct disciplining authority of the President who could legitimately have him dismissed from service. This is pursuant to the well-established principle that the President's power to remove is inherent in his power to appoint. Therefore, it is well within the authority of the President to order the respondent's dismissal.

7. ID.; ID.; ID.; ID.; ACCESSORY PENALTY CAN BE IMPOSED AGAINST RESPONDENT.— Cataquiz argues that his removal has rendered the imposition of the principal penalty of dismissal impossible. Consequently, citing the rule that the accessory follows the principal, he insists that the accessory penalties may no longer be imposed on him. The respondent is mistaken. In the case of *In Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*, despite the resignation from government service by the employee found guilty of grave misconduct, disgraceful and immoral conduct and violation of the Code of Conduct for Court Personnel, thereby making the imposition of the penalty of dismissal impossible, this Court nevertheless imposed the accessory penalties of forfeiture of benefits with prejudice to re-employment in any branch or instrumentality of government. Similarly instructive is the case of *Pagano v. Nazarro, Jr,* where the Court held that: The instant case is not moot and

academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service – may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits. Based on the foregoing, it is clear that the accessory penalties of disqualification from re-employment in public service and forfeiture of government retirement benefits can still be imposed on the respondent, notwithstanding the impossibility of effecting the principal penalty of dismissal because of his removal from office.

8. ID.; ID.; ID.; ID.; THE PRESIDENTIAL ANTI-GRAFT COMMISSION'S (PAGC) TYPOGRAPHICAL ERROR CAN BE CORRECTED.— It is clear from the pleadings submitted before PAGC – particularly in the Affidavit Complaint filed by CELLDA against Cataquiz and in the Counter-Affidavit submitted by the latter – that the resolution referred to as having been violated by the respondent was Board Resolution No. 28, and not No. 68, as was erroneously indicated in the PAGC Resolution. Thus, pursuant to the rule that the judgment should be in accordance with the allegations and the evidence presented, the typographical error contained in the PAGC Resolution can be amended. Clerical errors or any ambiguity in a decision can be rectified even after the judgment has become final by reference to the pleadings filed by the parties and the findings of fact and conclusions of law by the court. A careful perusal of the PAGC's discussion on the violation of the questioned board resolution discloses that PAGC was undoubtedly referring to Board Resolution No. 28 which approved the policy guidelines for public bidding of the remaining free fishpen areas in Laguna de Bay, and not Resolution No. 68 which had nothing at all to do with fishpen awards. Therefore, the reference to Board Resolution No. 68, instead of Board Resolution No. 28, in the PAGC Resolution is unmistakably a typographical error on the part of PAGC but, nonetheless, rectifiable.

9. POLITICAL LAW; STATUTES; ADMINISTRATIVE RULES AND REGULATIONS; BOARD RESOLUTION NO. 28 DOES NOT REQUIRE APPROVAL BY THE PRESIDENT.

— The respondent's counter-affidavit shows that he had knowledge of the fact that he was being charged with violation of Board Resolution No. 28. He even argued that the said resolution was an invalid and illegal administrative rule. His position was that the resolution issued by the Board of Directors of LLDA was an unreasonable exercise of its legislative power because the enabling law of LLDA, R.A. No. 4850, did not require the public bidding of free fishpen areas. Then, in his motion for reconsideration before the OP, he argued that the resolution was invalid because it was never approved by the President, contrary to Section 4(k) of R.A. No. 4850 (as amended by Presidential Decree No. 813). x x x Regrettably, the CA sustained the respondent's argument. A careful examination of the abovementioned law shows that presidential approval is only required for rules and regulations which shall govern fisheries development activities in Laguna de Bay. The question then is whether Board Resolution No. 28 falls under that category of rules subject to approval by the President. The answer is in the negative. The Revised Laguna de Bay Zoning and Management Plan allocated 10,000 hectares of the lake surface areas for fishpen operators. In the event that the area would not be fully occupied after all qualified operators had been assigned their respective fishpen areas, the residual free areas would be opened for bidding to other prospective qualified applicants. Accordingly, Board Resolution No. 28 simply set forth the guidelines for the public bidding of the remaining free fishpen areas in Laguna de Bay. It did not require presidential approval because it did not regulate any fisheries development activities. Hence, the questioned resolution cannot be declared invalid on the basis of the CA's ratiocination that the resolution lacked the approval of the President.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Balgos & Perez for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 31, 2008 Decision[1] and the June 23, 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 88736 entitled "*Calixto R. Cataquiz v. Office of the President and Concerned Employees of the LLDA (CELLDA),*" which reversed and set aside the Amended Resolution[3] dated February 10, 2005 of the Office of the President *(OP).*

The Facts

Respondent Calixto R. Cataquiz *(Cataquiz)* was appointed as General Manager of the Laguna Lake Development Authority *(LLDA)* on April 16, 2001.[4]

On April 1, 2003, a majority of the members of the Management Committee and the rank-and-file employees of the LLDA submitted to then Department of Environment and Natural Resources *(DENR)* Secretary Elisea G. Gozun *(Secretary Gozun)* their Petition for the Ouster of Cataquiz as LLDA General Manager[5] on the grounds of corrupt and unprofessional behavior and management incompetence.

In response, Secretary Gozun ordered the formation of an investigating team to conduct an inquiry into the allegations against Cataquiz. The results of the fact-finding activity were submitted in a Report[6] dated May 21, 2003 in which it was

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[1] *Rollo*, pp. 68-76. Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Lucenito N. Tagle.

[2] *Id.* at 80-81.

[3] *Id.* at 77-79.

[4] *Id.* at 69.

[5] *Id.* at 82.

[6] *Id.* at 102-114.

determined that respondent may be found guilty for acts prejudicial to the best interest of the government and for violations of several pertinent laws and regulations. Consequently, the investigating team recommended that the case be forwarded to the Presidential Anti-Graft Commission *(PAGC)* for proper investigation.

In her Memorandum[7] for the President dated May 23, 2003, Secretary Gozun reported that there is *prima facie* evidence to support some accusations against Cataquiz which may be used to pursue an administrative or criminal case against him. It was further noted that respondent lost his leadership credibility. In light of these, she recommended that Cataquiz be relieved from his position and that he be investigated by PAGC.

On June 6, 2003, in a letter[8] to then President Gloria Macapagal-Arroyo *(President Arroyo)*, the Concerned Employees of the Laguna Lake Development Authority *(CELLDA)*, a duly organized employees union of the LLDA, expressed their support for the petition to oust Cataquiz and likewise called for his immediate replacement.

Thereafter, CELLDA formally filed its Affidavit Complaint[9] dated September 5, 2003 before PAGC charging Cataquiz with violations of Republic Act *(R.A.)* No. 3019 (The Anti-Graft and Corrupt Practices Act), Executive Order *(E.O.)* No. 292 (The Administrative Code) and R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), to wit:

Violation of Section 3(e) of Republic Act 3019 in relation to Section 46 b(8) and (27), Chapter VI, Book V of EO 292.

a. That respondent directly transacted with 35 fishpen operators and authorized [the] payment of fishpen fees based on negotiated prices in violation of LLDA Board Resolution No. 28, Series of 1996 as alleged.

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[7] *Id.* at 99.

[8] *Id.* at 127.

[9] *Id.* at 116-126.

b. That respondent allegedly approved additional fishpen areas in the Lake without the approval of the Board and in violation of the existing Zoning and Management Plan (ZOMAP) of the Laguna de Bay that allows a carrying capacity of 10,000 hectares [of] fishpen structures in the lake based on scientific and technical studies.

c. That respondent allegedly condoned or granted reductions of fines and penalties imposed by the Public Hearing Committee, the duly authorized adjudicatory body of the LLDA. The condonation was allegedly without the concurrence of LLDA Board of Directors.

d. That respondent allegedly caused the dismissal of some cases pending with the LLDA without the concurrence of the Public Hearing Committee.

e. That on June 4, 2002, respondent allegedly appropriated and disbursed the amount of Five Hundred Thousand Pesos (₱500,000.00) from LLDA funds and confidential funds without any authority from the Department of Budget and Management.

f. That respondent allegedly contracted the services of several consultants without prior written concurrence from the Commission on Audit.

g. That on December 19, 2001, respondent allegedly appropriated and disbursed LLDA funds for the grant of gifts to indigent residents of San Pedro, Laguna. Said appropriation is not within the approved budget neither was it sanctioned by the Board of Directors, as alleged.

h. That respondent allegedly allowed a Taiwanese company identified as Phil-Tai Fishing and Trade Company to occupy and utilize certain portions of LLDA facilities located at Km. 70, Barangay Bangyas, Calauan, Laguna without any contract nor authority from the LLDA Board.

i. That respondent allegedly authorized the direct procurement of fish breeders from Delacon Realty and Development Corporation without the required bidding in accordance with COA rules and regulations.

Violation of Section 7(d) of Republic Act 6713:

a. That respondent allegedly solicited patronage from regulated industries in behalf of RVQ Productions, Inc. for the promotion of its film entry to the 2002 Metro Manila Film Festival entitled "Home Alone the Riber."

Violation of Section 5(a) of Republic Act 6713:

a. That respondent allegedly failed to act promptly and expeditiously on official documents, requests, papers or letters sent by the public or those which have been processed and completed staff work for his appropriate action.[10]

On December 5, 2003, PAGC issued a Resolution[11] recommending to the President that the penalty of dismissal from the service with the accessory penalties of disqualification for re-employment in the public service and forfeiture of government retirement benefits be imposed upon Cataquiz.

Thereafter, on December 8, 2003, Cataquiz was replaced by Fatima A.S. Valdez, who then assumed the position of Officer-in-Charge/General Manager and Chief Operating Officer of the LLDA by virtue of a letter of appointment dated December 3, 2003 issued by President Arroyo.[12]

In its Decision[13] dated June 29, 2004, the OP adopted by reference the findings and recommendations of PAGC. The dispositive portion thereof reads:

WHEREFORE, as recommended by the PAGC, respondent Calixto R. Cataquiz, is hereby **DISMISSED FROM THE SERVICE**, with the accessory penalties of disqualification from re-employment to government service and forfeiture of retirement benefits, effective immediately upon receipt of this order.

SO ORDERED.

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[10] *Id.* at 171-173.

[11] *Id.* at 168-192.

[12] *Id.* at 196.

[13] *Id.* at 193-194.

Aggrieved, Cataquiz filed his Motion for Reconsideration and/or for New Trial[14] dated August 4, 2004, arguing that: (1) prior to the issuance by the PAGC of its Resolution and by the OP of its Decision, he was already removed from office, thereby making the issue moot and academic; and (2) he cannot be found guilty for violating a resolution which was foreign to the charges against him or for acts which did not constitute sufficient cause for his removal in office, as shown by acts and documents which subsequently became available to him, entitling him to a new trial.

On February 10, 2005, the OP issued an Amended Resolution,[15] imposing on Cataquiz the penalties of disqualification from re-employment in the government service and forfeiture of retirement benefits, in view of the fact that the penalty of dismissal was no longer applicable to him because of his replacement as General Manager of the LLDA.

Cataquiz elevated his case to the CA via a petition for review[16] dated March 2, 2005, raising the same issues presented in his Motion for Reconsideration and/or New Trial before the OP.

The CA promulgated its Decision on January 31, 2008, which reversed and set aside the Amended Resolution of the OP. In so resolving, the CA reasoned that the accessory penalties of disqualification from employment in the government service and forfeiture of retirement benefits could no longer be imposed because the principal penalty of dismissal was not enforced, following the rule that the accessory penalty follows the principal penalty. The CA also agreed with Cataquiz that he could not be held liable for a violation of Board Resolution No. 68 of the LLDA, which when examined, was found not to be related to fishpen awards. If at all, the applicable rule would be Board Resolution No. 28, as suggested by Cataquiz himself. Said resolution though would be an invalid basis because it was not

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[14] *Id.* at 195-213.

[15] *Id.* at 77-79.

[16] *Id.* at 214-229.

approved by the President pursuant to Section 4(k) of R.A. No. 4850 (An Act Creating the Laguna Lake Development Authority). Finally, the CA found that the offenses charged against Cataquiz under R.A. No. 4850 constituted acts that were within his authority as general manager of the LLDA to perform.

Not in conformity, the OP and the PAGC *(petitioners)* filed this petition for review.

After the submission of respondent's comment[17] and the petitioners' reply,[18] Cataquiz filed an Urgent Motion for Judicial Notice[19] dated August 13, 2009 urging the Court to take judicial notice of the Resolution[20] rendered by the Office of the Ombudsman *(Ombudsman)* on November 30, 2004 which recommended the dismissal of the charges against him for violation of R.A. No. 3019.

The Issues

Petitioners cite the following errors as grounds for the allowance of the petition:

I.

The Court of Appeals gravely erred when it reversed *in toto* the findings of the OP and PAGC without stating clearly and distinctly the reasons therefor, which is contrary to the Constitution and the Rules of Court; the findings of the Court of Appeals are conclusions without citation of specific evidence on which they are based.

II.

The Court of Appeals erred because its judgment is based on a misapprehension of facts;

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[17] *Id.* at 541-561.

[18] *Id.* at 573-585.

[19] *Id.* at 589-591.

[20] *Id.* at 592-613.

III.

The Court of Appeals erred when it went beyond the issues of the case;

IV.

The findings of the Court of Appeals are contrary to the findings of the OP, PAGC and DENR Fact Finding Committee, [and]

V.

The OP and PAGC correctly found respondent to be unfit in public service, thus it did not err in imposing the accessory penalties of disqualification from employment in the government service and forfeiture of retirement benefits.[21]

Cataquiz, on the other hand, submits the following arguments in his Memorandum:[22]

I.

The dismissal by the Ombudsman of the cases against the respondent under the same set of facts further constitute the law of the case between the parties which necessitates the dismissal of this appeal and further supports the correctness of the decision of the Court of Appeals.

II.

The Court of Appeals did not commit any error when it reversed the amended resolution of the petitioner Office of the President.[23]

The issues can be condensed into four essential questions:

(1) Whether the CA made an incorrect determination of the facts of the case warranting review of its factual findings by the Court;

(2) Whether the dismissal by the Ombudsman of the charges against Cataquiz serves as a bar to the decision of the OP;

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[21] *Id.* at 38.

[22] *Id.* at 623-657.

[23] *Id.* at 635.

(3) Whether Cataquiz can be made to suffer the accessory penalties of disqualification from re-employment in the public service and forfeiture of government retirement benefits, despite his dismissal from the LLDA prior to the issuance by the PAGC and the OP of their decision and resolution, respectively; and

(4) Whether Cataquiz can be charged with a violation of Board Resolution No. 28, despite the clerical error made by the PAGC in indicating the Board Resolution number to be No. 68.

The Court's Ruling

The Court finds merit in the petition.

Findings of fact of the appellate court can be reviewed

As a general rule, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[24] Since this Court is not a trier of facts, findings of fact of the appellate court are binding and conclusive upon this Court.[25] There are, however, several recognized exceptions to this rule, namely:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee;

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[24] *Modesto v. Urbina*, G.R. No. 189859, October 18, 2010, 633 SCRA 383, 391.

[25] *Magno v. Francisco*, G.R. No. 168959, March 25, 2010, 616 SCRA 402, 414.

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs, are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[26] [Emphases supplied]

In this case, the findings of the CA are contrary to those of PAGC which recommended Cataquiz' dismissal for violating Section 3(e) of R.A. No. 3019, in relation to Section 46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. 292. Likewise, the Investigating Team of the DENR also agreed that there exists evidence that could sustain a finding of respondent's violation of several laws and regulations.

The result of PAGC's investigation, however, was simply brushed aside by the CA, without citing any evidence on which its findings were based. In ignoring the meticulous discussion of PAGC's conclusions and in absolving Cataquiz from any wrongdoing, the CA cavalierly declared as follows:

The petitioner likewise presented to us in support of his petition the argument that he had sufficient authority to do what had been complained against him. We have examined the charges against the provisions of R.A. No. 4850 and we found that the said acts could be sustained because they were within his powers as general manager of the Laguna Lake Development Authority as implied from express powers granted to him by the law. Moreover, the records of the Authority show that transactions resulting into contracts in the Authority's trading activities have been done by previous general managers of the Authority even without prior approval by the board. Ordinary corporate practices likewise point out to the fact that a

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[26] *Modesto v. Urbina*, *supra* note 24, citing *Ontimare, Jr. v. Elep*, 515 Phil. 237 (2006).

general manager, having the general management and control of its business and affairs, has implied and apparent authority to do acts or make any contracts in its behalf falling within the scope of the ordinary and usual business of the company, especially so when, relative to a contract that the petitioner had entered into with Phil-Tai Fishing and Trade Company, the Office of the Government Corporate Counsel had formally acceded thereto.[27]

As plain as that, without any analysis of the evidence on record or a comprehensive discussion on how the decision was arrived at, the CA absolved Cataquiz of the acts he was accused of committing during his service as General Manager of the LLDA.

Section 14, Article VIII of the 1987 Constitution mandates that decisions must clearly and distinctly state the facts and the law on which it is based. Decisions of courts must be able to address the issues raised by the parties through the presentation of a comprehensive analysis or account of factual and legal findings of the court.[28] It is evident that the CA failed to comply with these requirements. PAGC, in its Resolution dated December 5, 2003, discussing each of the twelve allegations against Cataquiz, determined that he should be dismissed from the government service and that he could be held liable under Section 3(e) of R.A. No. 3019, in relation to Section 46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. No. 292, to wit:

R.A. No. 3019

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:

> (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

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[27] *Rollo*, p. 75.

[28] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 307, citing *Madrid v. Court of Appeals*, 388 Phil. 366 (2000).

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.

E.O. No. 292

Section 46. Discipline: General Provisions.

x x x x x x x x x

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(27) Conduct prejudicial to the best interest of the service

The one-paragraph pronouncement of the CA that Cataquiz had authority to perform the acts complained of is grossly insufficient to overturn the determination by PAGC that he should be punished for acts prejudicial to the LLDA committed during his service as General Manager of the said agency. It should be emphasized that findings of fact of administrative agencies will not be interfered with and shall be considered binding and conclusive upon this Court provided that there is substantial evidence to support such findings.[29] Substantial evidence has been defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"[30] or "evidence commonly accepted by reasonably prudent men in the conduct of their affairs."[31]

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[29] *Salazar v. de Leon*, G.R. No. 127965, January 20, 2009, 576 SCRA 447, 462, citing *Perez v. Cruz*, 452 Phil. 597, 607 (2003).

[30] Rules of Court, Rule 133, Section 5.

[31] *Office of the Ombudsman (Visayas) v. Zaldarriaga*, G.R. No. 175349, June 22, 2010, 621 SCRA 373, 380, citing *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 154; *Go v. Office of the Ombudsman*, 460 Phil. 14, 35 (2003).

After a diligent review of the evidence presented and the pleadings filed, this Court finds that there is substantial evidence to justify the conclusion of PAGC that Cataquiz should be punished with the penalty of dismissal, along with its accessory penalties, for committing acts prejudicial to the best interest of the government and for giving undue advantage to a private company in the award of fishpens. Thus, the PAGC was correct when it wrote:

I.

[I]n the first allegation, respondent Cataquiz impliedly admitted his direct transaction with 35 fishpen operators and the payment of fishpen fees without conducting a public bidding. In respondent's defense, he raised the invalidity of Board Resolution No. 68 [sic] which provides for guidelines in public bidding for fishpen areas. Respondent argued that Board Resolution No. 68 [sic] is an unreasonable exercise of the Board's legislative power since public bidding has never been intended by RA 4850, the enabling law of LLDA.

The Commission finds the contention of the respondent bereft of merit. Section 25-A of RA 4850 authorizes the Board to "formulate, prescribe, amend and repeal rules and regulations to govern the conduct of business of the Authority" and it is the function of the respondent in his capacity as General Manager "to implement and administer the policies, programs and projects approved by the Board" pursuant to Section 26 (b) of RA 4850. While it is true that a Board Resolution draws life from the enabling statute, the Commission cannot find any inconsistency between the former and the latter. The Board Resolution No. 68 [sic] is still within the bounds of RA 4850 and is germane to its purpose in promoting a balanced growth of the Laguna Lake. Thus, the validity of the questioned Resolution stands. It becomes now the duty of the respondent to implement the Resolution and not to question its legality nor disregard it.

In the case at hand, respondent's act of not giving credence to the Board Resolution resulted to undue prejudice to the best interest of the public service considering that the Authority incurred Revenue loss from the direct transaction of respondent Cataquiz amounting to Seven Hundred Fifty Five Thousand Seven Hundred Pesos ₱755,700.00.

The presumption that the official duty has been regularly performed was overcome by the fact that the government was deprived of much needed revenue as a result of the act committed by respondent Cataquiz.

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III.

The Commission finds that the act of respondent Cataquiz in condoning penalties and reducing the fines imposed by the Public Hearing Committee (PHC) of the LLDA has no basis in law. The premise of the respondent citing Section 26 (b) giving him the executive prerogative and Section 4 (a) justifying the condonation and reduction is misplaced. A careful examination of the aforementioned provisions would reveal that Section 26 (b) does not vest the respondent the executive prerogative. Said provision gives him the authority to execute and administer the policies, plans, programs and projects approved by the Board. There is no showing that the condonation of penalties and reduction of fines has been approved by the Board. Section 26 (b) is clear in its terms that before respondent executes any policy, program or project, the same has to be approved by the Board. Thus, there is no executive prerogative to speak of.

The Commission agrees with the contention of the complainant that Section 4 (d) refers to additional power and function of the Authority and not to the respondent. Of equal importance is that Section 4 (d) does not confer him the authority to condone penalties nor reduce fines. Said provision is referring to Orders requiring the discontinuance of pollution. When the law is clear it needs no further interpretation.

The contention of respondent Cataquiz that there is nothing in Section 25-A that states that the approval of the Board is necessary has no leg to stand on. Same provision gives the Board the implied power "to do such other acts and perform such other functions as may be necessary to carry out the provisions of this Charter."

In relation to this is Section 31 of RA 4850 that gives the Board the authority to create such other divisions and positions as may be deemed necessary for the efficient, economic and effective conduct of the activity of the Authority.

The findings of the PHC, although a recommendatory body, must be accorded great respect. The penalties imposed by the PHC cannot be substituted by the respondent without any basis and the latter cannot simply claim that he has the sole authority to condone penalties and reduce fines.

Evidently respondent's act of condonation of penalties and reduction of fines was uncalled for. Thus, his act resulted to undue prejudice to the best interest of the service and will set a dangerous precedent to the justice system of the government.

IV.

In the same vein, the dismissal of the pending case against Twenty First Century Resources Inc. by the respondent has no basis in law. Section 26 of RA 4850 clearly enumerates the powers and functions of respondent, to wit:

"xxx.

a. Submit for consideration of the Board the policies and measures which he believes to be necessary to carry out the purposes and provisions of this Act;

b. Execute and administer the policies, plan, programs and projects approved by the Board;

c. Direct and supervise the operation and internal administration of the Authority. The General Manager may delegate certain administrative responsibilities to other officers of the Authority subject to the rules and regulations of the Board;

d. Appoint officials and employees below the rank of division heads to positions in the approved budget upon written recommendation of the division head concerned using as guide the standard set forth in the Authority's merit system;

e. Submit quarterly reports to the Board on personnel selection, placement and training;

f. Submit to the NEDA an annual report and such other reports as may be required, including the details of the annual and supplemental budgets of the Authority;

g. Perform such other functions as may be provided by law."

From the aforementioned section, nowhere can the Commission find any grant of power to adjudicate in favor of respondent Cataquiz and the latter cannot hide under the cloak of 'managerial prerogative' absent any law that justifies his act of dismissing the case. To reiterate, the dismissal of the case against Twenty First Century is an act clearly prejudicial to the best interest of the service. Consequently, the Authority was deprived of a committed service to the government and this fact cannot be overlooked upon by the Commission.

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VI.

The contract of service for consultancy duly signed by the respondent and the legal consultants of LLDA is not in accordance with Section 212 of the Government Accounting and Auditing Manual (GAAM) 86 which provides that:

> "Payment of public funds of retainer fees of private law practitioners who are so hired and employed without the prior written concurrence and acquiescence by the Solicitor General of the Government Corporate Counsel, as the case may be, as well as the written concurrence of the Commission on Audit, shall be disallowed in audit and the same shall be a personal liability of the official concerned."

The contention of the respondent that the LLDA Administrative Section failed to advise him regarding the requisites laid down by law cannot stand. Occupying an executive position, respondent is required to exercise diligence in the highest degree in the performance of his duties. Respondent cannot pass responsibility to other Division which in the first place, he has supervision and control of, pursuant to Section 31 of RA 4850. Supervision as defined is the overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control on the other hand, is the power of an officer to alter or modify or nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter. There is therefore a given authority to the respondent by law to regulate the acts of the Administrative Division and respondent cannot simply evade responsibility by invoking the shortcomings of his subordinates. In signing the contract, without verifying compliance of existing

laws, respondent falls short of the required competence expected of him in the performance of his official functions. Incompetence, has been defined as 'lack of ability, legal qualification or fitness to discharge the required duty; want of physical or intellectual or moral fitness.'

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VIII.

The Commission finds that the transaction entered into by the respondent and Phil-Tai Fishing and Trade Company is violative of Section 3 (e) of RA 3019. The elements of Section 3 (e) are as follows:

1. The accused is a public officer discharging official administrative, or judicial functions or private persons in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
4. His action caused undue injury to the Government or any private party or gave any party any unwarranted benefit, advantage or preference.

Applying the first element, respondent Cataquiz is a public officer within the legal term of RA 3019 which provides that "Public officer includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt from service receiving compensation, even nominal from the government xxx." Clearly, respondent is a public officer discharging official functions in transacting with Phil-Tai to occupy and utilize portions of LLDA facilities locate (sic) at Km. 70 Brgy. Bangyas, Calauan, Laguna.

Relating to the second element in the instant case, respondent in the exercise of his official duties allowed Phil-Tai to use the LLDA facility without the concurrence of the Board of Directors of LLDA where the corporate powers of the Authority lies as explicitly provided in Section 16 of RA 4850.

Applying the third element, respondent Cataquiz acted with manifest partiality when by reason of his office he allowed Phil-Tai to occupy the LLDA facility without any contract and without the approval of the Board of Directors. The privilege granted was by virtue of a joint venture proposal which was never authorized by the Board as admitted by the respondent in his position paper. In fact the proposal is still awaiting resolution from the board. Partiality is synonymous with "bias" which excites a disposition to see and report matters as they are wished for rather than as they are.

Manifest means "obvious to the understanding, evident to the mind, not obscure or hidden and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident and self-evident."

There was manifest partiality when respondent Cataquiz entered a transaction with Phil-Tai disregarding the requirements set forth by RA 4850 which requires the approval of the Board. Worse, the joint venture proposal by Phil-Tai which was accepted by the respondent took place without any contract at all. The contention of the respondent that Phil-Tai is only given the authority to conduct a preliminary study and including the technical survey and Pilot testing at the aforesaid facility for the purpose of determining its structural integrity and commercial viability cannot prevail over the records available at hand.

The findings of DENR officials in their ocular inspection on May 13, 2003 would disclose that Phil-Tai is in actual possession of the LLDA facility and personally witnessed the actual harvesting of tilapia from the fishpond owned by LLDA. The report of DENR officials contains that the act of the respondent is prejudicial to the interest of the government mainly because there was no contract executed between LLDA and Phil-Tai.

Moreover, the Memorandum from the Division Chief III Jose K. Cariño III of the Community Development Division would reveal that Phil-Tai is introducing exotic aquatic species in one of the earthen ponds at LLDA Calauan Complex. RA 8550 otherwise known as the Philippine Fisheries Code of 1998 provides that the introduction of foreign crustaceans such as crayfish in Philippine waters without a sound ecological, biological and environmental justification based on scientific studies is prohibited. There is, therefore, an unwarranted act by Phil-Tai which is prejudicial to the government.

Applying the fourth element in the case at bar, respondent Cataquiz gave Phil-Tai unwarranted benefit, advantage or preference when he entertained the joint venture proposal without any consideration. In fact, as stated in respondent's position paper, LLDA was assured by Phil-Tai that in the event the agreement does not materialize, it will remove all its equipment without damage to the LLDA aqua culture facilities. Be it noted that the assurance was not made in writing.

Respondent refused to discern the adverse consequences of the joint venture proposal considering that no available remedy was left to the government in case of untoward incidents that may arise. The transaction entered into is at most unenforceable because the agreements therein was (sic) not put into writing. The transaction cannot be tolerated by the Commission and the unwarranted benefit that Phil-Tai is enjoying deserves much consideration because it puts the government into a very disadvantageous situation.

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X.

The Commission finds that the promotion of the film entry of RVQ Productions by respondent Cataquiz does not offend Section 7 (d) of RA 6713 which provides as follows:

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

There was no undue solicitation of patronage of the film considering that the tickets sold are voluntary participation of interested employees. In fact, no monetary consideration was received nor accepted by the respondent.

Of important consideration, however, is the use of government vehicles in the delivery of movie tickets and the collection of payments thereof to different industrial establishments. Respondent Cataquiz in his official capacity as the General Manager of LLDA, approved the use of government vehicles and drivers for the promotion of the movie.

The impropriety of using government property in favor of a (sic) RVQ Production, a private entity cannot be countenanced as this is prejudicial to the best interest of the service. The very purpose of the use of the government property has not been properly served.[32] [Underscoring supplied]

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The dismissal of the criminal case against Respondent does not bar the finding of administrative liability.

Cataquiz claims that the dismissal by the Ombudsman of the case against him constitutes the law of the case between him and the OP which necessitates the dismissal of the petition before this Court.

At the outset, the Court would like to highlight the fact that Cataquiz never raised this issue before the CA, despite having had ample time to do so. The records show that the Ombudsman promulgated its resolution on November 30, 2004, more than three months prior to the filing by the respondent of his petition before the CA on March 2, 2005.[33] Nevertheless, he only chose to mention this after the CA had rendered its decision and after the submission of his comment on the petition at bench. This is evidently a desperate effort on his part to strengthen his position and support the decision of the CA exonerating him from any administrative liability. The Court has consistently ruled that issues not previously ventilated cannot be raised for the first time on appeal.[34] Otherwise, to consider such issues and arguments belatedly raised by a party would be tantamount to a blatant disregard of the basic principles of fair play, justice and due

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[32] *Rollo*, pp. 180-191.

[33] *Id.* at 592-613 and 214-229.

[34] *Bank of the Philippine Islands v. Shemberg Biotech Corporation*, G.R. No. 162291, August 11, 2010, 628 SCRA 70, 76, citing *Rasdas v. Estenor*, 513 Phil. 664 (2005).

process.[35] Therefore, this issue does not merit the attention of the Court.

Even if the Court were to overlook this procedural lapse, Cataquiz' argument would still fail. The Ombudsman Resolution dated November 30, 2004 recommending the dismissal of the charges against him pertains only to the criminal case against him and not the administrative case, which is the subject matter of the case at bench. As can be gleaned from the Resolution, the charges referred to by the Ombudsman were for respondent's alleged violation of Section 3(b) and (c) of R.A. No. 3019 or for malversation of public funds and fraud against the public treasury.[36]

It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act.[37] Obviously, administrative liability is separate and distinct from penal and civil liability.[38] In the case of *People v. Sandiganbayan*,[39] the Court elaborated on the difference between administrative and criminal liability:

> The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.[40]

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[35] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

[36] *Rollo*, p. 592.

[37] *Tecson v. Sandiganbayan*, 376 Phil. 191, 198 (1999).

[38] *Id.* at 199; *Veloso v. Sandiganbayan*, G.R. Nos. 89043-65, July 16, 1990, 187 SCRA 504.

[39] G.R. No. 164577, July 5, 2010, 623 SCRA 147.

[40] *Id.* at 161, citing *Paredes v. CA*, G.R. No. 169534, July 30, 2007, 528 SCRA 577.

Accordingly, the dismissal of the criminal case by the Ombudsman does not foreclose administrative action against Cataquiz.[41] His absolution from criminal liability is not conclusive upon the OP, which subsequently found him to be administratively liable. The pronouncement made by the Ombudsman cannot serve to protect the respondent from further administrative prosecution. A contrary ruling would be unsettling as it would undermine the very purpose of administrative proceedings, that is, to protect the public service and uphold the time-honored principle that a public office is a public trust.[42]

Respondent can be imposed with the accessory penalties.

Removal or resignation from office is not a bar to a finding of administrative liability.[43] Despite his removal from his position, Cataquiz can still be held administratively liable for acts committed during his service as General Manager of the LLDA and he can be made to suffer the corresponding penalties. The subsequent finding by the OP that Cataquiz is guilty of the charges against him with the imposition of the penalty of dismissal and its corresponding accessory penalties is valid.

It cannot be disputed that Cataquiz was a presidential appointee.[44] As such, he was under the direct disciplining authority of the President who could legitimately have him dismissed from service. This is pursuant to the well-established principle that the President's power to remove is inherent in his

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[41] *Office of the Court Administrator v. Enriquez*, A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10.

[42] *Ferrer v. Sandiganbayan*, G.R. No. 161067, March 14, 2008, 548 SCRA 460, 468, citing *Valencia v. Sandiganbayan*, G.R. No. 141336, June 29, 2004, 433 SCRA 88.

[43] *Muring, Jr. v. Gatcho*, A.M. No. CA-05-19-P, August 31, 2006, 500 SCRA 330, 349.

[44] Republic Act No. 4850 (1966), Sec. 16.

power to appoint.[45] Therefore, it is well within the authority of the President to order the respondent's dismissal.

Cataquiz argues that his removal has rendered the imposition of the principal penalty of dismissal impossible. Consequently, citing the rule that the accessory follows the principal, he insists that the accessory penalties may no longer be imposed on him.[46]

The respondent is mistaken.

In the case of *In Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*,[47] despite the resignation from government service by the employee found guilty of grave misconduct, disgraceful and immoral conduct and violation of the Code of Conduct for Court Personnel, thereby making the imposition of the penalty of dismissal impossible, this Court nevertheless imposed the accessory penalties of forfeiture of benefits with prejudice to re-employment in any branch or instrumentality of government.

Similarly instructive is the case of *Pagano v. Nazarro, Jr.*[48] where the Court held that:

> The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions – that of separation from service – may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.[49]

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[45] *Larin v. Executive Secretary*, 345 Phil. 961, 974 (1997), citing Const. (1987), Art. VII, Sec. 16.

[46] *Rollo*, p. 651.

[47] A.M. No. 2008-20-SC, March 15, 2010, 615 SCRA 186.

[48] G.R. No. 149072, September 21, 2007, 533 SCRA 622.

[49] *Id.* at 628.

Based on the foregoing, it is clear that the accessory penalties of disqualification from re-employment in public service and forfeiture of government retirement benefits can still be imposed on the respondent, notwithstanding the impossibility of effecting the principal penalty of dismissal because of his removal from office.

PAGC's typographical error can be corrected.

One of the charges against Cataquiz is for directly transacting with 35 fishpen operators and authorizing payment of fishpen fees based on negotiated prices, in contravention of the directive of Board Resolution No. 28, which requires the conduct of a public bidding. The PAGC Resolution dated December 5, 2003, recommending the dismissal of Cataquiz erroneously indicated that he violated Board Resolution No. 68, instead of No. 28.[50] The CA then sustained his contention that he could not be found guilty for violating Board Resolution No. 68 of the LLDA because such resolution was not related to fishpen awards and that his right to due process was violated when the OP found him guilty of violating the said resolution. It further added that even if the respondent was charged with acting in contravention with Board Resolution No. 28, the said resolution would be invalid for not having been duly approved by the President.

Petitioners, however, claim that it was merely a typographical or clerical error on the part of PAGC which was unfortunately adopted by the OP.[51] Cataquiz apparently will not be unduly prejudiced by the correction of the PAGC resolution. In the counter-affidavit he filed before the PAGC, he was able to exhaustively argue against the allegation that he had violated Board Resolution No. 28.[52] Hence, he cannot feign ignorance of the true charges against him.

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[50] *Rollo,* p. 180.

[51] *Id.* at 692.

[52] *Id.* at 133.

In this regard, the Court agrees with the petitioners.

It is clear from the pleadings submitted before PAGC – particularly in the Affidavit Complaint filed by CELLDA against Cataquiz and in the Counter-Affidavit submitted by the latter – that the resolution referred to as having been violated by the respondent was Board Resolution No. 28, and not No. 68, as was erroneously indicated in the PAGC Resolution. Thus, pursuant to the rule that the judgment should be in accordance with the allegations and the evidence presented,[53] the typographical error contained in the PAGC Resolution can be amended. Clerical errors or any ambiguity in a decision can be rectified even after the judgment has become final by reference to the pleadings filed by the parties and the findings of fact and conclusions of law by the court.[54]

A careful perusal of the PAGC's discussion on the violation of the questioned board resolution discloses that PAGC was undoubtedly referring to Board Resolution No. 28 which approved the policy guidelines for public bidding of the remaining free fishpen areas in Laguna de Bay, and not Resolution No. 68 which had nothing at all to do with fishpen awards. Therefore, the reference to Board Resolution No. 68, instead of Board Resolution No. 28, in the PAGC Resolution is unmistakably a typographical error on the part of PAGC but, nonetheless, rectifiable.

Moreover, the respondent's counter-affidavit shows that he had knowledge of the fact that he was being charged with violation of Board Resolution No. 28. He even argued that the said resolution was an invalid and illegal administrative rule. His position was that the resolution issued by the Board of Directors of LLDA was an unreasonable exercise of its legislative power because the enabling law of LLDA, R.A. No. 4850, did not

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[53] *Locsin v. Paredes*, 63 Phil. 87, 91 (1936).

[54] *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, G.R. No. 61250, June 3, 1991, 198 SCRA 19, 29, citing *Filipino Legion Corporation v. Court of Appeals*, 155 Phil. 616 (1974).

require the public bidding of free fishpen areas.[55] Then, in his motion for reconsideration before the OP, he argued that the resolution was invalid because it was never approved by the President, contrary to Section 4(k) of R.A. No. 4850 (as amended by Presidential Decree No. 813) which provides:

> (K) For the purpose of effectively regulating and monitoring activities in Laguna de Bay. The Authority shall have exclusive jurisdiction to issue new permit for the use of the lake waters for any projects or activities in/or affecting the said lake including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like, and to impose necessary safeguards for lake quality control and management and to collect necessary fees for said activities and projects: Provided, That the fees collected for fisheries may be shared between the Authority and other government agencies and political subdivisions in such proportion as may be determined by the President of the Philippines upon recommendation of the Authority's Board: Provided further, That the Authority's Board may determine new areas of fishery development or activities which it may place under the supervision of the Bureau of Fisheries and Aquatic Resources taking into account the overall development plans and programs for Laguna de Bay and related bodies of water: Provided, finally, That **the Authority shall subject to the approval of the President of the Philippines promulgate such rules and regulations which shall govern *fisheries development activities* in Laguna de Bay** which shall take into consideration among others the following: socio-economic amelioration of bona-fide resident fishermen whether individually or collectively in the form of cooperatives, lakeshore town development, a master plan for fish construction and operation, communal fishing ground for lakeshore town residents, and preference to lakeshore town residents in hiring laborers for fishery projects. [Emphasis supplied]

Regrettably, the CA sustained the respondent's argument. A careful examination of the abovementioned law shows that presidential approval is only required for rules and regulations which shall govern fisheries development activities in Laguna

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[55] *Rollo*, p. 133.

de Bay. The question then is whether Board Resolution No. 28 falls under that category of rules subject to approval by the President. The answer is in the negative.

The Revised Laguna de Bay Zoning and Management Plan[56] allocated 10,000 hectares of the lake surface areas for fishpen operators. In the event that the area would not be fully occupied after all qualified operators had been assigned their respective fishpen areas, the residual free areas would be opened for bidding to other prospective qualified applicants. Accordingly, Board Resolution No. 28 simply set forth the guidelines for the public bidding of the remaining free fishpen areas in Laguna de Bay.[57] It did not require presidential approval because it did not regulate any fisheries development activities. Hence, the questioned resolution cannot be declared invalid on the basis of the CA's ratiocination that the resolution lacked the approval of the President.

WHEREFORE, the petition is *GRANTED.* The Decision of the Court of Appeals is *REVERSED and SET ASIDE* and another judgment entered reinstating the June 29, 2004 Decision of the Office of the President, as amended by its February 10, 2005 Amended Resolution.

SO ORDERED.

Peralta (Acting Chairperson), Bersamin,[*] *Abad,* and *Sereno,*[**] *JJ.,* concur.

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[56] Approved on January 25, 1996 under LLDA Board Resolution No. 5, Series of 1996.

[57] *Rollo,* p. 266.

[*] Designated as additional member per Raffle dated September 12, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

FIRST DIVISION

[G.R. No. 187044. September 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO LAGAT *y* GAWAN a.k.a. RENAT GAWAN and JAMES PALALAY *y* VILLAROSA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ANTI-CARNAPPING ACT OF 1972; "CARNAPPING" AND "MOTOR VEHICLE"; DEFINED; ELEMENTS OF CARNAPPING.— Lagat and Palalay have been charged and convicted of the crime of qualified carnapping under Republic Act. No. 6539 or the Anti-Carnapping Act of 1972. Section 2 of the Act defines "carnapping" and "motor vehicle" as follows: "Carnapping" is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. "Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes. Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating. The elements of carnapping as defined and penalized under the Anti-Carnapping Act of 1972 are the following: 1. That there is an actual taking of the vehicle; 2. That the vehicle belongs to a person other than the offender himself; 3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4. That the offender intends to gain from the taking of the vehicle.

2. ID.; ID.; ID.; ID.; ID.; ALL THE ELEMENTS OF CARNAPPING ARE PRESENT AND WERE PROVEN DURING THE

TRIAL.— The records of this case show that all the elements of carnapping are present and were proven during trial. The tricycle, which was definitively ascertained to belong to Biag, as evidenced by the registration papers, was found in Lagat and Palalay's possession. Aside from this, the prosecution was also able to establish that Lagat and Palalay fled the scene when the Alicia PNP tried to approach them at the *palay* buying station. To top it all, Lagat and Palalay failed to give any reason why they had Biag's tricycle. Their unexplained possession raises the presumption that they were responsible for the unlawful taking of the tricycle. Section 3(j), Rule 131 of the Rules of Court states that: [A] person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercises acts of ownership over, are owned by him.

3. ID.; ID.; ID.; ID.; ID.; ID.; "UNLAWFUL TAKING" AND CONCEPT OF "INTENT TO GAIN," ELUCIDATED; CASE AT BAR.— In *People v. Bustinera*, this Court defined "unlawful taking," as follows: Unlawful taking, or *apoderamiento*, is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. Lagat and Palalay's intent to gain from the carnapped tricycle was also proven as they were caught in a *palay* buying station, on board the stolen tricycle, which they obviously used to transport the *cavans* of *palay* they had stolen and were going to sell at the station. In *Bustinera,* we elucidated on the concept of "intent to gain" and said: Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.

4. ID.; ID.; ID.; PENALTY FOR CARNAPPING; WHEN A PERSON IS KILLED OR RAPED IN THE COURSE OF OR ON THE OCCASION OF THE CARNAPPING, THE

CRIME OF CARNAPPING IS QUALIFIED AND THE PENALTY IS INCREASED TO *RECLUSION PERPETUA* TO DEATH.— When a person is killed or raped in the course of or on the occasion of the carnapping, the crime of carnapping is qualified and the penalty is increased pursuant to Section 14 of Republic Act No. 6539, as amended. x x x As there was no aggravating circumstance attendant in the commission of the crime, the RTC properly imposed the penalty of *reclusion perpetua*.

5. ID.; CIVIL LIABILITY *EX DELICTO* FOR DEATH OF VICTIM; DAMAGES AWARDED.— In conformity with prevailing jurisprudence, we affirm the award of ₱50,000.00 as civil indemnity *ex delicto* for the death of Jose Biag and ₱50,000.00 as moral damages for the proven mental suffering of his wife as a result of his untimely death. However, when actual damages proven by receipts during trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount. Thus, an award of ₱25,000.00 as temperate damages in lieu of the amount of ₱14,900.00 that the Court of Appeals awarded as actual damages is proper in this case.

6. ID.; ID.; LOSS OF EARNING CAPACITY; THE TRIAL COURT AND APPELLATE COURT FAILED TO CONSIDER THAT UNDER ARTICLE 2206 OF THE CIVIL CODE, THE ACCUSED ARE JOINTLY AND SEVERALLY LIABLE FOR THE LOSS OF EARNING CAPACITY OF THE VICTIM.— Both the RTC and the Court of Appeals failed to consider that under Article 2206 of the Civil Code, the accused are also jointly and severally liable for the loss of the earning capacity of Biag and such indemnity should be paid to his heirs. In *People v. Jadap*, this Court said: As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. In this case, no documentary evidence was

presented to prove the claim of the victim's heirs for damages by reason of loss of earning capacity. However, the victim's father testified that at the time of his son's death, he was only 20 years old and was working as a mason with a monthly income of ₱3,000.00. We find the father's testimony sufficient to justify the award of damages for loss of earning capacity.

7. ID.; ID.; ID.; FACTORS THAT MUST BE CONSIDERED IN DETERMINING THE AMOUNT OF DAMAGES RECOVERABLE FOR THE LOSS OF EARNING CAPACITY.— Biag's widow, Florida, testified that Biag worked as a farmer, *tanod*, and tricycle driver, and that his income amounted to ₱40,000.00 per cropping season as a farmer, ₱2,000.00 per month as a *tanod*, and ₱300.00 per day as a tricycle driver. However, since the prosecution failed to present any document pertaining to Biag's appointment as a *tanod*, or that he actually worked as a farmer, we shall consider only his earnings as a tricycle driver. According to the death certificate submitted by the prosecution, Biag was 56 years old at the time of his death. The amount of damages recoverable for the loss of earning capacity of the deceased is based on two factors: 1) the number of years on the basis of which the damages shall be computed; and 2) the rate at which the losses sustained by the heirs of the deceased should be fixed. The first factor is based on the formula (2/3 x 80 – age of the deceased at the time of his death = life expectancy) which is adopted from the American Expectancy Table of Mortality. Net income is computed by deducting from the amount of the victim's gross income the amount of his living expenses. As there is no proof of Biag's living expenses, the net income is estimated to be 50% of the gross annual income.

8. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; TO JUSTIFY A CONVICTION, THE COMBINATION OF CIRCUMSTANCES MUST BE INTERWOVEN IN SUCH A WAY AS TO LEAVE NO REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED; CASE AT BAR.— Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others,

is the one who has committed the crime. x x x A careful and exhaustive examination of the evidence presented, excluding those that are inadmissible, show that the circumstantial evidence, when viewed as a whole, effectively establishes the guilt of Lagat and Palalay beyond reasonable doubt. We considered the following pieces of evidence as convincing: *First*, Lagat and Palalay were found in possession of the tricycle the same day that it, together with its owner Biag, was reported missing. *Second*, Lagat and Palalay were found at a *palay* buying station, with the stolen tricycle packed with *cavans* of *palay* allegedly stolen in Alicia, Isabela. *Third*, Lagat and Palalay who were then on board the tricycle, jumped and ran the moment they saw the Alicia PNP approaching them. *Fourth*, Lagat and Palalay could not explain to the Alicia PNP why they were in possession of Biag's tricycle. *Fifth*, Biag's wallet and his tricycle's registration papers were found in the tricycle upon its inspection by the Alicia PNP. *Sixth*, Biag's body bore hack wounds as evidenced by the *post-mortem* autopsy done on him, while his tricycle had traces of blood in it. The foregoing circumstantial evidence only leads to the conclusion that Lagat and Palalay conspired to kill Biag in order to steal his tricycle. Direct proof that the two accused conspired is not essential as it may be inferred from their conduct before, during, and after their commission of the crime that they acted with a common purpose and design. The pieces of evidence presented by the prosecution are consistent with one another and the only rational proposition that can be drawn therefrom is that the accused are guilty of killing Biag to **carnap** his tricycle.

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.*:

This appeal was filed by accused-appellants Renato Lagat *y* Gawan (Lagat), also known as Renat Gawan, and James Palalay *y* Villarosa (Palalay) to challenge the **Court of Appeals'** October 8,

2008 **Decision**[1] in **CA-G.R. CR.-H.C. No. 02869**, for affirming with modification the March 19, 2007 **Decision**[2] of the **Regional Trial Court (RTC), Branch 21, Santiago City**, wherein they were found guilty beyond reasonable doubt of Qualified Carnapping in **Criminal Case No. 21-4949**.

Accused-appellants Lagat and Palalay were charged with the crime of Carnapping as defined under Section 2 and penalized under Section 14[3] of Republic Act No. 6539. The accusatory portion of the Information,[4] reads:

> That on or about the 12th day of April 2005, at Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, conniving with each other, and mutually helping one another and with intent to gain and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) unit YASUKI tricycle bearing Engine No. 161FMJ41535420 and Motor No. LX8PCK0034D002243 then driven and owned by JOSE BIAG, valued at ₱70,000.00, to the damage and prejudice of the owner thereof.
>
> That in the course of the commission of carnapping, or on occasion thereof, the above-named accused, conspiring, conniving confederating and helping each other, and with intent to kill, did then and there assault, attack and wound the said JOSE BIAG with sharp and pointed instrument directing blows against the vital parts of the body of the latter thereby inflicting upon him multiple stab and hacking wounds which directly caused the death of the said JOSE BIAG.

Lagat pleaded not guilty upon arraignment on June 16, 2005.[5] Palalay, on the other hand, did not enter any plea; hence, a plea of not guilty was entered by the RTC for him.[6]

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Portia Aliño-Hormachuelos and Teresita Dy-Liacco Flores, concurring.

[2] Records, pp. 126-133.

[3] As amended by Republic Act No. 7659.

[4] Records, pp. 1-2.

[5] *Id.* at 22.

[6] *Id.* at 21.

On August 1, 2005, both accused proposed to plead guilty to a lesser offense.[7] In their plea-bargaining proposal,[8] they asked that they be allowed to plead guilty to the crime of Homicide under Article 249 of the Revised Penal Code and that the mitigating circumstances of plea of guilty and/or no intention to commit so grave a wrong be considered in their favor. They also asked that damages be fixed at ₱120,000.00. This proposal was rejected[9] by the prosecution; thus, the pre-trial conference proceeded. The pre-trial Order contained the following facts as admitted by the parties:

1. That the cadaver of Jose Biag was recovered along Angadanan and Sn. Guillermo road by members of the police together with Barangay Captain Heherson Dulay and Chief Tanod Rumbaoa, Sr.

2. That the two accused were arrested in possession of *palay* allegedly stolen in Alicia, Isabela.

3. That the cause of death of Jose Biag was multiple stab and hack wounds as described in the Autopsy Report and death certificate which shall be submitted during trial.[10]

After the pre-trial conference, trial on the merits ensued.

The prosecution first presented Florida Biag (Florida), the wife of the victim Jose Biag (Biag), to testify on the circumstances leading to Biag's disappearance and the discovery of his body, the recovery of Biag's tricycle, and the expenses she incurred and the income she had lost as a result of her husband's death. Florida testified that her husband was a farmer, a *barangay tanod*, and a tricycle driver.[11] On April 12, 2005, at around two o'clock in the morning, her husband left to operate his tricycle for public use. It was around 11:00 a.m. of April 13,

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[7] *Id.* at 28.

[8] *Id.* at 38.

[9] *Id.* at 41.

[10] *Id.* at 39.

[11] TSN, January 9, 2006, p. 10.

2005, when news reached her that their tricycle was with the Philippine National Police (PNP) of the Municipality of Alicia and that her husband had figured in an accident. After learning of the incident, Florida sought the help of their Barangay (Brgy.) Captain, Heherson Dulay, who immediately left for Angadanan without her. At around 2:00 p.m., Brgy. Captain Dulay informed[12] Florida of what had happened to her husband.[13] Florida then presented in court the receipts[14] evidencing the expenses she had incurred for her husband's wake and funeral and for the repair of their tricycle, which was recovered with missing parts. She also testified as to the income Biag was earning as a farmer, a *tanod*, and a tricycle driver, and claimed that his death had caused her sleepless nights.[15]

The second witness for the prosecution was the Chief *Tanod* of Barangay Rizal, Poe Rumbaoa, Sr. (Rumbaoa). He testified that on April 13, 2005, after he and Brgy. Captain Dulay received Florida's report, they immediately went to the Alicia Police Station, wherein they found Biag's tricycle. The PNP of Alicia showed them the identification card recovered in the tricycle and told them that the tricycle was used in stealing *palay* from a store in Angadanan, Isabela that belonged to a certain Jimmy Esteban (Esteban). Rumbaoa and Brgy. Captain Dulay were also told that the owner of the tricycle was killed and dumped along the Angadanan and San Guillermo Road. They were thereafter shown the two suspects and the place where Biag's body was dumped. Rumbaoa said that he was able to identify the body as Biag's, which was almost unrecognizable because it was bloated all over, only because Biag had a mark on his right shoulder, which Rumbaoa knew of.[16]

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[12] Records, p. 4.

[13] TSN, January 9, 2006, pp. 3-6.

[14] Records, pp. 98A-98I.

[15] TSN, January 9, 2006, pp. 7-13.

[16] TSN, April 20, 2006, pp. 3-6.

Police Officer 2 (PO2) Arthur Salvador, a member of the PNP in Alicia, took the witness stand next. He testified that on April 13, 2005, he was on duty along with other colleagues at the Alicia PNP Station, when they received a report from Esteban that the *cavans* of *palay* stolen from him were seen at Alice Palay Buying Station in Alicia, Isabela, in a tricycle commandeered by two unidentified male persons. PO2 Salvador said that upon receipt of this report, their Chief of Police composed a team, which included him, PO2 Bernard Ignacio, and PO2 Nathan Abuan, to verify the veracity of the report. At Alice Palay Buying Station, they saw the tricycle described to them by their chief, with the *cavans* of *palay*, and the two accused, Lagat and Palalay. PO2 Salvador averred that he and his team were about to approach the tricycle when the two accused "scampered"[17] to different directions. After "collaring" the two accused, they brought them to the Alicia PNP Station together with the tricycle and its contents. PO2 Salvador asseverated that when they reached the station, they asked the two accused if they had any papers to show for both the tricycle and the *palay*, to which the two accused did not answer. They allegedly kept silent even after they were informed of their rights not only to remain as such, but also to have counsel, either of their own choosing, or to be assigned to them if they cannot afford one. PO2 Salvador then continued that when they unloaded the tricycle, they discovered bloodstains inside and outside the sidecar. He also personally found a wallet containing the tricycle's Certificate of Registration and Official Receipt[18] issued by the Land Transportation Office in the name of Jose Biag. When they asked the two accused about their discoveries, Lagat and Palalay voluntarily answered that the name in the papers is that of the owner of the tricycle, whom they killed and dumped along Angadanan and San Guillermo Road, when they carnapped his tricyle. PO2 Salvador alleged that upon hearing this revelation, they again informed Lagat and Palalay that anything they say would be used against them, and that they had a right to counsel. Thereafter, they

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[17] TSN, September 18, 2006, p. 5.

[18] Records, p. 8.

coordinated with the PNP of Angadanan Police Station, and together with the two accused, they proceeded to Angadanan-San Guillermo Road, where they found Biag's body in a ravine just after the bridge near the road.[19]

The prosecution's last witness, PO2 Ignacio corroborated PO2 Salvador's testimony on the events that led them to the tricycle, the *palay*, the two accused, and the body of Biag. He also confirmed PO2 Salvador's claim that they had informed the two accused of their rights but the latter just ignored them; hence, they continued with their investigation.[20] PO2 Ignacio added that the two accused also told them how they killed Biag, to wit:

> A- They rented a tricycle from Santiago to Alicia but they proceeded to Angadanan. And upon arrival at the site, they poked a knife to the driver and the driver ran away. They chased him and stabbed him, sir.[21]

Upon cross-examination, PO2 Ignacio averred that they were not able to recover the murder weapon despite diligent efforts to look for it and that they had questioned the people at Alice Palay Buying Station and were told that the two accused had no other companion. PO2 Ignacio also admitted that while they informed Lagat and Palalay of their constitutional rights, the two were never assisted by counsel at any time during the custodial investigation.[22]

The prosecution also submitted the Post-Mortem Autopsy Report[23] on Biag of Dr. Edgar Romanchito P. Bayang, the Assistant City Health and Medico-Legal Officer of Santiago City. The Report showed that Biag was likely killed between 12:00 noon

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[19] TSN, September 18, 2006, pp. 4-16.

[20] TSN, November 15, 2006, pp. 4-10.

[21] *Id.* at 9.

[22] *Id.* at 13-21.

[23] Records, pp. 94-96.

and 2:00 p.m. of April 12, 2004, and that he had sustained three stab wounds, an incise wound, two hack wounds and an "avulsion of the skin extending towards the abdomen."[24]

After the prosecution rested its case, the accused filed a Motion to Dismiss on Demurrer to Evidence[25] without leave of court[26] on the ground that the prosecution failed to prove their guilt beyond reasonable doubt. Lagat and Palalay averred that their constitutional rights on custodial investigation were grossly violated as they were interrogated for hours without counsel, relatives, or any disinterested third person to assist them. Moreover, the admissions they allegedly made were not supported by documentary evidence. Palalay further claimed that Rumbaoa's testimony showed that he had a "swelling above his right eye" and "a knife wound in his left arm," which suggests that he was maltreated while under police custody.[27]

The accused also claimed that the circumstantial evidence presented by the prosecution was not sufficient to convict them. They averred that aside from the alleged admissions they had made, the prosecution had nothing else: they had no object evidence for the bloodstains allegedly found in the tricycle; the murder weapon was never found; and no eyewitness aside from the police officers was presented to show that they were in possession of the tricycle at the time they were arrested. Lagat and Palalay argued that the prosecution failed to establish an unbroken chain of events that showed their guilt beyond reasonable doubt, thus, they were entitled to enjoy the constitutional presumption of innocence absent proof that they were guilty beyond reasonable doubt.[28]

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[24] *Id.*

[25] *Id.* at 104-110.

[26] Rules of Court, Rule 119, Section 23.

[27] TSN, April 20, 2006, p. 10.

[28] Records, pp. 108-109.

As the accused filed their Demurrer to Evidence without leave of court, they in effect waived their right to present evidence, and submitted the case for judgment on the basis of the evidence for the prosecution.[29]

On March 19, 2007, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE in the light of the foregoing considerations the Court finds the accused Renato Lagat *y* Gawan and James Palalay *y* Villarosa GUILTY beyond reasonable doubt of qualified carnapping and hereby sentences each of them to the penalty of *reclusion perpetua*. They are also ORDERED TO PAY Florida Biag the sum of Twelve thousand three hundred pesos (₱12,300.00) as actual damages plus Fifty thousand pesos (₱50,000.00) for death indemnity and another Fifty thousand pesos (₱50,000.00) for moral damages.[30]

After evaluating the evidence the prosecution presented, the RTC agreed with the accused that their rights were violated during their custodial investigation as they had no counsel to assist them. Thus, whatever admissions they had made, whether voluntarily or not, could not be used against them and were inadmissible in evidence.[31]

However, the RTC held that despite the absence of an eyewitness, the prosecution was able to establish enough circumstantial evidence to prove that Lagat and Palalay committed the crime, to wit:

1. The accused were caught by the Alicia PNP in possession of Biag's tricycle, loaded with stolen *palay*;
2. The accused ran immediately when they saw the Alicia PNP approaching them;
3. The Alicia PNP found bloodstains on the tricycle and Biag's wallet with documents to prove that Biag owned the tricycle;

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[29] Rules of Court, Rule 119, Section 23, paragraph 2.

[30] Records, p. 133.

[31] *Id.* at 130-131.

4. The Alicia PNP contacted the PNP of Santiago City to inquire about a Jose Biag, and this was how the *barangay* officials of Santiago City and Florida found out that Biag's tricycle was with the Alicia PNP;
5. Biag left early morning on April 12, 2005 and never returned home;
6. The accused themselves led the Alicia PNP and Barangay Captain Dulay and Rumbaoa to where they dumped Biag's body.[32]

The RTC convicted Lagat and Palalay of the crime of carnapping, qualified by the killing of Biag, which, according to the RTC, appeared to have been done in the course of the carnapping.[33]

Lagat and Palalay asked the RTC to reconsider its Decision on the grounds that it erred in giving full credence to the testimonies of the prosecution's witnesses and in relying on the circumstantial evidence presented by the prosecution.[34]

On May 29, 2007, the RTC denied[35] this motion, holding that the testimonies of the witnesses were credible and supported by the attending facts and circumstances, and that there was sufficient circumstantial evidence to convict the accused.

Lagat and Palalay went[36] to the Court of Appeals, asserting that their guilt was not established beyond reasonable doubt.[37] They averred that circumstantial evidence, to be sufficient for a judgment of conviction, "must exclude each and every hypothesis consistent with innocence,"[38] which was allegedly not the case

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[32] *Id.* at 131-132.

[33] *Id.* at 131-133.

[34] *Id.* at 135-138.

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

[36] *Id.* at 143.

[37] CA *rollo*, p. 29.

[38] *Id.* at 34.

in their situation. They elaborated on why the circumstantial evidence the RTC enumerated could not be taken against them:

1. The accused's possession of the tricycle cannot prove that they killed its owner;
2. Their act of fleeing may be due to the stolen *palay* (which is not the subject of this case), and not the tricycle;
3. No evidence was given that would link the bloodstains found in the tricycle to Biag himself. They could have easily been Palalay's, who was shown to have a knife wound; and
4. The accused's act of pointing to the police and the *barangay* officials the ravine where Biag's body was dumped was part of their interrogation without counsel, which the RTC itself declared as inadmissible in evidence.[39]

On October 8, 2008, the Court of Appeals rendered its Decision with the following dispositive portion:

> WHEREFORE, the Decision dated March 19, 2007 of the RTC, Branch 21, Santiago City, in Criminal Case No. 21-4949, is **AFFIRMED** with the **MODIFICATION** that accused-appellants Renato Lagat *y* Gawan and James Palalay *y* Villarosa are ordered to pay to private complainant the increased amount of ₱14,900.00 as actual damages.[40]

In affirming the conviction of the accused, the Court of Appeals held that the elements of carnapping were all present in this case. The Court of Appeals pointed out that Lagat and Palalay were in possession of the missing tricycle when they were apprehended by the Alicia PNP. Moreover, they failed to offer any explanation as to how they came to be in possession of the tricycle. The Court of Appeals also agreed with the RTC that whatever confession or admission the Alicia PNP extracted out

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[39] *Id.* at 35-36.

[40] *Rollo*, p. 16.

of the accused could not be used in evidence for having been done without the assistance of counsel. The Court of Appeals nonetheless affirmed the RTC's judgment as it was "convinced" that the following circumstantial evidence supported the conviction of the accused for qualified carnapping:

1. Biag and his tricycle went missing on April 12, 2005;
2. Lagat and Palalay were found in unauthorized possession of the tricycle on April 13, 2005;
3. The Alicia PNP, upon inspection of the tricycle, found traces of blood inside it, together with the original receipt and certificate of registration of the vehicle in the name of Jose Biag;
4. Palalay had a stab wound on his left arm when the Alicia PNP presented him and Lagat to Brgy. Capt. Dulay and prosecution witness Rumbaoa;
5. Biag bore five (5) hack wounds on his body when the Alicia PNP recovered his corpse in a ravine; and
6. Lagat and Palalay failed to account for their possession of the bloodstained tricycle immediately after their arrest.[41]

The accused are now before us with the same lone assignment of error they posited before the Court of Appeals, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[42]

Ruling of the Court

Lagat and Palalay have been charged and convicted of the crime of qualified carnapping under Republic Act. No. 6539[43]

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[41] *Id.* at 14.

