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FROM

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SUPREME COURT
MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 140528. December 7, 2011]

MARIA TORBELA, represented by her heirs, namely: EULOGIO TOSINO, husband and children: CLARO, MAXIMINO, CORNELIO, OLIVIA and CALIXTA, all surnamed TOSINO, APOLONIA TOSINO *VDA. DE* RAMIREZ and JULITA TOSINO DEAN; PEDRO TORBELA, represented by his heirs, namely: JOSE and DIONISIO, both surnamed TORBELA; EUFROSINA TORBELA ROSARIO, represented by her heirs, namely: ESTEBAN T. ROSARIO, MANUEL T. ROSARIO, ROMULO T. ROSARIO and ANDREA ROSARIO-HADUCA; LEONILA TORBELA TAMIN; FERNANDO TORBELA, represented by his heirs, namely: SERGIO T. TORBELA, EUTROPIA T. VELASCO, PILAR T. ZULUETA, CANDIDO T. TORBELA, FLORENTINA T. TORBELA and PANTALEON T. TORBELA; DOLORES TORBELA TABLADA; LEONORA TORBELA AGUSTIN, represented by her heirs, namely: PATRICIO, SEGUNDO, CONSUELO and FELIX, all surnamed AGUSTIN; and SEVERINA TORBELA ILDEFONSO, *petitioners, vs.* **SPOUSES ANDRES T. ROSARIO and LENA DUQUE-ROSARIO and BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondents.*

[G.R. No. 140553. December 7, 2011]

LENA DUQUE-ROSARIO, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; REVIEW OF FINDINGS OF FACT BY THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS, WARRANTED; EXCEPTIONS TO THE RULE ON FACTUAL FINDINGS OF THE TRIAL AND APPELLATE COURTS ARE EXTANT IN CASE AT BAR.— A disquisition of the issues raised and/or errors assigned in the Petitions at bar unavoidably requires a re-evaluation of the facts and evidence presented by the parties in the court *a quo*. In *Republic v. Heirs of Julia Ramos*, the Court summed up the rules governing the power of review of the Court: Ordinarily, this Court will not review, much less reverse, the factual findings of the Court of Appeals, especially where such findings coincide with those of the trial court. The findings of facts of the Court of Appeals are, as a general rule, conclusive and binding upon this Court, since this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case. The above rule, however, is subject to a number of exceptions, such as (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises, or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on

the absence of evidence and are contradicted by the evidence on record. As the succeeding discussion will bear out, the first, fourth, and ninth exceptions are extant in these case.

2. POLITICAL LAW; LOCAL GOVERNMENT CODE; *BARANGAY* CONCILIATION WAS NOT A PRE-REQUISITE TO THE INSTITUTION OF CIVIL CASE NO. U-4359; THE ORIGINAL PARTIES DO NOT RESIDE IN THE SAME *BARANGAY*, OR IN DIFFERENT *BARANGAYS* WITHIN THE SAME CITIES OR MUNICIPALITIES BUT ARE ADJOINING EACH OTHER.— The original parties in Civil Case No. U-4359 (the Torbela siblings and the spouses Rosario) do not reside in the same *barangay*, or in different *barangays* within the same city or municipality, or in different *barangays* of different cities or municipalities but are adjoining each other. Some of them reside outside Pangasinan and even outside of the country altogether. The Torbela siblings reside separately in Barangay Macalong, Urdaneta, Pangasinan; Barangay Consolacion, Urdaneta, Pangasinan; Pangil, Laguna; Chicago, United States of America; and Canada. The spouses Rosario are residents of Calle Garcia, Poblacion, Urdaneta, Pangasinan. Resultantly, the Lupon had no jurisdiction over the dispute and *barangay* conciliation was not a pre-condition for the filing of Civil Case No. U-4359.

3. CIVIL LAW; LAND REGISTRATION; REGISTRATION DOES NOT VEST TITLE; IT IS MERELY THE EVIDENCE OF SUCH TITLE.— Among the notable evidence presented by the Torbela siblings is the testimony of Atty. Lorenza Alcantara (Atty. Alcantara), who had no apparent personal interest in the present case. Atty. Alcantara, when she was still a boarder at the house of Eufrosina Torbela Rosario (Dr. Rosario's mother), was consulted by the Torbela siblings as regards the extrajudicial partition of Lot No. 356-A. She also witnessed the execution of the two Deeds of Absolute Quitclaim by the Torbela siblings and Dr. Rosario. In contrast, Dr. Rosario presented TCT No. 52751, issued in his name, to prove his purported title to Lot No. 356-A. In *Lee Tek Sheng v. Court of Appeals*, the Court made a clear distinction between title and the certificate of title: The certificate referred to is that document issued by the Register of Deeds known as the Transfer Certificate of Title (TCT). By title, the law refers to ownership which is represented by that document. Petitioner apparently confuses certificate with title. Placing a parcel of land under the mantle of the

Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title. The TCT is only the best proof of ownership of a piece of land. Besides, the certificate cannot always be considered as conclusive evidence of ownership. **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.** To repeat, registration is not the equivalent of title, but is only the best evidence thereof. **Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.** x x x. Registration does not vest title; it is merely the evidence of such title. Land registration laws do not give the holder any better title than what he actually has. Consequently, Dr. Rosario must still prove herein his acquisition of title to Lot No. 356-A, apart from his submission of TCT No. 52751 in his name.

4. ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); ADVERSE CLAIM; NOTICE OF ADVERSE CLAIM CAN ONLY BE CANCELLED AFTER A PARTY IN INTEREST FILES A PETITION FOR CANCELLATION BEFORE THE REGIONAL TRIAL COURT WHEREIN THE PROPERTY IS LOCATED.— The Court finds that Banco Filipino is **not** a mortgagee in good faith. Entry Nos. 274471-274472 were not validly cancelled, and the improper cancellation should have been apparent to Banco Filipino and aroused suspicion in said bank of some defect in Dr. Rosario's title. The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute. Adverse claims were previously governed by Section 110 of Act No. 496, otherwise known as the Land Registration Act. x x x The Court stressed in *Ty Sin Tei v. Lee Dy Piao* that "[t]he validity or efficaciousness of the [adverse] claim x x x may only be determined by the Court *upon petition by an interested party*, in which event, the Court shall order the

immediate hearing thereof and make the proper adjudication as justice and equity may warrant. *And it is ONLY when such claim is found unmeritorious that the registration thereof may be cancelled*." The Court likewise pointed out in the same case that while a notice of *lis pendens* may be cancelled in a number of ways, "the same is not true in a registered adverse claim, for it may be cancelled only in one instance, *i.e.*, after the claim is adjudged invalid or unmeritorious by the Court x x x;" and "if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotation of the adverse claim which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim." With the enactment of the Property Registration Decree on June 11, 1978, Section 70 thereof now applies to adverse claims. x x x Whether under Section 110 of the Land Registration Act or Section 70 of the Property Registration Decree, notice of adverse claim can only be cancelled after a party in interest files a petition for cancellation before the RTC wherein the property is located, and the RTC conducts a hearing and determines the said claim to be invalid or unmeritorious. No petition for cancellation has been filed and no hearing has been conducted herein to determine the validity or merit of the adverse claim of the Torbela siblings. Entry No. 520469 cancelled the adverse claim of the Torbela siblings, annotated as Entry Nos. 274471-774472, upon the presentation by Dr. Rosario of a mere Cancellation and Discharge of Mortgage. Regardless of whether or not the Register of Deeds should have inscribed Entry No. 520469 on TCT No. 52751, Banco Filipino could not invoke said inscription in support of its claim of good faith. There were several things amiss in Entry No. 520469 which should have already aroused suspicions in Banco Filipino, and compelled the bank to look beyond TCT No. 52751 and inquire into Dr. Rosario's title. First, Entry No. 520469 does not mention any court order as basis for the cancellation of the adverse claim. Second, the adverse claim was not a mortgage which could be cancelled with Dr. Rosario's Cancellation and Discharge of Mortgage. And third, the adverse claim was against Dr. Rosario, yet it was cancelled based on a document also executed by Dr. Rosario.

5. ID.; CONTRACTS; MORTGAGE; RESPONDENT BANK CANNOT BE CONSIDERED A MORTGAGEE IN GOOD FAITH

DUE TO THE EVIDENT DEFECT IN THE CANCELLATION OF ADVERSE CLAIM WHICH SHOULD HAVE BEEN APPARENT TO RESPONDENT AS A BANKING INSTITUTION WHICH IS EXPECTED TO EXERCISE DUE DILIGENCE BEFORE ENTERING INTO A MORTGAGE CONTRACT.— It is a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser or mortgagee for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation. While the defective cancellation of Entry Nos. 274471-274472 by Entry No. 520469 might not be evident to a private individual, the same should have been apparent to Banco Filipino. Banco Filipino is not an ordinary mortgagee, but is a mortgagee-bank, whose business is impressed with public interest. In fact, in one case, the Court explicitly declared that the rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks. In another case, the Court adjudged that unlike private individuals, a bank is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations. Banco Filipino cannot be deemed a mortgagee in good faith, much less a purchaser in good faith at the foreclosure sale of Lot No. 356-A. Hence, the right of the Torbela siblings over Lot No. 356-A is superior over that of Banco Filipino; and as the true owners of Lot No. 356-A, the Torbela siblings are entitled to a reconveyance of said property even from Banco Filipino.

6. ID.; ID.; ID.; THE FAILURE OF RESPONDENT BANK TO COMPLY WITH THE DILIGENCE REQUIREMENT WAS NOT

THE RESULT OF A DISHONEST PURPOSE, SOME MORAL OBLIQUITY, OR BREACH OF A KNOWN DUTY FOR SOME INTEREST OR ILL WILL THAT PARTAKES OF FRAUD THAT WOULD JUSTIFY DAMAGES.— [T]he failure of Banco Filipino to comply with the due diligence requirement was not the result of a dishonest purpose, some moral obliquity, or breach of a known duty for some interest or ill will that partakes of fraud that would justify damages. Given the reconveyance of Lot No. 356-A to the Torbela siblings, there is no more need to address issues concerning redemption, annulment of the foreclosure sale and certificate of sale (subject matter of Civil Case No. U-4733), or issuance of a writ of possession in favor of Banco Filipino (subject matter of Pet. Case No. U-822) insofar as Lot No. 356-A is concerned. Such would only be superfluous. Banco Filipino, however, is not left without any recourse should the foreclosure and sale of the two other mortgaged properties be insufficient to cover Dr. Rosario's loan, for the bank may still bring a proper suit against Dr. Rosario to collect the unpaid balance.

7. ID.; ID.; ID.; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; RESPONDENT BANK IS ENTITLED TO WRIT OF POSSESSION FOR LOT NO. 5-F-8-C-B-2-A; THE RIGHT OF THE PURCHASER TO THE POSSESSION OF THE FORECLOSED PROPERTY BECOMES ABSOLUTE UPON THE EXPIRATION OF THE REDEMPTION PERIOD.— The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case. The

issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial act and does not entail the exercise of discretion.

8. ID.; PROPERTY; OWNERSHIP; RIGHT OF SUCCESSION; THE RULES ON ACCESSION SHALL GOVERN THE IMPROVEMENTS ON LOT NO. 356-A AND THE RENTS THEREOF.— The accessory follows the principal. The right of accession is recognized under Article 440 of the Civil Code which states that "[t]he ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially." There is no question that Dr. Rosario is the builder of the improvements on Lot No. 356-A. The Torbela siblings themselves alleged that they allowed Dr. Rosario to register Lot No. 356-A in his name so he could obtain a loan from DBP, using said parcel of land as security; and with the proceeds of the loan, Dr. Rosario had a building constructed on Lot No. 356-A, initially used as a hospital, and then later for other commercial purposes. Dr. Rosario supervised the construction of the building, which began in 1965; fully liquidated the loan from DBP; and maintained and administered the building, as well as collected the rental income therefrom, until the Torbela siblings instituted Civil Case No. U-4359 before the RTC on February 13, 1986. When it comes to the improvements on Lot No. 356-A, both the Torbela siblings (as landowners) and Dr. Rosario (as builder) are deemed in bad faith. The Torbela siblings were aware of the construction of a building by Dr. Rosario on Lot No. 356-A, while Dr. Rosario proceeded with the said construction despite his knowledge that Lot No. 356-A belonged to the Torbela siblings. This is the case contemplated under Article 453 of the Civil Code, which reads: ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, **the rights of one and the other shall be the same as though both had acted in good faith**. It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

9. ID.; ID.; ID.; RULE WHEN BOTH THE LANDOWNER AND THE BUILDER ARE IN GOOD FAITH.— Whatever is built, planted, or sown on the land of another, and the improvements or repairs made thereon, belong to the owner of the land.

Where, however, the planter, builder, or sower has acted in good faith, a conflict of rights arises between the owners and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating what Manresa calls a state of "forced co-ownership," the law has provided a just and equitable solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to oblige the builder or planter to pay for the land and the sower to pay the proper rent. It is the owner of the land who is allowed to exercise the option because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing. The landowner has to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. But even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to remove the building from the land without first exercising either option. It is only if the owner chooses to sell his land, and the builder or planter fails to purchase it where its value is not more than the value of the improvements, that the owner may remove the improvements from the land. The owner is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same.

10. ID.; ID.; ID.; ID.; THE CIVIL FRUITS, SUCH AS RENTS, STILL BELONG TO RESPONDENT AS THE OWNER OF THE BUILDING EVEN IF THE PETITIONERS CHOOSE TO APPROPRIATE THE IMPROVEMENTS OF LOT NO. 356-A.— Should the Torbela siblings choose to appropriate the improvements on Lot No. 356-A, the following ruling of the Court in *Pecson v. Court of Appeals* is relevant in the determination of the amount of indemnity under Article 546 of the Civil Code: Article 546 does not specifically state how the value of the useful improvements should be determined. The respondent court and the private respondents espouse the belief that the cost of construction of the apartment building in 1965, and not its current market value, is sufficient reimbursement for necessary and useful improvements made by the petitioner. This position is, however, not in consonance with previous rulings of this Court in similar cases. In *Javier vs. Concepcion*,

Jr., this Court pegged the value of the useful improvements consisting of various fruits, bamboos, a house and camarin made of strong material based on the **market value** of the said improvements. In *Sarmiento vs. Agana*, despite the finding that the useful improvement, a residential house, was built in 1967 at a cost of between eight thousand pesos (₱8,000.00) to ten thousand pesos (₱10,000.00), the landowner was ordered to reimburse the builder in the amount of forty thousand pesos (₱40,000.00), the **value of the house at the time of the trial**. In the same way, the landowner was required to pay the **"present value"** of the house, a useful improvement, in the case of *De Guzman vs. De la Fuente*, cited by the petitioner. The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the **current market value** of the improvements which should be made the basis of reimbursement. A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the **present market value** of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner. Still following the rules of accession, civil fruits, such as rents, belong to the owner of the building. Thus, Dr. Rosario has a right to the rents of the improvements on Lot No. 356-A and is under no obligation to render an accounting of the same to anyone. In fact, it is the Torbela siblings who are required to account for the rents they had collected from the lessees of the commercial building and turn over any balance to Dr. Rosario. Dr. Rosario's right to the rents of the improvements on Lot No. 356-A shall continue until the Torbela siblings have chosen their option under Article 448 of the Civil Code. And in case the Torbela siblings decide to appropriate the improvements, Dr. Rosario shall have the right to retain said improvements, as well as the rents thereof, until the indemnity for the same has been paid.

11. ID.; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, REDUCED.— Dr. Rosario's deceit and bad faith is evident when, being fully aware that he only held Lot No. 356-A in trust for the Torbela siblings, he mortgaged said property to PNB and Banco Filipino absent the consent of the Torbela siblings, and caused the irregular cancellation of the Torbela siblings' adverse claim on TCT No. 52751. Irrefragably, Dr. Rosario's betrayal had caused the Torbela siblings (which included Dr. Rosario's own mother, Eufrosina Torbela Rosario) mental anguish, serious anxiety, and wounded feelings. Resultantly, the award of moral damages is justified, but the amount thereof is reduced to ₱200,000.00. In addition to the moral damages, exemplary damages may also be imposed given that Dr. Rosario's wrongful acts were accompanied by bad faith. However, judicial discretion granted to the courts in the assessment of damages must always be exercised with balanced restraint and measured objectivity. The circumstances of the case call for a reduction of the award of exemplary damages to ₱100,000.00.

12. ID.; ID.; ATTORNEY'S FEES; JUSTIFIED IN CASE AT BAR.— As regards attorney's fees, they may be awarded when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Because of Dr. Rosario's acts, the Torbela siblings were constrained to institute several cases against Dr. Rosario and his spouse, Duque-Rosario, as well as Banco Filipino, which had lasted for more than 25 years. Consequently, the Torbela siblings are entitled to an award of attorney's fees and the amount of ₱100,000.00 may be considered rational, fair, and reasonable.

13. ID.; CIVIL CODE; ESTOPPEL; RESPONDENT'S ADMISSION IN THE DEED OF ABSOLUTE QUITCLAIM THAT HE MERELY BORROWED LOT NO. 356-A IS DEEMED CONCLUSIVE UPON HIM AND ESTOPPED HIM FROM ASSERTING OWNERSHIP THEREOF.— It can also be said that Dr. Rosario is estopped from claiming or asserting ownership over Lot No. 356-A based on his Deed of Absolute Quitclaim dated December 28, 1964. Dr. Rosario's admission in the said Deed that he merely borrowed Lot No. 356-A is deemed conclusive upon him. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered

conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." That admission cannot now be denied by Dr. Rosario as against the Torbela siblings, the latter having relied upon his representation.

14. ID.; ID.; TRUSTS; DEFINED AND EXPOUNDED.— [T]he Court agrees with the RTC and the Court of Appeals that Dr. Rosario only holds Lot No. 356-A in trust for the Torbela siblings. Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law. Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust. Under Article 1444 of the Civil Code, "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." It is possible to create a trust without using the word "trust" or "trustee." Conversely, the mere fact that these words are used does not necessarily indicate an intention to create a trust. The question in each case is whether the trustor manifested an intention to create the kind of relationship which to lawyers is known as trust. It is immaterial whether or not he knows that the relationship which he intends to create is called a trust, and whether or not he knows the precise characteristics of the relationship which is called a trust.

15. ID.; ID.; ID.; WHEN LAND PASSES BY SUCCESSION TO ANY PERSON AND HE CAUSES THE LEGAL TITLE TO BE PUT IN THE NAME OF ANOTHER, A TRUST IS ESTABLISHED BY IMPLICATION OF LAW FOR THE BENEFIT OF THE TRUE OWNER.— In *Tamayo v. Callejo*, the Court recognized that a trust may have a constructive or implied nature in the beginning, but the registered owner's subsequent express acknowledgement in a public document of a previous sale of the property to another party, had the effect of imparting to the aforementioned trust the nature of an express trust. The same situation exists in this case. When Dr. Rosario was able to register Lot No. 356-A in his name under TCT No. 52751 on December 16, 1964, an implied trust was initially established

between him and the Torbela siblings under Article 1451 of the Civil Code, which provides: ART. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner. Dr. Rosario's execution of the Deed of Absolute Quitclaim on December 28, 1964, containing his express admission that he only borrowed Lot No. 356-A from the Torbela siblings, eventually transformed the nature of the trust to an express one. The express trust continued despite Dr. Rosario stating in his Deed of Absolute Quitclaim that he was already returning Lot No. 356-A to the Torbela siblings as Lot No. 356-A remained registered in Dr. Rosario's name under TCT No. 52751 and Dr. Rosario kept possession of said property, together with the improvements thereon.

16. ID.; ID.; PRESCRIPTION; THE REGISTRATION OF LOT NO. 356-A BY RESPONDENT IN HIS NAME UNDER TCT NO. 52751 ON DECEMBER 16, 1964 IS NOT THE REPUDIATION THAT WOULD HAVE CAUSED THE 10-YEAR PRESCRIPTIVE PERIOD FOR THE ENFORCEMENT OF EXPRESS TRUST TO RUN.— To apply the 10-year prescriptive period, which would bar a beneficiary's action to recover in an express trust, the repudiation of the trust must be proven by clear and convincing evidence and made known to the beneficiary. The express trust disables the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or *cestui que trust*. For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (*i.e.*, unrepudiated) trusts. In an express trust, the delay of the beneficiary is directly attributable to the trustee who undertakes to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is, therefore, not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated. Dr. Rosario argues that he is deemed to have repudiated the trust on December 16, 1964, when he registered Lot No. 356-A in his name under TCT No. 52751, so when on February 13, 1986, the Torbela siblings instituted before the RTC Civil Case No. U-4359, for the recovery of ownership

and possession of Lot No. 356-A from the spouses Rosario, over 21 years had passed. Civil Case No. U-4359 was already barred by prescription, as well as laches. The Court already rejected a similar argument in *Ringor v. Ringor* for the following reasons: **A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration.** A Torrens Certificate of Title in Jose's name did not vest ownership of the land upon him. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. The Torrens system was not intended to foment betrayal in the performance of a trust. It does not permit one to enrich himself at the expense of another. Where one does not have a rightful claim to the property, the Torrens system of registration can confirm or record nothing. Petitioners cannot rely on the registration of the lands in Jose's name nor in the name of the Heirs of Jose M. Ringor, Inc., for the wrong result they seek. For Jose could not repudiate a trust by relying on a Torrens title he held in trust for his co-heirs. The beneficiaries are entitled to enforce the trust, notwithstanding the irrevocability of the Torrens title. The intended trust must be sustained. In the more recent case of *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste*, the Court refused to apply prescription and laches and reiterated that: [P]rescription and laches will run only from the time the express trust is repudiated. The Court has held that for acquisitive prescription to bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive. **Respondents cannot rely on the fact that the Torrens title was issued in the name of Epifanio and the other heirs of Jose. It has been held that a trustee who obtains a Torrens title over property held in trust by him for another cannot repudiate the trust by relying on the registration.** The rule requires a clear repudiation of the trust duly communicated to the beneficiary. The only act that can be construed as repudiation was when respondents filed the petition for reconstitution in October 1993. And since petitioners filed their complaint in January 1995, their cause of action has

not yet prescribed, laches cannot be attributed to them. It is clear that under the foregoing jurisprudence, the registration of Lot No. 356-A by Dr. Rosario in his name under TCT No. 52751 on December 16, 1964 is not the repudiation that would have caused the 10-year prescriptive period for the enforcement of an express trust to run.

17. ID.; ID.; PRESCRIPTION; THE RIGHT OF PETITIONERS TO RECOVER LOT NO. 356-A HAS NOT YET PRESCRIBED; CIVIL CASE NO. U-4359 WAS INSTITUTED BEFORE THE LAPSE OF THE 10-YEAR PRESCRIPTIVE PERIOD FOR THE ENFORCEMENT OF THEIR EXPRESS TRUST WITH RESPONDENT.— For repudiation of an express trust to be effective, the unequivocal act of repudiation had to be made known to the Torbela siblings as the *cestuis que trust* and must be proven by clear and conclusive evidence. A scrutiny of TCT No. 52751 reveals the following inscription: Entry No. *520099* Amendment of the mortgage in favor of PNB inscribed under Entry No. *490658* in the sense that the consideration thereof has been increased to PHILIPPINE PESOS *Four Hundred Fifty Thousand Pesos only* (₱*450,000.00*) and to secure any and all negotiations with PNB, whether contracted before, during or after the date of this instrument, acknowledged before Notary Public of *Pangasinan Alejo M. Dato* as Doc. No. *198*, Page No. *41*, Book No. *11*, Series of 19*85*. Date of Instrument *March 5, 1981* Date of Inscription *March 6, 1981* Although according to Entry No. 520099, the original loan and mortgage agreement of Lot No. 356-A between Dr. Rosario and PNB was previously inscribed as Entry No. 490658, Entry No. 490658 does not actually appear on TCT No. 52751 and, thus, it cannot be used as the reckoning date for the start of the prescriptive period. The Torbela siblings can only be charged with knowledge of the mortgage of Lot No. 356-A to PNB on March 6, 1981 when the amended loan and mortgage agreement was registered on TCT No. 52751 as Entry No. 520099. Entry No. 520099 is constructive notice to the whole world that Lot No. 356-A was mortgaged by Dr. Rosario to PNB as security for a loan, the amount of which was increased to ₱450,000.00. Hence, Dr. Rosario is deemed to have effectively repudiated the express trust between him and the Torbela siblings on March 6, 1981, on which day, the prescriptive period for the enforcement of the express trust by the Torbela siblings began to run. From **March 6, 1981**,

when the amended loan and mortgage agreement was registered on TCT No. 52751, to **February 13, 1986**, when the Torbela siblings instituted before the RTC Civil Case No. U-4359 against the spouses Rosario, only about **five years** had passed. The Torbela siblings were able to institute Civil Case No. U-4359 well before the lapse of the 10-year prescriptive period for the enforcement of their express trust with Dr. Rosario.

18. ID.; ID.; LACHES; CIVIL CASE NO. U-4359 NOT BARRED BY LACHES; A DELAY WITHIN THE PRESCRIPTIVE PERIOD THAT IS SANCTIONED BY LAW IS NOT CONSIDERED TO BE THE DELAY THAT WOULD BAR RELIEF.— Civil Case No. U-4359 is likewise not barred by laches. Laches means the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. As the Court explained in the preceding paragraphs, the Torbela siblings instituted Civil Case No. U-4359 five years after Dr. Rosario's repudiation of the express trust, still within the 10-year prescriptive period for enforcement of such trusts. This does not constitute an unreasonable delay in asserting one's right. A delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. Laches apply only in the absence of a statutory prescriptive period.

19. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; DOES NOT APPLY TO CASES WHERE A PARTY TO A WRITTEN AGREEMENT FAILS TO PUT IN ISSUES IN HIS PLEADINGS THE REASON FOR MODIFYING EXPLAINING OR SUPPLEMENTING THE TERMS OF THE SUBJECT AGREEMENT; CASE AT BAR.— Dr. Rosario testified that he obtained Lot No. 356-A after paying the Torbela siblings ₱25,000.00, pursuant to a verbal agreement with the latter. The Court though observes that Dr. Rosario's testimony on the execution and existence of the verbal agreement with the Torbela siblings lacks significant details (such as the names of the parties present, dates, places, *etc*.) and is not corroborated by independent evidence. In addition, Dr. Rosario acknowledged the execution of the two Deeds of Absolute Quitclaim dated December 12, 1964 and December 28, 1964, even affirming his

own signature on the latter Deed. The Parol Evidence Rule provides that when the terms of the agreement have been reduced into 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. Dr. Rosario may not modify, explain, or add to the terms in the two written Deeds of Absolute Quitclaim since he did not put in issue in his pleadings (1) an intrinsic ambiguity, mistake, or imperfection in the Deeds; (2) failure of the Deeds to express the true intent and the agreement of the parties thereto; (3) the validity of the Deeds; or (4) the existence of other terms agreed to by the Torbela siblings and Dr. Rosario after the execution of the Deeds.

20. ID.; ID.; EXCEPTIONS TO THE HEARSAY RULE; DECLARATION AGAINST INTEREST; RESPONDENT'S DEED OF ABSOLUTE QUITCLAIM IS A DECLARATION AGAINST HIS SELF-INTEREST AND MUST BE TAKEN AS FAVORING THE TRUTHFULNESS OF THE CONTENTS OF THE SUBJECT DEED.— Even if the Court considers Dr. Rosario's testimony on his alleged verbal agreement with the Torbela siblings, the Court finds the same unsatisfactory. Dr. Rosario averred that the two Deeds were executed only because he was "planning to secure loan from the Development Bank of the Philippines and Philippine National Bank and the bank needed absolute quitclaim[.]" While Dr. Rosario's explanation makes sense for the first Deed of Absolute Quitclaim dated December 12, 1964 executed by the Torbela siblings (which transferred Lot No. 356-A to Dr. Rosario for ₱9.00), the same could not be said for the second Deed of Absolute Quitclaim dated December 28, 1964 executed by Dr. Rosario. In fact, Dr. Rosario's Deed of Absolute Quitclaim (in which he admitted that he only borrowed Lot No. 356-A and was transferring the same to the Torbela siblings for ₱1.00) would actually work against the approval of Dr. Rosario's loan by the banks. Since Dr. Rosario's Deed of Absolute Quitclaim dated December 28, 1964 is a declaration against his self-interest, it must be taken as favoring the truthfulness of the contents of said Deed.

APPEARANCES OF COUNSEL

Demetria Demetria Magno-Concepcion Law Offices for BF Savings & Mortgage Bank.
Alejandro T. Tabula for Lena Duque-Rosario.
Simplicio M. Sevileja for Dr. Andres T. Rosario.
Pedrito B. Labarinto for Maria Torbela, *et al.*

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Presently before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, both assailing the Decision[1] dated June 29, 1999 and Resolution[2] dated October 22, 1999 of the Court of Appeals in CA-G.R. CV No. 39770.

The petitioners in G.R. No. 140528 are siblings Maria Torbela,[3] Pedro Torbela,[4] Eufrosina Torbela Rosario,[5] Leonila Torbela Tamin, Fernando Torbela,[6] Dolores Torbela Tablada, Leonora Torbela Agustin,[7] and Severina Torbela Ildefonso (Torbela siblings).

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[1] *Rollo* (G.R. No. 140528), pp. 39-57; *rollo* (G.R. No. 140553), pp. 16-34; penned by Associate Justice Eugenio S. Labitoria with Associate Justices Mariano M. Umali and Edgardo P. Cruz, concurring.

[2] *Id.* at 58-59; *id.* at 35-36.

[3] Represented by her heirs: Eulogio Tosino, Claro Tosino, Maximino Tosino, Cornelio Tosino, Olivia Tosino, Calixta Tosino, Apolonia Tosino *vda. de* Ramirez, and Julita Tosino Dean.

[4] Represented by his heirs: Jose Torbela and Dionisio Torbela.

[5] Represented by her heirs: Esteban Rosario, Manuel Rosario, and Andrea Rosario-Haduca.

[6] Represented by Sergio Torbela, Eutropia Velasco, Pilar Zulueta, Candido Torbela, Florentina Torbela, and Pantaleon Torbela.

[7] Represented by her heirs: Patricio Agustin, Segundo Agustin, Consuelo Agustin, and Felix Agustin.

The petitioner in G.R. No. 140553 is Lena Duque-Rosario (Duque-Rosario), who was married to, but now legally separated from, Dr. Andres T. Rosario (Dr. Rosario). Dr. Rosario is the son of Eufrosina Torbela Rosario and the nephew of the other Torbela siblings.

The controversy began with a parcel of land, with an area of 374 square meters, located in Urdaneta City, Pangasinan (Lot No. 356-A). It was originally part of a larger parcel of land, known as Lot No. 356 of the Cadastral Survey of Urdaneta, measuring 749 square meters, and covered by Original Certificate of Title (OCT) No. 16676,[8] in the name of Valeriano Semilla (Valeriano), married to Potenciana Acosta. Under unexplained circumstances, Valeriano gave Lot No. 356-A to his sister Marta Semilla, married to Eugenio Torbela (spouses Torbela). Upon the deaths of the spouses Torbela, Lot No. 356-A was adjudicated in equal shares among their children, the Torbela siblings, by virtue of a Deed of Extrajudicial Partition[9] dated December 3, 1962.

On December 12, 1964, the Torbela siblings executed a Deed of Absolute Quitclaim[10] over Lot No. 356-A in favor of Dr. Rosario. According to the said Deed, the Torbela siblings "for and in consideration of the sum of NINE PESOS (₱9.00) x x x transfer[red] and convey[ed] x x x unto the said Andres T. Rosario, that undivided portion of THREE HUNDRED SEVENTY-FOUR square meters of that parcel of land embraced in Original Certificate of Title No. 16676 of the land records of Pangasinan x x x."[11] Four days later, on December 16, 1964, OCT No. 16676 in Valeriano's name was partially cancelled as to Lot No. 356-A and TCT No. 52751[12] was issued in Dr. Rosario's name covering the said property.

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[8] Records, Folder of Exhibits, pp. 1047-1050.

[9] *Id.* at 1051-1054.

[10] *Id.* at 1055-1056.

[11] *Id.* at 1055.

[12] *Id.* at 1057-1060.

Another Deed of Absolute Quitclaim[13] was subsequently executed on December 28, 1964, this time by Dr. Rosario, acknowledging that he only borrowed Lot No. 356-A from the Torbela siblings and was already returning the same to the latter for ₱1.00. The Deed stated:

> That for and in consideration of the sum of one peso (₱1.00), Philippine Currency **and the fact that I only borrowed the above described parcel of land** from MARIA TORBELA, married to Eulogio Tosino, EUFROSINA TORBELA, married to Pedro Rosario, PEDRO TORBELA, married to Petra Pagador, LEONILA TORBELA, married to Fortunato Tamen, FERNANDO TORBELA, married to Victoriana Tablada, DOLORES TORBELA, widow, LEONORA TORBELA, married to Matias Agustin and SEVERINA TORBELA, married to Jorge Ildefonso, x x x by these presents do hereby cede, transfer and convey by way of this ABSOLUTE QUITCLAIM unto the said Maria, Eufrosina, Pedro, Leonila, Fernando, Dolores, Leonora and Severina, all surnamed Torbela the parcel of land described above.[14] (Emphasis ours.)

The aforequoted Deed was notarized, but was not immediately annotated on TCT No. 52751.

Following the issuance of TCT No. 52751, Dr. Rosario obtained a loan from the Development Bank of the Philippines (DBP) on February 21, 1965 in the sum of ₱70,200.00, secured by a mortgage constituted on Lot No. 356-A. The mortgage was annotated on TCT No. 52751 on September 21, 1965 as **Entry No. 243537**.[15] Dr. Rosario used the proceeds of the loan for the construction of improvements on Lot No. 356-A.

On May 16, 1967, Cornelio T. Tosino (Cornelio) executed an Affidavit of Adverse Claim,[16] on behalf of the Torbela siblings. Cornelio deposed in said Affidavit:

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[13] *Id.* at 1061.

[14] *Id*.

[15] *Id.* at 1058.

[16] *Id.* at 1062-1063.

3. That ANDRES T. ROSARIO later quitclaimed his rights in favor of the former owners by virtue of a Deed of Absolute Quitclaim which he executed before Notary Public Banaga, and entered in his Notarial Registry as Dec. No. 43; Page No. 9; Book No. I; Series of 1964;

4. That it is the desire of the parties, my aforestated kins, to register ownership over the above-described property or to perfect their title over the same but their Deed could not be registered because the registered owner now, ANDRES T. ROSARIO mortgaged the property with the DEVELOPMENT BANK OF THE PHILIPPINES, on September 21, 1965, and for which reason, the Title is still impounded and held by the said bank;

5. That pending payment of the obligation with the DEVELOPMENT BANK OF THE PHILIPPINES or redemption of the Title from said bank, I, CORNELIO T. TOSINO, in behalf of my mother MARIA TORBELA-TOSINO, and my Aunts EUFROSINA TORBELA, LEONILA TORBELA-TAMEN, DOLORES TORBELA, LEONORA TORBELA-AGUSTIN, SEVERINA TORBELA-ILDEFONSO, and my Uncles PEDRO TORBELA and FERNANDO, also surnamed TORBELA, I request the Register of Deeds of Pangasinan to annotate their adverse claim at the back of Transfer Certificate of Title No. 52751, based on the annexed document, Deed of Absolute Quitclaim by ANDRES T. ROSARIO, dated December 28, 1964, marked as Annex "A" and made a part of this Affidavit, and it is also requested that the DEVELOPMENT BANK OF THE PHILIPPINES be informed accordingly.[17]

The very next day, on May 17, 1967, the Torbela siblings had Cornelio's Affidavit of Adverse Claim dated May 16, 1967 and Dr. Rosario's Deed of Absolute Quitclaim dated December 28, 1964 annotated on TCT No. 52751 as **Entry Nos. 274471**[18] and **274472**,[19] respectively.

The construction of a four-storey building on Lot No. 356-A was eventually completed. The building was initially used as a

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[17] *Id*.

[18] *Id.* at 1058, 1059-A.

[19] *Id*.

hospital, but was later converted to a commercial building. Part of the building was leased to PT&T; and the rest to Mrs. Andrea Rosario-Haduca, Dr. Rosario's sister, who operated the Rose Inn Hotel and Restaurant.

Dr. Rosario was able to fully pay his loan from DBP. Under **Entry No. 520197** on TCT No. 52751[20] dated March 6, 1981, the mortgage appearing under Entry No. 243537 was cancelled per the Cancellation and Discharge of Mortgage executed by DBP in favor of Dr. Rosario and ratified before a notary public on July 11, 1980.

In the meantime, Dr. Rosario acquired another loan from the Philippine National Bank (PNB) sometime in 1979-1981. Records do not reveal though the original amount of the loan from PNB, but the loan agreement was amended on March 5, 1981 and the loan amount was increased to ₱450,000.00. The loan was secured by mortgages constituted on the following properties: (1) Lot No. 356-A, covered by TCT No. 52751 in Dr. Rosario's name; (2) Lot No. 4489, with an area of 1,862 square meters, located in Dagupan City, Pangasinan, covered by TCT No. 24832; and (3) Lot No. 5-F-8-C-2-B-2-A, with an area of 1,001 square meters, located in Nancayasan, Urdaneta, Pangasinan, covered by TCT No. 104189.[21] The amended loan agreement and mortgage on Lot No. 356-A was annotated on TCT No. 52751 on March 6, 1981 as **Entry No. 520099**.[22]

Five days later, on March 11, 1981, another annotation, **Entry No. 520469**,[23] was made on TCT No. 52751, canceling the adverse claim on Lot No. 356-A under Entry Nos. 274471-274472, on the basis of the Cancellation and Discharge of Mortgage executed by Dr. Rosario on March 5, 1981. Entry No. 520469 consisted of both stamped and handwritten portions, and exactly reads:

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[20] *Id.* at 1059-A.

[21] No copies of TCT Nos. 24832 and 104189 can be found in the case records.

[22] Records, Folder of Exhibits, p. 1059-A.

[23] *Id.* at 1060.

Entry No. 520469. Cancellation of *Adverse Claim* executed by *Andres Rosario* in favor of *same*. The incumbrance/mortgage appearing under Entry No. *274471-72* is now cancelled as per Cancellation and Discharge of Mortgage Ratified before Notary Public *Mauro G. Meris* on *March 5, 1981*: Doc. No. *215*; Page No. *44*; Book No. *1*; Series Of *1981*. Lingayen, Pangasinan, *3-11*, 199*81* (sic)

[Signed: Pedro dela Cruz]
Register of Deeds[24]

On December 8, 1981, Dr. Rosario and his wife, Duque-Rosario (spouses Rosario), acquired a third loan in the amount of ₱1,200,000.00 from Banco Filipino Savings and Mortgage Bank (Banco Filipino). To secure said loan, the spouses Rosario again constituted mortgages on Lot No. 356-A, Lot No. 4489, and Lot No. 5-F-8-C-2-B-2-A. The mortgage on Lot No. 356-A was annotated on TCT No. 52751 as **Entry No. 533283**[25] on December 18, 1981. Since the construction of a two-storey commercial building on Lot No. 5-F-8-C-2-B-2-A was still incomplete, the loan value thereof as collateral was deducted from the approved loan amount. Thus, the spouses Rosario could only avail of the maximum loan amount of ₱830,064.00 from Banco Filipino.

Because Banco Filipino paid the balance of Dr. Rosario's loan from PNB, the mortgage on Lot No. 356-A in favor of PNB was cancelled per **Entry No. 533478**[26] on TCT No. 52751 dated December 23, 1981.

On February 13, 1986, the Torbela siblings filed before the Regional Trial Court (RTC) of Urdaneta, Pangasinan, a Complaint for recovery of ownership and possession of Lot No. 356-A, plus damages, against the spouses Rosario, which was docketed as **Civil Case No. U-4359**. On the same day, Entry Nos. 593493 and 593494 were made on TCT No. 52751 that read as follows:

Entry No. 593494 – Complaint – Civil Case No. U-4359 (For: Recovery of Ownership and Possession and Damages. (Sup. Paper).

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[24] *Id*.
[25] *Id*.
[26] *Id*.

Entry No. 593493 – Notice of *Lis Pendens* – The parcel of land described in this title is subject to *Lis Pendens* executed by Liliosa B. Rosario, CLAO, Trial Attorney dated February 13, 1986. Filed to TCT No. 52751 February 13, 1986-1986 February 13 – 3:30 p.m.

(SGD.) PACIFICO M. BRAGANZA
Register of Deeds[27]

The spouses Rosario afterwards failed to pay their loan from Banco Filipino. As of April 2, 1987, the spouses Rosario's outstanding principal obligation and penalty charges amounted to ₱743,296.82 and ₱151,524.00, respectively.[28]

Banco Filipino extrajudicially foreclosed the mortgages on Lot No. 356-A, Lot No. 4489, and Lot No. 5-F-8-C-2-B-2-A. During the public auction on April 2, 1987, Banco Filipino was the lone bidder for the three foreclosed properties for the price of ₱1,372,387.04. The Certificate of Sale[29] dated April 2, 1987, in favor of Banco Filipino, was annotated on TCT No. 52751 on April 14, 1987 as **Entry No. 610623**.[30]

On December 9, 1987, the Torbela siblings filed before the RTC their Amended Complaint,[31] impleading Banco Filipino as additional defendant in Civil Case No. U-4359 and praying that the spouses Rosario be ordered to redeem Lot No. 356-A from Banco Filipino.

The spouses Rosario instituted before the RTC on March 4, 1988 a case for annulment of extrajudicial foreclosure and damages, with prayer for a writ of preliminary injunction and temporary restraining order, against Banco Filipino, the Provincial *Ex Officio* Sheriff and his Deputy, and the Register of Deeds

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[27] *Id*.

[28] Records, pp. 489-492.

[29] *Id.* at 476-477.

[30] Records, Folder of Exhibits, p. 1060.

[31] Records, pp. 180-188. The Torbela siblings would eventually file a Second Amended Complaint in Civil Case No. U-4359 on July 29, 1991 (*id.* at 391-403).

of Pangasinan. The case was docketed as **Civil Case No. U-4667**. Another notice of *lis pendens* was annotated on TCT No. 52751 on March 10, 1988 as **Entry No. 627059**, *viz*:

> Entry No. 627059 – *Lis Pendens – Dr. Andres T. Rosario and Lena Duque Rosario, Plaintiff versus Banco Filipino, et. al.* Civil Case No. U-4667 or Annulment of ExtraJudicial Foreclosure of Real Estate Mortgage – The parcel of land described in this title is subject to Notice of *Lis Pendens* subscribed and sworn to before Notary Public Mauro G. Meris, as Doc. No. 21; Page No. 5; Book 111; S-1988. March 7, 1988-1988 March 10, 1:00 p.m.
>
> (SGD.) RUFINO M. MORENO, SR.
> Register of Deeds[32]

The Torbela siblings intervened in Civil Case No. U-4667. Eventually, on October 17, 1990, the RTC issued an Order[33] dismissing without prejudice Civil Case No. U-4667 due to the spouses Rosario's failure to prosecute.

Meanwhile, the Torbela siblings tried to redeem Lot No. 356-A from Banco Filipino, but their efforts were unsuccessful. Upon the expiration of the one-year redemption period in April 1988, the Certificate of Final Sale[34] and Affidavit of Consolidation[35] covering all three foreclosed properties were executed on May 24, 1988 and May 25, 1988, respectively.

On June 7, 1988, new certificates of title were issued in the name of Banco Filipino, particularly, TCT No. 165812 for Lot No. 5-F-8-C-2-B-2-A and TCT No. 165813 for Lot No. 356-A.[36]

The Torbela siblings thereafter filed before the RTC on August 29, 1988 a Complaint[37] for annulment of the Certificate of Final

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[32] Records, Folder of Exhibits, p. 1060A.

[33] CA *rollo*, p. 169.

[34] Records, pp. 478-479.

[35] *Id.* at 480.

[36] Records, Folder of Exhibits, p. 1064.

[37] Records, pp. 536-547. The Torbela siblings would subsequently file an Amended Complaint in Civil Case No. U-4733 on July 29, 1991.

Sale dated May 24, 1988, judicial cancelation of TCT No. 165813, and damages, against Banco Filipino, the *Ex Officio* Provincial Sheriff, and the Register of Deeds of Pangasinan, which was docketed as **Civil Case No. U-4733**.

On June 19, 1991, Banco Filipino filed before the RTC of Urdaneta City a Petition for the issuance of a writ of possession. In said Petition, docketed as **Pet. Case No. U-822**, Banco Filipino prayed that a writ of possession be issued in its favor over Lot No. 5-F-8-C-2-B-2-A and Lot No. 356-A, plus the improvements thereon, and the spouses Rosario and other persons presently in possession of said properties be directed to abide by said writ.

The RTC jointly heard Civil Case Nos. U-4359 and U-4733 and Pet. Case No. U-822. The Decision[38] on these three cases was promulgated on January 15, 1992, the dispositive portion of which reads:

WHEREFORE, judgment is rendered:

1. Declaring the real estate mortgage over Lot 356-A covered by TCT 52751 executed by Spouses Andres Rosario in favor of Banco Filipino, legal and valid;

2. Declaring the sheriff's sale dated April 2, 1987 over Lot 356-A covered by TCT 52751 and subsequent final Deed of Sale dated May 14, 1988 over Lot 356-A covered by TCT No. 52751 legal and valid;

3. Declaring Banco Filipino the owner of Lot 356-A covered by TCT No. 52751 (now TCT 165813);

4. Banco Filipino is entitled to a Writ of Possession over Lot 356-A together with the improvements thereon (Rose Inn Building). The Branch Clerk of Court is hereby ordered to issue a writ of possession in favor of Banco Filipino;

5. [The Torbela siblings] are hereby ordered to render accounting to Banco Filipino the rental they received from tenants of Rose Inn Building from May 14, 1988;

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[38] CA *rollo*, pp. 138-148; penned by Judge Modesto C. Juanson.