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

[43] As amended by Republic Act No. 7659.

or the Anti-Carnapping Act of 1972. Section 2 of the Act defines "carnapping" and "motor vehicle" as follows:

> "Carnapping" is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.
>
> "Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes. Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating.[44]

The elements of carnapping as defined and penalized under the Anti-Carnapping Act of 1972 are the following:

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;
3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4. That the offender intends to gain from the taking of the vehicle.[45]

The records of this case show that all the elements of carnapping are present and were proven during trial.

The tricycle, which was definitively ascertained to belong to Biag, as evidenced by the registration papers, was found in Lagat and Palalay's possession. Aside from this, the prosecution

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[44] Republic Act No. 6539, Section 2.

[45] *People v. Bernabe and Garcia*, 448 Phil. 269, 280 (2003).

was also able to establish that Lagat and Palalay fled the scene when the Alicia PNP tried to approach them at the *palay* buying station. To top it all, Lagat and Palalay failed to give any reason why they had Biag's tricycle. Their unexplained possession raises the presumption that they were responsible for the unlawful taking of the tricycle. Section 3(j), Rule 131 of the Rules of Court states that:

> [A] person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercises acts of ownership over, are owned by him.

In *Litton Mills, Inc. v. Sales*,[46] we said that for such presumption to arise, it must be proven that: (a) the property was stolen; (b) it was committed recently; (c) that the stolen property was found in the possession of the accused; and (d) the accused is unable to explain his possession satisfactorily.[47] As mentioned above, all these were proven by the prosecution during trial. Thus, it is presumed that Lagat and Palalay had unlawfully taken Biag's tricycle. In *People v. Bustinera*,[48] this Court defined "unlawful taking," as follows:

> Unlawful taking, or *apoderamiento*, is the taking of the motor vehicle without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things; it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[49]

Lagat and Palalay's intent to gain from the carnapped tricycle was also proven as they were caught in a *palay* buying station, on board the stolen tricycle, which they obviously used to transport the *cavans* of *palay* they had stolen and were going to sell at the station. In *Bustinera,* we elucidated on the concept of "intent to gain" and said:

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[46] G.R. No. 151400, September 1, 2004, 437 SCRA 488.

[47] *Id.* at 502.

[48] G.R. No. 148233, June 8, 2004, 431 SCRA 284.

[49] *Id.* at 295.

Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.[50]

Having established that the elements of carnapping are present in this case, we now go to the argument of the two accused that they cannot be convicted based on the circumstantial evidence presented by the prosecution.

Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime.

In *People v. Mansueto*,[51] we said:

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. Such evidence is founded on experience and observed facts and coincidences establishing a connection between the known and proven facts and the facts sought to be proved.[52]

Hence, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.[53]

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[50] *Id.* at 296.

[51] 391 Phil. 611 (2000).

[52] *Id.* at 629.

[53] *People v. Casitas, Jr.*, 445 Phil. 407, 417 (2003).

A careful and exhaustive examination of the evidence presented, excluding those that are inadmissible, show that the circumstantial evidence, when viewed as a whole, effectively establishes the guilt of Lagat and Palalay beyond reasonable doubt. We considered the following pieces of evidence as convincing:

First, Lagat and Palalay were found in possession of the tricycle the same day that it, together with its owner Biag, was reported missing.

Second, Lagat and Palalay were found at a *palay* buying station, with the stolen tricycle packed with *cavans* of *palay* allegedly stolen in Alicia, Isabela.

Third, Lagat and Palalay who were then on board the tricycle, jumped and ran the moment they saw the Alicia PNP approaching them.

Fourth, Lagat and Palalay could not explain to the Alicia PNP why they were in possession of Biag's tricycle.

Fifth, Biag's wallet and his tricycle's registration papers were found in the tricycle upon its inspection by the Alicia PNP.

Sixth, Biag's body bore hack wounds as evidenced by the *post-mortem* autopsy done on him, while his tricycle had traces of blood in it.

The foregoing circumstantial evidence only leads to the conclusion that Lagat and Palalay conspired to kill Biag in order to steal his tricycle. Direct proof that the two accused conspired is not essential as it may be inferred from their conduct before, during, and after their commission of the crime that they acted with a common purpose and design.[54] The pieces of evidence presented by the prosecution are consistent with one another and the only rational proposition that can be drawn therefrom is that the accused are guilty of killing Biag to **carnap** his tricycle.

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[54] *People v. Sube*, 449 Phil. 165, 176-177 (2003).

When a person is killed or raped in the course of or on the occasion of the carnapping, the crime of carnapping is qualified and the penalty is increased pursuant to Section 14 of Republic Act No. 6539, as amended:

> **Section 14.** *Penalty for Carnapping.* Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and **the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.** (As amended by R.A. No. 7659.) (Emphasis ours)

As there was no aggravating circumstance attendant in the commission of the crime, the RTC properly imposed the penalty of *reclusion perpetua*.

In conformity with prevailing jurisprudence, we affirm the award of ₱50,000.00 as civil indemnity *ex delicto* for the death of Jose Biag and ₱50,000.00 as moral damages for the proven mental suffering of his wife as a result of his untimely death. However, when actual damages proven by receipts during trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.[55] Thus, an award of ₱25,000.00 as temperate damages in lieu of the amount of ₱14,900.00 that the Court of Appeals awarded as actual damages is proper in this case.

Both the RTC and the Court of Appeals failed to consider that under Article 2206 of the Civil Code, the accused are also

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[55] *People v. Magdaraog*, G.R. No. 151251, May 19, 2004, 428 SCRA 529, 543.

jointly and severally liable for the loss of the earning capacity of Biag and such indemnity should be paid to his heirs.[56] In *People v. Jadap*,[57] this Court said:

> As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. In this case, no documentary evidence was presented to prove the claim of the victim's heirs for damages by reason of loss of earning capacity. However, the victim's father testified that at the time of his son's death, he was only 20 years old and was working as a mason with a monthly income of ₱3,000.00. We find the father's testimony sufficient to justify the award of damages for loss of earning capacity.[58]

Biag's widow, Florida, testified that Biag worked as a farmer, *tanod*, and tricycle driver, and that his income amounted to ₱40,000.00 per cropping season as a farmer, ₱2,000.00 per month as a *tanod,* and ₱300.00 per day as a tricycle driver. However, since the prosecution failed to present any document pertaining to Biag's appointment as a *tanod*, or that he actually worked as a farmer, we shall consider only his earnings as a tricycle driver. According to the death certificate[59] submitted by the prosecution, Biag was 56 years old at the time of his death.

The amount of damages recoverable for the loss of earning capacity of the deceased is based on two factors: 1) the number of years on the basis of which the damages shall be computed; and 2) the rate at which the losses sustained by the heirs of the deceased should be fixed. The first factor is based on the formula

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[56] *People v. Sirad,* 390 Phil. 412, 426 (2000).

[57] G.R. No. 177983, March 30, 2010, 617 SCRA 179.

[58] *Id.* at 196-197.

[59] Records, p. 9.

(2/3 x 80 – age of the deceased at the time of his death = life expectancy) which is adopted from the American Expectancy Table of Mortality.[60] Net income is computed by deducting from the amount of the victim's gross income the amount of his living expenses. As there is no proof of Biag's living expenses, the net income is estimated to be 50% of the gross annual income.[61] Thus, the loss of earning capacity of the deceased is computed as follows:

Net Earning Capacity = life expectancy x [gross annual income – living expenses][62]
= 2/3 [80-age at time of death] x [gross annual income - 50% of gross annual income]
= 2/3 [80-56] x [₱109,500.00 - ₱54,750.00]
= 16 x ₱54,750.00
= ₱876,000.00

WHEREFORE, we *AFFIRM* with *MODIFICATION* the October 8, 2008 decision of the Court of Appeals in *CA-G.R. CR.-H.C. No. 02869.* Accused-appellants *Renato Lagat y Gawan* and *James Palalay y Villarosa* are found *GUILTY* beyond reasonable doubt of the crime of *QUALIFIED CARNAPPING* and are sentenced to suffer the penalty of *reclusion perpetua.* They are hereby *ORDERED* to pay the heirs of the victim Jose Biag the following: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱25,000.00 as temperate damages; (d) ₱876,000.00 as loss of earning capacity; and (e) interest on all damages awarded at the rate of 6% *per annum* from the date of finality of this judgment.

SO ORDERED.

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

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[60] *People v. Librando*, 390 Phil. 543, 559 (2000).

[61] *People v. Templo*, 400 Phil. 471, 494 (2000).

[62] *People v. Verde*, 362 Phil. 305, 321 (1999).

SECOND DIVISION

[G.R. No. 191265. September 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELO PEREZ,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS, ESTABLISHED IN CASE AT BAR.— The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented. x x x All elements of rape under Article 266-A of the Revised Penal Code were sufficiently proved through the statement of AAA alone. The offender is a man who had carnal knowledge of AAA when he forced himself upon the latter. Appellant accomplished his purpose through the use of threat, *i.e.* threatening to kill AAA. In fact, it is under these same threats that AAA was not able to resist nor summon for help[.]

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON, UPHELD.— In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed. We affirm the finding of guilt as we once more say that the trial court is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. After a thorough examination of the records, we agree with the factual findings of the RTC, as affirmed by the Court of Appeals, on the credibility of AAA's testimony. AAA did not waver in pointing to appellant as her assailant. She was straightforward and unequivocal in narrating how she was raped by appellant[.]

3. ID.; ID.; ID.; TRIVIAL INCONSISTENCY IN THE TESTIMONY OF A WITNESS CANNOT DESTROY HER CREDIBILITY.— The inconsistency of AAA's statement pertaining to the presence of BBB at the crime scene can be easily dismissed, as it was dismissed by the appellate court in this wise: Clearly, the question of whether the victim's mother was in their house at the time of the rape or not is immaterial in proving the guilt or innocence of the accused-appellant. Hence, such minor inconsistency in the witness-victim's testimony cannot be a ground to destroy her credibility or more so, serve as basis for accused-appellant's acquittal. Indeed, the presence of BBB at the *locus criminis* is of no moment. It is not an essential element to establish the crime of rape. The inconsistent statements of AAA pertaining to BBB may be attributed to the fact that she was very confused at that time and she is not expected to remember each and every detail of the events that transpired that day, especially matters which are trivial and inconsequential.

4. ID.; ID.; MEDICAL FINDINGS IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE.— The appellate court is likewise correct in downplaying the medico-legal findings which it ruled as "merely corroborative in character and is not an element of rape." The prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of the victim is not indispensable in a prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict.

5. CRIMINAL LAW; RAPE; PENALTY AND CIVIL LIABILITY. — Under Article 266-B of the Revised Penal Code, rape under paragraph 1 of Article 266-A is punishable by *reclusion perpetua*. The trial court therefore correctly imposed the penalty. We likewise affirm the award of civil indemnity of ₱50,000.00 and moral damages amounting to ₱50,000.00. Civil indemnity is mandatory when rape is found to have been committed while moral damages are awarded to rape victims without need of proof other than the fact of rape on the assumption that the victim suffered moral injuries from the experience she underwent. An additional award of ₱30,000.00 as exemplary damages should likewise be given, as well as interest of six percent (6%) *per* annum on all damages awarded from the finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The subject of this appeal is the Decision[1] of the Court of Appeals dated 8 July 2009 in CA-G.R. CR-HC No. 02978 affirming the Decision[2] of the Regional Trial Court (RTC), Fifth Judicial Region, Branch 8, Legazpi City in Criminal Case No. 8182 finding appellant Marcelo Perez guilty beyond reasonable doubt of the crime of rape.

Appellant was charged in an Information for Rape allegedly committed as follows:

That on or about the 30th day of June, 1998, at more or less 4:00 o'clock in the morning, at [XXX],[3] Municipality of [XXX], Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],[4] 16 years of age, against her will and consent, to her damage and prejudice.[5]

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[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., concurring. *Rollo,* pp. 2-13.

[2] Presided by Judge Cezar A. Bordeos. CA *rollo,* pp. 7-23.

[3] The place of commission is withheld to preserve confidentiality of the identity of the victim. See *People v. Cabalquinto,* G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[4] The victim's real name, as well as the members of her immediate family is withheld to protect her privacy pursuant to *People v. Cabalquinto*.

[5] Records, p. 1.

On arraignment, appellant pleaded not guilty. During the preliminary conference, appellant admitted that AAA is the sister of his wife.[6] Trial ensued.

AAA, her mother, BBB[7] and the medico-legal officer, Dr. Tirzo de los Reyes, Jr. (Dr. de los Reyes) testified for the prosecution.

AAA recounted that on 30 June 1998 at around 4:00 a.m. she was awakened by appellant, her brother-in-law, who then dragged her to the bathroom. Inside the bathroom, appellant covered AAA's mouth with a piece of cloth. Appellant then removed his clothes and then began undressing AAA. He put his brief into AAA's mouth. He forced AAA down and then inserted his penis into AAA's vagina. Appellant managed to slash the wrist of AAA who then lost consciousness.[8] On cross-examination, AAA narrated that she did not offer any resistance because appellant threatened her with a knife. When AAA regained consciousness, she found herself beside her mother BBB.[9]

BBB testified that she was in Manila when her daughter CCC[10] called up to inform her that AAA was raped. BBB, together with AAA, proceeded to the police station to report the incident. She saw the wound on AAA's wrist, as well as the brief placed by appellant inside AAA's mouth.[11]

Dr. de los Reyes conducted a physical examination on AAA two (2) days after the alleged rape incident, and issued a medico-legal certification containing the following findings:

> Vaginal Examination: A lubricated right glove was used and the vaginal canal admits 2 fingers. No abnormalities were noted in the labia majora and minora. No hymen was seen.

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[6] *Id.* at 51.

[7] *Supra* note 4.

[8] TSN, 29 March 2006, pp. 4-6.

[9] *Id.* at 20-27.

[10] *Supra* note 4.

[11] TSN, 1 March 2006, pp. 4-5 and 11.

A lubricated medium sized vaginal speculum was inserted which revealed: normal looking vaginal canal and external os of the cervix. No lacerations noted.

A specimen of the vaginal discharge was obtained and was sent for laboratory identification of micro-organisms.[12]

The appellant never testified inspite of numerous resettings of the trial. The defense rested their case without presenting any documentary or any other testimonial evidence.

On 24 August 2007, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the Decision reads:

WHEREFORE, PREMISES CONSIDERED, the prosecution having proven the guilt of the accused beyond a shadow of doubt, MARCELO O. PEREZ is hereby found guilty of rape committed against his sister-in-law, [AAA], and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

Conformably with existing jurisprudence, accused is hereby ordered to pay the private offended party the amounts of [₱]50,000.00 as civil indemnity and [₱]50,000.00 as moral damages.[13]

The RTC held that the testimony of the rape victim had clearly established the elements of rape. The RTC dismissed as minor the inconsistency regarding BBB's presence at the house during the commission of the crime, which as such, does not affect the credibility of AAA. The trial court categorically stated that the absence of laceration and abnormalities on the victim's body did not negate the commission of rape. The trial court considered appellant's flight from the crime scene as an indication of guilt.

Appellant filed a notice of appeal. On 8 July 2009, the Court of Appeals affirmed the trial court's Decision *in toto*, *viz*:

IN LIGHT OF ALL THE FOREGOING, the appeal is hereby DENIED. The decision dated 24 August 2007 of the Regional Trial

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[12] Records, p. 2.

[13] CA *rollo*, p. 23.

Court, Branch 8, Legazpi City, finding accused-appellant Marcelo Perez guilty beyond reasonable doubt of the crime of rape is hereby AFFIRMED *IN TOTO*.[14]

Hence, the instant appeal.

On 7 April 2010, this Court required the appellant and the appellee to simultaneously submit their respective supplemental briefs.[15] Both parties manifested that they would merely adopt their briefs before the Court of Appeals.[16]

Appellant attacks the credibility of the victim by pointing out alleged incredulities and inconsistencies in her testimony. First, AAA testified that her parents, as well as her sister CCC, were all sleeping inside the small house. Appellant notes as incredible that nobody noticed that AAA was being dragged from the small house into the bathroom situated outside the house. Second, AAA did not try to get any of her housemate's attention nor did she try to shout for help. Third, appellant could not have easily undressed himself, and then the victim, while holding a knife. Fourth, the claim of AAA that her mother was inside the house when the rape was allegedly committed ran counter to her statement that her mother was in fact in Manila at that time. Finally, appellant also invites our attention to the findings contained in the medico-legal report. The absence of fresh laceration or any sign of trauma does not jive with AAA's claim that she was raped through the use of force and intimidation.

On the other hand, the Office of the Solicitor General (OSG) insists that the failure of the victim to shout for help does not negate rape. The OSG explains that AAA was cowed into silence and submission when appellant threatened to kill her should she resist. The OSG also dismissed the inconsistencies in AAA's testimony as inconsequential. Finally, the OSG belittles the medical findings on the absence of laceration or trauma on the victim's body as the same is not indispensable to prove the

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[14] *Rollo*, p. 12.

[15] *Id.* at 19-20.

[16] *Id.* at 22-23 and 26.

crime of rape. All told, the OSG is satisfied that the prosecution was able to prove appellant's guilt beyond reasonable doubt.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[17]

The prosecution sought to establish the presence of these elements through the testimony of the victim herself. The testimony, here found credible, paves way for the affirmance of the conviction of the accused. In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed.[18]

We affirm the finding of guilt as we once more say that the trial court is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial.[19]

After a thorough examination of the records, we agree with the factual findings of the RTC, as affirmed by the Court of Appeals, on the credibility of AAA's testimony. AAA did not waver in pointing to appellant as her assailant. She was straightforward and unequivocal in narrating how she was raped by appellant, thus:

Q: You have stated a while [a]go that you were in your house on June 30, 1998 in the early morning. What were you doing then?

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[17] *People v. Quintal*, G.R. No. 184170, 2 February 2011.

[18] *People v. Paculba*, G.R. No. 183453, 9 March 2010, 614 SCRA 755, 763-764 citing *People v. Mingming*, G.R. No. 174195, 10 December 2008, 573 SCRA 509, 532; *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 516.

[19] *People v. Malana*, G.R. No. 185716, 29 September 2010, 631 SCRA 676, 686 citing *Remiendo v. People*, G.R. No. 184874, 9 October 2009, 603 SCRA 274, 287.

A: I was sleeping then.

Q: What time did you wake up?

A: At 4:00 in the morning.

Q: Why is it that you were able to wake up in the early morning at 4:00 o'clock?

A: At 4:00 o'clock that early morning, I was awakened when he dragged me to the bathroom.

ATTY. ALMAYDA

x x x x x x x x x

A: I was awakened that early morning at 4:00 o'clock because he dragged me to the bathroom and he did something bad to me. (The witness is crying while testifying.)

Q: You have stated that a certain person dragged you at the bathroom, who is that person you are referring to?

A: Marcelo Perez.

Q: If that Marcelo Perez is inside the courtroom, can you point to him?

A: (Witness pointed to a person, who upon being asked of his name answered that he is Marcelo Perez.)

Q: You have stated that Marcelo Perez did something bad to you, what is that something bad you are referring to?

A: He raped me.

Q: How did he rape you?

A: He undressed himself, including his brief, and while we were inside the comfort room Marcelo Perez took off his brief, placed it inside my mouth and covered my mouth with a piece of cloth.

Q: After that, what did he do next?

A: He took off my short pants.

Q: How about your panty?

A: Including my panty.

Q: After he removed your shorts and panty, what did he do?

A: He laid me on the ground and he inserted his penis into my vagina.

Q: What did you feel when he inserted his penis into your vagina?

A: I did not feel anything because he slashed my wrist with a knife.[20]

All elements of rape under Article 266-A of the Revised Penal Code[21] were sufficiently proved through the statement of AAA alone. The offender is a man who had carnal knowledge of AAA when he forced himself upon the latter. Appellant accomplished his purpose through the use of threat, *i.e.* threatening to kill AAA. In fact, it is under these same threats that AAA was not able to resist nor summon for help, thus:

Q: While you were being dragged by the accused, did you observe your other companions madam witness? Were you able to observe them?

A: I did not have time to look at them anymore.

Q: But during the time that you were dragged you were so afraid?

A: Yes, sir.

Q: You were so afraid because there might be something bad that might happen to you, is that right madam witness?

Q: Yes, sir, because he was already threatening me.

A: Before being dragged by the accused, did I get it right that he threatened you not to shout or else the accused might kill you?

A: He also threatened me with death.

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[20] TSN, 29 March 2006, pp. 4-6.

[21] Article 266-A. Rape, When and How Committed. Rape is committed-

1. By a man who shall have carnal knowledge of a woman under any of the following:

a. Through force, threat, or intimidation;
b. When the offended party is deprived of reason or otherwise unconscious;
c. By means of fraudulent machination or grave abuse of authority; and
d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Q: He also threatened you with death in order for you not to shout?

A: Yes, sir.

Q: In fact you were so threatened that you did not shout?

A: Yes, sir.

Q: And when the accused dragged you outside the bedroom, you did not shout madam witness?

A: I did not have the courage to shout because he was already holding a knife in the hand.[22]

The inconsistency of AAA's statement pertaining to the presence of BBB at the crime scene can be easily dismissed, as it was dismissed by the appellate court in this wise:

> Clearly, the question of whether the victim's mother was in their house at the time of the rape or not is immaterial in proving the guilt or innocence of the accused-appellant. Hence, such minor inconsistency in the witness-victim's testimony cannot be a ground to destroy her credibility or more so, serve as basis for accused-appellant's acquittal.[23]

Indeed, the presence of BBB at the *locus criminis* is of no moment. It is not an essential element to establish the crime of rape. The inconsistent statements of AAA pertaining to BBB may be attributed to the fact that she was very confused at that time and she is not expected to remember each and every detail of the events that transpired that day, especially matters which are trivial and inconsequential.

The appellate court is likewise correct in downplaying the medico-legal findings which it ruled as "merely corroborative in character and is not an element of rape."[24] The prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of

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[22] TSN, 29 March 2006, pp. 19-20.

[23] *Rollo*, p. 10.

[24] *Id.* at 9.

the victim is not indispensable in a prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict.[25]

Under Article 266-B of the Revised Penal Code, rape under paragraph 1 of Article 266-A is punishable by *reclusion perpetua*. The trial court therefore correctly imposed the penalty. We likewise affirm the award of civil indemnity of ₱50,000.00 and moral damages amounting to ₱50,000.00. Civil indemnity is mandatory when rape is found to have been committed while moral damages are awarded to rape victims without need of proof other than the fact of rape on the assumption that the victim suffered moral injuries from the experience she underwent.[26] An additional award of ₱30,000.00 as exemplary damages should likewise be given, as well as interest of six percent (6%) *per* annum on all damages awarded from the finality of judgment until fully paid.[27]

WHEREFORE, the Decision of the Court of Appeals dated 8 July 2009 affirming *in toto* the Decision of the RTC dated 24 August 2007 is *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages in the amount of ₱30,000.00 is imposed in addition to the civil indemnity in the amount of ₱50,000.00 and moral damages also in the amount of ₱50,000.00. Interest at the rate of six percent (6%) *per* annum is likewise imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo,[*] and *Sereno, JJ.*, concur.

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[25] *People v. Otos*, G.R. No. 189821, 23 March 2011 citing *People v. Cadap*, G.R. No. 190633, 5 July 2010, 623 SCRA 655, 663; *People v. Llanas, Jr.*, G.R. No. 190616, 29 June 2010, 622 SCRA 602, 613; *People v. Barberos*, G.R. No. 187494, 23 December 2009, 609 SCRA 381, 399; *People v. Araojo*, G.R. No. 185203, 17 September 2009, 600 SCRA 295, 308-309.

[26] *People v. Masagca, Jr.*, G.R. No. 184922, 23 February 2011.

[27] *People v. Lucero*, G.R. No. 188705, 2 March 2011.

[*] Per Special Order No. 1077 dated 12 September 2011.

SECOND DIVISION

[G.R. No. 192084. September 14, 2011]

JOSE MEL BERNARTE, *petitioner, vs.* **PHILIPPINE BASKETBALL ASSOCIATION (PBA), JOSE EMMANUEL M. EALA, and PERRY MARTINEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS, JUDGMENTS, ORDERS, AND OTHER PAPERS; ACTUAL AND CONSTRUCTIVE SERVICE, WHEN COMPLETE.— The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee. Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee.

2. ID.; ID.; ID.; CONSTRUCTIVE SERVICE, HOW PROVED: APPLICATION.— The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered. In this case, petitioner failed to present any concrete proof as to how, when and to whom the delivery and receipt of the three notices issued by the post office was made. There is no conclusive evidence showing that the post office notices were actually received by respondents, negating petitioner's

claim of constructive service of the Labor Arbiter's decision on respondents. The Postmaster's Certification does not sufficiently prove that the three notices were delivered to and received by respondents; it only indicates that the post office issued the three notices. Simply put, the issuance of the notices by the post office is not equivalent to delivery to and receipt by the addressee of the registered mail. Thus, there is no proof of completed constructive service of the Labor Arbiter's decision on respondents.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER AND EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST TO DETERMINE EXISTENCE THEREOF.— To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The so-called "**control test**" is the most important indicator of the presence or absence of an employer-employee relationship.

4. ID.; ID.; ID.; LACK OF CONTROL BY THE EMPLOYER; THE JOB OF OFFICIATING A PROFESSIONAL BASKETBALL GAME CALLS FOR FREEDOM OF CONTROL; A REFEREE IS AN INDEPENDENT CONTRACTOR.— We agree with respondents that once in the playing court, the referees exercise their own independent judgment, based on the rules of the game, as to when and how a call or decision is to be made. The referees decide whether an infraction was committed, and the PBA cannot overrule them once the decision is made on the playing court. The referees are the only, absolute, and final authority on the playing court. Respondents or any of the PBA officers cannot and do not determine which calls to make or not to make and cannot control the referee when he blows the whistle because such authority exclusively belongs to the referees. The very nature of petitioner's job of officiating a professional basketball game undoubtedly calls for freedom of control by respondents. Moreover, the following circumstances indicate that petitioner is an independent contractor: (1) the referees are required to report for work only when PBA games are scheduled, which

is three times a week spread over an average of only 105 playing days a year, and they officiate games at an average of two hours per game; and (2) the only deductions from the fees received by the referees are withholding taxes. In other words, unlike regular employees who ordinarily report for work eight hours per day for five days a week, petitioner is required to report for work only when PBA games are scheduled or three times a week at two hours per game. In addition, there are no deductions for contributions to the Social Security System, Philhealth or Pag-Ibig, which are the usual deductions from employees' salaries. These undisputed circumstances buttress the fact that petitioner is an independent contractor, and not an employee of respondents. Furthermore, the applicable foreign case law declares that a referee is an independent contractor, whose special skills and independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party.

5. ID.; ID.; ID.; ID.; ID.; NON-RENEWAL OF THE REFEREE'S CONTRACT DOES NOT CONSTITUTE ILLEGAL DISMISSAL.— [T]he fact that PBA repeatedly hired petitioner does not by itself prove that petitioner is an employee of the former. For a hired party to be considered an employee, the hiring party must have control over the means and methods by which the hired party is to perform his work, which is absent in this case. The continuous rehiring by PBA of petitioner simply signifies the renewal of the contract between PBA and petitioner, and highlights the satisfactory services rendered by petitioner warranting such contract renewal. Conversely, if PBA decides to discontinue petitioner's services at the end of the term fixed in the contract, whether for unsatisfactory services, or violation of the terms and conditions of the contract, or for whatever other reason, the same merely results in the non-renewal of the contract, as in the present case. The non-renewal of the contract between the parties does not constitute illegal dismissal of petitioner by respondents.

APPEARANCES OF COUNSEL

Marcos L. Estrada, Jr. for petitioner.
Sayuno Mendoza & San Jose Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 17 December 2009 Decision[2] and 5 April 2010 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 105406. The Court of Appeals set aside the decision of the National Labor Relations Commission (NLRC), which affirmed the decision of the Labor Arbiter, and held that petitioner Jose Mel Bernarte is an independent contractor, and not an employee of respondents Philippine Basketball Association (PBA), Jose Emmanuel M. Eala, and Perry Martinez. The Court of Appeals denied the motion for reconsideration.

The Facts

The facts, as summarized by the NLRC and quoted by the Court of Appeals, are as follows:

> Complainants (Jose Mel Bernarte and Renato Guevarra) aver that they were invited to join the PBA as referees. During the leadership of Commissioner Emilio Bernardino, they were made to sign contracts on a year-to-year basis. During the term of Commissioner Eala, however, changes were made on the terms of their employment.
>
> Complainant Bernarte, for instance, was not made to sign a contract during the first conference of the All-Filipino Cup which was from February 23, 2003 to June 2003. It was only during the second conference when he was made to sign a one and a half month contract for the period July 1 to August 5, 2003.

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

[2] *Rollo*, pp. 73-83. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Jose C. Reyes, Jr. and Ricardo R. Rosario, concurring.

[3] *Id.* at 85-86. In the same resolution, the Court of Appeals granted the Motion to Withdraw motion for reconsideration filed by Renato Guevarra, another referee and petitioner's co-respondent in the Court of Appeals, rendering the decision of the Court of Appeals final as to him.

On January 15, 2004, Bernarte received a letter from the Office of the Commissioner advising him that his contract would not be renewed citing his unsatisfactory performance on and off the court. It was a total shock for Bernarte who was awarded Referee of the year in 2003. He felt that the dismissal was caused by his refusal to fix a game upon order of Ernie De Leon.

On the other hand, complainant Guevarra alleges that he was invited to join the PBA pool of referees in February 2001. On March 1, 2001, he signed a contract as trainee. Beginning 2002, he signed a yearly contract as Regular Class C referee. On May 6, 2003, respondent Martinez issued a memorandum to Guevarra expressing dissatisfaction over his questioning on the assignment of referees officiating out-of-town games. Beginning February 2004, he was no longer made to sign a contract.

Respondents aver, on the other hand, that complainants entered into two contracts of retainer with the PBA in the year 2003. The first contract was for the period January 1, 2003 to July 15, 2003; and the second was for September 1 to December 2003. After the lapse of the latter period, PBA decided not to renew their contracts.

Complainants were not illegally dismissed because they were not employees of the PBA. Their respective contracts of retainer were simply not renewed. PBA had the prerogative of whether or not to renew their contracts, which they knew were fixed.[4]

In her 31 March 2005 Decision,[5] the Labor Arbiter[6] declared petitioner an employee whose dismissal by respondents was illegal. Accordingly, the Labor Arbiter ordered the reinstatement of petitioner and the payment of backwages, moral and exemplary damages and attorney's fees, to wit:

WHEREFORE, premises considered all respondents who are here found to have illegally dismissed complainants are hereby ordered to (a) reinstate complainants within thirty (30) days from the date of receipt of this decision and to solidarily pay complainants:

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

[5] *Id.* at 111-147.

[6] Teresita D. Castillon-Lora.

	JOSE MEL BERNARTE	RENATO GUEVARRA
1. backwages from January 1, 2004 up to the finality of this Decision, which to date is	₱536,250.00	₱211,250.00
2. moral damages	100,000.00	100,000.00
3. exemplary damages	50,000.00	50,000.00
4. 10% attorney's fees	68,625.00	36,125.00
TOTAL	₱754,875.00	₱397,375.00

or a total of ₱1,152,250.00

The rest of the claims are hereby dismissed for lack of merit or basis.

SO ORDERED.[7]

In its 28 January 2008 Decision,[8] the NLRC affirmed the Labor Arbiter's judgment. The dispositive portion of the NLRC's decision reads:

WHEREFORE, the appeal is hereby DISMISSED. The Decision of Labor Arbiter Teresita D. Castillon-Lora dated March 31, 2005 is AFFIRMED.

SO ORDERED.[9]

Respondents filed a petition for *certiorari* with the Court of Appeals, which overturned the decisions of the NLRC and Labor Arbiter. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby **GRANTED**. The assailed *Decision* dated January 28, 2008 and *Resolution* dated August 26,

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[7] *Rollo*, p. 147.

[8] *Id.* at 87-94. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[9] *Id.* at 93.

2008 of the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Private respondents' complaint before the Labor Arbiter is **DISMISSED**.

SO ORDERED.[10]

The Court of Appeals' Ruling

The Court of Appeals found petitioner an independent contractor since respondents did not exercise any form of control over the means and methods by which petitioner performed his work as a basketball referee. The Court of Appeals held:

> While the NLRC agreed that the PBA has no control over the referees' acts of blowing the whistle and making calls during basketball games, it, nevertheless, theorized that the said acts refer to the means and methods employed by the referees in officiating basketball games for the illogical reason that said acts refer only to the referees' skills. How could a skilled referee perform his job without blowing a whistle and making calls? Worse, how can the PBA control the performance of work of a referee without controlling his acts of blowing the whistle and making calls?
>
> Moreover, this Court disagrees with the Labor Arbiter's finding (as affirmed by the NLRC) that the Contracts of Retainer show that petitioners have control over private respondents.
>
> x x x x x x x x x
>
> Neither do We agree with the NLRC's affirmance of the Labor Arbiter's conclusion that private respondents' repeated hiring made them regular employees by operation of law.[11]

The Issues

The main issue in this case is whether petitioner is an employee of respondents, which in turn determines whether petitioner was illegally dismissed.

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[10] *Id.* at 83.

[11] *Id.* at 78-79, 81.

Petitioner raises the procedural issue of whether the Labor Arbiter's decision has become final and executory for failure of respondents to appeal with the NLRC within the reglementary period.

The Ruling of the Court

The petition is bereft of merit.

The Court shall first resolve the procedural issue posed by petitioner.

Petitioner contends that the Labor Arbiter's Decision of 31 March 2005 became final and executory for failure of respondents to appeal with the NLRC within the prescribed period. Petitioner claims that the Labor Arbiter's decision was constructively served on respondents as early as August 2005 while respondents appealed the Arbiter's decision only on 31 March 2006, way beyond the reglementary period to appeal. Petitioner points out that service of an unclaimed registered mail is deemed complete five days from the date of first notice of the post master. In this case three notices were issued by the post office, the last being on 1 August 2005. The unclaimed registered mail was consequently returned to sender. Petitioner presents the Postmaster's Certification to prove constructive service of the Labor Arbiter's decision on respondents. The Postmaster certified:

x x x x x x x x x

That upon receipt of said registered mail matter, our registry in charge, Vicente Asis, Jr., immediately issued the first registry notice to claim on July 12, 2005 by the addressee. The second and third notices were issued on July 21 and August 1, 2005, respectively.

That the subject registered letter was returned to the sender (RTS) because the addressee failed to claim it after our one month retention period elapsed. Said registered letter was dispatched from this office to Manila CPO (RTS) under bill #6, line 7, page1, column 1, on September 8, 2005.[12]

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[12] *Id.* at 150.

Section 10, Rule 13 of the Rules of Court provides:

SEC. 10. Completeness of service. – Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster.[13]

Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee.[14] Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee.[15] Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee.[16]

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered.[17]

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[13] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, 31 March 2006, 486 SCRA 302, 321.

[14] *Id.*; *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655, 661 (1999).

[15] *Spouses Aguilar v. Court of Appeals*, *supra* at 662, citing *De la Cruz v. De la Cruz*, 160 SCRA 361 (1988).

[16] *Spouses Aguilar v. Court of Appeals*, *supra* at 662, citing *Barrameda v. Castillo*, 168 Phil. 170, (1977).

[17] *Barrameda v. Castillo*, 168 Phil. 170, 173 (1977).

In this case, petitioner failed to present any concrete proof as to how, when and to whom the delivery and receipt of the three notices issued by the post office was made. There is no conclusive evidence showing that the post office notices were actually received by respondents, negating petitioner's claim of constructive service of the Labor Arbiter's decision on respondents. The Postmaster's Certification does not sufficiently prove that the three notices were delivered to and received by respondents; it only indicates that the post office issued the three notices. Simply put, the issuance of the notices by the post office is not equivalent to delivery to and receipt by the addressee of the registered mail. Thus, there is no proof of completed constructive service of the Labor Arbiter's decision on respondents.

At any rate, the NLRC declared the issue on the finality of the Labor Arbiter's decision moot as respondents' appeal was considered in the interest of substantial justice. We agree with the NLRC. The ends of justice will be better served if we resolve the instant case on the merits rather than allowing the substantial issue of whether petitioner is an independent contractor or an employee linger and remain unsettled due to procedural technicalities.

The existence of an employer-employee relationship is ultimately a question of fact. As a general rule, factual issues are beyond the province of this Court. However, this rule admits of exceptions, one of which is where there are conflicting findings of fact between the Court of Appeals, on one hand, and the NLRC and Labor Arbiter, on the other, such as in the present case.[18]

To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the

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[18] *Sycip Gorres Velayo & Company v. De Raedt*, G.R. No. 161366, 16 June 2009, 589 SCRA 160, 167.

employer's power to control the employee on the means and methods by which the work is accomplished. The so-called "**control test**" is the most important indicator of the presence or absence of an employer-employee relationship.[19]

In this case, PBA admits repeatedly engaging petitioner's services, as shown in the retainer contracts. PBA pays petitioner a retainer fee, exclusive of per diem or allowances, as stipulated in the retainer contract. PBA can terminate the retainer contract for petitioner's violation of its terms and conditions.

However, respondents argue that the all-important element of control is lacking in this case, making petitioner an independent contractor and not an employee of respondents.

Petitioner contends otherwise. Petitioner asserts that he is an employee of respondents since the latter exercise control over the performance of his work. Petitioner cites the following stipulations in the retainer contract which evidence control: (1) respondents classify or rate a referee; (2) respondents require referees to attend all basketball games organized or authorized by the PBA, at least one hour before the start of the first game of each day; (3) respondents assign petitioner to officiate ballgames, or to act as alternate referee or substitute; (4) referee agrees to observe and comply with all the requirements of the PBA governing the conduct of the referees whether on or off the court; (5) referee agrees (a) to keep himself in good physical, mental, and emotional condition during the life of the contract; (b) to give always his best effort and service, and loyalty to the PBA, and not to officiate as referee in any basketball game outside of the PBA, without written prior consent of the Commissioner; (c) always to conduct himself on and off the court according to the highest standards of honesty or morality; and (6) imposition of various sanctions for violation of the terms and conditions of the contract.

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[19] *Id.*; *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583, 594-595.

The foregoing stipulations hardly demonstrate control over the means and methods by which petitioner performs his work as a referee officiating a PBA basketball game. The contractual stipulations do not pertain to, much less dictate, how and when petitioner will blow the whistle and make calls. On the contrary, they merely serve as rules of conduct or guidelines in order to maintain the integrity of the professional basketball league. As correctly observed by the Court of Appeals, "how could a skilled referee perform his job without blowing a whistle and making calls? x x x [H]ow can the PBA control the performance of work of a referee without controlling his acts of blowing the whistle and making calls?"[20]

In *Sonza v. ABS-CBN Broadcasting Corporation*,[21] which determined the relationship between a television and radio station and one of its talents, the Court held that not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. The Court held:

> We find that these general rules are merely guidelines towards the achievement of the mutually desired result, which are top-rating television and radio programs that comply with standards of the industry. We have ruled that:
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> > Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. v. NLRC*. In said case, we held that:
> >
> > > Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result,

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[20] *Rollo*, p. 78.

[21] *Supra* note 19.

> create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.[22]

We agree with respondents that once in the playing court, the referees exercise their own independent judgment, based on the rules of the game, as to when and how a call or decision is to be made. The referees decide whether an infraction was committed, and the PBA cannot overrule them once the decision is made on the playing court. The referees are the only, absolute, and final authority on the playing court. Respondents or any of the PBA officers cannot and do not determine which calls to make or not to make and cannot control the referee when he blows the whistle because such authority exclusively belongs to the referees. The very nature of petitioner's job of officiating a professional basketball game undoubtedly calls for freedom of control by respondents.

Moreover, the following circumstances indicate that petitioner is an independent contractor: (1) the referees are required to report for work only when PBA games are scheduled, which is three times a week spread over an average of only 105 playing days a year, and they officiate games at an average of two hours per game; and (2) the only deductions from the fees received by the referees are withholding taxes.

In other words, unlike regular employees who ordinarily report for work eight hours per day for five days a week, petitioner is required to report for work only when PBA games are scheduled or three times a week at two hours per game. In addition, there are no deductions for contributions to the Social Security System, Philhealth or Pag-Ibig, which are the usual deductions from employees' salaries. These undisputed circumstances buttress the fact that petitioner is an independent contractor, and not an employee of respondents.

Furthermore, the applicable foreign case law declares that a referee is an independent contractor, whose special skills and

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[22] *Id.* at 603-604.

independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party.

In *Yonan v. United States Soccer Federation, Inc.*,[23] the United States District Court of Illinois held that plaintiff, a soccer referee, is an independent contractor, and not an employee of defendant which is the statutory body that governs soccer in the United States. As such, plaintiff was not entitled to protection by the Age Discrimination in Employment Act. The U.S. District Court ruled:

> Generally, "if an employer has the right to control and direct the work of an individual, not only as to the result to be achieved, but also as to details by which the result is achieved, an employer/employee relationship is likely to exist." The Court must be careful to distinguish between "control[ling] the conduct of another party contracting party by setting out in detail his obligations" consistent with the freedom of contract, on the one hand, and "the discretionary control an employer daily exercises over its employee's conduct" on the other.
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> Yonan asserts that the Federation "closely supervised" his performance at each soccer game he officiated by giving him an assessor, discussing his performance, and controlling what clothes he wore while on the field and traveling. Putting aside that the Federation did not, for the most part, control what clothes he wore, the Federation did not supervise Yonan, but rather evaluated his performance after matches. That the Federation evaluated Yonan as a referee does not mean that he was an employee. There is no question that parties retaining independent contractors may judge the performance of those contractors to determine if the contractual relationship should continue. x x x
>
> It is undisputed that the Federation did not control the way Yonan refereed his games. He had full discretion and authority, under the Laws of the Game, to call the game as he saw fit. x x x In a similar vein, subjecting Yonan to qualification standards and procedures like the Federation's registration and training requirements does not create an employer/employee relationship. x x x

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[23] Case No. 09 C 4280, 22 June 2011 (citations omitted).

A position that requires special skills and independent judgment weights in favor of independent contractor status. x x x Unskilled work, on the other hand, suggests an employment relationship. x x x Here, it is undisputed that soccer refereeing, especially at the professional and international level, requires "a great deal of skill and natural ability." Yonan asserts that it was the Federation's training that made him a top referee, and that suggests he was an employee. Though substantial training supports an employment inference, that inference is dulled significantly or negated when the putative employer's activity is the result of a statutory requirement, not the employer's choice. x x x

In *McInturff v. Battle Ground Academy of Franklin*,[24] it was held that the umpire was not an agent of the Tennessee Secondary School Athletic Association (TSSAA), so the player's vicarious liability claim against the association should be dismissed. In finding that the umpire is an independent contractor, the Court of Appeals of Tennesse ruled:

The TSSAA deals with umpires to achieve a result-uniform rules for all baseball games played between TSSAA member schools. The TSSAA does not supervise regular season games. It does not tell an official how to conduct the game beyond the framework established by the rules. The TSSAA does not, in the vernacular of the case law, control the means and method by which the umpires work.

In addition, the fact that PBA repeatedly hired petitioner does not by itself prove that petitioner is an employee of the former. For a hired party to be considered an employee, the hiring party must have control over the means and methods by which the hired party is to perform his work, which is absent in this case. The continuous rehiring by PBA of petitioner simply signifies the renewal of the contract between PBA and petitioner, and highlights the satisfactory services rendered by petitioner warranting such contract renewal. Conversely, if PBA decides to discontinue petitioner's services at the end of the term fixed in the contract, whether for unsatisfactory services, or violation

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[24] Not Reported in S.W.3d, 2009 WL 4878614 Tenn.Ct.App.,2009. No. M2009-00504-COA-R3-CV, 16 December 2009.

of the terms and conditions of the contract, or for whatever other reason, the same merely results in the non-renewal of the contract, as in the present case. The non-renewal of the contract between the parties does not constitute illegal dismissal of petitioner by respondents.

WHEREFORE, we *DENY* the petition and *AFFIRM* the assailed decision of the Court of Appeals.

SO ORDERED.

Brion, del Castillo,[*] *Perez,* and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 192435-36. September 14, 2011]

CITY GOVERNMENT OF TUGUEGARAO, represented by ROBERT P. GUZMAN, *petitioner, vs.* **RANDOLPH S. TING,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; HAS THE SOLE POWER TO INVESTIGATE AND PROSECUTE A PUBLIC OFFICIAL OR EMPLOYEE.— It is settled that the Office of the Ombudsman has the sole power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. The power to withdraw the Information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute.

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[*] Designated Acting Member per Special Order No. 1077 dated 12 September 2011.

2. REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS FULL CONTROL OF THE CASE INVOLVING A PUBLIC OFFICIAL OR EMPLOYEE SO MUCH SO THAT THE INFORMATION MAY NOT BE WITHDRAWN WITHOUT ITS APPROVAL.— [W]hile it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the Information may not be dismissed without the approval of said court. Further, it does not matter whether such filing of a motion to dismiss by the prosecution is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation. In this case, the Sandiganbayan, ordered the Special Prosecutor to conduct a reinvestigation and subsequently granted his motion to withdraw the informations, after finding no probable cause against the latter on reinvestigation. The Sandiganbayan thus gave its approval to the withdrawal of the informations and ordered the dismissal of the cases. Since no appeal was taken by the Special Prosecutor from the order of dismissal within the reglementary period, the same had become final and executory pursuant to Section 7, paragraph 2 of P.D. No. 1606, as amended by R.A. No. 8249.

3. ID.; ID.; ID.; A PRIVATE COMPLAINANT HAS NO LEGAL PERSONALITY TO PROSECUTE AN APPEAL FROM THE SANDIGANBAYAN'S DISMISSAL OF A CRIMINAL CASE; HE IS ALLOWED TO APPEAL ONLY THE CIVIL ASPECT OF THE CASE.— We hold that petitioner is not the proper party to file the present action. Section 4 (c) of P.D. No. 1606, as amended, clearly provides that "In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986." A private complainant in a criminal case before the Sandiganbayan is allowed to appeal only the civil aspect of the criminal case after its dismissal by said court. While petitioner's name was included in the caption of the cases as private complainant during the preliminary investigation and re-investigation proceedings in the Office of the Ombudsman, he is not the offended party or private

complainant in the main case. As evident from a reading of the informations, it is the City of Tuguegarao which suffered damage as a consequence of the subject purchase of lands by the respondent and hence is the private complainant in the main case.

APPEARANCES OF COUNSEL

Lasam and Associates for petitioner.
Leynes Lozada-Marquez for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Resolutions[1] dated May 26, 2009 and December 9, 2009 of the Sandiganbayan (First Division) in SB-09-CRM-0004 to 0005. The Sandiganbayan directed the Ombudsman to resolve respondent's motion for reinvestigation which was treated as a motion for reconsideration of the Ombudsman's resolution finding probable cause against the respondent. Subsequently, the Special Prosecutor filed a motion for withdrawal of informations which the Sandiganbayan granted.

On June 12, 2008, the Office of the Ombudsman issued a resolution[2] finding probable cause to charge respondent Randolph S. Ting, then Mayor of Tuguegarao City, with violation of Section 3(g)[3] of Republic Act (R.A.) No. 3019 (*Anti-Graft and Corrupt*

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[1] *Rollo*, pp. 392, 554-556. The Resolution dated December 9, 2009 was penned by Associate Justice Norberto Y. Geraldez with Associate Justices Rodolfo A. Ponferrada and Napoleon E. Inoturan, concurring.

[2] *Id.* at 201-227.

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

Practices Act) in connection with the purchase of three (3) parcels of land in the year 2004 under two separate deeds of sale. The City Government intended to use the properties as a public cemetery as these are situated near the existing public cemetery and traverse Barangays Atulayan Sur and Penque.

In his complaint-affidavit,[4] petitioner Robert P. Guzman alleged that the purchase of the subject lots was anomalous because it was done despite the lack of a project study on the suitability of the properties for their intended purpose, an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR), and initial clearance from the Department of Health (DOH) as required by Presidential Decree (P.D.) No. 856 (Sanitation Code). Petitioner pointed out that the transaction was grossly disadvantageous to the city government considering that the area is flood-prone and the subject properties are situated along a waterway/floodway which are inundated during the rainy season. The purchased contiguous lots also adjoin a creek and a road where box culverts were constructed, and are lower than the elevation of the road. Petitioner further claimed that respondent entered into the sale transaction knowing fully well that the purchase price was way above the properties' fair market value, as reflected in the fair market value appraisal of Cuervo Appraisers, Inc. (Cuervo Report).

Respondent filed his counter-affidavit[5] asserting that the subject transaction was duly authorized by the *Sangguniang Panlungsod* of Tuguegarao City, its terms were above-board and did not violate any provision of R.A. No. 3019. He pointed out that when the lots were offered for sale at ₱700 per square meter to the City Government, the City Appraisal Committee conducted

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x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x x x x x x

[4] *Rollo*, pp. 35-38.

[5] *Id.* at 64-70.

an evaluation of the proposed acquisition of properties for the Tuguegarao City public cemetery expansion project which was included in the 2001-2005 City Comprehensive Development Plan/Comprehensive Land Use Plan (CCDP/CLUP) adopted by the *Sangguniang Panlungsod*. Said committee, after a thorough study, recommended that the City Government negotiate for the price of ₱351.54 per square meter which it found as the just and reasonable market value of the offered properties as the average amount in the deeds of sale and sworn statements of property owners. As for the clearances from DOH and DENR, respondent thought that these requirements shall be secured at the time the intended cemetery will be constructed. Respondent also explained that flooding occurs only when there is an unusually large volume of rainfall in the Cagayan Valley Region and for a short period. Moreover, the various resolutions passed by the City Development Council (CDC) already factored in such possibility when it required the backfilling of the acquired area. As to the price of ₱160 per square meter indicated in the Cuervo Report, this runs counter to the findings of the City Appraisal Committee also based on deeds of sale and sworn statements of lot owners.

As already mentioned, the Ombudsman approved the recommendation of Graft Investigation & Prosecution Officer I Albert S. Almojuela to indict the respondent for violation of Section 3(g) of R.A. No. 3019. It was noted that respondent failed to attach copies of the deeds of sale and sworn statements supposedly used as basis for the resolution of the City Appraisal Committee recommending the price per square meter of the properties for acquisition as their fair market value.[6] Consequently, on January 30, 2009, the corresponding informations[7] were filed in the Sandiganbayan.

Except for the names of the lot owners-sellers and specific properties subject of sale, the two (2) informations contain identical allegations, as follows:

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[6] *Id.* at 223.

[7] *Id.* at 229-231, 233-235.

That on or about May 05, 2004 or sometime prior or subsequent thereto, in the City of Tuguegarao, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Randy (Randolph) S. Ting, a public officer, being then the City Mayor of Tuguegarao, Province of Cagayan, while in the performance of his official functions, did then and there willfully, unlawfully and feloniously purchase/enter into a Contract of Sale of two (2) parcels of land with a total area of 24,816 square meters (Lot Nos. 5860 and 5861 of the Cadastral survey of Tuguegarao previously covered by TCT No. 36942, now TCT No. 144828 and TCT No. 36943 now TCT No. 144829, respectively), on behalf of the City Government of Tuguegarao from ANSELMO ALMAZAN, ANGELO ALMAZAN and ANSELMO ALMAZAN III, unsuitable for the intended purpose (public cemetery) as the said parcels of land are at least 1.6 meters lower than the elevation of the Cabalza-Santol Road located along a waterway, adjacent to a box culvert and are periodically inundated during rainy season and overpriced by one hundred ninety one pesos and fifty four centavos (₱191.54) per square meter, which is manifestly and grossly disadvantageous to the City Government of Tuguegarao to the damage and prejudice of the aforesaid City.

CONTRARY TO LAW.[8]

Prior to his arraignment,[9] respondent filed on March 3, 2009 a Motion For Reinvestigation[10] alleging that the Ombudsman committed serious irregularity when it failed to consider that in the acquisition of the subject properties for the public cemetery expansion project, the City Appraisal Committee met and deliberated on the proposed purchase, and eventually passed a resolution adopting the average amount of ₱351.54 per sq. m. Hence, the City Appraisal Committee should have been subpoenaed to produce those bunched deeds of sale and sworn statements (photocopies of which were attached to the motion) in its possession, which were used in the evaluation of the offered price for the subject lots, and for which the said body spent considerable time in determining the fair market value of the

[8] *Id.* at 229-230, 233-234.

[9] SB records (Vol. I), pp. 337-338.

[10] *Id.* at 151-167.

properties offered. Respondent stressed that the *Sangguniang Panlungsod* adopted the committee's findings and authorized the respondent to enter into a contract of sale with the property owners at such price. It was noted that the Ombudsman based its findings mainly on the Cuervo Report which contained errors and inaccuracies such as the acquisition cost by the property owners, ground elevation of fronting roads and zonal valuation figures.

Respondent further emphasized the fact that petitioner himself is engaged in the cemetery business being the President of Tuguegarao Memorial, Inc. located near the subject properties as well as the old and "overloaded" public cemetery. Copies of five (5) contracts to sell involving petitioner's burial lots were submitted by the respondent indicating the much higher selling price of petitioner's burial lots compared with the fair market value of the acquired properties. Respondent claimed that petitioner knew such expansion and development of the public cemetery would bring serious competition for the sales of burial lots in petitioner's private cemetery. Finally, respondent called attention to his election as City Mayor of Tuguegarao for three consecutive terms, and the various government awards he received as community leader and for the City Government, that would attest to his integrity and honesty in governance.

The Special Prosecutor, on behalf of the People of the Philippines, filed its Comment[11] stating that there is no necessity to conduct a reinvestigation but respondent's motion can instead be treated as a motion for reconsideration.

On May 26, 2009, the Sandiganbayan issued a resolution[12] ordering the prosecution to resolve respondent's motion for re-investigation which was treated as a motion for reconsideration.

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[11] *Id.* at 340-342.

[12] *Supra* note 1 at 392.

By Resolution[13] dated September 8, 2009, the Ombudsman reversed her earlier ruling and found no probable cause to charge the respondent with violation of Section 3(g) of R.A. No. 3019. On the issues of overpricing and unsuitability of the purchased properties, the Ombudsman made the following findings:

> Accused, however, was able to submit documents which served as basis for the amount arrived at by the City Appraisal Committee. In his Motion for Reinvestigation, accused submitted deeds of sale and tax declarations over properties in Barangay Atulayan Sur showing that some lots were sold for as much as ₱520 per sq. m. in the years 2002 to 2003. Accused also submitted another set of deeds of sale and tax declarations showing that in Barangay Penque, the average selling price of lots is ₱647.80 for the years 2002 to 2004. It would appear, therefore, that the City Appraisal Committee, relied on by [the] accused, had some basis in arriving at its recommendation.
>
> The actions of the City Appraisal Committee, in the absence of any evidence of some illegality in its proceedings, should be accorded the presumption of regularity. Their official findings and recommendations, based as they are on actual data, should prevail over the findings of a private appraisal firm which was hired by [the] complainant. This private appraiser apparently used the so-called "Stripping Method" and the "Anticipated Development Approach" when it arrived at the price of ₱160.00 per sq. m. When it came, however, to the "Market Data Approach," the appraisal report stated that the buying and selling price of the lots within the vicinity was ₱800-₱1000 per sq. m. – as gathered from local bank appraisers (Allied Bank and Chinabank). In the final analysis, it would appear that the City Appraisal Committee's recommendation is more realistic, being based on actual data and official records while that of the private appraiser – using the "Stripping Method" and "Anticipated Development Approach" – is more of a theory or an opinion.
>
> Moreover, while the area did, at some time, experience some flooding, any doubts as to the propriety of putting up a cemetery thereon has been laid to rest by the findings of the Regional Offices of the Environmental Management Bureau and the Mines Geo Sciences Bureau of DENR. The Mines and Geosciences Bureau, Region 2 Office reported that the "proposed site can be developed

[13] SB records (Vol. I), pp. 401-409.

as a cemetery or memorial park, provided, that proper mitigating measures like a well-designed drainage system and proper foundation designs shall be incorporated in the development plan of the project." The Environmental Management Bureau, for its part, stated that the project does not require an Environmental Compliance Certificate under PD 1586 but echoed the need to put up mitigating measures.

Other regulatory agencies of the government also gave approval to the project such as the Regional Office of the Center for Health of the DOH who gave INITIAL CLEARANCE to the project on January 30, 2008. The NWRB, in its letter dated July 21, 2008, stated that the "water table depth in the concerned area is within the permissible 4.5 meters below ground surface.[14]

The Ombudsman thus concluded that the existence of the element of a "contract or transaction being grossly and manifestly disadvantageous to the government" had become doubtful since the buying price of the subject lots falls within the prevailing fair market value of the properties within the area. It was also noted that there was no evidence of a better offer received by the City Government of Tuguegarao in terms of price, size and location that also meets its requirements. Moreover, since the lots purchased have been shown to be suitable for use as a public cemetery by the DENR, it cannot be said that the transaction entered into by respondent is grossly and manifestly disadvantageous to the government.

On October 12, 2009, the Office of the Special Prosecutor moved for the withdrawal of the informations.[15]

Petitioner filed his Opposition[16] reiterating his arguments that the newly submitted evidence on the buying and selling price of lots in the area have no relevance while there is no comparison between lots in a fully developed memorial park and an undeveloped flood-prone land which forms part of a waterway. As to the DENR reports, petitioner pointed out that it was clearly

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[14] *Id.* at 405-407.

[15] *Id.* at 398-400.

[16] *Id.* at 416-438.

indicated that the properties are located in a flood-prone area and require backfilling as certified by DENR officials. Also, the City Appraisal Committee certified only as to the fair market value of the properties without the backfilling cost. There was also non-compliance with public hearing requirement on re-zoning as affected residents in the vicinity have objected to the construction of a new public cemetery on the subject lots.

On December 9, 2009, the Sandiganbayan granted the prosecution's motion under the assailed resolution:

> WHEREFORE, the instant Motion to Withdraw Informations is hereby GRANTED. The Informations against accused Randolph S. Ting are hereby ordered WITHDRAWN and the instant cases are hereby ordered DISMISSED.
>
> SO ORDERED.[17]

Petitioner claims that he learned of the dismissal of the cases against the respondent during the campaign for the May 10, 2010 elections. Upon the request of his lawyer, petitioner was able to secure a certified copy of the above resolution from Executive Clerk IV Atty. Renato Bocar on June 3, 2010. Hence, he filed the present petition on June 18, 2010.

Petitioner argues that the Sandiganbayan departed from the accepted usual and prescribed course of judicial proceedings as to call for an exercise of the power of supervision when it:

1. Acted upon the motion for reinvestigation by the accused and considered the same as a motion for reconsideration of the resolution of the ombudsman when the said resolution has already become final and the accused has been arraigned at the honorable Sandiganbayan and has pleaded not guilty.
2. Dismissed prior to pre-trial the informations merely based on the Motion of the Ombudsman without a complete finding and/or discussion of all the issues raised in the pleadings in clear violation of Sec. 7 of P.D. 1486 creating the Sandiganbayan and totally ignoring the oppositions of the private complainant Guzman.

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[17] *Rollo,* p. 555.

3. Merely noted to appearance of the private complainant and totally ignored the pleadings filed by said private complainant Guzman.[18]

In his Comment,[19] respondent contends that petitioner raised the correctness of the finding of absence of probable cause, a question of fact which is not proper in a Rule 45 petition. Moreover, the petition is time-barred. Respondent points out that the Special Prosecutor did not file an appeal from the December 9, 2009 resolution of the Sandiganbayan within fifteen (15) days from receipt of a copy thereof; and necessarily so, because it was at their instance that the informations were withdrawn and pursuant thereto, the Sandiganbayan dismissed the criminal cases against the respondent. In any case, the petitioner cannot represent Tuguegarao City before the courts as he is not a proper party and neither does he have *locus standi* to bring a derivative suit in representation of Tuguegarao City as a public corporation.

We deny the petition.

The crucial issue in this case concerns the petitioner's legal personality to challenge before this Court the dismissal by the Sandiganbayan of the criminal cases against the respondent.

It is settled that the Office of the Ombudsman has the sole power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. The power to withdraw the Information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute.[20]

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[18] *Id.* at 10.

[19] *Id.* at 570-586.

[20] *Espinosa v. Office of the Ombudsman*, G.R. No. 135775, October 19, 2000, 343 SCRA 744, 751-752, citing Sec. 15(1), The Ombudsman Act of 1989 (R.A. No. 6770).

However, while it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the Information may not be dismissed without the approval of said court.[21] Further, it does not matter whether such filing of a motion to dismiss by the prosecution is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation.[22]

In this case, the Sandiganbayan, ordered the Special Prosecutor to conduct a reinvestigation and subsequently granted his motion to withdraw the informations, after finding no probable cause against the latter on reinvestigation. The Sandiganbayan thus gave its approval to the withdrawal of the informations and ordered the dismissal of the cases. Since no appeal was taken by the Special Prosecutor from the order of dismissal within the reglementary period, the same had become final and executory pursuant to Section 7, paragraph 2[23] of P.D. No. 1606,[24] as amended by R.A. No. 8249.[25]

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[21] *Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City*, G.R. No. 134509, April 12, 2005, 455 SCRA 377, 394; *Espinosa v. Office of the Ombudsman, id.*, citing *Dungog v. Court of Appeals*, G.R. Nos. 77850-51, March 25, 1988, 159 SCRA 145, 148.

[22] See *Crespo v. Mogul*, G.R. No. 53373, June 30, 1987, 151 SCRA 462, 471.

[23] SECTION 7. *Form, Finality and Enforcement of Decisions*. – x x x

A petition for reconsideration of any final order or decision may be filed within fifteen (15) days from promulgation or notice of the final order or judgment, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon.

x x x x x x x x x

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

[25] 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.

But disregarding for the moment the question of timeliness, does petitioner have the legal personality to prosecute this appeal from the Sandiganbayan's dismissal of the criminal cases?

We hold that petitioner is not the proper party to file the present action. Section 4 (c) of P.D. No. 1606, as amended, clearly provides that "In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986."

A private complainant in a criminal case before the Sandiganbayan is allowed to appeal only the civil aspect of the criminal case after its dismissal by said court. While petitioner's name was included in the caption of the cases as private complainant during the preliminary investigation and re-investigation proceedings in the Office of the Ombudsman, he is not the offended party or private complainant in the main case. As evident from a reading of the informations, it is the City of Tuguegarao which suffered damage as a consequence of the subject purchase of lands by the respondent and hence is the private complainant in the main case.

As this Court declared in *People v. Velez*:[26]

> On the first issue, the Court agrees with the contention of the respondent Office of the Ombudsman that Salmingo is not the proper party as petitioner in this case. The governing rule is Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which reads:
>
> > 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.

[26] G.R. No. 138093, February 19, 2003, 397 SCRA 721.

The Court has previously held that **the "party" referred to in the rule is the original party in the main case aggrieved by the order or decision in the main case.** Hence, only the aggrieved original party in the main case is the only proper party as petitioner. One who has not been an original party in the main case has no personality to file a petition under said rule.

x x x x x x x x x

The Court notes that Salmingo was not a party in the main case. While it is true that he initiated the criminal complaint with the Office of the Ombudsman against respondents for various offenses, however, under the Information filed with the SB, the parties are the People of the Philippines as plaintiff and the respondents as the accused. The private complainant is the City of Silay while Salmingo is merely a witness for the plaintiff.

The private complainant in a criminal case before the SB is also a proper party to file a petition under Rule 45 of the 1997 Rules of Civil Procedure, as amended, but only on the civil aspect of the case. It must be noted that Salmingo was not the private complainant in the main case**. As gleaned from the Information, Silay City was the party which suffered damage as a consequence of the wrongful acts of the malefactors and hence is the private complainant in the main case.**

Salmingo's inclusion in the caption of his petition of the People of the Philippines as a party petitioner is patently unauthorized. The Court believes that it is a futile attempt in compliance with Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended.[27] (Emphasis supplied.)

In the light of the foregoing, the Court finds it unnecessary to discuss other matters raised in the petition.

WHEREFORE, the petition for review on *certiorari* is *DENIED.*

With costs against petitioner Robert P. Guzman.

SO ORDERED.

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

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[27] *Id.* at 731-732.

SECOND DIVISION

[G.R. No. 193247. September 14, 2011]

SERGIO I. CARBONILLA, EMILIO Y. LEGASPI IV, and ADONAIS Y. REJUSO, *petitioners, vs.* **BOARD OF AIRLINES REPRESENTATIVES (MEMBER AIRLINES: ASIANA AIRLINES, CATHAY PACIFIC AIRWAYS, CHINA AIRLINES, CEBU PACIFIC AIRLINES, CHINA SOUTHERN AIRLINES, CONTINENTAL MICRONESIA AIRLINES, EMIRATES, ETIHAD AIRWAYS, EVA AIR AIRWAYS, FEDERAL EXPRESS CORPORATION, GULF AIR, JAPAN AIRLINES, AIR FRANCE-KLM ROYAL DUTCH AIRLINES, KOREAN AIR, KUWAIT AIRWAYS CORPORATION, LUFTHANSA GERMAN AIRLINES, MALAYSIA AIRLINES, NORTHWEST AIRLINES, PHILIPPINE AIRLINES, INC., QANTAS AIRWAYS, LTD., QATAR AIRLINES, ROYAL BRUNEI AIRLINES, SINGAPORE AIRLINES, SWISS INTERNATIONAL AIRLINES, LTD., SAUDI ARABIAN AIRLINES, and THAI INTERNATIONAL AIRWAYS),** *respondents.*

[G.R. No. 194276. September 14, 2011]

OFFICE OF THE PRESIDENT, represented by HON. PAQUITO N. OCHOA,[*] in his capacity as EXECUTIVE SECRETARY, DEPARTMENT OF FINANCE, represented by HON. CESAR V. PURISIMA[**] in his capacity as SECRETARY OF FINANCE, and THE BUREAU OF CUSTOMS, represented by HON. ANGELITO A. ALVAREZ[***] in his capacity as

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[*] Originally represented by Hon. Eduardo Ermita.

[**] Originally represented by Hon. Margarito B. Teves.

[***] Originally represented by Hon. Napoleon Morales.

COMMISSIONER OF CUSTOMS, *petitioners, vs.* **BOARD OF AIRLINES REPRESENTATIVES (MEMBER AIRLINES: ASIANA AIRLINES, CATHAY PACIFIC AIRWAYS, CHINA AIRLINES, CEBU PACIFIC AIRLINES, CHINA SOUTHERN AIRLINES, CONTINENTAL MICRONESIA AIRLINES, EMIRATES, ETIHAD AIRWAYS, EVA AIR AIRWAYS, FEDERAL EXPRESS CORPORATION, GULF AIR, JAPAN AIRLINES, AIR FRANCE-KLM ROYAL DUTCH AIRLINES, KOREAN AIR, KUWAIT AIRWAYS CORPORATION, LUFTHANSA GERMAN AIRLINES, MALAYSIA AIRLINES, NORTHWEST AIRLINES, PHILIPPINE AIRLINES, INC., QANTAS AIRWAYS, LTD., QATAR AIRLINES, ROYAL BRUNEI AIRLINES, SINGAPORE AIRLINES, SWISS INTERNATIONAL AIRLINES, LTD., SAUDI ARABIAN AIRLINES, and THAI INTERNATIONAL AIRWAYS),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; NATURE, EXPLAINED; APPLICATION.— Carbonilla, *et al*. were really after the payment of their differential or back payments for services rendered. Hence, the Court of Appeals correctly denied the motion for intervention. It should be stressed that the allowance or disallowance of a motion for intervention is addressed to the sound discretion of the courts. The permissive tenor of the Rules of Court shows the intention to give the courts the full measure of discretion in allowing or disallowing the intervention. Once the courts have exercised this discretion, it could not be reviewed by *certiorari* or controlled by *mandamus* unless it could be shown that the discretion was exercised in an arbitrary or capricious manner. Carbonilla, *et al*. failed to show that the Court of Appeals rendered its resolution in an arbitrary or capricious manner.

2. ID.; ID.; APPEALS; THE COURT OF APPEALS HAS JURISDICTION OVER THE PETITION FILED BY THE BOARD OF AIRLINES REPRESENTATIVES (BAR)

PURSUANT TO RULE 43 OF THE RULES OF PROCEDURE.— The jurisdiction of the Court of Appeals over BAR's petition stems from Section 1 in relation to Section 3, Rule 43 of the 1997 Rules of Civil Procedure which states that appeals from "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi judicial functions[,]" which includes the Office of the President, may be taken to the Court of Appeals. BAR's petition for review to the Court of Appeals from the 12 March 2007 Decision and 14 March 2008 Resolution of the Office of the President falls within the jurisdiction of the Court of Appeals. As noted by the Court of Appeals, the Office of the President took cognizance of Cruz's letter dated 4 December 2006 requesting for a review of the 31 August 2006 letter of Usec. Mendoza. Deputy Exec. Sec. Gaite required BAR to pay the appeal fee and submit its appeal memorandum. Thereafter, the Office of the President issued its 12 March 2007 Decision affirming the decision of the Department of Finance and then denied BAR's motion for reconsideration in its 14 March 2008 Resolution. BAR's only recourse is to file a petition for review before the Court of Appeals under Rule 43 of the 1997 Rules on Civil Procedure. The exercise by the Court of Appeals of its appellate jurisdiction over the decision of the Office of the President is entirely distinct from the issue of whether BAR committed a procedural error in elevating the case before the Office of the President instead of filing its appeal before the CTA.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; OFFICE OF THE PRESIDENT; ADMINISTRATIVE ORDER NO. 18, SERIES OF 1987 (AO 18); APPEALS PROVIDED THEREUNDER REFERS TO ADVERSARIAL CASES NOT TO A REVIEW OF ADMINISTRATIVE RULES AND REGULATIONS.— Cruz's 4 December 2006 letters to then President Gloria Macapagal Arroyo and then Exec. Sec. Eduardo Ermita are not in the nature of an appeal provided for under Administrative Order No. 18, series of 1987 (AO 18). Section 1 of AO 18 provides that an appeal to the Office of the President shall be taken within 30 days from receipt by the aggrieved party of the decision, resolution or order complained of or appealed from. Section 2 of AO 18 cites caption, docket number of the case as presented

in the office of origin, and addresses of the parties. Section 3 mentions pauper litigants. In sum, the appeal provided under AO 18 refers to adversarial cases. It does not refer to a review of administrative rules and regulations, as what BAR asked the Office of the President to do in this case. BAR, in writing the Office of the President, was exhausting its administrative remedies. BAR could still go to the regular courts after the Office of the President acted on its request for a review of Usec. Mendoza's 31 August 2006 letter. The decision of the Office of the President did not foreclose BAR's remedy to bring the matter to the regular courts.

4. REMEDIAL LAW; COURTS; JURISDICTION OVER THE VALIDITY OF CAO 1-2005 ISSUED BY COMMISSIONER OF CUSTOMS LIES WITH THE REGULAR COURTS.— BAR is assailing the issuance and implementation of CAO 1-2005. CAO 1-2005 is an amendment to CAO 7-92. CAO 7-92 was issued "[b]y authority of Section 608, in relation to Section 3506, of the Tariff and Customs Code of the Philippines x x x." On this score, we do not agree with the Office of the President that BAR, instead of filing an appeal before its office, should have filed an appeal before the CTA in accordance with Section 7 of Republic Act No. 9282[.] x x x [W]hat is appealable to the CTA are cases involving **protest or seizure**, which is not the subject of BAR's appeal in these cases. BAR's actions, including seeking an audience with the Secretary of Finance, as well as writing to the Executive Secretary and the Office of the President, are part of the administrative process to question the validity of the issuance of an administrative regulation, that is, of CAO 1-2005, entitled *Amendments to Customs Administrative Order No. 7-92 (Rules and Regulations Governing the Overtime Pay and Other Compensations Related Thereto Due to Customs Personnel at the NAIA)*. x x x The jurisdiction over the validity and constitutionality of rules and regulations issued by the Commissioner under Section 608 of the TCCP lies before the regular courts. It is not within the jurisdiction of the Office of the President or the CTA. Hence, the Office of the President erred in holding that BAR's appeal was filed late because BAR can still raise the issue before the regular courts.

5. ID.; CIVIL PROCEDURE; RULES ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING, RELAXED.— We agree with the Court of Appeals in its liberal interpretation of the Rules. Verification of a pleading is a formal, not jurisdictional, requirement. The requirement is simply a condition affecting the form of the pleading and non-compliance with the requirement does not render the pleading fatally defective. As regards the certification of non-forum shopping, this Court may relax the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfections should not serve as basis of decisions and should not be used to defeat the substantive rights of the other party.

6. TAXATION; TARIFF AND CUSTOMS CODE; UNDER SECTION 3506, AIRLINE COMPANIES, AIRCRAFT OWNERS, AND OPERATORS ARE AMONG THE PERSONS SERVED BY THE BUREAU OF CUSTOMS (BOC).— We do not agree with the Court of Appeals in excluding airline companies, aircraft owners, and operators from the coverage of Section 3506 of the TCCP. The term "other persons served" refers to all other persons served by the BOC employees. Airline companies, aircraft owners, and operators are among other persons served by the BOC employees. As pointed out by the OSG, the processing of embarking and disembarking from aircrafts of passengers, as well as their baggages and cargoes, forms part of the BOC functions. BOC employees who serve beyond the regular office hours are entitled to overtime pay for the services they render. The Court of Appeals ruled that, applying the principle of *ejusdem generis*, airline companies, aircraft owners, and operators are not in the same category as importers and shippers because an importer "brings goods to the country from a foreign country and pays custom duties" while a shipper is "one who ships goods to another; one who engages the services of a carrier of goods; one who tenders goods to a carrier for transportation." However, airline passengers pass through the BOC to declare whether they are bringing goods that need to be taxed. The passengers cannot leave the airport of entry without going through the BOC. Clearly, airline companies, aircraft owners,

and operators are among the persons served by the BOC under Section 3506 of the TCCP.

7. ID.; ID.; ID.; OVERTIME PAY OF BOC EMPLOYEES SHOULD BE SHOULDERED BY THE AIRLINE COMPANIES.— The overtime pay of BOC employees may be paid by any of the following: (1) all the taxpayers in the country; (2) the airline passengers; and (3) the airline companies which are expected to pass on the overtime pay to passengers. If the overtime pay is taken from all taxpayers, even those who do not travel abroad will shoulder the payment of the overtime pay. If the overtime pay is taken directly from the passengers or from the airline companies, only those who benefit from the overtime services will pay for the services rendered. Here, Congress deemed it proper that the payment of overtime services shall be shouldered by the "other persons served" by the BOC, that is, the airline companies. This is a policy decision on the part of Congress that is within its discretion to determine.

8. ID.; ID.; ID.; SECTION 3506 COMPLIED WITH THE COMPLETENESS AND SUFFICIENT STANDARD TESTS.— We do not agree with the Court of Appeals that Section 3506 of the TCCP failed the completeness and sufficient standard tests. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test requires adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot. Contrary to the ruling of the Court of Appeals, Section 3506 of the TCCP complied with these requirements. The law is complete in itself that it leaves nothing more for the BOC to do: it gives authority to the Collector to assign customs employees to do overtime work; the Commissioner of Customs fixes the rates; and it provides that the payments shall be made by the importers, shippers or other persons served. Section 3506 also fixed the standard to be followed by the Commissioner of Customs when it provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise.

9. ID.; ID.; ID.; ID.; PAYMENT OF OVERTIME PAY, TRAVEL, AND MEAL ALLOWANCES TO BOC EMPLOYEES DOES

NOT CONSTITUTE DOUBLE COMPENSATION.— BOC employees rendering overtime services are not receiving double compensation for the overtime pay, travel and meal allowances provided for under CAO 7-92 and CAO 1-2005. Section 3506 provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise. The overtime pay, travel and meal allowances are payment for additional work rendered after regular office hours and do not constitute double compensation prohibited under Section 8, Article IX(B) of the 1987 Constitution as they are in fact authorized by law or Section 3506 of the TCCP.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Tomas Carmelo T. Araneta for Sergio Carbonilla, *et al*.
Marcelino B. Agana IV and *Eduardo R. Ceniza* for respondents.

D E C I S I O N

CARPIO, *J.*:

The Cases

Before the Court are two petitions for review[1] assailing the Decision[2] promulgated on 9 July 2009 by the Court of Appeals in CA-G.R. SP No. 103250.

In G.R. No. 193247, petitioners Sergio I. Carbonilla, Emilio Y. Legaspi IV, and Adonais Y. Rejuso (Carbonilla, *et al.*) assail the Resolution[3] promulgated on 5 August 2010 by the Court of Appeals in CA-G.R. SP No. 103250.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 193247), pp. 41-70. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jose L. Sabio, Jr. and Ricardo R. Rosario, concurring.

[3] *Id.* at 79-80. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

In G.R. No. 194276, petitioners Office of the President, represented by Paquito N. Ochoa in his capacity as Executive Secretary, Department of Finance, represented by Cesar V. Purisima in his capacity as Secretary of Finance, and the Bureau of Customs (BOC), represented by Angelito A. Alvarez in his capacity as Commissioner of Customs (Office of the President, *et al.*), assail the Resolution[4] promulgated on 26 October 2010 by the Court of Appeals in CA-G.R. SP No. 103250.

The Antecedent Facts

The facts, as gathered from the assailed Decision of the Court of Appeals, are as follows:

The Bureau of Customs[5] issued Customs Administrative Order No. 1-2005 (CAO 1-2005) amending CAO 7-92.[6] The Department of Finance[7] approved CAO 1-2005 on 9 February 2006. CAO 7-92 and CAO 1-2005 were promulgated pursuant to Section 3506[8] in relation to Section 608[9] of the Tariff and Customs Code of the Philippines (TCCP).

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[4] *Rollo* (G.R. No. 194276), pp. 134-139. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Francisco P. Acosta, concurring.

[5] *Id.* at 198. Through then Commissioner George M. Jereos.

[6] Rules and Regulations Governing the Overtime Services and Pay, Travelling, Board and Lodging Expenses and/or Meal Allowance at the Ninoy Aquino International Airport.

[7] Through then Secretary Juanita P. Amatong.

[8] Section 3506. *Assignment of Customs Employees to Overtime Work.* - Custom employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid for by importers, shippers, or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

[9] Section 608. *Commissioner to Make Rules and Regulations*. - The Commissioner shall, subject to the approval of the Secretary of Finance, promulgate all rules and regulations necessary to enforce the provisions of this Code. x x x

Petitioners Office of the President, *et al*. alleged that prior to the amendment of CAO 7-92, the BOC created on 23 April 2002 a committee to review the overtime pay of Customs personnel in Ninoy Aquino International Airport (NAIA) and to propose its adjustment from the exchange rate of ₱25 to US$1 to the then exchange rate of ₱55 to US$1. The Office of the President, *et al*. alleged that for a period of more than two years from the creation of the committee, several meetings were conducted with the agencies concerned, including respondent Board of Airlines Representatives (BAR), to discuss the proposed rate adjustment that would be embodied in an Amendatory Customs Administrative Order.

On the other hand, BAR alleged that it learned of the proposed increase in the overtime rates only sometime in 2004 and only through unofficial reports.

On 23 August 2004, BAR wrote a letter addressed to Edgardo L. De Leon, Chief, Bonded Warehouse Division, BOC-NAIA, informing the latter of its objection to the proposed increase in the overtime rates. BAR further requested for a meeting to discuss the matter.

BAR wrote the Secretary of Finance on 31 January 2005 and 21 February 2005 reiterating its concerns against the issuance of CAO 1-2005. In a letter dated 3 March 2005, the Acting District Collector of BOC informed BAR that the Secretary of Finance already approved CAO 1-2005 on 9 February 2005. As such, the increase in the overtime rates became effective on 16 March 2005. BAR still requested for an audience with the Secretary of Finance which was granted on 12 October 2005.

The BOC then sent a letter to BAR's member airlines demanding payment of overtime services to BOC personnel in compliance with CAO 1-2005. The BAR's member airlines refused and manifested their intention to file a petition with the Commissioner of Customs and/or the Secretary of Finance to suspend the implementation of CAO 1-2005.

In a letter dated 31 August 2006,[10] Undersecretary Gaudencio A. Mendoza, Jr. (Usec. Mendoza), Legal and Revenue Operations Group, Department of Finance informed BAR, through its Chairman Felix J. Cruz (Cruz), that they "find no valid ground to disturb the validity of CAO 1-2005, much less to suspend its implementation or effectivity" and that its implementation effective 16 March 2005 is legally proper.

In separate letters both dated 4 December 2006,[11] Cruz requested the Office of the President and the Office of the Executive Secretary to review the decision of Usec. Mendoza. Cruz manifested the objection of the International Airlines operating in the Philippines to CAO 1-2005. On 13 December 2006, Deputy Executive Secretary Manuel B. Gaite (Deputy Exec. Sec. Gaite) issued an Order[12] requiring BAR to pay its appeal fee and submit an appeal memorandum within 15 days from notice. BAR paid the appeal fee and submitted its appeal memorandum on 19 January 2007.

The Decision of the Office of the President

In a Decision[13] dated 12 March 2007, the Office of the President denied the appeal of BAR and affirmed the Decision of the Department of Finance.

The Office of the President ruled that the BOC was merely exercising its rule-making or quasi-legislative power when it issued CAO 1-2005. The Office of the President ruled that since CAO 1-2005 was issued in the exercise of BOC's rule-making or quasi-legislative power, its validity and constitutionality may only be assailed through a direct action before the regular courts. The Office of the President further ruled that, assuming that BAR's recourse before the Office of the President was proper and in order, the appeal was filed out of time because

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[10] *Rollo* (G.R. No. 194276), pp. 167-168.

[11] *Id.* at 664-665, 211-218.

[12] *Id.* at 220-221.

[13] *Id.* at 159-166. Signed by Manuel B. Gaite, Deputy Executive Secretary for Legal Affairs by authority of the Executive Secretary.

BAR received the letter-decision of the Secretary of Finance on 4 September 2006 but it filed its appeal only on 4 December 2006, beyond the 30-day period provided under Administrative Order No. 18 dated 12 February 1987.

The Office of the President also ruled that the grounds raised by BAR, namely, (1) the failure to comply with the publication requirement; (2) that the foreign exchange cannot be a basis for rate increase; and (3) that increase in rate was ill-timed, were already deliberated during the meetings held between the BOC and the stakeholders and were also considered by the Secretary of Finance. The Office of the President further adopted the position of the BOC that several public hearings and consultations were conducted by the BOC-NAIA Collection District, which were in substantial compliance with Section 9, Chapter I, Book VII of the Administrative Code of 1987. BAR did not oppose the exchange rate used in CAO 7-92 which was the exchange rate at that time and thus, the BOC-NAIA Collection District found it strange that BAR was questioning the fixing of the adjusted pay rates which were lower than the rate provided under Section 3506 of the TCCP. The Office of the President ruled that there is a legal presumption that the rates fixed by an administrative agency are reasonable, and that the fixing of the rates by the Government, through its authorized agents, involved the exercise of reasonable discretion.

BAR filed a motion for reconsideration. In its Resolution[14] dated 14 March 2008, the Office of the President denied BAR's motion for reconsideration.

BAR filed a petition for review under Rule 45 before the Court of Appeals.

Petitioners Carbonilla, *et al.* filed an Omnibus Motion to Intervene before the Court of Appeals on the ground that as customs personnel, they would be directly affected by the outcome of the case. Petitioners Carbonilla, *et al.* also adopted the Comment filed by the Office of the Solicitor General (OSG).

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[14] *Id.* at 156-157.

The Decision of the Court of Appeals

In its 26 February 2009 Resolution,[15] the Court of Appeals denied the motion for intervention filed by Carbonilla, *et al.* The Court of Appeals ruled that the petition before it involved the resolution of whether the decision of the Office of the President was correctly rendered. The Court of Appeals held that the intervenors' case was for collection of their unpaid overtime services and their interests could not be protected or addressed in the resolution of the case. The Court of Appeals ruled that Carbonilla, *et al.* should pursue their case in a separate proceeding against the proper respondents.

Carbonilla, *et al.* filed a motion for reconsideration of the 26 February 2009 resolution.

Without resolving Carbonilla, *et al.*'s motion for reconsideration, the Court of Appeals promulgated the assailed 9 July 2009 Decision which set aside the 12 March 2007 Decision and 14 March 2008 Resolution of the Office of the President and declared Section 3506 of the TCCP, CAO 7-92 and CAO 1-2005 unenforceable against BAR.

Ruling that it could take cognizance of BAR's appeal, the Court of Appeals held that BAR could not be faulted for not filing a case before the Court of Tax Appeals (CTA) because the Office of the President admitted that it preempted any action before the CTA. Deputy Exec. Sec. Gaite treated the letters of BAR as an appeal and required it to pay appeal fee and to submit an appeal memorandum. The Court of Appeals further ruled that what the Office of the President treated as a decision of the Department of Finance was merely an advisory letter dated 31 August 2006 and to treat it as a decision from which an appeal could be taken and then rule that it was not perfected on time would deprive BAR of its right to due process.

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[15] *Rollo* (G.R. No. 193247), pp. 653-655. Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Edgardo P. Cruz and Ricardo R. Rosario, concurring.

The Court of Appeals further ruled that it has the power to resolve the constitutional issue raised against CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that Section 8, Article IX(B) of the Constitution prohibits an appointive public officer or employee from receiving additional, double or indirect compensation, unless specifically authorized by law. The Court of Appeals ruled that Section 3506 of the TCCP only authorized payment of additional compensation for overtime work, and thus, the payment of traveling and meal allowances under CAO 7-92 and CAO 1-2005 are unconstitutional and could not be enforced against BAR members.

The Court of Appeals ruled that Section 3506 of the TCCP failed the completeness and sufficient standard tests to the extent that it attempted to cover BAR members through CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that the phrase "other persons served" did not provide for descriptive terms and conditions that might be completely understood by the BOC. The Court of Appeals ruled that devoid of common distinguishable characteristic, aircraft owners and operators should not have been lumped together with importers and shippers. The Court of Appeals also ruled that Section 3506 of the TCCP failed the sufficient standard test because it does not contain adequate guidelines or limitations needed to map out the boundaries of the delegate's authority.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the petition is GRANTED. Declaring Section 3506 of the TCCP as well as CAO 7-92 and CAO 1-2005 to be unenforceable as against the petitioners, the appealed Decision dated March 12, 2007 and Resolution dated March 14, 2008 are hereby SET ASIDE.
>
> SO ORDERED.[16]

Petitioners Carbonilla, *et al.* filed their motion for reconsideration of the 9 July 2009 Decision. In its 5 August 2010 Resolution, the Court of Appeals, among others, denied Carbonilla, *et al.*'s motion for reconsideration.

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[16] *Rollo* (G.R. No. 194276), p. 132.

Carbonilla, *et al.* came to this Court *via* a petition for review, docketed as G.R. No. 193247, on the following grounds:

I. The Honorable Court of Appeals seriously erred in law in ruling that the Court of Tax Appeals did not have jurisdiction on the subject controversy.

II. The Honorable Court of Appeals seriously erred in law in ruling that Section 3506 of the TCCP failed the completeness and sufficient standard tests.

III. The Honorable Court of Appeals seriously erred in law in ruling that CAO 7-92 as amended by CAO 1-2005 as well as Section 3506 of the TCCP are not enforceable against BAR's members.

IV. The Honorable Court of Appeals seriously erred in law in not ruling that estoppel and/or laches should have prevented the BAR from questioning CAO 1-2005.

V. The Honorable Court of Appeals seriously erred in law in issuing the decision dated July 9, 2009 in denying petitioners' intervention and motion for reconsideration dated August 3, 2009.[17]

The Office of the President, *et al.* also filed a motion for reconsideration dated 28 July 2009 assailing the 9 July 2009 Decision of the Court of Appeals.

Meanwhile, in a Resolution promulgated on 12 May 2010,[18] the Court of Appeals directed BAR to continue complying with the 12 March 2007 Decision of the Office of the President. The Court of Appeals ruled that BAR unlawfully withheld the rightful overtime payment of BOC employees when it stopped paying its obligations under CAO 7-92, as amended by CAO 1-2005, since the Court of Appeals' 9 July 2009 Decision had not attained finality pending the resolution of the motion for reconsideration filed by the Office of the President, *et al.* BAR filed a motion for reconsideration dated 26 May 2010 for the reversal of the 12 May 2010 Resolution of the Court of Appeals.

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[17] *Rollo* (G.R. No. 193247), pp. 22-23.

[18] *Rollo* (G.R. No. 194276), pp. 241-243. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

In a Resolution promulgated on 26 October 2010, the Court of Appeals granted BAR's 26 May 2010 motion for reconsideration and denied the 28 July 2009 motion for reconsideration of the Office of the President, *et al.*

The Office of the President, *et al.* filed a petition for review before this Court, docketed as G.R. No. 194276, raising the following grounds:

I. The Court of Appeals erred in giving due course to respondents BAR and its member airlines' petition for review because it had no jurisdiction over the issues raised therein by respondents, to wit:

(1) CAO No. 1-2005 is invalid as the increased overtime pay rates and meal and transportation allowances fixed therein are unreasonable and confiscatory; and

(2) The act of the Bureau of Customs charging and/or collecting from BAR's member airlines the cost of the overtime pay and meal and transportation allowances of Bureau of Customs (BOC) personnel in connection with the discharge of their government duties, functions and responsibilities is legally impermissible and, therefore, invalid.

These issues involve the validity and collection of money charges authorized by the Customs Law and thus the Court of Tax Appeals (CTA) has exclusive jurisdiction thereof.

II. Granting *arguendo* that the Court of Appeals has jurisdiction over the said issues raised by the BAR and its member airlines, the Court of Appeals should have dismissed their petition for review filed under Rule 45 of the Rules of Court on the following grounds:

(1) A petition for review under Ruled 43 of the Rules of Court cannot be filed to question the quasi-legislative or rule-making power of the Commissioner of Customs;

(2) BAR's appeal to the Office of the President questioning the 31 August 2006 Decision of the Department of Finance (DOF), finding that CAO No. 1-2005 is valid, was filed out of time;

(3) Some of respondents BAR member airlines' country managers who executed the verification and certification of non-forum shopping of their petition for review did not have the necessary authorization of the said member airlines for them to execute the same; and

(4) Administrative procedural due process was observed in the promulgation by the Commissioner of Customs of the questioned CAO No. 1-2005.

III. Respondents BAR and its member airlines are guilty of laches and estoppel and thus are effectively barred from questioning the authority of the Commissioner of Customs to promulgate pursuant to Section 608 in relation to Section 3506 of the Tariff and Customs Code (TCCP), as amended, not only CAO No. 1-2005, but also CAO No. 7-92.

IV. The Court of Appeals erred in going beyond the issues raised by respondents BAR and its member airlines not only in the pleadings filed by them in the proceedings below but also in their petition for review.

V. Section 3506 of the TCCP, CAO No. 1-2005 and CAO No. 7-92 are valid. Said law and its implementing regulations neither constitute undue delegation of legislative power nor authorize overpayment of BOC personnel.[19]

The Issues

For resolution in these cases are the following issues:

1. Whether the Court of Appeals committed a reversible error in denying the intervention of Carbonilla, *et al.*;

2. Whether the Court of Appeals has jurisdiction over BAR's petition;

3. Whether BAR's appeal before the Office of the President was filed on time;

4. Whether the officers of some of BAR's member airlines who executed the verification and certification of non-forum shopping have the necessary authorization to execute them;

5. Whether BAR was guilty of laches and/or estoppel; and

6. Whether the Court of Appeals committed a reversible error in declaring Section 3506 of the TCCP, CAO 7-92, and CAO 1-2005 unenforceable against BAR.

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[19] *Id.* at 41-43.

The Ruling of this Court

The petition in G.R. No. 193247 has no merit while the petition in G.R. No. 194276 is meritorious.

Intervention in G.R. No. 193247

On the matter of the intervention of Carbonilla, *et al.*, Section 1, Rule 19 of the 1997 Rules of Civil Procedure provides:

> Section 1. *Who may intervene*. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not a matter of right but it may be permitted by the courts when the applicant shows facts which satisfy the requirements authorizing intervention.[20] In G.R. No. 193247, the Court of Appeals denied Carbonilla, *et al.*'s motion for intervention in its 26 February 2009 Resolution on the ground that the case was for collection of unpaid overtime services and thus should be pursued in a separate proceeding against the proper respondents. A reading of the Carbonilla, *et al.*'s Omnibus Motion[21] supports the ground invoked by the Court of Appeals in denying the motion. The Omnibus Motion states:

> 3. The said movants-intervenors all held offices or were stationed at the Ninoy Aquino International Airport [NAIA] and who have all been rendering overtime services thereat for so many years.
>
> 4. Movant-Intervenor Carbonilla has retired from government service last September 2007 without his being paid the additional rates set by CAO No. 1-2005 which became effective on March 16, 2007. The effectivity and implementation of the said CAO No. 1-2005 is the main issue in this case.

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[20] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830 (2003).

[21] *Rollo* (G.R. No. 193247), pp. 642-647.

5. Thus, it is noteworthy to mention that all the movants-intervenors all rendered overtime services since March 16, 2005 or for all the time material to the issue in this case.

6. Movants-Intervenors urgently need their respective [differential]/back payments representing overtime services rendered from 16 March 2005 to the present pursuant to the implementation of CAO No. 1-2005.

7. Said differential/back payments pursuant to CAO No. 1-2005 would be of great help to the movants-intervenors considering that as of 24 January 2008, herein movants-intervenors were stripped of their respective overtime duties by the District Collector of Customs at NAIA for reasons only known to the latter.

8. The full implementation of CAO No. 1-2005 would not only benefit the cause and financial needs of herein movants-intervenors but also that of the other 900 or so employees of the Bureau of Customs-NAIA who are rendering overtime services thereat up to the present.[22]

Clearly, Carbonilla, *et al.* were really after the payment of their differential or back payments for services rendered. Hence, the Court of Appeals correctly denied the motion for intervention.

It should be stressed that the allowance or disallowance of a motion for intervention is addressed to the sound discretion of the courts.[23] The permissive tenor of the Rules of Court shows the intention to give the courts the full measure of discretion in allowing or disallowing the intervention.[24] Once the courts have exercised this discretion, it could not be reviewed by *certiorari* or controlled by *mandamus* unless it could be shown that the discretion was exercised in an arbitrary or capricious manner.[25] Carbonilla, *et al.* failed to show that the Court of Appeals rendered its resolution in an arbitrary or capricious manner.

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[22] *Id.* at 643-644.

[23] *Heirs of Geronimo Restivera v. De Guzman*, 478 Phil. 592 (2004).

[24] *Id.*

[25] *Id.*

In addition, Carbonilla, *et al.* admitted in their petition that their motion for reconsideration of the 26 February 2009 Resolution of the Court of Appeals had been denied in open court during the oral arguments held by the Court of Appeals on 16 December 2009.[26] Carbonilla, *et al.* did not act on the denial of this motion but only pursued their motion for reconsideration of the 9 July 2009 Decision of the Court of Appeals. Hence, the denial of Carbonilla, *et al.*'s motion for intervention had already attained finality.

Having ruled against the right of Carbonilla, *et al.* to intervene, we see no reason to rule on the other issues they raise unless raised in G.R. No. 194276.

We now discuss the issues raised in G.R. No. 194276.

Jurisdiction of the Court of Appeals

The Office of the President, *et al.* argue that the Court of Appeals should have denied BAR's petition because it had no jurisdiction over the issues raised, involving the validity and collection of money charges authorized by Customs Law, which are under the jurisdiction of the CTA.

We do not agree.

The jurisdiction of the Court of Appeals over BAR's petition stems from Section 1 in relation to Section 3, Rule 43 of the 1997 Rules of Civil Procedure which states that appeals from "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi judicial functions[,]" which includes the Office of the President, may be taken to the Court of Appeals. BAR's petition for review to the Court of Appeals from the 12 March 2007 Decision and 14 March 2008 Resolution of the Office of the President falls within the jurisdiction of the Court of Appeals.

As noted by the Court of Appeals, the Office of the President took cognizance of Cruz's letter dated 4 December 2006

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[26] *Rollo* (G.R. No. 193247), p. 20.

requesting for a review of the 31 August 2006 letter of Usec. Mendoza. Deputy Exec. Sec. Gaite required BAR to pay the appeal fee and submit its appeal memorandum. Thereafter, the Office of the President issued its 12 March 2007 Decision affirming the decision of the Department of Finance and then denied BAR's motion for reconsideration in its 14 March 2008 Resolution. BAR's only recourse is to file a petition for review before the Court of Appeals under Rule 43 of the 1997 Rules on Civil Procedure. The exercise by the Court of Appeals of its appellate jurisdiction over the decision of the Office of the President is entirely distinct from the issue of whether BAR committed a procedural error in elevating the case before the Office of the President instead of filing its appeal before the CTA.

Timeliness of the Appeal before the Office of the President

The Court of Appeals ruled that the question of whether BAR's appeal before the Office of the President was filed on time was rendered academic when BAR paid the appeal fee and submitted its appeal memorandum on time. The Court of Appeals held that Deputy Exec. Sec. Gaite could not validly require BAR to perfect its appeal in his 13 December 2006 Order and then rule, after its perfection, that the appeal was not filed on time. The Court of Appeals ruled that the 13 December 2006 Order of Deputy Exec. Sec. Gaite stopped BAR from pursuing any recourse with the CTA. The Court of Appeals further ruled that the Office of the President did not explain how the 31 August 2006 letter of Usec. Mendoza became a decision of the Secretary of Finance when it was only an advisory letter.

We do not agree with the Court of Appeals.

The Office of the President is not precluded from issuing the assailed decision in the same way that this Court is not proscribed from accepting a petition before it, requiring the payment of docket fees, directing the respondent to comment on the petition, and after studying the case, from ruling that the petition was filed out of time or that it lacks merit.

However, Cruz's 4 December 2006 letters to then President Gloria Macapagal Arroyo and then Exec. Sec. Eduardo Ermita are not in the nature of an appeal provided for under Administrative Order No. 18, series of 1987 (AO 18).[27] Section 1 of AO 18 provides that an appeal to the Office of the President shall be taken within 30 days from receipt by the aggrieved party of the decision, resolution or order complained of or appealed from. Section 2 of AO 18 cites caption, docket number of the case as presented in the office of origin, and addresses of the parties. Section 3 mentions pauper litigants. In sum, the appeal provided under AO 18 refers to adversarial cases. It does not refer to a review of administrative rules and regulations, as what BAR asked the Office of the President to do in this case. BAR, in writing the Office of the President, was exhausting its administrative remedies. BAR could still go to the regular courts after the Office of the President acted on its request for a review of Usec. Mendoza's 31 August 2006 letter. The decision of the Office of the President did not foreclose BAR's remedy to bring the matter to the regular courts.

BAR is assailing the issuance and implementation of CAO 1-2005. CAO 1-2005 is an amendment to CAO 7-92. CAO 7-92 was issued "[b]y authority of Section 608, in relation to Section 3506, of the Tariff and Customs Code of the Philippines x x x." On this score, we do not agree with the Office of the President that BAR, instead of filing an appeal before its office, should have filed an appeal before the CTA in accordance with Section 7 of Republic Act No. 9282[28] (RA 9282) which reads:

Section 7. *Jurisdiction.* - The CTA shall exercise:

(a) Exclusive appellate jurisdiction, to review by appeal, as herein provided:

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[27] Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines.

[28] 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.

x x x x x x x x x

4. Decisions of the Commissioner of Customs in vases involving liability for customs duties, fees and other money charges, seizure, detention or release of property affected, fines forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.

Under Section 11 of RA 9282, an appeal to the CTA should be taken within 30 days from receipt of the assailed decision or ruling.

However, Section 2313, Book II of Republic Act No. 1937 (RA 1937)[29] provides:

Section 2313. *Review of Commissioner.* - The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification on writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision. Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall automatically be reviewed by the Commissioner and the records of the case shall be elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipts of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered of the decision involves imported articles whose published value is five million pesos (₱5,000,000) or more, such decision shall be deemed automatically

[29] An Act to Revise and Codify the Tariff and Customs Law of the Philippines.

appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be. Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

x x x x x x x x x

Section 2402 of RA 1937 further provides:

Section 2402. *Review by Court of Appeals.* - The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Clearly, what is appealable to the CTA are cases involving **protest or seizure**, which is not the subject of BAR's appeal in these cases. BAR's actions, including seeking an audience with the Secretary of Finance,[30] as well as writing to the Executive Secretary and the Office of the President, are part of the administrative process to question the validity of the issuance of an administrative regulation, that is, of CAO 1-2005, entitled *Amendments to Customs Administrative Order No. 7-92 (Rules and Regulations Governing the Overtime Pay and Other Compensations Related Thereto Due to Customs Personnel at the NAIA)*.

CAO 1-2005 was issued pursuant to Section 608 of the TCCP which provides:

Section 608. *Commissioner to Make Rules and Regulations.* - The Commissioner shall, subject to the approval of the Secretary of Finance, promulgate all rules and regulations necessary to enforce the provisions of this Code. x x x

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[30] *Rollo* (G.R. No. 194276), p. 107.

The jurisdiction over the validity and constitutionality of rules and regulations issued by the Commissioner under Section 608 of the TCCP lies before the regular courts. It is not within the jurisdiction of the Office of the President or the CTA. Hence, the Office of the President erred in holding that BAR's appeal was filed late because BAR can still raise the issue before the regular courts.

Verification and Certification of Non-Forum Shopping

The Office of the President, *et al.* allege that the Court of Appeals should have dismissed the petition because of BAR's failure to comply fully with the requirements of verification and certification of non-forum shopping.

We agree with the Court of Appeals in its liberal interpretation of the Rules. Verification of a pleading is a formal, not jurisdictional, requirement.[31] The requirement is simply a condition affecting the form of the pleading and non-compliance with the requirement does not render the pleading fatally defective.[32]

As regards the certification of non-forum shopping, this Court may relax the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits.[33] This is in line with the principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.[34] Technicality and procedural imperfections should not serve as basis of decisions and should not be used to defeat the substantive rights of the other party.[35]

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[31] *Millennium Erectors Corporation v. Magallanes*, G.R. No. 184362, 15 November 2010, 634 SCRA 708.

[32] *Id.*

[33] *Benedicto v. Lacson*, G.R. No. 141508, 5 May 2010, 620 SCRA 82.

[34] *Id.*

[35] *Id.*

Estoppel and Laches

The Office of the President, *et al.* allege that BAR is guilty of estoppel and laches because it did not question CAO 7-92 which had been in effect since 1992. The Office of the President, *et al.* argue that a direct attack of CAO 1-2005 is a collateral attack of CAO 7-92 since CAO 7-92 is the main administrative regulation enacted to implement Section 3506 of the TCCP.

The argument has no merit.

BAR is not questioning the validity of CAO 7-92 or Section 3506 of the TCCP. BAR is questioning the validity of CAO 1-2005 on the following grounds: (1) that it was approved in violation of BAR's right to due process because its approval did not comply with the required publication notice under Section 9(2), Chapter I, Book VII, of the Administrative Code of the Philippines; (2) that CAO 1-2005 inappropriately based its justification on the declining value of the Philippine peso versus the U.S. dollar when services of the BOC are rendered without spending any foreign currency; and (3) that the increase in BOC rates aggravates the already high operating cost paid by the airlines which are still reeling from the impact of consecutive negative events such as SARS, Iraqi war, avian flu and the unprecedented increase in fuel prices. BAR's objection to CAO 1-2005 could not be considered a direct attack on CAO 7-92 because BAR was merely objecting to the *amendments* to CAO 7-92. BAR did not question the validity of CAO 7-92 itself. Even during the pendency of these cases before the Court of Appeals, BAR members continued to pay the rates prescribed under CAO 7-92. It was only upon the promulgation of the Court of Appeals' Decision declaring CAO 7-92 and CAO 1-2005 unconstitutional that BAR recommended to its members to stop paying the charges imposed by the BOC.

Hence, BAR is not estopped from questioning CAO 1-2005 on the ground alone that it did not question the validity of CAO 7-92.

Constitutionality of CAO 7-92, CAO 1-2005 and Section 3506 of the TCCP

The Office of the President, *et al.* allege that the Court of Appeals acted beyond its jurisdiction when it passed upon the validity of CAO 7-92 and Section 3506 of the TCCP.

We do not agree with the Office of the President, *et al.*

Section 8, Rule 51 of the 1997 Rules of Civil Procedure also states:

> Section 8. *Questions that may be decided.* - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein, will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

The Court of Appeals deemed it necessary to rule on the issue for the proper determination of these cases. The Court has ruled that the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.[36] Further, while it is true that the issue of constitutionality must be raised at the first opportunity, this Court, in the exercise of sound discretion, can take cognizance of the constitutional issues raised by the parties in accordance with Section 5(2)(a), Article VII of the 1987 Constitution.[37]

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[36] *Demafelis v. Court of Appeals*, G.R. No. 152164, 23 November 2007, 538 SCRA 305.

[37] Section 5. The Supreme Court shall have the following powers:

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

The Court has further ruled:

When an administrative regulation is attacked for being unconstitutional or invalid, a party may raise its unconstitutionality or invalidity on every occasion that the regulation is being enforced. For the Court to exercise its power of judicial review, the party assailing the regulation must show that the question of constitutionality has been raised at the earliest opportunity. This requisite should not be taken to mean that the question of constitutionality must be raised immediately after the execution of the state action complained of. That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.[38]

Section 3506 of the TCCP provides:

Section 3506. *Assignment of Customs Employees to Overtime Work.* - Customs employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid by the importers, shippers or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

We do not agree with the Court of Appeals in excluding airline companies, aircraft owners, and operators from the coverage of Section 3506 of the TCCP. The term "other persons served" refers to all other persons served by the BOC employees. Airline companies, aircraft owners, and operators are among other persons served by the BOC employees. As pointed out by the OSG, the processing of embarking and disembarking from aircrafts of passengers, as well as their baggages and cargoes,

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(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

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[38] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, 21 June 2007, 525 SCRA 198, 204.

forms part of the BOC functions. BOC employees who serve beyond the regular office hours are entitled to overtime pay for the services they render.

The Court of Appeals ruled that, applying the principle of *ejusdem generis*, airline companies, aircraft owners, and operators are not in the same category as importers and shippers because an importer "brings goods to the country from a foreign country and pays custom duties" while a shipper is "one who ships goods to another; one who engages the services of a carrier of goods; one who tenders goods to a carrier for transportation." However, airline passengers pass through the BOC to declare whether they are bringing goods that need to be taxed. The passengers cannot leave the airport of entry without going through the BOC. Clearly, airline companies, aircraft owners, and operators are among the persons served by the BOC under Section 3506 of the TCCP.

The overtime pay of BOC employees may be paid by any of the following: (1) all the taxpayers in the country; (2) the airline passengers; and (3) the airline companies which are expected to pass on the overtime pay to passengers. If the overtime pay is taken from all taxpayers, even those who do not travel abroad will shoulder the payment of the overtime pay. If the overtime pay is taken directly from the passengers or from the airline companies, only those who benefit from the overtime services will pay for the services rendered. Here, Congress deemed it proper that the payment of overtime services shall be shouldered by the "other persons served" by the BOC, that is, the airline companies. This is a policy decision on the part of Congress that is within its discretion to determine. Such determination by Congress is not subject to judicial review.

We do not agree with the Court of Appeals that Section 3506 of the TCCP failed the completeness and sufficient standard tests. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do

is to enforce it.[39] The second test requires adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[40] Contrary to the ruling of the Court of Appeals, Section 3506 of the TCCP complied with these requirements. The law is complete in itself that it leaves nothing more for the BOC to do: it gives authority to the Collector to assign customs employees to do overtime work; the Commissioner of Customs fixes the rates; and it provides that the payments shall be made by the importers, shippers or other persons served. Section 3506 also fixed the standard to be followed by the Commissioner of Customs when it provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise.

Contrary to the ruling of the Court of Appeals, BOC employees rendering overtime services are not receiving double compensation for the overtime pay, travel and meal allowances provided for under CAO 7-92 and CAO 1-2005. Section 3506 provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise. The overtime pay, travel and meal allowances are payment for additional work rendered after regular office hours and do not constitute double compensation prohibited under Section 8, Article IX(B) of the 1987 Constitution[41] as they are in fact authorized by law or Section 3506 of the TCCP.

BAR raises the alleged failure of BOC to publish the required notice of public hearing and to conduct public hearings to give all parties the opportunity to be heard prior to the issuance of CAO 1-2005 as required under Section 9(2), Chapter I, Book

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[39] *Gerochi v. Department of Energy*, G.R. No. 159796, 17 July 2007, 527 SCRA 696.

[40] *Id.*

[41] Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office or title of any kind from any foreign government.

x x x x x x x x x

VII of the Administrative Code of the Philippines. Section 9(2) provides:

> Sec. 9. *Public Participation.* - (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.
>
> (3) In cases of opposition, the rules on contested cases shall be observed.

BAR's argument has no merit.

The BOC created a committee to re-evaluate the proposed increase in the rate of overtime pay and for two years, several meetings were conducted with the agencies concerned to discuss the proposal. **BAR and the Airline Operators Council participated in these meetings and discussions**. Hence, BAR cannot claim that it was denied due process in the imposition of the increase of the overtime rate. CAO 1-2005 was published in the Manila Standard, a newspaper of general circulation in the Philippines on 18 February 2005[42] and while it was supposed to take effect on 5 March 2005, or 15 days after its publication, the BOC-NAIA still deferred BAR's compliance until 16 March 2005.

WHEREFORE, we *DENY* the petition in G.R. No. 193247. We *GRANT* the petition in G.R. No. 194276 and *SET ASIDE* the 9 July 2009 Decision and 26 October 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 103250. Petitioner Bureau of Customs is *DIRECTED* to implement CAO 1-2005 immediately.

SO ORDERED.

Brion, del Castillo,[****] *Perez,* and *Sereno, JJ.,* concur.

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[42] *Rollo* (G.R. No. 194276), p. 198.

[****] Designated as Acting Member per Special Order No. 1077 dated 12 September 2011.

THIRD DIVISION

[G.R. No. 195665. September 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DAVID MANINGDING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES, NOT ESTABLISHED.— According to Article 11 of the Revised Penal Code, "any person who acts in defense of his person or rights" do not incur any criminal liability provided that the following requisites concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. Conversely, the accused must be able to establish that all three circumstances concur in order for the accused's act to be justified under the law. x x x In this case, the records would show that accused-appellant was clearly not able to establish the aforementioned requisites. Worse, his sole evidence—– his own testimony—–was found by the RTC to be so weak and devoid of any credibility as against those presented by the prosecution. From the facts of the present case, the RTC gave credence and weight to the evidence presented by the prosecution, whose testimonies rule out accused-appellant's claim of self-defense. x x x From the testimonies of Rommel and Aladino, there was no unlawful aggression on the part of the victim. If there was any, it came from accused-appellant himself for having unsuspectingly attacked the victim, who was peacefully engaged in a conversation with Rommel during the stabbing incident.

2. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— We are convinced that, indeed, treachery was employed and present in the stabbing by accused-appellant of the victim, which led to the latter's ultimate death. x x x From the testimonies of Aladino and Rommel, it cannot be gainsaid that accused-appellant without any warning or suspicion, and taking advantage of the circumstances,

immediately attacked the victim. The victim did not have any suspicion that could have alerted him of the impending attack. As clearly demonstrated in the trial court, the attack was swift and unexpected, even to the eyewitnesses, Aladino and Rommel. We, therefore, agree with the RTC's ruling and finding, and We find no reason to veer away from them.

3. ID.; MURDER; PENALTY.— Under Art. 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. In this case, the RTC was correct in imposing the lesser penalty of *reclusion perpetua*, as there existed neither aggravating nor mitigating circumstances.

4. ID.; ID.; CIVIL LIABILITY.— [I]n *People v. Combate*, We ruled that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP50,000.00 as civil indemnity, PhP50,000.00 as moral damages, and PhP30,000.00 as exemplary damages." Following the aforementioned jurisprudence, We, therefore, reduce from PhP100,000 to PhP50,000 the amount of moral damages awarded by the RTC to the heirs of the victim but impose the additional penalty of exemplary damages. To summarize, the following shall be assessed against accused-appellant: PhP50,000 in civil indemnity, PhP50,000 in moral damages, and PhP30,000 in exemplary damages, with an interest of six percent (6%) per annum from finality of judgment until paid. Furthermore, We note the actual damages awarded by the RTC amounting to PhP33,180.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the June 25, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03854, which affirmed the January 29, 2009 Decision[2] in Criminal Case No. 2006-0688-D of the Regional Trial Court (RTC), Branch 44 in Dagupan City. The RTC convicted accused David Maningding of murder.

The Facts

The charge against accused stemmed from the following Information dated November 7, 2006:

> That on September 13, 2006 at around 10:25 o'clock in the evening in Brgy. Anolid, Mangaldan, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with a bladed weapon, with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, stab and hit MARLON MUYALDE, inflicting upon him a stab wound on the vital part of his body, causing his untimely death, to the damage and prejudice of his heirs.
>
> CONTRARY TO LAW.[3]

On December 11, 2006, the arraignment was conducted and the accused pleaded not guilty to the offense charged. A mandatory pre-trial conference was conducted. Thereafter, the RTC proceeded with the accused's trial.

During the trial, the prosecution offered in evidence the testimonies of Aladino Jorge (Aladino), the owner of the *sari-sari*

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[1] *Rollo*, pp. 2-8. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[2] CA *rollo*, pp. 6-12. Penned by Judge Genoveva Coching-Maramba.

[3] *Id.* at 6.

store; Dr. Virgilio De Guzman (Dr. De Guzman), the physician who conducted the autopsy upon the cadaver of the victim, Marlon Muyalde (Marlon); Rommel Muyalde (Rommel), the brother of the victim; and Gloria Muyalde (Gloria), the wife of the victim. On the other hand, the defense only presented the accused as its witness.

The Prosecution's Version of Facts

The prosecution presented Aladino as its first witness. Aladino is a pensioner who owns and operates a *sari-sari* store in *Barangay* Anolid, Mangaldan, Pangasinan, where he has been residing for more than a year when the crime happened.[4] In addition to selling junk foods, candies and soft drinks in his *sari-sari* store, Aladino also operates a videoke to augment his income as a vendor. He testified that on September 13, 2006, at about 10:25 in the evening, while he was tending to his *sari-sari* store, he noticed brothers Rommel and Marlon conversing with each other, while seated on a bench beside his store. While this was transpiring, the accused arrived. The victim, Marlon, stood up and greeted the accused, who happened to be his brother-in-law, "good evening."[5] He stated that the accused kept quiet and suddenly raised the right hand of Marlon and stabbed him by the armpit with a knife that he was carrying.[6] Marlon shouted because of the pain, which caused the people in the neighborhood to come out. At this instance, the accused ran away. Aladino testified that he was only about one meter away from the incident's site as it was just right beside his *sari-sari* store.[7] Aladino executed a sworn statement before the police of Mangaldan, which he was able to positively identify in court. Aladino was also able to positively identify the accused in court as the person who stabbed Marlon.[8]

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[4] TSN, March 16, 2007, p. 2.

[5] *Id.* at 3-5.

[6] *Id.* at 6.

[7] *Id.* at 7.

[8] *Id.* at 7-8.

Dr. De Guzman was presented by the prosecution as its second witness. He testified that Marlon was brought to him at about 10:30 in the evening on September 13, 2006. At such time, he said that Marlon was already experiencing shock because of the stab wound, which he had sustained. Dr. De Guzman stated that while undergoing surgery, Marlon went on cardiopulmonary arrest.[9] He died of hypovolemic shock, mainly because of the massive loss of blood that the victim experienced.[10] Based on his autopsy, the victim had a single stab wound at the edge intercostal space right at the axillary line that penetrated and lacerated his right diaphragm and his liver. He testified that almost the entire thickness of the right lobe of the liver was lacerated. He noted that the injury was so fatal that as a result, the patient would eventually die. Based on Dr. De Guzman's experience and findings, the depth of the wound is 14 inches, more or less, and that it could have been caused by a sharp pointed object. Dr. De Guzman also caused the issuance of Marlon's Death Certificate.[11]

The prosecution next presented Rommel as its witness. Rommel testified that he is the brother of the victim[12] and the brother-in-law of the accused.[13] He stated that on September 13, 2006 at about 10:25 in the evening, he, the victim and a neighbor, Mandy Molina (Molina), were in front of Aladino's store, singing with the videoke that the latter is operating.[14] Thereafter, he and the victim were still engaged in conversation facing each other when the accused, who is their brother-in-law, arrived. They both greeted the accused but the latter did not respond. The accused, which apparently was armed with a knife, suddenly got hold of the victim's right hand, raised it

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[9] TSN, May 21, 2007, p. 5.

[10] *Id.* at 6.

[11] *Id.* at 5.

[12] TSN, August 13, 2007, p. 2.

[13] *Id.* at 3.

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

and made a thrust with his left hand.[15] He then pulled the knife and ran away. Molina caught the victim as he was about to fall down and rushed him to the hospital.[16]

Finally, the prosecution presented Gloria as witness to establish the civil liability of the accused. Gloria testified that she is the spouse of the victim.[17] She stated that the victim was gainfully employed as a farmer and at the same time bought and sold bottles.[18] As a farmer, he harvested 40 or more sacks of *palay* every harvest period, which is twice a year; and earned three hundred pesos (PhP 300) daily from buying and selling bottles.[19] Gloria also testified that they incurred PhP 33,180 as a result of the victim's death.[20] She also stated that she and the victim have four (4) children[21] and that he was 23 years old at the time of his death.[22]

The Defense's Version of Facts

Accused had a different version for his defense and, hence, a different appreciation of the facts:

He stated that on September 13, 2006 at about 10:25 in the evening, he was on his way home from carrying passengers with his tricycle when he saw the victim with four other people at the *sari-sari* store of Aladino, having a drinking spree.[23] He stated that the victim actually called for him and invited him for a drink, which he refused. According to the accused, the victim then embraced him by extending his arm to his shoulder.

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[15] *Id.* at 5.

[16] *Id.* at 6.

[17] TSN, October 1, 2007, p. 3.

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

[19] *Id.* at 5.

[20] *Id.* at 6.

[21] *Id.*

[22] *Id.* at 3.

[23] TSN, October 20, 2008, p. 3.

He testified that at this instant, he noticed that the victim was pulling a knife from his waist with his right hand, which he was able to grab.[24] As he was being embraced by the victim at such time and since they both fell thereafter, he did not know that he was actually able to stab the victim.[25] When he saw blood coming out of the victim, he ran away out of fear.[26] No other witness or evidence was presented by the defense for its case.

Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its Decision dated January 29, 2009 states:

> WHEREFORE, judgment is hereby rendered finding accused DAVID MANINGDING guilty beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of *reclusion perpertua* and to pay the heirs of the late MARLON MUYALDE, Php50,000.00 as civil indemnity for the latter's death, Php33,180.00 as actual damages for the burial and expenses incurred during the wake of the victim and Php100,000.00 as moral damages.
>
> SO ORDERED.[27]

In deciding for the prosecution and convicting the accused of the crime charged, the RTC gave credence to the testimonies of the prosecution's eyewitnesses, Rommel and Aladino.[28] The RTC also held that the accused's flight negated his claim of self-defense. Finally, his allegation that the victim was drunk at the time of the incident was not supported by any other evidence. Contrarily, the Medical Certificate of the victim is silent as to any presence of alcohol.

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

[25] *Id.* at 4.

[26] *Id.* at 5.

[27] CA *rollo*, p. 12.

[28] *Id.* at 9.

The RTC found that treachery attended the stabbing of the victim, being sudden and unexpected.[29] The RTC also explained that the facts indicate no showing that there was any altercation between the accused and the victim immediately prior to the stabbing that could have warned the latter of the said ensuing incident.[30]

Ruling of the Appellate Court

The accused appealed the Decision of the RTC, reiterating his argument of self-defense. On June 25, 2010, the CA affirmed the judgment of the trial court. The dispositive portion of the CA Decision reads:

> WHEREFORE, the Decision dated 29 January 2009 of the Regional Trial Court of Dagupan City, Branch 44 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[31]

In affirming the decision of the RTC, the CA held that it was not in any way persuaded by the appeal of the accused and his claim of self-defense.[32] The CA emphasized that the element of unlawful aggression is wanting in the present case. The CA likewise affirmed the existence of treachery.

Hence, We have this appeal.

The Issues

The appeal seeks to determine whether the RTC erred in convicting accused-appellant of the crime charged. Particularly, accused-appellant maintains that the stabbing of the victim is justified by self-defense.

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[29] *Id.*

[30] *Id.* at 11.

[31] *Rollo*, p. 7.

[32] *Id.* at 6.

The Court's Ruling

We sustain the conviction of accused-appellant.

The factual determination of the RTC should be afforded full faith and credit

We have held in *People v. Gabrino*[33] that the factual determination of the RTC should not be disturbed unless there is a showing of misinterpretation of materials facts or that it is tainted with grave abuse of discretion:

> We have held time and again that **"the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality."** As We have reiterated in the very recent case of *People v. Jose Pepito Combate*, **where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial.** Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.
>
> In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is therefore no reason to disturb the findings of fact made by the RTC and its assessment of the credibility of the witnesses. To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan*, thus:
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> > In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge *a quo* was in**

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[33] G.R. No. 189981, March 9, 2011; citing *People v. Combate*, G.R. No. 189301, December 15, 2010; *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 705; *People v. Dinglasan*, G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

> **a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.** It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, **because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case**. (Emphasis Ours.)

In this case, We see no reason to disturb the factual findings of the RTC as affirmed by the CA. Neither a misinterpretation of the material facts nor a grave abuse of discretion on the part of the RTC is existent or apparent from the facts of the case.

Self-defense does not exist in the present case

Preliminarily, it is a settled rule that when an accused claims the justifying circumstance of self-defense, an accused admits the commission of the act of killing. The burden of evidence, therefore, shifts to the accused's side in clearly and convincingly proving that the elements of self-defense exist that could justify the accused's act.[34] In this case, considering that at the outset, accused-appellant has already maintained a claim of self-defense, the burden of evidence rests upon him in proving his act of stabbing as justifiable under the circumstances.

According to Article 11 of the Revised Penal Code, "any person who acts in defense of his person or rights" do not incur any criminal liability provided that the following requisites concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. Conversely, the accused must be able to establish that all three circumstances concur in order for the accused's act to be justified under the law.

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[34] *People v. De Jesus*, G.R. No. 186528, January 26, 2011.

Particularly, in the case of unlawful aggression, *People v. Gabrino*, following the ruling in *People v. Manulit*,[35] explained, thus:

> Unlawful aggression is defined as an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life.[36]

In this case, the records would show that accused-appellant was clearly not able to establish the aforementioned requisites. Worse, his sole evidence—his own testimony—was found by the RTC to be so weak and devoid of any credibility as against those presented by the prosecution. From the facts of the present case, the RTC gave credence and weight to the evidence presented by the prosecution, whose testimonies rule out accused-appellant's claim of self-defense. As earlier explicated, We do not disturb or interfere with the findings of fact of the RTC unless there is a clear showing of mistake or a grave abuse of discretion. From the testimonies of Rommel and Aladino, there was no unlawful aggression on the part of the victim. If there was any, it came from accused-appellant himself for having unsuspectingly attacked the victim, who was peacefully engaged in a conversation with Rommel during the stabbing incident.

Treachery exists in the present case

In *People v. Dela Cruz*, this Court discussed that in order for an accused to be convicted of murder, the following elements must concur:

1. That a person was killed.
2. That the accused killed him.

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[35] G.R. No. 192581, November 17, 2010, 635 SCRA 426; citing *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 540.

[36] *People v. Gabrino*, *supra* note 33.

3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.[37]

Moreover, Art. 248 of the Code states that "[a]ny person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with x x x **treachery**."[38] There is treachery when "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make."[39] These means or methods are made in the form of a swift, deliberate and unexpected attack, without any warning and affording the victim, which is usually unarmed and unsuspecting, no chance at all to resist or escape the impending attack.[40]

In this case, it is undisputed that it was accused-appellant who stabbed and killed the victim, which is neither a crime of parricide nor infanticide. We are, therefore, left with the issue of whether there was treachery in the attack. Going over the records of the case, We are convinced that, indeed, treachery was employed and present in the stabbing by accused-appellant of the victim, which led to the latter's ultimate death.

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[37] G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746; cited in *People v. Gabrino*, *supra* note 33.

[38] Emphasis Ours.

[39] *People v. Gabrino*, *supra* note 33; citing *People v. Dela Cruz*, *supra* note 37; *People v. Amazan*, G.R. Nos. 136251 & 138606-07, January 16, 2001, 349 SCRA 218, 233 & *People v. Bato*, G.R. No. 127843, December 15, 2000, 348 SCRA 253, 261.

[40] *Id.*; citing *People v. Dela Cruz, supra* note 37; *People v. Albarido*, G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208; *People v. Francisco*, G.R. No. 130490, June 19, 2000, 333 SCRA 725, 746; *People v. Lobino*, G.R. No. 123071, October 28, 1999, 317 SCRA 606, 615.

We look into the testimonies of Aladino and Rommel, which established the existence of treachery:

Testimony of Aladino Jorge:

Q: You said that Rommel and Marlon were having conversation, where, in what particular portion of your store were they having conversation?
A: Beside my store, they were seated on a bench.

Q: Will you describe to us how they were seated at the time?
A: They were facing each other and in-between them is a table.

Q: And while Marlon and Rommel were having conversation, what transpired next if any?
A: David Maningding suddenly arrived.

x x x x x x x x x

Q: And when David Maningding arrived, what did he do if any?
A: The brother-in-law paid respect to David Maningding by greeting him "good evening."

Q: Who is that brother-in-law who gave his respect to David Maningding by saying "good evening?"
A: Marlon Muyalde, sir.

Q: When Marlon Muyalde said "good [e]vening" to David Maningding who just arrived, where was Marlon Muyalde at the time?
A: He was already standing.

Q: About Marlon's brother Rommer (sic), where was he when Marlon said "good evening" to David Maningding?
A: They were still at the same place, both of them.

Q: **When Marlon said "good evening" to David Maningding, how far was [he] from David Maningding?**
A: **Very near, but David Maningding did not answer.**

Q: When Marlon Muyalde was already standing, what transpired next if any?
A: **When Marlon Muyalde was already standing David Maningding raised the right hand of Marlon and instantly stabbed his armpit.**

x x x x x x x x x

Q: What happened to Marlon Muyalde after being stabbed by David Maningding?
A: Marlon shouted because of pain causing people to come out, then David Maningding ran away.