6. [The Torbela siblings] are hereby ordered to pay Banco Filipino the sum of ₱20,000.00 as attorney's fees;

7. Banco Filipino is hereby ordered to give [the Torbela siblings] the right of first refusal over Lot 356-A. The Register of Deeds is hereby ordered to annotate the right of [the Torbela siblings] at the back of TCT No. 165813 after payment of the required fees;

8. Dr. Rosario and Lena Rosario are hereby ordered to reimburse [the Torbela siblings] the market value of Lot 356-A as of December, 1964 minus payments made by the former;

9. Dismissing the complaint of [the Torbela siblings] against Banco Filipino, Pedro Habon and Rufino Moreno in Civil Case No. U-4733; and against Banco Filipino in Civil Case No. U-4359.[39]

The RTC released an Amended Decision[40] dated January 29, 1992, adding the following paragraph to the dispositive:

Banco Filipino is entitled to a Writ of Possession over Lot-5-F-8-C-2-[B]-2-A of the subdivision plan (LRC) Psd-122471, covered by Transfer Certificate of Title 104189 of the Registry of Deeds of Pangasinan[.][41]

The Torbela siblings and Dr. Rosario appealed the foregoing RTC judgment before the Court of Appeals. Their appeal was docketed as CA-G.R. CV No. 39770.

In its Decision[42] dated June 29, 1999, the Court of Appeals decreed:

WHEREFORE, foregoing considered, the appealed decision is hereby **AFFIRMED** with modification. Items No. 6 and 7 of the appealed decision are **DELETED**. Item No. 8 is modified requiring [Dr. Rosario] to pay [the Torbela siblings] actual damages, in the

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[39] *Id.* at 148.

[40] *Id.* at 149-150.

[41] *Id.* at 149.

[42] *Id.* at 195-213; penned by Associate Justice Eugenio S. Labitoria with Associate Justices Mariano M. Umali and Edgardo P. Cruz, concurring.

amount of ₱1,200,000.00 with 6% per annum interest from finality of this decision until fully paid. [Dr. Rosario] is further **ORDERED** to pay [the Torbela siblings] the amount of ₱300,000.00 as moral damages; ₱200,000.00 as exemplary damages and ₱100,000.00 as attorney's fees.

Costs against [Dr. Rosario].[43]

The Court of Appeals, in a Resolution[44] dated October 22, 1999, denied the separate Motions for Reconsideration of the Torbela siblings and Dr. Rosario.

The Torbela siblings come before this Court via the Petition for Review in G.R. No. 140528, with the following assignment of errors:

First Issue and Assignment of Error:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE REGISTRATION OF THE DEED OF ABSOLUTE QUITCLAIM EXECUTED BY [DR. ANDRES T. ROSARIO] IN FAVOR OF THE [TORBELA SIBLINGS] DATED DECEMBER 28, 1964 AND THE REGISTRATION OF THE NOTICE OF ADVERSE CLAIM EXECUTED BY THE [TORBELA SIBLINGS], SERVE AS THE OPERATIVE ACT TO CONVEY OR AFFECT THE LAND AND IMPROVEMENTS THEREOF IN SO FAR AS THIRD PERSONS ARE CONCERNED.

Second Issue and Assignment of Error:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE SUBJECT PROPERTY COVERED BY T.C.T. NO. 52751 IS CLEAN AND FREE, DESPITE OF THE ANNOTATION OF ENCUMBRANCES OF THE NOTICE OF ADVERSE CLAIM AND THE DEED OF ABSOLUTE QUITCLAIM APPEARING AT THE BACK THEREOF AS ENTRY NOS. 274471 AND 274472, RESPECTIVELY.

Third Issue and Assignment of Error:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE NOTICE OF ADVERSE CLAIM OF THE [TORBELA SIBLINGS] UNDER ENTRY NO. 274471 WAS

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[43] *Id*. at 212.

[44] *Id*. at 253-254.

VALIDLY CANCELLED BY THE REGISTER OF DEEDS, IN THE ABSENCE OF A PETITION DULY FILED IN COURT FOR ITS CANCELLATION.

Fourth Issue and Assignment of Error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENT BANCO FILIPINO SAVINGS AND MORTGAGE BANK IS A MORTGAGEE IN GOOD FAITH.

Fifth Issue and Assignment of Error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE FILING OF A CIVIL CASE NO. U-4359 ON DECEMBER 9, 1987, IMPLEADING RESPONDENT BANCO FILIPINO AS ADDITIONAL PARTY DEFENDANT, TOLL OR SUSPEND THE RUNNING OF THE ONE YEAR PERIOD OF REDEMPTION.

Sixth Issue and Assignment of Error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE OWNERSHIP OVER THE SUBJECT PROPERTY WAS PREMATURELY CONSOLIDATED IN FAVOR OF RESPONDENT BANCO FILIPINO SAVINGS AND MORTGAGE BANK.

Seventh Issue and Assignment of Error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE SUBJECT PROPERTY IS AT LEAST WORTH ₱1,200,000.00.[45]

The Torbela siblings ask of this Court:

WHEREFORE, in the light of the foregoing considerations, the [Torbela siblings] most respectfully pray that the questioned DECISION promulgated on June 29, 1999 (Annex "A", Petition) and the RESOLUTION dated October 22, 1999 (Annex "B", Petition) be REVERSED and SET ASIDE, and/or further MODIFIED in favor of the [Torbela siblings], and another DECISION issue ordering, among other reliefs, the respondent Banco Filipino to reconvey back Lot No. 356-A, covered by T.C.T. No. 52751, in favor of the [Torbela siblings] who are the actual owners of the same.

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[45] *Rollo* (G.R. No. 140528), pp. 21-22, 31, and 33.

The [Torbela siblings] likewise pray for such other reliefs and further remedies as may be deemed just and equitable under the premises.[46]

Duque-Rosario, now legally separated from Dr. Rosario, avers in her Petition for Review in G.R. No. 140553 that Lot No. 4489 and Lot No. 5-F-8-C-2-B-2-A were registered in her name, and she was unlawfully deprived of ownership of said properties because of the following errors of the Court of Appeals:

A

THE HON. COURT OF APPEALS PATENTLY ERRED IN NOT FINDING THAT THE PERIOD TO REDEEM THE PROPERTY HAS NOT COMMENCED, HENCE, THE CERTIFICATE OF SALE, THE CONSOLIDATION OF OWNERSHIP BY [BANCO FILIPINO], ARE NULL AND VOID.

B

THE COURT OF APPEALS PATENTLY ERRED IN REFUSING TO RULE THAT THE FILING OF THE COMPLAINT BEFORE THE COURT *A QUO* BY THE [TORBELA SIBLINGS] HAD ALREADY BEEN PRESCRIBED.[47]

Duque-Rosario prays that the appealed decision of the Court of Appeals be reversed and set aside, and that Lot No. 4489 and Lot No. 5-F-8-C-2-B-2-A be freed from all obligations and encumbrances and returned to her.

Review of findings of fact by the RTC and the Court of Appeals warranted.

A disquisition of the issues raised and/or errors assigned in the Petitions at bar unavoidably requires a re-evaluation of the facts and evidence presented by the parties in the court *a quo*.

In *Republic v. Heirs of Julia Ramos*,[48] the Court summed up the rules governing the power of review of the Court:

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[46] *Id*. at 35.

[47] *Rollo* (G.R. No. 140553), p. 10.

[48] G.R. No. 169481, February 22, 2010, 613 SCRA 314.

Ordinarily, this Court will not review, much less reverse, the factual findings of the Court of Appeals, especially where such findings coincide with those of the trial court. The findings of facts of the Court of Appeals are, as a general rule, conclusive and binding upon this Court, since this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case.

The above rule, however, is subject to a number of exceptions, such as (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises, or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[49]

As the succeeding discussion will bear out, the first, fourth, and ninth exceptions are extant in these case.

Barangay conciliation was not a pre-requisite to the institution of Civil Case No. U-4359.

Dr. Rosario contends that Civil Case No. U-4359, the Complaint of the Torbela siblings for recovery of ownership and possession of Lot No. 356-A, plus damages, should have been dismissed by the RTC because of the failure of the Torbela siblings to comply with the prior requirement of submitting the dispute to *barangay* conciliation.

The Torbela siblings instituted Civil Case No. U-4359 on February 13, 1986, when Presidential Decree No. 1508, Establishing a

[49] *Id.* at 324-325.

System of Amicably Settling Disputes at the Barangay Level, was still in effect.[50] Pertinent provisions of said issuance read:

Section 2. *Subject matters for amicable settlement.* The Lupon of each *barangay* shall have authority to bring together the **parties actually residing in the same city or municipality** for amicable settlement of all disputes except:

1. Where one party is the government, or any subdivision or instrumentality thereof;
2. Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
3. Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding ₱200.00;
4. Offenses where there is no private offended party;
5. Such other classes of disputes which the Prime Minister may in the interest of justice determine upon recommendation of the Minister of Justice and the Minister of Local Government.

Section 3. *Venue.* Disputes between or among persons actually residing in the same *barangay* shall be brought for amicable settlement before the Lupon of said *barangay*. Those involving actual residents of different *barangays* within the same city or municipality shall be brought in the *barangay* where the respondent or any of the respondents actually resides, at the election of the complainant. However, **all disputes which involved real property or any interest therein shall be brought in the *barangay* where the real property or any part thereof is situated**.

The Lupon shall have **no authority** over disputes:

1. involving **parties who actually reside in *barangays* of different cities or municipalities, except where such *barangays* adjoin each other**; and
2. involving real property located in different municipalities.

xxx xxx xxx

[50] This was repealed by Republic Act No. 7160, otherwise known as the Local Government Code of 1991, which took effect on January 1, 1992.

Section 6. *Conciliation, pre-condition to filing of complaint.* — No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. x x x. (Emphases supplied.)

The Court gave the following elucidation on the jurisdiction of the Lupong Tagapayapa in *Tavora v. Hon. Veloso*[51]:

The foregoing provisions are quite clear. Section 2 specifies the conditions under which the Lupon of a *barangay* "shall have authority" to bring together the disputants for amicable settlement of their dispute: The parties must be "actually residing in *the same* city or municipality." At the same time, Section 3 — while reiterating that the disputants must be "actually residing in *the same barangay*" or in "different *barangays*" within *the same* city or municipality — unequivocably declares that the Lupon shall have "no authority" over disputes "involving parties who actually reside in *barangays* of *different* cities or municipalities," except where such *barangays* adjoin each other.

Thus, **by express statutory inclusion and exclusion, the Lupon shall have no jurisdiction over disputes where the parties are not actual residents of the same city or municipality, except where the *barangays* in which they actually reside adjoin each other**.

It is true that immediately after specifying the *barangay* whose Lupon shall take cognizance of a given dispute, Sec. 3 of PD 1508 adds:

> "However, all disputes which involve real property or any interest therein shall be brought in the *barangay* where the real property or any part thereof is situated."

Actually, however, this added sentence is just an ordinary *proviso* and should operate as such.

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[51] 202 Phil. 943 (1982).

The operation of a proviso, as a rule, should be limited to its normal function, which is to restrict or vary the operation of the principal clause, rather than expand its scope, in the absence of a clear indication to the contrary.

> "The natural and appropriate office of a proviso is . . . to except something from the enacting clause; to limit, restrict, or qualify the statute in whole or in part; or to exclude from the scope of the statute that which otherwise would be within its terms." (73 Am Jur 2d 467.)

Therefore, the quoted proviso should simply be deemed to restrict or vary the rule on venue prescribed in the principal clauses of the first paragraph of Section 3, thus**: Although venue is generally determined by the residence of the parties, disputes involving real property shall be brought in the *barangay* where the real property or any part thereof is situated, notwithstanding that the parties reside elsewhere within the same city/municipality**.[52] (Emphases supplied.)

The original parties in Civil Case No. U-4359 (the Torbela siblings and the spouses Rosario) do not reside in the same *barangay*, or in different *barangays* within the same city or municipality, or in different *barangays* of different cities or municipalities but are adjoining each other. Some of them reside outside Pangasinan and even outside of the country altogether. The Torbela siblings reside separately in Barangay Macalong, Urdaneta, Pangasinan; Barangay Consolacion, Urdaneta, Pangasinan; Pangil, Laguna; Chicago, United States of America; and Canada. The spouses Rosario are residents of Calle Garcia, Poblacion, Urdaneta, Pangasinan. Resultantly, the Lupon had no jurisdiction over the dispute and *barangay* conciliation was not a pre-condition for the filing of Civil Case No. U-4359.

The Court now looks into the merits of Civil Case No. U-4359.

There was an express trust between the Torbela siblings and Dr. Rosario.

There is no dispute that the Torbela sibling inherited the title to Lot No. 356-A from their parents, the Torbela spouses, who,

[52] *Id.* at 947-948.

in turn, acquired the same from the first registered owner of Lot No. 356-A, Valeriano.

Indeed, the Torbela siblings executed a Deed of Absolute Quitclaim on **December 12, 1964** in which they transferred and conveyed Lot No. 356-A to Dr. Rosario for the consideration of ₱9.00. However, the Torbela siblings explained that they only executed the Deed as an accommodation so that Dr. Rosario could have Lot No. 356-A registered in his name and use said property to secure a loan from DBP, the proceeds of which would be used for building a hospital on Lot No. 356-A — a claim supported by testimonial and documentary evidence, and borne out by the sequence of events immediately following the execution by the Torbela siblings of said Deed. On **December 16, 1964**, TCT No. 52751, covering Lot No. 356-A, was already issued in Dr. Rosario's name. On **December 28, 1964**, Dr. Rosario executed his own Deed of Absolute Quitclaim, in which he expressly acknowledged that he "only borrowed" Lot No. 356-A and was transferring and conveying the same back to the Torbela siblings for the consideration of ₱1.00. On **February 21, 1965**, Dr. Rosario's loan in the amount of ₱70,200.00, secured by a mortgage on Lot No. 356-A, was approved by DBP. Soon thereafter, construction of a hospital building started on Lot No. 356-A.

Among the notable evidence presented by the Torbela siblings is the testimony of Atty. Lorenza Alcantara (Atty. Alcantara), who had no apparent personal interest in the present case. Atty. Alcantara, when she was still a boarder at the house of Eufrosina Torbela Rosario (Dr. Rosario's mother), was consulted by the Torbela siblings as regards the extrajudicial partition of Lot No. 356-A. She also witnessed the execution of the two Deeds of Absolute Quitclaim by the Torbela siblings and Dr. Rosario.

In contrast, Dr. Rosario presented TCT No. 52751, issued in his name, to prove his purported title to Lot No. 356-A. In

Lee Tek Sheng v. Court of Appeals,[53] the Court made a clear distinction between title and the certificate of title:

> The certificate referred to is that document issued by the Register of Deeds known as the Transfer Certificate of Title (TCT). By title, the law refers to ownership which is represented by that document. Petitioner apparently confuses certificate with title. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title. The TCT is only the best proof of ownership of a piece of land. Besides, the certificate cannot always be considered as conclusive evidence of ownership. **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.** To repeat, registration is not the equivalent of title, but is only the best evidence thereof. **Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.** x x x.[54] (Emphases supplied.)

Registration does not vest title; it is merely the evidence of such title. Land registration laws do not give the holder any better title than what he actually has.[55] Consequently, Dr. Rosario must still prove herein his acquisition of title to Lot No. 356-A, apart from his submission of TCT No. 52751 in his name.

Dr. Rosario testified that he obtained Lot No. 356-A after paying the Torbela siblings ₱25,000.00, pursuant to a verbal agreement with the latter. The Court though observes that Dr. Rosario's testimony on the execution and existence of the verbal agreement with the Torbela siblings lacks significant details (such as the names of the parties present, dates, places, *etc*.) and is not corroborated by independent evidence.

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[53] 354 Phil. 556 (1998).

[54] *Id.* at 561-562.

[55] *Heirs of Rosa Dumaliang v. Serban*, G.R. No. 155133, February 21, 2007, 516 SCRA 343, 357-358.

In addition, Dr. Rosario acknowledged the execution of the two Deeds of Absolute Quitclaim dated December 12, 1964 and December 28, 1964, even affirming his own signature on the latter Deed. The Parol Evidence Rule provides that when the terms of the agreement have been reduced into 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.[56] Dr. Rosario may not modify, explain, or add to the terms in the two written Deeds of Absolute Quitclaim since he did not put in issue in his pleadings (1) an intrinsic ambiguity, mistake, or imperfection in the Deeds; (2) failure of the Deeds to express the true intent and the agreement of the parties thereto; (3) the validity of the Deeds; or (4) the existence of other terms agreed to by the Torbela siblings and Dr. Rosario after the execution of the Deeds.[57]

Even if the Court considers Dr. Rosario's testimony on his alleged verbal agreement with the Torbela siblings, the Court finds the same unsatisfactory. Dr. Rosario averred that the two Deeds were executed only because he was "planning to secure loan from the Development Bank of the Philippines and Philippine National Bank and the bank needed absolute quitclaim[.]"[58] While Dr. Rosario's explanation makes sense for the first Deed of Absolute Quitclaim dated December 12, 1964 executed by the Torbela siblings (which transferred Lot No. 356-A to Dr. Rosario for ₱9.00), the same could not be said for the second Deed of Absolute Quitclaim dated December 28, 1964 executed by Dr. Rosario. In fact, Dr. Rosario's Deed of Absolute Quitclaim (in which he admitted that he only borrowed Lot No. 356-A and was transferring the same to the Torbela siblings for ₱1.00) would actually work against the approval of Dr. Rosario's loan by the banks. Since Dr. Rosario's Deed of Absolute Quitclaim dated December 28, 1964 is a

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[56] Rules of Court, Rule 130, Section 9.

[57] *Id*.

[58] TSN, September 25, 1991, p. 21.

declaration against his self-interest, it must be taken as favoring the truthfulness of the contents of said Deed.[59]

It can also be said that Dr. Rosario is estopped from claiming or asserting ownership over Lot No. 356-A based on his Deed of Absolute Quitclaim dated December 28, 1964. Dr. Rosario's admission in the said Deed that he merely borrowed Lot No. 356-A is deemed conclusive upon him. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."[60] That admission cannot now be denied by Dr. Rosario as against the Torbela siblings, the latter having relied upon his representation.

Considering the foregoing, the Court agrees with the RTC and the Court of Appeals that Dr. Rosario only holds Lot No. 356-A in trust for the Torbela siblings.

Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law.[61]

Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust. Under Article 1444 of the Civil Code, "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended."[62] It is possible to create a trust without using the word "trust" or "trustee." Conversely, the mere fact that these words

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[59] *Declaro v. Court of Appeals*, 399 Phil. 616, 623 (2000).

[60] *Spouses Gomez v. Duyan*, 493 Phil. 819, 828 (2005).

[61] *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste*, G.R. No. 162033, May 8, 2009, 587 SCRA 417, 425.

[62] *Id*.

are used does not necessarily indicate an intention to create a trust. The question in each case is whether the trustor manifested an intention to create the kind of relationship which to lawyers is known as trust. It is immaterial whether or not he knows that the relationship which he intends to create is called a trust, and whether or not he knows the precise characteristics of the relationship which is called a trust.[63]

In *Tamayo v. Callejo*,[64] the Court recognized that a trust may have a constructive or implied nature in the beginning, but the registered owner's subsequent express acknowledgement in a public document of a previous sale of the property to another party, had the effect of imparting to the aforementioned trust the nature of an express trust. The same situation exists in this case. When Dr. Rosario was able to register Lot No. 356-A in his name under TCT No. 52751 on December 16, 1964, an implied trust was initially established between him and the Torbela siblings under Article 1451 of the Civil Code, which provides:

> ART. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

Dr. Rosario's execution of the Deed of Absolute Quitclaim on December 28, 1964, containing his express admission that he only borrowed Lot No. 356-A from the Torbela siblings, eventually transformed the nature of the trust to an express one. The express trust continued despite Dr. Rosario stating in his Deed of Absolute Quitclaim that he was already returning Lot No. 356-A to the Torbela siblings as Lot No. 356-A remained registered in Dr. Rosario's name under TCT No. 52751 and Dr. Rosario kept possession of said property, together with the improvements thereon.

The right of the Torbela siblings to recover Lot No. 356-A has not yet prescribed.

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[63] *Heirs of Maximo Labanon v. Heirs of Constancio Labanon*, G.R. No. 160711, August 14, 2007, 530 SCRA 97, 107.

[64] 150-B Phil. 31, 37-38 (1972).

The Court extensively discussed the prescriptive period for express trusts in the *Heirs of Maximo Labanon v. Heirs of Constancio Labanon*,[65] to wit:

> On the issue of prescription, we had the opportunity to rule in *Bueno v. Reyes* that **unrepudiated written express trusts are imprescriptible**:
>
> "While there are some decisions which hold that an action upon a trust is imprescriptible, without distinguishing between express and implied trusts, the better rule, as laid down by this Court in other decisions, is that prescription does supervene where the trust is merely an implied one. The reason has been expressed by Justice J.B.L. Reyes in *J.M. Tuason and Co., Inc. vs. Magdangal*, 4 SCRA 84, 88, as follows:
>
> > Under Section 40 of the old Code of Civil Procedure, all actions for recovery of real property prescribed in 10 years, excepting only actions based on continuing or subsisting trusts that were considered by Section 38 as imprescriptible. As held in the case of *Diaz v. Gorricho*, L-11229, March 29, 1958, however, the continuing or subsisting trusts contemplated in Section 38 of the Code of Civil Procedure referred only to express unrepudiated trusts, and did not include constructive trusts (that are imposed by law) where no fiduciary relation exists and the trustee does not recognize the trust at all."
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> This principle was amplified in *Escay v. Court of Appeals* this way: "Express trusts prescribe 10 years from the repudiation of the trust (*Manuel Diaz, et al. vs. Carmen Gorricho, et al.*, 54 O.G. p. 8429, Sec. 40, Code of Civil Procedure)."
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> In the more recent case of *Secuya v. De Selma*, we again ruled that the prescriptive period for the enforcement of an express trust of ten (10) years starts upon the repudiation of the trust by the trustee.[66]

To apply the 10-year prescriptive period, which would bar a beneficiary's action to recover in an express trust, the

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[65] *Supra* note 63.

[66] *Id.* at 108-109.

repudiation of the trust must be proven by clear and convincing evidence and made known to the beneficiary.[67] The express trust disables the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or *cestui que trust*. For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (*i.e.*, unrepudiated) trusts. In an express trust, the delay of the beneficiary is directly attributable to the trustee who undertakes to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is, therefore, not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated.[68]

Dr. Rosario argues that he is deemed to have repudiated the trust on December 16, 1964, when he registered Lot No. 356-A in his name under TCT No. 52751, so when on February 13, 1986, the Torbela siblings instituted before the RTC Civil Case No. U-4359, for the recovery of ownership and possession of Lot No. 356-A from the spouses Rosario, over 21 years had passed. Civil Case No. U-4359 was already barred by prescription, as well as laches.

The Court already rejected a similar argument in *Ringor v. Ringor*[69] for the following reasons:

A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration. A Torrens Certificate of Title in Jose's name did not vest ownership of the land upon him. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. The Torrens system was not intended to foment betrayal in the performance of a trust. It does not

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[67] *Secuya v. De Selma*, 383 Phil. 126, 137 (2000).

[68] *Diaz v. Gorricho and Aguado*, 103 Phil. 261, 266 (1958).

[69] G.R. No. 147863, August 13, 2004, 436 SCRA 484.

permit one to enrich himself at the expense of another. Where one does not have a rightful claim to the property, the Torrens system of registration can confirm or record nothing. Petitioners cannot rely on the registration of the lands in Jose's name nor in the name of the Heirs of Jose M. Ringor, Inc., for the wrong result they seek. For Jose could not repudiate a trust by relying on a Torrens title he held in trust for his co-heirs. The beneficiaries are entitled to enforce the trust, notwithstanding the irrevocability of the Torrens title. The intended trust must be sustained.[70] (Emphasis supplied.)

In the more recent case of *Heirs of Tranquilino Labiste v. Heirs of Jose Labiste*,[71] the Court refused to apply prescription and laches and reiterated that:

[P]rescription and laches will run only from the time the express trust is repudiated. The Court has held that for acquisitive prescription to bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust it must be shown that: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive. **Respondents cannot rely on the fact that the Torrens title was issued in the name of Epifanio and the other heirs of Jose. It has been held that a trustee who obtains a Torrens title over property held in trust by him for another cannot repudiate the trust by relying on the registration.** The rule requires a clear repudiation of the trust duly communicated to the beneficiary. The only act that can be construed as repudiation was when respondents filed the petition for reconstitution in October 1993. And since petitioners filed their complaint in January 1995, their cause of action has not yet prescribed, laches cannot be attributed to them.[72] (Emphasis supplied.)

It is clear that under the foregoing jurisprudence, the registration of Lot No. 356-A by Dr. Rosario in his name under TCT No. 52751 on December 16, 1964 is not the repudiation

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[70] *Id.* at 500-501.

[71] *Supra* note 61.

[72] *Id.* at 426.

that would have caused the 10-year prescriptive period for the enforcement of an express trust to run.

The Court of Appeals held that Dr. Rosario repudiated the express trust when he acquired another loan from PNB and constituted a second mortgage on Lot No. 356-A sometime in 1979, which, unlike the first mortgage to DBP in 1965, was without the knowledge and/or consent of the Torbela siblings.

The Court only concurs in part with the Court of Appeals on this matter.

For repudiation of an express trust to be effective, the unequivocal act of repudiation had to be made known to the Torbela siblings as the *cestuis que trust* and must be proven by clear and conclusive evidence. A scrutiny of TCT No. 52751 reveals the following inscription:

Entry No. *520099*

Amendment of the mortgage in favor of PNB inscribed under Entry No. *490658* in the sense that the consideration thereof has been increased to PHILIPPINE PESOS *Four Hundred Fifty Thousand Pesos only* (~~P~~*450,000.00*) and to secure any and all negotiations with PNB, whether contracted before, during or after the date of this instrument, acknowledged before Notary Public of *Pangasinan Alejo M. Dato* as Doc. No. *198*, Page No. *41*, Book No. *11*, Series of 19*85*.

Date of Instrument *March 5, 1981*
Date of Inscription *March 6, 1981*[73]

Although according to Entry No. 520099, the original loan and mortgage agreement of Lot No. 356-A between Dr. Rosario and PNB was previously inscribed as Entry No. 490658, Entry No. 490658 does not actually appear on TCT No. 52751 and, thus, it cannot be used as the reckoning date for the start of the prescriptive period.

The Torbela siblings can only be charged with knowledge of the mortgage of Lot No. 356-A to PNB on March 6, 1981 when the amended loan and mortgage agreement was registered

[73] CA *rollo*, p. 105.

on TCT No. 52751 as Entry No. 520099. Entry No. 520099 is constructive notice to the whole world[74] that Lot No. 356-A was mortgaged by Dr. Rosario to PNB as security for a loan, the amount of which was increased to ₱450,000.00. Hence, Dr. Rosario is deemed to have effectively repudiated the express trust between him and the Torbela siblings on March 6, 1981, on which day, the prescriptive period for the enforcement of the express trust by the Torbela siblings began to run.

From **March 6, 1981**, when the amended loan and mortgage agreement was registered on TCT No. 52751, to **February 13, 1986**, when the Torbela siblings instituted before the RTC Civil Case No. U-4359 against the spouses Rosario, only about **five years** had passed. The Torbela siblings were able to institute Civil Case No. U-4359 well before the lapse of the 10-year prescriptive period for the enforcement of their express trust with Dr. Rosario.

Civil Case No. U-4359 is likewise not barred by laches. Laches means the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. As the Court explained in the preceding paragraphs, the Torbela siblings instituted Civil Case No. U-4359 five years after Dr. Rosario's repudiation of the express trust, still within the 10-year prescriptive period for enforcement of such trusts. This does not constitute an unreasonable delay in asserting one's right. A delay within

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[74] Section 52 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, reads:

SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Registrar of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, entering.

the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. Laches apply only in the absence of a statutory prescriptive period.[75]

Banco Filipino is not a mortgagee and buyer in good faith.

Having determined that the Torbela siblings are the true owners and Dr. Rosario merely the trustee of Lot No. 356-A, the Court is next faced with the issue of whether or not the Torbela siblings may still recover Lot No. 356-A considering that Dr. Rosario had already mortgaged Lot No. 356-A to Banco Filipino, and upon Dr. Rosario's default on his loan obligations, Banco Filipino foreclosed the mortgage, acquired Lot No. 356-A as the highest bidder at the foreclosure sale, and consolidated title in its name under TCT No. 165813. The resolution of this issue depends on the answer to the question of whether or not Banco Filipino was a mortgagee in good faith.

Under Article 2085 of the Civil Code, one of the essential requisites of the contract of mortgage is that the mortgagor should be the absolute owner of the property to be mortgaged; otherwise, the mortgage is considered null and void. However, an exception to this rule is the doctrine of "mortgagee in good faith." Under this doctrine, even if the mortgagor is not the owner of the mortgaged property, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This principle is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. This is the same rule that underlies the principle of "innocent purchasers for value." The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor to the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful

[75] *De Castro v. Court of Appeals*, 434 Phil. 53, 68 (2002).

owner of, or does not have a valid title to, the mortgaged property, the mortgagee in good faith is, nonetheless, entitled to protection.[76]

On one hand, the Torbela siblings aver that Banco Filipino is not a mortgagee in good faith because as early as May 17, 1967, they had already annotated Cornelio's Adverse Claim dated May 16, 1967 and Dr. Rosario's Deed of Absolute Quitclaim dated December 28, 1964 on TCT No. 52751 as Entry Nos. 274471-274472, respectively.

On the other hand, Banco Filipino asseverates that it is a mortgagee in good faith because per Section 70 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, the notice of adverse claim, registered on May 17, 1967 by the Torbela siblings under Entry Nos. 274471-274472 on TCT No. 52751, already lapsed after 30 days or on June 16, 1967. Additionally, there was an express cancellation of Entry Nos. 274471-274472 by Entry No. 520469 dated March 11, 1981. So when Banco Filipino approved Dr. Rosario's loan for ₱1,200,000.00 and constituted a mortgage on Lot No. 356-A (together with two other properties) on December 8, 1981, the only other encumbrance on TCT No. 52751 was Entry No. 520099 dated March 6, 1981, *i.e.*, the amended loan and mortgage agreement between Dr. Rosario and PNB (which was eventually cancelled after it was paid off with part of the proceeds from Dr. Rosario's loan from Banco Filipino). Hence, Banco Filipino was not aware that the Torbela siblings' adverse claim on Lot No. 356-A still subsisted.

The Court finds that Banco Filipino is **not** a mortgagee in good faith. Entry Nos. 274471-274472 were not validly cancelled, and the improper cancellation should have been apparent to Banco Filipino and aroused suspicion in said bank of some defect in Dr. Rosario's title.

The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a

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[76] *Llanto v. Alzona*, 490 Phil. 696, 703 (2005).

controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[77]

Adverse claims were previously governed by Section 110 of Act No. 496, otherwise known as the Land Registration Act, quoted in full below:

ADVERSE CLAIM

SEC. 110. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be cancelled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion.

Construing the aforequoted provision, the Court stressed in *Ty Sin Tei v. Lee Dy Piao*[78] that "[t]he validity or efficaciousness of the [adverse] claim x x x may only be determined by the Court *upon petition by an interested party*, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. *And it is ONLY when such claim is found unmeritorious that the registration*

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[77] *Arrazola v. Bernas*, 175 Phil. 452, 456-457 (1978).

[78] 103 Phil. 858, 867 (1958).

thereof may be cancelled." The Court likewise pointed out in the same case that while a notice of *lis pendens* may be cancelled in a number of ways, "the same is not true in a registered adverse claim, for it may be cancelled only in one instance, *i.e.*, after the claim is adjudged invalid or unmeritorious by the Court x x x;" and "if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotation of the adverse claim which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim."

With the enactment of the Property Registration Decree on June 11, 1978, Section 70 thereof now applies to adverse claims:

SEC. 70. *Adverse claim*. – Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registrations, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right, or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. **The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest:** Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus

registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphases supplied.)

In *Sajonas v. Court of Appeals*,[79] the Court squarely interpreted Section 70 of the Property Registration Decree, particularly, the new 30-day period not previously found in Section 110 of the Land Registration Act, thus:

> In construing the law aforesaid, care should be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole. For taken in solitude, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated. In ascertaining the period of effectivity of an inscription of adverse claim, we must read the law in its entirety. Sentence three, paragraph two of Section 70 of P.D. 1529 provides:
>
> "The adverse claim shall be effective for a period of thirty days from the date of registration."
>
> At first blush, the provision in question would seem to restrict the effectivity of the adverse claim to thirty days. But the above provision cannot and should not be treated separately, but should be read in relation to the sentence following, which reads:
>
> "After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest."
>
> If the rationale of the law was for the adverse claim to *ipso facto* lose force and effect after the lapse of thirty days, then it would not have been necessary to include the foregoing caveat to clarify and complete the rule. For then, no adverse claim need be cancelled. If it has been automatically terminated by mere lapse of time, the law would not have required the party in interest to do a useless act.

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[79] 327 Phil. 689 (1996).

A statute's clauses and phrases must not be taken separately, but in its relation to the statute's totality. Each statute must, in fact, be construed as to harmonize it with the pre-existing body of laws. Unless clearly repugnant, provisions of statutes must be reconciled. The printed pages of the published Act, its history, origin, and its purposes may be examined by the courts in their construction. x x x.

x x x x x x x x x

Construing the provision as a whole would reconcile the apparent inconsistency between the portions of the law such that the provision on cancellation of adverse claim by verified petition would serve to qualify the provision on the effectivity period. **The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. For if the adverse claim has already ceased to be effective upon the lapse of said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony.**

It should be noted that the law employs the phrase "may be cancelled," which obviously indicates, as inherent in its decision making power, that the court may or may not order the cancellation of an adverse claim, notwithstanding such provision limiting the effectivity of an adverse claim for thirty days from the date of registration. The court cannot be bound by such period as it would be inconsistent with the very authority vested in it. *A fortiori*, the limitation on the period of effectivity is immaterial in determining the validity or invalidity of an adverse claim which is the principal issue to be decided in the court hearing. It will therefore depend upon the evidence at a proper hearing for the court to determine whether it will order the cancellation of the adverse claim or not.

To interpret the effectivity period of the adverse claim as absolute and without qualification limited to thirty days defeats the very purpose for which the statute provides for the remedy of an inscription of adverse claim, as the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act or Act 496 (now P.D. 1529 or the Property Registration Decree), and serves as a warning to third parties dealing with said property that someone is claiming an interest or the same or a better right than the registered owner thereof.

The reason why the law provides for a hearing where the validity of the adverse claim is to be threshed out is to afford the adverse claimant an opportunity to be heard, providing a venue where the propriety of his claimed interest can be established or revoked, all for the purpose of determining at last the existence of any encumbrance on the title arising from such adverse claim. This is in line with the provision immediately following:

> "Provided, however, that after cancellation, no second adverse claim shall be registered by the same claimant."

Should the adverse claimant fail to sustain his interest in the property, the adverse claimant will be precluded from registering a second adverse claim based on the same ground.

It was held that "validity or efficaciousness of the claim may only be determined by the Court upon petition by an interested party, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And it is only when such claim is found unmeritorious that the registration of the adverse claim may be cancelled, thereby protecting the interest of the adverse claimant and giving notice and warning to third parties."[80] (Emphases supplied.)

Whether under Section 110 of the Land Registration Act or Section 70 of the Property Registration Decree, notice of adverse claim can only be cancelled after a party in interest files a petition for cancellation before the RTC wherein the property is located, and the RTC conducts a hearing and determines the said claim to be invalid or unmeritorious.

No petition for cancellation has been filed and no hearing has been conducted herein to determine the validity or merit of the adverse claim of the Torbela siblings. Entry No. 520469 cancelled the adverse claim of the Torbela siblings, annotated as Entry Nos. 274471-774472, upon the presentation by Dr. Rosario of a mere Cancellation and Discharge of Mortgage.

Regardless of whether or not the Register of Deeds should have inscribed Entry No. 520469 on TCT No. 52751, Banco

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[80] *Id.* at 708-712.

Filipino could not invoke said inscription in support of its claim of good faith. There were several things amiss in Entry No. 520469 which should have already aroused suspicions in Banco Filipino, and compelled the bank to look beyond TCT No. 52751 and inquire into Dr. Rosario's title. First, Entry No. 520469 does not mention any court order as basis for the cancellation of the adverse claim. Second, the adverse claim was not a mortgage which could be cancelled with Dr. Rosario's Cancellation and Discharge of Mortgage. And third, the adverse claim was against Dr. Rosario, yet it was cancelled based on a document also executed by Dr. Rosario.

It is a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser or mortgagee for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation.[81]

While the defective cancellation of Entry Nos. 274471-274472 by Entry No. 520469 might not be evident to a private individual, the same should have been apparent to Banco Filipino. Banco Filipino is not an ordinary mortgagee, but is a mortgagee-bank, whose business is impressed with public interest. In fact, in one case,[82] the Court explicitly declared that the rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks. In another case,[83] the Court

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[81] *Crisostomo v. Court of Appeals*, 274 Phil. 1134, 1142-1143 (1991).

[82] *Philippine Trust Company v. Court of Appeals*, G.R. No. 150318, November 22, 2010, 635 SCRA 518, 530.

[83] *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 239 (2002).

adjudged that unlike private individuals, a bank is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

Banco Filipino cannot be deemed a mortgagee in good faith, much less a purchaser in good faith at the foreclosure sale of Lot No. 356-A. Hence, the right of the Torbela siblings over Lot No. 356-A is superior over that of Banco Filipino; and as the true owners of Lot No. 356-A, the Torbela siblings are entitled to a reconveyance of said property even from Banco Filipino.

Nonetheless, the failure of Banco Filipino to comply with the due diligence requirement was not the result of a dishonest purpose, some moral obliquity, or breach of a known duty for some interest or ill will that partakes of fraud that would justify damages.[84]

Given the reconveyance of Lot No. 356-A to the Torbela siblings, there is no more need to address issues concerning redemption, annulment of the foreclosure sale and certificate of sale (subject matter of Civil Case No. U-4733), or issuance of a writ of possession in favor of Banco Filipino (subject matter of Pet. Case No. U-822) insofar as Lot No. 356-A is concerned. Such would only be superfluous. Banco Filipino, however, is not left without any recourse should the foreclosure and sale of the two other mortgaged properties be insufficient to cover Dr. Rosario's loan, for the bank may still bring a proper suit against Dr. Rosario to collect the unpaid balance.

The rules on accession shall govern the improvements on Lot No. 356-A and the rents thereof.

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

The accessory follows the principal. The right of accession is recognized under Article 440 of the Civil Code which states that "[t]he ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially."

There is no question that Dr. Rosario is the builder of the improvements on Lot No. 356-A. The Torbela siblings themselves alleged that they allowed Dr. Rosario to register Lot No. 356-A in his name so he could obtain a loan from DBP, using said parcel of land as security; and with the proceeds of the loan, Dr. Rosario had a building constructed on Lot No. 356-A, initially used as a hospital, and then later for other commercial purposes. Dr. Rosario supervised the construction of the building, which began in 1965; fully liquidated the loan from DBP; and maintained and administered the building, as well as collected the rental income therefrom, until the Torbela siblings instituted Civil Case No. U-4359 before the RTC on February 13, 1986.

When it comes to the improvements on Lot No. 356-A, both the Torbela siblings (as landowners) and Dr. Rosario (as builder) are deemed in bad faith. The Torbela siblings were aware of the construction of a building by Dr. Rosario on Lot No. 356-A, while Dr. Rosario proceeded with the said construction despite his knowledge that Lot No. 356-A belonged to the Torbela siblings. This is the case contemplated under Article 453 of the Civil Code, which reads:

> ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, **the rights of one and the other shall be the same as though both had acted in good faith**.
>
> It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. (Emphasis supplied.)

When both the landowner and the builder are in good faith, the following rules govern:

ART. 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.

ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

Whatever is built, planted, or sown on the land of another, and the improvements or repairs made thereon, belong to the owner of the land. Where, however, the planter, builder, or sower has acted in good faith, a conflict of rights arises between the owners and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating what Manresa calls a state of "forced co-ownership," the law has provided a just and equitable solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to oblige the builder or planter to pay for the land and the sower to pay the proper rent. It is the owner of the land who is allowed to exercise the option

because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[85]

The landowner has to make a choice between appropriating the building by paying the proper indemnity or obliging the builder to pay the price of the land. But even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. He must choose one. He cannot, for instance, compel the owner of the building to remove the building from the land without first exercising either option. It is only if the owner chooses to sell his land, and the builder or planter fails to purchase it where its value is not more than the value of the improvements, that the owner may remove the improvements from the land. The owner is entitled to such remotion only when, after having chosen to sell his land, the other party fails to pay for the same.[86]

This case then must be remanded to the RTC for the determination of matters necessary for the proper application of Article 448, in relation to Article 546, of the Civil Code. Such matters include the option that the Torbela siblings will choose; the amount of indemnity that they will pay if they decide to appropriate the improvements on Lot No. 356-A; the value of Lot No. 356-A if they prefer to sell it to Dr. Rosario; or the reasonable rent if they opt to sell Lot No. 356-A to Dr. Rosario but the value of the land is considerably more than the improvements. The determination made by the Court of Appeals in its Decision dated June 29, 1999 that the current value of Lot No. 356-A is ₱1,200,000.00 is not supported by any evidence on record.

Should the Torbela siblings choose to appropriate the improvements on Lot No. 356-A, the following ruling of the Court in *Pecson v. Court of Appeals*[87] is relevant in the determination of the amount of indemnity under Article 546 of the Civil Code:

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[85] *Bernardo v. Bataclan*, 66 Phil. 598, 602 (1938).

[86] *Briones v. Spouses Macabagdal*, G.R. No. 150666, August 3, 2010, 626 SCRA 300, 307-308.

[87] 314 Phil. 313 (1995).

Article 546 does not specifically state how the value of the useful improvements should be determined. The respondent court and the private respondents espouse the belief that the cost of construction of the apartment building in 1965, and not its current market value, is sufficient reimbursement for necessary and useful improvements made by the petitioner. This position is, however, not in consonance with previous rulings of this Court in similar cases. In *Javier vs. Concepcion, Jr.*, this Court pegged the value of the useful improvements consisting of various fruits, bamboos, a house and camarin made of strong material based on the **market value** of the said improvements. In *Sarmiento vs. Agana*, despite the finding that the useful improvement, a residential house, was built in 1967 at a cost of between eight thousand pesos (₱8,000.00) to ten thousand pesos (₱10,000.00), the landowner was ordered to reimburse the builder in the amount of forty thousand pesos (₱40,000.00), the **value of the house at the time of the trial**. In the same way, the landowner was required to pay the **"present value"** of the house, a useful improvement, in the case of *De Guzman vs. De la Fuente*, cited by the petitioner.

The objective of Article 546 of the Civil Code is to administer justice between the parties involved. In this regard, this Court had long ago stated in *Rivera vs. Roman Catholic Archbishop of Manila* that the said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the **current market value** of the improvements which should be made the basis of reimbursement. A contrary ruling would unjustly enrich the private respondents who would otherwise be allowed to acquire a highly valued income-yielding four-unit apartment building for a measly amount. Consequently, the parties should therefore be allowed to adduce evidence on the **present market value** of the apartment building upon which the trial court should base its finding as to the amount of reimbursement to be paid by the landowner.[88] (Emphases supplied.)

Still following the rules of accession, civil fruits, such as rents, belong to the owner of the building.[89] Thus, Dr. Rosario has a

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[88] *Id.* at 323-325.

[89] Article 441(3) of the Civil Code provides that "To the owner belongs x x x (t)he civil fruits." Article 442 of the same Code describes "civil

right to the rents of the improvements on Lot No. 356-A and is under no obligation to render an accounting of the same to anyone. In fact, it is the Torbela siblings who are required to account for the rents they had collected from the lessees of the commercial building and turn over any balance to Dr. Rosario. Dr. Rosario's right to the rents of the improvements on Lot No. 356-A shall continue until the Torbela siblings have chosen their option under Article 448 of the Civil Code. And in case the Torbela siblings decide to appropriate the improvements, Dr. Rosario shall have the right to retain said improvements, as well as the rents thereof, until the indemnity for the same has been paid.[90]

Dr. Rosario is liable for damages to the Torbela siblings.

The Court of Appeals ordered Dr. Rosario to pay the Torbela siblings ₱300,000.00 as moral damages; ₱200,000.00 as exemplary damages; and ₱100,000.00 as attorney's fees.

Indeed, Dr. Rosario's deceit and bad faith is evident when, being fully aware that he only held Lot No. 356-A in trust for the Torbela siblings, he mortgaged said property to PNB and Banco Filipino absent the consent of the Torbela siblings, and caused the irregular cancellation of the Torbela siblings' adverse claim on TCT No. 52751. Irrefragably, Dr. Rosario's betrayal had caused the Torbela siblings (which included Dr. Rosario's own mother, Eufrosina Torbela Rosario) mental anguish, serious anxiety, and wounded feelings. Resultantly, the award of moral damages is justified, but the amount thereof is reduced to ₱200,000.00.

In addition to the moral damages, exemplary damages may also be imposed given that Dr. Rosario's wrongful acts were accompanied by bad faith. However, judicial discretion granted to the courts in the assessment of damages must always be exercised with balanced restraint and measured objectivity. The circumstances

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fruits" as "the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income."

[90] *Id*.

of the case call for a reduction of the award of exemplary damages to ₱100,000.00.

As regards attorney's fees, they may be awarded when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Because of Dr. Rosario's acts, the Torbela siblings were constrained to institute several cases against Dr. Rosario and his spouse, Duque-Rosario, as well as Banco Filipino, which had lasted for more than 25 years. Consequently, the Torbela siblings are entitled to an award of attorney's fees and the amount of ₱100,000.00 may be considered rational, fair, and reasonable.