Q: You said earlier that there was no ex[c]hange of words between David Maningding and Marlon Muyalde before the stabbing incident because according to you David Maningding did not reply to the show of respect of Marlon Muyalde, correct?
A: Yes, sir.

Q: For how long did David Maningding [raise] the hand of Marlon after he arrived.
A: About five (5) minutes after he arrived.

Q: **And during the period of five (5) minutes after he arrived there was no exchange of words according to you between Marlon Muyalde and David Maningding?**
A: **None, sir.**

Q: [How] [a]bout between Rommel Muyalde and David Maningding?
A: The same.

Q: It was Rommel Muyalde who greeted David Maningding "good evening," what about Marlon Muyalde, did he say any word?
A: The same greeting.

Q: What about you, was there exchange of words between you, Marlon and Rommel and David Maningding, **you mean to say nothing happened within that five (5) minutes period before the stabbing?**
A: **No more, only the stabbing.**

Q: Can you tell us how many seconds or minutes did it take David Maningding to stab Marlon Muyalde?
A: **Less than one (1) minute most likely**.[41] (Emphasis Ours.)

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[41] TSN, March 16, 2007, pp. 5-7 & 16.

Testimony of Rommel Muyalde:

Q: While you and your brother were having conversation, can you recall what was your position?
A: We were already sitting facing with each other.

Q: While you were on that position, what happen [sic] next, if any?
A: When we were having conversation at that time my brother-in-law arrived.

Q: What is the name of that brother-in-law of yours who arrived
A: David Maningding, sir.

Q: You are referring to the accused in this case?
A: Yes, sir.

Q: And what happen[ed] next after your brother-in-law David Maningding arrived?
A: When he arrived I paid my respect saying "good evening *Kuya*" but he did not answer and also my older brother greeted him but he did not answer also.

Q: And what transpire[d], if any?
A: **After my brother greeted him good evening *kuya* and he did not answer, what he did he got hold of the right hand of my brother, raised it and then he made a thrust using his left hand**.[42]

x x x x x x x x x

Q: You mean to say that after your brother greeted your brother-in-law there was no response from David Maningding?
A: No more, sir.

Q: And for how long did it take after your *Kuya* Marlon had greeted David Maningding when the latter raised his right hand and stabbed his lower right armpit?
A: One or two minutes because after my brother Marlon greeted him, good evening *Kuya*, my brother-in-law David Maningding immediately raised his right hand, stabbed him then removed the knife and ran away, sir.

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[42] TSN, August 13, 2007, pp. 5-6.

x x x x x x x x x

Q: But before David Maningding stood up he was seated?
A: When he arrived I greeted him then he sat when my brother Marlon greeted him but David Maningding did not [respond] and he stood up.

Q: How many minutes did he sit before he stood up?
A: Two (2) minutes, sir.

Q: Did you not have any conversation before he stood up?
A: **None, we did not. We just greeted him. There was no conversation between us because when he arrived I paid respect to him but when it was the turn of my brother to [pay] respect he stood up and that was the time he stabbed him**.[43]

From the testimonies of Aladino and Rommel, it cannot be gainsaid that accused-appellant without any warning or suspicion, and taking advantage of the circumstances, immediately attacked the victim. The victim did not have any suspicion that could have alerted him of the impending attack. As clearly demonstrated in the trial court, the attack was swift and unexpected, even to the eyewitnesses, Aladino and Rommel. We, therefore, agree with the RTC's ruling and finding, and We find no reason to veer away from them.

Accused-appellant is liable for damages and interest

Under Art. 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. In this case, the RTC was correct in imposing the lesser penalty of *reclusion perpetua*, as there existed neither aggravating nor mitigating circumstances.[44]

Corollarily, in *People v. Combate*, We ruled that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP 50,000.00 as civil indemnity,

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[43] *Id.* at 14-15.

[44] *People v. Gabrino*, *supra* note 33.

PhP 50,000.00 as moral damages, and PhP 30,000.00 as exemplary damages."[45]

Following the aforementioned jurisprudence, We, therefore, reduce from PhP 100,000 to PhP 50,000 the amount of moral damages awarded by the RTC to the heirs of the victim but impose the additional penalty of exemplary damages. To summarize, the following shall be assessed against accused-appellant: PhP 50,000 in civil indemnity, PhP 50,000 in moral damages, and PhP 30,000 in exemplary damages, with an interest of six percent (6%) per annum from finality of judgment until paid.[46] Furthermore, We note the actual damages awarded by the RTC amounting to PhP 33,180.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 03854 finding accused-appellant David Maningding guilty of the crime of murder is *AFFIRMED* with *MODIFICATION*. As thus modified, the ruling of the trial court should read as follows:

> WHEREFORE, **PREMISES CONSIDERED,** judgment is hereby rendered finding the accused, David Maningding, **GUILTY** beyond reasonable doubt of the crime of **MURDER.** The accused is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA*** and is ordered to indemnify the heirs of the late Marlon Muyalde the sum of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, PhP 30,000 as exemplary damages, PhP 33,180 as actual damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Peralta, Abad, Villarama, Jr.,[*] and *Mendoza, JJ.*, concur.

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[45] G.R. No. 189301, December 15, 2010; cited in *People v. Gabrino*, *supra* note 33; *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[46] *Id.*

[*] Additional member per Special Order No. 1076 dated September 6, 2011.

FIRST DIVISION

[G.R. No. 166357. September 19, 2011]

VALERIO E. KALAW, *petitioner, vs.* **MA. ELENA FERNANDEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; EXPLAINED.— Psychological incapacity is the downright incapacity or inability to take cognizance of and to assume the basic marital obligations. The burden of proving psychological incapacity is on the plaintiff. The plaintiff must prove that the incapacitated party, based on his or her actions or behavior, suffers a serious psychological disorder that completely disables him or her from understanding and discharging the essential obligations of the marital state. The psychological problem must be grave, must have existed at the time of marriage, and must be incurable.

2. ID.; ID.; ID.; ID.; NOT PROVEN IN CASE AT BAR.— In the case at bar, petitioner failed to prove that his wife (respondent) suffers from psychological incapacity. He presented the testimonies of two supposed expert witnesses who concluded that respondent is psychologically incapacitated, but the conclusions of these witnesses were premised on the alleged acts or behavior of respondent which had not been sufficiently proven. Petitioner's experts heavily relied on petitioner's allegations of respondent's constant mahjong sessions, visits to the beauty parlor, going out with friends, adultery, and neglect of their children. Petitioner's experts opined that respondent's alleged habits, when performed constantly to the detriment of quality and quantity of time devoted to her duties as mother and wife, constitute a psychological incapacity in the form of NPD. But petitioner's allegations, which served as the bases or underlying premises of the conclusions of his experts, were not actually proven. x x x Given the insufficiency of evidence that respondent actually engaged in the behaviors described as constitutive of NPD, there is no basis for concluding that she

> was indeed psychologically incapacitated. Indeed, the totality of the evidence points to the opposite conclusion. A fair assessment of the facts would show that respondent was not totally remiss and incapable of appreciating and performing her marital and parental duties. x x x After poring over the records of the case, the Court finds no factual basis for the conclusion of psychological incapacity. x x x What transpired between the parties is acrimony and, perhaps, infidelity, which may have constrained them from dedicating the best of themselves to each other and to their children. There may be grounds for legal separation, but certainly not psychological incapacity that voids a marriage.

APPEARANCES OF COUNSEL

Erlando A. Abrenica & Jose Mari S. Velez, Jr. for petitioner.
Zamora Poblador Vasquez & Bretaña for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A finding of psychological incapacity must be supported by well-established facts. It is the plaintiff's burden to convince the court of the existence of these facts.

Before the Court is a Petition for Review[1] of the Court of Appeals' (CA) May 27, 2004 Decision[2] and December 15, 2004 Resolution[3] in CA-G.R. CV No. 64240, which reversed the trial court's declaration of nullity of the herein parties' marriage. The *fallo* of the assailed Decision reads:

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[1] *Rollo*, pp. 26-56.

[2] *Id.* at 9-20; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Regalado E. Maambong and Vicente Q. Roxas.

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

WHEREFORE,the appeal is **GRANTED**, and the assailed Decision is **SET ASIDE** and **VACATED** while the petition for declaration of nullity of marriage is hereby **DISMISSED**.

SO ORDERED.[4]

Factual Antecedents

Petitioner Valerio E. Kalaw (Tyrone) and respondent Ma. Elena Fernandez (Malyn) met in 1973. They maintained a relationship and eventually married in Hong Kong on November 4, 1976. They had four children, Valerio (Rio), Maria Eva (Ria), Ramon Miguel (Miggy or Mickey), and Jaime Teodoro (Jay).

Shortly after the birth of their youngest son, Tyrone had an extramarital affair with Jocelyn Quejano (Jocelyn), who gave birth to a son in March 1983.[5]

In May 1985, Malyn left the conjugal home (the house of her Kalaw in-laws) and her four children with Tyrone.[6] Meanwhile, Tyrone started living with Jocelyn, who bore him three more children.[7]

In 1990, Tyrone went to the United States (US) with Jocelyn and their children. He left his four children from his marriage with Malyn in a rented house in Valle Verde with only a househelp and a driver.[8] The househelp would just call Malyn to take care of the children whenever any of them got sick. Also, in accordance with their custody agreement, the children stayed with Malyn on weekends.[9]

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[4] CA Decision, p. 11; *rollo*, p. 19.

[5] Social Case Study Report, p. 14; Records, Vol. I, p. 216.

[6] TSN dated March 15, 1995, pp. 11-12.

[7] Social Case Study Report, p. 14; Records, Vol. I, p. 216.

[8] Social Case Study Report, pp. 11 and 13; *id.* at 213 and 215.

[9] Dr. Dayan's Psychological Evaluation Report, p. 7; *id.* at 259.

In 1994, the two elder children, Rio and Ria, asked for Malyn's permission to go to Japan for a one-week vacation. Malyn acceded only to learn later that Tyrone brought the children to the US.[10] After just one year, Ria returned to the Philippines and chose to live with Malyn.

Meanwhile, Tyrone and Jocelyn's family returned to the Philippines and resumed physical custody of the two younger children, Miggy and Jay. According to Malyn, from that time on, the children refused to go to her house on weekends because of alleged weekend plans with their father.[11]

Complaint for declaration of nullity of marriage

On July 6, 1994, nine years since the *de facto* separation from his wife, Tyrone filed a petition for declaration of nullity of marriage based on Article 36 of the Family Code.[12] He alleged that Malyn was psychologically incapacitated to perform and comply with the essential marital obligations at the time of the celebration of their marriage. He further claimed that her psychological incapacity was manifested by her immaturity and irresponsibility towards Tyrone and their children during their co-habitation, as shown by Malyn's following acts:

1. she left the children without proper care and attention as she played mahjong all day and all night;

2. she left the house to party with male friends and returned in the early hours of the following day; and

3. she committed adultery on June 9, 1985, which act Tyrone discovered *in flagrante delicto*.[13]

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[10] *Id.* at 10-11; *id.* at 259.

[11] TSN dated March 15, 1995, pp. 23-24; Dr. Dayan's Psychological Evaluation Report, pp. 7-8; Records, Vol. I, p. 259.

[12] *Id.* at 1-4.

[13] *Id.* at 2; Petitioner's Memorandum in JDRC Case No. 3100, records, Vol. II, pp. 306-307.

During trial,[14] Tyrone narrated the circumstances of Malyn's alleged infidelity. According to him, on June 9, 1985, he and his brother-in-law, Ronald Fernandez (Malyn's brother), proceeded to Hyatt Hotel and learned that Malyn was occupying a room with a certain Benjie Guevarra (Benjie). When he proceeded to the said room, he saw Benjie and Malyn inside.[15] At rebuttal, Tyrone elaborated that Benjie was wearing only a towel around his waist, while Malyn was lying in bed in her underwear. After an exchange of words, he agreed not to charge Malyn with adultery when the latter agreed to relinquish all her marital and parental rights.[16] They put their agreement in writing before Atty. Jose Palarca.

Tyrone presented a psychologist, Dr. Cristina Gates (Dr. Gates), and a Catholic canon law expert, Fr. Gerard Healy, S.J. (Fr. Healy), to testify on Malyn's psychological incapacity.

Dr. Gates explained on the stand that the factual allegations regarding Malyn's behavior – her sexual infidelity, habitual mahjong playing, and her frequent nights-out with friends – may reflect a narcissistic personality disorder (NPD).[17] NPD is present when a person is ***obsessed*** to meet her wants and needs in utter disregard of her significant others.[18] Malyn's NPD is manifest in her ***utter*** neglect of her duties as a mother.[19]

Dr. Gates reported that Malyn's personality disorder "may have been evident even prior to her marriage" because it is rooted in her family background and upbringing, which the psychologist gathered to be materially deprived and without a proper maternal role model.[20]

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[14] The case proceeded to trial after the fiscal manifested to the court that there was no collusion between the parties (Records, Vol. I, p. 45).

[15] TSN dated January 5, 1995, pp. 16-17.

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

[17] Psychological Report, Records, Vol. I, pp. 173-175.

[18] TSN dated February 15, 1995, pp. 6-7.

[19] *Id.* at 7.

[20] Psychological Report, Records, Vol. I, pp. 174-175.

Dr. Gates based her diagnosis on the facts revealed by her interviews with Tyrone, Trinidad Kalaw (Tyrone's sister-in-law), and the son Miggy. She also read the transcript of Tyrone's court testimony.[21]

Fr. Healy corroborated Dr. Gates' assessment. He concluded that Malyn was psychologically incapacitated to perform her marital duties.[22] He explained that her psychological incapacity is rooted in her role as the breadwinner of her family. This role allegedly inflated Malyn's ego to the point that her needs became priority, while her kids and her husband's needs became secondary. Malyn is so self-absorbed that she is incapable of prioritizing her family's needs.

Fr. Healy clarified that playing mahjong and spending time with friends are not disorders by themselves. They only constitute psychological incapacity whenever inordinate amounts of time are spent on these activities to the detriment of one's familial duties.[23] Fr. Healy characterized Malyn's psychological incapacity as grave and incurable.[24]

He based his opinion on his interview with Tyrone, the trial transcripts, as well as the report of Dr. Natividad Dayan (Dr. Dayan), Malyn's expert witness.[25] He clarified that he did not verify the truthfulness of the factual allegations regarding Malyn's "habits" because he believed it is the court's duty to do so.[26] Instead, he formed his opinion on the assumption that the factual allegations are indeed true.

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[21] TSN dated February 15, 1995, p. 4.

[22] TSN dated June 17, 1998, p. 24.

[23] *Id.* at 30-31.

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

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

[26] *Id.* at 23.

Malyn's version

Malyn denied being psychologically incapacitated.[27] While she admitted playing mahjong, she denied playing as frequently as Tyrone alleged. She maintained that she did so only two to three times a week and always between 1 p.m. to 6 p.m. only.[28] And in those instances, she always had Tyrone's permission and would often bring the children and their respective *yayas* with her.[29] She maintained that she did not neglect her duties as mother and wife.

Malyn admitted leaving the conjugal home in May 1985. She, however, explained that she did so only to escape her physically abusive husband.[30] On the day she left, Tyrone, who preferred to keep Malyn a housewife, was upset that Malyn was preparing to go to work. He called up the security guards and instructed them not to let Malyn out of the house. Tyrone then placed cigarette ashes on Malyn's head and proceeded to lock the bedroom doors. Fearing another beating, Malyn rushed out of their bedroom and into her mother-in-law's room. She blurted that Tyrone would beat her up again so her mother-in-law gave her ₱300 to leave the house.[31] She never returned to their conjugal home.

Malyn explained that she applied for work, against Tyrone's wishes, because she wanted to be self-sufficient. Her resolve came from her discovery that Tyrone had a son by Jocelyn and had secretly gone to the US with Jocelyn.[32]

Malyn denied the allegation of adultery. She maintained that Benjie only booked a room at the Hyatt Hotel for her because

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[27] Records, Vol. I, pp. 20-21.

[28] TSN dated July 8, 1998, pp. 5-7.

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

[30] TSN dated March 15, 1995, pp. 12-13.

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

[32] *Id.* at 9-11.

she was so drunk after partying with friends. She admitted finding her brother Ronald and Tyrone at the door of the Hyatt Hotel room, but maintained being fully clothed at that time.[33] Malyn insisted that she wrote the letter relinquishing all her spousal and parental rights under duress.[34]

After the Hyatt Hotel incident, Malyn only saw her children by surreptitiously visiting them in school. She later obtained partial custody of the children as an incident to the legal separation action filed by Tyrone against her (which action was subsequently dismissed for lack of interest).

As an affirmative defense, Malyn maintained that it was Tyrone who was suffering from psychological incapacity, as manifested by his drug dependence, habitual drinking, womanizing, and physical violence.[35] Malyn presented Dr. Dayan a clinical psychologist, as her expert witness.

Dr. Dayan interviewed Tyrone, Malyn, Miggy/Mickey, Jay, and Ria for her psychological evaluation of the spouses. The factual narrations culled from these interviews reveal that Tyrone found Malyn a "lousy" mother because of her mahjong habit,[36] while Malyn was fed up with Tyrone's sexual infidelity, drug habit, and physical abuse.[37] Dr. Dayan determined that both Tyrone and Malyn were behaviorally immature. They encountered problems because of their personality differences, which ultimately led to the demise of their marriage. Her diagnostic impressions are summarized below:

The marriage of Tyrone and Malyn was a mistake from the very beginning. Both of them were not truly ready for marriage even after two years of living together and having a child. When Malyn first met Tyrone who showered her with gifts, flowers, and affection she

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[33] *Id.* at 15-17.

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

[35] Records, Vol. I, p. 21.

[36] Dr. Dayan's Psychological Evaluation Report, p. 13; *id.* at 259.

[37] *Id.* at 4-6; *id.*

resisted his overtures. She made it clear that she could 'take him or leave him.' But the minute she started to care, she became a different person – clingy and immature, doubting his love, constantly demanding reassurance that she was the most important person in his life. She became relationship-dependent. It appears that her style then was when she begins to care for a man, she puts all her energy into him and loses focus on herself. This imbalance between thinking and feeling was overwhelming to Tyrone who admitted that the thought of commitment scared him. Tyrone admitted that when he was in his younger years, he was often out seeking other women. His interest in them was not necessarily for sex, just for fun – dancing, drinking, or simply flirting.

Both of them seem behaviorally immature. For some time, Malyn adapted to her husband who was a moody man with short temper and unresolved issues with parents and siblings. He was a distancer, concerned more about his work and friends tha[n] he was about spending time with his family. Because of Malyn's and Tyrone's backgrounds (both came from families with high conflicts) they experienced turmoil and chaos in their marriage. The conflicts they had struggled to avoid suddenly galloped out of control. Their individual personalities broke through, precipitating the demise of their marriage.[38]

Dr. Dayan likewise wrote in her psychological evaluation report that Malyn exhibited significant, but not severe, dependency, narcissism, and compulsiveness.[39]

On the stand, the psychologist elaborated that while Malyn had relationship problems with Tyrone, she appeared to have a good relationship with her kids.[40] As for Tyrone, he has commitment issues which prevent him from committing himself to his duties as a husband. He is unable to remain faithful to Malyn and is psychologically incapacitated to perform this duty.[41]

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[38] *Id.* at 17-18; *id.*; TSN dated March 14, 1996, p. 10.

[39] TSN dated January 30, 1996, p. 13.

[40] *Id.* at 15.

[41] TSN dated March 14, 1996, p. 12.

Children's version

The children all stated that both their parents took care of them, provided for their needs, and loved them. Rio testified that they would accompany their mother to White Plains on days that she played mahjong with her friends. None of them reported being neglected or feeling abandoned.

The two elder kids remembered the fights between their parents but it was only Ria who admitted actually witnessing physical abuse inflicted on her mother.[42] The two elder kids also recalled that, after the separation, their mother would visit them only in school.[43]

The children recalled living in Valle Verde with only the househelp and driver during the time that their dad was abroad.[44] While they did not live with their mother while they were housed in Valle Verde, the kids were in agreement that their mother took care of them on weekends and would see to their needs. They had a common recollection that the househelp would call their mother to come and take care of them in Valle Verde whenever any of them was sick.[45]

Other witnesses

Dr. Cornelio Banaag, Tyrone's attending psychiatrist at the Manila Sanitarium, testified that, for the duration of Tyrone's confinement, the couple appeared happy and the wife was commendable for the support she gave to her spouse.[46] He

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[42] Social Case Study Report, p. 13 (Records, Vol. I, p. 215); Dr. Dayan's Psychological Evaluation Report, p. 9 (Records, Vol. I, p. 259).

[43] TSN dated June 8, 1995, p. 6; Dr. Dayan's Psychological Evaluation Report, p. 9 (*Id.*); Rio's deposition, p. 3 (*Id.* at 356).

[44] Social Case Study Report, pp. 11 and 13; Records, Vol. I, pp. 213 and 215.

[45] TSN dated June 8, 1995, p. 9; Social Case Study Report, pp. 11 and 19 (*Id.* at 213 and 221).

[46] TSN dated November 20, 1995, pp. 15 and 21.

likewise testified that Tyrone tested negative for drugs and was not a drug dependent.[47]

Malyn's brother, Ronald Fernandez, confirmed Tyrone's allegation that they found Malyn with Benjie in the Hyatt hotel room. Contrary to Tyrone's version, he testified that neither he nor Tyrone entered the room, but stayed in the hallway. He likewise did not recall seeing Benjie or Malyn half-naked.[48]

Tyrone then presented Mario Calma (Mario), who was allegedly part of Malyn's group of friends. He stated on the stand that they would go on nights-out as a group and Malyn would meet with a male musician-friend afterwards.[49]

Social worker

The trial court ordered the court social worker, Jocelyn V. Arre (Arre), to conduct a social case study on the parties as well as the minor children. Arre interviewed the parties Tyrone and Malyn; the minor children Miggy/Mickey and Jay; Tyrone's live-in partner, Jocelyn;[50] and Tyrone and Malyn's only daughter, Ria. While both parents are financially stable and have positive relationships with their children, she recommended that the custody of the minor children be awarded to Malyn. Based on the interviews of family members themselves, Malyn was shown to be more available to the children and to exercise better supervision and care. The social worker commended the fact that even after Malyn left the conjugal home in 1985, she made efforts to visit her children clandestinely in their respective schools. And while she was only granted weekend custody of

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[47] *Id.* at 8-10.

[48] TSN dated January 4, 1996, pp. 4-6.

[49] TSN dated April 2, 1998, pp. 18-20.

[50] Tyrone alleges that he married Jocelyn Quejano in 1990 in California, United States of America after divorcing with Malyn also in California sometime in 1987. There is, however, no documentary evidence of the divorce and remarriage. There is no allegation that Tyrone had obtained American citizenship and is indicated in the Social Case Study Report as a Filipino citizen (Records, Vol. I, p. 219).

the children, it appeared that she made efforts to personally attend to their needs and to devote time with them.[51]

On the contrary, Tyrone, who had custody of the children since the couple's *de facto* separation, simply left the children for several years with only a maid and a driver to care for them while he lived with his second family abroad.[52] The social worker found that Tyrone tended to prioritize his second family to the detriment of his children with Malyn. Given this history during the formative years of the children, the social worker did not find Tyrone a reliable parent to whom custody of adolescents may be awarded.

Ruling of the Regional Trial Court[53]

After summarizing the evidence presented by both parties, the trial court concluded that both parties are psychologically incapacitated to perform the essential marital obligations under the Family Code. The court's Decision is encapsulated in this paragraph:

> From the evidence, it appears that parties are both suffering from psychological incapacity to perform their essential marital obligations under Article 36 of the Family Code. The parties entered into a marriage without as much as understanding what it entails. They failed to commit themselves to its essential obligations: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of their children to become responsible individuals. Parties' psychological incapacity is grave, and serious such that both are incapable of carrying out the ordinary duties required in marriage. The incapacity has been clinically established and was found to be pervasive, grave and incurable.[54]

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[51] Social Case Study Report, pp. 19-20; *id.* at 221-222.

[52] *Id.*; *id.*

[53] Records, Vol. II, pp. 382-389; penned by Judge Jose R. Hernandez of Branch 158 of the Regional Trial Court of Pasig City.

[54] RTC Decision, pp. 7-8; *id.* at 388-389.

The trial court then declared the parties' marriage void *ab initio* pursuant to Article 36 of the Family Code.[55]

Ruling of the Court of Appeals[56]

Malyn appealed the trial court's Decision to the CA. The CA reversed the trial court's ruling because it is not supported by the facts on record. Both parties' allegations and incriminations against each other do not support a finding of psychological incapacity. The parties' faults tend only to picture their immaturity and irresponsibility in performing their marital and familial obligations. At most, there may be sufficient grounds for a legal separation.[57] Moreover, the psychological report submitted by petitioner's expert witness, Dr. Gates, does not explain how the diagnosis of NPD came to be drawn from the sources. It failed to satisfy the legal and jurisprudential requirements for the declaration of nullity of marriage.[58]

Tyrone filed a motion for reconsideration[59] but the same was denied on December 15, 2004.[60]

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[55] The *fallo* reads:

WHEREFORE, the marriage between petitioner Valerio Kalaw and respondent Ma. Elena Fernandez celebrated on November 4, 1976 is declared void *ab initio* pursuant to the provisions of Article 36 of the Family Code, and of no further effect.

The provisions of Article[s] 50, 51, and 52 of the Family Code of the Philippines relative to the delivery of their children's presumptive legitime shall not apply because parties were not able to prove the existence of any conjugal partnership of gains.

Upon finality of this Decision, furnish a copy each to the Office of the Local Civil Registrar of Pasig City and the National Statistics Office, Quezon City for their appropriate action consistent with this Decision.

SO ORDERED. (*Id.*; *id.*)

[56] CA *rollo*, pp. 262-273.

[57] CA Decision, p. 7; CA *rollo*, p. 268.

[58] *Id.* at 11; *id.* at 272.

[59] CA *rollo*, pp. 281-298.

[60] *Id.* at 310-311.

Petitioner's arguments

Petitioner Tyrone argues that the CA erred in disregarding the factual findings of the trial court, which is the court that is in the best position to appreciate the evidence. He opines that he has presented preponderant evidence to prove that respondent is psychologically incapacitated to perform her essential marital obligations, to wit:

a) the expert witnesses, Dr. Gates and Fr. Healy, proved on the stand that respondent's egocentric attitude, immaturity, self-obsession and self-centeredness were manifestations of respondent's NPD;[61]

b) these expert witnesses proved that respondent's NPD is grave and incurable and prevents her from performing her essential marital obligations;[62] and

c) that respondent's NPD existed at the time of the celebration of the marriage because it is rooted in her upbringing, family background, and socialite lifestyle prior to her marriage.[63]

Petitioner stresses that even respondent insisted that their marriage is void because of psychological incapacity, albeit on petitioner's part.[64]

Respondent's arguments

Respondent maintains that Tyrone failed to discharge his burden of proving her alleged psychological incapacity.[65] She argues that the testimonies of her children and the findings of the court social worker to the effect that she was a good, loving, and attentive mother are sufficient to rebut Tyrone's allegation that she was negligent and irresponsible.[66]

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[61] Petitioner's Memorandum, pp. 23-26; *rollo*, pp. 606-609.

[62] *Id.* at 13-20; *id.* at 596-603.

[63] *Id.* at 20-22; *id.* at 603-605.

[64] *Id.* at 26-27; *id.* at 609-610.

[65] Respondent's Memorandum, p. 2; *id.* at 551.

[66] *Id.* at 17-18; *id.* at 566-567.

She assails Dr. Gates's report as one-sided and lacking in depth. Dr. Gates did not interview her, their common children, or even Jocelyn. Moreover, her report failed to state that Malyn's alleged psychological incapacity was grave and incurable.[67] Fr. Healy's testimony, on the other hand, was based only on Tyrone's version of the facts.[68]

Malyn reiterates the appellate court's ruling that the trial court Decision is intrinsically defective for failing to support its conclusion of psychological incapacity with factual findings.

Almost four years after filing her memorandum, respondent apparently had a change of heart and filed a Manifestation with Motion for Leave to Withdraw Comment and Memorandum.[69] She manifested that she was no longer disputing the possibility that their marriage may really be void on the basis of Tyrone's psychological incapacity. She then asked the Court to dispose of the case with justice.[70] Her manifestation and motion were noted by the Court in its January 20, 2010 Resolution.[71]

Issue

Whether petitioner has sufficiently proved that respondent suffers from psychological incapacity

Our Ruling

The petition has no merit. The CA committed no reversible error in setting aside the trial court's Decision for lack of legal and factual basis.

A petition for declaration of nullity of marriage is governed by Article 36 of the Family Code which provides:

ART. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with

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[67] *Id.* at 19; *id.* at 568.

[68] *Id.* at 20; *id.* at 569.

[69] *Rollo*, pp. 650-654.

[70] Respondent's Manifestation, p. 2; *id.* at 651.

[71] *Rollo*, p. 662.

the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Psychological incapacity is the downright incapacity or inability to take cognizance of and to assume the basic marital obligations.[72] The burden of proving psychological incapacity is on the plaintiff.[73] The plaintiff must prove that the incapacitated party, based on his or her actions or behavior, suffers a serious psychological disorder that completely disables him or her from understanding and discharging the essential obligations of the marital state. The psychological problem must be grave, must have existed at the time of marriage, and must be incurable.[74]

In the case at bar, petitioner failed to prove that his wife (respondent) suffers from psychological incapacity. He presented the testimonies of two supposed expert witnesses who concluded that respondent is psychologically incapacitated, but the conclusions of these witnesses were premised on the alleged acts or behavior of respondent which had not been sufficiently proven. Petitioner's experts heavily relied on petitioner's allegations of respondent's constant mahjong sessions, visits to the beauty parlor, going out with friends, adultery, and neglect of their children. Petitioner's experts opined that respondent's alleged habits, when performed constantly to the detriment of quality and quantity of time devoted to her duties as mother and wife, constitute a psychological incapacity in the form of NPD.

But petitioner's allegations, which served as the bases or underlying premises of the conclusions of his experts, were not actually proven. In fact, respondent presented contrary evidence refuting these allegations of the petitioner.

For instance, petitioner alleged that respondent constantly played mahjong and neglected their children as a result. Respondent admittedly played mahjong, but it was not proven

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[72] *Republic v. Iyoy*, 507 Phil. 485, 502 (2005), citing *Republic v. Court of Appeals*, 335 Phil. 664, 678 (1997).

[73] *Republic v. Court of Appeals*, 335 Phil. 664, 676 (1997).

[74] *Santos v. Court of Appeals*, 310 Phil. 21, 39 (1995).

that she engaged in mahjong so frequently that she ***neglected*** her duties as a mother and a wife. Respondent refuted petitioner's allegations that she played four to five times a week. She maintained it was only two to three times a week and always with the permission of her husband and without abandoning her children at home. The children corroborated this, saying that they were with their mother when she played mahjong in their relative's home. Petitioner did not present any proof, other than his own testimony, that the mahjong sessions were so frequent that respondent neglected her family. While he intimated that two of his sons repeated the second grade, he was not able to link this episode to respondent's mahjong-playing. The least that could have been done was to prove the frequency of respondent's mahjong-playing during the years when these two children were in second grade. This was not done. Thus, while there is no dispute that respondent played mahjong, its alleged debilitating frequency and adverse effect on the children were not proven.

Also unproven was petitioner's claim about respondent's alleged constant visits to the beauty parlor, going out with friends, and obsessive need for attention from other men. No proof whatsoever was presented to prove her visits to beauty salons or her frequent partying with friends. Petitioner presented Mario (an alleged companion of respondent during these nights-out) in order to prove that respondent had affairs with other men, but Mario only testified that respondent *appeared* to be dating other men. Even assuming *arguendo* that petitioner was able to prove that respondent had an extramarital affair with another man, that one instance of sexual infidelity cannot, by itself, be equated with obsessive need for attention from other men. Sexual infidelity *per se* is a ground for legal separation, but it does not necessarily constitute psychological incapacity.

Given the insufficiency of evidence that respondent actually engaged in the behaviors described as constitutive of NPD, there is no basis for concluding that she was indeed psychologically incapacitated. Indeed, the totality of the evidence points to the opposite conclusion. A fair assessment of the facts would show that respondent was not totally remiss and incapable of appreciating and performing her marital and parental duties. Not once did

the children state that they were neglected by their mother. On the contrary, they narrated that she took care of them, was around when they were sick, and cooked the food they like. It appears that respondent made real efforts to see and take care of her children despite her estrangement from their father. There was no testimony whatsoever that shows abandonment and neglect of familial duties. While petitioner cites the fact that his two sons, Rio and Miggy, both failed the second elementary level despite having tutors, there is nothing to link their academic shortcomings to Malyn's actions.

After poring over the records of the case, the Court finds no factual basis for the conclusion of psychological incapacity. There is no error in the CA's reversal of the trial court's ruling that there was psychological incapacity. The trial court's Decision merely summarized the allegations, testimonies, and evidence of the respective parties, but it did not actually assess the veracity of these allegations, the credibility of the witnesses, and the weight of the evidence. The trial court did not make factual findings which can serve as bases for its legal conclusion of psychological incapacity.

What transpired between the parties is acrimony and, perhaps, infidelity, which may have constrained them from dedicating the best of themselves to each other and to their children. There may be grounds for legal separation, but certainly not psychological incapacity that voids a marriage.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals' May 27, 2004 Decision and its December 15, 2004 Resolution in CA-G.R. CV No. 64240 are *AFFIRMED*.

SO ORDERED.

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

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[*] In lieu of Associate Justice Martin S. Villarama, Jr., per Special Order No. 1080 dated September 13, 2011.

THIRD DIVISION

[A.M. No. RTJ-11-2265. September 21, 2011]
(Formerly A.M. OCA I.P.I. No. 08-2986-RTJ)

ATTY. EMMANUEL R. ANDAMO, *complainant, vs.* **JUDGE EDWIN G. LARIDA, JR., CLERK OF COURT, STANLEE D. CALMA and LEGAL RESEARCHER DIANA G. RUIZ, all of Regional Trial Court, Branch 18 Tagaytay City,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW, NOT A CASE OF.— It is settled that a judge can be held liable for gross ignorance of the law if it can be shown that he committed an error so gross and patent as to produce an inference of bad faith. In addition to this, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption. The reasons cited by complainant, far from constituting gross ignorance of the law, actually reflect respondent Judge Larida Jr.'s faithful adherence to his judicial duty to review the cases, serve due process to all parties concerned, and to eventually decide the petitions based solely on law and evidence.

2. LEGAL ETHICS; ATTORNEYS; FILING OF A FRIVOLOUS AND BASELESS ADMINISTRATIVE COMPLAINT AGAINST A JUDGE CONSTITUTES A FLAGRANT VIOLATION OF THE LAWYER'S RESPONSIBILITY TO PRESERVE AND MAINTAIN THE RESPECT DUE TO COURTS OF JUSTICE.— The respondents cannot be held liable for judiciously performing their sworn duty to observe and follow court proceedings as provided by the Rules. Complainant apparently filed this complaint primarily to divert the attention of his client from his shortcomings as its counsel, if not to simply harass the respondents. x x x This administrative charge seeks to cast doubt on the integrity of respondent judge, the judicial personnel and the court which they represent, in flagrant abdication of the bounden responsibility of a lawyer to

observe and maintain the respect due to courts of justice. "As an officer of the court, a lawyer has the sworn duty to assist in, not to impede or pervert, the administration of justice." "Lawyers must always keep in perspective the thought that since lawyers are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice; to this, their clients' success is wholly subordinate; and their conduct ought to and must be scrupulously observant of law and ethics." x x x "A lawyer who files an unfounded complaint must be sanctioned because, as an officer of the court, he does not discharge his duty by filing frivolous petitions that only add to the work load of the judiciary. Such filing of baseless complaints is contemptuous of the courts."

D E C I S I O N

MENDOZA, *J.*:

Doubtless, the Court will never tolerate or condone any conduct, act or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary. However, it will not hesitate to protect innocent court employees against any baseless accusation or administrative charge that only serve to disrupt rather than promote the orderly administration of justice.[1]

At bench is an administrative case against respondents Judge Edwin G. Larida, Jr. *(Judge Larida, Jr.),* Clerk of Court Stanlee D. Calma *(Atty. Calma)* and Legal Researcher Diana G. Ruiz *(LR Ruiz),* all of the Regional Trial Court *(RTC),* Branch 18, Tagaytay City.

The Facts:

In a Letter-Complaint dated August 26, 2008,[2] complainant Atty. Emmanuel R. Andamo *(complainant),* counsel for Cavite

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[1] *Monticalbo v. Judge Maraya,* A.M. No. RTJ-09-2197, April 13, 2011.

[2] *Rollo,* pp. 1-8.

Rural Banking Corporation *(CRBC)*, charged Judge Larida, Jr., Atty. Calma and LR Ruiz with ignorance of the law.

The Office of the Court Administrator *(OCA)* summarized the letter-complaint and its attachments as follows:

I. Four (4) Petitions for issuance by the Clerk of Court of Certificates of Sale under Act 3135, as amended:

1. Cavite Rural Banking Corporation, *petitioner*, Freddie P. Magno, *mortgagor*, filed on **28 December 2005** – (Re: application for extra-judicial foreclosure of mortgage, **19 March 2003**);
2. Cavite Rural Banking Corporation, *petitioner*, Sps. Sixto & Norma Tolentino, *mortgagors*, filed on **28 December 2005** – (Re: application for extra-judicial foreclosure of mortgage, **19 March 2003**);
3. Cavite Rural Banking Corporation, *petitioner*, Sps. Jonathan & Yolanda Peñaranda, *mortgagors*, filed on 28 December 2005 – (Re: application for extra-judicial foreclosure of mortgage, **01 October 2001**);
4. Cavite Rural Banking Corporation, *petitioner*, Celia Bay, *mortgagor*, filed on **28 December 2005** – (Re: application for extra-judicial foreclosure of mortgage, **19 March 2003**);

II. Four (4) *Ex-parte* Joint Petitions for the issuance by the Honorable Trial Court of Writs of Possession under Act 3135, as amended:

1. **TG-05-1103**, 08 August 2005, Sps. Babestil & Sancha Pendatum, *mortgagors*;
2. **TG-05-1104**, 24 November 2005, Josefina Villanueva, *mortgagor*;
3. **TG-05-1105**, 08 August 2005, Sps. Josefa Desipeda & Roqueno Calderon, *mortgagors;*
4. **TG-05-1141**, 28 December 2005, Norma Malabanan, *mortgagor*;

Complainant Emmanuel R. Andamo avers that the aforementioned Petitions have long been pending before the above-mentioned court

saying that the ongoing hearings of said cases may be further extended by the respondent Judge Edwin G. Larida, Jr.

Anent *TG-05-1103 and TG-05-1105*, complainant Emmanuel R. Andamo argues that respondent Judge Edwin G. Larida, Jr. committed an error when he recognized the appearance and participation of Atty. Ireneo Anarna as lawyer for the oppositors to the said petitions in the hearings thereof, and thereafter gave due course to the two oppositions filed, both dated 15 November 2005. Respondent Judge Edwin G. Larida, Jr. committed another error when he failed to require the oppositors and Atty. Anarna the required guaranty bonds as mandated by Section 47 of Republic Act 8791.

Likewise, complainant Emmanuel R. Andamo bewails the issuance by respondent Judge Edwin G. Larida, Jr. of the Order dated 10 July 2008 in TG-05-1141 which denied complainant's *Ex Parte* Joint Motion for Early Resolution of *Ex-Parte* Joint Petitions for the Issuance of Writs of Possession (*in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141*) by ruling that the petitioner has yet to present evidence besides marking of exhibits. Complainant Emmanuel R. Andamo considers the said Order as contrary to Sections 7 and 8 of Act 3135 which mandates, among others, that the trial court shall issue the Writ of Possession regardless of opposition thereto.

In addition, complainant Emmanuel B. Andamo accuses respondent Diana Ruiz, as then Officer-in-Charge and Acting Clerk of Court, and Atty. Stanlee Calma, as the incumbent Clerk of Court, for not having "*lifted a finger, say, by placing the docket of those eight (8) long pending cases beside the other dockets already placed on the Hon. Court's working table by way of requesting his Honor for instruction or reminding his Honor of the urgency of action thereon, and notwithstanding Mrs. Ruiz['s] acknowledged receipt of the written instruction of the Hon. Supreme Court Administrator, dated November 17, 2005 as to how to act thereon.…*"

Furthermore, complainant Emmanuel R. Andamo implicated Atty. Ireneo Anarna, charging the latter of ignorance on the provisions of Act 3135 and for obstruction of justice for filing misplaced oppositions to non-litigious *ex-parte* petitions for issuance of Writ of Possession and for not submitting the required oppositor's bond.[3]

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[3] *Id.* at 114-116.

The Joint Comment of respondents Atty. Calma and LR Ruiz dated October 3, 2007 was also summarized by the OCA, *viz*:

Respondents Calma and Ruiz aver that complainant Emmanuel R. Andamo mainly charges them for the non-issuance of certificates of sale in the abovementioned extra-judicial foreclosure proceedings which were filed by Pepito Abueg as Acting Manager of petitioner Cavite Rural Banking Corporation. Respondents Calma and Ruiz declare that in all the aforesaid applications for foreclosure, were undated certificates of sale signed by then Deputy Sheriff Victor Hernandez, and Clerk of Court Analiza Luna. However, these certificates do not bear the signature of approval of then Assisting Judge (and eventually Deputy Court Administrator) Reuben P. Dela Cruz.

Likewise, respondents Calma and Ruiz stress that there is an Order in an undocketed case, entitled *Cavite Rural Banking Corporation (then Cavite Development Bank), mortgagee v. Sps. Jonathan Peñaranda, Sps. Simon and Petronila Peji, Celia M. Bay, Sixto and Norma Tolentino and Freddie Magno, mortgagors*. This Order was issued by then Judge Reuben Dela Cruz on 17 March 2004, the dispositive portion of which reads:

> *WHEREFORE, premises considered, the applications for extra-judicial foreclosure of mortgage of Spouses Jonathan and Yolanda Peñaranda; Spouses Simon and Petronila Peji; Celia M. Bay; Spouses Sixto and Norma Tolentino; and Freddie Magno are hereby DENIED for failure to comply with the requirements thereto.*
>
> *SO ORDERED.*

Respondents Calma and Ruiz argue that the aforesaid applications for foreclosure, including the petition for issuance of certificates of sale, were properly brought before and deliberated by the court. Hence, taking into consideration the issuance of the 17 March 2004 Order which they cannot alter or modify, respondents Calma and Ruiz aver that any issuance of certificates of sale on the subject applications for foreclosure cannot be done.

Respondents Calma and Ruiz further explicate that in a copy of the 17 March 2004 Order, there appears a signature over a handwritten name "*Sibano J. Sibero*" dated "*3-17-04.*" Thus suggesting that he received a copy of said Order in behalf of Cavite Rural Banking

Corporation. Hence, respondents Calma and Ruiz chide complainant Emmanuel R. Andamo for not mentioning in his complaint the 17 March 2004 Order. Furthermore, assuming *ex gratia argumenti* that complainant Emmanuel R. Andamo is not aware of said Order, respondents Calma and Ruiz still blame complainant Emmanuel R. Andamo that it took him almost seven (7) years before he made a follow up on the petitions for issuance of certificates of sale. If only their attention were called, respondents Calma and Ruiz aver that they would have searched for the records and inform complainant Emmanuel R. Andamo about the Order.

In addition, respondents Calma and Ruiz call as an unfair accusation complainant Emmanuel R. Andamo's imputation that they were the reason for the issuance of the 10 July 2008 Order. Respondents Calma and Ruiz argue that said Order is a judicial action and an exercise of discretion by the court to which they, being merely the Clerk of Court and the Legal Researcher, respectively, do not have any control. Moreover, they point out that the said Order was also given in the other petitions of complainant where there is no oppositor, thus, rendering complainants' perception as unfounded.

Lastly, while complainant Emmanuel R. Andamo charges respondents Calma and Ruiz with gross ignorance of Act No. 3135, respondents Calma and Ruiz find it ironic that complainant Emmanuel R. Andamo misses the entire point of the issuance of the 17 March 2004 Order which states complainant's failure to show compliance with the same Act No. 3135.[4]

After perusing the records, the OCA found that the allegations in the complaint and the defenses raised by respondents Atty. Calma and LR Ruiz presented conflicting factual issues that could not be categorically resolved merely on the basis of the records submitted. Judge Larida, Jr. even failed to submit his Comment on the matter. The OCA then pointed out the necessity for a formal investigation where the complainant and the respondents would be given the opportunity to adduce their respective evidence. Thus, it recommended that the administrative complaint against respondents be RE-DOCKETED as a regular administrative case, and the same be REFERRED to a Justice

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

of the Court of Appeals *(CA)* for investigation, report and recommendation within sixty (60) days from receipt of the records.

In the Resolution dated January 19, 2011,[5] the Court resolved to: ***(1)*** **note** the letter-complaint of Atty. Emmanuel R. Andamo against respondents Judge Larida, Jr., Atty. Calma and LR Ruiz, for gross ignorance of the law relative to LRC Case Nos. 05-1105, 05-1104, 05-1103, and 05-1141 for the issuance of writs of possession under Act 3135, as amended, and the joint comment dated October 3, 2007 of respondents Clerk of Court and Legal Researcher; ***(2)*** **re-docket** the instant administrative complaint; ***(3)*** **refer** this case to a Justice of the CA for investigation, report and recommendation within sixty (60) days from receipt of the records, and **direct** the Presiding Justice of the CA to raffle the case among the incumbent Justices of the CA who shall conduct the investigation and submit the required report and recommendation; and ***(4)*** **note** the Report dated June 18, 2010 of the OCA.

The case was eventually assigned to CA Associate Justice Amy C. Lazaro-Javier *(Justice Lazaro-Javier)* who, as directed by the Court, conducted the corresponding investigation on the complaint.

Notably, during the initial stage of the proceedings, Judge Larida, Jr. filed his Motion with Leave of Court to Admit Comment[6] dated April 14, 2011.[7] The same was granted in the interest of substantial justice.[8] In his Comment, respondent Judge Larida, Jr. denied that he delayed the resolution of complainant's petitions for issuance of writs of possession in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141. He claimed that he was unaware of unacted foreclosure proceedings pending before the Office of the Clerk of Court of RTC-Br. 18, Tagaytay

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[5] *Id.* at 124-125.

[6] *Id.* at 128-129.

[7] *Id.* at 130-132.

[8] *Id.* at 142.

City; that he never talked to complainant about the cases in his chambers; that it was only out of prudence and propriety that he acknowledged the oppositions to complainant's four (4) petitions as the said oppositions were necessarily part of the proceedings; and that he eventually set the petitions for hearing since there was a need for complainant to present evidence to support his entitlement to the four (4) writs prayed for.

Judge Larida, Jr. also informed the Court that per Supreme Court Resolution dated November 18, 2008,[9] he was detailed as Assisting Judge of RTC, Branch 74, Malabon City.

During the hearing on April 14, 2011, the parties agreed to submit their affidavits with attachments to constitute their testimony subject to cross-examination.[10]

Complainant did not submit an affidavit and opted to adopt his Letter-Complaint as his direct testimony. He further submitted several documentary evidence.[11]

For his part, Judge Larida, Jr. submitted his Judicial Affidavit dated April 18, 2011. He essentially iterated therein his allegations in his Comment. He also offered various documentary evidence[12] to refute the charges against him.

Atty. Calma and LR Ruiz likewise submitted their undated Joint Affidavit.

Atty. Calma emphasized that then Assisting Judge Reuben dela Cruz had long denied complainant's undocketed petitions for extrajudicial foreclosure in *CRBC v. Magno*, in his Order of March 17, 2004. The grounds for the said denial were: ***(1)*** non-

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[9] *Id.* at 119-120.

[10] *Id.* at 140.

[11] Exhs. "A" to "A-6", "B", "B-1", and "B-1-a", "C" to "C-3", "D" to "D-4", "E", "F" to "F-6-a", "G" to "G-3-a", "H" to "H-4-a", "I" to "I-7-a", "J" to "J-2", "K" to "K-2", "L", "M", "N", "O", "P", "Q", to "X".

[12] Exhs. "1" (with submarkings), "2" (with submarkings), "3" (with submarkings), "4", "4-a", "5" (with submarkings), "6" (with submarkings), "7" (with submarkings), unmarked status report.

payment of entry fees; ***(2)*** non-assignment of docket numbers; ***(3)*** absence of proofs of service to the sheriff and the parties; ***(4)*** non-attachment of photocopies of the official receipts to the cases; and ***(5)*** non-payment of sufficient amount of docket fees. Atty. Calma also disclosed that he was no longer connected with the judiciary as he had opted to engage in the private practice of law.

Aside from those previously submitted exhibits, Atty. Calma and LR Ruiz presented the following: ***(1)*** Application for Extra-Judicial Foreclosure filed in *CRBC v. Magno*;[13] ***(2)*** Application for Extra-Judicial Foreclosure filed in *CRBC v. Spouses Tolentino*;[14] ***(3)*** Application for Extra-Judicial Foreclosure filed in *CRBC v. Jonathan and Yolanda Peñaranda*;[15] ***(4)*** Application for Extra-Judicial Foreclosure filed in *Celia M. Bay*;[16] ***(5)*** Certificate of Sale for the auctioned property of Freddie P. Magno;[17] ***(6)*** Unsigned printed name of Assisting Judge Reuben dela Cruz;[18] ***(7)*** Certificate of Sale for the auctioned property of Sps. Tolentino;[19] ***(8)*** Unsigned printed name of Assisting Judge Reuben dela Cruz;[20] ***(9)*** Certificate of Sale for the auctioned property of Jonathan and Yolanda Peñaranda;[21] ***(10)*** Unsigned printed name of Assisting Judge Reuben dela Cruz;[22] ***(11)*** Certificate of Sale for the auctioned property of Celia Bay;[23] ***(12)*** Unsigned printed name of Assisting Judge Reuben dela

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[13] Exh. "8".

[14] Exh. "9".

[15] Exh. "10".

[16] Exh. "11".

[17] Exh. "12".

[18] Exh. "12-a".

[19] Exh. "13".

[20] Exh. "13-a".

[21] Exh. "14".

[22] Exh. "14-a".

[23] Exh. "15".

Cruz;[24] ***(13)*** Order of Judge Reuben dela Cruz dated March 17, 2004;[25] ***(14)*** Certification dated June 7, 2004 by Judge Reuben dela Cruz;[26] ***(15)*** Comment dated October 3, 2007 filed before the OCA;[27] and ***(16)*** Joint Affidavit of respondent Atty. Calma and LR Ruiz.[28]

The Acting Presiding Judge of RTC, Branch 18, Tagaytay City, submitted a status report and certified copies of the pertinent documents in LRC Case Nos. TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141.[29]

After the formal offer of evidence and the admission of the exhibits, the parties were required to file their respective memoranda. Only respondent Judge Larida, Jr. complied.

Accordingly, in her Report and Recommendation dated July 25, 2011, Justice Lazaro-Javier recommended that Judge Larida, Jr., Atty. Calma and LR Ruiz be **EXONERATED** of the charges against them for ignorance of the law. In sum, Justice Lazaro-Javier found that:

> Complainant's charge of gross ignorance of the law against respondents remains unfounded and unsubstantiated. The evidence which complainant submitted, instead of helping his cause, showed that it was he who was stubbornly remiss in his duties to his client and to the court, as well. The evidence likewise showed that **contrary to complainant's accusation, respondents in fact strictly complied with applicable laws, rules, and jurisprudence pertaining to issuance of writs of possession or allowance of extrajudicial foreclosure.** Verily, complainant has, among others, unjustly inconvenienced and mentally tortured respondents by dragging them into this unnecessary battle. Precious time, energy and expense

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[24] Exh. "15-a".

[25] Exh. "16".

[26] Exh. "17".

[27] Exh. "18".

[28] Exh. "19".

[29] *Rollo*, pp. 154-202.

were wasted when the same could have been beneficially used for some other lawful purpose beneficial to the interest of public service. [Emphasis supplied]

Now, the Court resolves.

After a thorough study of the case, the Court agrees with the evaluation and recommendation of Justice Lazaro-Javier.

Notably, respondents are all charged with gross ignorance of the law for their alleged acts or omissions, as follows:

Name	**Cases**	**Acts or Omission Charged**
Judge Edwin Larida, Jr.	LRC No. TG-05-1103	Issuing Order dated August 9, 2005 which set the petition for hearing October 21, 2005
	LRC No. TG-05-1105	Issuing Order dated August 11, 2005 which set the petition for hearing on October 21, 2005
	LRC Nos. TG-05-1103 and TG-05-1105	a) Recognizing the appearance of Atty. Ireneo Anarna as oppositors' counsel;
		b) Not requiring the oppositors therein to file guaranty bonds pursuant to Section 47 of RA 8791.
	LRC No. TG-05-1141	For issuing Order dated 10 July 2008 denying the *Ex Parte* Joint Motion for Early Resolution of *Ex-Parte* Joint Petitions for the Issuance of Writs of Possession in LRC Nos.

		TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141 on the ground that CRBC had yet to present evidence besides marking of exhibits.
Atty. Stanlee Calma and Legal Researcher Diana Ruiz		For not having "*lifted a finger, say, by placing the docket of those eight (8) long pending cases beside the other dockets already placed on the Hon. Court's working table by way of requesting his Honor for instruction or reminding his Honor of the urgency of action thereon, and notwithstanding Mrs. Ruiz['s] acknowledged receipt of the written instruction of the Hon. Supreme Court Administrator, dated November 17, 2005 as to how to act thereon.*"

As to respondent
Judge Edwin Larida, Jr.

According to complainant, it was Judge Larida Jr.'s ministerial duty under Act 3135, specifically Sections 7[30] and

[30] Section 7. *Possession during redemption period.*—In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of

8[31] thereof, to issue the writs of possession in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141. This being so, there was no need for him to still require applicant to present evidence as condition for granting them. The fact that he did, nonetheless, was a clear defiance of his ministerial duty and rendered him guilty of gross ignorance of the law.

Complainant is mistaken.

The ministerial character of judicial duty to issue writs of possession in extrajudicial foreclosure proceedings is explained in the case of *Saguan v. Philippine Bank of Communications*.[32] Thus:

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this Act. Such petition shall be made under oath and filed in [the] form of an *ex-parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[31] Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

[32] G.R. No. 159882, November 23, 2007, 538 SCRA 390, 394-397.

A writ of possession is an order enforcing a judgment to allow a person's recovery of possession of real or personal property. An instance when a writ of possession may issue is under Act No. 3135, as amended by act No. 4118, on extrajudicial foreclosure of real estate mortgage. Sections 6 and 7 provide, to wit:

> Section 6. *Redemption.*—In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at anytime within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.
>
> Section 7. *Possession during redemption period.*—In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the same was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in [the] form of the *ex-parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Number Four hundred and ninety-six, and the court shall , upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

From the foregoing provisions, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.

Within the redemption period the purchaser in a foreclosure sale may apply for a writ of possession by filing for that purpose an *ex-parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of an *ex-parte* motion and the approval of the corresponding bond, the court is expressly directed to issue the order for a writ of possession.

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment. The propriety of the issuance of the writ was heightened in this case where the respondent's right to possession of the properties extended after the expiration of the redemption period, and became absolute upon the petitioners' failure to redeem the mortgaged properties. [Underscoring supplied]

Simply put, after all the requisite elements for issuance of a writ of possession, which are: ***(1)*** consolidation of ownership in the mortgagor's name; and ***(2)*** issuance to mortgagor of a

new TCT, shall have been duly established, the trial court has no choice but to issue the writ prayed for. It cannot withhold, suspend, or otherwise deny this relief from petitioner.

In this case, Judge Larida Jr. denied complainant's "Urgent *Ex-Parte* Joint Motion for Early Resolution of *Ex-Parte* Joint Petition for the Issuance of Writs of Possession" in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141 precisely because CRBC had *yet* to present evidence to establish its entitlement to the writs prayed for.[33] As it was, complainant negatively reacted to Judge Larida Jr.'s directive and accused him of gross ignorance of the law for not instantly resolving the petitions, for ruling that his client had *yet* to present evidence and for recognizing Atty. Anarna's appearance as oppositor's counsel.

It is settled that a judge can be held liable for gross ignorance of the law if it can be shown that he committed an error so gross and patent as to produce an inference of bad faith. In addition to this, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption.[34]

The reasons cited by complainant, far from constituting gross ignorance of the law, actually reflect respondent Judge Larida Jr.'s faithful adherence to his judicial duty to review the cases, serve due process to all parties concerned, and to eventually decide the petitions based solely on law and evidence. Be that as it may, respondent Judge Larida, Jr. has nothing more to do with these cases since his detail to RTC, Branch 74, Malabon City.

At any rate, the filing of this administrative complaint is not the proper remedy for complainant. Complainant should have sought relief from higher courts. The filing of an administrative case against the judge is not an alternative to the other judicial remedies provided by law; neither is it

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[33] *Rollo*, p. 17

[34] *Monticalbo v. Judge Maraya*, *supra* note 1.

complementary or supplementary to such actions. As regards this matter, the case of *Atty. Flores v. Hon. Abesamis*[35] is enlightening:

> As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are *inter alia* the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.
>
> Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.

Complainant also held against Judge Larida, Jr. his alleged failure to require oppositors to post guaranty bonds in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141. Complainant invokes Section 47 of Republic Act *(R.A)* No. 8791.[36]

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[35] 341 Phil. 299, 312-313 (1997).

[36] Section 47. *Foreclosure of Real Estate Mortgage*.—In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the

Clearly, the provision cited by complainant refers to restraint of foreclosure proceedings which requires posting of bond by one who seeks it. It does not apply to the present case wherein the subject properties had already been foreclosed and sold at public auction. Thus, petitioner's insistence for imposition of guaranty bonds on the oppositors in TG-05-1103, TG-05-1104, TG-05-1105, and TG-05-1141 is misplaced. On this score too, Judge Larida, Jr. cannot be accused of gross ignorance of the law for not imposing these bonds in the cases mentioned.

As to respondents Atty. Calma and LR Ruiz

Records bear out that as early as March 17, 2004, then Assisting Judge Reuben dela Cruz of RTC Branch 18, Tagaytay City, under Order[37] of even date, had already denied CRBC's petitions in *CRBC v. Spouses Peñaranda,* thus:

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sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank of institution from the sale and custody of said property less the income derived therefrom. However, the purchaser of the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding. Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

[37] *Rollo*, pp. 105-108.

Hence, it is very evident, therefore, that there is no payment of the entry fees; there are no docket numbers assigned and stamped on the cases; there are no proofs of service of the notices of the Sheriff to the parties, particularly the mortgagors; there are no xerox copies of the official receipts attached to the cases, except Spouses Peñaranda; and that official receipts issued do not cover the correct amounts and entries for each pertinent book of accounts, in violation of RA 3135, as amended and the issuances of the Supreme Court.

WHEREFORE, premises considered, the application for extra-judicial foreclosure of mortgage of Spouses Jonathan and Yolanda Peñaranda, Spouses Simon and Petronila Peji; Celia M. Bay; Spouses Sixto and Norma Tolentino and Freddie Magno are hereby DENIED for failure to comply with the requirements thereto.

SO ORDERED. [Italics supplied]

It is worth noting, too, that there were no pending motions for reconsideration filed or other incidents initiated by complainant in the subject cases to warrant their entry in the court calendar. As a matter of fact, complainant does not deny that the assailed Order dated March 17, 2004 had long attained ***finality.*** For Atty. Calma and LR Ruiz to put them back in the court calendar, for no cogent reason at all, is obviously improper.

Finally, the trial court, through then Assisting Judge Reuben dela Cruz, had already spoken when it denied the petitions in *CRBC v. Spouses Peñaranda.* As stated, it was beyond Atty. Calma and LR Ruiz to order the trial court what to do next with these cases. At that time, complainant had plain, speedy, and adequate remedies available to him under the rules. He could have filed a motion for reconsideration or a petition for *certiorari* from the Order of denial dated March 17, 2004 but he did not. What complainant failed to do as a judicial remedy, he cannot revive through an administrative complaint against these court employees. It bears pointing out that it was only on August 26, 2008 or more than four years since the Order of March 17, 2004 was issued when the complainant unfairly turned his ire on these innocent and helpless respondents by wrongly accusing them in this administrative case.

Clearly, this is a frivolous and baseless complaint. The respondents cannot be held liable for judiciously performing their sworn duty to observe and follow court proceedings as provided by the Rules. Complainant apparently filed this complaint primarily to divert the attention of his client from his shortcomings as its counsel, if not to simply harass the respondents. At this juncture, the Court finds it worth quoting again the conclusion of the Investigating Justice Lazaro-Javier, to wit:

> Complainant's charge of gross ignorance of the law against respondents remains **unfounded** and **unsubstantiated**. The evidence which **complainant** submitted, instead of helping his cause, showed that it was he who was **stubbornly remiss in his duties to his client and to the court,** as well. The evidence likewise showed that contrary to complainant's accusation, respondents in fact strictly complied with applicable laws, rules, and jurisprudence pertaining to issuance of writs of possession or allowance of extrajudicial foreclosure. Verily, complainant has, among others, **unjustly inconvenienced and mentally tortured respondents** by dragging them into this unnecessary battle. **Precious time, energy and expense were wasted** when the same could have been beneficially used for some other lawful purpose beneficial to the interest of public service. [Emphases supplied]

A repeat of this cannot be tolerated.

This administrative charge seeks to cast doubt on the integrity of respondent judge, the judicial personnel and the court which they represent, in flagrant abdication of the bounden responsibility of a lawyer to observe and maintain the respect due to courts of justice. "As an officer of the court, a lawyer has the sworn duty to assist in, not to impede or pervert, the administration of justice."[38] "Lawyers must always keep in perspective the thought that since lawyers are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice; to this, their

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[38] *Cordova v. Hon. Labayen*, 319 Phil. 273, 287 (1995).

clients' success is wholly subordinate; and their conduct ought to and must be scrupulously observant of law and ethics."[39]

A lawyer is an officer of the courts; he is, "like the court itself, an instrument or agency to advance the ends of justice." His duty is to uphold the dignity and authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice." Faith in the courts a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of government and to the attainment of the liberties of the people."[40]

"A lawyer who files an unfounded complaint must be sanctioned because, as an officer of the court, he does not discharge his duty by filing frivolous petitions that only add to the workload of the judiciary. Such filing of baseless complaints is contemptuous of the courts.[41]

WHEREFORE, as recommended by Court of Appeals Associate Justice Amy C. Lazaro-Javier, the complaint against respondents Judge Edwin G. Larida, Jr., Clerk of Court Stanlee D. Calma and Legal Researcher Diana G. Ruiz, all of Regional Trial Court, Branch 18, Tagaytay City, for gross ignorance of the law is *DISMISSED* for utter lack of merit.

Complainant Atty. Emmanuel R. Andamo is hereby ordered to *SHOW CAUSE* why he should not be subjected to disciplinary action for filing a frivolous and baseless complaint against the respondent judiciary personnel, within ten (10) days from receipt hereof.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

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[39] *Cruz v. Aliño-Hormachuelos,* A.M. No. CA-04-38, March 31, 2004, 426 SCRA 573, 581.

[40] *Id.* at 580.

[41] *Dela Victoria v. Orig-Maloloy-On,* A.M. No. P-07-2343, August 14, 2007, 530 SCRA 1, 11.

FIRST DIVISION

[G.R. No. 157150. September 21, 2011]

PEDRO ANGELES, Represented by ADELINA T. ANGELES, Attorney-in-Fact, *petitioner, vs.* **ESTELITA B. PASCUAL, MARIA THERESA PASCUAL, NERISSA PASCUAL, IMELDA PASCUAL, MA. LAARNI PASCUAL and EDWIN PASCUAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION; QUESTION OF LAW, EXPLAINED.— Section 1, Rule 45 of the *Rules of Court* explicitly states that the petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth." In appeal by *certiorari*, therefore, only questions of law may be raised, because the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. The resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Supreme Court subject to certain exceptions. A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.

2. ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— [T]he Court has recognized several exceptions to the rule, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings

are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. The circumstances of this case indicate that none of such exceptions is attendant herein.

3. CIVIL LAW; PROPERTY; BUILDER IN GOOD FAITH; APPLICATION.— Article 448 of the *Civil Code* x x x contemplates a person building, or sowing, or planting in good faith on land owned by another. The law presupposes that the land and the building or plants are owned by different persons, like here. The RTC and CA found and declared Angeles to be a builder in good faith. We cannot veer away from their unanimous conclusion, which can easily be drawn from the fact that Angeles insists until now that he built his house entirely on his own lot. *Good faith* consists in the belief of the builder that the land he is building on is his and in his ignorance of a defect or flaw in his title. With the unassailable finding that Angeles' house straddled the lot of Pascual, and that Angeles had built his house in good faith, Article 448 of the *Civil Code*, which spells out the rights and obligations of the owner of the land as well as of the builder, is unquestionably applicable. Consequently, the land being the principal and the building the accessory, preference is given to Pascual as the owner of the land to make the choice as between appropriating the building or obliging Angeles as the builder to pay the value of the land. Contrary to the insistence of Angeles, therefore, no inconsistency exists between the finding of good faith in his favor and the grant of the reliefs set forth in Article 448 of the *Civil Code*.

APPEARANCES OF COUNSEL

Orlando R. Alcaraz for petitioner.
Padilla Padolina Borja and Associates Law Offices for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

Under appeal is the decision promulgated on January 31, 2002 in CA- G.R. CV No. 61600,[1] which involved a dispute about the true location of the respective lots of the parties, with the respondents claiming that the petitioner had encroached on their lot but the latter denying the encroachment.

Antecedents

Neighbors Regidor Pascual (Pascual) and Pedro Angeles (Angeles) were registered owners of adjacent parcels of land located in Cabanatuan City. Pascual owned Lot 4, Block 2 (Lot 4) of the consolidation-subdivision plan (LRC) Psd-951, a portion of the consolidation of Lots 1419-B-2B-3, 1419-B-2-B-4 and 1419-B-2-B-5, Psd- 9016, LGC (GLRO) Cadastral Record No. 94 covered by Transfer Certificate Title No. T-43707 of the Registry of Deeds of Nueva Ecija;[2] Angeles owned Lot 5, Block 2 (Lot 5) of the same consolidation-subdivision plan covered by TCT No. T-9459 of the Registry of Deeds of Nueva Ecija.[3] Each of them built a house on his respective lot, believing all the while that his respective lot was properly delineated. It was not until Metropolitan Bank and Trust Company (Metrobank), as the highest bidder in the foreclosure

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[1] *Rollo*, pp. 46-74; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, but now retired) and Associate Justice Perlita J. Tria-Tirona (retired), concurring.

[2] Records, p. 69.

[3] *Id.*, p. 171.

sale of the adjacent Lot 3, Block 2 (Lot 3), caused the relocation survey of Lot 3 that the geodetic engineer discovered that Pascual's house had encroached on Lot 3. As a consequence, Metrobank successfully ejected Pascual.

In turn, Pascual caused the relocation survey of his own Lot 4 and discovered that Angeles' house also encroached on his lot. Of the 318 square meters comprising Lot 4, Angeles occupied 252 square meters, leaving Pascual with only about 66 square meters. Pascual demanded rentals for the use of the encroached area of Lot 4 from Angeles, or the removal of Angeles' house. Angeles refused the demand. Accordingly, Pascual sued Angeles for recovery of possession and damages in the Regional Trial Court (RTC) in Cabanatuan City.

In the course of the trial, Pascual presented Clarito Fajardo, the geodetic engineer who had conducted the relocation survey and had made the relocation plan of Lot 4.[4] Fajardo testified that Angeles' house was erected on Lot 4. On the other hand, Angeles presented Juan Fernandez, the geodetic engineer who had prepared the sketch plan relied upon by Angeles to support his claim that there had been no encroachment.[5] However, Fernandez explained that he had performed only a "table work," that is, he did not actually go to the site but based the sketch plan on the descriptions and bearings appearing on the TCTs of Lot 4, Lot 5 and Lot 6; and recommended the conduct of a relocation survey.[6]

In its decision of November 3, 1998,[7] the RTC held that there was no dispute that Pascual and Angeles were the respective registered owners of Lot 4 and Lot 5; that what was disputed between them was the location of their respective lots; that Pascual proved Angeles' encroachment on Lot 4 by preponderant

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[4] *Id.*, p. 69.

[5] *Id.*, p. 161.

[6] TSN dated March 12, 1996, pp. 10-12.

[7] *Rollo*, pp. 96-104.

evidence; and that Pascual was entitled to relief. The RTC thus disposed:

> WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendant as follows:
>
> 1) ordering the defendant or persons claiming right through him to cause the removal of his house insofar as the same occupies the portion of Lot 4, Block 2 (TCT No. T-43707), of an area of 252 square meters, as particularly indicated in the Sketch Plan (Exhibit C-1); and
>
> 2) and without pronouncement to damages in both the complainant and counterclaim.
>
> With Costs.
>
> SO ORDERED.[8]

Angeles appealed to the CA.

On January 31, 2002, the CA affirmed the RTC,[9] and held that as between the findings of the geodetic engineer (Fajardo) who had actually gone to the site and those of the other (Fernandez) who had based his findings on the TCTs of the owners of the three lots, those of the former should prevail. However, the CA, modifying the RTC's ruling, applied Article 448 of the *Civil Code* (which defined the rights of a builder, sower and planter in good faith). The decision decreed thus:[10]

> WHEREFORE, the decision appealed from is MODIFIED. Plaintiffs-appellees are ordered to exercise within thirty (30) days from the finality of this decision their option to either buy the portion of defendant-appellant's house on their Lot. No. 4, or to sell to defendant-appellant the portion of their land on which his house stands. If plaintiffs-appellees elect to sell the land or buy the improvement, the purchase price must be at the prevailing market price at the time of payment. If buying the improvement will render

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[8] *Id.*, p. 104.

[9] *Id.*, pp. 46-74.

[10] *Id.*, pp. 73-74.

the defendant-appellant's house useless, then plaintiffs-appellees should sell the encroached portion of their land to defendant-appellant. If plaintiffs-appellees choose to sell the land but defendant-appellant is unwilling or unable to buy, then the latter must vacate the subject portion and pay reasonable rent from the time plaintiffs-appellees made their choice up to the time they actually vacate the premises. But if the value of the land is considerably more than the value of the improvement, then defendant-appellant may elect to lease the land, in which case the parties shall agree upon the terms of the lease. Should they fail to agree on said terms, the court of origin is directed to fix the terms of the lease. From the moment plaintiffs-appellees shall have exercised their option, defendant-appellant shall pay reasonable monthly rent up to the time the parties agree on the terms of the lease or until the court fixes such terms. This is without prejudice to any future compromise which may be agreed upon by the parties.

SO ORDERED.

Angeles expectedly sought reconsideration, but the CA denied his motion on February 13, 2003.

Issues

Hence, Angeles appeals, assailing: (*a*) the credence the CA accorded to the testimony and relocation plan of Fajardo as opposed to the survey plan prepared by Fernandez; and (*b*) the options laid down by the CA, *i.e.*, for Pascual either to buy the portion of Angeles' house or to sell to Angeles the portion of his land occupied by Angeles were contrary to its finding of good faith.

Ruling

The petition lacks merit.

I
The Court, not being a trier of facts, cannot review factual issues

Section 1, Rule 45 of the *Rules of Court* explicitly states that the petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth." In appeal by *certiorari*,

therefore, only questions of law may be raised, because the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. The resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Supreme Court subject to certain exceptions.[11] A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[12]

Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.[13]

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[11] *FNCB Finance v. Estavillo*, G.R. No. 93394, December 20, 1990, 192 SCRA 514, 517.

[12] II Herrera, *Remedial Law*, 2000 Edition, p. 648; citing Moran, *Comments on the Rules of Court*, 1979 Edition.

[13] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630.

Nonetheless, the Court has recognized several exceptions to the rule, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[14] The circumstances of this case indicate that none of such exceptions is attendant herein.

The credence given by the RTC to the testimony and relocation plan of Fajardo was conclusive upon this Court especially by virtue of the affirmance by the CA of the RTC. Resultantly, the fact of Angeles' encroachment on Pascual's Lot 4 was proved by preponderant evidence.

It is noteworthy to point out, too, that the argument of Angeles based on the indefeasibility and incontrovertibility of Torrens titles pursuant to Presidential Decree No. 1529 (*The Property Registration Decree*) is inapplicable considering that the ownership of Lot 4 and Lot 5 was not the issue. Nor were

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[14] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110; *Sps. Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998).

the metes and bounds of the lots as indicated in the respective TCTs being assailed, for the only issue concerned the exact and actual location of Lot 4 and Lot 5.

II
Angeles was a builder in good faith

To be next determined is whether the CA's application of Article 448 of the *Civil Code* was correct and proper.

Article 448 of the *Civil Code* provides thusly:

> Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

The provision contemplates a person building, or sowing, or planting in good faith on land owned by another. The law presupposes that the land and the building or plants are owned by different persons, like here. The RTC and CA found and declared Angeles to be a builder in good faith. We cannot veer away from their unanimous conclusion, which can easily be drawn from the fact that Angeles insists until now that he built his house entirely on his own lot. *Good faith* consists in the belief of the builder that the land he is building on is his and in his ignorance of a defect or flaw in his title.[15]

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[15] *Pleasantville Development Corporation v. Court of Appeals*, G.R. No. 79688, February 1, 1996, 253 SCRA 10, 18; *Floreza v. Evangelista*, G.R. No. L-25462, February 21, 1980, 96 SCRA 130.

With the unassailable finding that Angeles' house straddled the lot of Pascual, and that Angeles had built his house in good faith, Article 448 of the *Civil Code,* which spells out the rights and obligations of the owner of the land as well as of the builder, is unquestionably applicable. Consequently, the land being the principal and the building the accessory, preference is given to Pascual as the owner of the land to make the choice as between appropriating the building or obliging Angeles as the builder to pay the value of the land. Contrary to the insistence of Angeles, therefore, no inconsistency exists between the finding of good faith in his favor and the grant of the reliefs set forth in Article 448 of the *Civil Code*.

WHEREFORE, the Court *DENIES* the petition for review on *certiorari*; and *AFFIRMS* the decision promulgated on January 31, 2002 by the Court of Appeals in C.A.-G.R. CV No. 61600. No pronouncement on costs of suit.

SO ORDERED.

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

[*] Vice Associate Justice Martin S. Villarama, Jr., per Special Order No. 1080 dated September 13, 2011.

SECOND DIVISION

[G.R. No. 158143. September 21, 2011]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, *petitioner, vs.* **ANTONIO B. BALMACEDA and ROLANDO N. RAMOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; LIES ON THE PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE.— In civil cases, the party carrying the burden of proof must establish his case by a preponderance of evidence, or evidence which, to the court, is more worthy of belief than the evidence offered in opposition. x x x The party, whether the plaintiff or the defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment, subject to the overriding rule that the burden to prove his cause of action never leaves the plaintiff. For the defendant, an affirmative defense is one that is not merely a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will constitute an "avoidance" of the claim.

2. ID.; ID.; PREPONDERANCE OF EVIDENCE, NOT ESTABLISHED IN CASE AT BAR.— [A]ll that PCIB's evidence proves is that Balmaceda used Ramos' name as a payee when he filled up the application forms for the Manager's checks. But, as the CA correctly observed, the mere fact that Balmaceda made Ramos the payee on some of the Manager's Checks is not enough basis to conclude that Ramos was complicit in Balmaceda's fraud; a number of other people were made payees on the other Manager's checks yet PCIB never alleged them to be liable, nor did the Bank adduce any other evidence pointing to Ramos' participation that would justify his separate treatment from the others. Also, while Ramos is Balmaceda's brother-in-law, their relationship is not sufficient, by itself, to render Ramos liable, absent concrete proof of his actual participation in the fraudulent scheme. x x x Given that PCIB failed to establish Ramos' participation in Balmaceda's scheme, it was not even

necessary for Ramos to provide an explanation for the money he received from Balmaceda. Even if the evidence adduced by the plaintiff appears stronger than that presented by the defendant, a judgment cannot be entered in the plaintiff's favor if his evidence still does not suffice to sustain his cause of action, to reiterate, a preponderance of evidence as defined must be established to achieve this result.

3. COMMERCIAL LAW; BANKS; WHERE NEGLIGENCE OF THE BANK CONTRIBUTED TO THE PERPETUATION OF FRAUD.— [O]ne point that cannot be disregarded is the significant role that PCIB played which contributed to the perpetration of the fraud. We cannot ignore that Balmaceda managed to carry out his fraudulent scheme primarily because other PCIB employees failed to carry out their assigned tasks – flaws imputable to PCIB itself as the employer. Ms. Analiza Vega, an accounting clerk, teller and domestic remittance clerk at the PCIB, Sta. Cruz, Manila branch at the time of the incident, testified that Balmaceda broke the Bank's protocol when he ordered the Bank's employees to fill up the application forms for the Manager's checks, to be debited from the bank account of one of the bank's clients, without providing the necessary Authority to Debit from the client. PCIB also admitted that these Manager's checks were subsequently released to Balmaceda, and not to the client's representative, based solely on Balmaceda's word that the client had tasked him to deliver these checks. Despite Balmaceda's gross violations of bank procedures – mainly in the processing of the applications for Manager's checks and in the releasing of the Manager's checks – Balmaceda's co-employees not only turned a blind eye to his actions, but actually complied with his instructions. In this way, PCIB's own employees were ***unwitting accomplices*** in Balmaceda's fraud. Another telling indicator of PCIB's negligence is the fact that **it allowed Balmaceda to encash the Manager's checks that were plainly crossed checks.** A crossed check is one where two parallel lines are drawn across its face or across its corner. x x x **When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payee's account.** In complete disregard of this duty, PCIB's systems allowed Balmaceda to encash 26 Manager's checks which were all crossed checks, or checks payable to the "payee's account only." x x x While

we appreciate that Balmaceda took advantage of his authority and position as the branch manager to commit these acts, this circumstance cannot be used to excuse the manner the Bank – through its employees – handled its clients' bank accounts and thereby ignored established bank procedures at the branch manager's mere order. This lapse is made all the more glaring by Balmaceda's repetition of his *modus operandi* 33 more times in a period of over one year by the Bank's own estimation. With this kind of record, blame must be imputed on the Bank itself and its systems, not solely on the weakness or lapses of individual employees.

4. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT, NOT APPLICABLE.— Ramos cannot be held liable to PCIB on account of unjust enrichment simply because he received payments out of money secured by fraud from PCIB. To hold Ramos accountable, it is necessary to prove that he received the money from Balmaceda, knowing that he (Ramos) was not entitled to it. PCIB must also prove that Ramos, at the time that he received the money from Balmaceda, knew that the money was acquired through fraud. Knowledge of the fraud is the link between Ramos and PCIB that would obligate Ramos to return the money based on the principle of unjust enrichment. However, as the evidence on record indicates, Ramos accepted the deposits that Balmaceda made directly into his bank account, believing that these deposits were payments for the fighting cocks that Balmaceda had purchased. Significantly, PCIB has not presented any evidence proving that Ramos participated in, or that he even knew of the fraudulent sources of Balmaceda's funds.

5. ID.; OBLIGATIONS; LEGAL COMPENSATION, NOT APPLICABLE.— We see no legal merit in PCIB's claim that legal compensation took place between it and Ramos, thereby warranting the automatic deduction from Ramos' bank account. For legal compensation to take place, two persons, in their own right must first be creditors and debtors of each other. While PCIB, as the depository bank, is Ramos' debtor in the amount of his deposits, Ramos is not PCIB's debtor under the evidence the PCIB adduced. PCIB thus had no basis, in fact or in law, to automatically debit from Ramos' bank account.

6. ID.; DAMAGES; WHERE THE ACT OF THE BANK IN ILLEGALLY FREEZING AND DEBITING THE CLIENT'S ACCOUNT CANNOT BE THE BASIS FOR THE AWARD OF MORAL AND EXEMPLARY DAMAGES.— Although PCIB's act of freezing and debiting Ramos' account is unlawful, we cannot hold PCIB liable for moral and exemplary damages. Since a contractual relationship existed between Ramos and PCIB as the depositor and the depository bank, respectively, the award of moral damages depends on the applicability of Article 2220 of the Civil Code. x x x Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious commission of a wrong; it partakes of the nature of fraud. As the facts of this case bear out, PCIB did not act out of malice or bad faith when it froze Ramos' bank account and subsequently debited the amount of ₱251,910.96 therefrom. While PCIB may have acted hastily and without regard to its primary duty to treat the accounts of its depositors with meticulous care and utmost fidelity, we find that its actions were propelled more by the need to protect itself, and not out of malevolence or ill will. One may err, but error alone is not a ground for granting moral damages. We also disallow the award of exemplary damages. Article 2234 of the Civil Code requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Since no reason exists to award moral damages, so too can there be no reason to award exemplary damages.

7. ID.; ID.; ATTORNEY'S FEES, AWARDED.— We deem it just and equitable, however, to uphold the award of attorney's fees in Ramos' favor. Taking into consideration the time and efforts involved that went into this case, we increase the award of attorney's fees from ₱20,000.00 to ₱75,000.00.

APPEARANCES OF COUNSEL

Sumalpong Magturo Banzon and Buenaventura for petitioner.
Musico Law Office for Rolando Ramos.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*,[1] filed by the Philippine Commercial International Bank[2] (*Bank* or *PCIB*), to reverse and set aside the decision[3] dated April 29, 2003 of the Court of Appeals (*CA*) in CA-G.R. CV No. 69955. The CA overturned the September 22, 2000 decision of the Regional Trial Court (*RTC*) of Makati City, Branch 148, in Civil Case No. 93-3181, which held respondent Rolando Ramos liable to PCIB for the amount of ₱895,000.00.

FACTUAL ANTECEDENTS

On September 10, 1993, PCIB filed an action for recovery of sum of money with damages before the RTC against Antonio Balmaceda, the Branch Manager of its Sta. Cruz, Manila branch. In its complaint, PCIB alleged that between 1991 and 1993, Balmaceda, by taking advantage of his position as branch manager, fraudulently obtained and encashed 31 Manager's checks in the total amount of Ten Million Seven Hundred Eighty-Two Thousand One Hundred Fifty Pesos (₱10,782,150.00).

On February 28, 1994, PCIB moved to be allowed to file an amended complaint to implead Rolando Ramos as one of the recipients of a portion of the proceeds from Balmaceda's alleged fraud. PCIB also increased the number of fraudulently obtained and encashed Manager's checks to 34, in the total amount of Eleven Million Nine Hundred Thirty Seven Thousand One Hundred Fifty Pesos (₱11,937,150.00). The RTC granted this motion.

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[1] *Rollo*, pp. 16-36.

[2] Now the Equitable PCIBank.

[3] Penned by Associate Justice Eugenio S. Labitoria, and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong; *rollo*, pp. 38-49.

Since Balmaceda did not file an Answer, he was declared in default. On the other hand, Ramos filed an Answer denying any knowledge of Balmaceda's scheme. According to Ramos, he is a reputable businessman engaged in the business of buying and selling fighting cocks, and Balmaceda was one of his clients. Ramos admitted receiving money from Balmaceda as payment for the fighting cocks that he sold to Balmaceda, but maintained that he had no knowledge of the source of Balmaceda's money.

THE RTC DECISION

On September 22, 2000, the RTC issued a decision in favor of PCIB, with the following dispositive portion:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:
>
> 1. Ordering defendant Antonio Balmaceda to pay the amount of ₱11,042,150.00 with interest thereon at the legal rate from [the] date of his misappropriation of the said amount until full restitution shall have been made[.]
>
> 2. Ordering defendant Rolando Ramos to pay the amount of ₱895,000.00 with interest at the legal rate from the date of misappropriation of the said amount until full restitution shall have been made[.]
>
> 3. Ordering the defendants to pay plaintiff moral damages in the sum of ₱500,000.00 and attorney's fees in the amount of ten (10%) percent of the total misappropriated amounts sought to be recovered.
>
> 4. Plus costs of suit.
>
> SO ORDERED.[4]

From the evidence presented, the RTC found that Balmaceda, by taking undue advantage of his position and authority as branch manager of the Sta. Cruz, Manila branch of PCIB, successfully obtained and misappropriated the bank's funds by falsifying several commercial documents. He accomplished this by claiming that he had been instructed by one of the Bank's corporate

[4] *Id.* at 59.

clients to purchase Manager's checks on its behalf, with the value of the checks to be debited from the client's corporate bank account. First, he would instruct the Bank staff to prepare the application forms for the purchase of Manager's checks, payable to several persons. Then, he would forge the signature of the client's authorized representative on these forms and sign the forms as PCIB's approving officer. Finally, he would have an authorized officer of PCIB issue the Manager's checks. Balmaceda would subsequently ask his subordinates to release the Manager's checks to him, claiming that the client had requested that he deliver the checks.[5] After receiving the Manager's checks, he encashed them by forging the signatures of the payees on the checks.

In ruling that Ramos acted in collusion with Balmaceda, the RTC noted that although the Manager's checks payable to Ramos were crossed checks, Balmaceda was still able to encash the checks.[6] After Balmaceda encashed three of these Manager's checks, he deposited most of the money into Ramos' account.[7] The RTC concluded that from the ₱11,937,150.00 that Balmaceda misappropriated from PCIB, ₱895,000.00 actually went to Ramos. Since the RTC disbelieved Ramos' allegation that the sum of money deposited into his Savings Account (PCIB, Pasig branch) were proceeds from the sale of fighting cocks, it held Ramos liable to pay PCIB the amount of ₱895,000.00.

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

[6] *Id.* at 54.

[7] Balmaceda encashed PCIB Manager's Check No. 017979 dated February 28, 1992 in the amount of ₱250,000.00, and deposited ₱200,000.00 into Ramos' PCIB bank account, maintained in the Bank's Pasig branch, while he took ₱50,000.00. Balmaceda also encashed PCIB Manager's Check No. 019340 dated October 1992 in the amount of ₱425,000.00, and PCIB Manager's Check No. 019708 dated November 27, 1992 in the amount of ₱480,000.00, and deposited these amounts in Ramos' PCIB bank account, although he kept ₱10,000.00 from the latter check.

THE COURT OF APPEALS DECISION

On appeal, the CA dismissed the complaint against Ramos, holding that no sufficient evidence existed to prove that Ramos colluded with Balmaceda in the latter's fraudulent manipulations.[8]

According to the CA, the mere fact that Balmaceda made Ramos the payee in some of the Manager's checks does not suffice to prove that Ramos was complicit in Balmaceda's fraudulent scheme. It observed that other persons were also named as payees in the checks that Balmaceda acquired and encashed, and PCIB only chose to go after Ramos. With PCIB's failure to prove Ramos' actual participation in Balmaceda's fraud, no legal and factual basis exists to hold him liable.

The CA also found that PCIB acted illegally in freezing and debiting ₱251,910.96 from Ramos' bank account. The CA thus decreed:

> WHEREFORE, the appeal is granted. The Decision of the trial court rendered on September 22, 2000[,] insofar as appellant Ramos is concerned, is SET ASIDE, and the complaint below against him is DISMISSED.
>
> Appellee is hereby ordered to release the amount of ₱251,910.96 to appellant Ramos plus interest at [the] legal rate computed from September 30, 1993 until appellee shall have fully complied therewith.
>
> Appellee is likewise ordered to pay appellant Ramos the following:
>
> a) ₱50,000.00 as moral damages
> b) ₱50,000.00 as exemplary damages, and
> c) ₱20,000.00 as attorney's fees.
>
> No costs.
>
> SO ORDERED.[9]

THE PETITION

In the present petition, PCIB avers that:

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[8] Decision, dated April 29, 2003; *supra* note 3.

[9] *Supra* note 3, at 48.

I

THE APPELLATE COURT ERRED IN HOLDING THAT THERE IS NO EVIDENCE TO HOLD THAT RESPONDENT RAMOS ACTED IN COMPLICITY WITH RESPONDENT BALMACEDA

II

THE APPELLATE COURT ERRED IN ORDERING THE PETITIONER TO RELEASE THE AMOUNT OF ₱251,910.96 TO RESPONDENT RAMOS AND TO PAY THE LATTER MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES[10]

PCIB contends that the circumstantial evidence shows that Ramos had knowledge of, and acted in complicity with Balmaceda in, the perpetuation of the fraud. Ramos' explanation that he is a businessman and that he received the Manager's checks as payment for the fighting cocks he sold to Balmaceda is unconvincing, given the large sum of money involved. While Ramos presented evidence that he is a reputable businessman, this evidence does not explain why the Manager's checks were made payable to him in the first place.

PCIB maintains that it had the right to freeze and debit the amount of ₱251,910.96 from Ramos' bank account, even without his consent, since legal compensation had taken place between them by operation of law. PCIB debited Ramos' bank account, believing in good faith that Ramos was not entitled to the proceeds of the Manager's checks and was actually privy to the fraud perpetrated by Balmaceda. PCIB cannot thus be held liable for moral and exemplary damages.

OUR RULING

We partly grant the petition.

At the outset, we observe that the petition raises mainly questions of fact whose resolution requires the re-examination of the evidence on record. As a general rule, petitions for review on *certiorari* only involve questions of law.[11] By way of exception,

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[10] *Supra* note 1, at 22.

[11] RULES OF COURT, Rule 45, Section 1.

however, we can delve into evidence and the factual circumstance of the case when the findings of fact in the tribunals below (in this case between those of the CA and of the RTC) are conflicting. When the exception applies, we are given latitude to review the evidence on record to decide the case with finality.[12]

Ramos' participation in Balmaceda's scheme not proven

From the testimonial and documentary evidence presented, we find it beyond question that Balmaceda, by taking advantage of his position as branch manager of PCIB's Sta. Cruz, Manila branch, was able to apply for and obtain Manager's checks drawn against the bank account of one of PCIB's clients. The unsettled question is whether Ramos, who received a portion of the money that Balmaceda took from PCIB, should also be held liable for the return of this money to the Bank.

PCIB insists that it presented sufficient evidence to establish that Ramos colluded with Balmaceda in the scheme to fraudulently secure Manager's checks and to misappropriate their proceeds. Since Ramos' defense – anchored on mere denial of any participation in Balmaceda's wrongdoing – is an intrinsically weak defense, it was error for the CA to exonerate Ramos from any liability.

In civil cases, the party carrying the burden of proof must establish his case by a preponderance of evidence, or evidence which, to the court, is more worthy of belief than the evidence offered in opposition.[13] This Court, in *Encinas v. National Bookstore, Inc.*,[14] defined "preponderance of evidence" in the following manner:

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[12] *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*, G.R. No. 171238, February 2, 2011; and *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402 (2004).

[13] RULES OF COURT, Rule 133, Section 1.

[14] 485 Phil. 683, 695 (2004).

"Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

The party, whether the plaintiff or the defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment, subject to the overriding rule that the burden to prove his cause of action never leaves the plaintiff. For the defendant, an affirmative defense is one that is not merely a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will constitute an "avoidance" of the claim.[15]

Thus, PCIB, as plaintiff, had to prove, by preponderance of evidence, its positive assertion that Ramos conspired with Balmaceda in perpetrating the latter's scheme to defraud the Bank. In PCIB's estimation, it successfully accomplished this through the submission of the following evidence:

[1] Exhibits "A", "D", "PPPP", "QQQQ", and "RRRR" and their submarkings, the application forms for MCs, show that [these MCs were applied for in favor of Ramos;]

[2] Exhibits "K", "N", "SSSS", "TTTT", and "UUUU" and their submarkings prove that the MCs were issued in favor of x x x Ramos[; and]

[3] [T]estimonies of the witness for [PCIB].[16]

We cannot accept these submitted pieces of evidence as sufficient to satisfy the burden of proof that PCIB carries as plaintiff.

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[15] *Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207.

[16] *Supra* note 1, at 25.

On its face, all that PCIB's evidence proves is that Balmaceda used Ramos' name as a payee when he filled up the application forms for the Manager's checks. But, as the CA correctly observed, the mere fact that Balmaceda made Ramos the payee on some of the Manager's checks is not enough basis to conclude that Ramos was complicit in Balmaceda's fraud; a number of other people were made payees on the other Manager's checks yet PCIB never alleged them to be liable, nor did the Bank adduce any other evidence pointing to Ramos' participation that would justify his separate treatment from the others. Also, while Ramos is Balmaceda's brother-in-law, their relationship is not sufficient, by itself, to render Ramos liable, absent concrete proof of his actual participation in the fraudulent scheme.

Moreover, the evidence on record clearly shows that Balmaceda acted on his own when he applied for the Manager's checks against the bank account of one of PCIB's clients, as well as when he encashed the fraudulently acquired Manager's checks.

Mrs. Elizabeth Costes, the Area Manager of PCIB at the time of the relevant events, testified that Balmaceda committed all the acts necessary to obtain the unauthorized Manager's checks – from filling up the application form by forging the signature of the client's representative, to forging the signatures of the payees in order to encash the checks. As Mrs. Costes stated in her testimony:

Q: I am going into [these] particular instances where you said that Mr. Balmaceda [has] been making unauthorized withdrawals from particular account of a client or a client of yours at Sta. Cruz branch. Would you tell us how he effected his unauthorized withdrawals?

A: He prevailed upon the domestic remittance clerk to prepare the application of a Manager's check which [has] been debited to a client's account. This particular Manager's check will be payable to a certain individual thru his account as the instruction of the client.

Q: What was your findings in so far as the particular alleged instruction of a client is concerned?

A: **We found out that he forged the signature of the client**.

Q: On that particular application?
A: Yes sir.

Q: Showing to you several applications for Manager's Check previously attached as Annexes "A, B, C, D and E["] of the complaint. Could you please tell us where is that particular alleged signature of a client applying for the Manager's check which you claimed to have been forged by Mr. Balmaceda?
A: Here sir.

x x x x x x x x x

Q: After the accomplishment of this application form as you stated Mrs. witness, do you know what happened to the application form?
A: Before that application form is processed it goes to several stages. Here for example this was signed supposed to be by the client and his signature representing that, **he certified the signature based on their records to be authentic.**

Q: When you said he to whom are you referring to?
A: **Mr. Balmaceda**. **And at the same time he approved the transaction.**

x x x x x x x x x

Q: Do you know if the corresponding checks applied for in the application forms were issued?
A: Yes sir.

Q: Could you please show us where these checks are now, the one applied for in Exhibit "A" which is in the amount of ₱150,000.00, where is the corresponding check?
A: Rolando Ramos dated December 26, 1991 and one of the signatories with higher authority, this is Mr. Balmaceda's signature.

Q: In other words **he is likewise approving signatory to the Manager's check?**
A: Yes sir. **This is an authority that the check [has] been encashed**.

Q: In other words this check issued to Rolando Ramos dated December 26, 1991 is a cross check but nonetheless he allowed to encash by granting it.

Could you please show us?

ATTY. PACES: Witness pointing to an initial of the defendant Antonio Balmaceda, the notation cross check.

A: And this is his signature.

x x x x x x x x x

Q: How about the check corresponding to Exhibit E-2 which is an application for ₱125,000.00 for a certain Rolando Ramos. Do you have the check?

A: Yes sir.

ATTY. PACES: Witness producing a check dated December 19, 1991 the amount of ₱125,000.00 payable to certain Rolando Ramos.

Q: Can you tell us whether the same *modus operandi* was ad[o]pted by Mr. Balmaceda in so far as he is concerned?

A: **Yes sir he is also the right signer and he authorized the cancellation of the cross check**.[17] (emphasis ours)

x x x x x x x x x

Q: These particular checks [Mrs.] witness in your findings, do you know if Mr. Balmaceda [has] again any participation in these checks?

A: He is also the right signer and approved officer and he was authorized to debit on file.

x x x x x x x x x

Q: And do you know if these particular checks marked as Exhibit G-2 to triple FFF were subsequently encashed?

A: Yes sir.

Q: **Were you able to find out who encashed**?

A: **Mr. Balmaceda himself and besides he approved the encashment because of the signature that he allowed the encashment of the check.**

x x x x x x x x x

Q: Do you know if this particular person having in fact withdraw of received the proceeds of [these] particular checks, the payee?

A: No sir.

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[17] TSN, September 16, 1993, pp. 8-17.

Q: It was all Mr. Balmaceda dealing with you?
A: Yes sir.

Q: **In other words it would be possible that Mr. Balmaceda himself gotten the proceeds of the checks by forging the payees signature**?
A: **Yes sir.**[18] (emphases ours)

Mrs. Nilda Laforteza, the Commercial Account Officer of PCIB's Sta. Cruz, Manila branch at the time the events of this case occurred, confirmed Mrs. Costes' testimony by stating that **it was Balmaceda who forged Ramos' signature on the Manager's checks where Ramos was the payee, so as to encash the amounts indicated on the checks**.[19] Mrs. Laforteza also testified that Ramos never went to the PCIB, Sta. Cruz, Manila branch to encash the checks since **Balmaceda was the one who deposited the checks into Ramos' bank account**. As revealed during Mrs. Laforteza's cross-examination:

Q: **Mrs. Laforteza, these checks that were applied for by Mr. Balmaceda, did you ever see my client go to the bank to encash these checks?**
A: **No it is Balmaceda who is depositing in his behalf.**

Q: Did my client ever call up the bank concerning this amount?
A: Yes he is not going to call PCIBank Sta. Cruz branch because his account is maintained at Pasig.

Q: **So Mr. Balmaceda was the one who just remitted or transmitted the amount that you claimed [was sent] to the account of my client?**
A: **Yes**.[20] (emphases ours)

Even Mrs. Rodelia Nario, presented by PCIB as its rebuttal witness to prove that Ramos encashed a Manager's check for ₱480,000.00, could only testify that the money was deposited into Ramos' PCIB bank account. She could not attest that Ramos

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[18] *Id.* at 24-26.

[19] TSN, June 24, 1997, pp. 15-17.

[20] *Id.* at 77.

himself presented the Manager's check for deposit in his bank account.[21] These testimonies clearly dispute PCIB's theory that Ramos was instrumental in the encashment of the Manager's checks.

We also find no reason to doubt Ramos' claim that Balmaceda deposited these large sums of money into his bank account as payment for the fighting cocks that Balmaceda purchased from him. Ramos presented two witnesses – Vicente Cosculluela and Crispin Gadapan – who testified that Ramos previously engaged in the business of buying and selling fighting cocks, and that Balmaceda was one of Ramos' biggest clients.

Quoting from the RTC decision, PCIB stresses that Ramos' own witness and business partner, Cosculluela, testified that the biggest net profit he and Ramos earned from a single transaction with Balmaceda amounted to no more than ₱100,000.00, for the sale of approximately 45 fighting cocks.[22] In PCIB's view, this testimony directly contradicts Ramos' assertion that he received approximately ₱400,000.00 from his biggest transaction with Balmaceda. To PCIB, the testimony also renders questionable Ramos' assertion that Balmaceda deposited large amounts of money into his bank account as payment for the fighting cocks.

On this point, we find that PCIB misunderstood Cosculluela's testimony. A review of the testimony shows that Cosculluela specifically referred to the ***net profit*** that they earned from the sale of the fighting cocks;[23] PCIB apparently did not take into account the capital, transportation and other expenses that are components of these transactions. Obviously, in sales transactions, the buyer has to pay not only for the value of the thing sold, but also for the shipping costs and other incidental costs that accompany the acquisition of the thing sold. Thus, while the biggest net profit that Ramos and Cosculluela earned

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[21] TSN, January 28, 1999, pp. 7-13.

[22] TSN, August 6, 1998, p. 28.

[23] *Id.* at 29.

in a single transaction amounted to no more than ₱100,000.00,[24] the inclusion of the actual acquisition costs of the fighting cocks, the transportation expenses (*i.e.*, airplane tickets from Bacolod or Zamboanga to Manila) and other attendant expenses could account for the ₱400,000.00 that Balmaceda deposited into Ramos' bank account.

Given that PCIB failed to establish Ramos' participation in Balmaceda's scheme, it was not even necessary for Ramos to provide an explanation for the money he received from Balmaceda. Even if the evidence adduced by the plaintiff appears stronger than that presented by the defendant, a judgment cannot be entered in the plaintiff's favor if his evidence still does not suffice to sustain his cause of action;[25] to reiterate, a preponderance of evidence as defined must be established to achieve this result.

PCIB itself at fault as employer

In considering this case, one point that cannot be disregarded is the significant role that PCIB played which contributed to the perpetration of the fraud. We cannot ignore that Balmaceda managed to carry out his fraudulent scheme primarily because other PCIB employees failed to carry out their assigned tasks – flaws imputable to PCIB itself as the employer.

Ms. Analiza Vega, an accounting clerk, teller and domestic remittance clerk working at the PCIB, Sta. Cruz, Manila branch at the time of the incident, testified that Balmaceda broke the Bank's protocol when he ordered the Bank's employees to fill up the application forms for the Manager's checks, to be debited from the bank account of one of the bank's clients, without providing the necessary Authority to Debit from the client.[26] PCIB also admitted that these Manager's checks were

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[24] *Id.* at 30.

[25] *Ong v. Yap*, 492 Phil. 188, 197 (2005), citing *United Airlines, Inc. v. Court of Appeals*, G.R. No. 124110, April 20, 2001, 357 SCRA 99, 106-107.

[26] TSN, September 13, 1996, p. 21.

subsequently released to Balmaceda, and not to the client's representative, based solely on Balmaceda's word that the client had tasked him to deliver these checks.[27]

Despite Balmaceda's gross violations of bank procedures – mainly in the processing of the applications for Manager's checks and in the releasing of the Manager's checks – Balmaceda's co-employees not only turned a blind eye to his actions, but actually complied with his instructions. In this way, PCIB's own employees were ***unwitting accomplices*** in Balmaceda's fraud.

Another telling indicator of PCIB's negligence is the fact that **it allowed Balmaceda to encash the Manager's checks that were plainly crossed checks**. A crossed check is one where two parallel lines are drawn across its face or across its corner.[28] Based on jurisprudence, the crossing of a check has the following effects: (a) **the check may not be encashed but only deposited in the bank**; (b) the check may be negotiated only once — to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course.[29] In other words, the crossing of a check is a warning that the check should be deposited only in the account of the payee. **When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payee's**

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[27] RTC Records, p. 164.

[28] *Go v. Metropolitan Bank and Trust Company*, G.R. No. 168842, August 11, 2010, 628 SCRA 107, 114, citing *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, G.R. No. 93048, March 3, 1994, 230 SCRA 643, 647; *Associated Bank v. Court of Appeals*, G.R. No. 89802, May 7, 1992, 208 SCRA 465; *State Investment House v. Intermediate Appellate Court*, G.R. No. 72764, July 13, 1989, 175 SCRA 310; and *De Ocampo & Co. v. Gatchalian, et al.*, 113 Phil. 574 (1961).

[29] *Go v. Metropolitan Bank and Trust Company*, *supra*, at 115, citing *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, *supra*, at 648.

account.[30] In complete disregard of this duty, PCIB's systems allowed Balmaceda to encash 26 Manager's checks which were all crossed checks, or checks payable to the "payee's account only."

The General Banking Law of 2000[31] requires of banks the highest standards of integrity and performance. The banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family.[32] The highest degree of diligence is expected.[33]

While we appreciate that Balmaceda took advantage of his authority and position as the branch manager to commit these acts, this circumstance cannot be used to excuse the manner the Bank – through its employees –handled its clients' bank accounts and thereby ignored established bank procedures at the branch manager's mere order. This lapse is made all the more glaring by Balmaceda's repetition of his *modus operandi* 33 more times in a period of over one year by the Bank's own estimation. With this kind of record, blame must be imputed on the Bank itself and its systems, not solely on the weakness or lapses of individual employees.

Principle of unjust enrichment not applicable

PCIB maintains that even if Ramos did not collude with Balmaceda, it still has the right to recover the amounts unjustly received by Ramos pursuant to the principle of unjust enrichment.

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[30] *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361, 364 (2001).

[31] Republic Act No. 8791.

[32] *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538 (2000); and *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667 (1997).

[33] *Philippine Commercial International Bank v. Court of Appeals, supra* note 30.

This principle is embodied in Article 22 of the Civil Code which provides:

> Article 22. Every person who through an act of performance by another, 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.

To have a cause of action based on unjust enrichment, we explained in *University of the Philippines v. Philab Industries, Inc.*[34] that:

> Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.
>
> Moreover, to substantiate a claim for unjust enrichment, the **claimant must unequivocally prove that another party knowingly received something of value to which he was not entitled and that the state of affairs are such that it would be unjust for the person to keep the benefit**. Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[35] (emphasis ours)

Ramos cannot be held liable to PCIB on account of unjust enrichment simply because he received payments out of money secured by fraud from PCIB. To hold Ramos accountable, it is necessary to prove that he received the money from Balmaceda, knowing that he (Ramos) was not entitled to it. PCIB must also prove that Ramos, at the time that he received the money from Balmaceda, knew that the money was acquired through fraud. Knowledge of the fraud is the link between Ramos and PCIB

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[34] 482 Phil. 693 (2004).

[35] *Id.* at 709-710.

that would obligate Ramos to return the money based on the principle of unjust enrichment.

However, as the evidence on record indicates, Ramos accepted the deposits that Balmaceda made directly into his bank account, believing that these deposits were payments for the fighting cocks that Balmaceda had purchased. Significantly, PCIB has not presented any evidence proving that Ramos participated in, or that he even knew of, the fraudulent sources of Balmaceda's funds.

PCIB illegally froze and debited Ramos' assets

We also find that PCIB acted illegally in freezing and debiting Ramos' bank account. In *BPI Family Bank v. Franco*,[36] we cautioned against the unilateral freezing of bank accounts by banks, noting that:

> More importantly, [BPI Family Bank] does not have a unilateral right to freeze the accounts of Franco based on its mere suspicion that the funds therein were proceeds of the multi-million peso scam Franco was allegedly involved in. To grant [BPI Family Bank], or any bank for that matter, the right to take whatever action it pleases on deposits which it supposes are derived from shady transactions, would open the floodgates of public distrust in the banking industry.[37]

We see no legal merit in PCIB's claim that legal compensation took place between it and Ramos, thereby warranting the automatic deduction from Ramos' bank account. For legal compensation to take place, two persons, in their own right, must first be creditors and debtors of each other.[38] While PCIB, as the depositary bank, is Ramos' debtor in the amount of his deposits, Ramos is not PCIB's debtor under the evidence the PCIB adduced. PCIB thus had no basis, in fact or in law, to automatically debit from Ramos' bank account.

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[36] G.R. No. 123498, November 23, 2007, 538 SCRA 184.

[37] *Id.* at 197.

[38] CIVIL CODE, Article 1278.

On the award of damages

Although PCIB's act of freezing and debiting Ramos' account is unlawful, we cannot hold PCIB liable for moral and exemplary damages. Since a contractual relationship existed between Ramos and PCIB as the depositor and the depositary bank, respectively, the award of moral damages depends on the applicability of Article 2220 of the Civil Code, which provides:

> Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. *The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.* [emphasis ours]

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious commission of a wrong; it partakes of the nature of fraud.[39]

As the facts of this case bear out, PCIB did not act out of malice or bad faith when it froze Ramos' bank account and subsequently debited the amount of ₱251,910.96 therefrom. While PCIB may have acted hastily and without regard to its primary duty to treat the accounts of its depositors with meticulous care and utmost fidelity,[40] we find that its actions were propelled more by the need to protect itself, and not out of malevolence or ill will. One may err, but error alone is not a ground for granting moral damages.[41]

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[39] *BPI Family Bank v. Franco*, *supra* note 36, at 203, citing *Board of Liquidators v. Kalaw*, G.R. No. L-18805, August 14, 1967, 20 SCRA 987.

[40] *Central Bank of the Philippines v. Court of Appeals*, G.R. Nos. 88353 and 92943, May 8, 1992, 208 SCRA 652, 684-685.

[41] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454, May 28, 2004, 430 SCRA 261, 294.

We also disallow the award of exemplary damages. Article 2234 of the Civil Code requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Since no reason exists to award moral damages, so too can there be no reason to award exemplary damages.

We deem it just and equitable, however, to uphold the award of attorney's fees in Ramos' favor. Taking into consideration the time and efforts involved that went into this case, we increase the award of attorney's fees from ₱20,000.00 to ₱75,000.00.

WHEREFORE, the petition is *PARTIALLY GRANTED.* We *AFFIRM* the decision of the Court of Appeals dated April 29, 2003 in CA-G.R. CV No. 69955 with the *MODIFICATION* that the award of moral and exemplary damages in favor of Rolando N. Ramos is *DELETED,* while the award of attorney's fees is *INCREASED* to ₱75,000.00. Costs against the Philippine Commercial International Bank.

SO ORDERED.

Velasco, Jr.,[*] *Perez, Sereno,* and *Reyes, JJ.,* concur.

[*] Designated as Additional Member of the Second Division in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1084 dated September 13, 2011.

FIRST DIVISION

[G.R. No. 159051. September 21, 2011]

MAGLANA RICE AND CORN MILL, INC., and RAMON P. DAO, *petitioners, vs.* **ANNIE L. TAN and her husband MANUEL TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL RAISE ONLY QUESTIONS OF LAW WHICH MUST BE DISTINCTLY SET FORTH; RATIONALE.— The issue this appeal poses concerns the real cause of the vehicular accident, *that is*, whether or not the respondents' car suddenly cut into the lane of the petitioners' truck, and whether or not Dao simply failed to stop on time despite the respondents' car having already come to a full stop due to traffic congestion along the road. The issue is obviously a factual one because it requires the ascertainment of which driver was negligent. As such, the appeal fails, for a petition for review on *certiorari*, pursuant to Section 1, Rule 45 of the *Rules of Court*, "shall raise only questions of law, which must be distinctly set forth." x x x That an appeal by *certiorari* should raise only questions of law is not properly to be doubted. The limitation exists, because the Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court subject to certain exceptions.

2. ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. Indeed, there is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.

3. ID.; ID.; ID.; QUESTIONS OF FACT ARE NOT REVIEWABLE BY THE SUPREME COURT.— Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.

4. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS.— Although the Court has recognized several exceptions to the limitation of an appeal by *certiorari* to only questions of law, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*)when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion, this appeal does not come under the exceptions.

5. ID.; ID.; ID.; FRIVOLOUS APPEAL; NATURE.— A frivolous appeal is one where no error can be brought before the appellate court, or whose result is obvious and the arguments of error are totally bereft of merit, or which is prosecuted in bad faith, or which contrary to established law and unsupported by a reasoned, colorable argument for change. It is frivolous, too, when it does not present any justiciable question, or is one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect that it can succeed. A losing party has no right to prosecute a frivolous appeal, because he and his counsel are not relieved from the obligation to demonstrate persuasively even when appeal is a matter of right the substantial and reversible errors committed during the trial.

6. ID.; LEGAL FEES; COSTS; TREBLE COSTS OF SUIT; IMPOSED WHERE AN ACTION OR AN APPEAL IS FOUND TO BE FRIVOLOUS; PURPOSE.— Given the frivolousness of the appeal, the Court imposes treble costs of suit on the petitioners. x x x The imposition of treble costs of suit on the petitioners is meant to remind them and their attorney that the extent that an attorney's exercise of his professional responsibility for their benefit as his clients submits to reasonable limits beyond which he ought to go no further, and that his failure to recognize such limits will not be allowed to go unsanctioned by the Court. Thus, the Court has not hesitated to impose treble costs of suit (*a*) to stress its dislike for "any scheme to prolong litigation" or for "an unwarranted effort to avoid the implementation of a judgment painstakingly arrived at;" (*b*) to sanction an appeal that was obviously interposed "for the sole purpose of delay;" (*c*) to disapprove of the party's "lack of good and honest intentions, as well as the evasive manner by which it was able to frustrate (the adverse party's) claim for a decade;" (*d*) to stifle a party's deplorable propensity to "go to extreme lengths to evade complying with their duties under the law and the orders of this Court" and thereby to cause the case to drag "for far too long with practically no end in sight;" (*e*) to condemn the counsel's frantic search for "any ground to resuscitate his client's lost cause;" and (*f*) to reiterate that a litigant, although his right to initiate an action in court is fully respected, is not permitted to initiate similar suits once his case been adjudicated by a competent court in a valid final judgment, in the hope of securing a favorable ruling

"for this will result to endless litigations detrimental to the administration of justice."

APPEARANCES OF COUNSEL

Alabastro Olaguer and Alabastro Law Offices for petitioners.
Leonides T. Tan for respondents.

D E C I S I O N

BERSAMIN, *J.*:

This case originated from the Municipal Trial Courts in Cities of Davao City (MTCC),[1] which adjudged the petitioners liable for the material injury valued at ₱83,750.00 sustained by the vehicle of the respondents arising from the accident involving their respective vehicles, and for attorney's fees and costs of suit. The Regional Trial Court (RTC), Branch 14, in Davao City upheld the judgment of the MTCC.[2] On appeal to the Court of Appeals (CA) by petition for review, the CA affirmed the RTC through its decision promulgated on November 29, 2002.[3] Hence, this further appeal *via* petition for review on *certiorari*.

Antecedents

The vehicular accident, which involved the Fuso truck owned by petitioner Maglana Rice and Corn Mill, Inc., driven by its employee, petitioner Ramon P. Dao, and the Honda Accord sedan owned by the respondents, driven by respondent Manuel Tan, occurred on August 28, 1996 in the Davao-Agusan Road in Lanang, Davao City. The truck hit the car at its rear. Both vehicles sustained damage. The respondents demanded

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[1] CA *rollo*, pp. 41-49.

[2] *Id.*, pp. 67-75.

[3] *Rollo*, pp. 29-38; penned by Associate Justice Portia Aliño-Hormachuelos (retired), with Associate Justice Jose L. Sabio, Jr. (retired) and Associate Justice Amelita G. Tolentino, concurring.

reimbursement of their expenses for the repair of their car, but the petitioners, denying liability, refused the demand. Consequently, the respondents filed a complaint in the MTCC.

The version of the respondents is that their car was travelling along the Davao-Agusan Road, but had to stop upon reaching the All Trac Compound, as did other vehicles, due to the traffic slowdown caused by an earlier collision between a car and a jeep not far ahead. Dao, who was driving the truck, failed to stop and his truck bumped the car at its rear, causing to the car material damage valued at ₱83,750.00. Their version was corroborated by the traffic accident report and the court testimony of traffic investigator SPO4 Manuel C. Española (SPO4 Española).

The petitioners gave a different version. A few moments before the accident, Dao was on board the truck at about 6:45 p.m. occupying the inner of the two north-bound lanes on the national highway in Lanang, Davao City, observing an approximate distance of three-cars length from the vehicle ahead at a speed of about 30 kilometers/hour. Upon reaching the All Trac Compound, he spotted an accident involving a car and a jeep ahead of his truck, and immediately shifted to second gear to slow down to about 20 kilometers/hour. The driver of the vehicle ahead of the truck also slowed down. As he decelerated preparatory to coming to a full stop, the respondents' car overtook the truck from the right lane and suddenly cut into his lane at a very unsafe distance. This cutting-in caused the right front portion of the truck to come into contact with the left rear of the respondents' car just when the car was in a diagonal position with about two feet of its rear still on the right lane.

In its decision dated August 14, 2001,[4] the MTCC accorded greater credence to the version of the respondents. It ruled that such version was more plausible and convincing due to its being in accord with the nature of the damage of the car during the collision, among other things; and concluded that the proximate cause of the accident was the lack of foresight and vigilance of Dao. It disposed thus:

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[4] CA *rollo*, pp. 41-49; penned by Presiding Judge Antonina B. Escovilla.

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, Maglana Rice and Corn Mill, Inc. and Ramon Dao, enjoining them to pay jointly and severally the following:

1. The sum of ₱83,750.00 as the repair expenses of the Honda car which was damaged during the incident, per Job Order No. 64017 of Kar Asia Inc., dated August 29, 1996;

2. The sum of ₱15,000.00 as reasonable amount for and as attorney's fees; and

3. The costs of suit.

SO ORDERED.[5]

The petitioners appealed, but the RTC upheld the MTCC on December 20, 2001.[6]

Not satisfied, the petitioners further appealed to the CA, which denied their petition for lack of merit, thereby affirming the RTC.[7]

The petitioners' motion for reconsideration proved futile, with the CA denying it.[8]

Hence, this appeal to the Court by petition for review on *certiorari*, whereby the petitioners reiterate that the fault for the vehicular accident was attributable to the respondents.

Ruling

The appeal deserves outright rejection.

I
Appeal under Rule 45 is limited to questions of law; exceptions

The issue this appeal poses concerns the real cause of the vehicular accident, *that is*, whether or not the respondents' car

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[5] *Id.*

[6] *Id.*, pp. 67-75.

[7] *Rollo*, pp. 29-38.

[8] *Id.*, pp. 49-50.

suddenly cut into the lane of the petitioners' truck, and whether or not Dao simply failed to stop on time despite the respondents' car having already come to a full stop due to traffic congestion along the road. The issue is obviously a factual one because it requires the ascertainment of which driver was negligent. As such, the appeal fails, for a petition for review on *certiorari*, pursuant to Section 1, Rule 45 of the *Rules of Court*, "shall raise only questions of law, which must be distinctly set forth." A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. Indeed, there is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[9]

Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.[10]

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[9] II Herrera, *Remedial Law*, 2000 Edition, p. 648; citing Moran, *Comments on the Rules of Court*, 1979 Edition.

[10] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630, 637.

That an appeal by *certiorari* should raise only questions of law is not properly to be doubted. The limitation exists, because the Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court subject to certain exceptions.[11]

Although the Court has recognized several exceptions to the limitation of an appeal by *certiorari* to only questions of law, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion,[12] this appeal does not come under the exceptions.

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[11] *FNCB Finance v. Estavillo*, G.R. No. 93394, December 20, 1990, 192 SCRA 514, 517.

[12] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549*; Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110; *Sps. Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998).

II
Appeal to the Court is frivolous;
Petitioners are liable for treble costs of suit

In the CA, the petitioners specified the errors committed by the RTC thuswise:

I. THE COURT *A QUO* GRAVELY ERRED IN NOT HOLDING THAT PLAINTIFF DR. MANUEL TAN VIOLATED TRAFFIC RULES (SEC. 39, RA 4136) AT THE TIME OF THE ACCIDENT AND PURSUANT TO ARTICLE 2185 OF THE CIVIL CODE AND THE RULING OF THE SUPREME COURT (MCKEE VS. IAC, 211 SCRA 517) HE WAS THE ONE NEGLIGENT AT THE TIME OF THE MISHAP.

II. THE COURT *A QUO* GRAVELY ERRED IN NOT HOLDING THAT MANUEL TAN WAS TRYING TO COVER UP HIS MISDEEDS BECAUSE AT THE TIME OF THE ACCIDENT THE INSURANCE OF HIS WIFE'S CAR ALREADY EXPIRED AND HE WANTED THE INSURANCE OF THE DEFENDANT'S TRUCK [TO] SHOULDER EXPENSES FOR THE DAMAGE.

III. THE COURT *A QUO* GRAVELY ERRED IN NOT HOLDING THAT THE POLICE REPORT WAS ERRONEOUS AND LOADED IN FAVOR OF THE PLAINTIFFS AS PERCEIVED BY THE PRESIDING JUDGE OF MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, WHO ORIGINALLY HEARD THIS CASE BUT HE RETIRED BEFORE HE COULD RENDER HIS DECISION ON THIS CASE.

IV. THE COURT *A QUO* GRAVELY ERRED IN ITS APPRECIATION OF THE EVIDENCE PRESENTED BY BOTH PARTIES, AND COROLLARILY, IT ARRIVED AT A WRONG CONCLUSION.[13]

As stated, the CA rejected the petitioners' submissions.

The rejection by the CA unerringly indicated that three lower courts with the legal capacity and official function to resolve issues of fact, namely, the MTCC, the RTC, and the CA, all found and declared that the police report respecting the accident

[13] *Rollo*, pp. 32-33.

was unbiased and worthy of belief; that the truck had been travelling behind the respondents' car; and that the accident had occurred because Dao did not stop after the car had come to a full stop despite his having a clear view of the road ahead. They noted that the pictorial evidence revealed no scraping marks or even a dent on the left side of the car, but instead showed a solitary material damage sustained on the left rear portion of car, proof that only one collision had occurred between the two vehicles.[14] They concluded that the version of the respondents was the more credible one.

In this recourse, the petitioners have presented no ground sufficient to persuade the Court to treat their appeal as coming under any of the aforementioned exceptions as to warrant the review of the uniform findings of fact and conclusions made by the MTCC, RTC and CA. After the CA upheld the appellate judgment of the RTC, they should have desisted on their own volition from coming to the Court, seeing that the only issues that they would be raising were plainly factual in nature. They did not desist despite their attorney being surely aware of the limitation to questions of law of any appeal to the Court on account of its not being a trier of facts. Under such circumstances, their appeal was made notwithstanding its being patently frivolous.

A frivolous appeal is one where no error can be brought before the appellate court, or whose result is obvious and the arguments of error are totally bereft of merit, or which is prosecuted in bad faith, or which is contrary to established law and unsupported by a reasoned, colorable argument for change.[15] It is frivolous, too, when it does not present any justiciable question, or is one so readily recognizable as devoid of merit on the face of the record that there is little, if any,

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[14] *Rollo*, pp. 34-35 (CA Decision).

[15] Bersamin, *Appeal and Review in the Philippines*, Second Edition, p. 105; citing Re & Re, *Brief Writing & Oral Argument*, Seventh Edition, Oceana Publications, p. 55.

prospect that it can succeed.[16] A losing party has no right to prosecute a frivolous appeal, because he and his counsel are not relieved from the obligation to demonstrate persuasively even when appeal is a matter of right the substantial and reversible errors committed during the trial.

Given the frivolousness of the appeal, the Court imposes treble costs of suit on the petitioners. Rule 142 of the *Rules of Court* provides:

> Section 3. *Costs when appeal frivolous*.— Where an action or an appeal is found to be frivolous, double or treble costs may be imposed on the plaintiff or appellant, which shall be paid by his attorney, if so ordered by the court.

Corpus Juris Secundum explains the concept of costs of suit thusly:

> Costs are certain allowances authorized by statute or court rule to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings. **They are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in court. The theory on which they are allowed to a plaintiff is that the default of defendant made it necessary to sue him, and to a defendant, that plaintiff sued him without cause**.
>
> x x x x x x x x x
>
> In their origin, costs were given rather as a punishment of the defeated party for causing the litigation than as a recompense to the successful party for the expenses to which he had been subjected. At the present time, the latter theory generally obtains in the legislation with regard to it; but **under some statutes, the law of costs is regarded as penal, the right to recover costs being given to the successful party against the unsuccessful party as a penalty for presenting in court as suit or defense that which is without merit, as where the litigant has pleaded frivolous or false matters**.
>
> x x x x x x x x x

[16] *De La Cruz v. Blanco and Quevedo,* 73 Phil. 596 (1942).

Costs are a mere incident to, and are in no sense the subject of, the litigation; and while they are incident to all actions they are nevertheless in their nature a mere incident to the judgment to which they attach, especially in cases relating to motions and orders.

The right to costs, although ancillary to the judgment, is a substantive right and not a mere matter of procedure; although it has been held that costs alone cannot furnish the basis for substantive judgment.[17] [emphasis supplied]

The imposition of treble costs of suit on the petitioners is meant to remind them and their attorney that the extent that an attorney's exercise of his professional responsibility for their benefit as his clients submits to reasonable limits beyond which he ought to go no further, and that his failure to recognize such limits will not be allowed to go unsanctioned by the Court. Thus, the Court has not hesitated to impose treble costs of suit (*a*) to stress its dislike for "any scheme to prolong litigation" or for "an unwarranted effort to avoid the implementation of a judgment painstakingly arrived at;"[18] (*b*) to sanction an appeal that was obviously interposed "for the sole purpose of delay;"[19] (*c*) to disapprove of the party's "lack of good and honest intentions, as well as the evasive manner by which it was able to frustrate (the adverse party's) claim for a decade;"[20] (*d*) to stifle a party's deplorable propensity to "go to extreme lengths to evade complying with their duties under the law and the orders of this Court" and thereby to cause the case to drag

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[17] 20 CJS, *Costs*, §2.

[18] *Tumibay v. Soro*, G.R. No. 152016, April 13, 2010, 618 SCRA 169, 179.

[19] *Equitable Banking Corporation v. Liwanag*, G.R. No. L-28335, March 30, 1970, 32 SCRA 293, 297.

[20] *Uniwide Holdings, Inc. v. Jandecs Transportation Co., Inc.*, G.R. No. 168522, December 19, 2007, 541 SCRA 158, 165.

"for far too long with practically no end in sight;"[21] (*e*) to condemn the counsel's frantic search for "any ground to resuscitate his client's lost cause;"[22] and (*f*) to reiterate that a litigant, although his right to initiate an action in court is fully respected, is not permitted to initiate similar suits once his case has been adjudicated by a competent court in a valid final judgment, in the hope of securing a favorable ruling "for this will result to endless litigations detrimental to the administration of justice."[23]

WHEREFORE, the Court *AFFIRMS* the decision of the Court of Appeals, and *ORDERS* the petitioners to pay treble costs of suit.

SO ORDERED.

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

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[21] *Heirs of Jose Sy Bang v. Sy*, G.R. No. 114217, October 13, 2009, 603 SCRA 534, 574.

[22] *Diaz v. Republic*, G.R. No. 181502, February 2, 2010, 611 SCRA 403, 427.

[23] *Knecht v. United Cigarette Corp.*, G.R. No. 139370, July 4, 2002, 384 SCRA 45, 59.

[*] Vice Associate Justice Martin S. Villarama, Jr. per Special Order No. 1080 dated September 13, 2011.

THIRD DIVISION

[G.R. No. 168053. September 21, 2011]

REBECCA T. ARQUERO, *petitioner, vs.* **COURT OF APPEALS (Former Thirteenth Division); EDILBERTO C. DE JESUS, in his capacity as Secretary of the Department of Education; DR. PARALUMAN GIRON, Director, Regional Office IV-MIMAROPA, Department of Education; DR. EDUARDO LOPEZ, Schools Division Superintendent, Puerto Princesa City; and NORMA BRILLANTES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; DECLARATION OF DEFAULT; REMEDIES OF A PARTY DECLARED IN DEFAULT.— In *Martinez v. Republic*, the Court has clearly discussed the remedies of a party declared in default in light of the 1964 and 1997 Rules of Court and a number of jurisprudence applying and interpreting said rules. Citing *Lina v. Court of Appeals*, the Court enumerated the above-mentioned remedies, to wit: "a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec. 3, Rule 18); b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and d) **He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)**" The Court explained in *Martinez* that the fourth remedy, that of appeal, is anchored on Section 2, Rule 41 of the 1964 Rules. Even after the deletion of that provision

under the 1997 Rules, the Court did not hesitate to expressly rely on the *Lina* doctrine, including the pronouncement that a defaulted defendant may appeal from the judgment rendered against him. Moreover, in *Rural Bank of Sta. Catalin v. Land Bank of the Philippines*, the Court provided a comprehensive restatement of the remedies of the defending party declared in default x x x.