Banco Filipino is entitled to a writ of possession for Lot No. 5-F-8-C-2-B-2-A.

The Court emphasizes that Pet. Case No. U-822, instituted by Banco Filipino for the issuance of a writ of possession before the RTC of Urdaneta, included only Lot No. 5-F-8-C-2-B-2-A and Lot No. 356-A (Lot No. 4489, the third property mortgaged to secure Dr. Rosario's loan from Banco Filipino, is located in Dagupan City, Pangasinan, and the petition for issuance of a writ of possession for the same should be separately filed with the RTC of Dagupan City). Since the Court has already granted herein the reconveyance of Lot No. 356-A from Banco Filipino to the Torbela siblings, the writ of possession now pertains only to Lot No. 5-F-8-C-2-B-2-A.

To recall, the Court of Appeals affirmed the issuance by the RTC of a writ of possession in favor of Banco Filipino. Dr. Rosario no longer appealed from said judgment of the appellate court. Already legally separated from Dr. Rosario, Duque-Rosario alone challenges the writ of possession before this Court through her Petition in G.R. No. 140553.

Duque-Rosario alleges in her Petition that Lot No. 5-F-8-C-2-B-2-A had been registered in her name under TCT No. 104189. Yet, without a copy of TCT No. 104189 on record, the Court cannot give much credence to Duque-Rosario's claim of sole ownership of Lot No. 5-F-8-C-2-B-2-A. Also, the question of whether Lot No. 5-F-8-C-2-B-2-A was the paraphernal property

of Duque-Rosario or the conjugal property of the spouses Rosario would not alter the outcome of Duque-Rosario's Petition.

The following facts are undisputed: Banco Filipino extrajudicially foreclosed the mortgage constituted on Lot No. 5-F-8-C-2-B-2-A and the two other properties after Dr. Rosario defaulted on the payment of his loan; Banco Filipino was the highest bidder for all three properties at the foreclosure sale on April 2, 1987; the Certificate of Sale dated April 2, 1987 was registered in April 1987; and based on the Certificate of Final Sale dated May 24, 1988 and Affidavit of Consolidation dated May 25, 1988, the Register of Deeds cancelled TCT No. 104189 and issued TCT No. 165812 in the name of Banco Filipino for Lot No. 5-F-8-C-2-B-2-A on June 7, 1988.

The Court has consistently ruled that the one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale is registered with the Registry of Deeds.[91] No copy of TCT No. 104189 can be found in the records of this case, but the fact of annotation of the Certificate of Sale thereon was admitted by the parties, only differing on the date it was made: April 14, 1987 according to Banco Filipino and April 15, 1987 as maintained by Duque-Rosario. Even if the Court concedes that the Certificate of Sale was annotated on TCT No. 104189 on the later date, **April 15, 1987**, the one-year redemption period already expired on **April 14, 1988**.[92] The Certificate of Final Sale and Affidavit of Consolidation were executed more than a month thereafter, on **May 24, 1988** and **May 25, 1988**, respectively, and were clearly not premature.

It is true that the rule on redemption is liberally construed in favor of the original owner of the property. The policy of the law is to aid rather than to defeat him in the exercise of his right of redemption.[93] However, the liberal interpretation of the rule on

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[91] *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 178449, October 17, 2008, 569 SCRA 814, 831.

[92] The year 1988 was a leap-year.

[93] *Ysmael v. Court of Appeals*, 376 Phil. 323, 334 (1999).

redemption is inapplicable herein as neither Duque-Rosario nor Dr. Rosario had made any attempt to redeem Lot No. 5-F-8-C-2-B-2-A. Duque-Rosario could only rely on the efforts of the Torbela siblings at redemption, which were unsuccessful. While the Torbela siblings made several offers to redeem Lot No. 356-A, as well as the two other properties mortgaged by Dr. Rosario, they did not make any valid tender of the redemption price to effect a valid redemption. The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. The redemption price should either be fully offered in legal tender or else validly consigned in court. Only by such means can the auction winner be assured that the offer to redeem is being made in good faith.[94] In case of disagreement over the redemption price, the redemptioner may preserve his right of redemption through judicial action, which in every case, must be filed within the one-year period of redemption. The filing of the court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period.[95] But no such action was instituted by the Torbela siblings or either of the spouses Rosario.

Duque-Rosario also cannot bar the issuance of the writ of possession over Lot No. 5-F-8-C-2-B-2-A in favor of Banco Filipino by invoking the pendency of Civil Case No. U-4359, the Torbela siblings' action for recovery of ownership and possession and damages, which supposedly tolled the period for redemption of the foreclosed properties. Without belaboring the issue of Civil Case No. U-4359 suspending the redemption period, the Court simply points out to Duque-Rosario that Civil Case No. U-4359 involved Lot No. 356-A only, and the legal consequences of the institution, pendency, and resolution of Civil Case No. U-4359 apply to Lot No. 356-A alone.

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[94] *BPI Family Savings Bank Inc. v. Sps. Veloso*, 479 Phil. 627, 634 (2004).

[95] *Banco Filipino Savings & Mortgage Bank v. Court of Appeals*, 501 Phil. 372, 384 (2005).

Equally unpersuasive is Duque-Rosario's argument that the writ of possession over Lot No. 5-F-8-C-2-B-2-A should not be issued given the defects in the conduct of the foreclosure sale (*i.e.*, lack of personal notice to Duque-Rosario) and consolidation of title (*i.e.*, failure to provide Duque-Rosario with copies of the Certificate of Final Sale).

The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[96]

The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case. The issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial act and does not entail the exercise of discretion.[97]

WHEREFORE, in view of the foregoing, the Petition of the Torbela siblings in G.R. No. 140528 is *GRANTED*, while the Petition of Lena Duque-Rosario in G.R. No. 140553 is *DENIED* for lack of merit. The Decision dated June 29, 1999 of the Court of Appeals in CA-G.R. CV No. 39770, which affirmed with modification the Amended Decision dated January 29, 1992 of the RTC in Civil

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[96] *Sarrosa v. Dizon*, G.R. No. 183027, July 26, 2010, 625 SCRA 556, 564-565.

[97] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150.

Case Nos. U-4359 and U-4733 and Pet. Case No. U-822, is *AFFIRMED WITH MODIFICATIONS*, to now read as follows:

(1) Banco Filipino is *ORDERED* to reconvey Lot No. 356-A to the Torbela siblings;

(2) The Register of Deeds of Pangasinan is *ORDERED* to cancel TCT No. 165813 in the name of Banco Filipino and to issue a new certificate of title in the name of the Torbela siblings for Lot No. 356-A;

(3) The case is *REMANDED* to the RTC for further proceedings to determine the facts essential to the proper application of Articles 448 and 546 of the Civil Code, particularly: (a) the present fair market value of Lot No. 356-A; (b) the present fair market value of the improvements thereon; (c) the option of the Torbela siblings to appropriate the improvements on Lot No. 356-A or require Dr. Rosario to purchase Lot No. 356-A; and (d) in the event that the Torbela siblings choose to require Dr. Rosario to purchase Lot No. 356-A but the value thereof is considerably more than the improvements, then the reasonable rent of Lot No. 356-A to be paid by Dr. Rosario to the Torbela siblings;

(4) The Torbela siblings are *DIRECTED* to submit an accounting of the rents of the improvements on Lot No. 356-A which they had received and to turn over any balance thereof to Dr. Rosario;

(5) Dr. Rosario is *ORDERED* to pay the Torbela siblings ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees; and

(6) Banco Filipino is entitled to a writ of possession over Lot-5-F-8-C-2-B-2-A, covered by TCT No. 165812. The RTC Branch Clerk of Court is *ORDERED* to issue a writ of possession for the said property in favor of Banco Filipino.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154113. December 7, 2011]

EDEN GLADYS ABARIA, ROMULO ALFORQUE, ELENA ALLA, EVELYN APOSTOL, AMELIA ARAGON, BEATRIZ ALBASTRO, GLORIA ARDULLES, GLENDA BANTILAN, VIRGILIE BORINAGA, ROLDAN CALDERON, ILDEBRANDO CUTA, ROMEO EMPUERTO, LANNIE FERNANDEZ, LUCINELL GABAYERON, JESUSA GERONA, JOSE GONZAGA, TEOFILO HINAMPAS, JOSEFINA IBUNA, MARLYN LABRA, MARIA CARMENCITA LAO, ERA CANEN, RODNEY REX LERIAS, ERNIE MANLIGAS, JOHANNE DEL MAR, RUBY ORIMACO, CONSTANCIO PAGADOR, MARVELOUS PANAL, NOLAN PANAL, LILLAN PETALLAR, GERNA PATIGDAS, MELODIA PAULIN, SHIRLEY ROSE REYES, JOSEFINA REYES, OSCAR DE LOS SANTOS, SOLOMON DE LOS SANTOS, RAMON TAGNIPIS, BERNADETTE TIBAY, RONALD TUMULAK, LEONCIO VALLINAS, EDELBERTO VILLA and the NAGKAHIUSANG MAMUMUO SA METRO CEBU COMMUNITY HOSPITAL, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, METRO CEBU COMMUNITY HOSPITAL, INC., ITS BOARD OF TRUSTEES, REV. GREGORIO IYOY, SHIELA BUOT, REV. LORENZO GENOTIVA, RUBEN CARABAN, RUBEN ESTOYE, LILIA SAURO, REV. ELIZER BERTOLDO, RIZALINA VILLAGANTE, DRA. LUCIA FLORENDO, CONCEPCION VILLEGAS, REV. OLIVER CANEN, DRA. CYD RAGAS, REV. MIKE CAMBA, AVEDNIGO VALIENTE, RIZALINO TAGANAS, CIRIACO PONGASI, ISIAS WAGAS, REV. ESTER GELOAGAN, REV. LEON MANIWAN, CRESENTE BAOAS, WINEFREDA BARLOSO, REV. RUEL MARIGA**

AND THE UNITED CHURCH OF CHRIST IN THE PHILIPPINES, REV. HILARIO GOMEZ, REV. ELMER BOLOCON, THE NATIONAL FEDERATION OF LABOR AND ARMAND ALFORQUE, *respondents.*

[G.R. No. 187778. December 7, 2011]

PERLA NAVA, DANIELA YOSORES, AGUSTIN ALFORNON, AILEEN CATACUTAN, ROLANDO REDILOSA, CORNELIO MARIBOJO, VIRGENCITA CASAS, CRISANTA GENEGABOAS, EMILIO LAO, RICO GASCON, ALBINA BAÑEZ, PEDRO CABATINGAN, PROCOMIO SALUPAN, ELIZABETH RAMON, DIOSCORO GABUNADA, ROY MALAZARTE, FELICIANITA MALAZARTE, NORBERTA CACA, MILAGROS CASTILLO, EDNA ALBO, BERNABE LUMAPGUID, CELIA SABAS, SILVERIO LAO, DARIO LABRADOR, ERNESTO CANEN, JR., ELSA BUCAO, HANNAH BONGCARAS, NEMA BELOCURA, PEPITO LLAGAS, GUILLERMA REMOCALDO, ROGELIO DABATOS, ROBERTO JAYMA, RAYMUNDO DELATADO, MERLYN NODADO, NOEL HORTELANO, HERMELO DELA TORRE, LOURDES OLARTE, DANILO ZAMORA, LUZ CABASE, CATALINA ALSADO, RUTH BANZON AND THE NAGKAHIUSANG MAMUMUO SA METRO CEBU COMMUNITY HOSPITAL, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), METRO CEBU COMMUNITY HOSPITAL, INC., BOARD OF TRUSTEES, REV. GREGORIO IYOY, SHIELA BUOT, REV. LORENZO GENOTIVA, RUBEN CABABAN, ROSENDO ESTOYE, LILIA SAURO, REV. ELIZER BERTOLDO, RIZALINA VILLAGANTE, DRA. LUCIA FLORENDO, CONCEPCION VILLEGAS, REV. OLIVER CANEN, DRA. CYD RAAGAS, REV.**

MIKE CAMBA, AVIDNIGO VALIENTE, RIZALINO TAGANAS, CIRIACO PONGASI, ISIAS WAGAS, REV. ESTER GELOAGAN, REV. LEON MANIWAN, CRESENTE BAOAS, WINIFREDA BARLOSO, REV. RUEL MARIGA, THE UNITED CHURCH OF CHRIST IN THE PHILIPPINES, REV. HILARIO GOMEZ, REV. ELMER BOLOCON, THE NATIONAL FEDERATION OF LABOR AND ARMANDO ALFORQUE, *respondents.*

[G.R. No. 187861. December 7, 2011]

METRO CEBU COMMUNITY HOSPITAL, presently known as Visayas Community Medical Center (VCMC), *petitioner, vs* **PERLA NAVA, DANIELA YOSORES, AGUSTIN ALFORNON, AILEEN CATACUTAN, ROLANDO REDILOSA, CORNELIO MARIBOJO, VIRGENCITA CASAS, CRISANTA GENEGABOAS, EMILIO LAO, RICO GASCON, ALBINA BANEZ, PEDRO CABATINGAN, PROCOMIO SALUPAN, ELIZABETH RAMON, DIOSCORO GABUNADA, ROY MALAZARTE, FELICIANITA MALAZARTE, NORBERTA CACA, MILAGROS CASTILLO, EDNA ALBO, BERNABE LUMABGUID, CELIA SABAS, SILVERIO LAO, DARIO LABRADOR, ERNESTO CANEN, JR., ELSA BUCAO, HANNAH BONGCARAS, NEMA BELOCURA, PEPITO LLAGAS, GUILLERMA REMOCALDO, ROGELIO DABATOS, ROBERTO JAYMA, RAYMUNDO DELATADO, NOEL HORTELANO, HERMELO DE LA TORRE, LOURDES OLARTE, DANILO ZAMORA, LUZ CABASE, CATALINA ALSADO AND RUTH BANZON,** *respondents.*

[G.R. No. 196156. December 7, 2011]

VISAYAS COMMUNITY MEDICAL CENTER (VCMC) formerly known as METRO CEBU COMMUNITY HOSPITAL (MCCH), *petitioner, vs* **ERMA YBALLE, NELIA ANGEL, ELEUTERIA CORTEZ and EVELYN ONG,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; DROPPING OF PETITIONERS WHO DID NOT SIGN THE CERTIFICATION AGAINST FORUM SHOPPING IS IMPROPER.— The Court has laid down the rule in *Altres v. Empleo* as culled from "jurisprudential pronouncements", that the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. In the case at bar, the signatures of 47 out of 88 petitioning employees in the certification against forum shopping constitute substantial compliance with the rule. There is no question that they shared a common interest and invoked a common cause of action when they filed suit before the Labor Arbiter and NLRC questioning the validity of their termination and charging MCCHI with unfair labor practice. Thus, when they appealed their case to the CA, they pursued the same as a collective body, raising only one argument in support of their cause of action, *i.e.*, the illegal dismissal allegedly committed by MCCHI when union members resorted to strike and mass actions due to MCCHI's refusal to bargain with officers of the local chapter. There is sufficient basis, therefore, for the 47 signatories to the petition, to speak for and in behalf of their co-petitioners and to file the Petition for Certiorari in the appellate court. Clearly, the CA erred in dropping as parties-petitioners those who did not sign the certification against forum shopping. However, instead of remanding the case to the CA for it to resolve the petition with

respect to the herein petitioners in G.R. No. 154113, and as prayed for, the Court shall consider them parties-petitioners in CA-G.R. SP No. 66540,which case has already been decided and now subject of appeal in G.R. No. 187778.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; UNFAIR LABOR PRACTICES; RESPONDENT IS NOT GUILTY OF UNFAIR LABOR PRACTICE; NOT BEING THE LEGITIMATE LABOR ORGANIZATION NOR THE CERTIFIED EXCLUSIVE BARGAINING REPRESENTATIVE OF RESPONDENT'S RANK-AND-FILE EMPLOYEES, PETITIONERS CANNOT DEMAND FROM RESPONDENT THE RIGHT BARGAIN COLLECTIVELY IN THEIR BEHALF.— Records of the NCMB and DOLE Region 7 confirmed that NAMA-MCCH-NFL had not registered as a labor organization, having submitted only its charter certificate as an affiliate or local chapter of NFL. Not being a legitimate labor organization, NAMA-MCCH-NFL is not entitled to those rights granted to a legitimate labor organization under Art. 242, specifically: (a) To act as the representative of its members for the purpose of collective bargaining; (b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining; x x x x Aside from the registration requirement, it is only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit which is the exclusive representative of the employees in such unit for the purpose of collective bargaining, as provided in Art. 255. NAMA-MCCH-NFL is not the labor organization certified or designated by the majority of the rank-and-file hospital employees to represent them in the CBA negotiations but the NFL, as evidenced by CBAs concluded in 1987, 1991 and 1994. While it is true that a local union has the right to disaffiliate from the national federation, NAMA-MCCH-NFL has not done so as there was no any effort on its part to comply with the legal requisites for a valid disaffiliation during the "freedom period" or the last 60 days of the last year of the CBA, through a majority vote in a secret balloting in accordance with Art. 241 (d). Nava and her group simply demanded that MCCHI directly negotiate with the local union which has not even registered as one. x x x Not being a legitimate labor organization nor the certified exclusive bargaining representative of MCCHI's rank-and-file

employees, NAMA-MCCH-NFL cannot demand from MCCHI the right to bargain collectively in their behalf. Hence, MCCHI's refusal to bargain then with NAMA-MCCH-NFL cannot be considered an unfair labor practice to justify the staging of the strike.

3. ID.; ID.; STRIKES AND LOCKOUTS; STRIKE AND PICKETING ACTIVITIES CONDUCTED BY UNION OFFICERS AND MEMBERS WERE ILLEGAL DUE TO THE COMMISSION OF PROHIBITED ACTIVITIES.— The strike was illegal due to the commission of the following prohibited activities: (1) violence, coercion, intimidation and harassment against non-participating employees; and (2) blocking of free ingress to and egress from the hospital, including preventing patients and their vehicles from entering the hospital and other employees from reporting to work, the putting up of placards with a statement advising incoming patients to proceed to another hospital because MCCHI employees are on strike/protest. As shown by photographs submitted by MCCHI, as well as the findings of the NCMB and Cebu City Government, the hospital premises and sidewalk within its vicinity were full of placards, streamers and makeshift structures that obstructed its use by the public who were likewise barraged by the noise coming from strikers using megaphones. On the other hand, the affidavits executed by several hospital employees and patients narrated in detail the incidents of harassment, intimidation, violence and coercion, some of these witnesses have positively identified the perpetrators. The prolonged work stoppage and picketing activities of the striking employees severely disrupted hospital operations that MCCHI suffered heavy financial losses. The findings of the Executive Labor Arbiter and NLRC, as sustained by the appellate court, clearly established that the striking union members created so much noise, disturbance and obstruction that the local government authorities eventually ordered their removal for being a public nuisance. This was followed by an injunction from the NCMB enjoining the union leaders from further blocking the free ingress to and egress from the hospital, and from committing threats, coercion and intimidation against non-striking employees and patients/vehicles desiring to enter for the purpose of seeking medical treatment/confinement. By then, the illegal strike had lasted for almost five months.

4. ID.; ID.; ID.; A UNION OFFICER MAY BE TERMINATED FROM WORK WHEN HE KNOWINGLY PARTICIPATES IN AN ILLEGAL STRIKE, AND LIKE OTHER WORKERS, WHEN HE COMMITS AN ILLEGAL ACT DURING A STRIKE.— Art. 264 (a) of the Labor Code, as amended, provides for the consequences of an illegal strike to the participating workers: x x x Any union officer who knowingly participates in illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: *Provided*, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. The above provision makes a distinction between workers and union officers who participate in an illegal strike: an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike. Considering their persistence in holding picketing activities despite the declaration by the NCMB that their union was not duly registered as a legitimate labor organization and the letter from NFL's legal counsel informing that their acts constitute disloyalty to the national federation, and their filing of the notice of strike and conducting a strike vote notwithstanding that their union has no legal personality to negotiate with MCCHI for collective bargaining purposes, there is no question that NAMA-MCCH-NFL officers *knowingly participated in the illegal strike*. The CA therefore did not err in ruling that the termination of union officers Perla Nava, Catalina Alsado, Albina Bañez, Hannah Bongcaras, Ernesto Canen, Jesusa Gerona and Guillerma Remocaldo was valid and justified.

5. ID.; ID.; ID.; DISMISSAL OF UNION MEMBERS WHO MERELY PARTICIPATED IN THE ILLEGAL STRIKE WAS ILLEGAL.— With respect to the dismissed union members, although MCCHI submitted photographs taken at the picket line, it did not individually name those striking employees and specify the illegal act committed by each of them. As to the affidavits executed by non-striking employees, they identified mostly union officers

as the persons who blocked the hospital entrance, harassed hospital employees and patients whose vehicles were prevented from entering the premises. Only some of these witnesses actually named a few union members who committed similar acts of harassment and coercion. Consequently, we find no error committed by the CA in CA-G.R. SP No. 66540 when it modified the decision of the NLRC and ruled that the dismissal of union members who merely participated in the illegal strike was illegal. On the other hand, in CA-G.R. SP No. 84998, the CA did not err in ruling that the dismissal of Yballe, et al. was illegal; however, it also ordered their reinstatement with full back wages.

6. ID.; ID.; ID.; DISMISSED UNION MEMBERS NOT ENTITLED TO BACKWAGES BUT SHOULD BE AWARDED SEPARATION PAY IN LIEU OF REINSTATEMENT; DOCTRINE OF *STARE DECISIS* NOT APPLIED.— Since there is no clear proof that union members actually participated in the commission of illegal acts during the strike, they are not deemed to have lost their employment status as a consequence of a declaration of illegality of the strike. Petitioners in G.R. Nos. 154113 and 187778 assail the CA in not ordering their reinstatement with back wages. Invoking *stare decisis,* they cited the case of *Bascon v. Court of Appeals* decided by this Court in 2004 and which involved two former hospital employees who likewise sued MCCHI after the latter terminated their employment due to their participation in the same illegal strike led by NAMA-MCCH-NFL. In said case we ruled that petitioners Cole and Bascon were illegally dismissed because MCCHI failed to prove that they committed illegal acts during the strike. We thus ordered the reinstatement of petitioners Bascon and Cole without loss of seniority rights and other privileges and payment of their back wages inclusive of allowances, and other benefits computed from the time they were dismissed up to the time of their actual reinstatement. *Bascon* was also the basis of the award of back wages in CA-G.R. SP No. 84998. *Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be

different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. Although the *Bascon* case involved the very same illegal strike in MCCHI which led to the termination of herein petitioners, its clearly erroneous application of the law insofar only as the award of back wages warrants setting aside the doctrine. Indeed, the doctrine of *stare decisis* notwithstanding, the Court has abandoned or overruled precedents whenever it realized that the Court erred in the prior decisions. "Afterall, more important than anything else is that this Court should be right."

7. ID.; ID.; ID.; THE BASIC FACTOR IN DETERMINING AWARD OF BACKWAGES IS THE PRINCIPLE OF A "FAIR DAY'S WAGE FOR A FAIR DAY'S LABOR".— In *G & S Transport Corporation v. Infante*, the Court explained the rationale for its recent rulings deleting back wages awarded to the dismissed workers if the strike was found to be illegal. Considering that they did not render work for the employer during the strike, they are entitled only to reinstatement. **With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof.** If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila*

Diamond Hotel Employees Union, the Court stressed that **for this exception to apply, it is required that the strike be legal,** a situation that does not obtain in the case at bar. Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief. If reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order. The CA decision in CA-G.R. SP No. 66540 ordering the payment of separation pay in lieu of reinstatement without back wages is thus in order, to conform to the policy of *a fair day's wage for a fair day's labor*. The amount of separation pay is increased to one month pay for every year of service, consistent with jurisprudence. Accordingly, the decision in CA-G.R. SP No. 84998 is modified by deleting the award of back wages and granting separation pay in lieu of reinstatement.

8. ID.; ID.; ID.; FAIRNESS AND JUSTICE DICTATE THAT BACK WAGES BE DENIED TO EMPLOYEES WHO PARTICIPATED IN THE ILLEGAL CONCERTED ACTIVITIES TO THE GREAT DETRIMENT OF THE EMPLOYER.— It is to be noted that as early as April 8, 1996, union members who took part in the concerted activities have been warned by management that NAMA-MCCH-NFL is not a legitimate labor organization and its notice of strike was denied by the NCMB, and directed to desist from further participating in such illegal activities. Despite such warning, they continued with their picketing activities and held more mass actions after management sent them termination notices. The prolonged work stoppage seriously disrupted hospital operations, which could have eventually brought MCCHI into bankruptcy had the City Government of Cebu not issued a demolition order and the NLRC Region 7 not formally enjoined the prohibited picketing activities. Also, the illegal dismissal complaints subsequently filed by the terminated employees did not obliterate the fact that they did not suffer loss of earnings by reason of the employer's unjustified acts, there being no unfair labor practice committed by MCCHI. Hence, fairness and justice dictate that back wages be denied the said employees who participated in the illegal concerted activities to the great detriment of the employer.

9. ID.; ID.; ID.; CRICUMSTANCES WHEN SEPARATION PAY IS MADE AN ALTERNATIVE RELIEF IN LIEU OF REINSTATEMENT.— Separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.

10. DAMAGES; ATTORNEY'S FEE'S ATTENDANT CIRCUMSTANCES JUSTIFY THE AWARD THEREOF.— The dismissed employees having been compelled to litigate in order to seek redress and protect their rights, they are entitled to reasonable attorney's fees pursuant to Art. 2208 (2) of the Civil Code. In view of the attendant circumstances of this case, we hold that attorney's fees in the amount of ₱50,000.00 is reasonable and justified. However, the respondents in G.R. No. 196156 are not entitled to the same relief since they did not appeal from the CA decision which did not include the award of attorney's fees.

APPEARANCES OF COUNSEL

Jaime L. Alviola for Heirs of Gloria Arguilles and Romulo Alforque.

Fatima H. Asjali for Amelia Aragon.

Noel O. Bacalla for Nolan Alvin Panal, *et al.*

Arguedo Go & Associates Law Offices for MCCHI.

Armando M. Alforque for NFL and for himself.

Jose Vicente M. Arnado for Perla Nava, *et al.*

Cesar A.M. Tabotabo for respondents in G.R. No. 196156.

DECISION

VILLARAMA, JR., *J.*:

The consolidated petitions before us involve the legality of mass termination of hospital employees who participated in strike and picketing activities.

The factual antecedents:

Metro Cebu Community Hospital, Inc. (MCCHI), presently known as the Visayas Community Medical Center (VCMC), is a non-stock, non-profit corporation organized under the laws of the Republic of the Philippines. It operates the Metro Cebu Community Hospital (MCCH), a tertiary medical institution located at Osmeña Boulevard, Cebu City. MCCH is owned by the United Church of Christ in the Philippines (UCCP) and Rev. Gregorio P. Iyoy is the Hospital Administrator.

The National Federation of Labor (NFL) is the exclusive bargaining representative of the rank-and-file employees of MCCHI. Under the 1987 and 1991 Collective Bargaining Agreements (CBAs), the signatories were Ciriaco B. Pongasi, Sr. for MCCHI, and Atty. Armando M. Alforque (NFL Legal Counsel) and Paterno A. Lumapguid as President of NFL-MCCH Chapter. In the CBA effective from January 1994 until December 31, 1995, the signatories were Sheila E. Buot as Board of Trustees Chairman, Rev. Iyoy as MCCH Administrator and Atty. Fernando Yu as Legal Counsel of NFL, while Perla Nava, President of Nagkahiusang Mamumuo sa MCCH (NAMA-MCCH-NFL) signed the Proof of Posting.[1]

On December 6, 1995, Nava wrote Rev. Iyoy expressing the union's desire to renew the CBA, attaching to her letter a statement of proposals signed/endorsed by 153 union members. Nava subsequently requested that the following employees be allowed to avail of one-day union leave with pay on December

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[1] NLRC records (Vol. I), pp. 221-234; *rollo* (G.R. No. 154113), pp. 170-205.

19, 1995: Celia Sabas, Jesusa Gerona, Albina Bañez, Eddie Villa, Roy Malazarte, Ernesto Canen, Jr., Guillerma Remocaldo, Catalina Alsado, Evelyn Ong, Melodia Paulin, Sofia Bautista, Hannah Bongcaras, Ester Villarin, Iluminada Wenceslao and Perla Nava. However, MCCHI returned the CBA proposal for Nava to secure first the endorsement of the legal counsel of NFL as the official bargaining representative of MCCHI employees.[2]

Meanwhile, Atty. Alforque informed MCCHI that the proposed CBA submitted by Nava was never referred to NFL and that NFL has not authorized any other legal counsel or any person for collective bargaining negotiations. By January 1996, the collection of union fees (check-off) was temporarily suspended by MCCHI in view of the existing conflict between the federation and its local affiliate. Thereafter, MCCHI attempted to take over the room being used as union office but was prevented to do so by Nava and her group who protested these actions and insisted that management directly negotiate with them for a new CBA. MCCHI referred the matter to Atty. Alforque, NFL's Regional Director, and advised Nava that their group is not recognized by NFL.[3]

In his letter dated February 24, 1996 addressed to Nava, Ernesto Canen, Jr., Jesusa Gerona, Hannah Bongcaras, Emma Remocaldo, Catalina Alsado and Albina Bañez, Atty. Alforque suspended their union membership for serious violation of the Constitution and By-Laws. Said letter states:

> During the last General Membership Meeting of the union on February 20, 1996, you openly declared that you recognized the officers of the KMU not those of the NFL, that you submit to the stuctures *[sic]* and authority of the KMU not of the NFL, and that you are loyal only to the KMU not to the NFL.
>
> Also, in the same meeting, you admitted having sent a proposal for a renewed collective bargaining agreement to the management

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[2] *Rollo* (G.R. No. 154113), pp. 212-235.

[3] *Id.* at 236-243.

without any consultation with the NFL. In fact, in your letter dated February 21, 1996 addressed to Rev. Gregorio Iyoy, the Administrator of the hospital, you categorically stated as follows: "We do not need any endorsement from NFL, more particularly from Atty. Armando Alforque to negotiate our CBA with MCCH." You did not only ignore the authority of the undersigned as Regional Director but you maliciously prevented and bluntly refused my request to join the union negotiating panel in the CBA negotiations.

Your above flagrant actuations, made in the presence of the union membership, constitute the following offenses:

1. Willful violation of the Constitution and By-Laws of the Federation and the orders and decisions of duly constituted authorities of the same (Section 4 (b), Article III), namely:

a) Defying the decision of the organization disaffiliating from the KMU; and

b) Section 9 (b), Article IX which pertains to the powers and responsibilities of the Regional Director, particularly, to negotiate and sign collective bargaining agreement together with the local negotiating panel subject to prior ratification by the general membership;

2. Joining or assisting another labor organization or helping in the formation of a new labor organization that seeks or tends to defeat the purpose of the Federation (Section 4 (d), Article III) in relation to the National Executive Board's Resolution No. 8, September 26-27, 1994, to wit:

> "Pursuant to the NEB Resolution disaffiliating from the KMU dated September 11, 1993, the NEB in session hereby declare that KMU is deemed an organization that seeks to defeat the objective of establishing independent and democratic unions and seeks to replace the Federation as exclusive representative of its members.
>
> Committing acts that tend to alienate the loyalty of the members to the Federation, subvert its duly constituted authorities, and divide the organization in any level with the objective of establishing a pro-KMU faction or independent union loyal to the KMU shall be subject to disciplinary action, suspension or expulsion from union membership, office or position in accordance with paragraph[s] d and f of Section 4,

Article III, and paragraph h, Section 6, Article VI, paragraph d, Section 9, Article IX."

You are, therefore, directed to submit written explanation on the above charges within five (5) days from receipt hereof. Failure on your part shall be considered a waiver of your right to be heard and the Federation will act accordingly.

Considering the gravity of the charges against you, the critical nature of the undertaking to renew the collective bargaining agreement, and the serious threat you posed to the organization, you are hereby placed under temporary suspension from your office and membership in the union immediately upon receipt hereof pending investigation and final disposition of your case in accordance with the union's constitution and by-laws.

For your guidance and compliance.[4]

On February 26, 1996, upon the request of Atty. Alforque, MCCHI granted one-day union leave with pay for 12 union members.[5] The next day, several union members led by Nava and her group launched a series of mass actions such as wearing black and red armbands/headbands, marching around the hospital premises and putting up placards, posters and streamers. Atty. Alforque immediately disowned the concerted activities being carried out by union members which are not sanctioned by NFL. MCCHI directed the union officers led by Nava to submit within 48 hours a written explanation why they should not be terminated for having engaged in illegal concerted activities amounting to strike, and placed them under immediate preventive suspension. Responding to this directive, Nava and her group denied there was a temporary stoppage of work, explaining that employees wore their armbands only as a sign of protest and reiterating their demand for MCCHI to comply with its duty to bargain collectively. Rev. Iyoy, having been informed that Nava and her group have also been suspended by NFL, directed said officers to appear before his office for investigation in connection with the illegal strike wherein they reportedly

[4] *Id.* at 244-245.

[5] *Id.* at 246.

uttered slanderous and scurrilous words against the officers of the hospital, threatening other workers and forcing them to join the strike. Said union officers, however, invoked the grievance procedure provided in the CBA to settle the dispute between management and the union.[6]

On March 13 and 19, 1996, the Department of Labor and Employment (DOLE) Regional Office No. 7 issued certifications stating that there is nothing in their records which shows that NAMA-MCCH-NFL is a registered labor organization, and that said union submitted only a copy of its Charter Certificate on January 31, 1995.[7] MCCHI then sent individual notices to all union members asking them to submit within 72 hours a written explanation why they should not be terminated for having supported the illegal concerted activities of NAMA-MCCH-NFL which has no legal personality as per DOLE records. In their collective response/statement dated March 18, 1996, it was explained that the picketing employees wore armbands to protest MCCHI's refusal to bargain; it was also contended that MCCHI cannot question the legal personality of the union which had actively assisted in CBA negotiations and implementation.[8]

On March 13, 1996, NAMA-MCCH-NFL filed a Notice of Strike but the same was deemed not filed for want of legal personality on the part of the filer. The National Conciliation and Mediation Board (NCMB) Region 7 office likewise denied their motion for reconsideration on March 25, 1996. Despite such rebuff, Nava and her group still conducted a strike vote on April 2, 1996 during which an overwhelming majority of union members approved the strike.[9]

Meanwhile, the scheduled investigations did not push through because the striking union members insisted on attending the

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[6] *Id.* at 247-248, 260-263.

[7] NLRC records (Vol. II), pp. 307-308.

[8] *Rollo* (G.R. No. 154113), pp. 252-259.

[9] *Id.* at 250-251; NLRC records (Vol. II), pp. 309-310.

same only as a group. MCCHI again sent notices informing them that their refusal to submit to investigation is deemed a waiver of their right to explain their side and management shall proceed to impose proper disciplinary action under the circumstances. On March 30, 1996, MCCHI sent termination letters to union leaders and other members who participated in the strike and picketing activities. On April 8, 1996, it also issued a cease-and-desist order to the rest of the striking employees stressing that the wildcat concerted activities spearheaded by the Nava group is illegal without a valid Notice of Strike and warning them that non-compliance will compel management to impose disciplinary actions against them. For their continued picketing activities despite the said warning, more than 100 striking employees were dismissed effective April 12 and 19, 1996.

Unfazed, the striking union members held more mass actions. The means of ingress to and egress from the hospital were blocked so that vehicles carrying patients and employees were barred from entering the premises. Placards were placed at the hospital's entrance gate stating: "Please proceed to another hospital" and "we are on protest." Employees and patients reported acts of intimidation and harassment perpetrated by union leaders and members. With the intensified atmosphere of violence and animosity within the hospital premises as a result of continued protest activities by union members, MCCHI suffered heavy losses due to low patient admission rates. The hospital's suppliers also refused to make further deliveries on credit.

With the volatile situation adversely affecting hospital operations and the condition of confined patients, MCCHI filed a petition for injunction in the NLRC (Cebu City) on July 9, 1996 (Injunction Case No. V-0006-96). A temporary restraining order (TRO) was issued on July 16, 1996. MCCHI presented 12 witnesses (hospital employees and patients), including a security guard who was stabbed by an identified sympathizer while in the company of Nava's group. MCCHI's petition was granted and a permanent injunction was issued on September 18, 1996

enjoining the Nava group from committing illegal acts mentioned in Art. 264 of the Labor Code.[10]

On August 27, 1996, the City Government of Cebu ordered the demolition of the structures and obstructions put up by the picketing employees of MCCHI along the sidewalk, having determined the same as a public nuisance or nuisance *per se*.[11]

Thereafter, several complaints for illegal dismissal and unfair labor practice were filed by the terminated employees against MCCHI, Rev. Iyoy, UCCP and members of the Board of Trustees of MCCHI.

On August 4, 1999, Executive Labor Arbiter Reynoso A. Belarmino rendered his decision[12] dismissing the complaints for unfair labor practice in NLRC Case Nos. RAB-VII-02-0309-98, RAB-VII-02-0394-98 and RAB-VII-03-0596-98 filed by Nava and 90 other complainants. Executive Labor Arbiter Belarmino found no basis for the charge of unfair labor practice and declared the strike and picketing activities illegal having been conducted by NAMA-MCCH-NFL which is not a legitimate labor organization. The termination of union leaders Nava, Alsado, Bañez, Bongcaras, Canen, Gerona and Remocaldo were upheld as valid but MCCHI was directed to grant separation pay equivalent to one-half month for every year of service, in the total amount of ₱3,085,897.40 for the 84 complainants.[13]

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[10] NLRC records (Vol. II), pp. 345-355.

[11] *Id.* at 360-369.

[12] *Rollo (*G.R. No. 187778), pp. 265-297; NLRC records (Vol. I), pp. 407-439.

[13] Rogelio Dabatos, Cecilia Sabas, Pepito Llagas, Edna Albo, Johanne del Mar, Elsa Bucao, Elena Alia, Elizabeth Ramon, Elma Entece, Aileen Catacutan, Ruth Banzon, Dioscoro Gabunada, Avelina Bangalao, Luz Cabase, Gerna Patigdas, Shirley Rose Reyes, Amelia Aragon, Nema Belocura, Merlyn Nodado, Noel Hortelano, Virgilie Borinaga, Josefina Reyes, Hermelo dela Torre, Raymundo Delatado, Norberta Caca, Romulo Alforque, Era Canen, Solomon delos Reyes, Daniela Yosores, Dailinda Hinampas, Roy Malazarte, Ronald Tumulak, Danilo Zamora, Jose Gonzaga, Felecianita Malazarte, Virgencita Casas, Romeo Empuerto, Daylinda Tigo, Agustin Alfornon, Rico

Complainants appealed to the Commission. On March 14, 2001, the NLRC's Fourth Division rendered its Decision,[14] the dispositive portion of which reads:

> WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is AFFIRMED with MODIFICATIONS declaring the dismissal of all the complainants in RAB Case No. 07-02-0394-98 and RAB Case No. 07-03-0596-98 valid and legal. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.
>
> Resolution on RAB Case No. 07-02-0309-98 is hereby Deferred upon Joint Motion of the parties.
>
> SO ORDERED.[15]

In its Resolution dated July 2, 2001, the NLRC denied complainants' motion for reconsideration.[16]

Complainants elevated the case to the Court of Appeals (CA) (Cebu Station) *via* a petition for certiorari, docketed as CA-G.R. SP No. 66540.[17]

In its Resolution dated November 14, 2001, the CA's Eighth Division dismissed the petition on the ground that out of 88

Gascon, Teofilo Henampas, Beatriz Arbasto, Eden Gladys Albaria, Milagros Castillo, Emilio Lao, Crisanta Genegaboas, Silverio Lao, Dario Labrador, Procomeo Salupan, Pedro Cabatingan, Edilberto Villa, Samuel Saliente, Jr., Leoncio Vallinas, Lannie Fernandez, Roberta Jayma, Bernadette Tibay, Cornelio Maribojo, Lucineil Gabayeron, Oscar delos Santos, Rolando Redilosa, Rodney Rex Lerias, Bernardito Lawas, Gloria Arquilles, Lilian Doris Pitallar, Evelyn Apostol, Glenda Bantilan, Roldan Calderon, Ildefonso Cirta, Josefina Ibuna, Marlyn Labra, Ma. Carmencita Lao, Bernabe Lumapguid, Ernie Manligas, Lourdes Olarte, Ruby Climaco, Constancio Pagador, Melodia Paulin, Ramon Tagnipis, Erma Yballe, Eleuteria Cortez, Nelia Angel, Evelyn Ong, Marvelous Panal, Nolan Alvin Panal.

[14] NLRC records (Vol. II), pp. 617-647. Penned by Commissioner Bernabe S. Batuhan and concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Edgardo M. Enerlan.

[15] *Id.* at 647.

[16] *Id.* at 690-691.

[17] CA *rollo,* pp. 2-39.

petitioners only 47 have signed the certification against forum shopping.[18] Petitioners moved to reconsider the said dismissal arguing that the 47 signatories more than constitute the principal parties as the petition involves a matter of common concern to all the petitioning employees.[19] By Resolution[20] dated May 28, 2002, the CA reinstated the case only insofar as the 47 petitioners who signed the petition are concerned.

Petitioners challenged the validity of the November 14, 2001 and May 28, 2002 resolutions before this Court in a petition for review on certiorari, docketed as **G.R. No. 154113.**

Meanwhile, the NLRC's Fourth Division (Cebu City) rendered its Decision[21] dated March 12, 2003 in RAB Case Nos. 07-02-0309-98 (NLRC Case No. V-001042-99) pertaining to complainants Erma Yballe, Evelyn Ong, Nelia Angel and Eleuteria Cortez as follows:

> WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is AFFIRMED with MODIFICATIONS declaring all complainants to have been validly dismissed. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.
>
> SO ORDERED.[22]

The NLRC likewise denied the motion for reconsideration filed by complainants Yballe, et al. in its Resolution dated April 13, 2004.[23]

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[18] *Id.* at 332.

[19] *Id.* at 347-357.

[20] *Id.* at 377-378.

[21] *Rollo* (G.R. No. 196156), pp. 332-361. Penned by Commissioner Oscar S. Uy with Commissioner Edgardo M. Enerlan concurring.

[22] *Id. at 361.*

[23] *Id.* at 363-365.

On October 17, 2008, the CA rendered its Decision[24] in CA-G.R. SP No. 66540, the dispositive portion of which states:

> WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the Decision of the National Labor Relations Commission (NLRC) – Fourth Division dated March 14, 2001 in NLRC Case No. V-001042-99, WITH MODIFICATIONS to the effect that (1) the petitioners, except the union officers, shall be awarded separation pay equivalent to one-half (1/2) month pay for every year of service, and (2) petitioner Cecilia Sabas shall be awarded overtime pay amounting to sixty-three (63) hours.
>
> SO ORDERED.[25]

Petitioners filed a motion for reconsideration while privaterespondents filed a motion for partial reconsideration questioning the award of separation pay. The former also invoked the decision of this Court in *Bascon v. Court of Appeals*,[26] while the latter argued for the application of the ruling in decision rendered by the CA (Cebu City) in *Miculob v. NLRC, et al.* (CA-G.R. SP No. 84538),[27] both involving similar complaints filed by dismissed employees of MCCHI.

By Resolution[28] dated April 17, 2009, the CA denied both motions:

> WHEREFORE, the petitioners' Motion for Reconsideration and the private respondent[s'] Motion for Partial Reconsideration of the October 17, 2008 Decision are both DENIED for lack of merit.
>
> The Motions for Substitution of Counsel and Compromise Agreements submitted by petitioners Bernardito Lawas, Avelina

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[24] CA *rollo*, pp. 491-512. Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil v. Zalameda concurring.

[25] *Id.* at 511.

[26] G.R. No. 144899, February 5, 2004, 422 SCRA 122.

[27] CA *rollo*, pp. 398-408.

[28] *Id.* at 762-774. Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda.

Bangalao, Dailenda Hinampas and Daylinda Tigo are hereby approved. Consequently, said petitioners are ordered dropped from the list of petitioners and the case is deemed dismissed as to them.

SO ORDERED.[29]

Complainants Yballe, *et al.* also challenged before the CA the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC in a petition for certiorari, docketed as CA-G.R. SP No. 84998 (Cebu City). By Decision[30] dated November 7, 2008, the CA granted their petition, as follows:

WHEREFORE, the challenged Decision of public respondent dated March 12, 2003 and its Resolution dated April 13, 2004 are hereby REVERSED AND SET ASIDE. Private respondent Metro Cebu Community Hospital is ordered to reinstate petitioners Erma Yballe, Eleuteria Cortes, Nelia Angel and Evelyn Ong without loss of seniority rights and other privileges; to pay them their full backwages inclusive of their allowances and other benefits computed from the time of their dismissal up to the time of their actual reinstatement.

No pronouncement as to costs.

SO ORDERED.[31]

Private respondents (MCCHI, *et al.*) moved to reconsider the above decision but the CA denied their motion on February 22, 2011.[32]

Both petitioners and private respondents in CA-G.R. SP No. 66540 appealed to this Court. Private respondent MCCHI in CA-G.R. SP No. 84998, under its new name Visayas Community Medical Center (VCMC), filed a petition for certiorari in this Court.

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[29] *Id.* at 774.

[30] *Rollo* (G.R. No. 196156), pp. 64-76. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Franchito N Diamante and Edgardo L. Delos Santos concurring.

[31] *Id.* at 75.

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

In **G.R. No. 187778**, petitioners Nava, *et al.* prayed that the CA decision be set aside and a new judgment be entered by this Court (1) declaring private respondents guilty of unfair labor practice and union busting; (2) directing private respondents to cease and desist from further committing unfair labor practices against the petitioners; (3) imposing upon MCCH the proposed CBA or, in the alternative, directing the hospital and its officers to bargain with the local union; (4) declaring private respondents guilty of unlawfully suspending and illegally dismissing the individual petitioners-employees; (5) directing private respondents to reinstate petitioners-employees to their former positions, or their equivalent, without loss of seniority rights with full backwages and benefits until reinstatement; and (6) ordering private respondents to pay the petitioners moral damages, exemplary damages, legal interests, and attorney's fees.[33]

On the other hand, petitioner MCCHI in **G.R. No. 187861** prayed for the modification of the CA decision by deleting the award of separation pay and reinstating the March 14, 2001 decision of the NLRC.[34]

In **G.R. No. 196156**, MCCHI/VCMC prayed for the annulment of the November 7, 2008 Decision and February 22, 2011 Resolution of the CA, for this Court to declare the dismissal of respondents Yballe, *et al.* as valid and legal and to reinstate the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC.

G.R. No. 187861 was consolidated with G.R. Nos. 154113 and 187778 as they involve similar factual circumstances and identical or related issues. G.R. No. 196156 was later also consolidated with the aforesaid cases.

The issues are: (1) whether the CA erred in dismissing the petition for certiorari (CA-G.R. SP No. 66540) with respect to the petitioners in G.R. No. 154113 for their failure to sign the certification against forum shopping; (2) whether MCCHI

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[33] *Rollo* (G.R. No. 187778), pp. 45-46.

[34] *Rollo* (G.R. No. 187861), p. 37.

is guilty of unfair labor practice; (3) whether petitioning employees were illegally dismissed; and (4) if their termination was illegal, whether petitioning employees are entitled to separation pay, backwages, damages and attorney's fees.

Dropping of petitioners who did not sign the certification against forum s hopping improper

The Court has laid down the rule in *Altres v. Empleo*[35] as culled from "jurisprudential pronouncements", that the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

In the case at bar, the signatures of 47 out of 88 petitioning employees in the certification against forum shopping constitute substantial compliance with the rule. There is no question that they shared a common interest and invoked a common cause of action when they filed suit before the Labor Arbiter and NLRC questioning the validity of their termination and charging MCCHI with unfair labor practice. Thus, when they appealed their case to the CA, they pursued the same as a collective body, raising only one argument in support of their cause of action, *i.e.*, the illegal dismissal allegedly committed by MCCHI when union members resorted to strike and mass actions due to MCCHI's refusal to bargain with officers of the local chapter. There is sufficient basis, therefore, for the 47 signatories to the petition, to speak for and in behalf of their co-petitioners and to file the Petition for Certiorari in the appellate court.[36]

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[35] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-597.

[36] *Vide: Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007, 519 SCRA 327, 344-345.

Clearly, the CA erred in dropping as parties-petitioners those who did not sign the certification against forum shopping.

However, instead of remanding the case to the CA for it to resolve the petition with respect to the herein petitioners in G.R. No. 154113, and as prayed for, the Court shall consider them parties-petitioners in CA-G.R. SP No. 66540,which case has already been decided and now subject of appeal in G.R. No. 187778.

MCCHI not guilty of unfair labor practice

Art. 248 (g) of the Labor Code, as amended, makes it an unfair labor practice for an employer "[t]o violate the duty to bargain collectively" as prescribed by the Code. The applicable provision in this case is Art. 253 which provides:

> ART. 253. *Duty to bargain collectively when there exists a collective bargaining agreement.* – When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

NAMA-MCCH-NFL charged MCCHI with refusal to bargain collectively when the latter refused to meet and convene for purposes of collective bargaining, or at least give a counter-proposal to the proposed CBA the union had submitted and which was ratified by a majority of the union membership. MCCHI, on its part, deferred any negotiations until the local union's dispute with the national union federation (NFL) is resolved considering that the latter is the exclusive bargaining agent which represented the rank-and-file hospital employees in CBA negotiations since 1987.

We rule for MCCHI.

Records of the NCMB and DOLE Region 7 confirmed that NAMA-MCCH-NFL had not registered as a labor organization, having submitted only its charter certificate as an affiliate or local chapter of NFL.[37] Not being a legitimate labor organization, NAMA-MCCH-NFL is not entitled to those rights granted to a legitimate labor organization under Art. 242, specifically:

(a) To act as the representative of its members for the purpose of collective bargaining;

(b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining;

x x x x x x x x x

Aside from the registration requirement, it is only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit which is the exclusive representative of the employees in such unit for the purpose of collective bargaining, as provided in Art. 255.[38] NAMA-MCCH-NFL is not the labor organization certified or designated by the majority of the rank-and-file hospital employees to represent them in the CBA negotiations but the NFL, as evidenced by CBAs concluded in 1987, 1991 and 1994. While it is true that a local union has the right to disaffiliate from the national federation, NAMA-MCCH-NFL has not done so as there was no any effort on its part to comply with the legal requisites for a valid disaffiliation during the "freedom period"[39]

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[37] *Supra* note 7.

[38] Art. 255. *Exclusive bargaining representation and workers' participation in policy and decision-making.* – The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. x x x

See *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, G.R.* No. 158075, June 30, 2006, 494 SCRA 195, 207-208.

[39] See The Labor Code With Comments and Cases by C.A. AZUCENA, JR., Vol. II, 6th Ed., p. 191.

or the last 60 days of the last year of the CBA, through a majority vote in a secret balloting in accordance with Art. 241 (d).[40] Nava and her group simply demanded that MCCHI directly negotiate with the local union which has not even registered as one.

To prove majority support of the employees, NAMA-MCCH-NFL presented the CBA proposal allegedly signed by 153 union members. However, the petition signed by said members showed that the signatories endorsed the proposed terms and conditions without stating that they were likewise voting for or designating the NAMA-MCCH-NFL as their exclusive bargaining representative. In any case, NAMA-MCCH-NFL at the time of submission of said proposals was not a duly registered labor organization, hence it cannot legally represent MCCHI's rank-and-file employees for purposes of collective bargaining. Hence, even assuming that NAMA-MCCH-NFL had validly disaffiliated from its mother union, NFL, it still did not possess the legal personality to enter into CBA negotiations. A local union which is not independently registered cannot, upon disaffiliation from the federation, exercise the rights and privileges granted by law to legitimate labor organizations; thus, it cannot file a petition for certification election.[41] Besides, the NFL as the mother union has the right to investigate members of its local chapter under the federation's Constitution and By-Laws, and if found guilty to expel such members.[42] MCCHI therefore cannot be

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[40] Art. 241. Rights and conditions of membership in a labor organization. – The following are the rights and conditions of membership in a labor organization:

x x x x x x x x x

(d) The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case the board of directors of the organization may make the decision in behalf of the general membership.

[41] See *Villar v. Inciong*, Nos. L-50283-84, April 20, 1983, 121 SCRA 444, 460-461.

[42] *Id.* at 457-458.

faulted for deferring action on the CBA proposal submitted by NAMA-MCCH-NFL in view of the union leadership's conflict with the national federation. We have held that the issue of disaffiliation is an intra-union dispute[43] which must be resolved in a different forum in an action at the instance of either or both the federation and the local union or a rival labor organization, not the employer.[44]

Not being a legitimate labor organization nor the certified exclusive bargaining representative of MCCHI's rank-and-file employees, NAMA-MCCH-NFL cannot demand from MCCHI the right to bargain collectively in their behalf.[45] Hence, MCCHI's refusal to bargain then with NAMA-MCCH-NFL cannot be considered an unfair labor practice to justify the staging of the strike.[46]

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[43] An **intra-union dispute** refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes, *viz:*

RULE XI

INTER/INTRA-UNION DISPUTES AND

OTHER RELATED LABOR RELATIONS DISPUTES

Section 1.Coverage. – Inter/intra-union disputes shall include:

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

(e) ***validity/invalidity of union affiliation or disaffiliation;***

x x x x (Emphasis supplied.) (Employees Union of Bayer Phils. v. Bayer Philippines, Inc., G.R. No. 162943, December 6, 2010, 636 SCRA 473, 487.*)*

[44] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, p. 7.

[45] See *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, supra* note 38 at 208.

[46] *Id.* at 209.

Strike and picketing activities conducted by union officers and members were illegal

Art. 263 (b) of the Labor Code, as amended, provides:

ART. 263. *Strikes, picketing and lockouts*. – x x x

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of **legitimate labor organizations to strike and picket** and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

x x x x (Emphasis supplied.)

As borne by the records, NAMA-MCCH-NFL was not a duly registered or an independently registered union at the time it filed the notice of strike on March 13, 1996 and when it conducted the strike vote on April 2, 1996. It could not then legally represent the union members. Consequently, the mandatory notice of strike and the conduct of the strike vote report were ineffective for having been filed and conducted by NAMA-MCCH-NFL which has no legal personality as a legitimate labor organization, in violation of Art. 263 (c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code.[47]

Art. 263 of the Labor Code provides:

ART. 263. *Strikes, picketing and lockouts*. — (a) x x x

x x x x x x x x x

(c) In cases of bargaining deadlocks, the **duly certified or recognized bargaining agent** may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and **in the absence of a duly certified or recognized bargaining agent, the notice of strike**

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[47] *Magdala Multipurpose & Livelihood Cooperative v. Kilusang Manggagawa ng LGS, et al.*, G.R. Nos. 191138-39, October 19, 2011, p. 6.

may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately. (As amended by Executive Order No. 111, December 24, 1986.)

(d) The notice must be in accordance with such implementing rules and regulations as the Department of Labor and Employment may promulgate.

xxx xxx xxx

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. (As amended by Batas Pambansa Bilang 130, August 21, 1981 and further amended by Executive Order No. 111, December 24, 1986.) (Emphasis supplied.)

Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code reads:

RULE XXII

CONCILIATION, STRIKES AND LOCKOUTS

xxx xxx xxx

SEC. 6. *Who may declare a strike or lockout*. — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, **any legitimate labor**

organization in the establishment may declare a strike but only on grounds of unfair labor practice. (Emphasis supplied.)

Furthermore, the strike was illegal due to the commission of the following prohibited activities[48]: (1) violence, coercion, intimidation and harassment against non-participating employees; and (2) blocking of free ingress to and egress from the hospital, including preventing patients and their vehicles from entering the hospital and other employees from reporting to work, the putting up of placards with a statement advising incoming patients to proceed to another hospital because MCCHI employees are on strike/protest. As shown by photographs[49] submitted by MCCHI, as well as the findings of the NCMB and Cebu City Government, the hospital premises and sidewalk within its vicinity were full of placards, streamers and makeshift structures that obstructed its use by the public who were likewise barraged by the noise coming from strikers using megaphones.[50] On the other hand, the affidavits[51] executed by several hospital employees and patients narrated in detail the incidents of harassment, intimidation, violence and coercion, some of these witnesses have positively identified the perpetrators. The prolonged work stoppage and picketing activities of the striking employees severely disrupted hospital operations that MCCHI suffered heavy financial losses.

The findings of the Executive Labor Arbiter and NLRC, as sustained by the appellate court, clearly established that the striking union members created so much noise, disturbance and obstruction that the local government authorities eventually ordered their removal for being a public nuisance. This was followed by an injunction from the NCMB enjoining the union

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[48] Art. 264 (e) of the Labor Code provides: "No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares."

[49] NLRC records (Vol. II), pp. 326-327.

[50] *Id.* at 356-368.

[51] *Id.* at 122-135, 151-158.

leaders from further blocking the free ingress to and egress from the hospital, and from committing threats, coercion and intimidation against non-striking employees and patients/vehicles desiring to enter for the purpose of seeking medical treatment/ confinement. By then, the illegal strike had lasted for almost five months.

Consequences of illegal strike to union officers and members

Art. 264 (a) of the Labor Code, as amended, provides for the consequences of an illegal strike to the participating workers:

> x x x Any union officer who knowingly participates in illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: *Provided*, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

The above provision makes a distinction between workers and union officers who participate in an illegal strike: an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike.[52]

Considering their persistence in holding picketing activities despite the declaration by the NCMB that their union was not duly registered as a legitimate labor organization and the letter from NFL's legal counsel informing that their acts constitute

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[52] *Sukhothai Cuisine and Restaurant v. Court of Appeals*, G.R. No. 150437, July 17, 2006, 495 SCRA 336, 355,citing *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, G.R. No. 140992, March 25, 2004, 426 SCRA 319, 327-328; *Telefunken Seminconductors Employees Union-FFW v. Secretary of Labor and Employment*, 347 Phil. 447, 454-455 (1997); *and Gold City Integrated Port Service, Inc. v. NLRC*, 315 Phil. 698, 709-710 (1995).

disloyalty to the national federation, and their filing of the notice of strike and conducting a strike vote notwithstanding that their union has no legal personality to negotiate with MCCHI for collective bargaining purposes, there is no question that NAMA-MCCH-NFL officers *knowingly participated in the illegal strike*. The CA therefore did not err in ruling that the termination of union officers Perla Nava, Catalina Alsado, Albina Bañez, Hannah Bongcaras, Ernesto Canen, Jesusa Gerona and Guillerma Remocaldo was valid and justified.

With respect to the dismissed union members, although MCCHI submitted photographs taken at the picket line, it did not individually name those striking employees and specify the illegal act committed by each of them. As to the affidavits executed by non-striking employees, they identified mostly union officers as the persons who blocked the hospital entrance, harassed hospital employees and patients whose vehicles were prevented from entering the premises. Only some of these witnesses actually named a few union members who committed similar acts of harassment and coercion. Consequently, we find no error committed by the CA in CA-G.R. SP No. 66540 when it modified the decision of the NLRC and ruled that the dismissal of union members who merely participated in the illegal strike was illegal. On the other hand, in CA-G.R. SP No. 84998, the CA did not err in ruling that the dismissal of Yballe, et al. was illegal; however, it also ordered their reinstatement with full back wages.

Dismissed union members not entitled to backwages but should be awarded separation pay in lieu of reinstatement

Since there is no clear proof that union members actually participated in the commission of illegal acts during the strike, they are not deemed to have lost their employment status as a consequence of a declaration of illegality of the strike.

Petitioners in G.R. Nos. 154113 and 187778 assail the CA in not ordering their reinstatement with back wages. Invoking *stare decisis*, they cited the case of *Bascon v. Court of*

Appeals[53] decided by this Court in 2004 and which involved two former hospital employees who likewise sued MCCHI after the latter terminated their employment due to their participation in the same illegal strike led by NAMA-MCCH-NFL. In said case we ruled that petitioners Cole and Bascon were illegally dismissed because MCCHI failed to prove that they committed illegal acts during the strike. We thus ordered the reinstatement of petitioners Bascon and Cole without loss of seniority rights and other privileges and payment of their back wages inclusive of allowances, and other benefits computed from the time they were dismissed up to the time of their actual reinstatement. *Bascon* was also the basis of the award of back wages in CA-G.R. SP No. 84998.

Stare decisis et non quieta movere. Stand by the decision and disturb not what is settled. Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same,[54] even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[55]

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[53] *Supra* note 26.

[54] *Tala Realty Services Corporation v. Court of Appeals*, G.R. Nos. 130088, 131469, 155171, 155201 & 166608, April 7, 2009, 584 SCRA 63, 79.

[55] *Grand Placement and General Services Corporation v. Court of Appeals*, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204, citing *Villena v. Chavez*, G.R. No. 148126, November 10, 2003, 415 SCRA 33, 42-43; *Ayala Corporation v. Rosa-Diana Realty and Development Corp.*, G.R. No. 134284, December 1, 2000, 346 SCRA 663, 671; *Tung Chin Hui v. Rodriguez*, 395 Phil. 169, 177 (2000); *and Negros Navigation Co., Inc. v. CA*, 346 Phil. 551, 563 (1997).

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside.[56] For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.[57]

Although the *Bascon* case involved the very same illegal strike in MCCHI which led to the termination of herein petitioners, its clearly erroneous application of the law insofar only as the award of back wages warrants setting aside the doctrine. Indeed, the doctrine of *stare decisis* notwithstanding, the Court has abandoned or overruled precedents whenever it realized that the Court erred in the prior decisions. "Afterall, more important than anything else is that this Court should be right."[58]

In *G & S Transport Corporation v. Infante*,[59] the Court explained the rationale for its recent rulings deleting back wages awarded to the dismissed workers if the strike was found to be illegal. Considering that they did not render work for the employer during the strike, they are entitled only to reinstatement.

With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back

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[56] *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 595.

[57] *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, September 5, 1996, 261 SCRA 464, 467.

[58] *Alonso v. Cebu Country Club, Inc.*, G.R. No. 130876, January 31, 2002, 375 SCRA 390, 409.

[59] G.R. No. 160303, September 13, 2007, 533 SCRA 288.

to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that **for this exception to apply, it is required that the strike be legal,** a situation that does not obtain in the case at bar.

Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief. If reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.[60] (Emphasis supplied.)

The CA decision in CA-G.R. SP No. 66540 ordering the payment of separation pay in lieu of reinstatement without back wages is thus in order, to conform to the policy of *a fair day's wage for a fair day's labor*. The amount of separation pay is increased to one month pay for every year of service, consistent with jurisprudence. Accordingly, the decision in CA-G.R. SP No. 84998 is modified by deleting the award of back wages and granting separation pay in lieu of reinstatement.

It is to be noted that as early as April 8, 1996, union members who took part in the concerted activities have been warned by management that NAMA-MCCH-NFL is not a legitimate labor organization and its notice of strike was denied by the NCMB, and directed to desist from further participating in such illegal activities. Despite such warning, they continued with their picketing activities and held more mass actions after management sent them termination notices. The prolonged work stoppage seriously disrupted hospital operations, which could have eventually brought MCCHI into bankruptcy had the City Government of Cebu not issued a demolition order and the NLRC Region 7 not formally enjoined the prohibited picketing activities.

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[60] *Id. at 301-302.* See also *National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAIN-APL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals*, G.R. Nos. 163942 & 166295, November 11, 2008, 570 SCRA 598, 617-618 and *Solidbank Corporation v. Gamier*, G.R. Nos. 159460 & 159461, November 15, 2010, 634 SCRA 554, 581-582.

Also, the illegal dismissal complaints subsequently filed by the terminated employees did not obliterate the fact that they did not suffer loss of earnings by reason of the employer's unjustified acts, there being no unfair labor practice committed by MCCHI. Hence, fairness and justice dictate that back wages be denied the said employees who participated in the illegal concerted activities to the great detriment of the employer.

Separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.[61]

Considering that 15 years had lapsed from the onset of this labor dispute, and in view of strained relations that ensued, in addition to the reality of replacements already hired by the hospital which had apparently recovered from its huge losses, and with many of the petitioners either employed elsewhere, already old and sickly, or otherwise incapacitated, separation pay without back wages is the appropriate relief. We note that during the pendency of the cases in this Court, some of the petitioners have entered into compromise agreements with MCCHI, all of which were duly approved by this Court. Thus, excluded from the herein monetary awards are the following petitioners whose compromise agreements have been approved by this Court and judgment having been entered therein: Gloria Arguilles, Romulo Alforque, Gerna Patigdas-Barte, Daylinda Tigo Merlyn Nodado, Ramon Tagnipis, Bernabe Lumapguid, Romeo Empuerto, Marylen Labra, Milagros Castillo Bernadette

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[61] *Escario v. National Labor Relations Commission (Third Division)*, G.R. No. 160302, September 27, 2010, 631 SCRA 261, 275.

Pontillas-Tibay, Constancio Pagador, Nolan Alvin Panal, Edilberto Villa, Roy Malazarte, Felecianita Malazarte and Noel Hortelano.

Attorney's fees

The dismissed employees having been compelled to litigate in order to seek redress and protect their rights, they are entitled to reasonable attorney's fees pursuant to Art. 2208 (2) of the Civil Code. In view of the attendant circumstances of this case, we hold that attorney's fees in the amount of ₱50,000.00 is reasonable and justified. However, the respondents in G.R. No. 196156 are not entitled to the same relief since they did not appeal from the CA decision which did not include the award of attorney's fees.

WHEREFORE, the petition for review on certiorari in G.R. No. 187861 is *DENIED* while the petitions in G.R. Nos. 154113, 187778 and 196156 are *PARTLY GRANTED*. The Decision dated October 17, 2008 of the Court of Appeals in CA-G.R. SP No. 66540 is hereby *AFFIRMED* with *MODIFICATIONS* in that MCCHI is ordered to pay the petitioners in G.R. Nos. 154113 and 187778, except the petitioners who are union officers, separation pay equivalent to one month pay for every year of service, and reasonable attorney's fees in the amount of ₱50,000.00. The Decision dated November 7, 2008 is likewise *AFFIRMED* with *MODIFICATIONS* in that MCCHI is ordered to pay the private respondents in G.R. No. 196156 separation pay equivalent to one month pay for every year of service, and that the award of back wages is *DELETED*.

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the petitioners union members in G.R. Nos. 154113, 187778 and 196156 except those who have executed compromise agreements approved by this Court.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171146. December 7, 2011]

RODOLFO MORLA, *petitioner, vs.* **CORAZON NISPEROS BELMONTE, ABRAHAM U. NISPEROS, PERLITA NISPEROS OCAMPO, ARMANDO U. NISPEROS, ALBERTO U. NISPEROS, HILARIO U. NISPEROS, ARCHIMEDES U. NISPEROS, BUENAFE NISPEROS PEREZ, ARTHUR U. NISPEROS, and ESPERANZA URBANO NISPEROS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; HIGHER COURTS ARE PRECLUDED FROM ENTERTAINING MATTERS NEITHER ALLEGED IN THE PLEADINGS NOR RAISED DURING THE PROCEEDINGS BELOW, BUT VENTILATED FOR THE FIRST TIME ONLY IN A MOTION FOR RECONSIDERATION OR ON APPEAL.— If it were true that the subject land's ownership was ceded to the Morla brothers as early as 1978, then it is inconceivable that they would forget to bring up this important fact and use it as their key defense when they filed their Answer to the Complaint on July 12, 1994. Even then, the Morla brothers had every opportunity to correct this lapse as they had always been aware and in possession of the 1978 contract. They could have stipulated it during the pre-trial conference, or at least stated it in their Position Paper. The theory advanced by the Morla brothers from the very beginning is that they are entitled to the possession of the subject land as the owner thereof because the property was sold to them by virtue of the Partial Deed of Sale executed on June 8, 1988. They presented the 1978 contract only to prove that they had been in continuous and open possession since 1978. The first time the Morla brothers claimed ownership, and not mere possession, of the subject land by virtue of the 1978 contract, was in their motion for reconsideration, after they had lost their appeal before the Court

of Appeals. The Court of Appeals was correct in not considering this argument for not having been raised at the earliest opportunity. It is a well-settled rule that "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal." "Petitioner is bound by the statements and stipulations he made while the case was being heard in the lower courts." In *Manila Electric Company v. Benamira*, we said: [I]t is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. The individual respondents are bound by their submissions that AFSISI is their employer and they should not be permitted to change their theory. Such a change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules but as a matter of fairness. A change of theory on appeal is objectionable because it is contrary to the rules of fair play, justice and due process.

2. CIVIL LAW; PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); SECTION 119 THEREOF LIBERALLY CONSTRUED IN ORDER TO CARRY OUT ITS PURPOSE; RIGHT TO REPURCHASE UNDER SECTION 119 COULD BE EXTENDED BY MUTUAL AGREEMENT OF THE PARTIES INVOLVED.— We are in full accord with the clear findings and apt ruling of the lower courts. Nowhere in Commonwealth Act No. 141 does it say that the right to repurchase under Section 119 thereof could not be extended by mutual agreement of the parties involved. Neither would extending the period in Section 119 be against public policy as "the evident purpose of the Public Land Act, especially the provisions thereof in relation to homesteads, is to conserve ownership of lands acquired as homesteads in the homesteader or his heirs." "What cannot be bartered away is the homesteader's right to repurchase the homestead within five years from its conveyance, as this is what public policy by law seeks to preserve." "This, in our opinion, is the only logical meaning to be given to the law, which must be liberally construed in order to carry out its purpose."

3. ID.; CONTRACTS; PETITIONER, WHO FREELY SIGNED THE 1988, CONTRACT CANNOT NOW BE ALLOWED TO

RENEGE ON HIS OBLIGATION UNDER IT, SIMPLY BECAUSE HE CHANGED HIS MIND; A CONTRACT MUST BIND BOTH CONTRACTING PARTIES AND ITS VALIDITY CANNOT BE LEFT TO THE WILL OF ONE OF THEM.— Petitioner does not dispute that the 1988 contract was executed freely and willingly between him and his late brother, and the Nisperos spouses. "The freedom of contract is both a constitutional and statutory right," and "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." The 1988 contract neither shortens the period provided under Section 119 nor does away with it. Instead, it gives the Nisperos spouses more time to reacquire the land that the State gratuitously gave them. The 1988 contract therefore is not contrary to law; instead it is merely in keeping with the purpose of the homestead law. Since the 1988 contract is valid, it should be given full force and effect. In *Roxas v. De Zuzuarregui, Jr.*, we held: It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties. Petitioner, who freely signed the 1988 contract, cannot now be allowed to renege on his obligation under it, simply because he changed his mind. Article 1308 of the Civil Code provides: The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. Petitioner is thus bound by the terms of the 1988 Contract, and must comply with it in good faith. Since the right to repurchase was exercised by the Nisperos spouses before the expiration of the time given to them by the Morla brothers, the lower courts correctly ruled in their favor.

APPEARANCES OF COUNSEL

Ramorelia P. Lodriguito-Caranay for petitioner.
Carmelita Lourdes Soriano for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This petition for review on *certiorari*[1] seeks to annul and set aside the March 9, 2005 **Decision**[2] and December 29, 2005 **Resolution**[3] of the Court of Appeals in **CA-G.R. CV No. 53527**, which affirmed with modification the February 19, 1996 Judgment[4] of the Regional Trial Court (RTC) of Ilagan, Isabela, Branch 17 in Civil Case No. 810.

Spouses Alfredo Nisperos and Esperanza Urbano (the Nisperos spouses) were the original homesteaders of an 80,873-square meter tract of public land known and identified as Lot No. 4353 of Pls. 62, situated in Caliguian, Burgos, Isabela,[5] by virtue of Original Certificate of Title (OCT) No. P-1542, issued on May 4, 1951.[6]

On June 8, 1988, the Nisperos spouses executed a Partial Deed of Absolute Sale,[7] wherein they sold a portion of Lot No. 4353 with an area of 50,000 square meters (subject land) to the brothers Ramon and Rodolfo Morla (the Morla brothers) for the sum of Two Hundred Fifty Thousand Pesos (₱250,000.00).

On August 2, 1988, the Morla brothers acknowledged and confirmed in writing (the "1988 contract") that they had bought from the Nisperos spouses the subject land, and that they had agreed to give the Nisperos spouses a period of ten (10) years

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 49-56; penned by Associate Justice Edgardo P. Cruz with Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza (now a member of this Court), concurring.

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

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

[5] Records, p. 1.

[6] *Id.* at 8.

[7] *Id.* at 33.

within which to repurchase the subject land for the price of Two Hundred Seventy-Five Thousand Pesos (₱275,000.00). The 1988 contract was written in Ilocano and executed at the Office of the Barangay Captain in the Municipality of Burgos, Province of Isabela.[8]

On June 27, 1994, the Nisperos spouses filed a **Complaint**[9] **for Repurchase and/or Recovery of Ownership Plus Damages** against the Morla brothers. They alleged that the deed of sale was registered by the Morla brothers only when they had signified their intention to repurchase their property.[10] Thus, Transfer Certificate of Title (TCT) No. 225544 for the subject land was issued in favor of the Morla brothers, and TCT No. 225545,[11] for the remaining 30,870 square meters of Lot No. 4353, to the Nisperos spouses.

In response,[12] the Morla brothers claimed that the Nisperos spouses had no cause of action, as the repurchase of the subject land was improper for being outside the five-year period provided under Section 119 of Commonwealth Act No. 141.[13]

At the pre-trial conference held on June 19, 1995, the parties settled that the only issue to be resolved by the RTC was whether the 1988 contract executed by the parties, wherein it was stipulated that the Nisperos spouses may repurchase the land sold to the Morla brothers within a period of ten (10) years, was valid or not.[14]

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[8] *Id.* at 6.

[9] *Id.* at 1-5.

[10] *Id.* at 2.

[11] *Id.* at 8.

[12] *Id.* at 27-32.

[13] *Id.* at 28.

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

On July 28, 1995, the RTC issued an Order[15] requiring the parties to submit their position papers or memoranda in light of their agreement to submit the case for Summary Judgment on the issue of the validity of the 1988 contract.

The Nisperos spouses then filed a Motion for Summary Judgment[16] on the ground that there was no genuine issue of material facts in the case except for damages and attorney's fees, which may be heard separately and independently.

On September 15, 1995, the Nisperos spouses deposited the amount of ₱275,000.00, with the clerk of court of the RTC for the repurchase of the subject land.[17]

The RTC rendered its Judgment dated February 19, 1996, the dispositive portion of which reads:

> WHEREFORE, for and in consideration of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the defendants to reconvey the portion of five (5) hectares of plaintiff's land covered by their original title, Original Certificate of Title No. P-1542 unto the plaintiffs and to receive and accept the ₱275,000.00 from the plaintiffs as repurchase; to pay attorney's fees in the amount of ₱5,000.00 and to pay the costs of this suit.[18]

The RTC said that the only issue to be resolved was the validity of the 1988 contract, which the Morla brothers neither attacked nor denied. The RTC held that it was clear from the 1988 contract, which the Morla brothers executed, that they had bound themselves to its terms and conditions. The RTC further proclaimed that what was prohibited was the shortening of the five-year redemption period under Section 119 of Commonwealth Act No. 141, and not its prolongation.[19]

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[15] *Id.* at 56.

[16] *Id.* at 66-70.

[17] *Id.* at 74.

[18] CA *rollo*, p. 9.

[19] Records, p. 81.

On March 14, 1996, the Morla brothers moved for the reconsideration[20] of the RTC's judgment on the ground that it could not affect them since they were no longer the real parties-in-interest as they had already sold the subject land to Rosie Ocampo, married to Delfin Gragasin, and Hilario Bernardino, married to Manolita Morla, on May 2, 1994.[21]

The Nisperos spouses, in their Opposition to the Motion for Reconsideration,[22] attacked the validity of the purported sale and alleged that such sale in favor of the Morla brothers' close relatives was a last ditch attempt to win the case. The Nisperos spouses pointed out that the Morla brothers never mentioned such sale considering that it supposedly happened in May 1994, before the case was instituted in June 1994.[23]

The RTC denied the Morla brothers' motion for reconsideration in an **Order**[24] dated July 19, 1996. The RTC noted how such purported sale was not mentioned by the Morla brothers in their confrontations with the Nisperos spouses prior to the filing of the case, or in any of their pleadings filed before the RTC. The RTC agreed with the Nisperos spouses' contention that if the sale really did happen, then the Morla brothers should have brought it up at the earliest opportune time. Finally, the RTC said that the belated issue would not in any way affect the standing of the parties.

The Morla brothers timely[25] appealed this decision to the Court of Appeals and assigned the following errors in support thereof:

I

The TRIAL COURT GRAVELY ERRED IN HOLDING THAT APPELLANTS' AUGUST 2, 1988 private writing, Exh. "A" WAS AN

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[20] *Id.* at 82-84.
[21] *Id.* at 94.
[22] *Id.* at 86-90.
[23] *Id.* at 86-88.
[24] *Id.* at 100.
[25] *Id.* at 110.

AGREEMENT BY PARTIES FOR APPELLEES TO REPURCHASE WITHIN TEN (10) YEARS THEREFROM THE FIVE (5) HECTARES PORTION OF THEIR HOMESTEAD THEY SOLD TO THE FORMER AS PER JUNE 28, 1988 PARTIAL DEED OF ABSOLUTE SALE, EXH. "1" NOTWITHSTANDING THE MANDATORY FIVE (5) YEARS REPURCHASE PERIOD FROM THE DATE OF SALE PROVIDED BY SECTION 119 OF THE PUBLIC LAND LAW (COMMONWEALTH ACT NO. 141).

II

THE TRIAL COURT GRAVELY ERRED IN RELYING ON THE PRECEDENT LAID IN THE CASES OF *MENJE, ET AL. VS. ANGELES*, 101 PHIL. 563 AND *MANUEL VS. PHILIPPINE NATIONAL BANK*, 101 PHIL. 568, WHICH TREAT OF REDEMPTION OF FORECLOSED HOMESTEAD AFTER FORECLOSURE SALES NOTWITHSTANDING THE CLEAR ISSUE IN THE CASE AT BAR WHICH IS FOR REPURCHASE OF A PORTION OF A HOMESTEAD. [26]

On March 9, 2005, the Court of Appeals affirmed the RTC's decision, with the deletion of the award of attorney's fees for lack of basis in the decision, as the only modification. While the Court of Appeals agreed with the Morla brothers' assertion that the cases cited by the RTC were not applicable to their case, it declared that the RTC did not err in allowing the Nisperos spouses to repurchase the subject land. The Court of Appeals immediately noted that there clearly was no genuine issue as to any material fact, except for the claim of attorney's fees. It upheld the validity of the 1988 contract and concurred with the RTC's rationale that the arrangement to prolong the period for redemption of the subject land was not prohibited by law as it was in line with the intent of Section 119 "to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it." The Court of Appeals further held that the 1988 contract, contrary to the Morla brothers' contention, was not unenforceable as the necessity to embody

[26] CA *rollo*, pp. 47-48.

certain contracts in a public instrument was only for convenience and not for its validity or enforceability.[27]

The Morla brothers sought to have this decision reconsidered on the strength of a "newly discovered" Contract of Sale of farm land dated June 28, 1978 (1978 contract). The Morla brothers alleged that this contract, which covered the subject land, was found only upon the prodding of their new lawyer; thus, even the ten-year period to repurchase the subject land under Article 1606 of the Civil Code had already expired.[28]

The Court of Appeals issued a Resolution[29] on December 29, 2005, denying the Morla brothers' motion for reconsideration in this wise:

> [The Morla brothers] assert a new theory on the basis of a handwritten "contract" dated June 28, 1978 – a private document – allegedly executed by [the Nisperos spouses]. Said document is being introduced for the first time on appeal. And it is settled that issues not raised in the court *a quo* cannot be raised for the first time on appeal – in the case at bench, in a motion for reconsideration – for being offensive to the basic rules of fair play, justice and due process x x x.[30]

As Ramon Morla died on March 5, 2001, single and without any descendants or ascendants, Rodolfo Morla (petitioner), by himself, elevated the instant case before this Court with the Nisperos spouses as respondents. Alfredo Nisperos, however, also died on September 19, 2010.[31] Consequently, Alfredo Nisperos' legal heirs filed a motion[32] to be substituted as respondents, in lieu of their deceased father. This motion was

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[27] *Rollo*, pp. 54-56.

[28] *Id.* at 58-63.

[29] *Id.* at 66-66A.

[30] *Id.* at 66.

[31] *Id.* at 140.

[32] *Id.* at 137-138.

granted on October 3, 2011[33] thus, Corazon Nisperos Belmonte, Abraham U. Nisperos, Perlita Nisperos Ocampo, Armando U. Nisperos, Alberto U. Nisperos, Hilario U. Nisperos, Archimedes U. Nisperos, Buenafe Nisperos Perez, and Arthur U. Nisperos, now join their mother Esperanza Urbano Nisperos as respondents in this case.

Issue

Petitioner, claiming that his petition is of transcendental importance as it poses a novel question of law, is asking us to resolve the following question:

[M]ay parties to a deed of sale of a land covered by a homestead patent extend or prolong the 5-year period of repurchase under Section 119 of Act 141, under a private writing subsequently executed by them?[34]

The Court's Ruling

This Court would like to address the admissibility of the 1978 contract at the outset as petitioner posits that by virtue of this contract, the respondents' claim had already prescribed, even if the redemption period under Section 119 of Commonwealth Act No. 141 were extended to ten years. Petitioner claims that the June 8, 1988 Partial Deed of Sale was actually the formal culmination of an earlier transaction between the Morla brothers and the Nisperos spouses, as shown by the 1978 contract. Hence, more than ten years have already lapsed from the time such contract was executed to the time the right to repurchase was sought to be exercised.[35]

Contrary to petitioner's allegation in its Motion for Reconsideration before the Court of Appeals, the 1978 contract did not surface only after the appeal; it was actually attached to the Morla brothers' Answer[36] filed with the RTC on July 12,

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[33] Resolution dated October 3, 2011.

[34] *Rollo*, p. 17.

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

[36] Records, pp. 27-32.

1994. Referencing this 1978 contract, the Morla brothers stated the following in their Answer:

> 8. Since June 28, 1978 and continuously up to the present, the defendants are in the open, continuous, exclusive, and notorious actual physical possession, occupation, and cultivation of the (50,000 SQUARE METERS) portion of Lot No. 4353, Pls-62, as evidenced by a private document, a xerox copy of which document is hereto attached as Annex "2" to this answer.[37]

During the pre-trial, the Morla brothers and the Nisperos spouses also agreed on only the following stipulation of facts, as stated in the RTC's June 19, 1995 Order:

1. That the land is a Homestead originally applied for by the plaintiffs and a Homestead Patent and Original Certificate of Title were issued to the plaintiffs;
2. That on August 2, 1988, at Caliguian, Burgos, Isabela, in the presence of the *Barangay* Captain, an Ilocano writing or contract was acknowledged and confirmed by the defendants and the defendants admitted as to its authenticity;
3. That the Transfer Certificate of Title No. T-225545 is the remaining portion of Three (3) hectares or 30, 873 square meters, which was only issued by the Register of Deeds of Isabela on March 11, 1994, and this remaining portion was derived from the Original Certificate of Title of Alfredo Nisperos, which is OCT No. P-1542 issued in 1951;
4. That on June 8, 1988, a Partial Deed of Absolute Sale was prepared, as per Doc. No. 419; Page 84; Book 17; Series of 1988, entered into the Notarial Book of Notary Public Severo Ladera;
5. That Transfer Certificate of Title No. T-225544 was registered in the name of the defendants, Rodolfo Morla and Ramon Morla at the Office of the Registry of Deeds of Isabela on March 11, 1994.[38]

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[37] *Id.* at 29.

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

The Morla brothers' Position Paper/Memorandum[39] likewise reiterated that the sale of the subject land happened on June 8, 1988, and referred to the 1978 contract only to prove their long possession of the subject land, just as they did in their Answer.

If it were true that the subject land's ownership was ceded to the Morla brothers as early as 1978, then it is inconceivable that they would forget to bring up this important fact and use it as their key defense when they filed their Answer to the Complaint on July 12, 1994. Even then, the Morla brothers had every opportunity to correct this lapse as they had always been aware and in possession of the 1978 contract. They could have stipulated it during the pre-trial conference, or at least stated it in their Position Paper. The theory advanced by the Morla brothers from the very beginning is that they are entitled to the possession of the subject land as the owner thereof because the property was sold to them by virtue of the Partial Deed of Sale executed on June 8, 1988. They presented the 1978 contract only to prove that they had been in continuous and open possession since 1978. The first time the Morla brothers claimed ownership, and not mere possession, of the subject land by virtue of the 1978 contract, was in their motion for reconsideration, after they had lost their appeal before the Court of Appeals. The Court of Appeals was correct in not considering this argument for not having been raised at the earliest opportunity. It is a well-settled rule that "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal."[40] "Petitioner is bound by the statements and stipulations he made while the case was being heard in the lower courts."[41] In *Manila Electric Company v. Benamira*,[42] we said:

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[39] *Id.* at 57-62.

[40] *Pasco v. Pison-Arceo Agricultural and Development Corporation*, G.R. No. 165501, March 28, 2006, 485 SCRA 514, 523.

[41] *Roman Catholic Archbishop of Caceres v. Heirs of Manuel Abella*, G.R. No. 143510, November 23, 2005, 476 SCRA 1, 8.

[42] 501 Phil. 621 (2005).

[I]t is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. The individual respondents are bound by their submissions that AFSISI is their employer and they should not be permitted to change their theory. Such a change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules but as a matter of fairness. A change of theory on appeal is objectionable because it is contrary to the rules of fair play, justice and due process.[43]

Having settled the inadmissibility of the 1978 contract, we now go to the legality of the 1988 contract.

Since the subject land was acquired by the Nisperos spouses pursuant to a homestead patent, the applicable law is Commonwealth Act No. 141, or the Public Land Act.[44] Section 119 thereof specifically speaks about repurchases of a homestead or free patent land:

Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

The petitioner does not dispute the existence or validity of the 1988 contract. He simply argues that the 10-year repurchase period he and his brother Ramon Morla had agreed to grant the Nisperos spouses, as evidenced by the 1988 contract, was contrary to law and jurisprudence, *viz:*

In no uncertain terms can the statutory period of five (5) years, which is fixed and non-extendible, be prolonged or extended by agreement of the parties since it runs athwart with the express limitation of the right to repurchase provided for in *Section 119, Act 141*. Spouses Nisperos cannot, therefore, use the August 2, 1988 private writing to extend the already expired period granted under the law. To do so is to

[43] *Id.* at 638.

[44] Commonwealth Act No. 141, Section 1.

violate the law. ***The law must control over the revised intention of the parties.***[45] (Emphasis supplied.)

Elucidating on the purpose of the homestead laws, this Court held in *Republic of the Philippines v. Court of Appeals*[46]:

It is well-known that the homestead laws were designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation. Pursuant to such benevolent intention the State prohibits the sale or encumbrance of the homestead (Section 116) within five years after the grant of the patent. After that five-year period the law impliedly permits alienation of the homestead; but in line with the primordial purpose to favor the homesteader and his family the statute provides that such alienation or conveyance (Section 117) shall be subject to the right of repurchase by the homesteader, his widow or heirs within five years. This Section 117 is undoubtedly a complement of Section 116. It aims to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him. It would, therefore, be in keeping with this fundamental idea to hold, as we hold, that the right to repurchase exists not only when the original homesteader makes the conveyance, but also when it is made by his widow or heirs. This construction is clearly deducible from the terms of the statute.[47]

In *Fontanilla, Sr. v. Court of Appeals*,[48] we said:

The applicant for a homestead is to be given all the inducement that the law offers and is entitled to its full protection. Its blessings, however, do not stop with him. This is particularly so in this case as the appellee is the son of the deceased. There is no question then as to his status of being a legal heir. The policy of the law is not difficult to understand. The incentive for a pioneer to venture into developing virgin land becomes more attractive if he is assured that his effort will not go for naught should perchance his life be cut short. This is merely a recognition

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[45] *Rollo*, p. 20.

[46] 346 Phil. 637 (1997).

[47] *Id.* at 649.

[48] 377 Phil. 382 (1999).

of how closely bound parents and children are in Filipino family. Logic, the sense of fitness and of right, as well as pragmatic considerations thus call for continued adherence to the policy that not the individual applicant alone but those so closely related to him as are entitled to legal succession may take full advantage of the benefits the law confers.[49]

We are in full accord with the clear findings and apt ruling of the lower courts. Nowhere in Commonwealth Act No. 141 does it say that the right to repurchase under Section 119 thereof could not be extended by mutual agreement of the parties involved. Neither would extending the period in Section 119 be against public policy as "the evident purpose of the Public Land Act, especially the provisions thereof in relation to homesteads, is to conserve ownership of lands acquired as homesteads in the homesteader or his heirs."[50] "What cannot be bartered away is the homesteader's right to repurchase the homestead within five years from its conveyance, as this is what public policy by law seeks to preserve."[51] "This, in our opinion, is the only logical meaning to be given to the law, which must be liberally construed in order to carry out its purpose."[52]

Petitioner does not dispute that the 1988 contract was executed freely and willingly between him and his late brother, and the Nisperos spouses. "The freedom of contract is both a constitutional and statutory right,"[53] and "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."[54] The 1988 contract neither shortens the period provided under Section 119 nor does away with it. Instead, it gives the Nisperos spouses more time

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[49] *Id.* at 390-391.

[50] *Ferrer v. Mangente*, 151-A Phil. 427, 431 (1973).

[51] *Santos v. Roman Catholic Church of Midsayap*, 94 Phil. 405, 411 (1954).

[52] *Rivera v. Curamen*, 133 Phil. 454, 458 (1968).

[53] *Rivera v. Solidbank Corporation*, 521 Phil. 628, 651 (2006).

[54] NEW CIVIL CODE, Article 1306.

to reacquire the land that the State gratuitously gave them. The 1988 contract therefore is not contrary to law; instead it is merely in keeping with the purpose of the homestead law. Since the 1988 contract is valid, it should be given full force and effect. In *Roxas v. De Zuzuarregui, Jr.*,[55] we held:

> It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.[56]

Petitioner, who freely signed the 1988 contract, cannot now be allowed to renege on his obligation under it, simply because he changed his mind. Article 1308 of the Civil Code provides:

> The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

Petitioner is thus bound by the terms of the 1988 Contract, and must comply with it in good faith. Since the right to repurchase was exercised by the Nisperos spouses before the expiration of the time given to them by the Morla brothers, the lower courts correctly ruled in their favor.

WHEREFORE, the Petition is hereby *DENIED* and the March 9, 2005 Decision and December 29, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 53527, are *AFFIRMED*.

SO ORDERED.

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

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[55] 516 Phil. 605 (2006).

[56] *Id*. at 622-623.