2. ID.; ID.; ID.; ID.; A DEFENDANT DECLARED IN DEFAULT RETAINS THE RIGHT TO APPEAL FROM THE JUDGMENT BY DEFAULT.— [A] defendant declared in default retains the right to appeal from the judgement by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default except that he does not regain his right to adduce evidence. The appellate court, in turn, can review the assailed decision and is not precluded from reversing the same based solely on the evidence submitted by the plaintiff.

3. ID.; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; REFERS TO THE PROPER LEGAL REMEDY TO DETERMINE THE RIGHT OR TITLE TO THE CONTESTED PUBLIC OFFICE AND TO OUST THE HOLDER FROM ITS ENJOYMENT.— A *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment. It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office. It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.

4. ID.; ID.; ID.; THE PETITIONER WHO FILES THE ACTION IN HIS NAME MUST PROVE THAT HE IS ENTITLED TO THE SUBJECT PUBLIC OFFICE.— In *quo warranto*, the petitioner who files the action in his name must prove that he is entitled to the subject public office. In other words, the private person suing must show a clear right to the contested position. Otherwise, the person who holds the same has a right to undisturbed possession and the action for *quo warranto* may be dismissed. It is not even necessary to pass upon the right of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; APPOINTMENTS; ACTING OR TEMPORARY APPOINTMENT; THE ESSENCE THEREOF IS ITS TEMPORARINESS AND ITS CONSEQUENT REVOCABILITY AT ANY TIME BY THE APPOINTING AUTHORITY; CASE AT BAR.— The contested position was created by RA 6765. x x x As aptly observed by the CA, the law created two positions — the VSS and the principal or secondary school head teacher of each of the units or branches of the integrated school. The legislators clearly intended that the integrated schools shall be headed by a superintendent. Admittedly, petitioner did not possess the qualifications to hold the position and she was merely designated by the DepEd as the OIC of the PINS. At that time, she held in a concurrent capacity, the permanent position of prinicipal of the PNS. Having been appointed as OIC without the necessary qualifications, petitioner held the position only in a temporary capacity. The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed, but endures at the pleasure of the appointing authority. The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority. Thus, under RA 6765, petitioner can only insist on her security of tenure as principal of the PNS but not as OIC of the integrated school. Upon the withdrawal of her designation, her right to the contested position ceased to exist.

APPEARANCES OF COUNSEL

Leynes Capinpin & Acejas III for petitioner.
The Solicitor General for public 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 filed by petitioner Rebecca T. Arquero against public respondents Edilberto C. De Jesus (De Jesus), in his capacity as Secretary of Education, Dr. Paraluman Giron (Dr. Giron), Department of Education (DepEd) Director, Regional Office IV-MIMAROPA, Dr. Eduardo Lopez (Lopez), Schools Division Superintendent, Puerto Princesa City, and private respondent Norma Brillantes. Petitioner assails the Court of Appeals (CA) Decision[1] dated December 15, 2004 and Resolution[2] dated May 3, 2005 in CA-G.R. SP No. 85899. The assailed decision reversed and set aside the Judgment by Default[3] of the Regional Trial Court (RTC), Branch 95, Puerto Princesa City, while the assailed resolution denied petitioner's motion for reconsideration.

The facts of the case are as follows:

On October 13, 1989, Congress approved Republic Act (RA) No. 6765, or "*An Act Integrating Certain High Schools in the City of Puerto Princesa and in the Province of Palawan with the Palawan National School and Appropriating Funds Therefor.*" Under the law, the following schools were converted into national schools and integrated with the Palawan National School (PNS) in the City of Puerto Princesa, Province of Palawan, as branches thereof: (1) Puerto Princesa School of Philippine Craftsmen; (2) San Jose Barangay High School; (3) Inagawan Barangay High School; (4) Puerto Princesa Rural High School; all in the City of Puerto Princesa and (5) Plaridel Barangay High School in the Municipality of Aborlan; (6) Narra Barangay High School

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 132-162.

[2] *Id.* at 180.

[3] Penned by Judge Bienvenido C. Blancaflor; records, pp. 1158-1163.

in the Municipality of Narra; (7) Quezon Municipal High School in the Municipality of Quezon; (8) Pulot Barangay High School in the Municipality of Brooke's Point; (9) Bataraza Barangay High School in the Municipality Bataraza; and (10) Balabac Barangay High School in the Municipality of Balabac; all in the Province of Palawan.[4]

Section 2 of the law provides that the PNS shall, in addition to general secondary education program, offer post-secondary technical-vocational and other relevant courses to carry out its objectives. The PNS shall thus be considered the "mother unit" and the integrated schools should benefit from a centralized curriculum planning to eliminate duplication of functions and efforts relative to human resource development for the province.[5] The law also provides that the Palawan Integrated National Schools (PINS) shall be headed by a Vocational School Superintendent (VSS) who shall be chosen and appointed by the Secretary of the Department of Education, Culture, and Sports (now the DepEd).[6] Except for Puerto Princesa School of Philippine Craftsmen, which shall be headed by the Home Industries Training Supervisor, the PNS and each of its units or branches shall be headed either by a Principal or Secondary School Head Teacher to be chosen in accordance with the DepEd Rules and Regulations.[7]

However, no VSS was appointed. Instead, then DECS Region IV Office designated then PNS Principal Eugenio J. dela Cuesta in a concurrent capacity as Officer-in-Charge (OIC) of the PINS. After the retirement of Dela Cuesta, petitioner took over as Secondary School Principal of the PNS.[8] On March 18, 1993,

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[4] R.A. 6765, Sec. 1.

[5] *Rollo*, p. 134, citing the Explanatory Note of House Bill No. 919, Exhibit "C1", records, pp. 275-276.

[6] R.A. 6765, Sec. 3.

[7] R.A. 6765, Sec. 4.

[8] Exhibit "D", records, p. 277.

then DECS-Region IV Director IV Desideria Rex (Director Rex) designated petitioner as OIC of the PINS.[9]

On December 1, 1994, Director Rex's successor, Pedro B. Trinidad placed all satellite schools of the PINS under the direct supervision of the Schools Division Superintendent for Palawan effective January 1, 1995.[10] This directive was later approved by the DepEd in September 1996. Petitioner was instructed to turn over the administration and supervision of the PINS branches or units.[11] In another memorandum, Schools Division Superintendent Portia Gesilva was designated as OIC of the PINS. These events prompted different parties to institute various actions restraining the enforcement of the DepEd orders.

Pursuant to RA 8204, separate City Schools Division Offices were established for the City of Puerto Princesa and the Province of Palawan.[12]

On March 14, 2000, Regional Director Belen H. Magsino issued an Order addressed to the Schools Division Superintendent of Palawan and Puerto Princesa City, and petitioner stating that the PINS satellite schools shall be under the supervision of the division schools superintendents concerned, while petitioner should concentrate on the supervision and administration of the PNS.[13] Again, this prompted the filing of various court actions.

On May 14, 2002, then DECS Undersecretary Jaime D. Jacob issued an Order[14] addressed to Dr. Giron, OIC, DepEd Regional Office No. 4, stating that there being no more legal impediment to the integration, he ordered that the secondary schools integrated with the PNS be under the direct administrative management and supervision of the schools division superintendents of the

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[9] Exhibit "D-1", *id.* at 278.

[10] Exhibit "E", *id.* at 280.

[11] *Id.*

[12] *Rollo,* p. 136.

[13] Exhibit "M", records, p. 292.

[14] Exhibit "R", *id.* at 310.

divisions of Palawan and Puerto Princesa City, as the case may be, according to their geographical and political boundaries. Consequently, Dr. Giron instructed the secondary schools' principals concerned of the assumption of jurisdiction by the superintendent of the schools division offices of the city and province, and that their fiscal and financial transaction as turned over will be effected in July 1, 2002. However, then DepEd Undersecretary Ramon C. Bacani (Bacani) ordered that the *status quo* be maintained and that no turn over of schools be made.[15] In the meantime, petitioner remained as the OIC of the PINS.

On September 19, 2002, Dr. Giron withdrew the designation of petitioner as OIC of the PINS, enjoining her from submitting to the Regional Office all appointments and personnel movement involving the PNS and the satellite schools. On November 7, 2002, petitioner appealed to the Civil Service Commission assailing the withdrawal of her designation as OIC of the PINS.[16]

On March 28, 2003, then DepEd Secretary Edilberto C. De Jesus designated Assistant Schools Division Superintendent Norma B. Brillantes (hereafter referred to as private respondent) in concurrent capacity as OIC of the PINS entitled to representation and transportation allowance, except the salary of the position.[17] Petitioner filed a Motion for Reconsideration and/or Clarification[18] before the Office of the DepEd Secretary as to the designation of private respondent.

On September 18, 2003, Dr. Giron filed a formal charge[19] against petitioner who continued to defy the orders issued by the Regional Office relative to the exercise of her functions as OIC of the PINS despite the designation of private respondent as such. The administrative complaint charged petitioner with

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[15] Exhibit "3", *id.* at 313.

[16] *Rollo*, p. 139.

[17] Exhibit "A", records, p. 270.

[18] Exhibit "X", *id.* at 325-335.

[19] Exhibit "AA", *id.* at 348-351.

grave misconduct, gross insubordination and conduct prejudicial to the best interest of the service. Petitioner was also preventively suspended for ninety (90) days.[20]

On October 2, 2003, petitioner filed the Petition for *Quo Warranto* with Prayer for Issuance of Temporary Restraining Order and/or Injunctive Writ[21] before the RTC of Palawan[22] against public and private respondents. The case was docketed as Civil Case No. 3854. Petitioner argued that the designation of private respondent deprived her of her right to exercise her function and perform her duties in violation of her right to security of tenure. Considering that petitioner was appointed in a permanent capacity, she insisted that private respondent's designation as OIC of the PNS is null and void there being no vacancy to the position. Petitioner thus prayed that the RTC issue an order granting the writ of *quo warranto* enjoining private respondent from assuming the position of OIC of the PNS, declaring the questioned designation null and void and without operative effect, and declaring petitioner to be entitled to the office of the principal of the PNS.[23]

On October 6, 2003, the Executive Judge issued a 72-Hour TRO[24] enjoining and restraining private respondent from assuming the position of OIC and performing the functions of the Office of the Principal of the PNS; and restraining public respondents from giving due course or recognizing the assailed designation of private respondent. The RTC later issued the writ of preliminary injunction.[25]

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[20] *Rollo*, p. 140.

[21] Records, pp. 2-48.

[22] Branch 95, Puerto Princesa City.

[23] Records, pp. 43-44.

[24] *Id.* at 144-145.

[25] *Id.* at 900.

Respondents failed to file their Answer. Hence, on motion[26] of petitioner, the Court declared respondents in default in an Order[27] dated December 15, 2003. In the same order, petitioner was allowed to present her evidence *ex parte*.

On June 14, 2004, the RTC rendered a Judgment by Default,[28] the dispositive portion of which reads:

> WHEREFORE, premises considered and by preponderance of evidence, judgment is hereby rendered:
>
> 1. Declaring petitioner Rebecca T. Arquero as the lawful Principal and Head of the Palawan Integrated National High School who is lawfully entitled to manage the operation and finances of the school subject to existing laws;
>
> 2. Declaring the formal charge against petitioner, the preventive suspension, the investigating committee, the proceedings therein and any orders, rulings, judgments and decisions that would arise therefrom as null, void and of no effect;
>
> 3. Ordering respondent Norma Brillantes, or any person acting in her behalf, to cease and desist from assuming and exercising the functions of the Office of the Principal of Palawan Integrated National High School, and respondents Edilberto C. De Jesus, Paraluman R. Giron and Eduardo V. Lopez, or any person acting in their behalf, from giving due course or recognizing the same; and
>
> 4. Making the writ of preliminary injunction issued in this case permanent.
>
> IT IS SO ORDERED.[29]

The RTC held that considering that the integrated school failed to offer post-secondary technical-vocational courses, the VSS position became *functus officio*. The PNS, therefore,

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[26] *Id.* at 825-827.

[27] *Id.* at 832-833.

[28] *Id.* at 1158-1163.

[29] *Id.* at 1163.

remains to be a general secondary school under the jurisdiction of the DepEd.[30] Consequently, supervision of the integrated school was automatically vested with the principal of the PNS without the necessity of appointment or designation. As to the administrative case filed against petitioner, the RTC opined that the formal charge and preventive suspension are illegal for lack of due process.[31]

On appeal, the CA reversed and set aside the RTC decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed decision of the court a *quo* in Civil Case No. 3854 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the petition for *quo warranto* filed by appellee Rebecca T. Arquero.
>
> No pronouncement as to costs.
>
> SO ORDERED.[32]

Applying the rules on statutory construction, the appellate court emphasized the need to harmonize the laws. The CA held that the PINS and its satellite schools remain under the complete administrative jurisdiction of the DepEd and not transferred to the Technical Education and Skills Development Authority (TESDA). It also explained that by providing for a distinct position of VSS with a higher qualification, specifically chosen and appointed by the DepEd Secretary that is separate from the school head of the PNS offering general secondary education program, RA 6765 intended that the functions of a VSS and School Principal of PNS be discharged by two separate persons.[33] The CA added that if we follow the RTC conclusion, petitioner would assume the responsibilities and exercise the functions of a division schools superintendent without appointment

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[30] *Id.* at 1161.

[31] *Id.* at 1162.

[32] *Rollo*, pp. 161-162.

[33] *Id.* at 157.

and compliance with the qualifications required by law.[34] The appellate court likewise held that petitioner failed to establish her clear legal right to the position of OIC of the PINS as she was not appointed but merely designated to the position in addition to her functions as incumbent school principal of the PNS.[35] Clearly, there was no violation of her right to due process and security of tenure when private respondent replaced her. As to the validity of filing the administrative charge against her and the subsequent imposition of preventive suspension, the CA refused to rule on the matter due to the pendency of the administrative case which is within the jurisdiction of the DepEd.

Hence, this petition raising the following issues:

A. THE COURT OF APPEALS' **DECISION** DATED THE 15TH DECEMBER 2004, AND THE **RESOLUTION** OF 3RD MAY 2005, HAVE DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, OR THE APPELLATE COURT HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HIGHEST COURT; OR THE RESPONDENT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.

B. THE CHALLENGED DECISION WAS RENDERED ON THE BASIS OF MERE UNSUBSTANTIATED "***ARGUMENTATIONS***" OF THE INDIVIDUAL RESPONDENTS.

NO IOTA OF EVIDENCE, TESTIMONIAL OR DOCUMENTARY, WERE PRESENTED AND OFFERED FOR A SPECIFIC PURPOSE BY THE RESPONDENTS (WHO WERE DECLARED IN DEFAULT).

THEREFORE, THE ***CONCLUSION*** OF THE IMPUGNED DECISION IS NOT SUPPORTED BY RECORDED EVIDENCE.[36]

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[34] *Id.* at 158-159.

[35] *Id.* at 159.

[36] *Id.* at 276.

The petition is without merit.

Petitioner insists that respondents could not have appealed the RTC decision having been declared in default. She explains that the only issue that could have been raised is a purely legal question, therefore, the appeal should have been filed with the Court and not with the CA.

In *Martinez v. Republic*,[37] the Court has clearly discussed the remedies of a party declared in default in light of the 1964 and 1997 Rules of Court and a number of jurisprudence applying and interpreting said rules. Citing *Lina v. Court of Appeals*,[38] the Court enumerated the above-mentioned remedies, to wit:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec. 3, Rule 18)

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)[39]

The Court explained in *Martinez* that the fourth remedy, that of appeal, is anchored on Section 2, Rule 41 of the 1964 Rules. Even after the deletion of that provision under the 1997 Rules, the Court did not hesitate to expressly rely on the *Lina*

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[37] G.R. No. 160895, October 30, 2006, 506 SCRA 134.

[38] G.R. No. 63397, April 9, 1985, 135 SCRA 637.

[39] *Martinez v. Republic*, *supra* note 37, at 147. (Emphasis supplied.)

doctrine, including the pronouncement that a defaulted defendant may appeal from the judgment rendered against him. Moreover, in *Rural Bank of Sta. Catalina v. Land Bank of the Philippines*,[40] the Court provided a comprehensive restatement of the remedies of the defending party declared in default:

> It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.[41]

Undoubtedly, a defendant declared in default retains the right to appeal from the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default except that he does not regain his right to adduce evidence.[42] The appellate court, in turn, can review the assailed decision and is not precluded from reversing the same based solely on the evidence submitted by the plaintiff.

The next question to be resolved is whether petitioner has the right to the contested public office and to oust private respondent from its enjoyment. We answer in the negative.

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[40] 479 Phil. 43 (2004).

[41] *Id.* at 52.

[42] *Martinez v. Republic*, *supra* note 37, at 150-151.

A *quo warranto* proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment.[43] It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office.[44] It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.[45]

In *quo warranto*, the petitioner who files the action in his name must prove that he is entitled to the subject public office. In other words, the private person suing must show a clear right to the contested position.[46] Otherwise, the person who holds the same has a right to undisturbed possession and the action for *quo warranto* may be dismissed.[47] It is not even necessary to pass upon the right of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office.[48]

On the basis of the evidence presented solely by petitioner and without considering the arguments and attachments made by respondents to rebut petitioner's claims, we find that petitioner failed to prove that she is entitled to the contested position.

It is undisputed that petitioner was appointed as the principal of the PNS. In addition, she was designated as the OIC of the PINS. Said designation was, however, withdrawn. Private respondent was, thereafter, designated as the new OIC. This

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[43] *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 827.

[44] *Id.* at 827-828.

[45] *Danilo Moro v. Generoso Reyes Del Castillo, Jr.*, G.R. No. 184980, March 30, 2011.

[46] *Topacio v. Ong*, *supra* note 43, at 828.

[47] *Danilo Moro v. Generoso Reyes Del Castillo, Jr.*, *supra* note 45.

[48] *Hon. Luis Mario M. General, Commissioner, National Police Commission v. Hon. Alejandro S. Urro, in his capacity as the new appointee vice herein petitioner Hon. Luis Mario M. General, National Police Commission*, G.R. No. 191560, March 29, 2011.

prompted petitioner to file the *quo warranto* petition before the court *a quo*.

The contested position was created by RA 6765. Section 3 of the law provides:

> Section 3. The school shall be headed by a Vocational School Superintendent. He shall be chosen and appointed by the Secretary of Education, Culture and Sports [now Secretary of Education].

Moreover, Section 4 thereof states:

> Section 4. The Home Industries Training Supervisor of the Puerto Princesa School of Philippine Craftsmen shall continue to serve as such. The main school and each of its units or branches shall be headed either by a Principal or Secondary School Head Teacher to be chosen in accordance with the rules and regulations of the Department of Education, Culture and Sports [now the Department of Education].

As aptly observed by the CA, the law created two positions — the VSS and the principal or secondary school head teacher of each of the units or branches of the integrated school. The legislators clearly intended that the integrated schools shall be headed by a superintendent. Admittedly, petitioner did not possess the qualifications to hold the position and she was merely designated by the DepEd as the OIC of the PINS. At that time, she held in a concurrent capacity, the permanent position of principal of the PNS. Having been appointed as OIC without the necessary qualifications, petitioner held the position only in a temporary capacity. The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed, but endures at the pleasure of the appointing authority.[49] The essence of an acting appointment is its

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[49] *Id.*

temporariness and its consequent revocability at any time by the appointing authority.[50]

Thus, under RA 6765, petitioner can only insist on her security of tenure as principal of the PNS but not as OIC of the integrated school. Upon the withdrawal of her designation, her right to the contested position ceased to exist.

Petitioner also bases her right to the contested position on the enactment of RA 7796, or *"An Act Creating the Technical Education and Skills Development Authority, Providing for its Powers, Structure and for Other Purposes,"* and RA 9155, or "*An Act Instituting a Framework of Governance for Basic Education, Establishing Authority and Accountability, Renaming the Department of Education Culture and Sports as the Department of Education, and for Other Purposes.*" She contends that under RA 7796, the position of VSS could no longer be filled up by the DepEd having been absorbed by TESDA. As such, the right to manage the operation and finances of the integrated schools is automatically vested with petitioner being the principal of the PNS without further appointment or designation.

Again, we do not agree.

As found by the RTC and affirmed by the CA, the PINS failed to implement its technical-vocational education program. Consequently, the PNS and the other satellite schools never came under the jurisdiction of the Bureau of Technical and Vocational Education of the DepEd nor the technical-vocational education in DepEd's regional offices. Thus, except for the Puerto Princesa School of Philippine Craftsmen, which is now within the jurisdiction of the TESDA, the PNS and the other units remained under the complete administrative jurisdiction of the DepEd. Although the technical-vocational education program was not implemented, it does not alter the law's intent that the main school, which is the PNS and the other units integrated with it, shall be headed either by a principal or

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[50] *Id.*

secondary school head teacher; while the PINS or the integrated school shall be headed by another. We cannot subscribe to petitioner's insistence that the principal automatically heads the PINS without appointment or designation. As clearly explained by the CA, "by providing for a distinct position with a higher qualification (that of a superintendent), specifically chosen and appointed by the DepEd Secretary, separate from the school head of the PNS offering general secondary education program, the law clearly intended the functions of a VSS and school principal of the PNS to be discharged and performed by two different individuals."[51]

Neither can petitioner rely on the enactment of RA 9155. The law, in fact, weakens petitioner's claim. RA 9155 provides the framework for the governance of basic education. It also emphasizes the principle of shared governance which recognizes that every unit (which includes the national, regional, division, school district, and school levels) in the education bureaucracy has a particular role, task and responsibility. The school shall be headed by a [principal] or school head; a school district by a schools district supervisor; a division by a schools division superintendent; a region by a director; and the national level by the Secretary of Education. It must be recalled that the integration under RA 6765 involved certain high schools in different municipalities of the Province of Palawan and the City of Puerto Princesa. We also note that RA 6765 intended that the integrated school shall be headed by a superintendent. Nowhere in the above laws can we find justification for petitioner's insistence that she, and not private respondent, has a better right to hold the contested position.

Clearly, petitioner failed to establish her right to the contested position. Therefore, the dismissal of her *quo warranto* petition is in order. It must be emphasized, however, that this declaration only involves the position of petitioner as OIC of the PINS. It does not in any way affect her position as principal of the PNS which she holds in a permanent capacity.

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[51] *Rollo,* p. 157.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated December 15, 2004 and Resolution dated May 3, 2005 in CA-G.R. SP No. 85899, are *AFFIRMED.*

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169263. September 21, 2011]

CITY OF MANILA, *petitioner, vs.* **MELBA TAN TE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; THE CONCEPT OF SOCIALIZED HOUSING HAS ALREADY BEEN INCLUDED IN THE EXPANDED DEFINITION OF "PUBLIC USE OR PURPOSE" IN THE CONTEXT OF THE STATE'S EXERCISE OF THE POWER OF EMINENT DOMAIN.— [T]he concept of socialized housing, whereby housing units are distributed and/or sold to qualified beneficiaries on much easier terms, has already been included in the expanded definition of "public use or purpose" in the context of the State's exercise of the power of eminent domain.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; PROCEDURE.— Expropriation is a two-pronged proceeding: *first*, the determination of the authority of the plaintiff to exercise the power and the propriety of its exercise in the context of the facts which terminates in an order of dismissal or an order of condemnation affirming the plaintiff's lawful right to take the property for the public use or purpose described in the complaint and *second*, the determination by the court of the just compensation for the property sought to be expropriated.

3. ID.; ID.; ID.; THE DEFENDANT IN AN EXPROPRIATION CASE WHO HAS OBJECTIONS TO THE TAKING OF HIS PROPERTY IS NOW REQUIRED TO FILE AN ANSWER AND IN IT RAISE ALL HIS AVAILABLE DEFENSES AGAINST THE ALLEGATIONS IN THE COMPLAINT FOR EMINENT DOMAIN.— Expropriations proceedings are governed by Rule 67 of the Rules of Court. Under the Rules of Court of 1940 and 1964, where the defendant in an expropriation case conceded to the plaintiff's right to expropriate (or where the trial court affirms the existence of such right), the court-appointed commissioners would then proceed to determine the just compensation to be paid. Otherwise, where the defendant had objections to and defenses against the expropriation of his property, he was required to file a single motion to dismiss containing all such objections and defenses. x x x The Supreme Court, in its *en banc* Resolution in Bar Matter No. 803 dated April 8, 1997, has provided that the revisions made in the Rules of Court were to take effect on July 1, 1997. Thus, with said amendments, the present state of Rule 67 dispenses with the filing of an extraordinary motion to dismiss such as that required before in response to a complaint for expropriation. The present rule requires the filing of an answer as responsive pleading to the complaint. Section 3 thereof provides: "Sec. 3. *Defenses and objections.*— x x x **If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking**

of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. x x x" The defendant in an expropriation case who has objections to the taking of his property is now required to file an answer and in it raise all his available defenses against the allegations in the complaint for eminent domain. While the answer is bound by the omnibus motion rule under Section 8, Rule 15, much leeway is nevertheless afforded to the defendant because amendments may be made in the answer within 10 days from its filing. Also, failure to file the answer does not produce all the disastrous consequences of default in ordinary civil actions, because the defendant may still present evidence on just compensation.

4. POLITICAL LAW; STATUTES; STATUTES WHICH REGULATE PROCEDURE IN THE COURTS APPLY TO ACTIONS PENDING AND UNDETERMINED AT THE TIME THOSE STATUTES WERE PASSED.— At the inception of the case at bar with the filing of the complaint on November 16, 2000, the amended provisions of Rule 67 have already been long in force. *Borre v. Court of Appeals* teaches that statutes which regulate procedure in the courts apply to actions pending and undermined at the time those statutes were passed. And in *Laguio v. Gamet*, it is said that new court rules apply to proceedings which take place after the date of their effectivity.

APPEARANCES OF COUNSEL

Office of the City Legal Officers (Manila) for petitioner.
Manuel P. Casiño for respondent.

D E C I S I O N

PERALTA, *J.*:

In this Petition for Review,[1] the City of Manila assails the April 29, 2005 Decision[2] of the Court of Appeals in CA-G.R. CV No. 71894, as well as the August 12, 2005 Resolution,[3] in the said case denying reconsideration. The assailed decision affirmed the June 13, 2001 Order[4] of the Regional Trial Court of Manila, Branch 24 issued in Civil Case No. 00-99264 – one for expropriation filed by petitioner, the City of Manila. The said Order, in turn, granted the motion to dismiss the complaint that was filed by respondent Melba Tan Te, in lieu of an answer.

The facts follow.

On March 15, 1998, then Manila City Mayor Joselito L. Atienza approved Ordinance No. 7951 – an expropriation measure enacted on February 3, 1998 by the city council – authorizing

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[1] *Rollo*, pp. 12-20. The petition states that the same was filed under Section 3, Rule 56 of the Rules of Court, and was taken from the August 12, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 71894 which denied reconsideration of the April 29, 2005 Decision in the same case. Section 3, in relation to Section 4 of the said Rule, provides that appeals to the Supreme Court may be taken only by petition for review in accordance, among others, with the provisions of Rule 45. The petition was initially denied in the Court's November 21, 2005 Resolution for being filed out of the period of extension given, for lack of proper verification and certification, as well for lack of reversible error. (See *rollo*, p. 155). On Motion for Reconsideration, which discussed both the technicalities as well as the merits of the case, the Court reconsidered and directed respondent to file her Comment, which addressed the primordial issues raised in the petition. Thereafter, petitioner filed its Reply. The issues pervading since the inception of this case now call for the exercise of discretionary power of judicial review.

[2] The assailed decision was penned by Associate Justice Eliezer R. Delos Santos, with Associate Justices Rosmari D. Carandang and Arturo D. Brion (now Supreme Court Associate Justice), concurring; CA *rollo*, pp. 97-105.

[3] CA *rollo*, pp. 130-132.

[4] The Order was signed by Judge Antonio M. Eugenio, Jr.; records, pp. 137-138.

him to acquire by negotiation or expropriation certain pieces of real property along Maria Clara and Governor Forbes Streets where low-cost housing units could be built and then awarded to *bona fide* residents therein. For this purpose, the mayor was also empowered to access the city's funds or utilize funding facilities of other government agencies.[5] In the aggregate, the covered property measures 1,425 square meters, and includes the 475-square-meter lot owned by respondent Melba Tan Te.[6]

The records bear that respondent had acquired the property from the heirs of Emerlinda Dimayuga Reyes in 1996, and back then it was being occupied by a number of families whose leasehold rights had long expired even prior to said sale. In 1998, respondent had sought before the Metropolitan Trial Court of Manila, Branch 15 the ejectment of these occupants from the premises. The favorable ruling in that case evaded execution; hence, the court, despite opposition of the City of Manila, issued a Writ of Demolition at respondent's instance.[7] It appears that in the interim between the issuance of the writ of execution and the order of demolition, the City of Manila

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[5] It is entitled *AN ORDINANCE AUTHORIZING HIS HONOR, THE MAYOR, TO ACQUIRE EITHER BY NEGOTIATION OR EXPROPRIATION CERTAIN PARCELS OF LAND COVERED BY TRANSFER CERTIFICATE OF TITLE NOS. 233273, 175106 AND 140471, CONTAINING A TOTAL AREA OF ONE THOUSAND FOUR HUNDRED TWENTY-FIVE (1,425) SQUARE METERS, LOCATED AT MARIA CLARA AND GOV. FORBES STREETS, STA. CRUZ, MANILA, FOR LOW-COST HOUSING AND AWARD TO ACTUAL BONA FIDE RESIDENTS THEREAT, AND AUTHORIZING THE MAYOR TO AVAIL FOR THAT PURPOSE ANY AVAILABLE FUNDS OF THE CITY AND OTHER EXISTING FUNDING FACILITIES FROM OTHER GOVERNMENT AGENCIES; id.* at 8-9.

[6] Respondent's property is covered by Transfer Certificate of Title (TCT) No. 233273. The two other properties are covered by TCT Nos. 175106 and 140471; *id.* at 7-8.

[7] See the Decision in Civil Case Nos. 156527-CV, 156528-CV, 156729-CV, 156731-CV, 156732-CV, 156733-CV, 156734-CV, 156735-CV and 156736-CV, as well as the Writ of Execution issued in these cases and the Order for the issuance of a Writ of Demolition; *id.* at 65-82.

had instituted an expropriation case[8] affecting the same property. Respondent had moved for the dismissal of that first expropriation case for lack of cause of action, lack of showing of an ordinance authorizing the expropriation, and non-compliance with the provisions of Republic Act (R.A.) No. 7279, otherwise known as the *Urban Development and Housing Act of 1992*.[9] The trial court found merit in the motion and dismissed the complaint without prejudice.[10]

On November 16, 2000, petitioner[11] filed this second Complaint[12] for expropriation before the Regional Trial Court of Manila, Branch 24.[13] This time, it attached a copy of Ordinance No. 7951 and alleged that pursuant thereto, it had previously offered to purchase the subject property from respondent for ₱824,330.00.[14] The offer was contained in a letter sent to

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[8] The case was docketed as Civil Case No. 97-85700 with the Regional Trial Court of Manila, Branch 47.

[9] Urban land reform was institutionalized in 1978 by Presidential Decree (P.D) No. 1517, known as the *Urban Land Reform Act*, issued by then President Ferdinand Marcos. This decree sought to liberate human communities from blight, congestion and hazard, and promote their development and modernization, the optimum use of land as a national resource for public welfare. Accordingly, Proclamation No. 1893 was issued a year later and declared the entire Metro Manila area as an urban land reform zone. Amendments came in 1980 under Proclamation No. 1967 and then in 1983 under Proclamation No. 2284 which identified 245 sites in Metro Manila as areas for priority development and urban land reform zones.

[10] See Order dated August 6, 1998 issued in Civil Case No. 97-85700, records, pp. 87-91.

[11] Petitioner, the City of Manila, is a municipal corporation organized and existing under Republic Act No. 409, as amended.

[12] Records, pp. 1-6.

[13] Presided by Judge Antonio M. Eugenio, Jr.

[14] Records, p. 3. See also Letter dated May 21, 1999 signed by City Legal Officer Melchor Monsod communicating petitioner's formal offer to purchase respondent's property for the amount equivalent to its assessed value; records, p. 10.

respondent by the City Legal Officer on May 21, 1999,[15] but respondent allegedly failed to retrieve it despite repeated notices,[16] thereby compelling petitioner to institute the present expropriation proceedings after depositing in trust with the Land Bank of the Philippines ₱1,000,000.00 cash, representing the just compensation required by law to be paid to respondent.[17]

Respondent did not file an answer and in lieu of that, she submitted a Motion to Dismiss[18] and raised the following grounds: that Ordinance No. 7951 was an invalid expropriation measure because it violated the rule against taking private property without just compensation; that petitioner did not comply with the requirements of Sections 9[19] and 10[20] of R.A. No. 7279;

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[15] See May 21, 1999 Letter addressed to respondent; *id.* at 10.

[16] See Certification from the Philippine Postal Corporation showing respondent failed to claim the letter despite notices on July 2, 9 and 21, 1999; *id.* at 11.

[17] See Certification issued by the Land Bank of the Philippines dated April 7, 2000, *id.* at 12.

[18] Records, pp. 44-64.

[19] SEC. 9. *Priorities in the Acquisition of Land.* — Lands for socialized housing shall be acquired in the following order:

(a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and

(f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give priority to on-site development of government lands.

[20] SEC. 10. *Modes of Land Acquisition.* — The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land-swapping, land assembly or consolidation, land banking, donation to the

and that she qualified as a small property owner and, hence, exempt from the operation of R.A. No. 7279, the subject lot being the only piece of realty that she owned.

Petitioner moved that it be allowed to enter the property, but before it could be resolved, the trial court issued its June 13, 2001 Order[21] dismissing the complaint. *First*, the trial court held that while petitioner had deposited with the bank the alleged ₱1M cash in trust for respondent, petitioner nevertheless did not submit any certification from the City Treasurer's Office of the amount needed to justly compensate respondent for her property. *Second*, it emphasized that the provisions of Sections 9 and 10 of R.A. No. 7279 are mandatory in character, yet petitioner had failed to show that it exacted compliance with them prior to the commencement of this suit. *Lastly*, it conceded that respondent had no other real property except the subject lot which, considering its total area, should well be considered a small property exempted by law from expropriation. In view of the dismissal of the complaint, petitioner's motion to enter was rendered moot and academic.[22]

Government, joint-venture agreement, negotiated purchase, and expropriation: *Provided, however,* That expropriation shall be resorted to only when other modes of acquisition have been exhausted: *Provided, further,* That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: *Provided, finally,* That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority, primarily through negotiated purchase: *Provided,* That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

[21] Records, pp. 137-138.

[22] *Id.* at 138. The Order disposed of the complaint as follows:

ACCORDINGLY, finding merit in the Motion, the same is hereby GRANTED. The complaint filed by plaintiff is hereby ordered DISMISSED.

With the dismissal of the complaint, the motion to allow plaintiff to enter the property of defendant filed by plaintiff had become MOOT and ACADEMIC.

Petitioner interposed an appeal to the Court of Appeals which, finding no merit therein, dismissed the same.[23] Petitioner sought reconsideration,[24] but it was denied.[25]

In this Petition,[26] petitioner posits that the trial court's dismissal of its complaint was premature, and it faults the Court of Appeals for having failed to note that by such dismissal it has been denied an opportunity to show previous compliance with the requirements of Sections 9 and 10 of R.A. No. 7279 as well as to establish that respondent actually owns other realty apart from the subject property. Besides, continues petitioner, whether or not it had truly complied with the requirements of the law is a matter which can be determined only after a trial of the case on the merits and not, as what happened in this case, at the hearing of the motion to dismiss.[27]

Respondent, for her part, points out that Ordinance No. 7951 is an invalid expropriation measure as it does not even contain an appropriation of funds in its implementation. In this respect, respondent believes that the ₱1M cash deposit certified by the bank seems to be incredible, since petitioner has not shown any certification from the City Treasurer's Office on the amount necessary to implement the expropriation measure. More importantly, she believes that the dismissal of the complaint must be sustained as it does not allege previous compliance with Sections 9 and 10 of R.A. No. 7279 and, hence, it does

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The hearing on the Motion scheduled on July 6, 2001 at 8:30 a.m. is hereby CANCELLED.

SO ORDERED.

[23] CA *rollo*, p. 90. It disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

[24] *Id.* at 91-94.

[25] *Id.* at 126-128.

[26] *Rollo*, pp. 12-20.

[27] *Id.* at 17-19, 207-209.

not present a valid cause of action.[28] She theorizes that the expropriation for socialized housing must abide by the priorities in land acquisition and the available modes of land acquisition laid out in the law, and that expropriation of privately-owned lands avails only as the last resort.[29] She also invokes the exemptions provided in the law. She professes herself to be a small property owner under Section 3 (q),[30] and claims that the subject property is the only piece of land she owns where she, as of yet, has not been able to build her own home because it is still detained by illegal occupants whom she had already successfully battled with in the ejectment court.[31]

In its Reply, petitioner adopts a different and bolder theory. It claims that by virtue of the vesture of eminent domain powers in it by its charter, it is thereby not bound by the requirements of Sections 9 and 10 of R.A. No. 7279. It also asserts its right to immediately enter the subject property because not only is its complaint supposedly sufficient in form and substance but also because it has already deposited ₱1M cash with the bank in trust for respondent. It reiterates that the dismissal of its complaint constitutes a denial of due process because all the issues propounded by respondent, initially in her motion to dismiss and all the way in the present appeal, must be resolved in a full-blown trial.

Prefatorily, the concept of socialized housing, whereby housing units are distributed and/or sold to qualified beneficiaries on much easier terms, has already been included in the expanded

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[28] *Id.* at 182-188, 190-197.

[29] *Id.* at 188-189.

[30] *Id.* at 189. Section 3 (q) of R.A. No. 7279 states:

SEC. 3. *Definition of Terms.* — For purposes of this Act:

(q) "Small property owners" refers to those whose only real property consists of residential lands and exceeding three hundred square meters (300 sq. m.) in highly urbanized cities and eight hundred square meters (800 sq. m.) in other urban areas.

[31] *Id.* at 199.

definition of "public use or purpose" in the context of the State's exercise of the power of eminent domain. Said the Court in *Sumulong v. Guerrero,*[32] citing the earlier case of *Heirs of Juancho Ardona v. Reyes:*[33]

> The public use requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions.
>
> The taking to be valid must be for public use. There was a time where it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. x x x The constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be divided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use.
>
> The term "public use" has acquired a more comprehensive coverage. To the literal import of the term signifying strict use or employment by the public has been added the broader notion of **indirect public benefit or advantage.** x x x
>
> The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a *laissez-faire* state. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources.
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> Specifically, **urban renewal or development and the construction of low-cost housing are recognized as a public**

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[32] G.R. No. L-48685, September 30, 1987, 154 SCRA 461.

[33] G.R. Nos. 60549, 60553-60555, October 26, 1983, 125 SCRA 220.

purpose, not only because of the expanded concept of public use but also because of specific provisions in the Constitution. x x x The 1987 Constitution [provides]:

> The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all. (Article II, Section 9)
>
> The State shall, by law and for the common good, undertake, in cooperation with the private sector, a continuing program for urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. xxx In the implementation of such program the State shall respect the rights of small property owners. (Article XIII, Section 9)

Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications. A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.

Population growth, the migration to urban areas and the mushrooming of crowded makeshift dwellings is a worldwide development particularly in developing countries. So basic and urgent are housing problems that the United Nations General Assembly proclaimed 1987 as the "International Year of Shelter for the Homeless" "to focus the attention of the international community on those problems." The General Assembly is seriously concerned that, despite the efforts of Governments at the national and local levels and of international organizations, the driving conditions of the majority of the people in slums and squatter areas and rural settlements, especially in developing countries, continue to deteriorate in both relative and absolute terms." [G.A. Res. 37/221, Yearbook of the United Nations 1982, Vol. 36, p. 1043-4]

In light of the foregoing, the Court is satisfied that "socialized housing" falls within the confines of "public use."[34]

Congress passed R.A. No. 7279,[35] to provide a comprehensive and continuing urban development and housing program as well as access to land and housing by the underprivileged and homeless citizens; uplift the conditions of the underprivileged and homeless citizens in urban areas by making available decent housing at affordable cost; optimize the use and productivity of land and urban resources; reduce urban dysfunctions which affect public health, safety and ecology; and improve the capability of local governments in undertaking urban development and housing programs and projects, among others.[36] Accordingly, all city and municipal governments are mandated to inventory all lands and improvements within their respective locality and identify lands which may be utilized for socialized housing and as resettlement sites for acquisition and disposition to qualified beneficiaries.[37] Section 10 thereof authorizes local government units to exercise the power of eminent domain to carry out the objectives of the law, but subject to the conditions stated therein and in Section 9.[38]

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[34] *Sumulong v. Guerrero, supra* note 32, at 468-469. See also *National Housing Authority v. Guivelondo* G.R. No. 154411, June 19, 2003, 404 SCRA 389 and *Reyes v. National Housing Authority*, 443 Phil. 603 (2003). (Emphasis supplied.)

[35] Urban land reform was institutionalized in 1978 by Presidential Decree No. 1517, known as the *Urban Land Reform Act*, issued by then President Ferdinand Marcos. This decree sought to liberate human communities from blight, congestion and hazard, and to promote their development and modernization as well as the optimum use of land as a national resource for public welfare. Accordingly, Proclamation No. 1893 was issued a year later and declared the entire Metro Manila area as an urban land reform zone. Amendments came in 1980 under Proclamation No. 1967 and then in 1983 under Proclamation No. 2284 which identified 245 sites in Metro Manila as areas for priority development and urban land reform zones.

[36] R.A. No. 7279, Sec. 2.

[37] R.A. No. 7279, Secs. 7, 8, 9 and 12.

[38] See notes 19 and 20.

It is precisely this aspect of the law which constitutes the core of the present controversy, yet this case presents a serious procedural facet – overlooked by both the trial court and the Court of Appeals – which needs foremost attention ahead of the issues propounded by the parties.

Expropriation is a two-pronged proceeding: *first*, the determination of the authority of the plaintiff to exercise the power and the propriety of its exercise in the context of the facts which terminates in an order of dismissal or an order of condemnation affirming the plaintiff's lawful right to take the property for the public use or purpose described in the complaint and *second*, the determination by the court of the just compensation for the property sought to be expropriated.[39]

Expropriation proceedings are governed by Rule 67 of the Rules of Court. Under the Rules of Court of 1940 and 1964, where the defendant in an expropriation case conceded to the plaintiff's right to expropriate (or where the trial court affirms the existence of such right), the court-appointed commissioners would then proceed to determine the just compensation to be paid.[40] Otherwise, where the defendant had objections to and defenses against the expropriation of his property, he was required to file a single motion to dismiss containing all such objections and defenses.[41]

This motion to dismiss was not covered by Rule 15 which governed ordinary motions, and was then the required responsive pleading, taking the place of an answer, where the plaintiff's

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[39] *Abad v. Fil-Homes Realty and Development Corporation*, G.R. No. 189239, November 24, 2010, 636 SCRA 247, 255, citing *Lintag v. National Power Corporation*, G.R. No. 158609, July 27, 2007, 528 SCRA 287.

[40] See Act 190, Sec. 243.

[41] Section 3 of the old Rule 67 of the Rules of Court allowed a defendant "in lieu of an answer, [to] present in a single motion to dismiss or for other appropriate relief, all his objections and defenses to the plaintiff's right to take his property x x x." See Feria-Noche, *Civil Procedure Annotated*, Volume 2, 2001 ed., p. 536 and Regalado, *Remedial Law Compendium*, Vol. I, 8th Revised ed., p. 752.

right to expropriate the defendant's property could be put in issue.[42] Any relevant and material fact could be raised as a defense, such as that which would tend to show that the exercise of the power to condemn was unauthorized, or that there was cause for not taking defendant's property for the purpose alleged in the petition, or that the purpose for the taking was not public in character. With that, the hearing of the motion and the presentation of evidence would follow. The rule is based on fundamental constitutional provisions affecting the exercise of the power of eminent domain, such as those that seek to protect the individual property owner from the aggressions of the government.[43] However, the rule, which was derived from the practice of most American states, proved indeed to be a source of confusion because it likewise permitted the filing of another motion to dismiss, such as that referred to in Rule 16, where the defendant could raise, in addition, the preliminary objections authorized under it.[44]

The Supreme Court, in its *en banc* Resolution in Bar Matter No. 803 dated April 8, 1997, has provided that the revisions made in the Rules of Court were to take effect on July 1, 1997. Thus, with said amendments, the present state of Rule 67 dispenses with the filing of an extraordinary motion to dismiss such as that required before in response to a complaint for expropriation. The present rule requires the filing of an answer as responsive pleading to the complaint. Section 3 thereof provides:

Sec. 3. *Defenses and objections*. — If a defendant has no objection or defense to the action or the taking of his property, he may and serve a notice or appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims

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[42] *Robern Development Corporation v. Quitain*, 373 Phil. 773, 790 (1999); *Rural Progress Administration v. Guzman*, 87 Phil. 176, 178 (1950);

[43] *Robern Development Corporation, supra*, citing Francisco, *The Revised Rules of Court in the Philippines*, Vol. IV-B, Part I, 1972 ed., pp. 405-412.

[44] *Id.* at 790-791, citing Regalado, *Remedial Law Compendium*, Vol. I, 8th Revised ed., pp. 752-753.

to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.[45]

The defendant in an expropriation case who has objections to the taking of his property is now required to file an answer and in it raise all his available defenses against the allegations in the complaint for eminent domain. While the answer is bound by the omnibus motion rule under Section 8,[46] Rule 15, much leeway is nevertheless afforded to the defendant because amendments may be made in the answer within 10 days from its filing. Also, failure to file the answer does not produce all the disastrous consequences of default in ordinary civil actions, because the defendant may still present evidence on just compensation.[47]

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[45] Emphasis supplied.

[46] Sec. 8. *Omnibus motion.* — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

[47] *Robern Development Corporation v. Quitain, supra* note 42, at 791, citing Regalado, *Remedial Law Compendium,* Vol. I, 8th Revised ed., pp. 752-753.

At the inception of the case at bar with the filing of the complaint on November 16, 2000, the amended provisions of Rule 67 have already been long in force. *Borre v. Court of Appeals*[48] teaches that statutes which regulate procedure in the courts apply to actions pending and undetermined at the time those statutes were passed. And in *Laguio v. Gamet*,[49] it is said that new court rules apply to proceedings which take place after the date of their effectivity.

In the case of *Robern Development Corporation v. Quitain*,[50] a similar motion to dismiss was filed by the private property owner, petitioner therein, in an expropriation case filed by the National Power Corporation (NPC), alleging certain jurisdictional defects as well as issues on the impropriety of the expropriation measure being imposed on the property. The trial court in that case denied the motion inasmuch as the issues raised therein should be dealt with during the trial proper. On petition for *certiorari*, the Court of Appeals affirmed the trial court's denial of the motion to dismiss. On appeal, the Supreme Court affirmed the Court of Appeals, but declared that under the amended provisions of Section 3, Rule 67, which were already in force at about the time the motion to dismiss had been submitted for resolution, all objections and defenses that could be availed of to defeat the expropriator's exercise of the power of eminent domain must be contained in an answer and not in a motion to dismiss because these matters require the presentation of evidence. Accordingly, while the Court in that case sustained the setting aside of the motion to dismiss, it nevertheless characterized the order of dismissal as a nullity. Hence, it referred the case back to the trial court and required the NPC to submit its answer to the complaint within 10 days from the finality of the decision.

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[48] 242 Phil. 345 (1988).

[49] G.R. No. 74903, March 21, 1989, 171 SCRA 392.

[50] *Supra* note 42.

Thus, the trial court in this case should have denied respondent's motion to dismiss and required her to submit in its stead an answer within the reglementary period. This, because whether petitioner has observed the provisions of Sections 9 and 10 of R.A. No. 7279 before resorting to expropriation, and whether respondent owns other properties than the one sought to be expropriated, and whether she is actually a small property owner beyond the reach of petitioner's eminent domain powers, are indeed issues in the nature of affirmative defenses which require the presentation of evidence *aliunde*.[51] Besides, Section 1, Rule 16 of the Rules of Court does not consider these matters grounds for a motion to dismiss, and an action can be dismissed only on the grounds authorized by this provision.[52]

The Court declared in *Robern Development Corporation*, thus:

> Accordingly, Rule 16, Section 1 of the Rules of Court, does not consider as grounds for a motion to dismiss the allotment of the disputed land for another public purpose or the petition for a mere easement of right-of-way in the complaint for expropriation. The grounds for dismissal are exclusive to those specifically mentioned in Section 1, Rule 16 of the Rules of Court, and an action can be dismissed only on a ground authorized by this provision.
>
> To be exact, the issues raised by the petitioner are affirmative defenses that should be alleged in an answer, since they require presentation of evidence *aliunde*. Section 3 of Rule 67 provides that "if a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property," he should include them in his answer. Naturally, these issues will have to be fully ventilated in a full-blown trial and hearing. It would be precipitate to dismiss the Complaint on such grounds as claimed by the petitioner. Dismissal of an action upon a motion

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[51] See *Panes v. Visayas State College of Agriculture*, 332 Phil. 745 (1996).

[52] See *Borje v. CFI of Misamis Occidental*, Br. II, No. L-48315, February 27, 1979, 88 SCRA 576, 581, cited in *Robern Development Corporation v. Court of Appeals*, *supra* note 42, at 791.

to dismiss constitutes a denial of due process if, from a consideration of the pleadings, it appears that there are issues that cannot be decided without a trial of the case on the merits.

Inasmuch as the 1997 Rules had just taken effect when this case arose, we believe that in the interest of substantial justice, the petitioner should be given an opportunity to file its answer to the Complaint for expropriation in accordance with Section 3, Rule 67 of the 1997 Rules of Civil Procedure.x x x[53]

WHEREFORE, the Petition is hereby *GRANTED*. The Order of the Regional Trial Court of Manila, Branch 24 in Civil Case No. 00-99264 dated June 13, 2001, as well as the April 29, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 71894 affirming said order, and the August 12, 2005 Resolution therein which denied reconsideration, are hereby *SET ASIDE*. The case is hereby *REMANDED* to the trial court for further proceedings. Respondent is *DIRECTED* to file her Answer to the complaint within ten (10) days from the finality of this Decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[53] *Robern Development Corporation v. Court of Appeals, supra* note 42, at 164-165.

FIRST DIVISION

[G.R. No. 175151. September 21, 2011]

TOBIAS SELGA and CEFERINA GARANCHO SELGA, *petitioners, vs.* **SONY ENTIERRO BRAR, represented by her Attorney-in-Fact MARINA T. ENTIERRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; DEFINED.— *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

2. ID.; ID.; ID.; ID.; GROUNDS.— It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation – *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause – *nemo debet bis vexari pro una et eadem causa.* A contrary doctrine would subject public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of public tranquility and happiness.

3. ID.; ID.; ID.; ID.; CONCEPTS; EXPLAINED.— *Res judicata* has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment

under Rule 39, Section 47(c). x x x Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein.

4. ID.; ID.; ID.; ID.; BAR BY PRIOR JUDGMENT; REQUISITES.— The case at bar satisfies the four essential requisites of *res judicata* under the first concept, bar by prior judgment, *viz*: "(a) finality of the former judgment; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter and causes of action."

5. ID.; ID.; ID.; IMMUTABILITY OF FINAL JUDGMENT; A JUDGMENT WHICH HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE; EXCEPTION.— As we held in *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*, a judgment which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except to correct clerical errors or mistakes, **all the issues between the parties being deemed resolved and laid to rest**. We added in *Manila Electric Company v. Philippine Consumers Foundation, Inc.* that a final and executory judgment or order can no longer be disturbed or reopened no matter how erroneous it may be. **Although judicial determinations are not infallible, judicial error should be corrected through appeals, not through repeated suits on the same claim.** x x x Exceptions to the immutability of final judgment are allowed only under the most

extraordinary of circumstances. The instant case cannot be considered an exception especially when respondent had the opportunity to appeal the Decision dated May 8, 1996 of RTC-Branch 55 in Civil Case No. 276, but by her own action, desisted from pursuing the same.

APPEARANCES OF COUNSEL

Subaldo & Subaldo Law Office for petitioners.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is a Petition for Review under Rule 45 of the Rules of Court of the Decision[1] dated May 31, 2006 and Resolution[2] dated September 28, 2006 of the Court Appeals in CA-G.R. CV No. 72987, which reversed the Decision[3] dated July 27, 2001 of Branch 56, Regional Trial Court (RTC) of Himamaylan City, Negros Occidental (RTC-Branch 56), in Civil Case No. 573 for Legal Redemption with Damages.

The following facts are not disputed:

Francisco Entierro (Francisco) died intestate on March 7, 1979, and left behind a parcel of land, identified as Lot 1138-A, located in Himamaylan City, Negros Occidental, with an area of 39,577 square meters, and covered by Transfer Certificate of Title (TCT) No. T-10273 in his name (subject property).

On May 15, 1985, Francisco's spouse, Basilia Tabile (Basilia), and legitimate children, Esteban, Herminia, Elma, Percival, and Gilda, all surnamed Entierro (collectively referred to as Basilia, *et al.*), executed a Deed of Sale with Declaration of Heirship. In said Deed, Basilia, *et al.*, declared themselves to be Francisco's

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[1] *Rollo*, pp. 22-30; penned by Associate Justice Arsenio J. Magpale with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr., concurring.

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

[3] CA *rollo*, pp. 36-39.

only heirs who inherited the subject property; and at the same time, sold the subject property to petitioners, spouses Tobias Selga and Ceferina Garancho Selga, for ₱120,000.00. By reason of said sale, TCT No. T-10273 in Francisco's name was cancelled and replaced by TCT No. T-134408 in petitioners' names.

Seven years later, on July 10, 1992, respondent Sony Entierro Brar, represented by her sister-in-law and attorney-in-fact, Marina T. Entierro, filed before Branch 55 of the RTC of Himamaylan City, Negros Occidental (RTC-Branch 55) a Complaint for Annulment of Sale with Damages against petitioners, which was docketed as Civil Case No. 276. Respondent claimed that she was one of the legitimate children of Francisco and Basilia, and that she had been preterited and illegally deprived of her rightful share and interests in the subject property as one of Francisco's legal heirs. Among respondent's allegations in her Complaint was:

> 10. That as one of the co-heirs of the undivided portion of the questioned Lot 1138-A, [herein respondent] is legally entitled to redeem the said property from the [herein petitioners] for the price the said [petitioners] have paid her co-heirs as appearing in the Deed of Sale with Declaration of Heirship, Annex "B".[4]

Respondent prayed that RTC-Branch 55 render judgment:

> 1. Declaring the [herein respondent] as one of the legitimate children and legal heirs of the late Francisco Entierro and is legally entitled to inherit and share in Lot No. 1138-A of Himamaylan, which the latter had left behind upon his demise on March 7, 1979;
>
> 2. Declaring the annulment of the Deed of Sale with Declaration of Heirship, Annex "B", because [respondent] was unduly preterited therein, as one of the children and heirs of the late Francisco Entierro and consequently, the said document should be ordered cancelled insofar as [respondent's] legal share and participation over the said Lot 1138-A is concerned;
>
> 3. Ordering the [respondent] legally entitled to redeem from the [herein petitioners] the subject Lot 1138-A for the redemption

[4] Records, p. 28.

price of ₱52,000.00 as one of the co-heirs and co-owners proindiviso of the said property at the time, the same was sold and conveyed in favor of the [petitioners] on May 15, 1985, as shown in Annex "B" hereof;

4. Ordering the [petitioners] to account to the [respondent] her share in the produce of the land in question with respect to her legal share on said property is concerned from May 15, 1985, up to the time, that [respondent's] legal share and participation therefrom, shall have been ordered delivered to her;

5. Ordering the [petitioners] to pay the [respondent] the sum of ₱50,000.00 by way of attorney's fee and to pay the costs of this suit;

6. [Respondent] further prays for such other reliefs as may be deemed just and equitable in the premises.[5]

After trial on the merits, RTC-Branch 55 rendered a Decision dated May 8, 1996.

According to RTC-Branch 55, it was duly proven that respondent is a legitimate daughter of Francisco and Basilia; a fact admitted by petitioner Tobias Selga himself during his cross-examination. Upon Francisco's death, half of the subject property was inherited by his spouse, Basilia; while the other half was inherited by his children, *pro-indiviso*. The property relation of Francisco's heirs as regards the subject property was governed by the provisions on co-ownership. Basilia, *et al*., validly sold all their rights and interests over the subject property to petitioners, excluding the rights and interests over the same pertaining to respondent, who did not participate in the execution of the Deed of Sale. RTC-Branch 55 summed up its findings, thus:

The other heirs have no right to sell the share belonging to the [herein respondent]. Although this fact is known to the [herein petitioners], the [respondent's] share was included in the Deed of Sale by selling the entire Lot No. 1138-A. The [petitioners], knowing that [respondent] Sony Entierro Brar was preterited during the

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

settlement and disposition of the subject Lot No. 1138-A, was in bad faith when he caused for the registration of the entire lot in his name. Knowing that there was a flaw in his title, an implied trust was created with respect to that of the share belonging to respondent Sony Entierro Brar.[6]

RTC-Branch 55 finally disposed:

WHEREFORE, based on the foregoing premises and considerations, the Court hereby renders judgment declaring the annulment of the Deed of Sale with Declaration of heirship dated May 15, 1985 adjudicating ownership of Lot No. 1138-A in the name of [herein respondent] Sony Entierro Brar being one of the legitimate heirs of spouses Francisco Entierro and Basilia Tabile one eleventh (1/11) share and ten eleventh (10/11) share in the name of [herein petitioner] Tobias Selga married to Ceferina Garancho and further orders the following:

1. For the relocation survey of Lot No. 1138-A to establish the definite location of the respective share of the parties, the expenses to be borne by them proportionately to their share;

2. The Register of Deeds of the Province of Negros Occidental is hereby directed to cancel Transfer Certificate of Title No. T-134408 and in lieu thereof issue a new transfer certificate of title in the name of Tobias Selga consisting of an area of Thirty[-]Seven Thousand Seven Hundred Seventy[-]Eight (37,778) square meters and another new transfer certificate of title in the name of Sony Entierro Brar consisting of an area of One Thousand Seven Hundred Ninety[-]Nine (1,799) square meters upon submission of an approved subdivision plan;

3. For the [petitioners] to account to [respondent] her share in the produce of the land from May 15, 1985 up to the time that [respondent's] possession of her share of Lot No. 1138-A is restored to her; and, finally,

4. For the [petitioners] to pay [respondent] the sum of ₱50,000.00 as attorney's fee and to pay the costs of suit.[7]

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[6] *Id.* at 13.

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

Unsatisfied, respondent filed an appeal of the aforequoted judgment of RTC-Branch 55 before the Court of Appeals, where it was docketed as CA-G.R. CV No. 9520A UDK. However, respondent subsequently moved to withdraw her appeal, which the Court of Appeals granted in a Resolution dated June 13, 1997. The Decision dated May 8, 1996 of RTC-Branch 55 eventually attained finality.

In a Letter dated August 11, 1997, respondent informed petitioners that she was exercising her right to redeem petitioners' ten-eleventh (10/11) share in the subject property, in accordance with the final and executory Decision dated May 8, 1996 of RTC-Branch 55 in Civil Case No. 276. In their Reply-Letter dated August 20, 1997, petitioners' counsel rejected respondent's demand for the following reasons:

> Please be informed that your claim re redemption is devoid of complete merit.
>
> It must be remembered that in your complaint, you pleaded redemption as one of your causes of action and even specifically sought the same as a prayer in your complaint. However, on the basis of the decision of the Regional Trial Court, dated May 8, 1996, the court did not see fit to grant you the right of redemption.
>
> It is the considered view of the undersigned that in line with established jurisprudence, you cannot now or in the future, exercise this right.[8]

This prompted respondent to institute on January 21, 1998 a Complaint for Legal Redemption with Damages, which was docketed as Civil Case No. 573 before RTC-Branch 56.

In their Answer with Counterclaim[9] in Civil Case No. 576, petitioners invoked the defenses of *res judicata* and/or forum shopping, arguing that the cause of action pleaded by respondent was among those that had already been litigated in Civil Case No. 276 before RTC-Branch 55.

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[8] *Id.* at 69.

[9] *Id.* at 20-25.

In its Decision dated July 27, 2001, RTC-Branch 56 agreed with petitioners and dismissed Civil Case No. 573, ratiocinating that:

The primary issue to be resolved in this case is whether or not the present action is barred by *res judicata* in view of the finality of the decision in Civil Case No. 276 involving the same parties herein. Although the prior case was entitled annulment of sale with damages, yet, the averments in the complaint and the reliefs sought for included the legal redemption of Lot 1138-A, which is the subject of the present action, particularly paragraph 10 of the complaint and paragraph 3 of the prayer therein which were earlier quoted. The elements of *res judicata* are (1) the judgment bring sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be based on a judgment or order on the merits; and (4) there must be identity of parties, subject matter and causes of action as between the prior and the subsequent actions. Clearly, these elements are present. It is an elementary rule that the nature of a cause of action is determined by the facts alleged in the complaint as constituting a cause of action. There is, therefore, identity of parties, subject matter and cause of action between the two (2) cases.

Since the decision in Civil Case No. 276 was silent on the issue of legal redemption, it can be inferred therefrom that the court did not see it fit to grant the same. Plaintiff should have moved for the reconsideration thereof or should have appealed to the Court of Appeals raising this particular issue. It did not do so. Thus, the decision had become final and executory.

The filing of the present action constitutes forum shopping. "The filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment amounts to forum shopping. Only when the successive filing of the suits as part of an appeal, or a special civil action, will there be no forum shopping because the party no longer availed of different fora but, rather, through a review of a lower tribunal's decision or order." (*Quinsay v. CA, et al.*, G.R. No. 127058, Aug. 31, 2000.)[10]

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[10] CA *rollo*, pp. 37-39.

Respondent's appeal of the aforementioned judgment of RTC-Branch 56 was docketed as CA-G.R. CV No. 72987 before the Court of Appeals.

On May 31, 2006, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 72987, which reversed and set aside the assailed July 27, 2001 Decision of RTC-Branch 56 in Civil Case No. 573.

The Court of Appeals held that respondent had validly exercised her right to redemption of the subject property:

> As a rule, co-heir/s or co-owner/s of undivided property are required to notify in writing the other co-heir/s or co-owner/s of the actual sale of the former's share in the co-ownership. And, within one (1) month or 30 days from the said notice, a co-heir or co-owner who wish to redeem such property must make a claim for the reconveyance of the same by either consignation in court or offer to repurchase by tendering the vendor payment of the redemption money.
>
> A thorough perusal of the records as well as the documentary evidences presented by both parties reveal that no written notice was given by the heirs of Francisco Entierro to [herein respondent] regarding the sale of Lot No. 1138-A, because, [respondent] was preterited or omitted in the inheritance during the settlement and disposition of the subject lot. She was initially not considered nor included as heir of Francisco Entierro not until she was judicially declared one. However, despite the absence of a written notice, [respondent], in her complaint in Civil Case No. 276, impleaded therein her claim to redeem Lot No. 1138-A sold by her co-heirs to [herein petitioners]. Hence, by such act, [respondent] had effectively enforced her right.[11]

The appellate court further ruled that Civil Case No. 573 before RTC-Branch 56 was not barred by the final judgment in Civil Case No. 276 of RTC-Branch 55:

> What had became final and conclusive in Civil Case No. 276 is only with respect to the filiation of [herein respondent] and [her] right to inherit, but not as to [respondent's] right to redeem the property sold by her co-heirs.