THIRD DIVISION

[G.R. No. 172666. December 7, 2011]

PICOP RESOURCES, INCORPORATED (PRI), Represented in this Petition by MR. WILFREDO D. FUENTES, in his capacity as Senior Vice-President and Resident Manager, *petitioner, vs.* **RICARDO DEQUILLA, ELMO PABILANDO, CESAR ATIENZA and ANICETO ORBETA, JR., and NAMAPRI-SPFI,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE MERE ACT OF SIGNING AN AUTHORIZATION FOR A PETITION FOR CERTIFICATION ELECTION BEFORE THE FREEDOM PERIOD DOES NECESSARILY DEMONSTRATE UNION DISLOYALTY TO WARRANT DISMISSAL OF RESPONDENTS.— Considering the peculiar circumstances, the Court is of the view that the acts of private respondents are not enough proof of a violation of the Union Security Clause which would warrant their dismissal. PICOP failed to show in detail how private respondents campaigned and supported FFW. Their mere act of signing an authorization for a petition for certification election before the freedom period does not necessarily demonstrate union disloyalty. It is far from being within the definition of "acts of disloyalty" as PICOP would want the Court to believe. The act of "signing an authorization for a petition for certification election" is not disloyalty to the union *per se* considering that the petition for certification election itself was filed during the freedom period which started on March 22, 2000. Moreover, as correctly ruled by the CA, the records are bereft of proof of any contemporaneous acts of resignation or withdrawal of union membership or non-payment of union dues. Neither is there proof that private respondents joined FFW. The fact is, private respondents remained in good standing with their union, NAMAPRI-SPFL. This point was settled in

the case of *PICOP Resources, Incorporated (PRI) v. Anacleto L. Tañeca.*

2. ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES.— Considering that private respondents were illegally dismissed, basic law provides that they shall be entitled to the benefit of full backwages and reinstatement unless the latter is no longer viable, in which case, a grant of separation pay shall be awarded equivalent to one month salary for every year of service. x x x Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision x x x. Private respondents are also entitled to an award of attorney's fees equivalent to 10% of the total monetary award as they were compelled to litigate in order to seek redress for their illegal dismissal.

3. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; WORKER'S FREEDOM TO CHOOSE WHO THEIR BARGAINING REPRESENTATIVE IS OF PARAMOUNT IMPORTANCE; THE FACT THERE ALREADY EXIST A BARGAINING REPRESENTATIVE IN THE UNIT CONCERNED IS OF NO MOMENT AS LONG AS THE PETITION FOR CERTIFICATION ELECTION WAS FILED WITHIN THE FREEDOM PERIOD.— Petitioner's reliance on Article 253 is misplaced. The provision of Article 256 of the Labor Code is particularly enlightening. It reads: Article 256. Representation issue in organized establishments. — In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at

least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty per cent (50%) of the number of votes cast. x x x Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important is that everyone be given a democratic space in the bargaining unit concerned. We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor.

APPEARANCES OF COUNSEL

Romero A. Boniel for petitioner.
AMP and Associates Law Office for R. Dequilla, *et al.*
Wilbur Fuentes for NAMAPRI-SPFL.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review assailing the April 14, 2005 Decision[1] of the Court of Appeals *(CA)* which reversed and set aside the Resolutions[2] of the National Labor Relations Commission *(NLRC)* dated December 27, 2002 and March 28, 2003, and reinstated the June 9, 2001 Decision[3] of the Labor Arbiter *(LA)*, which declared the dismissal of the private respondents as illegal.

The Facts

Ricardo Dequilla, Cesar Atienza and Aniceto Orbeta *(private respondents)* were regular rank-and-file employees of Picop Resources, Inc. *(PICOP)* and members of the NAMAPRI-SPFL, a duly registered labor organization and existing bargaining agent of the PICOP rank-and-file employees. PICOP and NAMAPRI-SPFL had a collective bargaining agreement *(CBA)* which would expire on May 22, 2000.

On May 16, 2000, the late Atty. Proculo P. Fuentes, Jr. *(Atty. Fuentes)*, then National President of the Southern Philippines Federation of Labor *(SPFL)*, advised the PICOP management to terminate about 800 employees due to acts of disloyalty, specifically, for allegedly campaigning, supporting and signing a petition for the certification of a rival union, the Federation of Free Workers Union *(FFW)* before the 60-day "freedom period" and during the effectivity of the CBA. Such acts of disloyalty were construed to be a valid cause for termination under the terms and conditions of the CBA. Based on the CBA, the freedom period would start on March 22, 2000.

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[1] *Rollo*, pp. 35-49. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate JusticeTeresita Dy-Liacco Flores and Associate Justice Edgardo A. Camello.

[2] *Id*. at 87-90 and 110-112.

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

Acting on the advice of Atty. Fuentes, Atty. Romero Boniel *(Atty. Boniel)*, Manager of the PICOP Legal and Labor Relations Department, issued a memorandum directing the employees concerned to explain within seventy-two (72) hours why their employment should not be terminated due to alleged acts of disloyalty. Upon receiving their explanation letters, Atty. Boniel endorsed the same to Atty. Fuentes who then requested the termination of 46 employees found guilty of acts of disloyalty.

On October 16, 2000, PICOP served a notice of termination due to acts of disloyalty to 31 of the 46 employees. Private respondents were among the 31 employees dismissed from employment by PICOP on November 16, 2000.

Enraged at what management did to them, private respondents filed a complaint before the NLRC Regional Arbitration Branch No. XIII, Butuan City, for Unfair Labor Practice and Illegal Dismissal with money claims, damages and attorney's fees.

LA Ruling

On June 9, 2001, after the parties submitted their respective position papers, the LA rendered a decision declaring as illegal the termination of the private respondents. The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby entered:
>
> 1. Declaring complainants' dismissal illegal; and
>
> 2. Ordering respondents PRI and NAMPRI-SPFL to reinstate complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount of ₱177,403.68, as shown in the computation, hereto attached and marked as Annex "A" hereof, plus damages in the amount of ₱10,000.00 each and attorney's fees equivalent to 10% of the total monetary award.
>
> SO ORDERED. [4]

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

NLRC Ruling

PICOP elevated the LA decision to the NLRC but its appeal was dismissed in the November 19, 2002 NLRC Resolution.[5] On motion for reconsideration, however, the NLRC issued another resolution,[6] dated December 27, 2002, reversing and setting aside its November 19, 2002 Resolution, the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, the above resolution dated November 19, 2002, is Reversed and Set Aside. In lieu thereof, a new judgment is rendered DISMISSING the above-entitled case for lack of merit.
>
> SO ORDERED.[7]

CA Ruling

Upon the denial of their motion for reconsideration, the private respondents brought the case to the CA. On April 14, 2005, the CA rendered the subject decision reversing and setting aside the December 27, 2002 NLRC resolution and reinstating the June 9, 2001 Decision of the LA. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, [the] instant petition is GRANTED and the assailed resolutions of the Public Respondent NLRC are hereby REVERSED and SET ASIDE. In view thereof, ordered REINSTATED is the Decision of Acting Executive Labor Arbiter Rogelio P. Legaspi dated 09 June 2001 which reads:
>
> WHEREFORE, premises considered, judgment is hereby entered:
>
> 1. Declaring complainants' dismissal illegal; and
> 2. Ordering Respondents PRI and NAMPRI-SPFL to reinstate Complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount

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[5] *Id*. at 69-71.

[6] *Id*. at 87-90.

[7] *Id*. at 90.

> of ₱177,403.68, plus damages in the amount of ₱10,000.00 each and attorney's fees equivalent to 10% of the total monetary award.
>
> SO ORDERED.[8]

The CA ruled, among others, that although private respondents signed an authorization for the filing of the petition for certification election of a rival union, PICOP Democratic Trade Unionist-Federation of Free Workers *(FFW)*, such act was not a sufficient ground to terminate the employment of private respondents. It explained:

> Ruminating from the alleged violation of the CBA, We see no reason, sufficient and compelling enough, to sustain the Public Respondent's *raison d'etre* in overturning the Labor Arbiter's ruling in favor of the Petitioners. While it is true that Petitioners signed the authorization in support of the Petition for certification election of FFW before the "freedom period," such act is not a sufficient ground to terminate the employment of the Petitioners in as much as the petition itself was filed during the freedom period. Hence, there is nil a basis to impute acts of disloyalty to Petitioners. Imputations of an alleged violation of the CBA should not arise from a vague and all embracing definition of alleged "acts of disloyalty." Neither should it arise from speculative inferences where no evidence appears from the record that Respondent NAMAPRI-SPFL expressly defined "acts of disloyalty." Besides, to Our mind, signing an authorization for the filing of the petition for certification election does not constitute an act of disloyalty *per se*. There must be proof of contemporaneous acts of resignation or withdrawal of their membership from the Respondent NAMAPRI-SPFL to which they are members. Respondents miserably failed to present evidence to justify a valid termination of employees in pursuance to the CBA allegedly violated. Petitioners, in fact remained in good standing, a continuing requirement for retaining their employment in the Respondent PRI. Petitioners neither joined nor affiliated with FFW and continuously paid their union dues with Respondent NAMAPRI-SPFL. Consequently, this lends credence to the Labor Arbiter's ruling that Petitioners' dismissal was indeed illegal.

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[8] *Id*. at 48.

Likewise, the advise of the Respondent NAMAPRI-SPFL to the Respondent PRI to effect the termination of employees, including herein Petitioners, finds no basis in fact and in law considering that at the time the Respondent PRI dismissed the Petitioners, among others, on 16 November 2000, there was no more CBA to speak of after it had already expired on 22 May 2000.[9]

The CA further agreed with private respondents that Article 256 and not Article 253, of the Labor Code applied in this case. The CA discussed this point as follows:

We are inclined to favor Petitioner's stance that Article 256, *supra*, is applicable. The issue of acts of disloyalty relates more to a direct connection on the alleged violation or breach of loyalty to the majority status of the incumbent union than on violation of the terms and conditions of the agreement under Article 253, *supra*, as the Respondents would want Us to believe. Article 256 provides that at the expiration of the 60-day period reckoned from the expiration date of the CBA, the employer shall continue to recognize the majority status of the incumbent bargaining agent only where no petition for certification election is filed. However, as earlier pointed, a petition was already filed by the Petitioners, among others, during the 60-day freedom period. Clearly, from the imports of said provision, it will render nugatory the purpose of the law providing for a freedom period for the filing of a petition for certification election should the act of signing/filing the said petition be interpreted as an act of disloyalty and will render farce the need for a certification election as an instrument of ascertaining the true expression of the will of the workers as to which labor organization would represent them.

To construe the provision of law in Article 253, *supra*, as imposing a restriction against the signing and filing a petition for certification election during the freedom period, is to violate the constitutional right of the employees to organize freely. It is a basic precept of statutory construction that statutes should be construed not so much according to the letters that *killeth* but in line with the purpose for which they have been enacted.[10]

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

[10] *Id*. at 45-46.

Not in conformity with the CA decision, PICOP filed this petition for review posing the following

ISSUES

WHETHER [OR NOT] AN EXISTING COLLECTIVE BARGAINING AGREEMENT (CBA) CAN BE GIVEN ITS FULL FORCE AND EFFECT IN ALL ITS TERMS AND CONDITIONS INCLUDING ITS UNION SECURITY CLAUSE, EVEN BEYOND THE 5-YEAR PERIOD WHEN NO NEW CBA HAS YET BEEN ENTERED INTO?

WHETHER OR NOT AN HONEST ERROR IN THE INTERPRETATION AND/OR CONCLUSION OF LAW FALLS WITHIN THE AMBIT OF THE EXTRA ORDINARY REMEDY OF *CERTIORARI* UNDER RULE 65, REVISED RULES OF COURT.[11]

PICOP basically argues that Article 253 of the Labor Code applies in this case. Article 253 of the Labor Code provides that the terms and conditions of a CBA remain in full force and effect even beyond the 5-year period when no new CBA has yet been reached. It claims that the private respondents violated this provision when they campaigned for, supported and signed FFW's petition for certification election on March 19 and 20, 2000, before the onset of the freedom period. It further argues that private respondents were not denied due process when they were terminated. Finally, it claims that the decision of the NLRC on the issues raised was not without merit. Even assuming that it erred in its judgment on the legal issues raised, its error is not equivalent to an abuse of discretion that should fall within the ambit of the extraordinary remedy of *certiorari.*

Private respondents' position

Private respondents argue that the substantial arguments raised by PICOP in this petition are basically a rehash of the same issues and arguments contained in its Motion for Reconsideration of the CA decision. Private respondents adopted and repleaded the ruling of the CA in their Comment[12] on this petition.

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[11] *Id.* at 16.

[12] *Id.* at 248-256.

The Court's Ruling

The petition merits a denial.

There is no question that in the CBA entered into by the parties, there is a union security clause. The clause imposes upon the workers the obligation to join and maintain membership in the company's recognized union as a condition for employment.

> "Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[13]

There is no dispute that private respondents were members of NAMAPRI-SPFL who were terminated by PICOP due to alleged acts of disloyalty. It is basic in labor jurisprudence that the burden of proof rests upon management to show that the dismissal of its worker was based on a just cause. When an employer exercises its power to terminate an employee by enforcing the union security clause, it needs to determine and prove the following: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence

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[13] *PICOP Resources, Incorporated (PRI) v. Anacleto L. Tañeca*, G.R. No. 160828, August 9, 2010, 627 SCRA 56, 66-67.

to support the decision of the union to expel the employee from the union.[14]

In this case, the resolution thereof hinges on whether PICOP was able to show sufficient evidence to support the decision of the union to expel private respondents from it.

PICOP basically contends that private respondents were justly terminated from employment for campaigning, supporting and signing a petition for the certification of FFW, a rival union, before the 60-day "freedom period" and during the effectivity of the CBA. Their acts constitute an act of disloyalty against the union which is valid cause for termination pursuant to the Union Security Clause in the CBA.

The Court finds Itself unable to agree.

Considering the peculiar circumstances, the Court is of the view that the acts of private respondents are not enough proof of a violation of the Union Security Clause which would warrant their dismissal. PICOP failed to show in detail how private respondents campaigned and supported FFW. Their mere act of signing an authorization for a petition for certification election before the freedom period does not necessarily demonstrate union disloyalty. It is far from being within the definition of "acts of disloyalty" as PICOP would want the Court to believe. The act of "signing an authorization for a petition for certification election" is not disloyalty to the union *per se* considering that the petition for certification election itself was filed during the freedom period which started on March 22, 2000.

Moreover, as correctly ruled by the CA, the records are bereft of proof of any contemporaneous acts of resignation or withdrawal of union membership or non-payment of union dues. Neither is there proof that private respondents joined FFW. The fact is, private respondents remained in good standing with their union, NAMAPRI-SPFL. This point was settled in the case of *PICOP Resources, Incorporated (PRI) v. Anacleto L. Tañeca*,[15] where it was written:

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[14] *Id*.

[15] *Id*.

However, as to the third requisite, we find that there is no sufficient evidence to support the decision of PRI to terminate the employment of the respondents.

PRI alleged that respondents were terminated from employment based on the alleged acts of disloyalty they committed when they signed an authorization for the Federation of Free Workers (FFW) to file a Petition for Certification Election among all rank-and-file employees of PRI. It contends that the acts of respondents are a violation of the Union Security Clause, as provided in their Collective Bargaining Agreement.

We are unconvinced.

We are in consonance with the Court of Appeals when it held that the mere signing of the authorization in support of the Petition for Certification Election of FFW on March 19, 20 and 21, or before the "freedom period," is not sufficient ground to terminate the employment of respondents inasmuch as the petition itself was actually filed during the freedom period. Nothing in the records would show that respondents failed to maintain their membership in good standing in the Union. Respondents did not resign or withdraw their membership from the Union to which they belong. Respondents continued to pay their union dues and never joined the FFW.

Significantly, petitioner's act of dismissing respondents stemmed from the latter's act of signing an authorization letter to file a petition for certification election as they signed it outside the freedom period. However, we are constrained to believe that an "authorization letter to file a petition for certification election" is different from an actual "Petition for Certification Election." Likewise, as per records, it was clear that the actual Petition for Certification Election of FFW was filed only on May 18, 2000. Thus, it was within the ambit of the freedom period which commenced from March 21, 2000 until May 21, 2000. Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period. This is not the situation in this case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.[16]

Finally, PICOP insists that Article 253 of the Labor Code applies in this case, not Article 256 thereof. The Court agrees with the CA that its argument is misplaced. This issue was

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

tackled and settled in the same *PICOP Resources, Incorporated (PRI) v. Tañeca* case, to wit:

Moreover, PRI anchored their decision to terminate respondents' employment on Article 253 of the Labor Code which states that "it shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties." It claimed that they are still bound by the Union Security Clause of the CBA even after the expiration of the CBA; hence, the need to terminate the employment of respondents.

Petitioner's reliance on Article 253 is misplaced.

The provision of Article 256 of the Labor Code is particularly enlightening. It reads:

Article 256. Representation issue in organized establishments. — In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty per cent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.

Applying the same provision, it can be said that while it is incumbent for the employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification,

any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. The provision for *status quo* is conditioned on the fact that no certification election was filed during the freedom period. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them.

In the instant case, four (4) petitions were filed as early as May 12, 2000. In fact, a petition for certification election was already ordered by the Med-Arbiter of DOLE Caraga Region on August 23, 2000. Therefore, following Article 256, at the expiration of the freedom period, PRI's obligation to recognize NAMAPRI-SPFL as the incumbent bargaining agent does not hold true when petitions for certification election were filed, as in this case.

Moreover, the last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the *status quo* provision in so far as the need to await the creation of a new agreement will not apply. Otherwise, it will create an absurd situation where the union members will be forced to maintain membership by virtue of the union security clause existing under the CBA and, thereafter, support another union when filing a petition for certification election. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented, or compromised.

Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important is that everyone be given a democratic space in the bargaining unit concerned.

We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor.[17]

Considering that private respondents were illegally dismissed, basic law provides that they shall be entitled to the benefit of full backwages and reinstatement unless the latter is no longer viable, in which case, a grant of separation pay shall be awarded equivalent to one month salary for every year of service.

x x x Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision x x x.[18]

Private respondents are also entitled to an award of attorney's fees equivalent to 10% of the total monetary award as they were compelled to litigate in order to seek redress for their illegal dismissal.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Peralta (Acting Chairperson),[*] *Abad, Sereno,*[**] and *Perlas-Bernabe, JJ.*, concur.

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[17] *Id*. at 69-73.

[18] *Id.* at 73.

[*] Designated as Acting Chairperson per Special Order No. 1166 dated November 28, 2011.

[**] Designated as additional member per Special Order No. 1167 dated November 28, 2011.

FIRST DIVISION

[G.R. No. 174193. December 7, 2011]

SAMUEL JULIAN, represented by his Attorney-in-Fact, ROBERTO DELA CRUZ, *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES and THE CITY SHERIFF,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PAYMENT OF FULL DOCKET FEES WITHIN THE PRESCRIBED PERIOD BEFORE TAKING AN APPEAL IS MANDATORY.— It is well-established that "[t]he right to appeal is a statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law." "Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal." The applicable rule for appeals from judgments issued by the RTC in the exercise of its original jurisdiction is Rule 41 of the Rules of Court, Section 4 of which provides: Section 4. *Appellate court docket and other lawful fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. The Rules also provide that failure of the appellant to pay the docket and other lawful fees is a ground for dismissal of the appeal. The Court has consistently ruled in a number of cases that the payment of the full amount of docket fees within the prescribed period is both mandatory and jurisdictional. It is a condition *sine qua non* for the appeal to be perfected and only then can a court acquire jurisdiction over the case. The requirement of an appeal fee is not a mere technicality of law or procedure and should not be undermined except for the most persuasive of reasons. Non-observance would be tantamount to no appeal being filed thereby rendering the challenged decision, resolution or order final and executory.

2. ID.; ID.; ID.; THE JUSTIFICATIONS OR REASONS PRESENTED ARE NEITHER CONVINCING NOR ADEQUATE TO MERIT RELAXATION OF THE RULES.— Admittedly, the rule is not without recognized qualifications. The Court has declared that in appealed cases, failure to pay the appellate court docket fee within the prescribed period warrants only discretionary as opposed to automatic dismissal of the appeal and that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances. In the case at bench, the justifications presented by petitioner for the non-payment of the docket fees are oversight and the lack of advice from his counsel. Unfortunately, the reasons presented are neither convincing nor adequate to merit leniency. Petitioner submits that he only found out about the requirement to pay the docket fees when he received the CA Resolution denying his appeal on April 22, 2005 or three days short of one year from filing of the said appeal. This Court finds this not to be logically true to human experience. It is unusual for petitioner's counsel not to advice him of the required docket fees. More often than not, counsels are aware of the docket fees required to be paid to the courts, and will ask clients for the said amount prior to filing pleadings in court. This is so because counsels are not expected to shoulder or advance payment for their clients. Assuming *arguendo* that petitioner's counsel did not inform him of the requirement to pay the docket fees to perfect the appeal, what we find incredible is that petitioner apparently failed to communicate with his counsel after the filing of said appeal. This Court has repeatedly held that "litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. "It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case. Moreover, the counsel's negligence binds petitioner and, for that reason alone the loss of his remedy was caused by his own negligence. Consequently, a relaxation of the rule cannot be granted. The bitter consequence of such grave inadvertence is to render the trial court's order final and executory.

3. ID.; ID.; ID.; THE CASE OF *YAMBAO* RELIED UPON BY PETITIONER APPLIES TO A SITUATION WHERE PAYMENT WAS MADE ALBEIT INCOMPLETE; IN CASE AT BAR, NO

PAYMENT WHATSOEVER WAS MADE BY PETITIONER.— Further, the Court notes that petitioner only attempted to perfect his appeal on May 6, 2005 by appending the postal money orders to his Motion for Reconsideration, or one year and nine days too late. By that time, the challenged Order has long become final and no longer open to an appeal. Petitioner's reliance on the policy espoused in the case of *Yambao* is likewise unavailing. The pertinent portion relied on by petitioner reads: Thus, the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for his failure to pay the **correct** amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant. x x x Clearly, the case applies to a situation where payment of the docket fees was made albeit incomplete. In the instant case, no payment was made by petitioner at all. Even assuming *arguendo* that *Yambao* is applicable to petitioner's case, still, the Court sees no justifiable reason to allow this Court to relax the strict application of the Rules.

4. ID.; ID.; ID.; PETITIONER IS UNDER NO THREAT OF SUFFERING AN INJUSTICE TO WARRANT RELAXATION OF THE RULES; IT WOULD BE THE HEIGHT OF INJUSTICE IF THE COURT ACCORDS PETITIONER LENIENCY AND REINSTATES HIS APPEAL AS THIS WOULD MEAN FURTHER WAITING ON THE PART OF RESPONDENT WHICH HAS LONG BEEN DEPRIVED OF ITS RIGHT TO POSSESS THE PROPERTY IT OWNS.— Likewise assuming for the sake of argument that consideration be given to petitioner's willingness to comply with the rules since he attached postal money orders to his motion for reconsideration, the broader interest of justice will still not be served if petitioner's appeal is reinstated. On one hand, petitioner calls for leniency to enable him to establish his case. On the other hand is respondent, which has been embroiled in a decades-long waiting game. The long-running dispute could be recapped thus: (1) petitioner's predecessor-in-interest, Thelma, obtained a loan from respondent secured by a Real Estate Mortgage on the subject property; (2) Thelma was unable to pay the loan thereby causing foreclosure of the Real Estate Mortgage; (3) petitioner

filed his civil action to question the validity of the public auction sale only on October 27, 1993 or 10 years after the sale was conducted; and, (4) from the time of the consolidation of title in the name of respondent in 1984 until the present, spouses De la Cruz have been in possession of the foreclosed property. Petitioner and his sister Ruth Julian de la Cruz (Ruth) know that their mother Thelma has already lost ownership rights to the property in question when the latter defaulted in her payment to respondent and none of her successors-in-interest redeemed the property within the prescribed period. This is the reason why Ruth and her husband offered to purchase the property from respondent. However, when the said spouses De la Cruz defaulted in their payment, they refused to surrender the property to respondent. For his part, petitioner reinforces such refusal to surrender by questioning the validity of the public auction sale. Now petitioner comes before this Court praying for leniency in the interest of justice. It must be stressed, however, that it is only when persuasive reasons exist that the Rules may be relaxed to spare a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Here, the Court finds that petitioner is under no threat of suffering an injustice. On the contrary, it will be the height of injustice if the Court accords petitioner leniency and reinstates his appeal as this would mean further waiting on the part of the respondent which has long been deprived of its right to possess the property it owns.

APPEARANCES OF COUNSEL

Faustino V. Roxas, Jr. for petitioner.
Chief Legal Counsel for Development Bank of the Phils.

D E C I S I O N

DEL CASTILLO, *J.*:

The requirement of an appeal fee is not a mere technicality of law or procedure and should not be disregarded without the most compelling of reasons.

Before us is a Petition for Review on *Certiorari*[1] of the Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00240 dated April 12, 2005 which dismissed petitioner's appeal as follows:

> Considering that per JRD Report dated March 30, 2005, the appellant failed to pay the required docket and other lawful fees, the instant Appeal is hereby DISMISSED pursuant to Section [1](c) Rule 50 of the 1997 Rules of Civil Procedure.
>
> SO ORDERED.[3]

Also assailed is the CA's Resolution[4] dated July 27, 2006 which denied the Motion for Reconsideration thereto.

Petitioner seeks to reverse the aforesaid Resolutions of the CA and direct the latter to admit the payment for the docket fees enclosed in his Motion for Reconsideration[5] so that his appeal may be given due course, or, in the alternative, to remand the case to the court *a quo* for further proceedings.

Factual Antecedents

This case stemmed from a Real Estate Mortgage[6] executed by Thelma Julian (Thelma), mother of herein petitioner Samuel Julian, over a property situated in Fuentes Subdivision, Roxas City covered by Transfer Certificate of Title (TCT) No. T-16705.[7]

On December 23, 1980,[8] Thelma obtained a housing loan from respondent Development Bank of the Philippines (DBP)

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[1] *Rollo*, pp. 13-20.

[2] CA *rollo*, p. 15; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Enrico A. Lazanas.

[3] *Id*.

[4] *Id*. at 36-38; penned by Associate JusticeVicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Agustin S. Dizon.

[5] Motion for Reconsideration with Motion to Admit Payment of Docket Fee and Entry of Appearance, *id*. at 18-21.

[6] Records, p. 57.

[7] *Id*. at 10.

[8] *Id*. at 3.

in the amount of ₱99,400.00.[9] To secure payment of the loan, she executed in favor of the respondent a Real Estate Mortgage on the aforementioned parcel of land registered under her name. A Special Power of Attorney (SPA) appointing the respondent and its personnel to sell the property in the event of extrajudicial foreclosure was inserted and made an integral part of the mortgage contract.[10]

Subsequently, Thelma died on January 8, 1982.[11]

Because of arrearages in the monthly amortizations, respondent foreclosed the mortgaged property. Same was sold at public auction on September 15, 1983[12] with respondent as the highest bidder.[13] No redemption having been made, title to the property was consolidated in favor of the respondent on September 21, 1984[14] and TCT No. T-19303[15] was thereafter issued in its name.

Thereafter, the actual occupants of the mortgaged property, spouses Ramon de la Cruz and his wife, who is likewise petitioner's sibling, Ruth Julian de la Cruz (spouses De la Cruz), offered to purchase the property. Respondent accepted the offer and executed a Deed of Conditional Sale[16] on October 31, 1985. However, spouses De la Cruz failed to pay[17] 72 monthly amortizations resulting in the rescission of the said deed on February 28, 1992. Notwithstanding, spouses De la Cruz refused to vacate the premises compelling respondent to file an "Unlawful Detainer" case against them on February

[9] *Id.* at 53.

[10] *Id.* at 57.

[11] *Id.* at 4.

[12] *Id.* at 11.

[13] See Certificate of Sheriff's Sale, *id.* at 11-12.

[14] See Affidavit of Consolidation of Ownership, *id.* at 14.

[15] *Id.* at 15.

[16] *Id.* at 41-43.

[17] *Id.* at 46.

23, 1993. Judgment was rendered in favor of respondent on July 29, 1993.[18]

However, before the Writ of Execution could be carried out,[19] petitioner filed Civil Case No. 6387[20] before the Regional Trial Court (RTC) of Roxas City on October 27, 1993,[21] for the cancellation of respondent's TCT No. T-19303. He contended that the SPA which was used to sell the mortgaged property at public auction in 1983 was no longer effective in view of Thelma's death in 1982. Consequently, the public auction, the resulting Deed of Sale,[22] Affidavit of Consolidation and TCT No. T-19303 are null and void.

During the course of the proceedings, a series of postponements[23] were made at the instance of both parties due to an impending amicable settlement. Eventually, the parties were able to reach a settlement. Thus, in an Order[24] dated October 28, 1998, the RTC directed both parties to submit a joint motion to dismiss the case. However, almost two years passed without the parties complying with the said Order.

Consequently, in an Order[25] dated October 11, 2000, the RTC dismissed the case for failure of the parties to comply for an unreasonable length of time. The dismissal, however, was set aside in an Order[26] dated February 12, 2003 in consideration

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[18] *Id*. at 44-48.

[19] On November 22, 1993, a Preliminary Prohibitory Injunction was issued to stay the execution of the decision in the unlawful detainer case, *id*. at 30.

[20] For cancellation of TCT No. T-19303, Annulment of Public Auction Sale, Deed of Sale and Affidavit of Consolidation, Injunction, and Damages with Prayer for Preliminary Injunction, *id*. at 1-8.

[21] More than 10 years after the public auction sale.

[22] Records, p.13.

[23] *Id*. at 158-164.

[24] *Id*. at 166.

[25] *Id*. at 175.

[26] *Id*. at 182.

of petitioner's payment of ten percent (10%) of respondent's claim. The parties were then given 15 days from notice within which to submit their compromise agreement,[27] which was subsequently extended for 30 days from notice.[28] Despite the extensions, however, no compromise agreement was filed in court. As a result, in an Order[29] dated July 24, 2003, the trial court directed the parties to show cause within 15 days from notice why the case should not be dismissed for failure to prosecute. Meanwhile, with petitioner's conformity, his counsel withdrew her appearance on August 13, 2003.[30]

Ruling of the Regional Trial Court

On January 28, 2004 or six months from the issuance of the show cause Order, the trial court dismissed the case in an Order[31] which states:

> For failure of the parties thru counsel to comply with the Order dated July 24, 2003, the instant case is hereby DISMISSED.
>
> SO ORDERED.

Petitioner, through his new counsel, timely filed a Notice of Appeal[32] on April 26, 2004 but failed to pay the docket and other lawful fees.

Ruling of the Court of Appeals

As earlier mentioned, the CA dismissed the appeal for non-payment of the required docket and other lawful fees pursuant to Section 1(c), Rule 50 of the Rules of Court.[33]

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[27] *Id*.

[28] *Id.* at 187.

[29] *Id.* at 192.

[30] See Motion to Withdraw, *id*. at 194.

[31] *Id.* at 200.

[32] *Id.* at 206.

[33] Section 1. *Grounds for dismissal of appeal.*— An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

Seeking reconsideration,[34] petitioner attached to his motion Postal Money Order Nos. A-0620000276, B-0610000283 and J-065000566 in the aggregate amount of ₱3,020.00[35] as payment for the docket fees. He explained that his failure to pay the required fees was due to oversight and non-cognizance of the necessity to pay the said fees since his counsel did not inform him of such requirement to pay. Petitioner prayed for liberal application of the Rules as according to him, a strict enforcement would be tantamount to imposing a penalty not commensurate to his thoughtlessness or oversight in not adhering to the procedural requisite.[36]

Petitioner's submission did not move the CA, which disposed of his motion for reconsideration through its second assailed Resolution[37] thus:

> In the case of Meatmaster International *Corporation vs. Lelis Integrated Development Corporation,* it was held "**that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal**." This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court. The payment of the full amount of the docket fee is *sine qua non* for the perfection of an appeal. The court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.
>
> Verily, the requirement of an appeal fee is not a mere technicality of law or procedure but an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. Thus, if We allow belated payment as prayed for and reinstate the instant appeal, it will have the effect of withholding the finality of the judgment or order appealed from.

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x x x x x x x x x

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41.

[34] CA *rollo*, pp. 18-21.

[35] *Id.* at 20.

[36] *Id.*

[37] *Id.* at 36-38.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not proportionate with the degree of his thoughtlessness in not complying with the procedure prescribed.

In his Motion for Reconsideration, appellant has not shown weighty and persuasive reasons to compel Us to exercise Our discretion of suspending the strict adherence to the Rules. Other than his flimsy excuse that the ground in the Court's Resolution is merely technical, appellant has miserably failed to proffer a convincing justification for [his] procedural error. Thus, appellant failed to justify why the Rules should be relaxed and [why] the equitable consideration of the Court should be exercised in his situation as an exception to the strict implementation of the Rules.

IN VIEW THEREOF, the Motion for Reconsideration is hereby DENIED and the Resolution dated April 12, 2005 MAINTAINED.

SO ORDERED.[38]

Issues

Petitioner comes before this Court by way of Petition for Review on *Certiorari* raising the following issues:

A.

WHETHER X X X THE DISMISSAL OF THE TRIAL COURT [WAS] PROPER.

B.

WHETHER X X X THE COURT OF APPEALS ERRED IN APPLYING STRICTLY THE RULES ON DOCKET FEES.[39]

The pivotal issue is whether the CA was correct in strictly applying the rules on the payment of docket fees.

Petitioner acknowledges the mandatory nature of the rule that docket and other lawful fees must be paid in full within the

[38] *Id.* at 37.

[39] *Rollo*, p. 82.

prescribed period for an appeal to be perfected. However, he asserts that the broader interest of justice and the desired objective of deciding the case on the merits call for leniency in the application of the rules. Hence, he must be given an opportunity to air his cause without the constraints of technicalities. Petitioner contends that the CA should apply the pronouncement of this Court in *Yambao v. Court of Appeals*[40] relaxing the policy of strict adherence to the rule regarding appeal fees if justifiable reason for the non-payment of the correct amount of docket fees within the prescribed period is shown. He further contends that his act of attaching the payment for the fees to his Motion for Reconsideration shows his intention and willingness to comply with the rules.

Our Ruling

The petition lacks merit.

Payment of full docket fees within the prescribed period for taking an appeal is mandatory.

It is well-established that "[t]he right to appeal is a statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law."[41] "Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal."[42]

The applicable rule for appeals from judgments issued by the RTC in the exercise of its original jurisdiction is Rule 41 of the Rules of Court, Section 4 of which provides:

Section 4. *Appellate court docket and other lawful fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk

[40] 399 Phil. 712 (2000).

[41] *Tamayo v. Tamayo, Jr.*, 504 Phil. 179, 183 (2005); See also *Spouses Ortiz v. Court of Appeals*, 360 Phil. 95, 100-101. (1998).

[42] *M.A. Santander Construction, Inc. v. Villanueva*, 484 Phil. 500, 503 (2004), citing *Neplum, Inc. v. Orbeso*, 433 Phil. 844, 867 (2002).

of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

The Rules also provide that failure of the appellant to pay the docket and other lawful fees is a ground for dismissal of the appeal.[43]

The Court has consistently ruled in a number of cases that the payment of the full amount of docket fees within the prescribed period is both mandatory and jurisdictional.[44] It is a condition *sine qua non* for the appeal to be perfected and only then can a court acquire jurisdiction over the case.[45] The requirement of an appeal fee is not a mere technicality of law or procedure and should not be undermined except for the most persuasive of reasons. Non-observance would be tantamount to no appeal being filed thereby rendering the challenged decision, resolution or order final and executory.

Admittedly, this rule is not without recognized qualifications. The Court has declared that in appealed cases, failure to pay the appellate court docket fee within the prescribed period warrants only discretionary as opposed to automatic dismissal of the appeal and that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances.[46]

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[43] *Supra* note 33.

[44] *Tamayo v. Tamayo, Jr.*, *supra* note 41 at 184; *Aranas v. Endona*, 203 Phil. 120, 126 (1982).

[45] *Meatmasters International Corporation v. Lelis Integrated Development Corporation*, 492 Phil. 698, 701 (2005).

[46] *Id.* at 702-703, citing *La Salette College v. Pilotin*, 463 Phil. 785, 794 (2003); *American Express International, Inc. v. Sison*, G.R. No. 172901, October 29, 2008, 570 SCRA 194, 203, citing *Spouses Buenaflor v. Court of Appeals*, 400 Phil. 395, 401-402 (2000).

In the case at bench, the justifications presented by petitioner for the non-payment of the docket fees are oversight and the lack of advice from his counsel. Unfortunately, the reasons presented are neither convincing nor adequate to merit leniency. Petitioner submits that he only found out about the requirement to pay the docket fees when he received the CA Resolution denying his appeal on April 22, 2005 or three days short of one year from filing of the said appeal. This Court finds this not to be logically true to human experience. It is unusual for petitioner's counsel not to advice him of the required docket fees. More often than not, counsels are aware of the docket fees required to be paid to the courts, and will ask clients for the said amount prior to filing pleadings in court. This is so because counsels are not expected to shoulder or advance payment for their clients. Assuming *arguendo* that petitioner's counsel did not inform him of the requirement to pay the docket fees to perfect the appeal, what we find incredible is that petitioner apparently failed to communicate with his counsel after the filing of said appeal. This Court has repeatedly held that "litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case.[47] "It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case.[48] Moreover, the counsel's negligence binds petitioner and, for that reason alone the loss of his remedy was caused by his own negligence.[49] Consequently, a relaxation of the rule cannot be granted.[50] The bitter consequence of such grave inadvertence is to render the trial court's order final and executory.[51]

Further, the Court notes that petitioner only attempted to perfect his appeal on May 6, 2005 by appending the postal money orders

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[47] *Bernardo v. Court of Appeals*, 341 Phil. 413, 428 (1997) citing *Greenhills Airconditioning and Services, Inc. v. National Labor Relations Commission*, 315 Phil. 409, 417 (1995).

[48] *Id.* at 429.

[49] *Tamayo v. Tamayo, Jr., supra* note 41 at 185.

[50] *Aranas v. Endona, supra* note 44.

[51] *Tamayo v. Tamayo, Jr., supra* note 41.

to his Motion for Reconsideration, or one year and nine days too late.[52] By that time, the challenged Order has long become final and no longer open to an appeal.[53]

Petitioner's reliance on the policy espoused in the case of *Yambao*[54] is likewise unavailing. The pertinent portion relied on by petitioner reads:

> Thus, the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for his failure to pay the **correct** amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant. x x x[55] (Emphasis supplied.)

Clearly, the case applies to a situation where payment of the docket fees was made albeit incomplete. In the instant case, no payment was made by petitioner at all. Even assuming *arguendo* that *Yambao* is applicable to petitioner's case, still, the Court sees no justifiable reason to allow this Court to relax the strict application of the Rules.

Likewise assuming for the sake of argument that consideration be given to petitioner's willingness to comply with the rules since he attached postal money orders to his motion for reconsideration, the broader interest of justice will still not be served if petitioner's appeal is reinstated. On one hand, petitioner calls for leniency to enable him to establish his case. On the other hand is respondent, which has been embroiled in a decades-long waiting game. The long-running dispute could be recapped thus: (1) petitioner's predecessor-in-interest, Thelma, obtained a loan from respondent secured by a Real Estate Mortgage on the subject property; (2) Thelma was unable to pay the loan thereby causing foreclosure of the Real Estate Mortgage; (3) petitioner filed his

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[52] Petitioner received the RTC's Order of dismissal on April 12, 2004. Under the Rules, he had 15 days counted from the date of receipt, or until April 27, 2004, to perfect the appeal.

[53] *M.A. Santander Construction, Inc. v. Villanueva, supra* note 42 at 505.

[54] *Supra* note 40.

[55] *Id.* at 719.

civil action to question the validity of the public auction sale only on October 27, 1993 or 10 years after the sale was conducted; and, (4) from the time of the consolidation of title in the name of respondent in 1984 until the present, spouses De la Cruz have been in possession of the foreclosed property.

Petitioner and his sister Ruth Julian de la Cruz (Ruth) know that their mother Thelma has already lost ownership rights to the property in question when the latter defaulted in her payment to respondent and none of her successors-in-interest redeemed the property within the prescribed period. This is the reason why Ruth and her husband offered to purchase the property from respondent. However, when the said spouses De la Cruz defaulted in their payment, they refused to surrender the property to respondent. For his part, petitioner reinforces such refusal to surrender by questioning the validity of the public auction sale.

Now petitioner comes before this Court praying for leniency in the interest of justice. It must be stressed, however, that it is only when persuasive reasons exist that the Rules may be relaxed to spare a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[56] Here, the Court finds that petitioner is under no threat of suffering an injustice. On the contrary, it will be the height of injustice if the Court accords petitioner leniency and reinstates his appeal as this would mean further waiting on the part of the respondent which has long been deprived of its right to possess the property it owns.

WHEREFORE, the petition is *DENIED*. The Resolutions of the Court of Appeals in CA-G.R. CV No. 00240 dated April 12, 2005 and July 27, 2006 are *AFFIRMED*.

SO ORDERED.

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

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[56] *Sebastian v. Hon. Morales,* 445 Phil. 595, 605 (2003).

FIRST DIVISION

[G.R. No. 175816. December 7, 2011]

BPI FAMILY SAVINGS BANK, INC., *petitioner, vs.* **MA. ARLYN T. AVENIDO & PACIFICO A. AVENIDO,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE; ACT NO. 3135 DOES NOT PROHIBIT THE MORTGAGEE TO RECOVER THE DEFICIENCY. — It is settled that if "the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage."

2. ID.; ID.; ID.; ID.; THE LAW DOES NOT REQUIRE ANY MINIMUM BID OR THAT THE BID SHOULD AT LEAST BE EQUAL TO THE MARKET VALUE OF THE PROPERTY. — [Section 4 of Act No. 3135] does not mention any minimum bid at the public auction sale. There is no legal basis for requiring that the bid should at least be equal to the market value of the foreclosed property or the outstanding obligation of the mortgage debtor. We have consistently held in previous cases that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify the sale. In fact, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.

3. ID.; ID.; ID.; ID.; MORTGAGEE MAY STILL RECOVER THE DEFICIENCY WITHOUT VIOLATING THE PRINCIPLE OF

UNJUST ENRICHMENT. — [W]e refuse to consider the question of sufficiency of the winning bid price of BPI Family for the foreclosed property; and affirm the application of said winning bid in the amount of ₱2,142,616.00 against the total outstanding loan obligation of the spouses Avenido by March 8, 1999 in the sum of ₱2,598,452.80, thus, leaving a deficiency of ₱455,836.80. BPI Family may still collect the said deficiency without violating the principle of unjust enrichment, as opined by the Court of Appeals. "There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code provides that 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. The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage." There is no unjust enrichment to speak of in this case. There is strong legal basis for the claim of BPI Family against the spouses Avenido for the deficiency of their loan obligation.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad Tolentino & Castillo for petitioner.

Paras Enojo & Associates for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated March 31, 2006 of

[1] *Rollo*, pp. 27-34; penned by Associate Justice Pampio A. Abarintos with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, concurring.

the Court of Appeals in CA-G.R. CV No. 79008, which affirmed the Decision[2] dated November 13, 2002 of the Regional Trial Court (RTC), Branch 58 of Cebu City, in Civil Case No. CEB-25629. The RTC dismissed the Complaint for Collection of Deficiency of Mortgage Obligation with Damages filed by petitioner BPI Family Savings Bank (BPI Family) against respondent spouses Pacifico A. Avenido and Ma. Arlyn T. Avenido (spouses Avenido), following the extrajudicial foreclosure of the property given by the latter as security for their loan. The instant Petition likewise challenges the Resolution[3] dated November 16, 2006 of the Court of Appeals in the same case denying the Motion for Reconsideration of BPI Family.

The controversy arose from the following facts.

On September 20, 2000, BPI Family filed with the RTC a Complaint for Collection of Deficiency of Mortgage Obligation with Damages against the spouses Avenido, docketed as Civil Case No. CEB-25629.

BPI Family alleged in its Complaint that pursuant to a Mortgage Loan Agreement[4] dated April 25, 1996, the spouses Avenido obtained from the bank a loan in the amount of ₱2,000,000.00, secured by a real estate mortgage on a parcel of land situated in Bais City, which is covered by Transfer Certificate of Title (TCT) No. T-1216 (mortgaged/foreclosed property). The spouses Avenido failed to pay their loan obligation despite demand, prompting BPI Family to institute before the Sheriff of Bais City extrajudicial foreclosure proceedings over the mortgaged property, in accordance with Act No. 3135, otherwise known as an Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages. At the public auction sale held on March 8, 1999, BPI Family was the highest bidder for the foreclosed property. The bid price of ₱2,142,616.00 of BPI Family was applied as partial payment of the mortgage

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[2] *Id*. at 72-78; penned by Judge Gabriel T. Ingles.

[3] *Id*. at 35.

[4] *Id*. at 57-58.

obligation of the spouses Avenido, which had amounted to ₱2,917,381.43 on the date of the public auction sale, thus, still leaving an unpaid amount of ₱794,765.43. The Certificate of Sale dated March 8, 1999 was registered on TCT No. T-1216 on May 25, 1999.[5]

BPI Family prayed that the RTC order the spouses Avenido to pay the deficiency of their mortgage obligation amounting to ₱794,765.43, plus legal interest thereon from the date of the filing of the Complaint until full payment; 15% as contractual attorney's fees; ₱50,000.00 as litigation expenses; and costs of the suit.[6]

The spouses Avenido filed their Answer with Special/ Affirmative Defenses and Counterclaims on September 18, 2001. The spouses Avenido averred therein that they had already paid a substantial amount to BPI Family, which could not be less than ₱1,000,000.00, but due to the imposition by BPI Family of unreasonable charges and penalties on their principal obligation, their payments seemed insignificant. Per the Notice of Extrajudicial Sale dated February 4, 1999, the spouses Avenido's indebtedness to BPI Family only amounted to less than ₱2,000,000.00, and such amount was already fully covered when the foreclosed property was sold at the public auction for ₱2,142,616.00. The spouses Avenido sought the dismissal of the Complaint for lack of merit, plus the award of ₱500,000.00 as moral damages and ₱300,000.00 as exemplary damages given the prejudice and unnecessary expenses they suffered because of the unjustified suit of BPI Family.[7]

Failing to reach an amicable settlement during the pre-trial conference, trial ensued.

BPI Family submitted the following computation in support of its claim for deficiency mortgage obligation from the spouses Avenido:

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[5] *Id.* at 61.

[6] *Id.* at 53-56.

[7] *Id.* at 62-69.