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[11] *Rollo,* p. 26.

We disagree with the court *a quo*'s holding which provides, to wit: "Since the decision in Civil Case No. 276 was silent on the issue of legal redemption, it can be inferred therefrom that the court did not see it fit to grant the same."

Right of legal redemption is a statutory right provided by law – as long as the redemptioner possesses all the essential requisites and comply with the requirements, such right need not be judicially declared in order for it to be enforced. The role of the court is only to ascertain whether the essential requisites and requirements are properly complied with. As the right of redemption is inherent to every co-heir or co-owner, denial of the said right must be explicitly and expressly provided and justified by the court and not by mere silence only. Silence of the decision in Civil Case No. 276 on the issue of [respondent's] right of redemption does not mean that the same was denied. Only the issues of filiation and the validity of the Deed of Sale with Declaration of Heirship were judicially determined by the lower court on the said case. Hence, in the instant case, this Court may rule upon the issue of redemption.[12]

The Court of Appeals decreed in the end:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Himamaylan City, Negros Occidental, Branch 56 dated July 27, 2001 is hereby REVERSED and SET ASIDE and a new one is hereby ENTERED by recognizing [herein respondent's] legal right to redeem Lot No. 1138-A of Himamaylan Cadastre, Negros Occidental from [herein petitioners].

[Respondent] is hereby given thirty (30) days from the finality of this Decision within which to exercise his right of redemption over Lot No. 1138-A by reimbursing [petitioners] the price of the sale in the amount of ₱120,000.00 plus the total value of the improvements, if any, on the subject lot based on the current fair market value.

Failure of [respondent] to redeem the property within the period herein provided shall vest [petitioners] absolute right over subject property.[13]

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

[13] *Id.* at 29.

Petitioners now come before this Court via the instant Petition for Review, insisting that respondent's right to redemption of the subject property from petitioners was among the causes of action already litigated in Civil Case No. 276 before RTC-Branch 55; and the very same cause of action between the same parties involving the same subject matter was merely duplicated in Civil Case No. 573 before RTC-Branch 56. Thus, the prior final judgment rendered in Civil Case No. 276 already barred Civil Case No. 573.

Respondent counters that Civil Case No. 573 before RTC-Branch 56 involving her legal right to redeem the subject property from petitioners cannot be deemed barred by the final judgment in Civil Case No. 276 rendered by RTC-Branch 55 because said issue was not explicitly ruled upon in the latter case.

We find merit in the instant Petition.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[14]

It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari pro una et*

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[14] *Pentacapital Investment Corp. v. Mahinay*, G.R. No. 171736, July 5, 2010, 623 SCRA 284, 307.

eadem causa. A contrary doctrine would subject public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of public tranquility and happiness.[15]

Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c).[16] These concepts differ as to the extent of the effect of a judgment or final order as follows:

> SEC. 47. *Effect of judgments or final orders*. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged **or as to any other matter that could have been raised in relation thereto**, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, **or which was actually and necessarily included therein or necessary thereto**.

Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as

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[15] *La Campana Development Corp. v. Development Bank of the Philippines*, G.R. No. 146157, February 13, 2009, 579 SCRA 137, 158-159.

[16] *Co v. People*, G.R. No. 160265, July 13, 2009, 592 SCRA 381, 393.

to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein.[17]

The case at bar satisfies the four essential requisites of *res judicata* under the first concept, bar by prior judgment, *viz*:

(a) finality of the former judgment;

(b) the court which rendered it had jurisdiction over the subject matter and the parties;

(c) it must be a judgment on the merits; and

(d) there must be, between the first and second actions, identity of parties, subject matter and causes of action.[18]

It is not disputed that the Decision dated May 8, 1996 of RTC-Branch 55 in Civil Case No. 276 had become final and executory. Petitioners no longer appealed the said decision, while respondent withdrew her appeal of the same before the Court of Appeals.

There is also no question that RTC-Branch 55 had jurisdiction over the subject matter and parties in Civil Case No. 276, and that its Decision dated May 8, 1996 was a judgment on the merits, *i.e.*, one rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case.[19]

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[17] *Gamboa v. Court of Appeals*, 194 Phil. 624, 642-643 (1981).

[18] *Del Rosario v. Far East Bank and Trust Company*, G.R. No. 150134, October 31, 2007, 537 SCRA 571, 584.

[19] *Dayot v. Shell Chemical Company (Phils.), Inc.*, G.R. No. 156542, June 26, 2007, 525 SCRA 535, 546.

Controversy herein arises from the fourth requirement: the identity of parties, subject matter and, particularly, the causes of action between Civil Case No. 276 and Civil Case No. 573.

There is identity of parties. Civil Case No. 276 and Civil Case No. 573 were both instituted by respondent against petitioners.

There is also identity of subject matter. Civil Case No. 276 and Civil Case No. 573 both involved respondent's rights and interests over the subject property as Francisco's legitimate child and compulsory heir.

Finally, there is identity of causes of action.

Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." The cause of action in Civil Case No. 273 and Civil Case No. 576 is the sale of the entire subject property by Basilia, *et al.*, to petitioners without respondent's knowledge and consent, hence, depriving respondent of her rights and interests over her *pro-indiviso* share in the subject property as a co-heir and co-owner. The annulment of the sale of respondent's share in the subject property, the legal redemption by respondent of her co-heirs' share sold to petitioners, and the claim for damages should not be mistaken to be the causes of action, but they were the remedies and reliefs prayed for by the respondent to redress the wrong allegedly committed against her.

The allegations in respondent's Complaint in Civil Case No. 573 initially give the impression that the cause of action therein was petitioners' refusal to heed respondent's demand to redeem petitioners' ten-eleventh (10/11) share in the subject property. But a closer study of said Complaint, as well as the trial proceedings before RTC-Branch 56, reveal that respondent's right to redeem petitioners' ten-eleventh (10/11) share in the subject property also arose from the sale of the said subject property to petitioners by respondent's co-heirs and co-owners, alleged to be without respondent's knowledge or consent – the very same cause of action at the crux of Civil Case No. 276.

In their Memorandum[20] filed on September 3, 2007 before this Court, respondent invoked Articles 1088 and 1620 of the Civil Code of the Philippines in support of their right to redeem the subject property. The said provisions state:

> Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.
>
> x x x x x x x x x
>
> Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.
>
> Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

In her Complaint in Civil Case No. 276, respondent already alleged her right to redemption and prayed, among others, the RTC-Branch 55 to order respondent legally entitled to redeem the subject property for the price of ₱52,000.00. The Decision dated May 8, 1996 of the RTC-Branch 55 neither discussed respondent's right to redemption nor ordered in its decretal portion for petitioners to accept respondent's offer to redeem the subject property. In consonance with the provisions of Rule 39, Section 47 of the Rules of Court cited above, we hold that all the matters within the issues raised in Civil Case No. 276 were laid before RTC-Branch 55 and passed upon by it. Resultantly, the silence of the Decision dated May 8, 1996 in Civil Case No. 276 on respondent's right to redemption invoked by the latter does not mean that RTC-Branch 55 did not take cognizance of the same, but rather, that RTC-Branch 55 did not deem respondent entitled to said right.

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[20] *Rollo*, pp. 55-57.

Regardless of whether or not RTC-Branch 55 erred in not ordering the redemption by respondent of the subject property in the Decision dated May 8, 1996 in Civil Case No. 276, said judgment can no longer be reviewed or corrected by RTC-Branch 56 in Civil Case No. 573. Any error committed by RTC-Branch 55 in the Decision dated May 8, 1996 in Civil Case No. 276 could only be reviewed or corrected on appeal. Although respondent initially filed an appeal of said judgment before the Court of Appeals, she eventually filed a motion to withdraw the same, which was granted by the appellate court. Hence, the Decision dated May 8, 1996 attained finality.

As we held in *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*,[21] a judgment which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except to correct clerical errors or mistakes, **all the issues between the parties being deemed resolved and laid to rest**. We added in *Manila Electric Company v. Philippine Consumers Foundation, Inc.*[22] that a final and executory judgment or order can no longer be disturbed or reopened no matter how erroneous it may be. **Although judicial determinations are not infallible, judicial error should be corrected through appeals, not through repeated suits on the same claim**.

We rationalized in *Navarro v. Metropolitan Bank & Trust Company*[23] the doctrine of immutability of a final judgment as follows:

> No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business,

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[21] 400 Phil. 542, 550 (2000).

[22] 425 Phil. 65, 83 (2002).

[23] G.R. Nos. 165697 and 166481, August 4, 2009, 595 SCRA 149.

and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligation of every litigant must not hang in suspense for an indefinite period of time. As the Court declared in *Yau v. Silverio*:

> Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down. Thus, in *Heirs of Wenceslao Samper v. Reciproco-Noble*, we had occasion to emphasize the significance of this rule, to wit:

> It is an important fundamental principle in our Judicial system that every litigation must come to an end x x x Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.[24]

Exceptions to the immutability of final judgment are allowed only under the most extraordinary of circumstances. The instant case cannot be considered an exception especially when respondent had the opportunity to appeal the Decision dated May 8, 1996 of RTC-Branch 55 in Civil Case No. 276, but by her own action, desisted from pursuing the same.

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[24] *Id.* at 159-160.

Therefore, Civil Case No. 573 before RTC-Branch 56 should be dismissed, being barred by *res judicata*, given the final and executory Decision dated May 8, 1996 of RTC-Branch 55 in Civil Case No. 276. We stress that *res judicata*, in the concept of bar by prior judgment, renders the judgment or final order conclusive between the parties and their privies, not just with respect to a matter directly adjudged, but also any other matter that could have been raised in relation thereto.

WHEREFORE, the instant Petition is hereby *GRANTED*. The Decision dated May 31, 2006 and Resolution dated September 28, 2006 of the Court Appeals in CA-G.R. CV No. 72987 are *SET ASIDE*. The Decision dated July 27, 2001 of Branch 56 of the Regional Trial Court of Himamaylan City, Negros Occidental, dismissing Civil Case No. 573, is *REINSTATED*.

SO ORDERED.

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

[*] Per Special Order No. 1080 dated September 13, 2011.

FIRST DIVISION

[G.R. No. 178699. September 21, 2011]

BPI EMPLOYEES UNION-METRO MANILA and ZENAIDA UY, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

[G.R. No. 178735. September 21, 2011]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **BPI EMPLOYEES UNION-METRO MANILA and ZENAIDA UY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BACK WAGES; THE BASE FIGURE TO BE USED IN THE COMPUTATION THEREOF IS PEGGED AT THE WAGE RATE AT THE TIME OF THE EMPLOYEE'S DISMISSAL UNQUALIFIED BY DEDUCTIONS, INCREASES AND/OR MODIFICATIONS.— Jurisprudence dictates that such award of back wages is without qualifications and deductions, that is, "unqualified by any wage increases or other benefits that may have been received by co-workers who were not dismissed." It is likewise settled that the base figure to be used in the computation of back wages is pegged at the wage rate at the time of the employee's dismissal unqualified by deductions, increases and/or modifications. We thus fully agree with the observation of the CA in its Amended Decision that the back wages as discussed in the March 31, 2005 Decision in G.R. No. 137863 did not include salary increases and CBA benefits x x x.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PROPER REMEDY IN CASE AT BAR.— Section 1, Rule 41 of the Rules of Court explicitly provides that no appeal may be taken from an order of execution, the remedy of an aggrieved party being an appropriate special civil action under Rule 65

of the Rules of Court. Thus, BPI correctly availed of the remedy of *certiorari* under Rule 65 of the Rules of Court when it assailed the December 6, 2005 order of execution of the Voluntary Arbitrator.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; LEGAL INTEREST OF 12% PER ANNUM, IMPOSED IN CASE AT BAR.— Pursuant to our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, the legal interest of 12% *per annum* shall be imposed upon the monetary award granted in favor of Uy, from the time this Court's March 31, 2005 Decision became final and executory until full satisfaction thereof, for the delay caused. This natural consequence of a final judgment is not defeated notwithstanding the fact that the parties were at variance in the computation of what is due to Uy under the judgment.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; FUNCTIONAL ALLOWANCE; AWARDED IN CASE AT BAR.— We rule that Uy is entitled to the teller's functional allowance since Uy's function as a teller at the time of her dismissal was factually established and was never impugned by the parties during the proceedings held in the main case. Besides, BPI did not present any evidence to substantiate its allegation that Uy was assigned as a low-counter staff at the time of her dismissal. It is a hornbook rule that he who alleges must prove. Neither was there any proof on record which could support this bare allegation.

5. ID.; ID.; VACATION AND SICK LEAVE CASH CONVERSION BENEFIT; A PRIVILEGE WHICH IS NOT STATUTORY OR MANDATORY IN CHARACTER BUT ONLY VOLUNTARILY GRANTED.— As to the vacation and sick leave cash conversion benefit, we disagree with the CA's pronouncement that entitlement to the same should not be necessarily proved. It is to be noted that this privilege is not statutory or mandatory in character but only voluntarily granted. As such, the existence of this benefit as well as the employee's entitlement thereto cannot be presumed but should be proved by the employee. The records, however, failed to prove that Uy was receiving this benefit at the time of her dismissal on December 14, 1995. The CBA covering the period April 1, 2001 to March 31, 2006, which was presented by the parties

does not at all prove that vacation and sick leave credits, as well as the privilege of converting the same into cash, were granted before the CBA's effectivity in 2001. We thus hold that Uy failed to prove that she is entitled to such benefit as a matter of right.

APPEARANCES OF COUNSEL

Carlo A. Domingo for BPI Employees Union & Z. Uy.
Benedicto Verzosa Felipe & Burkley for BPI.

D E C I S I O N

DEL CASTILLO, *J.*:

The base figure in computing the award of back wages to an illegally dismissed employee is the employee's basic salary plus regular allowances and benefits received at the time of dismissal, unqualified by any wage and benefit increases granted in the interim.[1]

By these consolidated Petitions for Review on *Certiorari*,[2] the Bank of the Philippine Islands (BPI), BPI Employees Union-Metro Manila (the Union) and Zenaida Uy (Uy) seek modification of the Court of Appeals' (CA) Amended Decision[3] dated July 4, 2007 in CA-G.R. SP No. 92631. Said Amended Decision computed Uy's back wages and other monetary awards pursuant to the final and executory Decision[4] dated March 31, 2005 of

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[1] *Villaruel v. Atty. Grapilon*, A.C. No. 4826, October 17, 2000. Minute Resolution.

[2] *Rollo* (G.R. No. 178699), pp. 8-30; (G.R. No. 178735), pp. 8-30.

[3] *Rollo* (G.R. No. 178699), pp. 50-78; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Vicente Q. Roxas.

[4] *Id.* at 142-160; penned by Associate Justice Minita V. Chico-Nazario and concurred in by Associate Justices Reynato S. Puno (later to become Chief Justice), Ma. Alicia Austria-Martinez, Romeo J. Callejo, Sr. and Dante O. Tinga.

this Court in G.R. No. 137863 based on her salary rate at the time of her dismissal and disregarded the salary increases granted in the interim as well as other benefits which were not proven to have been granted at the time of Uy's dismissal from the service.

Factual Antecedents

On December 14, 1995, Uy's services as a bank teller in BPI's Escolta Branch was terminated on grounds of gross disrespect/discourtesy towards an officer, insubordination and absence without leave. Uy, together with the Union, thus filed a case for illegal dismissal.

On December 31, 1997, the Voluntary Arbitrator[5] rendered a Decision[6] finding Uy's dismissal as illegal and ordering BPI to immediately reinstate Uy and to pay her full back wages, *including all her other benefits under the Collective Bargaining Agreement (CBA)* and attorney's fees.[7]

On October 28, 1998, the CA affirmed with modification the Decision of the Voluntary Arbitrator. Instead of reinstatement, the CA ordered BPI to pay Uy her separation pay. Further, instead of full back wages, the CA fixed Uy's back wages to three years.[8]

The case eventually reached this Court when both parties separately filed petitions for review on *certiorari*. While BPI's petition which was docketed as G.R. No. 137856 was denied for failure to comply with the requirements of a valid certification of non-forum shopping,[9] Uy's and the Union's petition which was docketed as G.R. No. 137863 was given due course.

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[5] Samuel D. Entuna.

[6] *Rollo* (G.R. No. 178699), pp. 128-134.

[7] *Id.* at 133.

[8] *Id.* at 135-141; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Artemon D. Luna and Rodrigo V. Cosico.

[9] See page 8 of the Court's March 31, 2005 Decision in G.R. No. 137863, *id.* at 149.

On March 31, 2005, the Court rendered its Decision[10] in G.R. No. 137863, the dispositive portion of which reads:

> WHEREFORE, the instant petition is **GRANTED.** The assailed 28 October 1998 Decision and 8 March 1999 Resolution of the Court of Appeals are hereby **MODIFIED** as follows: 1) respondent BPI is **DIRECTED** to pay petitioner Uy backwages from the time of her illegal dismissal until her actual reinstatement; and 2) respondent BPI is **ORDERED** to reinstate petitioner Uy to her former position, or to a substantially equivalent one, without loss of seniority right and other benefits attendant to the position.
>
> SO ORDERED.[11]

Ruling of the Voluntary Arbitrator

After the Decision in G.R. No. 137863 became final and executory, Uy and the Union filed with the Office of the Voluntary Arbitrator a Motion for the Issuance of a Writ of Execution.[12]

In Uy's computation, she based the amount of her back wages on the *current* wage level and included all the increases in wages and benefits under the CBA that were granted during the entire period of her illegal dismissal. These include the following: Cost of Living Allowance (COLA), Financial Assistance, Quarterly Bonus, CBA Signing Bonus, Uniform Allowance, Medicine Allowance, Dental Care, Medical and Doctor's Allowance, Teller's Functional Allowance, Vacation Leave, Sick Leave, Holiday Pay, Anniversary Bonus, Burial Assistance and Omega watch.[13]

BPI disputed Uy's/Union's computation arguing that it contains items which are not included in the term "back wages" and that no proof was presented to show that Uy was receiving all the listed items therein before her termination. It claimed that the

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[10] *Supra* note 4.

[11] *Rollo* (G.R. No. 178699), pp. 158-159.

[12] CA *rollo*, pp. 61-70.

[13] *Id.* at 70.

basis for the computation of back wages should be the employee's wage rate *at the time of dismissal*.[14]

In an Order dated December 6, 2005,[15] the Voluntary Arbitrator agreed with Uy's/Union's contention that full back wages should include all wage and benefit increases, including new benefits granted during the period of dismissal. The Voluntary Arbitrator opined that this Court's March 31, 2005 Decision in G.R. No. 137863 reinstated his December 31, 1997 Decision which ordered the payment of full back wages computed from the time of dismissal until actual reinstatement including all benefits under the CBA. Nonetheless, the Voluntary Arbitrator excluded the claims for uniform allowance, anniversary bonus and Omega watch for want of basis for their grant.

The Voluntary Arbitrator thus granted the motion for issuance of writ of execution and computed Uy's back wages in the total amount of ₱3,897,197.89 as follows:

Basic Monthly Salary (BMS)	₱ 2,062, 087.50
Cost of Living Allowance.....	56, 100.00
Financial Assistance.....	39, 000.00
Total Quarterly Bonuses	693, 820.00
CBA Signing Bonus.....	32, 500.00
Medicine Allowance.....	58, 400.00
Dental Care	14, 120.00
Medical and Doctor's Allowance.....	58, 400.00
Teller's Functional Allowance.....	25, 500.00
Vacation Leave.....	187, 085.50
Sick Leave.....	187, 085.50
Holiday Pay.....	128, 808.65
Attorney's Fee.....	354, 290.72
Grand Total.....	₱ 3,897,197.89[16]

[14] *Id.* at 71-77.

[15] *Rollo* (G.R. No. 178699), pp. 161-173.

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

A Writ of Execution[17] and a Notice of Garnishment[18] were subsequently issued.

Ruling of the Court of Appeals

Imputing grave abuse of discretion on the part of the Voluntary Arbitrator, BPI filed with the CA a Petition for *Certiorari* with urgent Motion for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction.[19] BPI alleged that the Voluntary Arbitrator's erroneous computation of back wages amended and varied the terms of the March 31, 2005 final and executory Decision in G.R. No. 137863.

Specifically, it averred that the Voluntary Arbitrator erred in computing back wages based on the current rate and in including the wage increases or benefits given in the interim as well as attorney's fees. BPI further argued that there was no basis for the award of teller's functional allowance, cash conversion of vacation and sick leaves and dental care allowance.

In their Comment,[20] Uy and the Union alleged that BPI's remedy is not a *certiorari* petition under Rule 65 of the Rules of Court but an appeal from judgments, final orders and resolutions of voluntary arbitrators under Rule 43 of the Rules of Court. They also contended that BPI's petition is wanting in substance.

Meanwhile, the CA issued a TRO[21] restraining the implementation of the December 6, 2005 Order of the Voluntary Arbitrator and the corresponding Writ of Execution issued on December 12, 2005. Upon receipt of the TRO, Uy and the Union filed an Urgent Motion for Clarification[22] on whether the TRO encompasses even the implementation of the

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[17] Dated December 12, 2005; CA *rollo*, pp. 92-96.

[18] *Id.* at 91.

[19] *Id.* at 2-26.

[20] *Id.* at 160-171.

[21] *Id.* at 127-128.

[22] *Id.* at 175-178.

reinstatement aspect of the March 31, 2005 Decision of this Court in G.R. No. 137863.

The CA initially rendered a Decision[23] on May 24, 2006. In said Decision, the CA held that BPI's resort to *certiorari* was proper and that the award of CBA benefits and attorney's fees has legal basis. The CA however found that the Voluntary Arbitrator erroneously computed Uy's back wages based on the current rate. The CA also deleted the award of dental allowance since it was granted in 2002 or more than six years after Uy's dismissal.

Both parties thereafter filed their respective motions for reconsideration. Consequently, on July 4, 2007, the CA issued the herein assailed Amended Decision.

In its Amended Decision, the CA upheld the propriety of BPI's resort to *certiorari*. It also ruled that this Court's March 31, 2005 Decision in G.R. No. 137863 did not reinstate the December 31, 1997 Decision of the Voluntary Arbitrator awarding full back wages including CBA benefits. The CA ruled that the computation of Uy's full back wages, as defined under Republic Act No. 6715, should be based on the basic salary at the time of her dismissal plus the regular allowances that she had been receiving likewise at the time of her dismissal. It held that any increase in the basic salary occurring after Uy's dismissal as well as all benefits given after said dismissal should not be awarded to her in consonance with settled jurisprudence on the matter. Accordingly, the CA pronounced that Uy's basic salary, which amounted to ₱10,895.00 at the time of her dismissal on December 14, 1995, is to be used as the base figure in computing her back wages, exclusive of any increases and/or modifications. As Uy's entitlement to COLA, quarterly bonus and financial assistance are not disputed, the CA retained their award provided that, again, the base figure for the computation of these benefits should be the rate then prevailing at the time of Uy's dismissal.

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[23] *Rollo* (G.R. No. 178699), pp. 32-48; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Joel G. Tijam and Vicente Q. Roxas.

The CA deleted the award of CBA signing bonus, medicine allowance, medical and doctor's allowance and dental care allowance for lack of sufficient proof that these benefits were already being received and enjoyed by Uy at the time of her dismissal. However, it held that the teller's functional allowance should rightfully be given to Uy as a regular bank teller as well as the holiday pay and monetary equivalent of vacation and sick leave benefits. As for the attorney's fees, the CA ruled that Uy's right over the same has already been resolved and has attained finality when it was neither assailed nor raised as an issue after the Voluntary Arbitrator awarded it in favor of Uy.

Finally, the CA likewise ruled that Uy's reinstatement was effectively restrained by the TRO issued by it. Pertinent portions of the CA's Amended Decision read:

> All told, We find Petitioner's Motion for Reconsideration to be partly meritorious and so hold that Private Respondent Uy is entitled to the following sums to be included in the computation:
>
> 1. Basic Monthly Salary, COLA and Quarterly Bonus, with ₱10,895.00 as the base figure, computed from the time of her dismissal up to her actual reinstatement;
> 2. Teller's Functional Allowance, based on the rate at the time of her dismissal;
> 3. Monetary Equivalent of Vacation and Sick Leaves, and Holiday Pay, based on the rate at the time of her dismissal;
> 4. Attorney's Fees, which is 10% of the total amount of the award.
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> Anent the Private Respondent's Urgent Motion for Clarification, Private Respondent asked whether the TRO issued by this Court on January 3, 2006 restrained the reinstatement of Private Respondent Uy.
>
> *We answer in the affirmative.*
>
> The wordings of the *Resolution* ordering the issuance of a temporary restraining order are clear. The TRO was issued to restrain the implementation and/or enforcement of the Public Respondent's Order

dated December 6, 200[5] and the Writ of Execution, dated December 12, 200[5]. Considering that said Order and the ensuing Writ are for the reinstatement of Private Respondent Uy, hence, the TRO, indeed, effectively restrained Uy's reinstatement.

WHEREFORE, Private Respondents' Motion for Partial Reconsideration is ***DENIED*** and Petitioner's Motion for Partial Reconsideration is ***GRANTED IN PART.*** The Decision of this Court promulgated on May 24, 2006 is hereby ***amended,*** and the Public Respondent Voluntary Arbitrator is ***ordered to recompute*** the amount of backwages due to Private Respondent Uy consistent with the foregoing ruling.

SO ORDERED.[24]

From the foregoing Amended Decision, both parties separately filed petitions before this Court. Uy's and the Union's petition is docketed as G.R. No. 178699, and that of BPI is docketed as G.R. No. 178735. The Court resolved to consolidate both petitions in a Resolution dated September 3, 2007.[25]

Issues

G.R. No. 178699

Uy and the Union argue that the CA effectively amended the final Decision in G.R. No. 137863. They allege that the issues raised in G.R. No. 137863 were confined only to the propriety of the CA's award of back wages for a fixed period of three years as well as the order for the payment of separation pay in lieu of reinstatement. Hence, the Voluntary Arbitrator's award of CBA benefits as components of Uy's back wages and the attorney's fees, which were not raised as issues in G.R. No. 137863, should no longer be disturbed.

Uy and the Union likewise assail the CA's order restraining Uy's reinstatement despite the finality of this Court's Decision ordering such reinstatement. They also fault the CA in not dismissing BPI's petition for being an improper mode of appeal.

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

[25] *Rollo* (G.R. No. 178735), pp. 235-236.

Finally, Uy and the Union assert that a twelve percent (12%) interest *per annum* should be imposed on the total amount due to Uy, computed from the finality of the Decision of this Court in G.R. No. 137863 until full compliance thereof by BPI.

G.R. No. 178735

On the other hand, BPI alleges that Uy's/Union's petition should be dismissed for lack of proof of service of the petition on the lower court concerned as required by the Rules of Court. BPI also argues that the CA erred in including the teller's functional allowance and the vacation and sick leave cash equivalent in the computation of Uy's backwages. Also, BPI questions the propriety of the award of attorney's fees.

Our Ruling

The March 31, 2005 Decision of this Court in G.R. No. 137863 did not reinstate the December 31, 1997 Decision of the Voluntary Arbitrator which ordered the payment of full back wages including all benefits under the CBA.

We agree with the CA's finding that the March 31, 2005 Decision of this Court in G.R. No. 137863 did not in anyway reinstate the Voluntary Arbitrator's December 31, 1997 Decision regarding the award of CBA benefits.

To recall, after Uy and the Union filed the case for illegal dismissal, the Voluntary Arbitrator rendered his Decision[26] on December 31, 1997, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant Zenaida Uy as illegal and ordering the respondent Bank of the Philippine Islands to immediately reinstate her to her position as bank teller of the Escolta Branch without loss of seniority rights and with full backwages computed from the time she was dismissed on December 14, 1995 until she

[26] *Supra* note 6.

is actually reinstated in the service, and including all her other benefits which are benefits under their Collective Bargaining Agreement (CBA).

For reasonable attorney's fees, respondent is also ordered to pay complainant the equivalent of 10% of the recoverable award in this case.

SO ORDERED.[27]

On appeal, the CA, in its October 28, 1998 Decision,[28] affirmed with modification the Decision of the Voluntary Arbitrator. Instead of full back wages, the CA limited the award to three years. Also, in lieu of reinstatement, the CA ordered BPI to pay separation pay, thus:

WHEREFORE, the judgment appealed from is ***AFFIRMED*** with the ***MODIFICATION*** that instead of reinstatement, the petitioner Bank of the Philippine Islands is ***DIRECTED*** to pay Uy back salaries not exceeding three (3) years and separation pay of one month for every year of service. The said judgment is ***AFFIRMED*** in all other respects.

SO ORDERED.[29]

As already discussed, both parties appealed to this Court. However, BPI's petition was dismissed outright for failure to comply with the requirements for a valid certification of non-forum shopping. Uy's and the Union's petition docketed as G.R. No. 137863, on the other hand, was given due course. On March 31, 2005, the Court rendered its Decision disposing thus:

WHEREFORE, the instant petition is **GRANTED.** The assailed 28 October 1998 Decision and 8 March 1999 Resolution of the Court of Appeals are hereby **MODIFIED** as follows: 1) respondent BPI is **DIRECTED** to pay petitioner Uy backwages from the time of her illegal dismissal until her actual reinstatement; and 2)

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[27] *Rollo* (G.R. No. 178699), p. 133.

[28] *Id.* at 135-141.

[29] *Id.* at 141.

respondent BPI is **ORDERED** to reinstate petitioner Uy to her former position, or to a substantially equivalent one, without loss of seniority right and other benefits attendant to the position.

SO ORDERED.[30]

From the foregoing, it is clear that Uy's and the Union's contention that the March 31, 2005 Decision of this Court in G.R. No. 137863 in effect reinstated the December 31, 1997 Decision of the Voluntary Arbitrator awarding full back wages including the CBA benefits, is without basis. What is clear is that the March 31, 2005 Decision modified the October 28, 1998 Decision of the CA by awarding full back wages instead of limiting the award to a period of three years. This interpretation is further bolstered by the Court's discussion in the main body of March 31, 2005 Decision as to the meaning of "full back wages" in view of the passage of Republic Act No. 6715[31] on March 21, 1989 which amended Article 279 of the Labor Code, as follows:

ART. 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by the Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and *to his full backwages*, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Italics supplied)

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[30] *Id.* at 158-159.

[31] An Act to extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the preferential use of Voluntary Modes of settling Labor disputes, and Reorganize the National Labor Relations Commission, amending for these purposes certain provisions of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, appropriating funds therefor and for other purposes; took effect on March 21, 1989.

Jurisprudence dictates that such award of back wages is without qualifications and deductions,[32] that is, "unqualified by any wage increases or other benefits that may have been received by co-workers who were not dismissed."[33] It is likewise settled that the base figure to be used in the computation of back wages is pegged at the wage rate at the time of the employee's dismissal unqualified by deductions, increases and/or modifications.[34]

We thus fully agree with the observation of the CA in its Amended Decision that the back wages as discussed in the March 31, 2005 Decision in G.R. No. 137863 did not include salary increases and CBA benefits, *viz:*

> There is no ambiguity or omission in the dispositive portion of the SC decision but Public Respondent erroneously concluded that said SC decision effectively reinstated Public Respondent's December 31, 1997 Decision. There is a need to read the findings and conclusions reached by the Supreme Court in the subject decision to understand what was finally adjudicated.
>
> In the dispositive portion of Its Decision of March 31, 2005, the Supreme Court expressly awarded Uy full backwages from the time of her dismissal up to the time of her actual reinstatement. The full backwages, as referred to in the *body* of the decision pertains to "backwages" as defined in Republic Act No. 6715. Under said law, and as provided in numerous jurisprudence, "full backwages" means backwages without any deduction or qualification, including benefits or their monetary equivalent the employee is enjoying at the time of his dismissal.
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> Clearly, it is the intention of the Supreme Court to grant unto Private Respondent Uy full backwages as defined under RA 6715. Consequently, any benefit or allowance over and above that allowed

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[32] *General Baptist Bible College v. National Labor Relations Commission,* G.R. No. 85534, March 5, 1993, 219 SCRA 549, 559-560.

[33] *Evangelista v. National Labor Relations Commission,* 319 Phil. 299, 301 (1995), citing *Paramount Vinyl Products Corp. v. National Labor Relations Commission,* G.R. No. 81200, October 17, 1990, 190 SCRA 525, 537.

[34] *Villaruel v. Atty. Grapilon, supra* note 1.

and provided by said law is deemed excluded under said SC Decision. The CBA benefits awarded by Public Respondent is not within the benefits under RA 6715. Said benefits are not to be included in the backwages. x x x[35]

The CA correctly deleted the award of CBA benefits.

Thus, we find that the CA properly disregarded the salary increases and correctly computed Uy's back wages based on the salary rate at the time of Uy's dismissal plus the regular allowances that she had been receiving likewise at the time of her dismissal.[36] The CA also correctly deleted the signing bonus, medicine allowance, medical and doctor's allowance and dental care allowance, as they were all not proven to have been granted to Uy at the time of her dismissal from service.

The award of attorney's fees is proper.

We likewise affirm the CA's award of attorney's fees. The issue on its grant has already been threshed out and settled with finality when the parties failed to question it on appeal. As aptly held by the CA in its Amended Decision:

> Based on the evidence, We find Uy to be entitled to Attorney's fees. True, the SC Decision did not include the award of attorney's fees; however, after the Public Respondent awarded said attorney's fees in favor of Private Respondent Uy, said award was neither assailed nor raised as an issue before the Court of Appeals and the Supreme Court. Hence, the March 31, 2005 Decision of the Supreme Court and the Court of Appeals' Decision as modified no longer mention said award.
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> Consequently, as the right of Uy to attorney's fees has already been resolved and had attained finality, Petitioner cannot now question

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[35] *Rollo* (G.R. No. 178699), p. 67.

[36] *Palmeria, Sr. v. National Labor Relations Commission*, 317 Phil. 67, 76 (1995); *Espejo v. National Labor Relations Commission*, 325 Phil. 753, 760 (1996); *Masagana Concrete Products v. National Labor Relations Commission*, 372 Phil. 459, 481 (1999); *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 409.

its inclusion to the computation of awards given to Private Respondent Uy during the execution proceedings.[37]

The issue concerning the CA's temporary restraining order which covered the reinstatement aspect of this Court's final decision has been rendered moot by Uy's subsequent reinstatement in BPI's payroll on August 1, 2006.

While we agree with Uy's/Union's postulation that it was improper for the CA to restrain the implementation of the reinstatement aspect of this Court's final and executory Decision considering that BPI's appeal with the CA only questioned the propriety of the Voluntary Arbitrator's computation of back wages, suffice it to say that this particular issue has already been rendered moot by Uy's reinstatement. As manifested by BPI in its Comment,[38] Uy, with her acquiescence, was reinstated in BPI's payroll on August 1, 2006. Notably, this fact was not at all disputed or denied by Uy in any of her pleadings.

BPI's resort to certiorari under Rule 65 of the Rules of Court is proper.

Section 1, Rule 41 of the Rules of Court explicitly provides that no appeal may be taken from an order of execution, the remedy of an aggrieved party being an appropriate special civil action under Rule 65 of the Rules of Court. Thus, BPI correctly availed of the remedy of *certiorari* under Rule 65 of the Rules of Court when it assailed the December 6, 2005 order of execution of the Voluntary Arbitrator.

A legal interest at 12% per annum should be imposed upon the monetary awards granted in favor of Uy commencing from the finality of this Court's March 31, 2005 Decision until full satisfaction thereof.

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[37] *Rollo* (G.R. No. 178699), p. 76.

[38] *Id.* at 104-127.

Pursuant to our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[39] the legal interest of 12% *per annum* shall be imposed upon the monetary award granted in favor of Uy, from the time this Court's March 31, 2005 Decision became final and executory until full satisfaction thereof, for the delay caused. This natural consequence of a final judgment is not defeated notwithstanding the fact that the parties were at variance in the computation of what is due to Uy under the judgment.[40]

The CA was properly served with a copy of Uy's/Union's petition in compliance with the Rules of Court.

BPI's allegation that Uy's/Union's petition in G.R. No. 178699 should be dismissed outright for failure to furnish the lower court concerned of their petition is without basis. Records disclose that Uy's/Union's petition was accompanied with an affidavit of service with the corresponding registry receipt[41] showing that the CA was duly provided with a copy of the petition.

Uy is entitled to teller's functional allowance but not to vacation and sick leave cash conversion.

BPI contends that at the time of Uy's dismissal, she was no longer functioning as a teller but as a low-counter staff and as such, Uy is not anymore entitled to the teller's functional allowance pursuant to company policy. Furthermore, BPI argues that Uy is neither entitled to the monetary conversion of vacation and sick leaves for failure to prove that she is entitled to these benefits at the time of her dismissal.

We rule that Uy is entitled to the teller's functional allowance since Uy's function as a teller at the time of her dismissal was

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[39] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[40] *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 420.

[41] *Rollo* (G.R. No. 178699), p. 30.

factually established and was never impugned by the parties during the proceedings held in the main case. Besides, BPI did not present any evidence to substantiate its allegation that Uy was assigned as a low-counter staff at the time of her dismissal. It is a hornbook rule that he who alleges must prove.[42] Neither was there any proof on record which could support this bare allegation.

As to the vacation and sick leave cash conversion benefit, we disagree with the CA's pronouncement that entitlement to the same should not be necessarily proved. It is to be noted that this privilege is not statutory or mandatory in character but only voluntarily granted.[43] As such, the existence of this benefit as well as the employee's entitlement thereto cannot be presumed but should be proved by the employee.[44] The records, however, failed to prove that Uy was receiving this benefit at the time of her dismissal on December 14, 1995. The CBA covering the period April 1, 2001 to March 31, 2006, which was presented by the parties does not at all prove that vacation and sick leave credits, as well as the privilege of converting the same into cash, were granted before the CBA's effectivity in 2001. We thus hold that Uy failed to prove that she is entitled to such benefit as a matter of right.

WHEREFORE, the petitions in G.R. Nos. 178699 and 178735 are both *PARTIALLY GRANTED*. The Amended Decision dated July 4, 2007 of the Court of Appeals in CA-G.R. SP No. 92631 is hereby *AFFIRMED with MODIFICATIONS*. The back wages of Zenaida Uy should be computed as follows:

1. Basic Monthly Salary, Cost of Living Allowance, Financial Assistance and Quarterly Bonus, with ₱10,895.00 as the base

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[42] *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006, 500 SCRA 186, 197.

[43] *EVERYONE'S LABOR CODE*, C.A. Azucena, Jr., fifth ed. (2007), p. 75.

[44] *Kwok v. Phil. Carpet Manufacturing Corporation*, 497 Phil. 8, 17 (2005).

figure which is her salary rate at the time of her dismissal, computed from the time of her dismissal on December 14, 1995 up to her reinstatement on August 1, 2006;

2. Teller's Functional Allowance, based on the rate at the time of her dismissal;

3. Holiday Pay, based on the rate at the time of her dismissal;

4. Attorney's Fees, which is 10% of the total amount of the award; and

5. Interest at 12% *per annum* on the total amount of the awards commencing from the finality of the Decision in G.R. No. 137863 until full payment thereof.

6. The award for the monetary conversion of vacation and sick leave is deleted.

The Voluntary Arbitrator is hereby *ORDERED TO RECOMPUTE* the amounts due to Zenaida Uy in accordance with the above disposition.

SO ORDERED.

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

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[*] In lieu of Associate Justice Martin S. Villarama, Jr., per Special Order No. 1080 dated September 13, 2011.

SECOND DIVISION

[G.R. No. 178782. September 21, 2011]

JOSEFINA P. REALUBIT, *petitioner, vs.* **PROSENCIO D. JASO and EDEN G. JASO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; DOCUMENTS ACKNOWLEDGED BEFORE NOTARIES PUBLIC ARE ADMISSIBLE IN EVIDENCE WITHOUT NECESSITY OF PRELIMINARY PROOF AS TO THEIR AUTHENTICITY AND DUE EXECUTION.— [D]ocuments acknowledged before notaries public are public documents which are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution. It cannot be gainsaid that, as a public document, the *Deed of Assignment* Biondo executed in favor of Eden not only enjoys a presumption of regularity but is also considered *prima facie* evidence of the facts therein stated. A party assailing the authenticity and due execution of a notarized document is, consequently, required to present evidence that is clear, convincing and more than merely preponderant. In view of the Spouses Realubit's failure to discharge this onus, we find that both the RTC and the CA correctly upheld the authenticity and validity of said *Deed of Assignment* upon the combined strength of the above-discussed disputable presumptions and the testimonies elicited from Eden and Notary Public Rolando Diaz.

2. ID.; ID.; FORGERY IS NEVER PRESUMED AND MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE BY THE PARTY ALLEGING THE SAME.— As for the Spouses' Realubit's bare assertion that Biondo's signature on the same document appears to be forged, suffice it to say that, like fraud, forgery is never presumed and must likewise be proved by clear and convincing evidence by the party alleging the same. Aside from not being borne out by a comparison of Biondo's signatures on the *Joint Venture Agreement* and the *Deed of Assignment*, said forgery is, moreover debunked by

Biondo's duly authenticated certification dated 17 November 1998, confirming the transfer of his interest in the business in favor of Eden.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; JOINT VENTURES; GOVERNED BY THE LAW ON PARTNERSHIPS.— Generally understood to mean an organization formed for some temporary purpose, a joint venture is likened to a particular partnership or one which "has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation." The rule is settled that joint ventures are governed by the law on partnerships which are, in turn, based on mutual agency or *delectus personae.*

4. ID.; SPECIAL CONTRACTS; PARTNERSHIP; PROPERTY RIGHTS OF A PARTNER; CONVEYANCE OF PARTNERSHIP INTEREST, EFFECT.— Insofar as a partner's conveyance of the entirely of his interest in the partnership is concerned, Article 1813 of the Civil Code provides x x x that "(t)he transfer by a partner of his partnership interest does not make the assignee of such interest a partner of the firm, nor entitle the assignee to interfere in the management of the partnership business or to receive anything except the assignee's profits. The assignment does not purport to transfer an interest in the partnership, but only a future contingent right to a portion of the ultimate residue as the assignor may become entitled to receive by virtue of his proportionate interest in the capital." Since a partner's interest in the partnership includes his share in the profits, we find that the CA committed no reversible error in ruling that the Spouses Jaso are entitled to Biondo's *share in the profits*, despite Juanita's lack of consent to the assignment of said Frenchman's interest in the joint venture. Although Eden did not, moreover, become a partner as a consequence of the assignment and/or acquire the right to require an accounting of the partnership business, the CA correctly granted her prayer for dissolution of the joint venture conformably with the right granted to the purchaser of a partner's interest under Article 1831 of the *Civil Code.*

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; CONFINED TO QUESTIONS OF LAW.— It is

well-entrenched doctrine that questions of fact are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law. Upon the principle that this Court is not a trier of facts, we are not duty bound to examine the evidence introduced by the parties below to determine if the trial and the appellate courts correctly assessed and evaluated the evidence on record. Absent showing that the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on misapprehension of facts, the Court will limit itself to reviewing only errors of law.

6. ID.; ID.; ID.; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE BINDING UPON THE SUPREME COURT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS.— As a rule, findings of fact of the CA are binding and conclusive upon this Court, and will not be reviewed or disturbed on appeal unless the case falls under any of the following recognized exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of the fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and, (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

APPEARANCES OF COUNSEL

Dante G. Huerta, MNSA for petitioner.
Jaso Dorillo & Associates for respondents.

D E C I S I O N

PEREZ, *J.*:

The validity as well as the consequences of an assignment of rights in a joint venture are at issue in this petition for review filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*,[1] assailing the 30 April 2007 Decision[2] rendered by the Court of Appeals' (CA) then Twelfth Division in CA-G.R. CV No. 73861,[3] the dispositive portion of which states:

> WHEREFORE, the Decision appealed from is SET ASIDE and we order the dissolution of the joint venture between defendant-appellant Josefina Realubit and Francis Eric Amaury Biondo and the subsequent conduct of accounting, liquidation of assets and division of shares of the joint venture business.
>
> Let a copy hereof and the records of the case be remanded to the trial court for appropriate proceedings.[4]

The Facts

On 17 March 1994, petitioner Josefina Realubit (Josefina) entered into a *Joint Venture Agreement* with Francis Eric Amaury Biondo (Biondo), a French national, for the operation of an ice manufacturing business. With Josefina as the industrial partner and Biondo as the capitalist partner, the parties agreed that they would each receive 40% of the net profit, with the remaining 20% to be used for the payment of the ice making machine which was purchased for the business.[5] For and in consideration of the sum of ₱500,000.00, however, Biondo subsequently

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[1] *Rollo*, pp. 8-17, Realubit's 9 August 2007 Petition.

[2] Penned by Justice Apolinario D. Bruselas, Jr. and concurred in by Justices Bienvenido L. Reyes and Aurora Santiago-Lagman.

[3] Record, CA-G.R. CV No. 178782, CA's 30 April 2007 Decision, pp. 124-134.

[4] *Id.* at 133.

[5] Exhibits "B" and "1", record, Civil Case No. 98-0331, 17 March 1994 Joint Venture Agreement, p. 210.

executed a *Deed of Assignment* dated 27 June 1997, transferring all his rights and interests in the business in favor of respondent Eden Jaso (Eden), the wife of respondent Prosencio Jaso.[6] With Biondo's eventual departure from the country, the Spouses Jaso caused their lawyer to send Josefina a letter dated 19 February 1998, apprising her of their acquisition of said Frenchman's share in the business and formally demanding an accounting and inventory thereof as well as the remittance of their portion of its profits.[7]

Faulting Josefina with unjustified failure to heed their demand, the Spouses Jaso commenced the instant suit with the filing of their 3 August 1998 Complaint against Josefina, her husband, Ike Realubit (Ike), and their alleged dummies, for specific performance, accounting, examination, audit and inventory of assets and properties, dissolution of the joint venture, appointment of a receiver and damages. Docketed as Civil Case No. 98-0331 before respondent Branch 257 of the Regional Trial Court (RTC) of Parañaque City, said complaint alleged, among other matters, that the Spouses Realubit had no gainful occupation or business prior to their joint venture with Biondo; that with the income of the business which earned not less than ₱3,000.00 per day, they were, however, able to acquire the two-storey building as well as the land on which the joint venture's ice plant stands, another building which they used as their office and/or residence and six (6) delivery vans; and, that aside from appropriating for themselves the income of the business, the Spouses Realubit have fraudulently concealed the funds and assets thereof thru their relatives, associates or dummies.[8]

Served with summons, the Spouses Realubit filed their Answer dated 21 October 1998, specifically denying the material allegations of the foregoing complaint. Claiming that they have been engaged in the tube ice trading business under a single proprietorship even before their dealings with Biondo, the Spouses Realubit,

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[6] Exhibits "A" and "2", 27 June 1997 Deed of Assignment, *id.* at 207.

[7] Exhibit "C", 19 February 1998 Demand Letter, *id.* at 211.

[8] Spouses Jaso's 3 August 1998 Complaint, *id.* at 2-7.

in turn, averred that their said business partner had left the country in May 1997 and could not have executed the *Deed of Assignment* which bears a signature markedly different from that which he affixed on their *Joint Venture Agreement*; that they refused the Spouses Jaso's demand in view of the dubious circumstances surrounding their acquisition of Biondo's share in the business which was established at Don Antonio Heights, Commonwealth Avenue, Quezon City; that said business had already stopped operations on 13 January 1996 when its plant shut down after its power supply was disconnected by MERALCO for non-payment of utility bills; and, that it was their own tube ice trading business which had been moved to 66-C Cenacle Drive, Sanville Subdivision, Project 6, Quezon City that the Spouses Jaso mistook for the ice manufacturing business established in partnership with Biondo.[9]

The issues thus joined and the mandatory pre-trial conference subsequently terminated, the RTC went on to try the case on its merits and, thereafter, to render its Decision dated 17 September 2001, discounting the existence of sufficient evidence from which the income, assets and the supposed dissolution of the joint venture can be adequately reckoned. Upon the finding, however, that the Spouses Jaso had been nevertheless subrogated to Biondo's rights in the business in view of their valid acquisition of the latter's share as capitalist partner,[10] the RTC disposed of the case in the following wise:

> WHEREFORE, defendants are ordered to submit to plaintiffs a complete accounting and inventory of the assets and liabilities of the joint venture from its inception to the present, to allow plaintiffs access to the books and accounting records of the joint venture, to deliver to plaintiffs their share in the profits, if any, and to pay the plaintiffs the amount of ₱20,000 for moral damages. The claims for exemplary damages and attorney's fees are denied for lack of basis.[11]

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[9] Spouses Realubit's 21 October 1998 Answer, *id.* at 24-32.

[10] RTC's 17 September 2001 Decision, *id.* at 427-431.

[11] *Id.* at 431.

On appeal before the CA, the foregoing decision was set aside in the herein assailed Decision dated 30 April 2007, upon the following findings and conclusions: (a) the Spouses Jaso validly acquired Biondo's share in the business which had been transferred to and continued its operations at 66-C Cenacle Drive, Sanville Subdivision, Project 6, Quezon City and not dissolved as claimed by the Spouses Realubit; (b) absent showing of Josefina's knowledge and consent to the transfer of Biondo's share, Eden cannot be considered as a partner in the business, pursuant to Article 1813 of the *Civil Code of the Philippines*; (c) while entitled to Biondo's *share in the profits* of the business, Eden cannot, however, interfere with the management of the partnership, require information or account of its transactions and inspect its books; (d) the partnership should first be dissolved before Eden can seek an accounting of its transactions and demand Biondo's *share in the business*; and, (e) the evidence adduced before the RTC do not support the award of moral damages in favor of the Spouses Jaso.[12]

The Spouses Realubit's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's 28 June 2007 Resolution,[13] hence, this petition.

The Issues

The Spouses Realubit urge the reversal of the assailed decision upon the negative of the following issues, to wit:

A. WHETHER OR NOT THERE WAS A VALID ASSIGNMENT OF RIGHTS TO THE JOINT VENTURE.

B. WHETHER THE COURT MAY ORDER PETITIONER [JOSEFINA REALUBIT] AS PARTNER IN THE JOINT VENTURE TO RENDER [A]N ACCOUNTING TO ONE WHO IS NOT A PARTNER IN SAID JOINT VENTURE.

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[12] CA *rollo*, CA-G.R. C.V. No. 73861, CA's 30 April 2007 Decision, pp. 124-134.

[13] *Id.* at 177-178.

C. WHETHER PRIVATE RESPONDENTS [SPOUSES JASO] HAVE ANY RIGHT IN THE JOINT VENTURE AND IN THE SEPARATE ICE BUSINESS OF PETITIONER[S].[14]

The Court's Ruling

We find the petition bereft of merit.

The Spouses Realubit argue that, in upholding its validity, both the RTC and the CA inordinately gave premium to the notarization of the 27 June 1997 *Deed of Assignment* executed by Biondo in favor of the Spouses Jaso. Calling attention to the latter's failure to present before the RTC said assignor or, at the very least, the witnesses to said document, the Spouses Realubit maintain that the testimony of Rolando Diaz, the Notary Public before whom the same was acknowledged, did not suffice to establish its authenticity and/or validity. They insist that notarization did not automatically and conclusively confer validity on said deed, since it is still entirely possible that Biondo did not execute said deed or, for that matter, appear before said notary public.[15] The dearth of merit in the Spouses Realubit's position is, however, immediately evident from the settled rule that documents acknowledged before notaries public are public documents which are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution.[16]

It cannot be gainsaid that, as a public document, the *Deed of Assignment* Biondo executed in favor of Eden not only enjoys a presumption of regularity[17] but is also considered *prima facie* evidence of the facts therein stated.[18] A party assailing the authenticity and due execution of a notarized document is, consequently, required to present evidence that is clear, convincing

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[14] *Rollo*, pp. 11-13.

[15] *Id.* at 131-133.

[16] *Cavile v. Heirs of Clarita Cavile*, 448 Phil. 302, 315 (2003).

[17] *Potenciano v. Reynoso*, 449 Phil. 396, 408 (2003).

[18] *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 139 (1999).

and more than merely preponderant.[19] In view of the Spouses Realubit's failure to discharge this onus, we find that both the RTC and the CA correctly upheld the authenticity and validity of said *Deed of Assignment* upon the combined strength of the above-discussed disputable presumptions and the testimonies elicited from Eden[20] and Notary Public Rolando Diaz.[21] As for the Spouses' Realubit's bare assertion that Biondo's signature on the same document appears to be forged, suffice it to say that, like fraud,[22] forgery is never presumed and must likewise be proved by clear and convincing evidence by the party alleging the same.[23] Aside from not being borne out by a comparison of Biondo's signatures on the *Joint Venture Agreement*[24] and the *Deed of Assignment*,[25] said forgery is, moreover debunked by Biondo's duly authenticated certification dated 17 November 1998, confirming the transfer of his interest in the business in favor of Eden.[26]

Generally understood to mean an organization formed for some temporary purpose, a joint venture is likened to a particular partnership or one which "has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation."[27] The rule is settled that joint ventures are governed by the law on partnerships[28] which are, in turn, based on mutual agency or *delectus personae*.[29] Insofar as a

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[19] *Manongsong v. Estimo*, 452 Phil. 862, 877-878 (2003).

[20] TSN, 22 September 1999, pp. 3-5.

[21] TSN, 12 January 2000, pp. 4-8.

[22] *Maestrado v. Court of Appeals*, 384 Phil. 418, 435 (2000).

[23] *Aloria v. Clemente*, 518 Phil. 764, 776 (2006).

[24] Exhibit "1-A", record, Civil Case No. 98-0331, p. 210.

[25] Exhibits "A-3" and "2-A", *id.* at 207.

[26] Exhibit "D-1", *id.* at 215.

[27] Art. 1783, *Civil Code of the Philippines*.

[28] *Heirs of Tan Eng Kee v. Court of Appeals*, 396 Phil. 68, 80-81(2000).

[29] *Tocao v. Court of Appeals*, 396 Phil. 166, 184 (2000).

partner's conveyance of the entirety of his interest in the partnership is concerned, Article 1813 of the Civil Code provides as follows:

> Art. 1813. A conveyance by a partner of his whole interest in the partnership does not itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contracts the profits to which the assigning partners would otherwise be entitled. However, in case of fraud in the management of the partnership, the assignee may avail himself of the usual remedies.
>
> In the case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

From the foregoing provision, it is evident that "(t)he transfer by a partner of his partnership interest does not make the assignee of such interest a partner of the firm, nor entitle the assignee to interfere in the management of the partnership business or to receive anything except the assignee's profits. The assignment does not purport to transfer an interest in the partnership, but only a future contingent right to a portion of the ultimate residue as the assignor may become entitled to receive by virtue of his proportionate interest in the capital."[30] Since a partner's interest in the partnership includes his share in the profits,[31] we find that the CA committed no reversible error in ruling that the Spouses Jaso are entitled to Biondo's *share in the profits*, despite Juanita's lack of consent to the assignment of said Frenchman's interest in the joint venture. Although Eden did not, moreover, become a partner as a consequence of the assignment and/or acquire the right to require an accounting of the partnership business, the CA correctly granted her prayer for dissolution of the joint

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[30] Tolentino, *Civil Code of the Philippines*, 1959 ed., Vol. V, pp. 297-298.

[31] Art. 1812, *Civil Code of the Philippines*.

venture conformably with the right granted to the purchaser of a partner's interest under Article 1831 of the *Civil Code*.[32]

Considering that they involve questions of fact, neither are we inclined to hospitably entertain the Spouses Realubit's insistence on the supposed fact that Josefina's joint venture with Biondo had already been dissolved and that the ice manufacturing business at 66-C Cenacle Drive, Sanville Subdivision, Project 6, Quezon City was merely a continuation of the same business they previously operated under a single proprietorship. It is well-entrenched doctrine that questions of fact are not proper subjects of appeal by *certiorari* under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.[33] Upon the principle that this Court is not a trier of facts, we are not duty bound to examine the evidence introduced by the parties below to determine if the trial and the appellate courts correctly assessed and evaluated the evidence on record.[34] Absent showing that the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on misapprehension of facts, the Court will limit itself to reviewing only errors of law.[35]

Based on the evidence on record, moreover, both the RTC[36] and the CA[37] ruled out the dissolution of the joint venture and concluded that the ice manufacturing business at the aforesaid address was the same one established by Juanita and Biondo.

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[32] Art. 1831. On application by or for a partner, the court shall decree a dissolution x x x

x x x x x x x x x

On the application of the purchaser of a partner's interest under Article 1813 or 1814:

(1) After the termination of the specified term or particular undertaking;

(2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

[33] *Goyena v. Ledesma-Gustilo*, 443 Phil. 150, 158 (2003).

[34] *Romualdez-Licaros v. Licaros*, 449 Phil. 824, 837 (2003).

[35] *Tsai v. Court of Appeals*, 418 Phil. 606, 617 (2001).

[36] Record, Civil Case No. 98-0331, p. 430.

[37] Record, CA-G.R. CV No. 73861, pp. 163-164.

As a rule, findings of fact of the CA are binding and conclusive upon this Court,[38] and will not be reviewed or disturbed on appeal[39] unless the case falls under any of the following recognized exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and, (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[40] Unfortunately for the Spouses Realubit's cause, not one of the foregoing exceptions applies to the case.

WHEREFORE, the petition is *DENIED* for lack of merit and the assailed CA Decision dated 30 April 2007 is, accordingly, *AFFIRMED in toto.*

SO ORDERED.

Velasco, Jr.,[*] *Brion,*[**] *Abad,*[***] and *Sereno, JJ.,* concur.

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[38] *Spouses Batingal v. Court of Appeals*, 403 Phil. 780, 788 (2001).

[39] *Bank of the Phil. Islands v. Leobrera*, 461 Phil. 461, 465 (2003).

[40] *Spouses Sevilla v. Court of Appeals*, G.R. No. 150284, 22 November 2010, 635 SCRA 508, 514-515.

[*] Associate Justice Presbitero J. Velasco, Jr. is designated Additional Member as per Special Order No. 1084 dated 13 September 2011.

[**] Associate Justice Arturo D. Brion is designated as Acting Chairperson per Special Order No. 1083 dated 13 September 2011.

[***] Associate Justice Roberto A. Abad is designated Additional Member per Raffle dated 19 September 2011.

SECOND DIVISION

[G.R. No. 186209. September 21, 2011]

UNITED LABORATORIES, INC., *petitioner, vs.* **JAIME DOMINGO substituted by his spouse CARMENCITA PUNZALAN DOMINGO, ANONUEVO REMIGIO, RODOLFO MARCELO, RAUL NORICO and EUGENIO OZARAGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION; PRESENT IN CASE AT BAR.— We will here review the factual conclusions of the CA which are contrary to those of the administrative tribunal. The conflict in findings is a first signal that a further review may be needed. This is so because, as we have long held in a number of cases, 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. Such that, while our well-entrenched holding is that this Court is not a trier of facts, we can go to the rule exceptions culled from jurisprudence on rule application, among such exception being that the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— Constructive dismissal is a derivative of dismissal without cause; an involuntary resignation, nay, a dismissal in disguise. It occurs when there is a **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.

3. POLITICAL LAW; LABOR; SECURITY OF TENURE; THE ENTITLEMENT OF WORKERS THERETO IS CORRELATIVE TO THE RIGHT OF ENTERPRISES TO REASONABLE RETURNS ON INVESTMENTS.— [D]ismissal without cause is prohibited because of the Constitutional security of tenure of workers. x x x The Labor Code describes as basic policy the worker's security of tenure. x x x It should be remembered, however, that the entitlement of workers to security of tenure is correlative to the right of enterprises to reasonable returns on investments. The rights are measured each in relation to the other. x x x [T]he Constitution mandates that "all workers shall be entitled to security of tenure" and commands at the same time in the same way, that the State shall recognize the right of enterprises to reasonable returns on investments, and to expansion and growth. Such that, in this jurisdiction, we recognize that management has a wide latitude to regulate, according to his own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Managerial prerogatives, on the other hand, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. Simply put, security of tenure from which springs the concept of constructive dismissal is not an absolute right. It cannot be pleaded to avoid the transfer or assignment of employees according to the requirements of the employer's business. Such transfer or assignment becomes objectionable only when it is not for "reasonable returns on investments," and for "expansion and growth" which are constitutionally recognized employer's rights, but is sought merely as a convenient cover for oppression. No such thing transpired in the instant case.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; A CRUCIAL ELEMENT IN A FINDING THEREOF IS A CESSATION OF EMPLOYMENT RELATIONS BETWEEN THE PARTIES.— *The University of the Immaculate Concepcion v. National Labor Relations*

Commission iterated that a crucial element in a finding of constructive dismissal is a cessation of employment relations between the parties. A claim of involuntary resignation or being left with no choice but to quit presupposes an employee actually quitting or resigning. But not all respondents quit: Domingo stayed on with Unilab until his retirement while Remigio, and even complainant Cortez, although they eventually settled with Unilab, never resigned. Plainly, respondents Domingo and Remigio, even Cortez, cannot claim that their employment circumstances with Unilab were so unbearable and left them with no other option but to quit.

5. ID.; ID.; ID.; THE REQUIREMENTS FOR, AND THE BENEFITS FROM, THE SEVERAL AND DIFFERENT MANNERS OF TERMINATION OF EMPLOYMENT ARE DISTINCT AND DIFFERENT.— Retirement and redundancy, while both resulting in the cessation of employment relations, are two entirely different things. Significantly, the Labor Code divides Book 6 on Post Employment into two titles: Title 1 on Termination of Employment and Title II on Retirement from the Service. Specifically, Article 283 of the Labor Code lists redundancy as an authorized cause for the employer to terminate an employee, while Article 287 thereof provides for the retirement from the service of an employee x x x. The requirements for, and the benefits from, the several and different manners of termination of employment are, naturally, also distinct and different. The employees cannot mix and match rights and obligations which are set and settled by law or agreement of the parties. This is particularly evident in this case where respondents demanded either the redundancy of their services in the face of the employees' continuing need for such services, or the benefits from redundancy upon their retirement or resignation. The demand cannot be honored.

APPEARANCES OF COUNSEL

Ochave & Escalona for petitioner.

Romulo B. Macalintal and *Verzosa Lauengco Aguas & Flor Law Offices* for respondents.

D E C I S I O N

PEREZ, *J.*:

We are confronted with a curious case of employees demanding the severance of their employment, insisting on the redundancy of their work and thereafter, when the demands went unheeded, crying constructive dismissal by the employer.

Assailed in this petition for review on *certiorari*[1] is the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 87502 which granted the petition for *certiorari*[3] filed by respondents Jaime Domingo, Anonuevo Remigio, Rodolfo Marcelo, Raul Norico and Eugenio Ozaraga and reversed the National Labor Relations Commission's (NLRC's) finding that there was no constructive dismissal in three (3) consolidated cases respectively docketed as NLRC NCR CASE NO. 00-08-06034-2002, NLRC NCR CASE NO. 00-10-08397-2002, and NLRC CASE NO. 00-10-08407-2002. The NLRC decision was an affirmance of the Labor Arbiter's dismissal of respondents' complaints for constructive dismissal against petitioner United Laboratories, Inc. (Unilab).[4]

The dispute, which resulted in the unusual resort by the employees to the principle of constructive dismissal, arose from the following facts:

Unilab is a prominent domestic corporation engaged in the manufacture, sale, marketing and distribution of pharmaceutical products.