AUCTION SALE: MARCH 8, 1999

Principal Balance		₱ 1,918,722.47
Interest		266,754.66
Fire Insurance 1997-1998		6,725.00
1998-1999		6,725.00
Unpaid MRI		10,720.00
Late Charges		37,425.46
Less: Unapplied		(0.18)
Sub-total		2,247,072.41
Foreclosure Expenses		
Filing Fee	₱ 5,719.60	
Sheriff's Fee	1,500.00	
Cost of Publication	5,000.00	
Interest on Litigation Expenses	232.17	12,451.77
		2,259,524.18
Contractual Penalties		
Attorney's fees		338,928.63
Liquidated Damages		338,928.63
Total		2,937,381.43

Total Appraised Value as of 03/05/99	2,678,270.00
80% of TAV	2,142,616.00

Summary:

Total Exposure as of 03/08/99	2,937,381.43
Bid Price (lower amt. between total exposure or 80% of TAV)	2,142,616.00
Deficiency	794,765.43
Portion of Principal covered by bid price to be retained in IL	0.00[8]

[8] *Id.* at 60.

BPI Family presented as witness Alfred Rason (Rason), the Assistant Manager for Operation, who was in charge of keeping track and collecting unpaid obligations of the bank. Rason testified that in the Petition for Extrajudicial Foreclosure, BPI Family reported that the loan obligation of the spouses Avenido amounted to ₱1,918,722.47, inclusive of interest, penalty charges, insurance, foreclosure expenses, and others, as of November 16, 1998. However, as of the public auction sale of the foreclosed property on March 8, 1999, the total loan obligation of the spouses Avenido already reached ₱2,937,381.43. The foreclosed property was awarded to BPI Family as the highest bidder at the public auction sale for ₱2,142,616.00. The bid price was arrived at by BPI Family following bank policy, *i.e.*, total exposure of claim or 80% of the total appraised value of the foreclosed property, whichever is lower. In a letter dated July 8, 2000, sent to the spouses Avenido through registered mail, counsel for BPI family demanded payment of the deficiency balance of ₱794,766.43 on the loan obligation of said spouses.[9]

When respondent Ma. Arlyn T. Avenido (Arlyn) took the witness stand, she admitted that she and her husband, co-respondent Pacifico A. Avenido (Pacifico), obtained from BPI Family a Motor Vehicle Loan in 1995 and a Home Mortgage Loan in 1996. The Home Mortgage Loan was for ₱2,000,000.00, payable in 15 years through debit memos (or automatic debit arrangement), instead of post-dated checks. The spouses Avenido failed to make some payments in 1998. The spouses Avenido subsequently deposited with their account at BPI Family branch in Bais City, Negros Occidental, the amount of ₱250,000.00, which would have been sufficient to cover their arrears; as well as made arrangements with Dumaguete City Rural Bank to buy out their loan from BPI Family. Yet, in February 1999, the spouses Avenido learned of the foreclosure proceedings over their mortgaged property only from court personnel. BPI Family never communicated with the spouses Avenido about the foreclosure proceedings except when the former sent the latter a demand letter in July 2000 for the ₱700,000.00 deficiency.

[9] TSN, May 6, 2002, pp. 2-17.

Counsel for the spouses Avenido answered BPI Family through a letter dated August 2, 2000, stating that the demand of the bank for deficiency was not only surprising, but lacked basis in fact and in law, for the mortgaged property was already foreclosed and sold at the public auction for ₱2,142,616.00, which was more than the ₱1,918,722.47 loan obligation of the spouses Avenido. Next thing the spouses Avenido knew, BPI Family had filed Civil Case No. CEB-25629 against them. In addition, the spouses Avenido had already fully paid their Motor Vehicle Loan in 1999, but BPI Family refused to release the Hi-Lux from the mortgage constituted thereon. BPI Family attached the Hi-Lux to cover the deficiency of the spouses Avenido on their home loan obligation. Due to the aforementioned acts of BPI Family, Arlyn suffered sleepless nights and humiliation. Hence, she prayed for the award of moral and exemplary damages and attorney's fees and the release of the Hi-Lux.[10]

The RTC rendered its Decision on November 13, 2002.

According to the RTC, the principal issue to be resolved was "whether or not [BPI Family] is entitled to deficiency judgment," which includes "a determination of the existence of the right to recover deficiency, and how much, if any."[11]

At the outset, the RTC recognized that in an extrajudicial foreclosure, the mortgagee has a right to recover deficiency where the proceeds of the sale are insufficient to cover the debt:

> Although Act 3135 is silent on the mortgagee's right to recover the deficiency where the proceeds of the sale is insufficient to cover the debt, it is now well-settled that said mortgagee has the right to recover the deficiency. (*PB Com v. De Vera,* 6 SCRA 1026; *DBP v. Vda. de Noel,* 43 SCRA 82; *DBP v. Zaragosa,* 84 SCRA 668.). The reasons advanced are 1) Although Act 3135 discusses nothing as to the mortgagee's right to recover such deficiency, neither is there any provision thereunder which expressly or impliedly prohibits such

[10] TSN, June 21, 2002, pp. 1-17.

[11] *Rollo,* p. 75.

recovery; and 2) now Rule 68 on judicial foreclosure expressly grants to the mortgagee the right to recover deficiency and the underlying principle is the same for extra-judicial foreclosure that the mortgage is but a security and not a satisfaction of indebtedness.

In the case of *DBP v. Tomeldon,* 101 SCRA 171, the Supreme Court ruled that the action to recover the deficiency prescribes after ten (10) years from the time the right to action accrues x x x.

Thus, in the case at bar the mortgagee's right and the period the said right is enforced are not contested. What is essentially in controversy is whether there is a deficiency and how much.[12]

The RTC then determined the total amount of the loan obligation of the spouses Avenido as follows:

In the Mortgage Loan Agreement (Exhibits A and I) the due execution and genuineness of which are admitted by both parties, the [spouses Avenido] obligated themselves as Borrower-Mortgagor to pay [BPI Family] the aggregate principal amount of TWO HUNDRED TWO MILLION PESOS (₱202,000,000.00) and interest on the unpaid balance from the date thereof until paid in full on the repayment dates. It further provides that in case the mortgagee fails to pay any of the sums secured, the mortgagor has the right to declare the entire obligation due and payable and to foreclose the mortgage. Moreover, Exhibit "A-2" shows that the proceeds of sale of the mortgaged property shall be applied as follows: "a) to the payment of the expenses and cost of foreclosure and sale, including the attorney's fees as herein provided; b) to the satisfaction of all interest and charges accruing upon the obligation herein and hereby secured; c) to the satisfaction of the principal amount of the obligation herein and hereby secured; d) to the satisfaction of all other obligation then owed to the bank or any of its subsidiaries. The balance, if any, to be due to the mortgagor." Finally, the attorney's fees stipulated is 15% of the total amount claimed by the bank (Exhibit A-3). The Court, however, finds no stipulation as regards liquidated damages.

x x x x x x x x x

This Court is not convinced that [spouses Avenido's] total indebtedness should only be ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED TWENTY[-]TWO

[12] *Id.* at 75-76.

[PESOS] AND FORTY[-]SEVEN [CENTAVOS] (₱1,918,722.47) because the Notice of Extra-Judicial Sale (Exhibit "3") itself states "x x x to satisfy the mortgaged indebtedness which as of November 16, 1998 amount to ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED TWENTY[-]TWO AND FORTY[-]SEVEN CENTAVOS (₱1,918,722.47) plus interest and penalty charges thereon from June 30, 1998 to date of the foreclosure sale, attorney's fees and necessary expenses for foreclosure x x x."

Foreclosure is not a single process and it is not therefore correct to conclude that what is material is the petition for extra-judicial sale nor the date of the filing of the application.

Thus, the Court gives credence to [BPI Family's] Exhibit "C" but not including the claim for liquidated damages in the sum of THREE HUNDRED THIRTY[-]EIGHT THOUSAND NINE HUNDRED TWENTY PESOS AND SIXTY[-]THREE CENTAVOS (₱330,920.63) because it has no basis whatsoever. Thus the total amount due is TWO MILLION FIVE HUNDRED NINETY[-]EIGHT THOUSAND FOUR HUNDRED FIFTY[-]TWO PESOS AND EIGHTY CENTAVOS (₱2,598,452.80). x x x.[13]

More than just reducing the total loan obligation of the spouses Avenido to ₱2,598,452.80, the RTC, in the end, denied the claim for deficiency of BPI Family based on the following ratiocination:

[T]he Court finds very significant the admission by [BPI Family's] witness that the appraised value of the foreclosed property is actually TWO MILLION SIX HUNDRED SEVENTY[-]EIGHT THOUSAND TWO HUNDRED SEVENTY PESOS (₱2,678,270.00) but [BPI Family] bidded only for 80% of the value as a matter of bank policy (TSN Afredo Rason, Aug. 6, 2002, p. 17). In other words, the actual market value of the property is more than the amount of TWO MILLION FIVE HUNDRED NINETY[-]EIGHT THOUSAND FOUR HUNDRED FIFTY[-]TWO PESOS AND EIGHTY CENTAVOS (₱2,598,452.80).

Under this circumstance, it would be inequitable to still grant the [BPI Family's] prayer for deficiency as it will be in effect allowing it to unjustly enrich itself at the expense of the [spouses Avenido].[14]

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[13] *Id*. at 76-77.

[14] *Id*. at 77-78.

Hence, the RTC decreed:

> Accordingly, the [BPI Family's] complaint and [spouses Avenido's] counterclaim are DISMISSED.[15]

Aggrieved by the RTC judgment, BPI Family filed an appeal before the Court of Appeals, docketed as CA-G.R. CV No. 79008, with a lone assignment of error, to wit:

> THE LOWER COURT ERRED IN NOT HOLDING [THE SPOUSES AVENIDO] LIABLE TO [BPI FAMILY] FOR DEFICIENCY OF THE MORTGAGE OBLIGATION.[16]

In its Decision promulgated on March 31, 2006, the Court of Appeals ruled:

> A careful scrutiny of the arguments presented in the case at bar yields no substantial and convincing reason for us to depart from the ruling found by the trial court x x x.
>
> x x x x x x x x x
>
> Indubitably, mortgagors whose properties a foreclosed and are purchased by the mortgagee as highest bidder at the auction sale are decidedly at a great disadvantage because almost invariably, mortgagors forfeit their properties at a great loss as they are purchased at a nominal cost by the mortgagee himself, who ordinarily bids in no more than his credit or the balance thereof at the auction sale.
>
> More importantly, the mortgage contract is also one of adhesion as it was prepared solely by [BPI Family] and the only participation of the [spouses Avenido] was the affixing of their signatures or adhesion thereto. Under such contracts, which are common in the Philippines and elsewhere, the lending institutions are free to require borrowers to provide assets, like real property, of much higher value than the desired loan amount, as collateral. Being a contract of adhesion, the mortgage is to be strictly construed against [BPI Family], the party which prepared the agreement.
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> In the case at bar, the intent of [BPI Family] is manifest that the [spouses Avenido] shall assume liability not only for the entire

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[15] *Id*. at 78.

[16] *Id*. at 81.

obligation mentioned in the mortgage but beyond, which is improper, as it will defeat the purpose of the foreclosure proceedings which is to answer or satisfy the principal obligation in case of default or non payment thereof.

Moreover, for all intents and purposes, we hold that [spouses Avenido] shall not be liable to pay for the deficiency of their mortgage obligation because it will be at their great disadvantage considering that their property was purchased at a nominal cost by [BPI Family] at the auction sale. As a matter [of] fact, there was an admission made by [BPI Family's] witness that the amount of the bid was only 80% of the actual price of the property. This is unfair on the part of the [spouses Avenido].

Besides, if mortgagees were allowed such right, the debtors would be at the mercy of their creditors considering the summary nature of extrajudicial foreclosure proceedings. It is also worthy to note the limited readership of auction sale notices which lead to the sale.

Accordingly, We upheld the ruling of the court *a quo* in absolving the [spouses Avenido] from any liability corresponding to the amount of deficiency of mortgage obligation as it will in effect be allowing [BPI Family] to unjustly enrich itself at the expense of the [spouses Avenido].[17]

The dispositive of the Court of Appeals judgment reads:

WHEREFORE, premises considered, the assailed Decision dated November 13, 2002 of the Regional Trial Court, Cebu City, 7th Judicial Region, Branch 58, in Civil Case No. CEB-25629, is hereby **AFFIRMED**. No pronouncement as to costs.[18]

In its Resolution dated November 16, 2006, the Court of Appeals denied the Motion for Reconsideration of BPI Family since the arguments set forth therein were but a rehash, repetition and/or reinstatement of the arguments/matters already passed upon and extensively discussed by the appellate court in its earlier decision.

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[17] *Id.* at 32-33.

[18] *Id.* at 34.

Hence, the present Petition for Review of BPI Family with the following assignment of errors:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RENDERING ITS DECISION (ANNEX "A") AND RESOLUTION (ANNEX "B") DECLARING THAT [BPI FAMILY] IS NOT ENTITLED TO ITS CLAIM AGAINST THE [SPOUSES AVENIDO] FOR DEFICIENCY OF MORTGAGE OBLIGATION DESPITE THE EXPRESS PROVISIONS OF THE MORTGAGE LAW AND NUMEROUS JURISPRUDENCE ENTITLING THE MORTGAGEE-[BPI FAMILY] TO THE SAME.

II

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT BASED ITS FINDING THAT THERE IS NO MORE DEFICIENCY OF MORTGAGE OBLIGATION BY COMPARING THE *MARKET VALUE* OF THE FORECLOSED PROPERTY AGAINST THE LOAN OBLIGATION OF THE MORTGAGORS-RESPONDENTS INSTEAD OF COMPARING THE *ACTUAL BID PRICE* AT THE AUCTION SALE AGAINST THE LOAN OBLIGATION OF THE MORTGAGORS-[SPOUSES AVENIDO].[19]

The primary issue posed before us is whether or not BPI Family is still entitled to collect the deficiency mortgage obligation from the spouses Avenido in the amount of ₱455,836.80, plus interest.

We answer in the affirmative.

It is settled that if "the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security

[19] *Id.* at 15-16.

given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage."[20]

It is no longer challenged before us that the outstanding loan obligation of the spouses Avenido amounted to **₱2,598,452.80**, inclusive of interests, penalties, and charges, by March 8, 1999. The controversy herein now only revolves around the value to be attributed to the foreclosed property, which would be applied against the outstanding loan obligation of the spouses Avenido to BPI Family. BPI Family insists that it should be **₱2,142,616.00**, its **winning bid price** for the foreclosed property at the public auction sale, which, being less than the outstanding loan obligation of the spouses Avenido, will still leave a deficiency collectible by BPI Family from the spouses Avenido in the amount of ₱455,836.80. The spouses Avenido maintain that, as the RTC and the Court of Appeals ruled, it should be **₱2,678,270.00**, the **fair market value** of the foreclosed property, which, being more than the outstanding loan obligation of the spouses Avenido, will already fully settle their indebtedness.

The spouses Avenido, the RTC, and the Court of Appeals may not have said it outright, but they actually consider the winning bid of BPI Family for the foreclosed property at the public auction sale to be insufficient. They took exception to the fact that the winning bid of BPI Family was equivalent to "only" 80% of the appraised value of the mortgaged property. The RTC and the Court of Appeals even went as far as to refer to the amount of the winning bid of BPI Family as "nominal" and "unfair" and would "unjustly enrich" the bank at the expense of the spouses Avenido. So the RTC and the Court of Appeals disregarded the winning bid of BPI Family and applied instead the fair market value of the foreclosed property against the outstanding loan obligation of the spouses Avenido.

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[20] *Cuñada v. Drilon*, 476 Phil. 725, 734 (2004).

According to Section 4 of Act No. 3135, an extrajudicial foreclosure sale of a mortgaged real property shall be conducted as follows:

> SEC. 4. *Public Auction.* — The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses.

Notably, the aforequoted provision does not mention any minimum bid at the public auction sale. There is no legal basis for requiring that the bid should at least be equal to the market value of the foreclosed property or the outstanding obligation of the mortgage debtor.

We have consistently held in previous cases that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify the sale. In fact, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.

Section 6 of Act No. 3135 provides for the redemption of an extrajudicially foreclosed property within a one-year period, to wit:

> Sec. 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 any time **within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to 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. (Emphasis ours.)

Republic Act No. 337, the General Banking Act, as amended, in force at the time of the herein transactions, had a specific

provision on the redemption of property extrajudicially foreclosed by banks, which reads:

> Sec. 78. Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security, plus seventy percent (70%) of the appraised value of the insured improvements, and such loans shall not be made unless title to the real estate shall be in the mortgagor. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, **within one year after the sale of the real estate** as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned in a 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 by the court and administer the same in accordance with law. (Emphasis ours.)

If the foreclosed property is registered, the mortgagor has one year within which to redeem the property from and after registration of sale with the Register of Deeds.[21]

We explained in *Prudential Bank v. Martinez*[22] that:

> [T]he fact that the mortgaged property is sold at an amount less than its actual market value should not militate against the right to such recovery. We fail to see any disadvantage going for the mortgagor. On the contrary, a mortgagor stands to gain with a reduced

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[21] *Union Bank of the Philippines v. Court of Appeals*, 370 Phil. 837, 847 (1999).

[22] G.R. No. 51768, September 14, 1990, 189 SCRA 612.

price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price should not be material, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by the reason of the price obtained at the auction sale. Generally, in forced sales, low prices are usually offered and the mere inadequacy of the price obtained at the sheriff's sale unless shocking to the conscience will not be sufficient to set aside a sale if there is no showing that in the event of a regular sale, a better price can be obtained.[23] (Citations omitted.)

We elucidated further in *New Sampaguita Builders Construction Inc. v. Philippine National Bank*[24] that:

In the accessory contract of real mortgage, in which immovable property or real rights thereto are used as security for the fulfillment of the principal loan obligation, the bid price may be lower than the property's fair market value. In fact, the loan value itself is only 70 percent of the appraised value. As correctly emphasized by the appellate court, a low bid price will make it easier for the owner to effect redemption by subsequently reacquiring the property or by selling the right to redeem and thus recover alleged losses. x x x.[25]

In *Hulst v. PR Builders, Inc.*,[26] we reiterated that:

[G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be

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[23] *Id.* at 617.

[24] 479 Phil. 483 (2004).

[25] *Id.* at 514-515.

[26] G.R. No. 156364, September 3, 2007, 532 SCRA 74.

material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption. x x x.[27]

In line with the foregoing jurisprudence, we refuse to consider the question of sufficiency of the winning bid price of BPI Family for the foreclosed property; and affirm the application of said winning bid in the amount of ₱2,142,616.00 against the total outstanding loan obligation of the spouses Avenido by March 8, 1999 in the sum of ₱2,598,452.80, thus, leaving a deficiency of ₱455,836.80. BPI Family may still collect the said deficiency without violating the principle of unjust enrichment, as opined by the Court of Appeals.

"There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code provides that 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. The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage."[28] There is no unjust enrichment to speak of in this case. There is strong legal basis for the claim of BPI Family against the spouses Avenido for the deficiency of their loan obligation.

BPI Family made an extrajudicial demand upon the spouses Avenido for the deficiency mortgage obligation in a letter dated

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[27] *Id.* at 103-104.

[28] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412.

July 8, 2000 and received by the spouses Avenido on July 17, 2000. Consequently, we impose the legal interest of 12% *per annum* on the deficiency mortgage obligation amounting to ₱455,836.80 from July 17, 2000 until the finality of this Decision. Thereafter, if the amount adjudged remains unpaid, it will be subject to interest at the rate of 12% *per annum* computed from the time the judgment became final and executory until fully satisfied.

WHEREFORE, the Petition is hereby *GRANTED*. The assailed Decision dated March 31, 2006 and Resolution dated November 16, 2006 of the Court of Appeals in CA-G.R. CV No. 79008, affirming the Decision dated November 13, 2002 of the Regional Trial Court, Branch 58 of Cebu City, in Civil Case No. CEB-25629, is *REVERSED* and *SET ASIDE*. Respondent spouses Ma. Arlyn T. Avenido and Pacifico A. Avenido are *ORDERED* to pay petitioner BPI Family Savings Bank, Inc. the deficiency of their mortgage obligation in the amount of ₱455,836.80, plus legal interest of 12% *per annum* from July 17, 2000 until the finality of this Decision. Thereafter, the amount adjudged shall be subject to legal interest of 12% *per annum* from the finality of this Decision up to its satisfaction. No cost.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190861. December 7, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LINO L. DUAVIS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, ELEMENTS OF; UNLAWFUL AGGRESSION, ABSENT IN CASE AT BAR. — It is a hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to prove the elements of that claim, *i.e.*, (1) unlawful aggression on the part of the victim, (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. But absent the essential element of unlawful aggression, there is no self-defense. In the present case, the appellant failed to prove the presence of unlawful aggression on the part of the victim. As correctly observed and ruled by the trial court: From the testimonies of the two prosecution witnesses, Dante Largado, Jr. and Alex Davocol, **the unarmed victim was being chased by the accused, armed with a long bolo, and upon catching up [with] the victim, the accused hacked the victim, hitting him on the left side of his face and ear, cutting major blood vessels, which caused the death of the victim instantaneously**. x x x Clearly, the element of unlawful aggression on the part of the victim is wanting. It must be remembered that the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution for, even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT GENERALLY ACCORDED RESPECT. — As to appellant's contention that the trial court was wrong in appreciating the testimonies of the prosecution's witnesses over his claim of self-defense, this Court has consistently reiterated that basic is the rule that the trial court's factual findings, especially its assessment of the

credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, the Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. The reason therefore is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION AND TREACHERY, ABSENT IN CASE AT BAR. — In finding that appellant is guilty of homicide, instead of murder, the CA ruled that there was an absence of the qualifying circumstances of evident premeditation and treachery. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act. On the other hand, to appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted. The CA, therefore, did not err when it ruled that the killing of the victim was neither attended by evident premeditation nor treachery [.]

4. ID. ; HOMICIDE; PENALTY; WHERE WORDINGS USED IN IMPOSING THE PENALTY WERE CONFUSING. — In the dispositive portion of the CA's decision, it imposed the penalty of "imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum." This is a wrong application of the Indeterminate Sentence Law; although the CA claims to have applied the Indeterminate Sentence Law in arriving at

the penalty imposed, the wordings used (*i.e.*, *anywhere within the range of*) and the actual penalty imposed are confusing, if not misleading. If not corrected, the prison official tasked to determine if the convicted accused has already served the minimum sentence will now be given the discretion to fix the minimum of the sentence, which duty can only be exercised by the court.

5. ID.; ID.; ID.; PROPER PENALTY, IMPOSED. — The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, should be imposed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:*

For resolution of this Court is the appeal of appellant Lino Duavis, assailing the Decision[1] dated May 29, 2009 of the Court of Appeals (CA), affirming with modification, the Decision[2] dated April 23, 2004 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, finding him guilty beyond reasonable doubt of the crime of homicide.

The following are the antecedent facts as shown in the records.

Around 5:30 in the afternoon of May 2, 2003, Dante Largado, Sr. was walking towards the direction of his house at *Barangay* Balire, Tunga, Leyte. Appellant was running behind Largado, Sr. carrying a long bolo about twenty-four (24) inches in length. Thereafter, appellant hacked Largado, Sr., hitting him on the face, leaving a wound so severe that he immediately fell to the ground and caused his instantaneous death.

Dante Largado, Jr., who was only a few meters from the place of the incident, shouted to appellant "*Why did you do that to my father?*" Appellant replied, "*You have no business on this, son of a bitch.*" Dante Largado, Jr. then shouted for help, but nobody responded. Alex Davocol, a neighbor of Largado, Sr., saw the incident and called the police station.

Thereafter, an Information[3] was filed against appellant for the crime of murder. The charge reads as follows:

That on or about the 2nd day of May, 2003, in the Municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent,

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* Per Special Order No. 1166 dated November 28, 2011.

[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Florito S. Macalino and Rodil V. Zalameda, concurring; *rollo,* pp. 4-16.

[2] Penned by Presiding Judge Crisostomo L. Garrido; CA *rollo,* pp. 11-22.

[3] Records, p. 1.

with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and hack one DANTE LARGADO, Sr. with the use of long bolo (*sundang*), which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:

> Incised wound 13.0 cm. in length x 3 cm. in width x 3.8 cm. in depth at the (L) side of the [face] extending from the angle of the mouth to the (L) ear involving the ear, skin, subcutaneous tissues, parotid gland, nerves, blood vessels and with fracture of the facial bones.
>
> which wounds caused the death of said Dante Largado, Sr.
>
> CONTRARY TO LAW.[4]

Upon arraignment, on August 4, 2003, appellant, with the assistance of his lawyer, pleaded not guilty. Thereafter, the trial on the merits ensued.

The prosecution, to prove the earlier mentioned facts, presented the testimonies of Dante Largado, Jr., Alex Davocol and Dr. Catalina Vivero Ronda. The defense, on the other hand, presented the testimony of appellant which can be summarized as follows:

Around 3 o'clock in the afternoon of May 2, 2003, appellant was in his yard, performing his work as a barber, together with Ompong Ronquillo, Aton Daong and Romeo Drillos. After an hour, appellant was able to finish his work and decided to have a drink with his friends.

Dante Largado, Sr. soon arrived and drank *tuba* with them. A few moments later, Daong and Drillos left. Largado, Sr. then got angry at appellant, because the latter told the former that they will have to stop drinking, and Largado, Sr. did not want to stop. Largado, Sr. then accused appellant of being too choosy of his drinking companions. Appellant explained to Largado, Sr. that it is not true. Appellant further told Largado, Sr. that they have to stop drinking because the former was going to gather more *tuba*. Largado, Sr. then broke a glass on the table and pushed it towards appellant who was thrown

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[4] *Id.*

outside the yard. Appellant told Largado, Sr. that he would not fight him, but the latter answered back and told appellant, "*Putang ina, papatayin kita pag nahawakan kita*."

Appellant then picked up a club and hurled the same at Largado, Sr. He also kicked Largado, Sr. on the chest, afterwhich, Largado, Sr. ran towards the extension of appellant's house, picked a bolo and hacked appellant with it. Appellant was able to evade the onslaught. They then wrestled for the possession of the *bolo* and the same got thrown away. Largado, Sr. was able to get hold of a club and he swung it at appellant, who evaded the blow. Thereafter, appellant ran towards his house, fetched his family and brought them to his father's house. Appellant returned to his house, got his scythe and *barok* and proceeded to gather *tuba* at the coconut plantation of Romeo Drillos. After gathering *tuba*, he went home and stayed at the extension of his house. Appellant was surprised when he saw Largado, Sr. hiding behind the trunk of a coconut tree preparing to attack him with a scythe. Appellant was able to evade him because of the noise created by Largado, Sr. when he stepped on a strew of coconut leaves lying on the ground. Appellant ran towards the direction of his house and Largado, Sr. followed him. Largado, Sr. was able to overtake him, and since he had no more place to escape, appellant hacked Largado, Sr. with his scythe, causing the latter's death.

Afterwards, appellant went back to the house of his father and informed the latter of what happened and that he wanted to surrender. When he went out of his father's house, the policemen were already there and he was arrested.

However, the trial court found in favor of the prosecution. The dispositive portion of its decision states that:

> WHEREFORE, premises considered, pursuant to Article 248 of the Revised Penal Code, as amended, and the amendatory provision of Sec. 11, R.A. No. 7659 (The Death Penalty Law), the Court found accused LINO DUAVIS *y* LABARDA, GUILTY, beyond reasonable doubt of the crime of MURDER, charged under the Information, and sentenced to suffer the maximum penalty of DEATH, and ordered to pay civil indemnity to the heirs of Dante Largado, Sr., the sum of

Seventy- Five Thousand (₱75,000.00) Pesos and moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos; and

Pay the Cost.

SO ORDERED.[5]

The case was appealed to this Court. However, on July 26, 2005,[6] in conformity with the Decision promulgated on July 7, 2004 in G.R. Nos. 147678-87 entitled *The People of the Philippines v. Efren Mateo y Garcia,* modifying the pertinent provisions of the Revised Rules of Criminal Procedure, more particularly Sections 3 and 10 of Rule 125 and any other rule insofar as they provide for direct appeals from the RTCs to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as well as the Court's *En Banc* Resolution dated September 19, 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Section 5, Article VII of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court, this Court transferred the cases to the CA for appropriate action and disposition.

On May 29, 2009, the CA, finding that the trial court erred in appreciating the qualifying circumstance of evident premeditation, ruled that appellant is guilty of the crime of homicide instead of murder. The dispositive portion of the decision reads as follows:

WHEREFORE, in view of all the foregoing, the April 23, 2004 Decision of the Regional Trial Court, Branch 13, Carigara, Leyte, is hereby AFFIRMED WITH MODIFICATION. Accordingly, appellant Duavis is found guilty beyond reasonable doubt of the crime of Homicide and is hereby sentenced to suffer an indeterminate penalty of imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

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[5] *Id.* at 62.

[6] CA *rollo,* p. 101.

The award of Seventy-Five Thousand (₱75,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos as moral damages to the heirs of Dante Largado, Sr. is also affirmed.

SO ORDERED.[7]

This Court accepted the appeal of the appellant on February 17, 2010.[8]

Appellant filed a Manifestation and Motion[9] on April 20, 2010 stating that he will adopt his earlier Supplemental Brief.

The Office of the Solicitor General (OSG), on May 4, 2010, filed its Manifestation and Motion[10] stating that it will no longer file a Supplemental Brief and will merely adopt the Appellee's Brief[11] it previously filed.

In his Brief,[12] appellant assigned the following errors:

I.

THAT THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II.

THAT THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT DID NOT ACT IN LEGITIMATE SELF-DEFENSE IN HACKING THE

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[7] *Rollo,* p. 15.

[8] *Id.* at 22.

[9] *Id.* at 24-27.

[10] *Id.* at 28-31.

[11] CA *rollo,* pp. 65-90.

[12] *Id.* at 32-60.

VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF MURDER.[13]

Appellant insists that all the elements or requisites of self-defense are present in this case. According to him, there was unlawful aggression on the part of the victim when he hid behind the trunk of a coconut tree and then hacked the appellant which the latter was able to evade. He also opines that the means employed by him in repelling or preventing the victim's aggression was reasonable, considering that when he ran away, the victim still chased him and overtook him. Finally, he states that there was lack of sufficient provocation on his part, as it was the victim who provoked him when he tried to hack and chase the victim.

In short, appellant argues that the trial court and the CA erred in not appreciating the justifying circumstance of self-defense and, instead, relied on the testimonies of the witnesses for the prosecution. However, this Court finds the said argument without any merit.

It is a hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to prove the elements of that claim,[14] *i.e.*, (1) unlawful aggression on the part of the victim, (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.[15] But absent the essential element of unlawful aggression, there is no self-defense.[16]

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[13] *Id.* at 39, 44.

[14] *Jacobo v. CA*, G.R. No. 107699, March 21, 1997, 270 SCRA 270, 285, citing *People v. Rivero*, G.R. No. 112721, March 15, 1995, 242 SCRA 354, 358; *People v. Nemeria*, G.R. No. 96288, March 20, 1995, 242 SCRA 448, 453; and *People v. Nuestro*, G.R. No. 111288, January 18, 1995, 240 SCRA 221, 227.

[15] *Id.*, citing *People v. Camahalan*, G.R. No. 114032, February 22, 1995, 241 SCRA 558, 569; *People v. Morin*, G.R. No. 101794, February 24, 1995, 241 SCRA 709, 715; *People v. Rivero*, *supra*; and *People v. Silvestre*, G.R. No. 109142, May 29, 1995, 244 SCRA 479, 490-491.

[16] *Id.*, citing *People v. So*, G.R. No. 104644, August 28, 1995, 247 SCRA 708, 719; and *People v. Galit*, G.R. No. 97432, March 1, 1994, 230 SCRA 486, 496.

In the present case, the appellant failed to prove the presence of unlawful aggression on the part of the victim. As correctly observed and ruled by the trial court:

> From the testimonies of the two prosecution witnesses, Dante Largado, Jr. and Alex Davocol, **the unarmed victim was being chased by the accused, armed with a long bolo, and upon catching up [with] the victim, the accused hacked the victim, hitting him on the left side of his face and ear, cutting major blood vessels, which caused the death of the victim instantaneously**.
>
> Even assuming *arguendo* that there was provocation on the part of the unarmed victim who immediately thereafter ran away, such provocation is not sufficient to be repelled with the use of a long bolo. The defense of self-defense by the accused cannot be appreciated by the Court, for not having been substantiated by clear and convincing evidence that the killing of Dante Largado, Sr. was justified, hence, must fail.[17] (Emphasis supplied.)

Clearly, the element of unlawful aggression on the part of the victim is wanting. It must be remembered that the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution for, even if the prosecution evidence is weak, it cannot be disbelieved after the accused himself has admitted the killing.[18]

Moreover, the question of whether appellant acted in self-defense is essentially a question of fact.[19] Thus, in the absence of proof that the CA and the trial court failed to appreciate facts or circumstances that would have merited appellant's acquittal, this Court has no reason whatsoever to disturb the ruling of the CA and the trial court.

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[17] CA *rollo*, p. 21.

[18] See *People v. Maceda*, G.R. No. 91108, May 27, 1991, 197 SCRA 499, 502; *People v. Albarico*, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211; and *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 64.

[19] *Jacobo v. CA*, *supra* note 14, at 287; citing *People v. Sazon*, G.R. No. 89684, September 18, 1990, 189 SCRA 700, 711.

As to appellant's contention that the trial court was wrong in appreciating the testimonies of the prosecution's witnesses over his claim of self-defense, this Court has consistently reiterated that basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are generally accorded great weight and respect on appeal. When the issue is one of credibility, the Court will generally not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. The reason therefore is not hard to discern. The trial courts are in a better position to decide questions of credibility having heard the witnesses and observed their deportment and manner of testifying during the trial.[20]

Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[21] Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[22] Based on the findings of the trial court and the CA, the testimonies of the witnesses for the prosecution are more credible in itself than the self-serving defense of appellant.

In finding that appellant is guilty of homicide, instead of murder, the CA ruled that there was an absence of the qualifying circumstances of evident premeditation and treachery. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a

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[20] *Tindoy v. People*, G.R. No. 157106, September 3, 2008, 564 SCRA 39, 47, citing *People v. Laceste*, G.R. No. 127127, July 30, 1998, 293 SCRA 397.

[21] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 427, citing *People v. Zinampan*, G.R. No. 126781, September 13, 2000, 340 SCRA 189, 199.

[22] *Id*.

space of time sufficient to arrive at a calm judgment.[23] For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[24] On the other hand, to appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted.[25] The CA, therefore, did not err when it ruled that the killing of the victim was neither attended by evident premeditation nor treachery, thus:

> The element of evident premeditation is manifested by the careful planning and preparation undertaken by the offender prior to the commission of the crime. **A perusal of the evidence on record shows that the altercation between appellant Duavis and Dante Largado, Sr. took place at around 3:00 o'clock in the afternoon of May 2, 2003, and the hacking incident took place at around 5:30 in the afternoon of the same day**. To the mind of the Court, **the lapse of time between the decision and the execution is not sufficient to allow appellant to fully reflect upon the consequences of his act and to effectively and efficiently prepare and plan his actions prior to the**

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[23] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 400; citing *People v. Durante*, 53 Phil. 363, 369 (1929); *People v. Escabarte*, No. L-42964, March 14, 1988, 158 SCRA 602, 612; *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482; *People v. Sayaboc*, G.R. No. 147201, January 15, 2004, 419 SCRA 659, 673.

[24] *Id.*, citing *People v. Requipo*, G.R. No. 90766, August 13, 1990, 188 SCRA 571, 577; *People v. Valdez*, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 626; *People v. Kinok*, G.R. No. 104629, November 13, 2001, 368 SCRA 510, 521; *People v. Manlansing*, G.R. Nos. 131736-37, March 11, 2002, 378 SCRA 685, 701.

[25] *People v. Ave*, G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 246; *People v. Delmo*, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 435.

commission of the crime. Although it may be argued that there was some kind of premeditation on the part of appellant Duavis, it was not proved to be evident.

This Court further finds that the qualifying circumstance of treachery is not present in the instant case because evidence on record show that **appellant Duavis chased Dante Largado, Sr. before the latter was hacked; hence, it cannot be concluded that appellant Duavis employed means of execution which gives Dante Largado, Sr. no opportunity to retaliate or escape**. Moreover, the **location of the hack wound on the left side of the face of the victim will also show that a frontal attack was made**.

Thus, in the absence of any circumstance which would qualify the killing of Dante Largado, Sr., appellant Duavis can only be convicted of Homicide, not murder.[26] (Emphasis supplied.)

Hence, the CA modified the penalty imposed by the trial court. In the dispositive portion of the CA's decision, it imposed the penalty of "imprisonment anywhere within the range of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum." This is a wrong application of the Indeterminate Sentence Law; although the CA claims to have applied the Indeterminate Sentence Law in arriving at the penalty imposed, the wordings used (*i.e.*, *anywhere within the range of*) and the actual penalty imposed are confusing, if not misleading. If not corrected, the prison official tasked to determine if the convicted accused has already served the minimum sentence will now be given the discretion to fix the minimum of the sentence, which duty can only be exercised by the court.

The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant can

[26] *Rollo*, pp. 13-14.

be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period.

There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.[27]

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, should be imposed.

WHEREFORE, the Decision dated May 29, 2009 of the Court of Appeals, affirming with modification, the Decision dated April 23, 2004 of the Regional Trial Court, Branch 13, Carigara, Leyte, finding appellant Lino Duavis guilty beyond reasonable doubt of the crime of homicide is hereby *AFFIRMED* with the *MODIFICATION* that the penalty imposed, after applying the Indeterminate Sentence Law is imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

SO ORDERED.

Abad, Mendoza, Sereno,[**] and *Perlas-Bernabe, JJ.*, concur.

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[27] REVISED PENAL CODE, Art. 64, par. 1.

[**] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1167 dated November 28, 2011.

THIRD DIVISION

[G.R. No. 194128. December 7, 2011]

WESTMONT INVESTMENT CORPORATION, *petitioner, vs.* **AMOS P. FRANCIA, JR., CECILIA ZAMORA, BENJAMIN FRANCIA, and PEARLBANK SECURITIES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION COVERS ONLY QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. —** As a rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by this Court in the exercise of its power to review. The distinction between questions of law and questions of fact is established. A *question of law* exists when the doubt or difference centers on what the law is on a certain state of facts. A *question of fact*, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts. This being so, the findings of fact of the CA are final and conclusive and this Court will not review them on appeal.

2. **ID.; ID.; ID.; EXCEPTIONS. —** While it goes without saying that only questions of law can be raised in a petition for review on *certiorari* under Rule 45, the same admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings

of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. CIVIL LAW; AGENCY; CONCEPT AND ELEMENTS. — In a contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the latter's consent. It is said that the underlying principle of the contract of agency is to accomplish results by using the services of others – to do a great variety of things. Its aim is to extend the personality of the principal or the party for whom another acts and from whom he or she derives the authority to act. Its basis is representation. Significantly, the elements of the contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.

4. ID.; ID.; PRINCIPAL AGENT RELATIONSHIP, NOT ESTABLISHED. — In this case, the principal-agent relationship between the Francias and Wincorp was not duly established by evidence. The records are bereft of any showing that Wincorp merely brokered the loan transactions between the Francias and Pearlbank and the latter was the actual recipient of the money invested by the former. Pearlbank did not authorize Wincorp to borrow money for it. Neither was there a ratification, expressly or impliedly, that it had authorized or consented to said transaction.

5. REMEDIAL LAW; EVIDENCE; OFFER AND OBJECTION TO EVIDENCE, WHEN PROPER; APPLICATION. — It bears stressing too that all the documents attached by Wincorp to its pleadings before the CA cannot be given any weight or evidentiary value for the sole reason that, as correctly observed by the CA, these documents were ***not*** formally offered as evidence in the trial court. To consider them now would deny the other parties the right to examine and rebut them. x x x "The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight." The Court cannot,

likewise, disturb the findings of the RTC and the CA as to the evidence presented by the Francias. It is elementary that objection to evidence must be made after evidence is formally offered. It appears that Wincorp was given ample opportunity to file its Comment/Objection to the formal offer of evidence of the Francias but it chose not to file any.

APPEARANCES OF COUNSEL

Romulo & Serrano Law Office for petitioner.
Chavez Miranda & Aseoche for Amos P. Francia, *et al.*
Saulog & De Leon Law Office for Pearlbank Securities, Inc.

D E C I S I O N

MENDOZA, *J.*:

At bench is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the (1) July 27, 2010 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV No. 84725, which affirmed with modification the September 27, 2004 Decision[2] of the Regional Trial Court, Branch 56, Makati City *(RTC)* in Civil Case No. 01-507; and (2) its October 14, 2010 Resolution,[3] which denied the motion for the reconsideration thereof.

THE FACTS:

On March 27, 2001, respondents Amos P. Francia, Jr., Cecilia Zamora and Benjamin Francia *(the Francias)* filed a Complaint for Collection of Sum of Money and Damages[4] arising from their investments against petitioner Westmont Investment Corporation

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[1] *Rollo*, pp. 10-20. Penned by Associate Justice Florito S. Macalino, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Ramon S. Bato, Jr., concurring.

[2] Records, pp. 381-384.

[3] *Rollo*, p. 50.

[4] Records, pp. 1-13.

(Wincorp) and respondent Pearlbank Securities Inc. *(Pearlbank)* before the RTC.

Wincorp and Pearlbank filed their separate motions to dismiss.[5] Both motions were anchored on the ground that the complaint of the Francias failed to state a cause of action. On July 16, 2001, after several exchanges of pleadings, the RTC issued an order[6] dismissing the motions to dismiss of Wincorp and Pearlbank for lack of merit.

Wincorp then filed its Answer,[7] while Pearlbank filed its Answer with Counterclaim and Crossclaim (against Wincorp).[8]

The case was set for pre-trial but before pre-trial conference could be held, Wincorp filed its Motion to Dismiss Crossclaim[9] of Pearlbank to which the latter filed an opposition.[10] The RTC denied Wincorp's motion to dismiss crossclaim.[11]

The pre-trial conference was later conducted after the parties had filed their respective pre-trial briefs. The parties agreed on the following stipulation of facts, as contained in the Pre-Trial Order[12] issued by the RTC on April 17, 2002:

1. The personal and juridical circumstances of the parties meaning, the plaintiffs and both corporate defendants;

2. That plaintiffs caused the service of a demand letter on Pearl Bank on February 13, 2001 marked as Exhibit E;

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[5] *Id*. at 23-33; 34-39.

[6] *Id*. at 99-100.

[7] *Id*. at 106-115.

[8] *Id*. at 116-127.

[9] *Id*. at 144-151.

[10] *Id*. at 154-157.

[11] *Id*. at 167.

[12] *Id*. at 185-187.

3. **Plaintiffs do not have personal knowledge as to whether or not Pearl Bank indeed borrowed the funds allegedly invested by the plaintiff from Wincorp;** and

4. **That the alleged confirmation advices which indicate Pearl Bank as alleged borrower of the funds allegedly invested by the plaintiffs in Wincorp do not bear the signature or acknowledgment of Pearl Bank**. (Emphases supplied)

After several postponements requested by Wincorp, trial on the merits finally ensued. The gist of the testimony of Amos Francia, Jr. *(Amos)* is as follows:

1. Sometime in 1999, he was enticed by Ms. Lalaine Alcaraz, the bank manager of Westmont Bank, Meycauayan, Bulacan Branch, to make an investment with Wincorp, the bank's financial investment arm, as it was offering interest rates that were 3% to 5% higher than regular bank interest rates. Due to the promise of a good return of investment, he was convinced to invest. He even invited his sister, Cecilia Zamora and his brother, Benjamin Francia, to join him. Eventually, they placed their investment in the amounts of ₱1,420,352.72 and ₱2,522,745.34 with Wincorp in consideration of a net interest rate of 11% over a 43-day spread. Thereafter, Wincorp, through Westmont Bank, issued Official Receipt Nos. 470844[13] and 470845,[14] both dated January 27, 2000, evidencing the said transactions.[15]

2. When the 43-day placement matured, the Francias wanted to retire their investments but they were told that Wincorp had no funds. Instead, Wincorp "rolled-over" their placements and issued Confirmation Advices[16] extending their placements for another 34 days. The said confirmation advices indicated the name of the borrower as Pearlbank. The maturity values were ₱1,435,108.61 and ₱2,548,953.86 with a due date of April 13, 2000.

3. On April 13, 2000, they again tried to get back the principal amount they invested plus interest but, again, they were frustrated.[17]

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[13] *Id.* at 236.

[14] *Id.* at 237.

[15] TSN, June 26, 2002, pp. 5-14.

[16] Records, pp. 16-17, 383; *rollo*, pp. 12-13.

[17] TSN, June 26, 2002, pp. 15-18.

4. Constrained, they demanded from Pearlbank[18] their investments. There were several attempts to settle the case, but all proved futile.

After the testimony of Amos Francia, Jr., the Francias filed their Formal Offer of Evidence.[19] Pearlbank filed its Comment/Objection,[20] while Wincorp did not file any comment or objection. After all the exhibits of the Francias were admitted for the purposes they were offered, the Francias rested their case.

Thereafter, the case was set for the presentation of the defense evidence of Wincorp. On March 7, 2003, three (3) days before the scheduled hearing, Wincorp filed a written motion to postpone the hearing on even date, as its witness, Antonio T. Ong, was unavailable because he had to attend a congressional hearing. Wincorp's substitute witness, Atty. Nemesio Briones, was likewise unavailable due to a previous commitment in the Securities and Exchange Commission.

The RTC denied Wincorp's Motion to Postpone and considered it to have waived its right to present evidence.[21] The Motion for Reconsideration of Wincorp was likewise denied.[22]

On August 14, 2003, Pearlbank filed its Demurrer to Evidence.[23] The RTC granted the same in its Order[24] dated January 12, 2004. Hence, the complaint against Pearlbank was dismissed, while the case was considered submitted for decision insofar as Wincorp was concerned.

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[18] Records, pp. 18-19.

[19] *Id.* at 219-235.

[20] *Id.* at 274-276.