Respondents Jaime Domingo, Anonuevo Remigio, Rodolfo Marcelo, Raul Norico and Eugenio Ozaraga were former employees of Unilab assigned to the Distribution Accounting

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

[2] Penned by Associate Justice Lucas P. Bersamin (now a Member of this Court) with then Presiding Justice Conrado M. Vasquez, Jr. (now retired) and Associate Justice Pampio A. Abarintos, concurring, *rollo*, pp. 70-90.

[3] Under Rule 65 of the Rules of Court.

[4] *Rollo,* pp. 100-112.

Department (DAD) servicing all the accounting requirements of Unilab's sixteen (16) provincial depots—fourteen (14) distribution centers and two (2) area offices—spread nationwide.

Sometime in 2001, under a Physical Distribution Master Plan (PDMP), Unilab consolidated its finished goods inventories and logistics activities (warehousing, order processing and shipping) into one distribution center located in Metro Manila. As a result, Unilab closed down its sixteen (16) provincial depots. The job functions of the employees working thereat were declared redundant and their positions were abolished. Unilab gave the redundant employees a separation package of two and a half (2½) months' pay for every year of service.

In the succeeding year, on 7 January 2002, respondents wrote Unilab requesting for their separation or retirement from service under a separation package similar or equivalent to that of the redundant employees in the provincial depots. Respondents referred to this separation package as the *Bagong Sibol* Program.[5]

On 9 April 2002, respondents' counsel, on their behalf, wrote Unilab reiterating respondents' previous request to be separated from service under Unilab's purported *Bagong Sibol* Program. Particularly, respondents were keen on retiring and receiving 2½ months' pay for every year of service, and all the other benefits which Unilab had extended to the redundant employees in the provincial depots. The message and sentiment were that "they should likewise be retired under the same redundancy plan or retirement scheme [because] their positions are similarly situated [to] the 'retired employees' of [Unilab's] distribution centers under the principle that 'things that are alike should be treated alike' since they also hold the position of 'distribution personnel.'"[6]

In a letter dated 15 April 2002,[7] Unilab denied respondents' claims, pointing out that:

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[5] *Id.* at 458.

[6] *Id.* at 459-460.

[7] *Id.* at 461-467.

1. The PDMP is not a retirement program but a cost restructuring measure which resulted in the redundancy of the job functions of the employees working in the provincial depots;

2. Unilab has no *Bagong Sibol* Program, and "independent of the PDMP, there is no redundancy program or other severance scheme 'open [for] application' by any employee;"

3. The only existing and official early retirement program of Unilab is provided for in Article IV, Section 2, in relation to Article V, Section 2, of the United Retirement Plan (URP);

4. "At the time of the PDMP implementation, [respondents] were not assigned to the provincial depot centers performing provincial, [decentralized], distribution functions;" and

5. "At present, [respondents'] positions are not redundant, *i.e.*, superfluous, or in excess of what is reasonably demanded by the actual requirements of the business."

Quite relevantly, in the first half of 2002, Unilab implemented a Shared Services Policy (SSP) which consolidated and centralized all accounting functions of the UNILAB Group of Companies, its affiliates and subsidiaries, under the Finance Division of Unilab. Essentially, accounting services and requirements of the UNILAB Group of Companies, were merged into a single pool, and performed in Unilab's main office. After the closure of the provincial depots, respondents were transferred and re-assigned to the accounting work pool pursuant to the SSP.

Respondents, along with four (4) other co-employees, Rosemarie F. Cortez, Exequiel B. Sioson, Wilfredo M. Tumalad, and William C. Obedencia, filed three complaints for constructive dismissal, nonpayment/underpayment of separation pay, damages and attorney's fees against Unilab, which were eventually consolidated. As it turned out, the denial of their request for retirement covered by a higher retirement package rankled on respondents.

Interestingly, while their cases were pending before the NLRC, and thereafter while on petition for *certiorari* before

the CA, Cortez and respondents Domingo and Remigio remained working at UNILAB. In fact, the three remained employed at UNILAB until their actual separation therefrom: they received monies as full retirement benefits and as settlement of all their claims against Unilab.

On 14 July 2003, the Executive Labor Arbiter dismissed respondents' complaints for lack of merit:

> WHEREFORE, judgment is hereby rendered dismissing the instant complaints for utter lack of merit. [UNILAB], however, is directed to pay the Remaining Complainants, namely: Rosemarie F. Cortez, Jaime A. Domingo, Anonuevo S. Remigio and William Obedencia their separation pay equivalent to one and one-half (1&½) months' salary for every year of service.[8]

Dissatisfied, respondents, along with Cortez, appealed to the NLRC. However, on March 30, 2004, the NLRC denied the appeal and affirmed the Labor Arbiter's dismissal of the complaints.

Posthaste, respondents filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the decision of the NLRC. Meanwhile, after respondents' petition was submitted for resolution, Unilab, with respondents Remigio and Cortez, separately, arrived at an amicable settlement. Remigio, in particular, received the amount of Four Million Seventy Seven Thousand Eight Hundred Ninety Seven Pesos and Eighty-Seven Centavos (₱4,077,897.87) from Unilab as full settlement and payment of all his claims; he signed a Quitclaim[9] in favor of Unilab.

Not surprisingly, Unilab received a Motion for Leave of Court to Withdraw as Petitioner separately filed by Cortez and Remigio. The motions were similarly worded and filed by the same counsel on Cortez's and Remigio's behalf.

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[8] *Id.* at 147.

[9] *Id.* at 716.

The reversal by the CA of the NLRC resulted in the ruling that respondents were constructively dismissed. The CA disposed of the case, thus:

> WHEREFORE, the **PETITION FOR *CERTIORARI*** is **GRANTED**.
>
> The assailed **RESOLUTIONS DATED MARCH 30, 2004 AND AUGUST 31, 2004** of [the] **NATIONAL LABOR RELATIONS COMMISSION** are **NULLIFIED AND SET ASIDE**.
>
> [Petitioner] **UNITED LABORATORIES, INC.** is **ORDERED**:
>
> 1. To cause the immediate reinstatement of [respondents] **JAIME A. DOMINGO, EUGENIO P. OZARAGA, RODOLFO R. MARCELO, RAUL C. NORICO,** and **ANONUEVO S. REMIGIO** to their former positions or to substantially equivalent positions without loss of seniority rights and other benefits;
>
> 2. If reinstatement is no longer possible, to pay **JAIME A. DOMINGO, EUGENIO P. OZARAGA, RODOLFO R. MARCELO, RAUL C. NORICO** and **ANONUEVO S. REMIGIO** their separation pay, the amount of which shall be computed on the basis of the *United Laboratories, Inc. Computation of Separation Benefit*;
>
> 3. To pay full backwages to **JAIME A. DOMINGO**, **EUGENIO P. OZARAGA, RODOLFO R. MARCELO, RAUL C. NORICO** and **ANONUEVO S. REMIGIO,** computed from the time of the abolition of [Unilab's] Distribution Accounting Department up to the finality of this Decision without qualification or deduction;
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> 4. To pay 10% of the total award as attorney's fees.
>
> Costs of suit to be paid the [petitioner] (*sic*).[10]

Oddly, despite a motion to withdraw as petitioner signed by Remigio's counsel, the CA did not drop him as petitioner.

Unilab filed separate motions: a Motion for Reconsideration dated July 2, 2008 and a Motion for Inhibition dated July 7, 2008, both pointing out that Remigio should have been dropped as petitioner in CA-G.R. SP No. 87502 given his motion to

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[10] *Id.* at 88-89.

withdraw as petitioner. Naturally, Unilab likewise alleged that the CA decision is contrary to law and not supported by the evidence.

In a Resolution dated 28 January 2009, the CA promptly dismissed Unilab's motions:

> EXCEPT FOR THE FIRST GROUND, [PETITIONER] APPARENTLY REITERATE[S] MATTERS ALREADY ADDRESSED AND PASSED UPON IN THE DECISION DATED JUNE 16, 2008. AS SUCH, WE REJECT THEM AND REITERATE THE DECISION.
>
> ANENT THE FIRST GROUND, WE HAVE NO RECORD OF THE SO-CALLED *MOTION FOR LEAVE TO WITHDRAW AS PETITIONER* SUPPOSEDLY FILED BY ANONUEVO S. REMIGIO. THE FIRST TIME WE ARE INFORMED OF THE MOTION IS *VIA* THE *MOTION FOR RECONSIDERATION*. FOR ALL INTENTS AND PURPOSES, THEREFORE, THE FIRST GROUND OF THE *MOTION FOR RECONSIDERATION* IS UNWARRANTED AND SHOULD BE DENIED FOR THAT REASON.
>
> II
>
> THE *MOTION FOR INHIBITION*, BEING APPARENTLY WITHOUT FACTUAL AND LEGAL BASES AS NOW INDICATED, IS DENIED FOR LACK OF MERIT.[11]

Hence, this petition for review on *certiorari* positing the following issues:

> **I.**
>
> **THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT INCLUDED REMIGIO IN THE DECISION EVEN IF HIS MOTION TO WITHDRAW AS A PARTY (WITH ABANDONMENT OF CLAIMS AGAINST PETITIONER) AND HIS QUITCLAIM HAVE BEEN PRESENTED BEFORE IT.**
>
> **II.**
>
> **THE COURT OF APPEALS' REVERSAL OF THE DECISION OF BOTH THE NLRC AND THE LABOR ARBITER ON THE**

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[11] *Id.* at 92-94.

MATTER OF RESPONDENTS' ALLEGED CONSTRUCTIVE DISMISSAL WAS ARBITRARY AND RUNS COUNTER TO WELL-SETTLED JURISPRUDENCE.

III.

THE COURT OF APPEALS' REVERSAL OF THE DECISION OF BOTH THE NLRC AND THE LABOR ARBITER ON THE MATTER OF WHETHER RESPONDENTS NORICO, MARCELO AND OZARAGA WERE FORCED TO RESIGN WAS HIGHLY SPECULATIVE AND RUNS COUNTER TO WELL-SETTLED JURISPRUDENCE.

IV.

THE COURT OF APPEALS' DIRECTIVE FOR [UNILAB] TO PAY RESPONDENTS SEPARATION PAY IN THE SAME WAY IT PAID ITS REDUNDATED EMPLOYEES HAS UTTERLY NO LEGAL BASIS.

V.

THE COURT OF APPEALS' RULING THAT RESPONDENTS ARE ENTITLED TO BOTH SEPARATION PAY AND RETIREMENT PAY NOTWITHSTANDING THE PROVISIONS OF [UNILAB'S] RETIREMENT PLAN TO THE CONTRARY IS A DIRECT VIOLATION OF WELL-SETTLED JURISPRUDENCE ON THE MATTER. IRONICALLY, [UNILAB'S] RETIREMENT PLAN IS THE VERY SAME PLAN WHICH THIS HONORABLE COURT EARLIER SUSTAINED AS VALID.[12]

Respondents filed two Comments dated 20 May 2009[13] and June 8, 2009,[14] respectively, signed by two different counsels. In the expanded Comment dated 8 June 2009, one of respondents' counsel, Romulo Macalintal, manifested that Remigio has executed an Affidavit declaring under oath that he did execute a quitclaim in favor of Unilab and no longer intends to pursue his case against it. Albeit belatedly, Atty.

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[12] *Id.* at 25-26.

[13] *Id.* at 784-789.

[14] *Id.* at 791-808.

Macalintal clarified that the Comment he has filed is only for respondents Domingo, Marcelo, Norico and Ozaraga.

On 13 August 2009, a different counsel for respondents filed a Manifestation with Motion to Substitute a Party[15] informing the Court of the death of respondent Domingo and the substitution of Domingo's wife, Carmencita Punzalan Domingo, as respondent in this case.

Preliminarily, regarding the CA's refusal to drop Remigio as petitioner and its categorical declaration of the inexistence of a Motion for Leave to Withdraw as Petitioner filed by Remigio's counsel, we have checked the records and found that one of respondents' counsels, Atty. Alexander Versoza, on behalf of Remigio, indeed filed a Motion for Leave to Withdraw as Petitioner with the CA.[16] In fact, attached to the motion in question is a Quitclaim executed by Remigio in favor of Unilab, which Remigio does not disavow. Thus, the CA was mistaken in not dropping Remigio as petitioner contrary to his motion.

The disingenuousness of Remigio's counsel is not lost on this Court. We note that this peripheral issue could have been easily settled if respondents' counsel, Atty. Versoza, forthwith acknowledged the existence of this Motion for Leave to Withdraw as Petitioner he had filed before the CA and had served on Unilab. We likewise note that Atty. Macalintal who has been co-counsel from the time of the filing of the complaints before the NLRC, only belatedly and reluctantly admitted that Remigio has signed a Quitclaim in favor of Unilab. By that time, the issue had reached us, unnecessarily.

Respondents' counsels ought to be reacquainted with Canon 10 of the Code of Professional Responsibility: **A lawyer owes candor, fairness and good faith to the Court**. Specifically, Rule 10.01: **A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice**.

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[15] *Id.* at 813-819.

[16] See Annexes "Q", "R" and "S" of the Petition, *rollo*, pp. 773-775.

We will here review the factual conclusions of the CA which are contrary to those of the administrative tribunal. The conflict in findings is a first signal that a further review may be needed. This is so because, as we have long held in a number of cases, 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.[17] Such that, while our well-entrenched holding is that this Court is not a trier of facts,[18] we can go to the rule exceptions culled from jurisprudence on rule application, among such exception being that the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[19]

We so reach a conclusion in this case different from that of the appellate court.

Two facts relevant to the issues at hand were not given enough deserved importance by the CA:

1. The Physical Distribution Master Plan (PDMP) of Unilab whereby it consolidated the warehousing and distribution of the finished goods of the sixteen (16) provincial centers into one distribution center in Metro Manila; and

2. The Shared Services Policy (SSP) which centralized all accounting services of Unilab into one pool at its main office.

These plan and policy had company wide application and effect. As earlier pointed out, the PDMP resulted in the closure of sixteen (16) provincial depots while the SSP consolidated under the Financial Division of Unilab all the accounting services in the UNILAB group of companies, affiliates and subsidiaries.

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[17] *Benguet Electric Cooperative v. Fianza*, 468 Phil. 980, 993 (2004).

[18] *Merck Sharp & Dohme v. Robles*, G.R. No. 176506, 25 November 2009, 605 SCRA 488, 494.

[19] *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division),* G.R. No. 153192, 30 January 2009, 577 SCRA 280, 292.

Quite plainly, while the plan and policy resulted in the personnel movement that included respondents, they were not conceptualized and implemented by Unilab for the sole purpose of easing the respondents out of the company's employ, or as the CA underscored, to decrease the "merit rating" of respondents. The CA did not dispute the uniform findings of the Labor Arbiter and the NLRC that the PDMP was a "cost restructuring strategy program" and that the SSP was a "recognized management prerogative." Indeed, the legitimacy of Unilab's plan and policy was not questioned by the respondents. It was the implementation of the management projects that respondents complained about. They wanted to avail of the separation package for employees declared redundant because of the PDMP. They refused their transfer to the centralized Financial Division as planned under the SSP. When they were not included among those considered as redundant employees, they wanted their transfer to the Financial Division declared as "constructive dismissal," and Unilab pronounced liable for damages and attorney's fees, aside from non-payment of separation pay.

The primary facts of respondents' employment are enough to support the submission of Unilab that the CA was wrong in reversing the NLRC's conclusion that there was no "constructive dismissal." Respondents were accountants or were performing accounting functions all assigned to the Distribution Accounting Department (DAD) servicing the accounting requirements of distribution centers such as Unilab's sixteen (16) provincial depots. The closing of the provincial depots did not result in the abolition of respondents' position as accountants. While they had assignments pertaining to the provincial depots, they did not perform goods distribution or warehousing functions. They were accountants and their work as such was appropriately covered by the SSP that transferred all accounting functions to the Finance Division of Unilab.

The concept of constructive dismissal is inapplicable to respondents. Constructive dismissal is a derivative of dismissal without cause; an involuntary resignation, nay, a dismissal in

disguise.[20] It occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[21]

In turn, dismissal without cause is prohibited because of the Constitutional security of tenure of workers.

Thus, it is stated in Article XIII, Section 3 of the Constitution that:

> xxx [Workers] shall be entitled to security of tenure, humane conditions of work, and a living wage. xxx

The Labor Code describes as basic policy the worker's security of tenure. Thus:

> **ART. 3. Declaration of basic policy** – The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between worker and employers. **The State shall assure the rights of workers** to self-organization, collective bargaining, **security of tenure**, and humane conditions of work.
>
> **ART. 279. Security of Tenure**. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

It should be remembered, however, that the entitlement of workers to security of tenure is correlative to the right of enterprises

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[20] *CRC Agricultural Trading v. National Labor Relations Commission*, G.R. No. 177664, 23 December 2009, 609 SCRA 138, 149.

[21] *Supra* note 18.

to reasonable returns on investments.[22] The rights are measured each in relation to the other.

In one section under the same title of Article XIII, the Constitution mandates that "all workers shall be entitled to security of tenure" and commands at the same time in the same way, that the State shall recognize the right of enterprises to reasonable returns on investments, and to expansion and growth. Such that, in this jurisdiction, we recognize that management has a wide latitude to regulate, according to his own discretion and judgment, all aspects of employment, including the freedom to transfer and reassign employees according to the requirements of its business. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[23] Managerial prerogatives, on the other hand, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[24]

Simply put, security of tenure from which springs the concept of constructive dismissal is not an absolute right. It cannot be pleaded to avoid the transfer or assignment of employees according to the requirements of the employer's business. Such transfer or assignment becomes objectionable only when it is not for "reasonable returns on investments," and for "expansion and growth" which are constitutionally recognized employer's rights, but is sought merely as a convenient cover for oppression. No such thing transpired in the instant case. We cite with favor the uniform ruling of the NLRC and the labor arbiter:

It is not disputed that Unilab instituted a cost restructuring strategy program called the Physical Distribution Master Plan

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[22] Article XIII, Sec. 3, paragraph 4 of the Constitution.

[23] *Philippine Japan Active Carbon Corporation v. National Labor Relations Commission*, 253 Phil. 149, 153 (1989).

[24] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, 11 February 2008, 544 SCRA 279, 290.

(PDMP) which resulted in the closure of [Unilab's] provincial depots nationwide sometime in March 2002. As a necessary consequence of the closure of [Unilab's] provincial depots, the positions affected were became redundant and were declared to be so. Thus, the personnel affected by the redundancy were separated from the service and paid a generous separation pay, *i.e.*, 2.5 months' pay for every year of service.

It is likewise not disputed that complainants Cortez, [respondents] Domingo, Marcelo, Norico, Ozaraga, and Remigio were all accountants and/or performing accounting functions who, with the sole exception of complainant Cortez and prior to the implementation of the PDMP, were all assigned to the Distribution Division. Also not disputed is the fact that [Unilab] came up with its Shared Services Policy where accounting services within the Unilab group of companies were pooled and consolidated under [Unilab's] Finance Division.

According to [respondents] Domingo, Remigio, Norico, Marcelo and Ozaraga, they were in effect constructively dismissed after the closure of [Unilab's] provincial depots. They claim that the job or work subsequently assigned to them were either menial or servile or they were never given new assignments at all. This Office is not convinced.

Records will reveal that [respondents] Domingo, Remigio, Norico, Marcelo and Ozaraga as accountants or employees performing accounting functions were affected by the Shared Services Policy of the Company. Thus, after the provincial depots were closed down, they were reassigned to [Unilab's] Finance Division to service the accounting requirement of the Unilab group of companies. Thereafter, [respondents] Norico, Marcelo and Ozaraga voluntarily resigned while respondents Domingo and Remigio remained with [Unilab].

This Office notes that [respondents] were transferred to the Finance Division on account of the Shared Services Policy of [Unilab]. In *San Miguel v. NLRC*, it was held that the abolition of departments or positions in the company is one of the recognized management prerogatives. Likewise, in *Castillo v. NLRC*, the Supreme Court reiterated the long standing rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirements of its business.

There is therefore nothing irregular or illegal in the transfer of [respondents] to the Finance Division after [Unilab] came up with its Shared Services Policy.[25]

That the respondents were indeed not constructively dismissed is supported by substantial evidence.

First. The CA's ruling easily unravels because three (3) of the complainants before the NLRC, including herein respondents Domingo and Remigio, even while their petition for *certiorari* was pending before the CA, remained employed at UNILAB. In those instances, there was actually no dismissal to speak of.

Most recently, *The University of the Immaculate Concepcion v. National Labor Relations Commission*[26] iterated that a crucial element in a finding of constructive dismissal is a cessation of employment relations between the parties.

A claim of involuntary resignation or being left with no choice but to quit presupposes an employee actually quitting or resigning. But not all respondents quit: Domingo stayed on with Unilab until his retirement while Remigio, and even complainant Cortez, although they eventually settled with Unilab, never resigned.

Plainly, respondents Domingo and Remigio, even Cortez, cannot claim that their employment circumstances with Unilab were so unbearable and left them with no other option but to quit.

Second. As regards respondents Marcelo, Norico and Ozaraga, the ruling of the labor tribunals that the three voluntarily resigned and were not constructively dismissed is again, and also, supported by substantial evidence.

To substantiate its finding that Norico's, Marcelo's and Ozaraga's resignations were involuntary, the CA pointed out that Marcelo and Ozaraga had children who were still studying, and, obviously had "great need for continued employment."

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[25] *Rollo*, pp. 138-141.

[26] G.R. No. 181146, 26 January 2011.

Moreover, the CA finds incredulous respondents' reasons for resigning: Marcelo to venture into business and Ozaraga to pay off his mounting debt. For the CA, their resignations forego a steady income from continued employment and, therefore, inconsistent with a voluntary resignation.

The reasoning of the CA is specious and pure conjecture.

It is not unheard of that employees who have opted for early retirement have used the windfall therefrom to start their own business and to pay off their debts. The trade off with having a "steady income" and "continued employment" is to be their own boss or to turn over a new leaf, free from debt. We can likewise surmise, as the CA has so easily done, that Ozaraga would have been buried deeper in debt if he expected to pay it off with only his "steady income." In any event, the CA's vaguely drawn theory as to the impetus for respondents' resignations can be easily debunked by similarly plausible reasons. It is indeed apropos, to once more refer to the correlation between the workers' right to security of tenure and the right of enterprise to reasonable returns on investment. The right of enterprise in the case at bar was exercised by Unilab through the PDMP which resulted in the abolition of the provincial depots but did not erase the respondents' accounting functions that, in the same manner that the logistic activities at the provinces were centralized in Metro Manila, were consolidated under the Finance Division of Unilab under its SSP. Absent a showing that the PDMP and the SSP were illegal or meant to defeat respondents' security of tenure, we cannot uphold their proposition that they must, like those in the provincial distribution centers, also be considered redundant employees. Respondents, who are accounting employees, cannot refuse their assignment to the Finance Division. As we have delared on more than one occasion:

> Certainly, **the Court cannot accept the proposition that when an employee opposes his employer's decision to transfer him to another work place, there being no bad faith or underhanded motives on the part of either party, it is the employee's wishes that should be made to prevail.** On the basis of the qualifications, training and performance of the employee, the prerogative to

determine the place or station where he or she is best qualified to serve the interests of the company belongs to the employer.[27]

As a final point, the allegations of respondents and the factual findings of both the labor tribunals and the appellate court bring to the fore respondents obvious position that they have the option to claim redundancy as reason for severing their employment from Unilab.

From the start, respondents insisted that Unilab has unjustifiably refused to grant them the same separation package granted to the redundant employees in the provincial depots. Respondents demanded that this higher separation package be applied for their retirement as they are "similarly situated" with the redundant employees. Respondents wished for the cessation of their employment, specifying, however, their availment of retirement benefits equivalent to the separation package of the redundant employees. Effectively, respondents were exercising their right to terminate their employment, invoking a hodgepodge of provisions from the Unilab Retirement Plan, Unilab's purported *Bagong Sibol* Program, and the Labor Code.

Respondents are laboring under a cloud of confusion. Retirement and redundancy, while both resulting in the cessation of employment relations, are two entirely different things. Significantly, the Labor Code divides Book 6 on Post Employment into two titles: Title 1 on Termination of Employment and Title II on Retirement from the Service. Specifically, Article 283 of the Labor Code lists redundancy as an authorized cause for the employer to terminate an employee, while Article 287 thereof provides for the retirement from the service of an employee, thus:

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 losses or the closing or cessation

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[27] *Supra* note 17 at 997 citing *Philippine Telegraph and Telephone Corporation v. Laplana*, G.R. No. 76645, 23 July 1991, 199 SCRA 485.

of the operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one month pay or to at least one month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

ART. 287. Retirement. – Any employee retirement may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employees shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining, and other agreement: Provided, however, the employee's retirement benefits under any collective bargaining and other agreement shall not be less than those provided herein.

In the absence of retirement plan or agreement providing for retirement benefits of employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service , a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

x x x x x x x x x

x x x x x x x x x

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

Petitioner has an elaborate Retirement Plan that lists all possible benefits for retiring and resigning employees, and, significantly to this case, a separate article on involuntary separation due to redundancy.[28]

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[28] Article IV

NORMAL RETIREMENT

Section 1.

A member shall be retired on the 30th day after attaining age 60 and shall be entitled to the full normal retirement benefits as provided for in succeeding Article V of this Retirement Plan.

Section 2.

A member may elect to retire upon attaining age 50, provided he has at least 10 years of service, and shall be entitled to the early retirement benefits as provided for in the succeeding Article V, Section 2 of this Retirement Plan.

Article V

NORMAL RETIREMENT BENEFITS

Section 1.

Upon attainment of the normal retirement date as in Article IV, Section 1, a Member shall be entitled to the normal retirement benefits as follows:

A. From Trust Fund A

A lump sum of one and one-half month's pay per year of service based on the Member's last or terminal basic monthly salary (as amended, December 16, 1992).

B. From Trust Fund B

The member's total contributions and accumulated income less any loss.

Section 2.

Upon attainment of the early retirement date as in Article IV, Section 2, a Member shall be entitled to the early retirement benefits as follows:

A. From Trust Fund A

A lump sum of one and one-half months' pay per year of service based on the member's last or terminal basic monthly salary (as amended, December 16, 1992) reduced in accordance with Article VIII of this Retirement Plan.

However, if a member should avail of early retirement after reaching the age of 55 regardless of the number of years of service, he shall be entitled to a lump sum of one and one-half months' pay per year of service based on the member's last or terminal basic monthly salary.

Section A. From Trust Fund B

The Member's total contributions and accumulated income less any loss.

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Article VIII

RESIGNATION BENEFITS

Section 1.

If a member (Manager or Non-Manager) should resign before reaching age 60, he shall be entitled to the following benefits:

A. From Trust Fund A

A lump sum of one and one-half months' pay per year of service based on the member's last or terminal basic monthly salary (as amended, December 16, 1992) reduced as follows:

Years of Continuous Service	Percentage of Normal Retirement Benefit
less than 5	none
5 to less than 6	25%
6 to less than 7	30%
7 to less than 8	35%
8 to less than 9	40%
9 to less than 10	45%
10 to less than 11	50%
11 to less than 12	55%
12 to less than 13	60%
13 to less than 14	65%
14 to less than 15	70%
15 to less than 16	75%
16 to less than 17	80%
17 to less than 18	85%
18 to less than 19	90%
19 to less than 20	95%
20 or more	100%

However, if a member should resign after reaching the age of 55 regardless of the number of years of service, he shall be entitled to a lump sum of one and one-half months' pay per year of service based on the member's last or terminal basic monthly salary.

B. From Trust Fund B

The Member's total contributions and accumulated income less any loss.

The requirements for, and the benefits from, the several and different manners of termination of employment are, naturally, also distinct and different. The employees cannot mix and match rights and obligations which are set and settled by law or agreement of the parties. This is particularly evident in this case where respondents demanded either the redundancy of their services in the face of the employees' continuing need for such services, or the benefits from redundancy upon their retirement or resignation. The demand cannot be honored.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 87502 is *SET ASIDE*. The Resolution of the National Labor Relations Commission in NLRC NCR CASE NO. 00-08-06034-2002, NLRC NCR CASE NO. 00-10-08397-2002, and NLRC CASE NO. 00-10-08407-2002 is *REINSTATED*. No costs.

SO ORDERED.

Velasco, Jr.,[*] *Brion,*[**] *Sereno,* and *Reyes, JJ.,* concur.

Article IX

INVOLUNTARY SEPARATION

Section 1.

A member who is terminated beyond his control due to the installation of labor-saving devices or redundancy, retrenchment program initiated by the employer as a result of merger or to prevent losses or other similar causes, or where the Employee suffers from a disease and his continued employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the Employee concerned shall be entitled to the same benefits as provided for under Article VIII of this Plan or the New Labor Code or similar legislation, whichever is applicable. *Rollo,* p. 48.

[*] Per Special Order No. 1084 dated 13 September 2011.

[**] Per Special Order No. 1083 dated 13 September 2011.

THIRD DIVISION

[G.R. No. 194719. September 21, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODEL SINGSON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; MUST NOT ONLY COME FROM CREDIBLE LIPS BUT MUST BE CREDIBLE IN SUBSTANCE.— Testimonial evidence, to be believed, must not only come from credible lips but must be credible in substance. A story that defies reason and logic and above all runs against the grain of common experience cannot persuade. Here, the prosecution's account failed to pass these tests.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE EVIDENCE FAILED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED IN CASE AT BAR.— It seems, considering all the testimonies that what happened is that, since they were alone in the house, Rodel and MJ lost control and made love. When MJ's mother suddenly showed up and opened her daughter's room with a key, Rodel hid under the bed. But the suspicious mother, finding her daughter naked, looked for him under the bed. LK summoned her sister, the *barangay* chairman, her son and her brother-in-law, both *tanods* and seized Rodel. Asked if she preferred getting married to continuing her studies, MJ must have chosen the latter. And, to save face, her relatives who had political power made it look like Rodel raped her. Although the weight of jurisprudence is that the Court must respect the factual findings of the trial court and the CA, this case presents an exception. On close examination, the prosecution's evidence left much to be desired. With so many inconsistencies and incompatibilities with common experience, the Court is unable to see the unfiltered truth. To conclude, the evidence failed to overcome the constitutional presumption of innocence of the accused.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Lucky M. Damasen for appellant.

D E C I S I O N

ABAD, *J.*:

In this rape case, when the victim's mother got home and found her daughter's bedroom locked, she looked for the key, opened her daughter's bedroom with it, and found her naked in bed with the accused hiding underneath it.

The Facts and the Case

The Provincial Prosecutor of Cabarroguis, Quirino, charged the accused Rodel Singson with rape before the Regional Trial Court (RTC) of that province[1] in Criminal Case 1841.

MJ[2] testified that, through text messages by mobile phones, Rodel became her boyfriend and their relation lasted from January to September 2003. But they hardly saw each other after MJ studied in Manila. They met when MJ came home to Santiago for vacation in the summer of 2003. After a few months, however, she broke up with Rodel to concentrate on her studies.

In the evening of December 22, 2003 MJ and her mother, LK, attended the *simbang gabi* from 9:00 p.m. to 10:00 p.m. After the mass, LK wanted to join some church members to go caroling. Since MJ felt sleepy, she bade her mother leave to go home at about 11:30 p.m. On reaching home, MJ prepared to

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[1] Branch 31.

[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).

go to bed but someone knocked at their door. Thinking it was her mother, she opened it and, to her surprise, saw Rodel standing at the door.

Rodel said that he wanted to talk to MJ about renewing their relation. She was at first hesitant to entertain him because he appeared drunk but she eventually let him in. After talking with Rodel at the living room for about 45 minutes, MJ asked him to leave and he did. MJ then entered her room. But, suddenly, Rodel appeared and sprayed something on her face that made her feel weak and dizzy. Her vision also became blurred. After undressing her, Rodel touched her body in various parts. Eventually, he violated her. She could only cry until she lost consciousness.

MJ woke up to the screams of her brother who was gripping Rodel by the bedroom window. As it turned out, when LK came home at 2:00 a.m., she knocked at MJ's bedroom to check if she had gotten home safely but LK got no answer. Worried, LK used a key to open the door and she saw MJ naked and unconscious on the bed. Noticing unfamiliar clothes on the floor, LK became suspicious and looked around. When she checked under the bed, she saw Rodel there in his underwear. LK shouted for help, waking up her sister who happened to be the *barangay* chairman of their village. Some *barangay tanods* came. They moved MJ to another room and arrested Rodel. It was to her aunt that MJ told her story because the incident affected her mother deeply.

Rodel, on the other hand, insisted that he and MJ freely had sexual intercourse borne of their mutual affection. He did not rape her. But, declining to give credence to his defense, on November 26, 2007 the RTC found Rodel guilty of rape, sentenced him to life imprisonment, and ordered him to pay MJ ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.

On March 25, 2010 the Court of Appeals (CA) in CA-G.R. CR-H.C. 03161 affirmed the RTC decision, hence, this appeal.

The Issue Presented

The only issue presented in this case is whether or not Rodel raped MJ after spraying her with drugs that weakened her resistance and eventually rendered her unconscious.

The Ruling of the Court

One of the ways of committing rape, according to Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659,[3] is by having carnal knowledge of a woman when she has been deprived of reason or otherwise rendered unconscious. The prosecution claims that this was Rodel's crime.

But the Court doubts MJ's story. She testified that Rodel sprayed something on her face, causing her to feel weak and dizzy. Rodel then brought her into her room and took off her clothes. He kissed her neck and breasts and successfully ravished her. She said that she was unable to scream for help because she suddenly became unconscious when Rodel entered her. It was only when she heard her brother scream that she woke up.[4]

But, MJ's story is at variance with what she said in her December 23, 2003 affidavit[5] which she executed only hours after the incident. MJ there said that she was fully conscious during the time Rodel was raping her. Indeed, she described Rodel's pumping motion until he discharged into her. She even felt pain afterwards in her genitals and in the other parts of her body. MJ claimed that it was only after it was over that her eyes felt heavy and she lost consciousness. When the defense counsel confronted her with this inconsistency between her testimony and her affidavit, MJ could not offer an explanation.[6]

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[3] Entitled AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AND FOR OTHER PURPOSES.

[4] TSN, January 3, 2005, p. 5.

[5] Records, p. 2, Exhibit "C".

[6] *Supra* note 4, at 19.

The testimony of LK, MJ's mother, is just as dubious. She said that on entering her daughter's room, she saw MJ naked in bed. Seeing a man's pants on the floor, LK looked under the bed and saw Rodel hiding there. LK tried to rouse her daughter but she would not wake up, prompting LK to cry for help. When the *barangay* chairman and the *tanods* arrived, they pulled Rodel from under the bed. It was only then that MJ came around and told her mother that she had been raped.[7]

On cross-examination, however, LK's story of what happened followed a different sequence. Rather than try to wake her daughter up, she immediately screamed for help on seeing Rodel under the bed.[8] His son came, wrapped a blanket around MJ, and brought her still unconscious into another room.[9] And LK claimed that MJ woke up only after Rodel and the others had left.[10] LK also said that when she started screaming for help, MJ asked her, "What happen now to you?"[11] This shows that MJ regained consciousness at about the time her mother saw Rodel under the bed. Only afterwards did they move MJ out of the room.

LK's revised version somehow corroborates Rodel's story of what really happened. Rodel testified:

> Q: And what did you do when [MJ] instructed you to hide under her bed?
>
> A: I went under the bed, sir.[12]
>
> x x x x x x x x x
>
> A: Her brother peeped under the bed and he saw me so he pulled me and punched me, sir.[13]

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[7] TSN, October 11, 2004, pp. 6-8.

[8] *Id.* at 15.

[9] *Id.* at 20.

[10] *Id.* at 21.

[11] *Id.* at 18.

[12] TSN, November 9, 2005, p. 16.

[13] *Id.* at 17.

x x x x x x x x x

A: After that, they took [MJ] out of her room and brought her to another room, sir.

Q: Who took [MJ] to another room?
A: Her mother, sir.[14]

x x x x x x x x x

Q: How about you, what did they do to you, if any?
A: I was locked inside the room of [MJ], sir.

Q: What happened next?
A: I heard her mother talking to [MJ] whether she wants to continue her studies or she wants to get marry already.

Q: So, what happened after that?
A: No more, sir.[15]

Consider also that, although MJ claimed that Rodel sprayed her face with something that made her dizzy and weak, the prosecution never produced the spray can or bottle he used, which the *barangay* chairman or her *tanods* would have seized and kept as evidence if it existed. MJ's mother did not mention seeing it. Surely, Rodel who only had his underwear on when they arrested him could not have taken or concealed it. It seems doubtful, therefore, that there had been a spraying of some immobilizing drugs that morning.

Testimonial evidence, to be believed, must not only come from credible lips but must be credible in substance. A story that defies reason and logic and above all runs against the grain of common experience cannot persuade.[16] Here, the prosecution's account failed to pass these tests.

In her Affidavit, MJ said that Rodel sought to walk her home because he wanted to talk to her about fixing their relationship.[17]

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[14] *Id.*

[15] *Id.* at 18.

[16] *People v. Abino*, 423 Phil. 263, 276 (2001).

[17] *Supra* note 5.

In her testimony, however, MJ insisted that she had no conversation with Rodel prior to his showing up at her house near midnight of December 23, 2003. Thus:

Q: When was the first time you saw Rodel?
A: At the start of the caroling, sir.

Q: Did you talk to each other when you saw him?
A: No, sir.

Q: You just saw him?
A: Yes, sir.

Q: **So, that was the first and last time you have seen him while caroling?**
A: **Yes, sir.**

Q: You are very sure about that?
A: Yes, sir.[18] (Emphasis supplied)

When confronted by her contradictory statements, MJ had to admit that Rodel indeed talked to her about walking her home during the caroling. Thus:

A: Only that part- he volunteered to accompany me, when we were in the terrace he said he wanted to talk to me, sir.[19]

MJ also testified that she and Rodel never really had a deep relationship because they seldom saw each other and communicated only through text messages on their mobile phones.[20] Indeed, she broke up with him three months before December 2003. Yet, when Rodel came by their house at around midnight of December 23, she let him in when Rodel was visibly drunk. Then she let him stay for nearly an hour before asking him to leave.

And when Rodel left, MJ did not see him off at the door to lock it as he went out. Her excuse in not locking the door was

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[18] *Supra* note 4, at 15.

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

[20] *Id*. at 9.

that her mother was still out.[21] But, notably, when Rodel supposedly came and knocked at the door after she got home at 11:30 p.m., she had to let him in because it was already locked.[22]

MJ also said that she was no longer naked when she woke up and heard her brother screaming by the bedroom window, with Rodel in a tight grip.[23] If this were true, somebody must have slipped her clothes back on while she was out cold. This contradicts LK's testimony that her son had to wrap MJ in a blanket before taking her out of the room.

In insisting that she already had her dress on when she woke up, MJ was apparently steering clear of the fact that her mother had caught her naked, with Rodel in his underwear beneath the bed. MJ simply wanted to save her dignity at Rodel's expense. Apparently, what bothered MJ more was not the supposed rape but how she would explain the compromising situation in which her mother found her. Thus MJ testified:

Q: So, **when you recovered consciousness, what did you do?**
A: **I cried and cried, sir.**

Q: Why did you cry?

x x x x x x x x x

A: Because I could not accept what happened because my mother was asking me what happened, sir.[24]

x x x x x x x x x

Q: What did you tell your mother after you regained consciousness?
A: **I cried, sir.**

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[21] *Id.* at 23.

[22] *Id.* at 20-21.

[23] *Id.* at 6.

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

Q: What else did you tell your mother after you regained your consciousness?
A: **I was just crying, sir.**

Q: Did you not tell her that Rodel Singson sprayed something to your face?
A: I told her, sir.

Q: Immediately after you regained your consciousness, is that what you mean?
A: No, sir it took sometime.

Q: Why did you not tell immediately?
A: (No answer of the witness).

Court: **What is the span of time did you tell to your mother?**
A: **I do not know because I was crying and crying, sir.**[25] (Emphasis supplied)

MJ's above testimony also contradicts her mother's original claim that when her daughter woke up she immediately said that Rodel raped her.[26] Of course, LK had to remedy this contradiction by subsequently saying that MJ mentioned the supposed rape only when the *barangay* authorities showed up. Thus, LK said:

Q: Now, what did your daughter tell you?
A: Actually **my daughter narrated the incident to the *barangay* captain not to me** because during that time I can not speak and I was shocked, sir.

Q: So when did your daughter tell to the *barangay* captain what happened to her?
A: I can no longer remember because that whole afternoon I was very weak and my body can not go through it, sir.

Q: **So it was the *barangay* captain who told you that your daughter was raped because your daughter told to her about that?**
A: **Yes, sir.**[27]

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[25] *Id.* at 29.

[26] *Supra* note 7, at 8.

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

x x x x x x x x x

Q: So you did not know that morning that your daughter was raped?
A: I don't know, sir.

Q: **When did you talk first with your daughter after that incident?**
A: **Maybe two days after the incident because she herself was also crying. She was always in tears and we can not talk to her, sir.**[28] (Emphasis supplied)

The *barangay* chairman, MJ's aunt and LK's sister, testified that on her arrival the first thing she heard was that a man entered the house and that her sister found MJ naked. No one told the *barangay* chairman at that point that MJ had been raped. No wonder, the first thing the *barangay* chairman did was to go into the room and ask MJ if Rodel had taken her virginity from her. Thus:

Q: **Who told you that her daughter was raped?**
A: **My elder sister told me that a man entered their house but I was not yet informed that [MJ] was raped.**

Q: So, how did the mother of [MJ] tell you that her daughter [MJ] was raped?
A: She was the first one who saw [MJ] naked.

Q: That was told to you by her, is that correct?
A: Yes, sir.

x x x x x x x x x

Q: When did you ask [MJ] about that Madam Witness?
A: **After my elder sister told me that she saw [MJ] naked so I went to [MJ] to verify if her womanhood was taken**.[29]

x x x x x x x x x

Q: **Do you remember if [MJ] told you about what the accused did first that he sprayed something in the face of [MJ]?**

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[28] *Id.* at 23.

[29] TSN, January 17, 2005, pp. 14-15.

A: **No** sir because the **only thing I asked is that if he had taken her womanhood**.[30] (Emphasis supplied)

It is uncanny that even after so much time had passed, still no one told the *barangay* chairman right off when she arrived that MJ had been raped. It was MJ's nakedness in her room and Rodel's presence under the bed that preoccupied the *barangay* chairman and made her ask if MJ's virginity had been taken from her, which fact in itself did not amount to rape. How Rodel succeeded in taking that virginity—supposedly by spraying MJ with something that made her dizzy—apparently did not have relevance to the *barangay* chairman's line of inquiry.

The sequence of events that the prosecution tried to establish did not also make sense. The story is that MJ got home at about 11:30 p.m.[31] Rodel came around midnight and they talked for about 30 to 45 minutes. This means that Rodel left at 12:45 a.m. at the latest. Since he came right back into the house, this means that, if the prosecution evidence were to be believed, he raped MJ at about 12:45 a.m. Thus, at least one hour would have passed before MJ's mother, LK, came home at 2:00 a.m.[32] So what reason would Rodel have for staying around in his underwear after raping MJ? And, although the bedroom had a window through which Rodel could easily have escaped, he chose to dive under the bed. These circumstances indicate that Rodel did not believe he committed a crime. He hid simply to avoid exposing MJ to her mother's wrath.

It seems, considering all the testimonies that what happened is that, since they were alone in the house, Rodel and MJ lost control and made love. When MJ's mother suddenly showed up and opened her daughter's room with a key, Rodel hid under the bed. But the suspicious mother, finding her daughter naked, looked for him under the bed. LK summoned her sister, the

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[30] *Id.* at 17.

[31] *Supra* note 4, at 13.

[32] *Supra* note 7, at 6.

barangay chairman, her son and her brother-in-law, both *tanods* and seized Rodel. Asked if she preferred getting married to continuing her studies, MJ must have chosen the latter. And, to save face, her relatives who had political power made it look like Rodel raped her.

Although the weight of jurisprudence is that the Court must respect the factual findings of the trial court and the CA, this case presents an exception. On close examination, the prosecution's evidence left much to be desired. With so many inconsistencies and incompatibilities with common experience, the Court is unable to see the unfiltered truth. To conclude, the evidence failed to overcome the constitutional presumption of innocence of the accused.

WHEREFORE, the Court *GRANTS* the appeal, *SETS ASIDE* the decision of the Court of Appeals dated March 25, 2010 in CA-G.R. CR-HC 03161 as well as the decision of the Regional Trial Court of Cabarroguis, Quirino, Branch 31 in Criminal Case 1841, and *ACQUITS* the accused-appellant Rodel Singson of the crime charged on ground of reasonable doubt.

The Court orders his immediate *RELEASE* from custody unless he is being held for some other lawful cause and *ORDERS* the Director of the Bureau of Corrections to immediately implement this Decision and to inform the Court within five days from its receipt of the date appellant was actually released from confinement. Costs *de oficio*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[A.C. No. 6281. September 26, 2011]

VALENTIN C. MIRANDA, *complainant, vs.* **ATTY. MACARIO D. CARPIO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S RETAINING LIEN; WHEN RECOGNIZED.— An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) *unsatisfied claim for attorney's fees.* Further, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.

2. ID.; ID.; UNJUSTIFIED ACT OF WITHHOLDING THE CLIENT'S PROPERTY AND IMPOSING UNWARRANTED FEES IN EXCHANGE FOR THE RELEASE OF THE TITLE; PENALTY IN CASE AT BAR.— Respondent's unjustified act of holding on to complainant's title with the obvious aim of forcing complainant to agree to the amount of attorney's fees sought is an alarming abuse by respondent of the exercise of an attorney's retaining lien, which by no means is an absolute right, and cannot at all justify inordinate delay in the delivery of money and property to his client when due or upon demand. Atty. Carpio failed to live up to his duties as a lawyer by unlawfully withholding and failing to deliver the title of the complainant, despite repeated demands, in the guise of an alleged entitlement to additional professional fees. He has breached Rule 1.01 of Canon 1 and Rule 16.03 of Canon 16 of the Code of Professional Responsibility x x x. Respondent's inexcusable act of withholding the property belonging to his client and imposing unwarranted fees in exchange for the release of said title deserve the imposition of disciplinary sanction. Hence, the ruling of the IBP Board of Governors, adopting and approving with modification the report and recommendation of the IBP-CBD that respondent be suspended from the practice of law for a

period of six (6) months and that respondent be ordered to return the complainant's owner's duplicate of OCT No. 0-94 is hereby affirmed. However, the fifteen-day period from notice given to respondent within which to return the title should be modified and, instead, respondent should return the same immediately upon receipt of the Court's decision.

3. ID.; ID.; SHALL CHARGE ONLY FAIR AND REASONABLE FEES.— [I]n collecting from complainant exorbitant fees, respondent violated Canon 20 of the Code of Professional Responsibility, which mandates that "a lawyer shall charge only fair and reasonable fees." It is highly improper for a lawyer to impose additional professional fees upon his client which were never mentioned nor agreed upon at the time of the engagement of his services. At the outset, respondent should have informed the complainant of all fees or possible fees that he would charge before handling the case and not towards the near conclusion of the case. This is essential in order for the complainant to determine if he has the financial capacity to pay respondent before engaging his services.

4. ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; APPLIES IF A LAWYER IS EMPLOYED WITHOUT A PRICE AGREED UPON FOR HIS SERVICES.— "*Quantum meruit*, meaning 'as much as he deserved' is used as a basis for determining the lawyer's professional fees in the absence of a contract but recoverable by him from his client." The principle of *quantum meruit* applies if a lawyer is employed without a price agreed upon for his services. In such a case, he would be entitled to receive what he merits for his services, as much as he has earned. In the present case, the parties had already entered into an agreement as to the attorney's fees of the respondent, and thus, the principle of *quantum meruit* does not fully find application because the respondent is already compensated by such agreement.

5. ID.; ID.; MUST CONDUCT HIMSELF, ESPECIALLY IN HIS DEALINGS WITH HIS CLIENTS, WITH INTEGRITY IN A MANNER THAT IS BEYOND REPROACH.— The Court notes that respondent did not inform complainant that he will be the one to secure the owner's duplicate of the OCT from the RD and failed to immediately inform complainant that the title was already in his possession. Complainant, on April 3,

2000, went to the RD of Las Piñas City to get the owner's duplicate of OCT No. 0-94, only to be surprised that the said title had already been claimed by, and released to, respondent on March 29, 2000. A lawyer must conduct himself, especially in his dealings with his clients, with integrity in a manner that is beyond reproach. His relationship with his clients should be characterized by the highest degree of good faith and fairness. By keeping secret with the client his acquisition of the title, respondent was not fair in his dealing with his client. Respondent could have easily informed the complainant immediately of his receipt of the owner's duplicate of the OCT on March 29, 2000, in order to save his client the time and effort in going to the RD to get the title.

APPEARANCES OF COUNSEL

Christine P. Carpio for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a disbarment case against Atty. Macario D. Carpio filed by Valentin C. Miranda.[1]

The facts, as culled from the records, are as follows:

Complainant Valentin C. Miranda is one of the owners of a parcel of land consisting of 1,890 square meters located at Barangay Lupang Uno, Las Piñas, Metro Manila. In 1994, complainant initiated Land Registration Commission (LRC) Case No. M-226 for the registration of the aforesaid property. The case was filed before the Regional Trial Court of Las Piñas City, Branch 275. During the course of the proceedings, complainant engaged the services of respondent Atty. Carpio as counsel in the said case when his original counsel, Atty. Samuel Marquez, figured in a vehicular accident.

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[1] The case was initially referred by this Court to the Integrated Bar of the Philippines for investigation, report and recommendation and docketed as ADM. Case No. 6281; *rollo*, p. 36.

In complainant's Affidavit,[2] complainant and respondent agreed that complainant was to pay respondent Twenty Thousand Pesos (PhP20,000.00) as acceptance fee and Two Thousand Pesos (PhP2,000.00) as appearance fee. Complainant paid respondent the amounts due him, as evidenced by receipts duly signed by the latter. During the last hearing of the case, respondent demanded the additional amount of Ten Thousand Pesos (PhP10,000.00) for the preparation of a memorandum, which he said would further strengthen complainant's position in the case, plus twenty percent (20%) of the total area of the subject property as additional fees for his services.

Complainant did not accede to respondent's demand for it was contrary to their agreement. Moreover, complainant co-owned the subject property with his siblings, and he could not have agreed to the amount being demanded by respondent without the knowledge and approval of his co-heirs. As a result of complainant's refusal to satisfy respondent's demands, the latter became furious and their relationship became sore.

On January 12, 1998, a Decision was rendered in LRC Case No. M-226, granting the petition for registration, which Decision was declared final and executory in an Order dated June 5, 1998. On March 24, 2000, the Land Registration Authority (LRA) sent complainant a copy of the letter addressed to the Register of Deeds (RD) of Las Piñas City, which transmitted the decree of registration and the original and owner's duplicate of the title of the property.

On April 3, 2000, complainant went to the RD to get the owner's duplicate of the Original Certificate of Title (OCT) bearing No. 0-94. He was surprised to discover that the same had already been claimed by and released to respondent on March 29, 2000. On May 4, 2000, complainant talked to respondent on the phone and asked him to turn over the owner's duplicate of the OCT, which he had claimed without complainant's knowledge, consent and authority. Respondent insisted that complainant first pay him the PhP10,000.00 and the 20% share

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[2] *Rollo*, pp. 7-10.

in the property equivalent to 378 square meters, in exchange for which, respondent would deliver the owner's duplicate of the OCT. Once again, complainant refused the demand, for not having been agreed upon.

In a letter[3] dated May 24, 2000, complainant reiterated his demand for the return of the owner's duplicate of the OCT. On June 11, 2000, complainant made the same demand on respondent over the telephone. Respondent reiterated his previous demand and angrily told complainant to comply, and threatened to have the OCT cancelled if the latter refused to pay him.

On June 26, 2000, complainant learned that on April 6, 2000, respondent registered an adverse claim on the subject OCT wherein he claimed that the agreement on the payment of his legal services was 20% of the property and/or actual market value. To date, respondent has not returned the owner's duplicate of OCT No. 0-94 to complainant and his co-heirs despite repeated demands to effect the same.

In seeking the disbarment or the imposition of the appropriate penalty upon respondent, complainant invokes the following provisions of the Code of Professional Responsibility:

> Canon 20. A lawyer shall charge only fair and reasonable fees.
> Canon 16. A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
> Canon 16.03. A lawyer shall deliver the funds and properties of his client when due or upon demand. x x x

In defense of his actions, respondent relied on his alleged retaining lien over the owner's duplicate of OCT No. 0-94. Respondent admitted that he did not turn over to complainant the owner's duplicate of OCT No. 0-94 because of complainant's refusal, notwithstanding repeated demands, to complete payment of his agreed professional fee consisting of 20% of the total area of the property covered by the title, *i.e.*, 378 square meters out of 1,890 square meters, or its equivalent market value at the rate of PhP7,000.00 per square meter, thus,

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[3] *Id.* at 24.

yielding a sum of PhP2,646,000.00 for the entire 378-square-meter portion and that he was ready and willing to turn over the owner's duplicate of OCT No. 0-94, should complainant pay him completely the aforesaid professional fee.

Respondent admitted the receipt of the amount of PhP32,000.00, however, he alleged that the amount earlier paid to him will be deducted from the 20% of the current value of the subject lot. He alleged that the agreement was not reduced into writing, because the parties believed each other based on their mutual trust. He denied that he demanded the payment of PhP10,000.00 for the preparation of a memorandum, since he considered the same unnecessary.

In addition to the alleged agreement between him and complainant for the payment of the 20% professional fees, respondent invoked the principle of "*quantum meruit*" to justify the amount being demanded by him.

In its Report and Recommendation[4] dated June 9, 2005, the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) recommended that respondent be suspended from the practice of law for a period of six (6) months for unjustly withholding from complainant the owner's duplicate of OCT No. 0-94 in the exercise of his so-called attorney's lien. In Resolution No. XVII-2005-173,[5] dated December 17, 2005, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD.

Respondent filed a motion for reconsideration of the resolution of the IBP Board of Governors adopting the report and recommendation of the IBP-CBD. Pending the resolution of his motion for reconsideration, respondent filed a petition for review[6] with this Court. The Court, in a Resolution[7] dated

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[4] *Id.* at 312-323.

[5] *Id.* at 311.

[6] *Id.* at 273-281.

[7] *Id.* at 325.

August 16, 2006, directed that the case be remanded to the IBP for proper disposition, pursuant to this Court's resolution in *Noriel J. Ramientas v. Atty. Jocelyn P. Reyala*.[8]

In Notice of Resolution No. XVIII-2008-672, dated December 11, 2008, the IBP Board of Governors affirmed Resolution No. XVII-2005-173, dated December 17, 2005, with modification that respondent is ordered to return the complainant's owner's duplicate of OCT No. 0-94 within fifteen days from receipt of notice. Hence, the present petition.

The Court sustains the resolution of the IBP Board of Governors, which affirmed with modification the findings and recommendations of the IBP-CBD. Respondent's claim for his

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[8] A.C. No. 7055, July 31, 2006, 497 SCRA 130, 137-138. In that case, the Court held that:

> In concurrence with the above, now, therefore, BE IT RESOLVED, as it is hereby resolved, that in accordance with our ruling in *Halimao v. Villanueva*, pertinent provisions of Rule III of the Rules of Procedure of the Commission on Bar Discipline, as contained in the By-Laws of the IBP, particularly §1 and §2, are hereby deemed amended. Accordingly, §1 of said rules now reads as follows:
>
> SECTION. 1. *Pleadings.* - The only pleadings allowed are verified complaint, verified answer, verified position papers and *motion for reconsideration of a resolution.* (Emphasis supplied.)
>
> And in §2, a motion for reconsideration is, thus, removed from the purview of the class of prohibited pleadings.
>
> Further, the following guidelines shall be observed by the IBP in respect of disciplinary cases against lawyers:
>
> 1. The IBP must first afford a chance to either party to file a motion for reconsideration of the IBP resolution containing its findings and recommendations within fifteen (15) days from notice of receipt by the parties thereon;
>
> 2. If a motion for reconsideration has been timely filed by an aggrieved party, the IBP must first resolve the same prior to elevating to this Court the subject resolution together with the whole record of the case;
>
> x x x x x x x x x
>
> 5. For records of cases already transmitted to this Court where there exist pending motions for reconsideration filed in due time before the IBP, the latter is directed to withdraw from this Court the subject resolutions, together with the whole records of the cases, within 30 days from notice, and, thereafter, to act on said motions with reasonable dispatch.

unpaid professional fees that would legally give him the right to retain the property of his client until he receives what is allegedly due him has been paid has no basis and, thus, is invalid.

Section 37, Rule 138 of the Rules of Court specifically provides:

> Section 37. *Attorney's liens*. – An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements.

An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) *unsatisfied claim for attorney's fees*.[9] Further, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.[10]

In the present case, complainant claims that there is no such agreement for the payment of professional fee consisting of 20% of the total area of the subject property and submits that their agreement was only for the payment of the acceptance fee and the appearance fees.

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[9] *Ampil v. Hon. Agrava*, 145 Phil. 297, 303 (1970). (Emphasis supplied)

[10] *Id.* at 305-306.

As correctly found by the IBP-CBD, there was no proof of any agreement between the complainant and the respondent that the latter is entitled to an additional professional fee consisting of 20% of the total area covered by OCT No. 0-94. The agreement between the parties only shows that respondent will be paid the acceptance fee and the appearance fees, which the respondent has duly received. Clearly, there is no *unsatisfied claim for attorney's fees* that would entitle respondent to retain his client's property. Hence, respondent could not validly withhold the title of his client absence a clear and justifiable claim.

Respondent's unjustified act of holding on to complainant's title with the obvious aim of forcing complainant to agree to the amount of attorney's fees sought is an alarming abuse by respondent of the exercise of an attorney's retaining lien, which by no means is an absolute right, and cannot at all justify inordinate delay in the delivery of money and property to his client when due or upon demand.[11]

Atty. Carpio failed to live up to his duties as a lawyer by unlawfully withholding and failing to deliver the title of the complainant, despite repeated demands, in the guise of an alleged entitlement to additional professional fees. He has breached Rule 1.01 of Canon 1 and Rule 16.03 of Canon 16 of the Code of Professional Responsibility, which read:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESS.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to

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[11] *Lemoine v. Atty. Balon, Jr.*, 460 Phil. 702, 714 (2003).

satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Further, in collecting from complainant exorbitant fees, respondent violated Canon 20 of the Code of Professional Responsibility, which mandates that "a lawyer shall charge only fair and reasonable fees." It is highly improper for a lawyer to impose additional professional fees upon his client which were never mentioned nor agreed upon at the time of the engagement of his services. At the outset, respondent should have informed the complainant of all the fees or possible fees that he would charge before handling the case and not towards the near conclusion of the case. This is essential in order for the complainant to determine if he has the financial capacity to pay respondent before engaging his services.

Respondent's further submission that he is entitled to the payment of additional professional fees on the basis of the principle of *quantum meruit* has no merit. "*Quantum meruit*, meaning 'as much as he deserved' is used as a basis for determining the lawyer's professional fees in the absence of a contract but recoverable by him from his client."[12] The principle of *quantum meruit* applies if a lawyer is employed without a price agreed upon for his services. In such a case, he would be entitled to receive what he merits for his services, as much as he has earned.[13] In the present case, the parties had already entered into an agreement as to the attorney's fees of the respondent, and thus, the principle of *quantum meruit* does not fully find application because the respondent is already compensated by such agreement.

The Court notes that respondent did not inform complainant that he will be the one to secure the owner's duplicate of the

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[12] *Rilloroza v. Eastern Telecommunications Phils., Inc.*, 369 Phil. 1, 11 (1999).

[13] *Lorenzo v. Court of Appeals*, G.R. No. 85383, August 30, 1990, 189 SCRA 260, 264.

OCT from the RD and failed to immediately inform complainant that the title was already in his possession. Complainant, on April 3, 2000, went to the RD of Las Piñas City to get the owner's duplicate of OCT No. 0-94, only to be surprised that the said title had already been claimed by, and released to, respondent on March 29, 2000. A lawyer must conduct himself, especially in his dealings with his clients, with integrity in a manner that is beyond reproach. His relationship with his clients should be characterized by the highest degree of good faith and fairness.[14] By keeping secret with the client his acquisition of the title, respondent was not fair in his dealing with his client. Respondent could have easily informed the complainant immediately of his receipt of the owner's duplicate of the OCT on March 29, 2000, in order to save his client the time and effort in going to the RD to get the title.

Respondent's inexcusable act of withholding the property belonging to his client and imposing unwarranted fees in exchange for the release of said title deserve the imposition of disciplinary sanction. Hence, the ruling of the IBP Board of Governors, adopting and approving with modification the report and recommendation of the IBP-CBD that respondent be suspended from the practice of law for a period of six (6) months and that respondent be ordered to return the complainant's owner's duplicate of OCT No. 0-94 is hereby affirmed. However, the fifteen-day period from notice given to respondent within which to return the title should be modified and, instead, respondent should return the same immediately upon receipt of the Court's decision.

WHEREFORE, Atty. Macario D. Carpio is *SUSPENDED* from the practice of law for a period of six (6) months, effective upon receipt of this Decision. He is ordered to *RETURN* to the complainant the owner's duplicate of OCT No. 0-94 immediately upon receipt of this decision. He is *WARNED* that a repetition of the same or similar act shall be dealt with more severely.

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[14] *Schulz v. Atty. Flores*, 462 Phil. 601, 613 (2003).

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Macario D. Carpio as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED.

Abad, Perez,[*] *Mendoza,* and *Perlas-Bernabe, JJ.,* concur.

[*] Designated additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1102 dated September 21, 2011.

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Illegal dismissal — Non-renewal of the referee's contract does not constitute illegal dismissal. (Bernarte *vs*. Phil. Basketball Association [PBA], G.R. No. 192084, Sept. 14, 2011) p. 384

Serious misconduct — For misconduct or improper behavior to be a just cause for dismissal, the following must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer. (Nissan Motors Phils., Inc. *vs*. Angelo, G.R. No. 164181, Sept. 14, 2011) p. 150

Willful disobedience — Order or instruction disobeyed must be: (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge. (Nissan Motors Phils., Inc. *vs*. Angelo, G.R. No. 164181, Sept. 14, 2011) p. 150

— The essence of an action for reconveyance is that the certificate of title is respected as incontrovertible. *(Id.)*

REDEMPTION

Legal redemption — If the intent of the law has been to include verbal notice or any other means of information as sufficient to give the effect of notice, there would have been no necessity or reason to specify in the article that said notice be in writing. (Barcellano *vs.*Banas, G.R. No. 165287, Sept. 14, 2011) p. 177

— Without a written notice, the period of thirty days within which the right of legal redemption may be exercised, does not start. *(Id.)*

RES JUDICATA

Doctrine of — Elements are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. (PCGG *vs*. Sandiganbayan [2nd Div.], G.R. No. 152500, Sept. 14, 2011) p. 106

(Chu *vs*. Sps. Fernando and Trinidad Cunanan, G.R. No. 156185, Sept. 12, 2011) p. 12

— Means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. *(Id.)*

RULES OF PROCEDURE

Liberal application/construction — Rules on verification and certification of non-forum shopping, relaxed in case at bar. (Carbonilla *vs*. Board of Airlines Representatives, G.R. No. 193247, Sept. 14, 2011) p. 413

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