[21] *Id.* at 298.

[22] *Id.* at 325-326.

[23] *Id.* at 332-337.

[24] *Id.* at 371-373.

On September 27, 2004, the RTC rendered a decision[25] in favor of the Francias and held Wincorp *solely* liable to them. The dispositive portion thereof reads:

> WHEREFORE, judgment is rendered ordering defendant Westmont Investment Corporation to pay the plaintiffs, the following amounts:
>
> 1. ₱3,984,062.47 representing the aggregate amount of investment placements made by plaintiffs, plus 11% per annum by way of stipulated interest, to be counted from 10 March 2000 until fully paid; and
>
> 2. 10% of the above-mentioned amount as and for attorney's fees and costs of suit.
>
> SO ORDERED.

Wincorp then filed a motion for reconsideration, but it was denied by the RTC in its Order[26] dated November 10, 2004.

Not in conformity with the pronouncement of the RTC, Wincorp interposed an appeal with the CA, alleging the following arguments:

> I. THE REGIONAL TRIAL COURT ERRED WHEN IT HELD THAT WINCORP AS AGENT OF PLAINTIFFS-APPELLEES WAS LIABLE TO THE LATTER NOTWITHSTANDING THE CLEAR WRITTEN AGREEMENT TO THE CONTRARY;
>
> II. THE REGIONAL TRIAL COURT ALSO ERRED WHEN IT HELD THAT PEARLBANK, THE ACTUAL BORROWER AND RECIPIENT OF THE MONEY INVOLVED IS NOT LIABLE TO THE PLAINTIFFS-APPELLEES; and
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> III. THE REGIONAL TRIAL COURT ERRED IN DISMISSING ALL TOGETHER THE CROSS-CLAIM OF WINCORP AGAINST PEARLBANK.[27]

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[25] *Id.* at 381-384.

[26] *Id.* at 550.

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

The CA *affirmed with modification* the ruling of the RTC in its July 27, 2010 Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the present Appeal is **DENIED.** The Decision dated 27 September 2004 of the Regional Trial Court, Branch 56, Makati City in Civil Case No. 01-507 is hereby **AFFIRMED WITH MODIFICATION** of the awards. Defendant-appellant Wincorp is hereby ordered to pay plaintiffs-appellees the amounts of ₱3,984,062.47 plus 11% per annum by way of stipulated interest to be computed from 13 April 2000 until fully paid and ₱100,000.00 as attorney's fees and cost of suit."

SO ORDERED.

The CA explained:

After a careful and judicious scrutiny of the records of the present case, together with the applicable laws and jurisprudence, this Court finds defendant-appellant Wincorp solely liable to pay the amount of ₱3,984,062.47 plus 11% interest per annum computed from 10 March 2000 to plaintiffs-appellees.

Preliminarily, the Court will rule on the procedural issues raised to know what pieces of evidence will be considered in this appeal.

Section 34, Rule 132 of the Rules on Evidence states that:

"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. Evidence not formally offered during the trial can not be used for or against a party litigant. Neither may it be taken into account on appeal.

The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered shall be excluded and rejected.

Prescinding therefrom, the very glaring conclusion is that all the documents attached in the motion for reconsideration of the decision of the trial court and all the documents attached in the defendant-appellant's brief filed by defendant-appellant Wincorp **cannot be given any probative weight or credit for the sole reason that the said documents were not formally offered as evidence in the trial court because to consider them at this stage will deny the other parties the right to rebut them.**

The arguments of defendant-appellant Wincorp that the plaintiffs-appellees made an erroneous offer of evidence as the documents were offered to prove what is contrary to its content and that they made a violation of the parol evidence rule do not hold water.

It is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.

As to oral evidence, objection thereto must likewise be raised at the earliest possible time, that is, after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given.

xxx xxx xxx

In the case at bench, a perusal of the records shows that the plaintiffs-appellees have sufficiently established their cause of action by preponderance of evidence. The fact that on 27 January 2000, plaintiffs-appellees placed their investment in the amounts of ₱1,420,352.72 and ₱2,522,754.34 with defendant-appellant Wincorp to earn a net interest at the rate of 11% over a 43-day period was distinctly proved by the testimony of plaintiff-appellee Amos Francia, Jr. and supported by Official Receipt Nos. 470844 and 470845 issued by defendant-appellant Wincorp through Westmont Bank. The facts that plaintiffs-appellees failed to get back their investment after 43 days and that their investment was rolled over for another 34 days were also established by their oral evidence and confirmed by the Confirmation

Advices issued by defendant-appellant Wincorp, which indicate that their investment already amounted to ₱1,435,108.61 and ₱2,548,953.86 upon its maturity on 13 April 2000. Likewise, the fact that plaintiffs-appellees' investment was not returned to them until this date by defendant-appellant Wincorp was proved by their evidence. To top it all, defendant-appellant Wincorp never negated these established facts because defendant-appellant Wincorp's claim is that it received the money of plaintiffs-appellees but it merely acted as an agent of plaintiffs-appellees and that the actual borrower of plaintiffs-appellees' money is defendant-appellee PearlBank. Hence, defendant-appellant Wincorp alleges that it should be the latter who must be held liable to the plaintiffs-appellees.

However, the contract of agency and the fact that defendant-appellee PearlBank actually received their money were never proven. The records are bereft of any showing that defendant-appellee PearlBank is the actual borrower of the money invested by plaintiffs-appellees as defendant-appellant Wincorp never presented any evidence to prove the same.

Moreover, the trial court did not err in dismissing defendant-appellant Wincorp's crossclaim as nothing in the records supports its claim. And such was solely due to defendant-appellant Wincorp because it failed to present any scintilla of evidence that would implicate defendant-appellee PearlBank to the transactions involved in this case. The fact that the name of defendant-appellee PearlBank was printed in the Confirmation Advices as the actual borrower does not automatically makes defendant-appellee PearlBank liable to the plaintiffs-appellees as nothing therein shows that defendant-appellee PearlBank adhered or acknowledged that it is the actual borrower of the amount specified therein.

Clearly, the plaintiffs-appellees were able to establish their cause of action against defendant-appellant Wincorp, while the latter failed to establish its cause of action against defendant-appellee PearlBank.

Hence, in view of all the foregoing, the Court finds defendant-appellant Wincorp solely liable to pay the amount of ₱3,984,062.47 representing the matured value of the plaintiffs-appellees' investment as of 13 April 2000 plus 11% interest per annum by way of stipulated interest counted from maturity date (13 April 2000).

As to the award of attorney's fees, this Court finds that the undeniable source of the present controversy is the failure of defendant-appellant Wincorp to return the principal amount and the

interest of the investment money of plaintiffs-appellees, thus, the latter was forced to engage the services of their counsel to protect their right. It is elementary that when attorney's fees is awarded, they are so adjudicated, because it is in the nature of actual damages suffered by the party to whom it is awarded, as he was constrained to engage the services of a counsel to represent him for the protection of his interest. Thus, although the award of attorney's fees to plaintiffs-appellees was warranted by the circumstances obtained in this case, this Court finds it equitable to reduce the same from 10% of the total award to a fixed amount of ₱100,000.00.[28]

Wincorp's Motion for Reconsideration was likewise denied by the CA in its October 14, 2010 Resolution.[29]

Not in conformity, Wincorp seeks relief with this Court *via* this petition for review alleging that –

PLAINTIFFS-RESPONDENTS HAVE NO CAUSE OF ACTION AGAINST WINCORP AS THE EVIDENCE ON RECORD SHOWS THAT THE ACTUAL BENEFICIARY OF THE PROCEEDS OF THE LOAN TRANSACTIONS WAS PEARLBANK

SUBSTANTIAL JUSTICE DICTATES THAT THE EVIDENCE PROFERRED BY WINCORP SHOULD BE CONSIDERED TO DETERMINE WHO, AMONG THE PARTIES, ARE LIABLE TO PLAINTIFFS-RESPONDENTS[30]

ISSUE

The core issue in this case is whether or not the CA is correct in finding Wincorp *solely* liable to pay the Francias the amount of ₱3,984,062.47 plus interest of 11% per annum.

Quite clearly, the case at bench presents a factual issue.

As a rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by this Court in the

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

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

[30] *Id.* at 33, 35.

exercise of its power to review. The distinction between questions of law and questions of fact is established. A *question of law* exists when the doubt or difference centers on what the law is on a certain state of facts. A *question of fact,* on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts.[31] This being so, the findings of fact of the CA are final and conclusive and this Court will not review them on appeal.

While it goes without saying that only questions of law can be raised in a petition for review on *certiorari* under Rule 45, the same admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[32]

The Court finds that no cogent reason exists in this case to deviate from the general rule.

Wincorp insists that the CA should have based its decision on the express terms, stipulations, and agreements provided for in the documents offered by the Francias as the legal relationship of the parties was clearly spelled out in the very documents introduced by them which indicated that it merely

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[31] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[32] *Macasero v. Southern Industrial Gases Philippines,* G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

brokered the loan transaction between the Francias and Pearlbank.[33]

Wincorp would want the Court to rule that there was a contract of agency between it and the Francias with the latter authorizing the former as their agent to lend money to Pearlbank. According to Wincorp, the two Confirmation Advices presented as evidence by the Francias and admitted by the court, were competent proof that the recipient of the loan proceeds was Pearlbank.[34]

The Court is not persuaded.

In a contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the latter's consent.[35] It is said that the underlying principle of the contract of agency is to accomplish results by using the services of others – to do a great variety of things. Its aim is to extend the personality of the principal or the party for whom another acts and from whom he or she derives the authority to act. Its basis is representation.[36]

Significantly, the elements of the contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.[37]

In this case, the principal-agent relationship between the Francias and Wincorp was not duly established by evidence. The records are bereft of any showing that Wincorp merely brokered the loan transactions between the Francias and

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[33] *Rollo*, p. 33.

[34] *Id.* at 34.

[35] Article 1868 of the Civil Code.

[36] *Eurotech Industrial Technologies, Inc. v. Cuizon*, G.R. No. 167552, April 23, 2007, 521 SCRA 584, 592-593.

[37] *Id.* at 593.

Pearlbank and the latter was the actual recipient of the money invested by the former. Pearlbank did not authorize Wincorp to borrow money for it. Neither was there a ratification, expressly or impliedly, that it had authorized or consented to said transaction.

As to Pearlbank, records bear out that the Francias anchor their cause of action against it merely on the strength of the subject Confirmation Advices bearing the name "PearlBank" as the supposed borrower of their investments. Apparently, the Francias ran after Pearlbank only after learning that Wincorp was reportedly bankrupt.[38] The Francias were consistent in saying that they only dealt with Wincorp and not with Pearlbank. It bears noting that even in their Complaint and during the pre-trial conference, the Francias alleged that they did not have any personal knowledge if Pearlbank was indeed the recipient/beneficiary of their investments.

Although the subject Confirmation Advices indicate the name of Pearlbank as the purported borrower of the said investments, said documents do not bear the signature or acknowledgment of Pearlbank or any of its officers. This cannot prove the position of Wincorp that it was Pearlbank which received and benefited from the investments made by the Francias. There was not even a promissory note validly and duly executed by Pearlbank which would in any way serve as evidence of the said borrowing.

Another significant point which would support the stand of Pearlbank that it was not the borrower of whatever funds supposedly invested by the Francias was the fact that it initiated, filed and pursued several cases against Wincorp, questioning, among others, the latter's acts of naming it as borrower of funds from investors.[39]

It bears stressing too that all the documents attached by Wincorp to its pleadings before the CA cannot be given any weight or evidentiary value for the sole reason that, as correctly

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[38] TSN, June 26, 2002, pp. 17-20.

[39] *Rollo*, pp. 212-213.

observed by the CA, these documents were ***not*** formally offered as evidence in the trial court. To consider them now would deny the other parties the right to examine and rebut them. Section 34, Rule 132 of the Rules of Court provides:

> Section 34. *Offer of evidence* —The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

"The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."[40]

The Court cannot, likewise, disturb the findings of the RTC and the CA as to the evidence presented by the Francias. It is elementary that objection to evidence must be made after evidence is formally offered.[41] It appears that Wincorp was given ample opportunity to file its Comment/Objection to the formal offer of evidence of the Francias but it chose not to file any.

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[40] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145.

[41] Sec. 36. *Objection*. – Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefore shall become reasonable apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified. (Revised Rules on Evidence);

See also the case of *Macasiray v. People*, 353 Phil. 353 (1998).

All told, the CA committed no reversible error in rendering the assailed July 27, 2010 Decision and in issuing the challenged October 14, 2010 Resolution.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Abad, Sereno,*[**] and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[A.C. No. 4428. December 12, 2011]

ELPIDIO P. TIONG, *complainant, vs.* **ATTY. GEORGE M. FLORENDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; HAVING AN AFFAIR WITH A CLIENT'S WIFE AMOUNTS TO GROSSLY IMMORAL CONDUCT. — In this case, respondent admitted his illicit relationship with a married woman not his wife, and worse, that of his client. Contrary to respondent's claim, their consortium cannot be classified as a mere "moment of indiscretion" considering that it lasted for two (2) years and was only aborted when complainant overheard their amorous phone conversation on March 13, 1995. Respondent's act of having an affair with his client's wife manifested his disrespect for the laws on the sanctity of marriage and his own marital vow of fidelity. It showed his utmost moral depravity and low regard for the ethics of his profession. Likewise, he violated the trust and confidence reposed on him by complainant which in itself is prohibited under

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[*] Designated as Acting Chairperson per Special Order No. 1166 dated November 28, 2011.

[**] Designated as additional member per Special Order No. 1167 dated November 28, 2011.

Canon 17 of the Code of Professional Responsibility. Undeniably, therefore, his illicit relationship with Ma. Elena amounts to a disgraceful and grossly immoral conduct warranting disciplinary action from the Court. Section 27, Rule 138 of the Rules of Court provides that an attorney may be disbarred or suspended from his office by the Court for any deceit, malpractice, or other gross misconduct in office, **grossly immoral conduct**, among others.

2. ID.; ID.; ID.; AFFIDAVIT OF FORGIVENESS EXECUTED BY THE AGGRIEVED SPOUSES CANNOT ABATE AN ADMINISTRATIVE PROCEEDING. — It bears to stress that a case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. It is not an investigation into the acts of respondent as a husband but on his conduct as an officer of the Court and his fitness to continue as a member of the Bar. Hence, the Affidavit dated March 15, 1995, which is akin to an affidavit of desistance, cannot have the effect of abating the instant proceedings.

3. ID.; ID.; ID.; PENALTY. — [C]onsidering the circumstances of this case, the Court finds that a penalty of suspension from the practice of law for six (6) months, instead of one (1) year as recommended by the IBP-CBD, is adequate sanction for the grossly immoral conduct of respondent.

APPEARANCES OF COUNSEL

Fe Fernandez-Bautista for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] for disbarment filed by Elpidio P. Tiong against Atty. George M. Florendo for gross immorality and grave misconduct.

The facts of the case are as follows:

[1] *Rollo*, Vol. I, pp. 1-4.

Complainant Elpidio P. Tiong, an American Citizen, and his wife, Ma. Elena T. Tiong, are real estate lessors in Baguio City. They are likewise engaged in the assembly and repair of motor vehicles in Paldit, Sison, Pangasinan. In 1991, they engaged the services of respondent Atty. George M. Florendo not only as legal counsel but also as administrator of their businesses whenever complainant would leave for the United States of America (USA).

Sometime in 1993, complainant began to suspect that respondent and his wife were having an illicit affair. His suspicion was confirmed in the afternoon of May 13, 1995 when, in their residence, he chanced upon a telephone conversation between the two. Listening through the extension phone, he heard respondent utter the words "I love you, I'll call you later." When confronted, his wife initially denied any amorous involvement with respondent but eventually broke down and confessed to their love affair that began in 1993. Respondent likewise admitted the relationship. Subsequently, at a meeting initiated by respondent and held at the Salibao Restaurant in Burnham Park, Baguio City, respondent and complainant's wife, Ma. Elena, confessed anew to their illicit affair before their respective spouses.

On May 15, 1995, the parties met again at the Mandarin Restaurant in Baguio City and, in the presence of a Notary Public, Atty. Liberato Tadeo, respondent and Ma. Elena executed and signed an affidavit[2] attesting to their illicit relationship and seeking their respective spouses' forgiveness, as follows:

"WE, GEORGE M. FLORENDO, a resident of Baguio City and of legal age and MA. ELENA T. TIONG, likewise a resident of Baguio City, of legal age, depose and state:

We committed adultery against our spouses from May 1993 to May 13, 1995 and we hereby ask forgiveness and assure our spouses that this thing will never happen again with us or any other person. We assure that we will no longer see each other nor have any

[2] *Id.*, p. 5.

communication directly or indirectly. We shall comply with our duties as husband and wife to our spouses and assure that there will be no violence against them. That any behaviour unbecoming a husband or wife henceforth shall give rise to legal action against us; We shall never violate this assurance;

We, the offended spouses Elizabeth F. Florendo and Elpidio Tiong forgive our spouses and assure them that we will not institute any criminal or legal action against them because we have forgiven them. If they violate this agreement we will institute legal action.

This document consists of four (4) typewritten copies and each party has been furnished a copy and this document shall have no validity unless signed by all the parties.

IN WITNESS WHEREOF, we have set out hands this 15th day of May 1995 at Baguio City, Philippines.

(SIGNED)
GEORGE M. FLORENDO

(SIGNED)
ELPIDIO TIONG

(SIGNED)
MA. ELENA T. TIONG

(SIGNED)
ELIZABETH F. FLORENDO"

Notwithstanding, complainant instituted the present suit for disbarment on May 23, 1995 charging respondent of gross immorality and grave misconduct. In his Answer[3], respondent admitted the material allegations of the complaint but interposed the defense of pardon.

In the Resolution[4] dated September 20, 1995, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation and decision.

Finding merit in the complaint, the Commission on Bar Discipline (CBD), through Commissioner Agustinus V. Gonzaga, submitted its Report and Recommendation[5] dated September 21, 2007 for the suspension of respondent from the practice of

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[3] *Id.*, pp. 13-14.

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

[5] *Id.*, Vol. III, pp. 2-10.

law for one (1) year, which was adopted and approved by the IBP Board of Governors in its Resolution[6] dated October 19, 2007. Respondent's Motion for Reconsideration[7] therefrom was denied in the Resolution[8] dated June 26, 2011.

Hence, the instant petition on the sole issue – whether the pardon extended by complainant in the Affidavit dated May 15, 1995 is sufficient to warrant the dismissal of the present disbarment case against respondent for gross immoral conduct.

After due consideration, the Court resolves to adopt the findings and recommendation of the IBP-CBD except as to the penalty imposed.

The pertinent provisions in the Code of Professional Responsibility provide, thus:

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

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

xxx xxx xxx

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

xxx xxx xxx

Rule 7.03. –A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession."

It has been consistently held by the Court that possession of good moral character is not only a condition for admission to the Bar but is a continuing requirement to maintain one's good standing in the legal profession. It is the bounden duty of law practitioners

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[6] *Id.*, p. 1.

[7] *Id.*, pp. 11-14.

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

to observe the highest degree of morality in order to safeguard the integrity of the Bar.[9] Consequently, any errant behaviour on the part of a lawyer, be it in his public or private activities, which tends to show him deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant his suspension or disbarment.

In this case, respondent admitted his illicit relationship with a married woman not his wife, and worse, that of his client. Contrary to respondent's claim, their consortium cannot be classified as a mere "moment of indiscretion"[10] considering that it lasted for two (2) years and was only aborted when complainant overheard their amorous phone conversation on March 13, 1995.

Respondent's act of having an affair with his client's wife manifested his disrespect for the laws on the sanctity of marriage and his own marital vow of fidelity. It showed his utmost moral depravity and low regard for the ethics of his profession.[11] Likewise, he violated the trust and confidence reposed on him by complainant which in itself is prohibited under Canon 17[12] of the Code of Professional Responsibility. Undeniably, therefore, his illicit relationship with Ma. Elena amounts to a disgraceful and grossly immoral conduct warranting disciplinary action from the Court.[13] Section 27, Rule 138 of the Rules of Court provides that an attorney may be disbarred or suspended from his office by the Court for any deceit, malpractice, or other gross misconduct in office, **grossly immoral conduct**, among others.

Respondent, however, maintains that he cannot be sanctioned for his questioned conduct because he and Ma. Elena had already

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[9] *Advincula vs. Macabata,* A.C. No. 7204, March 7, 2007, 517 SCRA 600.

[10] *Rollo,* Vol. I, p. 13.

[11] *Guevarra vs. Eala,* A.C. No. 7136, August 1, 2007, 529 SCRA 1.

[12] *"CANON 17. A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM."*

[13] *Samaniego vs. Ferrer,* A.C. No. 7022, June 18, 2008, 555 SCRA 1.

been pardoned by their respective spouses in the May 15, 1995 Affidavit.[14]

The Court disagrees.

It bears to stress that a case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. It is not an investigation into the acts of respondent as a husband but on his conduct as an officer of the Court and his fitness to continue as a member of the Bar.[15] Hence, the Affidavit dated March 15, 1995, which is akin to an affidavit of desistance, cannot have the effect of abating the instant proceedings.[16]

However, considering the circumstances of this case, the Court finds that a penalty of suspension from the practice of law for six (6) months, instead of one (1) year as recommended by the IBP-CBD, is adequate sanction for the grossly immoral conduct of respondent.

WHEREFORE, respondent *ATTY. GEORGE M. FLORENDO* is hereby found *GUILTY* of Gross Immorality and is *SUSPENDED* from the practice of law for *SIX (6) MONTHS* effective upon notice hereof, with a *STERN WARNING* that a repetition of the same or similar offense will be dealt with more severely.

Let copies of this Decision be entered in the personal record of respondent as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[14] *Supra* note 2.

[15] *Supra* note 13.

[16] *Garrido vs. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508.

THIRD DIVISION

[A.M. No. P-11-2988. December 12, 2011]
(Formerly A.M. No. 11-8-154-RTC)

OFFICE OF THE COURT ADMINISTRATOR (OCA), *complainant, vs.* **ATTY. TEOTIMO D. CRUZ, Former Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEE; CLERK OF COURT; DUTIES. — Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. They are the courts' treasurers, accountants, guards and physical plant managers. As custodian of court funds and revenues, it is their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.

2. ID.; ID.; ID.; ID.; FAILURE TO REMIT CASH COLLECTIONS ON TIME CONSTITUTES NEGLECT OF DUTY; PENALTY. — Atty. Cruz' belated turnover of cash deposited with him is inexcusable and will not exonerate him from liability. His failure to remit his cash collections on time is violative of Administrative Circular No. 3-2000 which mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, the authorized government depository bank. x x x The unwarranted failure to faithfully perform this responsibility deserves administrative sanction. Ordinarily, unreasonable delay in the remittances of collections constitutes neglect of duty punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense. Considering, however, that Atty. Cruz has retired from the service and considering that this is his first infraction, the Court finds the OCA's recommended penalty of ₱5,000.00 fine to be in order.

R E S O L U T I O N

MENDOZA, *J.*:

This administrative case arose from the financial audit conducted by the Court Management Office *(CMO)* of the books of account of Atty. Teotimo D. Cruz *(Atty. Cruz)*, former Officer-in-Charge of the Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal *(RTC)*, covering the period from August 21, 2007 to August 31, 2010. Atty. Cruz compulsorily retired on April 15, 2011.

Atty. Cruz succeeded Atty. Fermin M. Ofilas *(Atty. Ofilas)* who compulsorily retired on August 17, 2007. Atty. Cruz's term ended when Atty. Aris Z. Bautista was designated as Officer-in-Charge by Executive Judge Josephine Zarate-Fernandez effective September 1, 2010.

The audit conducted by the CMO disclosed that there was a cash shortage in the amount of ₱928,534.24. Of the said amount, ₱12,000.00 was incurred during the term of Atty. Cruz while ₱916,534.24 was carried over from the term of Atty. Ofilas and which formed part of the financial accountability of former Clerk IV Aranzazu V. Baltazar per Decision[1] of the Court in A.M. No. P-05-1935 dated April 23, 2010.

The audit team found out that the cash shortage of ₱12,000.00 was the result of a double withdrawal of cash bond posted in Criminal Case Nos. 6182 and 6183 under Official Receipt No. 13480917 dated July 21, 2002, which was previously withdrawn and confiscated during the term of Atty. Ofilas but was again withdrawn during Atty. Cruz' term.

The records likewise revealed that Atty. Cruz incurred a delay in the remittances of his collections in violation of Administrative Circular No. 5-93. Per computation, the non-

[1] Entitled "*Office of the Court Administrator v. Atty. Fermin M. Ofilas and Aranzazu V. Baltazar, Clerk of Court and Clerk IV, respectively, Regional Trial Court, San Mateo, Rizal*, A.M. No. P-05-1935 (Formerly A.M. No. 04-10-599-RTC), 619 SCRA 13.

remittances of court collections deprived the Court of the interest in the amount of ₱34,578.17 had the collections been deposited on time.[2]

In its report, the Office of the Court Administrator *(OCA)* adopted the recommendations of the Audit Team, to wit:

1. This report be DOCKETED as a regular administrative matter against ATTY. TEOTIMO D. CRUZ, former Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal;

2. A FINE of ₱5,000.00 be IMPOSED upon Atty. Teotimo D. Cruz for not depositing his collections within the prescribed period;

3. The Finance Division, FMO, OCA, be DIRECTED to process the money value of terminal leave benefits of Atty. Teotimo D. Cruz subject to the submission of the documentary requirements and to DEDUCT there from the cash shortage of ₱12,000.00 in the Fiduciary Fund, the FINE of ₱5,000.00 and the amount of ₱34,578.17 representing interests that could have been earned had the collections [been] deposited within the prescribed period;

4. The Cashier Division, FMO, OCA be DIRECTED to DEPOSIT the amount of ₱5,000.00 to the account of the Special Allowance for the Judiciary Fund and the ₱34,578.17 to the Judiciary Development Fund and FURNISH the Fiscal Monitoring Division, CMO, OCA with copies of machine validated deposit slips as proof of compliance thereof;

5. Atty. Aris Z. Baustista, Officer-in-Charge, Office of the Clerk of Court, RTC, San Mateo, Rizal be DIRECTED to DEPOSIT the amount of ₱12,000.00 to the Fiduciary Fund account within five (5) days from receipt of the check from the Checks Disbursement Division, FMO, OCA and FURNISH immediately the FMD, CMO, OCA with machine validated deposit slip as proof that the amount of ₱12,000.00 was deposited to the fiduciary fund account; and

6. Hon. Executive Judge Josephine Zarate-Fernandez be DIRECTED to STRICTLY MONITOR the incumbent Officer-

[2] *Rollo*, pp. 5-6.

> in-Charge in the strict compliance with the circulars and issuances of the Court particularly in the handling of judiciary funds, otherwise she shall be held equally liable for the infraction committed by the employee under her command/ supervision.[3]

The Court agrees with the OCA and adopts its recommendations.

Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice.[4] They are the courts' treasurers, accountants, guards and physical plant managers.[5] As custodian of court funds and revenues, it is their duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.[6]

Atty. Cruz' belated turnover of cash deposited with him is inexcusable and will not exonerate him from liability. His failure to remit his cash collections on time is violative of Administrative Circular No. 3-2000 which mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, the authorized government depository bank. It provides:

> ***3. Systems and Procedures. —***
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> x x x x x x x x x
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> (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

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

[4] *Escañan v. Monterola II*, 404 Phil. 32, 39 (2001).

[5] *Report on the Financial Audit conducted at the MCTC-Mabalacat, Pampanga*, 510 Phil. 237, 242 (2005).

[6] *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido*, 518 Phil. 1, 5 (2006).

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.

A separate set of official receipts shall be used for the collections for the Fund. The official receipt issued for the Fund shall invariably indicate the prefix initial of the name of the Fund, "JDF," followed immediately by the description of the kind and nature of the collection. Official receipts for the Fund shall be provided by the Supreme Court.

Collections shall not be used for encashment of personal checks, salary checks, *etc*., Only Cash, Cashier's Check and Manager's Check are acceptable as payments.

The unwarranted failure to faithfully perform this responsibility deserves administrative sanction. Ordinarily, unreasonable delay in the remittances of collections constitutes neglect of duty punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense.[7] Considering, however, that Atty. Cruz has retired from the service and considering that this is his first infraction, the Court finds the OCA's recommended penalty of ₱5,000.00 fine to be in order.

This Court has stressed that the behavior of all employees and officials involved in the administration of justice, from the judge to the most junior clerk, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times, in order to merit and maintain the public's respect for, and trust in the Judiciary.[8] The Court will not tolerate any conduct, act or omission on the part of those who will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[9]

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[7] *Id*. at 6.

[8] *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*, 445 Phil. 220, 224 (2003).

[9] *Office of the Court Administrator v. Juliet C. Banag*, A.M. No. P-09-2638, December 7, 2010, 637 SCRA 18, 37.

WHEREFORE, Atty. Teotimo D. Cruz is *FINED* in the amount of ₱5,000.00. He is likewise ordered to *RESTITUTE* the shortages in his collections in the total amount of ₱12,000.00 and to *PAY* ₱34,578.17 representing the interests which could have been earned had the collections been deposited within the prescribed period.

The Financial Management Office is directed to deduct from his retirement benefits the sum of ₱51,578.17.

The Financial Management Office is ordered to deposit the amount of ₱5,000.00 to the Special Allowance for the Judiciary Fund and ₱34,578.17 to the Judiciary Development Fund, and to furnish the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, copies of machine validated deposit slips as proof of compliance.

The Financial Management Office is likewise directed to issue a check in the amount of ₱12,000.00 to Atty. Aris Z. Bautista, Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal for the latter to deposit to the Fiduciary Fund account within five (5) days from receipt thereof and, thereafter, furnish the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator with copies of machine-validated deposit slips as proof of compliance.

Lastly, Executive Judge Josephine Zarate-Fernandez is directed to strictly monitor the incumbent Officer-in-Charge in the strict compliance with the circulars and issuances of the Court particularly in the handling of judiciary funds.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165769. December 12, 2011]

EDITO PAGADORA, *petitioner, vs.* **JULIETA S. ILAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEFECTIVE VERIFICATION IN A PETITION IS CURED BY SUBSEQUENT COMPLIANCE VIA MOTION FOR RECONSIDERATION; RULE ON VERIFICATION, LIBERALLY APPLIED. — The Court finds that indeed the verification on page 24 of herein petitioner's petition for review filed with the Court of Appeals – in which he attested among others that the statements therein were "true and correct to the best of [his] personal knowledge and honest belief"– is defective and non-compliant with Section 4, Rule 7 of the Rules of Court, which requires the affiant to attest the allegations in his petition to be true and correct of his personal knowledge or based on authentic records. Nevertheless, in his Motion for Reconsideration of the June 8, 2004 Resolution dismissing said petition, petitioner, in a *bona fide* attempt to rectify his initial mistake, has actually attached on page 6 thereof another verification which in all respects complies with the requirements of the aforementioned rule. It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, consistent with the policy of liberality espoused by Rule 1, Section 6. Not being inflexible, the rule on verification allows for such liberality.

2. ID.; ID.; SERVICE OF PLEADINGS; PERSONAL SERVICE IS PREFERRED BUT RESORT TO REGISTERED MAIL IS ALLOWED IF ACCOMPANIED BY WRITTEN EXPLANATION. — The petition submitted by petitioner did have an accompanying explanation justifying service by mail in lieu of personal service. On page 23 of his petition for review under the heading that reads "Explanation," it is stated that a copy of the pleading has been "served on plaintiffs through counsel *via* registered mail and not personally due to the unavailability of messenger and distance constraints," but the pleading so served is erroneously described as a "Manifestation and Motion to Dismiss" instead of "Petition for Review." In his Motion for Reconsideration of the June 8, 2004 Resolution, petitioner conceded having committed said mistake, but attributed the error to his counsel's inadvertence and oversight. And judging by the Registry Return Receipt attached to the petition itself, the copy of the pleading thus served, which was mailed on May 31, 2004, was received by respondent's counsel on June 3, 2004. Section 11 of Rule 13 requires service and filing of pleadings and other papers, whenever practicable, to be done personally; and if made through other modes, the party concerned must provide a written explanation as to why service or filing was done otherwise. Personal service is preferred because it is seen to expedite the action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service is done by mail, considering the inefficiency of the postal service. Likewise, it will do away with the practice of some lawyers who, wanting to appear clever, resort to less ethical practices to catch the opposing counsel off-guard or unduly procrastinate in claiming the parcel containing the pleading served. Thus, personal service is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place and person, personal service is mandatory. Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with.

3. ID.; ID.; ID.; ID.; COURT MAY EXERCISE PROPER DISCRETION BASED ON THE EXPLANATION GIVEN AND GUIDED BY THE PRINCIPLE THAT SUBSTANTIAL JUSTICE FAR

OUTWEIGHS RULES OF PROCEDURE; APPLICATION. — Based on this explanation will the court then determine whether personal service is indeed not practicable so that resort to other modes is made. At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved. It is in this respect that the Court of Appeals' reliance on *Solar Team Entertainment, Inc. v. Ricafort* has failed. Indeed, no critique may be made against the mandatory nature of the rule, as stated in that case, requiring a written explanation where service of pleadings is done by other means than personal service, yet that case is inapplicable to the present controversy because there, the Court found that there was absolutely no written explanation attached to the pleading to justify the deviation from the rules on service. Such is not the case here. Thus, the determination of the practicability of petitioner's availing of service by registered mail in the case at bar, based on the proffered absence of an available messenger and on account of the alleged distance constraint, is concededly a matter that lies within the prerogative of the Court of Appeals. Yet the exercise of discretion in this regard is ought to be guided by the principle that substantial justice far outweighs rules of procedure. A liberal application of procedural rules requires that: (1) there is justifiable cause or plausible explanation for non-compliance and (2) there is compelling reason to convince the court that the outright dismissal would seriously impair or defeat the administration of justice. In the present case, it is difficult to immediately dismiss the plausibility of the written explanation offered by petitioner when in fact in all stages of the proceedings he has always utilized the post in serving copies of his pleadings on respondent for the very same reasons stated in his petition filed with the Court of Appeals subject of this case.

4. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; PURPOSE AND NATURE. — The general purpose of forcible entry and detainer statutes is to assure that, regardless of the actual condition of the title to or the right of possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong

hand, violence or terror. One who is guilty of a forcible entry or of detainer after a peaceable but unlawful entry, is therefore not only subject to indictment but is also required to restore possession to the party from whom the property was taken or detained. In affording this remedy of restitution, the object of the statutes is to prevent breaches of the peace and criminal disorder which would ensue from withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate judicial action to assert their claims. This is the philosophy at the foundation of actions of forcible entry and detainer, which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his. Proceedings in forcible entry cases under Rule 70 are thus summary in nature, allowing as they do for an expeditious means of protecting actual possession or the right to possession of property. Forcible entry into one's land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior court. The law is geared towards protecting the person who in fact has actual possession; and in case of a controverted proprietary right, the law requires the parties to preserve the *status quo* until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership.

5. ID.; ID.; ID.; ALLEGATIONS IN THE COMPLAINT DETERMINE THE NATURE OF THE ACTION AS WELL AS JURISDICTION OF THE COURT. —The invariable rule is that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1 of Rule 70 provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence. Hence, in forcible entry, the complaint must necessarily allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law, but it would suffice that facts are set up showing that dispossession took place under said conditions. In other words,

the plaintiff must allege that he, prior to the defendant's act of dispossession by force, intimidation, threat, strategy or stealth, had been in prior physical possession of the property. This requirement is jurisdictional, and as long as the allegations demonstrate a cause of action for forcible entry, the court acquires jurisdiction over the subject matter.

6. ID.; ID.; ID.; ID.; WHERE THE ALLEGATIONS IN THE COMPLAINT DO NOT ESTABLISH A CAUSE OF ACTION FOR FORCIBLE ENTRY. — Judging by the terms of the complaint, We find that respondent has failed to make out a preliminary case for forcible entry. There is no ostensible averment in the complaint to the effect that she had been in prior possession of the subject property ahead of petitioner. Interestingly, indeed, there is neither reference – not even a circumstantial one – to an act of dispossession that may be attributed to petitioner in a way that would preliminarily establish that the latter had forcibly entered the disputed property and disturbed respondent's present or prior possession thereof. While there is actually an attribution to petitioner of force, intimidation, threat, strategy and stealth, it is nevertheless unascertainable whether these positive acts were employed to the end of disturbing respondent's prior possession of the property. What is only clear from the allegations, though, is that when respondent attempted to conduct a survey of the property which she bought in 1997, and later tried to build a fence around it, she and her workers were prevented by petitioner, through force, intimidation, threat, strategy and stealth, from completing the work upon the justification that he (petitioner) owned the property. Verily, the material allegations in respondent's complaint do not establish a cause of action for forcible entry and hence, the MTC has not acquired jurisdiction over the same. This could have accounted for the outright dismissal of the complaint at the first instance and yet, the case still progressed. And if there is anything significant which eventually unfolded, it is the fact that the conflict between petitioner and respondent is indeed beyond the competence of the MTC to resolve, because it is actually a boundary dispute affecting the ownership of the 482-square-meter portion of the property occupied by petitioner but claimed by respondent as part of the property she acquired under her 1997 Contract to Sell.

7. ID.; ID.; ID.; REMAND OF THE CASE FOR RECEPTION IN EVIDENCE OF A RELOCATION SURVEY IS A FUTILE

EXERCISE IN EJECTMENT PROCEEDINGS. — We find that the conduct of the court-appointed relocation survey in this case to determine where the exact boundaries of the subject properties properly lie, has been but a futile exercise – and so is the Order of the RTC remanding the case to the MTC for the reception in evidence and evaluation of Engr. Encisa's report on the said survey – because not being necessary under the premises, they were anathema to the policy underlying the summary nature of ejectment proceedings: that is to provide an expeditious means of resolving the issue of possession, eschewing any question as to title and ownership which ought to proceed independently, in order to speedily address breaches of the peace characteristic of disturbances of property possession. This, especially because there is already an initial showing in the complaint itself that respondent, the plaintiff therein, has not been in actual possession of the property. The contending claims of ownership between petitioner and respondent in this case, as well as the opposing possessory rights that emanate from such claims, may not therefore be resolved in such summary action as ejectment but rather in a separate action.

APPEARANCES OF COUNSEL

Gerald B. Soriano for petitioner
Brillantes Navarro Jumami Arcilla Escolin Martinez & Vivero Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Adventitious resort to technicality resulting in the dismissal of cases is disfavored because litigations must as much as possible be decided on the merits and not on technicalities.

This is a petition for review under Rule 45, assailing the twin Resolutions[1] of the Court of Appeals in CA-G.R. SP No.

[1] Penned by Associate Justice Mariano C. Del Castillo (now Associate Justice of the Supreme Court), with Associate Justices Roberto A. Barrios and Magdangal M. De Leon, concurring.

83933,[2] dated June 8, 2004[3] and October 20, 2004.[4] The former is a minute resolution that dismissed on technicality herein petitioner's appeal from the Judgment[5] rendered by Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 1581-01-SM. In turn, said judgment reversed the ruling of the Municipal Trial Court (MTC) of Rodriguez, Rizal in Civil Case No. 1083, one for forcible entry filed by herein respondent Julieta Ilao against petitioner Edito Pagadora. The second assailed Resolution denied reconsideration.

In November 1997, respondent Julieta Ilao acquired, under a Contract to Sell,[6] a 5,148 sq m piece of land[7] in Burgos, Rodriguez, Rizal. The contract stipulated that the balance of the purchase price was payable upon proof by the vendee that the boundaries of the property had already been relocated and that the fence thereon had been constructed.[8] Hence, immediately after the sale, respondent as vendee had commissioned the survey of the property, but the work had been stalled because, on several occasions, the occupant of the adjoining lot, herein petitioner Edito Pagadora, had allegedly prevented the surveyor from completing the task. When at length the work was finished, respondent then sought to fence off the property yet again, the work stood to a halt because petitioner, as was the case during the survey, allegedly hindered respondent's workers from completing the work and even threatened them with bodily harm.[9]

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[2] Entitled *Eduardo Pagadora, Petitioner vs. Julieta S. Ilao, Respondent.*

[3] *Rollo*, p. 43.

[4] *Id*. at 45-46.

[5] Signed by Judge Elizabeth Balquin-Reyes; *rollo*, pp. 83-88.

[6] Records, pp. 5-7.

[7] The property is covered by Original Certificate of Title No. ON-641 issued by the Register of Deeds of Rizal in the name of Gregorio F. Manahan. *Id*. at 8-9.

[8] See Contract to Sell dated November 20, 1997, *id*. at 20-22.

[9] See Complaint and Amended Compalint, *id*. at 1-2, 42-43.

Hence, on March 24, 1998, respondent filed a Complaint[10] for forcible entry against petitioner before the MTC, Rodriguez, Rizal.

It appears that the survey commissioned by respondent revealed that a portion of her property adjoining the land occupied by petitioner was lying within the perimeter fence of the latter, fenced in as it was by galvanized metal sheets.[11] This 482-square-meter portion turns out to be claimed by petitioner as part of the entire landholding which his wife had acquired supposedly as inheritance. In his Answer to the complaint, petitioner denied having forcibly entered the disputed property as alleged, and asserted that it has always been in his and his family's open and peaceful possession since 1986, it forming part of the landholding derived by his wife by succession from her parents Julian Guardiano and Sabina Jacobe. He pointed out that the complaint was infirm, lacking as it did an exact reference on when the alleged forcible entry took place, and also because it did not state that respondent had been in physical possession of the disputed property prior to him. Accordingly, he prayed for the dismissal of the case as the controversy did not fall under the MTC's jurisdiction, the allegations in the complaint being insufficient to constitute forcible entry.[12]

At the pretrial, respondent moved that a court-appointed surveyor from the Land Registration Authority (LRA) conduct an actual ground verification survey of the two subject properties.[13] Petitioner opposed the move based on his primal belief that the MTC did not have jurisdiction over the controversy.[14] Resolving the motion, the court directed the

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[10] The complaint was docketed as Civil Case No. 1083. It was later on amended to reflect the correct name of the defendant as "Edito Pagadora" instead of "Eduardo Pagadora." *Id.* at 16-18, 42-44.

[11] Records, p. 17.

[12] *Id.* at 35-36.

[13] See Motion to Appoint a Surveyor dated April 22, 1999, *id*. at 84.

[14] See Opposition dated June 5, 1999, *id*. at 109-111.

conduct of a simultaneous survey of the subject properties, and declared that where the existing common boundary would coincide with the result of the survey then the same should be respected.[15] For this purpose, it subsequently ordered the LRA to provide one surveyor.[16] Of this order, petitioner sought reconsideration.[17] Meantime, Engineer Porfirio Encisa of the LRA was designated to perform the survey.[18]

Meantime, pretrial terminated without the parties arriving at a settlement, and upon stipulation of the fact that their properties were adjacent to each other, petitioner and respondent were directed to submit their position paper.[19] Defendant also attached a copy of the Original Certificate of Title (OCT)[20] of the land he occupied in the name of Sabina Jacobe as well as a certified true copy of the 1958 survey of the land.[21] Apparently, respondent did not file her position paper. Nonetheless, the case was then deemed submitted for decision.

On September 18, 2000, the MTC rendered its Decision[22] dismissing the complaint for respondent's failure to establish her cause of action for forcible entry. The MTC, finding that respondent had failed to discharge the burden of proving that petitioner had encroached on the subject property, disposed of the case as follows:

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[15] Order dated August 20, 1999, *id*. at 127.

[16] Order dated February 8, 2000, *id*. at 155.

[17] Records, p. 156.

[18] See Order dated March 22, 2000.

[19] See Order dated August 17, 2000, *id*. at 186.

[20] The OCT was issued in the name of Sabina Jacobe.

[21] Records, pp. 196-199.

[22] *Id.* at 200-214. It disposed of the case as follows:

WHEREFORE, following the above dictum of the Honorable Supreme Court, this Court below has no choice but to dismiss as it hereby dismisses the instant complaint for failure of plaintiff to establish its cause of action and prevail with the evidence it had against the defendant.

No pronouncement as to cost.

SO ORDERED.

WHEREFORE, x x x [the] Court below has no choice but to dismiss as it hereby dismisses, the instant complaint for failure of plaintiff to establish its (sic) cause of action and prevail with the evidence it (she) had against the defendant.

No pronouncement as to cost.

SO ORDERED.[23]

On appeal, the RTC noted that while the MTC's decision was dated September 18, 2000, the report[24] of LRA Engineer Encisa, which formed part of the records transmitted to it, was stamped as received by the MTC on October 2, 2000, although the report itself was dated October 5, 2000 and that the copy of said decision was served by mail on the parties on October 31, 2000. It pointed out that Engr. Encisa's report was likely to affect the proper resolution of the case. Hence, it ordered the remand of the case to the MTC for the determination of the "existence, validity/admissibility and consideration of the said report."[25]

Forthwith, the MTC heard the testimony of Engr. Encisa, who affirmed his authorship of the report as well as the fact that the same was based on the verification/relocation survey ordered by the MTC with the agreement of both parties. The survey, he adds, was necessary to determine the actual boundaries of the properties involved and to ascertain whether petitioner indeed encroached on respondent's property. He also explained

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[23] Records, p. 214.

[24] *Rollo*, pp. 188-190. The report states, among others (a) that there existed no overlapping in boundaries of the properties of petitioner and respondent, except that the improvements constructed by the defendant himself are the one allegedly encroaching on plaintiff's property; (b) that such improvements consisted of a temporary fence and the house, all covering an area of 482 sq m; (c) that said portion of the lot being claimed by plaintiff under her Contract to Sell was traversed by the existing river and formed part of an existing river bed; (d) that there was a basketball whose construction was sanctioned by the *barangay* officials and which encroached on the portion claimed by the plaintiff to the extent of 141 sq m.

[25] See RTC Order dated August 2, 2002, records, p. 278.

that the apparent antedating of the report was merely a typographical error.[26] None of the parties objected to the admission of the report; hence, the case was submitted for resolution.[27]

On May 12, 2003, the MTC issued an Order declaring that it found no basis to abandon its earlier decision in the case.

The MTC decision, however, was reversed by the RTC. In its January 12, 2004 Decision,[28] it held that:

> WHEREFORE, premises considered, judgment is hereby rendered by this Court reversing the Decision of the MTC of Rodriguez, Rizal dated September 18, 2000 and ordering:
>
> 1. the defendant, Edito Pagadora, to immediately vacate the portion of land that forms part of the property of the plaintiff to the extent of 482 square meters and surrender possession of the same to the plaintiff;
> 2. to immediately remove the galvanized sheets on the portion of the property encroaching on the property of the plaintiff; and
> 3. to pay the amount of ₱30,000.00 as attorney's fees.
>
> SO ORDERED.[29]

Petitioner sought reconsideration,[30] but the same was denied.[31] He then elevated the matter to the Court of Appeals which only made short shrift of the appeal for two reasons: *first*, the petition itself does not supposedly contain a written explanation on why a copy thereof was served on respondent Ilao by registered mail, instead of by the preferred mode of personal

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[26] TSN, March 26, 2003, *id*. at 305-307.

[27] Order dated March 26, 2003, *id*. at 301.

[28] Records, pp. 333-338.

[29] *Id*. at 338.

[30] *Id*. at 346-350.

[31] Order dated April 21, 2004, *id*. at 363.

service in accordance with Section 11, Rule 13 of the Rules of Court and, *second*, the attached verification did not comply with Section 4, Rule 7, as amended by A.M. No. 00-2-10-SC.[32]

Petitioner sought reconsideration, but it was denied by a Resolution[33] dated October 20, 2004 for lack of merit.

Petitioner now assails the outright dismissal of his petition for review on a technicality, and advocates for a liberal interpretation of the rules of procedure to better serve the ends of justice.[34] He points out that, contrary to the appellate court's observation, his petition contained an adequate explanation why a copy thereof was served on respondent by registered mail instead of by personal service which appears in the last two pages[35] of his petition, except only that the pleading he served is erroneously described as a "Manifestation and Motion to Dismiss" instead of "Petition for Review" – an inadvertent error caused by the mere oversight of his counsel.[36] As to his

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[32] CA *rollo*, pp. 156-157.

[33] Pertinently, the October 20, 2004 Resolution reads:

WHEREFORE, subject Motion for Reconsideration is hereby DENIED and Our resolution of dismissal stands.

SO ORDERED. (*Rollo*, p. 46.)

[34] *Rollo*, pp. 23-28.

[35] CA *rollo*, p. 30. On page 23 of the Petition for Review appears the following:

Copy of the foregoing pleading is furnished by registered mail with return card to (sic):

Atty. Teodoro M. Jumamil
Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices
Counsel for Plaintiff-Appellee
105-B ECJ Condominium Bldg., Real cor. Arzobispo Streets,
Intramuros, 1002 Manila.

EXPLANATION

Copy of the foregoing "Manifestation and Motion to Dismiss" is served on plaintiffs through counsel via registered mail and not personally due to the unavailability of messenger and distance constraints.

defective verification, petitioner explains that the allegations in his petition for review are nevertheless based on authentic records comprising of all the relevant documents annexed to it, and that pertinent portions of these documents have likewise been reproduced in the petition itself. He explains that financial constraints had prevented him from having all the documents photocopied and certified by the lower court, and that besides, he had also anticipated the consequent elevation of the records to the appellate court.[37]

On the substantive aspect, petitioner believes the Court of Appeals to have erred in finding no merit in his appeal and in holding that the issues raised therein are too insubstantial to require consideration. Consistent is his stance that the MTC lacked the jurisdiction over the controversy. He also harps on respondent's failure to establish her cause of action below and, particularly, to prove that she had prior physical possession of the disputed property prior to the act of the supposed dispossession, which likewise has not been established before the ejectment court. Again, he points out that on the contrary, it was he who has been in actual and continuous possession of the property since 1986, and denies having wrestled possession from respondent by force, intimidation, threat, strategy and stealth as alleged.[38] In this connection, he laments that respondent's Contract to Sell, allegedly an unregistered instrument, would vest title only on full payment of the purchase price and that the same hardly proves prior possession in respondent's favor because it was executed only in 1997 – or way further in time than when he himself had established possession of the disputed property.[39]

Petitioner likewise assails the report of Engr. Encisa of the LRA as it hardly constitutes evidence of forcible entry. He opines that the RTC erred in reversing the judgment of the

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[36] *Rollo*, pp. 19-21, 22.

[37] *Id*. at 21. See also petitioner's Reply, *id*. at 208-209.

[38] *Id*. at 28-32, 34-36. See also petitioner's Reply, *id*. at 210.

[39] *Rollo*, pp. 26-30.

MTC only on the basis of the said report. He posits that the survey, against which he had registered his objections, was not the survey contemplated in the MTC's February 8, 2003 Order, and alleges that it was conducted by Engr. Encisa without his participation.[40]

Respondent stands by the Court of Appeals' ruling. In her rather non-extensive Comment, she reiterates that no special reason exists to warrant a review of the RTC's decision in this case, and that the violations committed by petitioner of the rules on verification and of service of pleadings are by all means fatal to his cause.[41]

We shall first address the procedural facet of this case.

The Court finds that indeed the verification on page 24 of herein petitioner's petition for review filed with the Court of Appeals – in which he attested among others that the statements therein were "true and correct to the best of [his] personal knowledge and honest belief"[42] – is defective and non-compliant with Section 4,[43] Rule 7 of the Rules of Court, which requires the affiant to attest the allegations in his petition to be true and correct of his personal knowledge or based on authentic records. Nevertheless, in his Motion for Reconsideration of the June 8, 2004 Resolution dismissing said petition, petitioner, in a *bona fide* attempt to rectify his initial mistake, has actually attached

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[40] *Id.* at 36-39.

[41] *Id.* at 210-203.

[42] CA *rollo*, p. 31.

[43] SEC. 4. *Verification*. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

on page 6[44] thereof another verification which in all respects complies with the requirements of the aforementioned rule.

It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules.[45] Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance,[46] consistent with the policy of liberality espoused by Rule 1, Section 6.[47] Not being inflexible, the rule on verification allows for such liberality.

Verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served.[48] The Court *en banc,*

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[44] CA *rollo*, p. 153.

[45] *Mediserve, Inc. v. Court of Appeals*, G.R. No. 161368, April 5, 2010.

[46] See *Santos v. Litton Mills Inc*, G.R. No. 170646, June 22, 2011.

[47] SEC. 6. *Construction.* — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[48] See *Millennium Erectors Corp. v. Magallanes*, G.R. No. 184362, November 15, 2010, and also *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, and *Robern Development Corporation v. Judge Quitain*, G.R. No. 135042, September 23, 1999, 313 SCRA 150,159-160.

in *Altres v. Empleo*,[49] has issued guidelines based on previous jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of a defective, verification as well as on certification against forum shopping, as follows:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[50]

In *Santos v. Litton Mills*,[51] where the petitioner therein had initially filed a petition before the Court of Appeals with a defective verification and certification, this Court noted that said defect has been corrected when after dismissal, said petitioner filed a motion for reconsideration and attached to it a verification and certification sufficient in form; because there was subsequent compliance in that case, the Court eagerly adopted liberality to secure the greater interest of justice and held that the Court of Appeals should have given due course to said petition in the first place.

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[49] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-597.

[50] *Id.* at 597. Also cited in the fairly recent cases of *Mandaue Galleon Trade, Inc. v. Isidto*, G.R. No. 181051, July 5, 2010, 623 SCRA 414, 422 and *Vda. de Formosa v. Philippine National Bank*, G.R. No. 154704, June 1, 2011.

[51] *Supra* note 46.

In the present case, petitioner's subsequent compliance *via* his motion for reconsideration should also have inspired an attitude of liberality, yet another procedural lapse was found by the Court of Appeals which also accounted for the dismissal of the appeal: the supposed absence of a written explanation why petitioner had resorted to service of the pleading on respondent by registered mail instead of by personal service in violation of the priority in the modes of service under Section 11, Rule 13.

We, however, are not inclined to adopt said finding because on the contrary, the petition submitted by petitioner did have an accompanying explanation justifying service by mail in lieu of personal service. On page 23 of his petition for review under the heading that reads "Explanation," it is stated that a copy of the pleading has been "served on plaintiffs through counsel *via* registered mail and not personally due to the unavailability of messenger and distance constraints," but the pleading so served is erroneously described as a "Manifestation and Motion to Dismiss" instead of "Petition for Review."[52] In his Motion for Reconsideration of the June 8, 2004 Resolution, petitioner conceded having committed said mistake, but attributed the error to his counsel's inadvertence and oversight.[53] And judging by the Registry Return Receipt[54] attached to the petition itself, the copy of the pleading thus served, which was mailed on May 31, 2004, was received by respondent's counsel on June 3, 2004.

Section 11[55] of Rule 13 requires service and filing of pleadings and other papers, whenever practicable, to be done personally;

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[52] CA *rollo*, p. 30.

[53] *Id.* at 146-147.

[54] Registry Return Receipt No. 7922, *id.* at 23.

[55] Sec. 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

and if made through other modes, the party concerned must provide a written explanation as to why service or filing was done otherwise. Personal service is preferred because it is seen to expedite the action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service is done by mail, considering the inefficiency of the postal service. Likewise, it will do away with the practice of some lawyers who, wanting to appear clever, resort to less ethical practices to catch the opposing counsel off-guard or unduly procrastinate in claiming the parcel containing the pleading served.[56] Thus, personal service is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place and person, personal service is mandatory. Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with.[57]

Based on this explanation will the court then determine whether personal service is indeed not practicable so that resort to other modes is made. At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved.[58] It is in this respect that the Court of Appeals' reliance on *Solar Team Entertainment, Inc. v. Ricafort*[59] has failed. Indeed,

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[56] *Maceda v. Vda. de Macatangay*, G.R. No. 164947, January 31, 2006, 481 SCRA 415, 423; *Solar Team Entertainment, Inc. v. Ricafort*, G.R. No. 132007, August 5, 1998, 293 SCRA 661, 667-668.

[57] *Id.* at 423-424; *id*. at 668.

[58] *Domingo v. Court of Appeals*, G.R. No. 169122, February 2, 2010, 611 SCRA 353, 365; See *Solar Team Entertainment, Inc. v. Ricafort*, *supra* note 56.

[59] *Supra* note 56.

no critique may be made against the mandatory nature of the rule, as stated in that case, requiring a written explanation where service of pleadings is done by other means than personal service, yet that case is inapplicable to the present controversy because there, the Court found that there was absolutely no written explanation attached to the pleading to justify the deviation from the rules on service. Such is not the case here.

Thus, the determination of the practicability of petitioner's availing of service by registered mail in the case at bar, based on the proffered absence of an available messenger and on account of the alleged distance constraint, is concededly a matter that lies within the prerogative of the Court of Appeals. Yet the exercise of discretion in this regard is ought to be guided by the principle that substantial justice far outweighs rules of procedure.

A liberal application of procedural rules requires that: (1) there is justifiable cause or plausible explanation for non-compliance and (2) there is compelling reason to convince the court that the outright dismissal would seriously impair or defeat the administration of justice.[60] In the present case, it is difficult to immediately dismiss the plausibility of the written explanation offered by petitioner when in fact in all stages of the proceedings he has always utilized the post in serving copies of his pleadings on respondent for the very same reasons stated in his petition filed with the Court of Appeals subject of this case. More importantly, the merits of petitioner's cause indeed deserve consideration especially since, as will be discussed, the controversy involved is far removed from the limited jurisdiction of the MTC.

The general purpose of forcible entry and detainer statutes is to assure that, regardless of the actual condition of the title to or the right of possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. One who is guilty of a forcible

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[60] *Domingo v. Court of Appeals, supra* note 58; *Tible & Tible Co., Inc. v. Royal Savings and Loan Association*, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 583.

entry or of detainer after a peaceable but unlawful entry, is therefore not only subject to indictment but is also required to restore possession to the party from whom the property was taken or detained. In affording this remedy of restitution, the object of the statutes is to prevent breaches of the peace and criminal disorder which would ensue from withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate judicial action to assert their claims. This is the philosophy at the foundation of actions of forcible entry and detainer, which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[61]

Proceedings in forcible entry cases under Rule 70 are thus summary in nature, allowing as they do for an expeditious means of protecting actual possession or the right to possession of property.[62] Forcible entry into one's land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior court.[63] The law is geared towards protecting the person who in fact has actual possession; and in case of a controverted proprietary right, the law requires the parties to preserve the *status quo* until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership.[64]

The invariable rule is that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which

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[61] 35 Am Jur 2d, pp. 894-895.

[62] See *Deveza v. Montecillo*, 137 Phil. 232, 238 (1969).

[63] *Sarmiento v. Court of Appeals*, 320 Phil. 146, 155 (1995).

[64] *Id.* at 157.

Section 1[65] of Rule 70 provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence.[66] Hence, in forcible entry, the complaint must necessarily allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law, but it would suffice that facts are set up showing that dispossession took place under said conditions.[67] In other words, the plaintiff must allege that he, prior to the defendant's act of dispossession by force, intimidation, threat, strategy or stealth, had been in prior physical possession of the property. This requirement is jurisdictional, and as long as the allegations demonstrate a cause of action for forcible entry, the court acquires jurisdiction over the subject matter.[68]

We find that at the inception of this case at the MTC, it was already apparent that respondent had failed to establish her cause of action. The complaint materially reads:

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[65] SECTION 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[66] *Delos Reyes v. Odones*, G.R. No. 178096, March 23, 2011. See also *Sarmienta v. Manalite Homeowners Association, Inc.*, G.R. No. 182953, October 11, 2010, 632 SCRA 538,546.

[67] *Cajayon v. Spouses Batuyong*, 517 Phil. 648, 659 (2006).

[68] *Delos Reyes v. Odones*, *supra* note 65. See also *Sarmienta v. Manalite Homeowners Association, Inc.*, *supra* note 66 at 546.

3. That immediately after her purchase, plaintiff commissioned the services of one Engr. Richard G. Montano to conduct a survey of the aforementioned property. However, xxx during the survey (on) December 29, 1997, Engr. Montano was prevented by defendant EDITO PAGADORA from completing the survey, particularly on the portion of the property xxx contiguous to his property and even threatened Engr. Montano with bodily harm by pointing his gun xxx;

4. That through the assistance of the [police], x x x a survey of the property was finally made on January 21, 1998;

5. That on February 16, 1998, xxx plaintiff applied for a Fencing Permit x x x for which plaintiff was granted Permit No. 98-02-004 xxx;

6. However, when the fencing of the property was being made on March 2, 1998, plaintiff and her workers were again prevented from installing the fence on the property bounded by points 11, 12, 1, 2, and 3, as marked on the attached Relocation Plan, xxx with the defendant Edito Pagadora threatening the workers of the plaintiff with bodily harm and at the same time brandishing his gun, and claiming that the portion of the said property belongs to him;

7. That thru force, intimidation, strategy, threat and stealth, and against the will and without the consent of the herein plaintiff, defendant Edito Pagadora took possession of that portion of property measuring about 450 square meters, more or less, xxx by erecting a fence made of galvanized sheets xxx;

8. That defendant EDITO PAGADORA further claims, in order to intimidate the plaintiff, that he is a member of the Philippine National Police with the rank of Lieutenant Colonel xxx and that he always displays his gun every time the plaintiff and her workers made efforts to fence her property.

9. That due to the defendant's refusal and failure to vacate the premises and to turn over possession of the same to the plaintiff, plaintiff was constrained to hire the services of the undersigned counsel in the amount of ₱100,000.00 to protect her rights and interests plus ₱5,000.00 for every appearance in court. [69]

Judging by the terms of the complaint, We find that respondent has failed to make out a preliminary case for forcible entry.

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[69] Records, pp. 17-18, 42-44.

There is no ostensible averment in the complaint to the effect that she had been in prior possession of the subject property ahead of petitioner. Interestingly, indeed, there is neither reference – not even a circumstantial one – to an act of dispossession that may be attributed to petitioner in a way that would preliminarily establish that the latter had forcibly entered the disputed property and disturbed respondent's present or prior possession thereof. While there is actually an attribution to petitioner of force, intimidation, threat, strategy and stealth, it is nevertheless unascertainable whether these positive acts were employed to the end of disturbing respondent's prior possession of the property. What is only clear from the allegations, though, is that when respondent attempted to conduct a survey of the property which she bought in 1997, and later tried to build a fence around it, she and her workers were prevented by petitioner, through force, intimidation, threat, strategy and stealth, from completing the work upon the justification that he (petitioner) owned the property.

Verily, the material allegations in respondent's complaint do not establish a cause of action for forcible entry and hence, the MTC has not acquired jurisdiction over the same. This could have accounted for the outright dismissal of the complaint at the first instance and yet, the case still progressed. And if there is anything significant which eventually unfolded, it is the fact that the conflict between petitioner and respondent is indeed beyond the competence of the MTC to resolve, because it is actually a boundary dispute affecting the ownership of the 482-square-meter portion of the property occupied by petitioner but claimed by respondent as part of the property she acquired under her 1997 Contract to Sell.

In fact, in his answer to the complaint, petitioner declared that the property involved has always been in his open and peaceful possession since 1986 when, together with the rest of the landholding currently occupied by him and his family, it was acquired by his wife as an inheritance from her parents[70]

[70] *Id.* at 35-36.

– a claim that does not appear to have been refuted. Also, consistent with the MTC's findings, it is clear that the conflict arose when respondent, after her purchase of the property adjoining that of petitioner, was prevented by the latter from entering the disputed portion, enclosed by long-existing galvanized metal sheets and apparently forming part of his (petitioner's) land.[17] This all the more highlights the facts that said disputed portion, over which respondent lays claim as owner under her contract to sell, has been in the physical possession of petitioner, likewise under claim of ownership, but way ahead of respondent's.

In sum, We find that the conduct of the court-appointed relocation survey in this case to determine where the exact boundaries of the subject properties properly lie, has been but a futile exercise – and so is the Order of the RTC remanding the case to the MTC for the reception in evidence and evaluation of Engr. Encisa's report on the said survey – because not being necessary under the premises, they were anathema to the policy underlying the summary nature of ejectment proceedings: that is to provide an expeditious means of resolving the issue of possession, eschewing any question as to title and ownership which ought to proceed independently,[72] in order to speedily address breaches of the peace characteristic of disturbances of property possession.[73] This, especially because there is already an initial showing in the complaint itself that respondent, the plaintiff therein, has not been in actual possession of the property. The contending claims of ownership between petitioner and respondent in this case, as well as the opposing possessory rights that emanate from such claims, may not therefore be resolved in such summary action as ejectment but rather in a separate action.[74]

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[71] Records, pp. 209-211.

[72] *Flores v. Quitalig*, G.R. No. 178907, July 4, 2008, 557 SCRA 334, 337.

[73] *Pajuyo v. CA*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 510, citing *Reynoso v. Court of Appeals*, G.R. No. L-49344, February 23, 1989, 170 SCRA 546; *Aguilon v. Bohol*, G.R. No. L-27169, October 20, 1977, 79 SCRA 482.

[74] *Sarmienta v. Manalite Homeowners Association, Inc.*, *supra* note 66, at 549.

All told, it is unnecessary to pass upon the other issues raised in the petition at bar.

WHEREFORE, the petition is *GRANTED*. The Resolutions of the Court of Appeals in CA-G.R. SP No. 83933, dated June 8, 2004 and October 20, 2004, respectively affirming the decision of the Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 1581-01-SM, and denying reconsideration, are *SET ASIDE*. The September 18, 2000 decision of the Municipal Trial Court of Rodriguez, Rizal in Civil Case No. 1083, dismissing the complaint for forcible entry filed by respondent Julieta Ilao, is *REINSTATED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 171993. December 12, 2011]

MARC II MARKETING, INC. and LUCILA V. JOSON, *petitioners, vs.* **ALFREDO M. JOSON,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE OFFICERS; DISMISSAL OF A CORPORATE OFFICER IS ALWAYS REGARDED AS INTRA-CORPORATE CONTROVERSY WHICH IS UNDER RTC JURISDICTION.— While Article 217(a)2 of the Labor Code, as amended, provides that it is the Labor Arbiter who has the original and exclusive jurisdiction over cases involving termination or dismissal of workers when the person dismissed or terminated is a corporate officer, the case automatically falls within the province of the RTC. The dismissal of a corporate officer is always regarded

as a corporate act and/or an intra-corporate controversy. Under Section 5 of Presidential Decree No. 902-A, intra-corporate controversies are those controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity. **It also includes controversies in the election or appointments of** directors, trustees, **officers or managers of such corporations,** partnerships or associations.

2. ID.; ID.; ID.; THE POSITION OF GENERAL MANAGER IS NOT CONSIDERED A CORPORATE OFFICER AS IT WAS NOT MENTIONED IN THE CORPORATION'S BY-LAWS. — A careful perusal of petitioner corporation's by-laws, particularly paragraph 1, Section 1, Article IV, would explicitly reveal that its corporate officers are composed only of: (1) Chairman; (2) President; (3) one or more Vice-President; (4) Treasurer; and (5) Secretary. **The position of General Manager was not among those enumerated**. Paragraph 2, Section 1, Article IV of petitioner corporation's by-laws, empowered its Board of Directors to appoint such other officers as it may determine necessary or proper. It is by virtue of this enabling provision that petitioner corporation's Board of Directors allegedly approved a resolution to make the position of General Manager a corporate office, and, thereafter, appointed respondent thereto making him one of its corporate officers. All of these acts were done without first amending its by-laws so as to include the General Manager in its roster of corporate officers. With the given circumstances and in conformity with *Matling Industrial and Commercial Corporation v. Coros*, this Court rules that respondent was not a corporate officer of petitioner corporation because his position as General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation's by-laws empowering its Board of Directors to create additional officers, *i.e.*, General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. *Matling* clearly enunciated that the board of directors has no power to create other corporate offices without first

amending the corporate by-laws so as to include therein the newly created corporate office. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code. In view thereof, this Court holds that unless and until petitioner corporation's by-laws is amended for the inclusion of General Manager in the list of its corporate officers, such position cannot be considered as a corporate office within the realm of Section 25 of the Corporation Code. x x x It is also of no moment that respondent, being petitioner corporation's General Manager, was given the functions of a managing director by its Board of Directors. As held in *Matling*, the only officers of a corporation are those given that character either by the Corporation Code or by the corporate by-laws. It follows then that the corporate officers enumerated in the by-laws are the exclusive officers of the corporation while the rest could only be regarded as mere employees or subordinate officials. Respondent, in this case, though occupying a high ranking and vital position in petitioner corporation but which position was not specifically enumerated or mentioned in the latter's by-laws, can only be regarded as its employee or subordinate official. Noticeably, respondent's compensation as petitioner corporation's General Manager was set, fixed and determined not by the latter's Board of Directors but simply by its President, petitioner Lucila. The same was not subject to the approval of petitioner corporation's Board of Directors. This is an indication that respondent was an employee and not a corporate officer.

3. ID.; ID.; INTRA-CORPORATE CONTROVERSY; THAT THE GENERAL MANAGER WHO WAS DISMISSED WAS ALSO A DIRECTOR AND A STOCKHOLDER DOES NOT AUTOMATICALLY MAKE THE CASE AS AN INTRA-CORPORATE CONTROVERSY. — That respondent was also a director and a stockholder of petitioner corporation will not automatically make the case fall within the ambit of intra-corporate controversy and be subjected to RTC's jurisdiction. To reiterate, not all conflicts between the stockholders and the corporation are classified as intra-corporate. Other factors such as the status or relationship of the parties and the nature of the question that is the subject of the controversy must be considered in

determining whether the dispute involves corporate matters so as to regard them as intra-corporate controversies. As previously discussed, respondent was not a corporate officer of petitioner corporation but a mere employee thereof so there was no intra-corporate relationship between them. With regard to the subject of the controversy or issue involved herein, *i.e.*, respondent's dismissal as petitioner corporation's General Manager, the same did not present or relate to an intra-corporate dispute. To note, there was no evidence submitted to show that respondent's removal as petitioner corporation's General Manager carried with it his removal as its director and stockholder. Also, petitioners' allegation that respondent's claim of 30% share of petitioner corporation's net profit was by reason of his being its director and stockholder was without basis, thus, self-serving. Such an allegation was tantamount to a mere speculation for petitioners' failure to substantiate the same. In addition, it was not shown by petitioners that the position of General Manager was offered to respondent on account of his being petitioner corporation's director and stockholder. Also, in contrast to NLRC's findings, neither petitioner corporation's by-laws nor the Management Contract stated that respondent's appointment and termination from the position of General Manager was subject to the approval of petitioner corporation's Board of Directors. If, indeed, respondent was a corporate officer whose termination was subject to the approval of its Board of Directors, why is it that his termination was effected only by petitioner Lucila, President of petitioner corporation? The records are bereft of any evidence to show that respondent's dismissal was done with the conformity of petitioner corporation's Board of Directors or that the latter had a hand on respondent's dismissal. No board resolution whatsoever was ever presented to that effect.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OR CESSATION OF BUSINESS OPERATION AS AN AUTHORIZED CAUSE, EXPLAINED; REQUISITES.— Under Article 283 of the Labor Code, as amended, **one of the authorized causes in terminating the employment of an employee is the closing or cessation of operation of the establishment or undertaking**. x x x [T]he **closure or cessation of operations of establishment or undertaking may either be due to serious**

business losses or financial reverses or otherwise. If the closure or cessation was due to serious business losses or financial reverses, it is incumbent upon the employer to sufficiently and convincingly prove the same. If it is otherwise, the employer can lawfully close shop anytime as long as it was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees and as long as the terminated employees were paid in the amount corresponding to their length of service. Accordingly, under Article 283 of the Labor Code, as amended, there are **three requisites for a valid cessation of business operations**: (a) service of a **written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month before the intended date** thereof; (b) the cessation of business **must be *bona fide* in character**; and (c) **payment to the employees of termination pay** amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

5. ID.; ID.; ID.; ID.; RELIEFS GRANTED TO A DISMISSED EMPLOYEE DUE TO CLOSURE OF BUSINESS DONE IN GOOD FAITH. — A careful perusal of the records revealed that, indeed, petitioner corporation has stopped and ceased business operations beginning 30 June 1997. This was evidenced by a notarized Affidavit of Non-Operation dated 31 August 1998. There was also no showing that the cessation of its business operations was done in bad faith or to circumvent the Labor Code. Nevertheless, in doing so, petitioner corporation failed to comply with the one-month prior written notice rule. The records disclosed that respondent, being petitioner corporation's employee, and the DOLE were not given a written notice at least one month before petitioner corporation ceased its business operations. Moreover, the records clearly show that respondent's dismissal was effected on the same date that petitioner corporation decided to stop and cease its operation. Similarly, respondent was not paid separation pay upon termination of his employment. As respondent's dismissal was **not** due to serious business losses, respondent is entitled to payment of separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher.

6. ID.; ID.; ID.; ID.; ID.; EMPLOYER'S FAILURE TO COMPLY WITH ONE-MONTH PRIOR WRITTEN NOTICE RULE ENTITLES THE EMPLOYEE TO AN AWARD OF NOMINAL DAMAGES. — The records of this case disclosed that there was absolutely no written notice given by petitioner corporation to the respondent and to the DOLE prior to the cessation of its business operations. This is evident from the fact that petitioner corporation effected respondent's dismissal on the same date that it decided to stop and cease its business operations. The necessary consequence of such failure to comply with the one-month prior written notice rule, which constitutes a violation of an employee's right to statutory due process, is the payment of indemnity in the form of nominal damages.

7. ID.; ID.; ID.; ID.; ID.; A PRESIDENT OF THE CORPORATION WHO ACTED IN BAD FAITH IS HELD SOLIDARILY LIABLE FOR EMPLOYEE'S DISMISSAL. — As a rule, corporation has a personality separate and distinct from its officers, stockholders and members such that **corporate officers are not personally liable for their official acts unless it is shown that they have exceeded their authority**. However, this corporate veil can be pierced when the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues. Under the Labor Code, for instance, when a corporation violates a provision declared to be penal in nature, the penalty shall be imposed upon the guilty officer or officers of the corporation. Based on the prevailing circumstances in this case, petitioner Lucila, being the President of petitioner corporation, acted in bad faith and with malice in effecting respondent's dismissal from employment. Although petitioner corporation has a valid cause for dismissing respondent due to cessation of business operations, however, the latter's dismissal therefrom was done abruptly by its President, petitioner Lucila. Respondent was not given the required one-month prior written notice that petitioner corporation will already cease its business operations. As can be gleaned from the records, respondent was dismissed outright by petitioner Lucila on the same day that petitioner corporation decided to stop and cease its business operations. Worse, respondent was not given separation pay considering

that petitioner corporation's cessation of business was not due to business losses or financial reverses.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for petitioners.
Edilberto G. Carmelo for respondent.

D E C I S I O N

PEREZ, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, herein petitioners Marc II Marketing, Inc. and Lucila V. Joson assailed the Decision[1] dated 20 June 2005 of the Court of Appeals in CA-G.R. SP No. 76624 for reversing and setting aside the Resolution[2] of the National Labor Relations Commission (NLRC) dated 15 October 2002, thereby affirming the Labor Arbiter's Decision[3] dated 1 October 2001 finding herein respondent Alfredo M. Joson's dismissal from employment as illegal. In the questioned Decision, the Court of Appeals upheld the Labor Arbiter's jurisdiction over the case on the basis that respondent was not an officer but a mere employee of petitioner Marc II Marketing, Inc., thus, totally disregarding the latter's allegation of intra-corporate controversy. Nonetheless, the Court of Appeals remanded the case to the NLRC for further proceedings to determine the proper amount of monetary awards that should be given to respondent.

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[1] Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Magdangal M. De Leon, concurring. *Rollo*, pp. 34-52.

[2] Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring. *Id*. at 124-133.

[3] Penned by Labor Arbiter Pablo C. Espiritu, Jr. *Id*. at 81-88.

Assailed as well is the Court of Appeals Resolution[4] dated 7 March 2006 denying their Motion for Reconsideration.

Petitioner Marc II Marketing, Inc. (petitioner corporation) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in buying, marketing, selling and distributing in retail or wholesale for export or import household appliances and products and other items.[5] It took over the business operations of Marc Marketing, Inc. which was made non-operational following its incorporation and registration with the Securities and Exchange Commission (SEC). Petitioner Lucila V. Joson (Lucila) is the President and majority stockholder of petitioner corporation. She was also the former President and majority stockholder of the defunct Marc Marketing, Inc.

Respondent Alfredo M. Joson (Alfredo), on the other hand, was the General Manager, incorporator, director and stockholder of petitioner corporation.

The controversy of this case arose from the following factual milieu:

Before petitioner corporation was officially incorporated,[6] respondent has already been engaged by petitioner Lucila, in her capacity as President of Marc Marketing, Inc., to work as the General Manager of petitioner corporation. It was formalized through the execution of a Management Contract[7] dated 16 January 1994 under the letterhead of Marc Marketing, Inc.[8] as

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[4] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Edgardo P. Cruz and Mariano C. Del Castillo (now a Member of this Court), concurring. *Id*. at 54-55.

[5] Articles of Incorporation of Marc II Marketing, Inc. *Id*. at 59.

[6] As evidenced by its Certificate of Incorporation bearing S.E.C. Reg. No. AS094-007318. *Id*. at 58.

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

[8] It was incorporated on 24 July 1984 as evidenced by its Certificate of Incorporation bearing S.E.C. Reg. No. 121722. CA *rollo*, p. 228.

petitioner corporation is yet to be incorporated at the time of its execution. It was explicitly provided therein that respondent shall be entitled to 30% of its net income for his work as General Manager. Respondent will also be granted 30% of its net profit to compensate for the possible loss of opportunity to work overseas.[9]

Pending incorporation of petitioner corporation, respondent was designated as the General Manager of Marc Marketing, Inc., which was then in the process of winding up its business. For occupying the said position, respondent was among its corporate officers by the express provision of Section 1, Article IV[10] of its by-laws.[11]

On 15 August 1994, petitioner corporation was officially incorporated and registered with the SEC. Accordingly, Marc Marketing, Inc. was made non-operational. Respondent continued to discharge his duties as General Manager but this time under petitioner corporation.

Pursuant to Section 1, Article IV[12] of petitioner corporation's by-laws,[13] its corporate officers are as follows: Chairman, President, one or more Vice-President(s), Treasurer and Secretary. Its Board of Directors, however, may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Per an undated Secretary's Certificate,[14] petitioner corporation's Board of Directors conducted a meeting on 29 August 1994 where respondent was appointed as one of its corporate officers with the designation or title of General Manager to function as a managing director with other duties and

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[9] Per Management Contract dated 16 January 1994. *Rollo*, pp. 56-57.

[10] CA *rollo*, p. 239.

[11] *Id.* at 235-242.

[12] *Id.* at 183.

[13] *Id.* at 177-190.

[14] Per Secretary's Certificate. *Rollo*, p. 69.

responsibilities that the Board of Directors may provide and authorized.[15]

Nevertheless, on 30 June 1997, petitioner corporation decided to stop and cease its operations, as evidenced by an Affidavit of Non-Operation[16] dated 31 August 1998, due to poor sales collection aggravated by the inefficient management of its affairs. On the same date, it formally informed respondent of the cessation of its business operation. Concomitantly, respondent was apprised of the termination of his services as General Manager since his services as such would no longer be necessary for the winding up of its affairs.[17]

Feeling aggrieved, respondent filed a Complaint for Reinstatement and Money Claim against petitioners before the Labor Arbiter which was docketed as NLRC NCR Case No. 00-03-04102-99.

In his complaint, respondent averred that petitioner Lucila dismissed him from his employment with petitioner corporation due to the feeling of hatred she harbored towards his family. The same was rooted in the filing by petitioner Lucila's estranged husband, who happened to be respondent's brother, of a Petition for Declaration of Nullity of their Marriage.[18]

For the parties' failure to settle the case amicably, the Labor Arbiter required them to submit their respective position papers. Respondent complied but petitioners opted to file a Motion to Dismiss grounded on the Labor Arbiter's lack of jurisdiction as the case involved an intra-corporate controversy, which jurisdiction belongs to the SEC [now with the Regional Trial Court (RTC)].[19] Petitioners similarly raised therein the ground of prescription of respondent's monetary claim.

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[15] *Id*.

[16] *Id.* at 70.

[17] NLRC Resolution dated 15 October 2002. CA *rollo*, p. 20.

[18] Court of Appeals Decision dated 20 June 2005. *Rollo*, p. 39.

[19] This is pursuant to Section 5.2 of Republic Act No. 8799, known as "*Securities Regulation Code*," which was signed into law on 19 July

On 5 September 2000, the Labor Arbiter issued an Order[20] deferring the resolution of petitioners' Motion to Dismiss until the final determination of the case. The Labor Arbiter also reiterated his directive for petitioners to submit position paper. Still, petitioners did not comply. Insisting that the Labor Arbiter has no jurisdiction over the case, they instead filed an Urgent Motion to Resolve the Motion to Dismiss and the Motion to Suspend Filing of Position Paper.

In an Order[21] dated 15 February 2001, the Labor Arbiter denied both motions and declared final the Order dated 5 September 2000. The Labor Arbiter then gave petitioners a period of five days from receipt thereof within which to file position paper, otherwise, their Motion to Dismiss will be treated as their position paper and the case will be considered submitted for decision.

Petitioners, through counsel, moved for extension of time to submit position paper. Despite the requested extension, petitioners still failed to submit the same. Accordingly, the case was submitted for resolution.

On 1 October 2001, the Labor Arbiter rendered his Decision in favor of respondent. Its decretal portion reads as follows:

2000. It expressly provides that: "The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby **transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court**: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed. [**Emphasis supplied**.]

[20] Penned by Labor Arbiter Pablo C. Espiritu, Jr. CA *rollo*, pp. 191-192.

[21] *Id.* at 193-194.

WHEREFORE, premises considered, judgment is hereby rendered **declaring [respondent's] dismissal from employment illegal**. Accordingly, [petitioners] are hereby ordered:

1. To reinstate [respondent] to his former or equivalent position without loss of seniority rights, benefits, and privileges;

2. Jointly and severally liable to pay [respondent's] unpaid wages in the amount of ₱450,000.00 per month from [26 March 1996] up to time of dismissal in the total amount of ₱6,300,000.00;

3. Jointly and severally liable to pay [respondent's] full backwages in the amount of ₱450,000.00 per month from date of dismissal until actual reinstatement which at the time of promulgation amounted to ₱21,600,000.00;

4. Jointly and severally liable to pay moral damages in the amount of ₱100,000.00 and attorney's fees in the amount of 5% of the total monetary award.[22] [Emphasis supplied.]

In the aforesaid Decision, the Labor Arbiter initially resolved petitioners' Motion to Dismiss by finding the ground of lack of jurisdiction to be without merit. The Labor Arbiter elucidated that petitioners failed to adduce evidence to prove that the present case involved an intra-corporate controversy. Also, respondent's money claim did not arise from his being a director or stockholder of petitioner corporation but from his position as being its General Manager. The Labor Arbiter likewise held that respondent was not a corporate officer under petitioner corporation's by-laws. As such, respondent's complaint clearly arose from an employer-employee relationship, thus, subject to the Labor Arbiter's jurisdiction.

The Labor Arbiter then declared respondent's dismissal from employment as illegal. Respondent, being a regular employee of petitioner corporation, may only be dismissed for a valid cause and upon proper compliance with the requirements of due process. The records, though, revealed that petitioners failed to present any evidence to justify respondent's dismissal.

[22] Labor Arbiter's Decision dated 1 October 2001. *Rollo*, pp. 87-88.

Aggrieved, petitioners appealed the aforesaid Labor Arbiter's Decision to the NLRC.

In its Resolution dated 15 October 2002, the NLRC ruled in favor of petitioners by giving credence to the Secretary's Certificate, which evidenced petitioner corporation's Board of Directors' meeting in which a resolution was approved appointing respondent as its corporate officer with designation as General Manager. Therefrom, the NLRC reversed and set aside the Labor Arbiter's Decision dated 1 October 2001 and dismissed respondent's Complaint for want of jurisdiction.[23]

The NLRC enunciated that the validity of respondent's appointment and termination from the position of General Manager was made subject to the approval of petitioner corporation's Board of Directors. Had respondent been an ordinary employee, such board action would not have been required. As such, it is clear that respondent was a corporate officer whose dismissal involved a purely intra-corporate controversy. The NLRC went further by stating that respondent's claim for 30% of the net profit of the corporation can only emanate from his right of ownership therein as stockholder, director and/or corporate officer. Dividends or profits are paid only to stockholders or directors of a corporation and not to any ordinary employee in the absence of any profit sharing scheme. In addition, the question of remuneration of a person who is not a mere employee but a stockholder and officer of a corporation is not a simple labor problem. Such matter comes within the ambit of corporate affairs and management and is an intra-corporate controversy in contemplation of the Corporation Code.[24]

When respondent's Motion for Reconsideration was denied in another Resolution[25] dated 23 January 2003, he filed a Petition

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[23] *Id.* at 132.

[24] NLRC Resolution dated 15 October 2002. CA *rollo*, pp. 23-24.

[25] Penned by Presiding Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring. *Id.* at 27-28.

for *Certiorari* with the Court of Appeals ascribing grave abuse of discretion on the part of the NLRC.

On 20 June 2005, the Court of Appeals rendered its now assailed Decision declaring that the Labor Arbiter has jurisdiction over the present controversy. It upheld the finding of the Labor Arbiter that respondent was a mere employee of petitioner corporation, who has been illegally dismissed from employment without valid cause and without due process. Nevertheless, it ordered the records of the case remanded to the NLRC for the determination of the appropriate amount of monetary awards to be given to respondent. The Court of Appeals, thus, decreed:

> WHEREFORE, the petition is by us PARTIALLY GRANTED. The Labor Arbiter is DECLARED to have jurisdiction over the controversy. The records are REMANDED to the NLRC for further proceedings to determine the appropriate amount of monetary awards to be adjudged in favor of [respondent]. Costs against the [petitioners] *in solidum*.[26]

Petitioners moved for its reconsideration but to no avail.[27]

Petitioners are now before this Court with the following assignment of errors:

I.

THE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DECIDING THAT THE NLRC HAS THE JURISDICTION IN RESOLVING A PURELY INTRA-CORPORATE MATTER WHICH IS COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION/REGIONAL TRIAL COURT.

II.

ASSUMING, *GRATIS ARGUENDO*, THAT THE NLRC HAS JURISDICTION OVER THE CASE, STILL THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN [RESPONDENT]

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[26] *Rollo*, pp. 51-52.

[27] Per Court of Appeals Resolution dated 7 March 2006. *Id.* at 54-55.

ALFREDO M. JOSON AND MARC II MARKETING, INC. [PETITIONER CORPORATION].

III.

ASSUMING *GRATIS ARGUENDO* THAT THE NLRC HAS JURISDICTION OVER THE CASE, THE COURT OF APPEALS ERRED IN NOT RULING THAT THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING MULTI-MILLION PESOS IN COMPENSATION AND BACKWAGES BASED ON THE PURPORTED GROSS INCOME OF [PETITIONER CORPORATION].

IV.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT MAKING ANY FINDINGS AND RULING THAT [PETITIONER LUCILA] SHOULD NOT BE HELD SOLIDARILY LIABLE IN THE ABSENCE OF EVIDENCE OF MALICE AND BAD FAITH ON HER PART.[28]

Petitioners fault the Court of Appeals for having sustained the Labor Arbiter's finding that respondent was not a corporate officer under petitioner corporation's by-laws. They insist that there is no need to amend the corporate by-laws to specify who its corporate officers are. The resolution issued by petitioner corporation's Board of Directors appointing respondent as General Manager, coupled with his assumption of the said position, positively made him its corporate officer. More so, respondent's position, being a creation of petitioner corporation's Board of Directors pursuant to its by-laws, is a corporate office sanctioned by the Corporation Code and the doctrines previously laid down by this Court. Thus, respondent's removal as petitioner corporation's General Manager involved a purely intra-corporate controversy over which the RTC has jurisdiction.

Petitioners further contend that respondent's claim for 30% of the net profit of petitioner corporation was anchored on the purported Management Contract dated 16 January 1994. It should be noted, however, that said Management Contract was executed at the time petitioner corporation was still nonexistent and had

[28] Petition for Review. *Id*. at 10-11.

no juridical personality yet. Such being the case, respondent cannot invoke any legal right therefrom as it has no legal and binding effect on petitioner corporation. Moreover, it is clear from the Articles of Incorporation of petitioner corporation that respondent was its director and stockholder. Indubitably, respondent's claim for his share in the profit of petitioner corporation was based on his capacity as such and not by virtue of any employer-employee relationship.

Petitioners further avow that even if the present case does not pose an intra-corporate controversy, still, the Labor Arbiter's multi-million peso awards in favor of respondent were erroneous. The same was merely based on the latter's self-serving computations without any supporting documents.

Finally, petitioners maintain that petitioner Lucila cannot be held solidarily liable with petitioner corporation. There was neither allegation nor iota of evidence presented to show that she acted with malice and bad faith in her dealings with respondent. Moreover, the Labor Arbiter, in his Decision, simply concluded that petitioner Lucila was jointly and severally liable with petitioner corporation without making any findings thereon. It was, therefore, an error for the Court of Appeals to hold petitioner Lucila solidarily liable with petitioner corporation.

From the foregoing arguments, the initial question is which between the Labor Arbiter or the RTC, has jurisdiction over respondent's dismissal as General Manager of petitioner corporation. Its resolution necessarily entails the determination of whether respondent as General Manager of petitioner corporation is a corporate officer or a mere employee of the latter.

While Article 217(a)2[29] of the Labor Code, as amended, provides that it is the Labor Arbiter who has the original and exclusive jurisdiction over cases involving termination or dismissal

[29] Article 217. *Jurisdiction of the Labor Arbiters and the Commission.* – (a) Except as otherwise provided under this Code, **the Labor Arbiters shall have original and exclusive jurisdiction** to hear and decide, within

of workers when the person dismissed or terminated is a corporate officer, the case automatically falls within the province of the RTC. The dismissal of a corporate officer is always regarded as a corporate act and/or an intra-corporate controversy.[30]

Under Section 5[31] of Presidential Decree No. 902-A, intra-corporate controversies are those controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity. **It also includes controversies**

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thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, **the following cases involving all workers, whether agricultural or non-agricultural**:

1. x x x.

2. **Termination disputes**; [Emphasis supplied.]

[30] *Easycall Communications Phils., Inc. v. King*, 514 Phil. 296, 302 (2005).

[31] **Sec. 5.** In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

in the election or appointments of directors, trustees, **officers or managers of such corporations,** partnerships or associations.[32]

Accordingly, in determining whether the SEC (now the RTC) has jurisdiction over the controversy, the status or relationship of the parties and the nature of the question that is the subject of their controversy must be taken into consideration.[33]

In *Easycall Communications Phils., Inc. v. King*, this Court held that in the context of Presidential Decree No. 902-A, **corporate officers** are those officers of a corporation who **are given that character either by the Corporation Code or by the corporation's by-laws**. Section 25[34] of the Corporation Code specifically enumerated who are these corporate officers, to wit: (1) president; (2) secretary; (3)

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[32] *Matling Industrial and Commercial Corporation v. Coros*, G.R. No. 157802, 13 October 2010, 633 SCRA 12, 21-22.

[33] *Nacpil v. International Broadcasting Corporation*, 429 Phil. 410, 416 (2002); *Union Motors Corporation v. The National Labor Relations Commission*, 373 Phil. 310, 319 (1999).

[34] **Sec. 25.** ***Corporate officers, quorum.*** — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

treasurer; and (4) **such other officers as may be provided for in the by-laws**.[35]

The aforesaid Section 25 of the Corporation Code, particularly the phrase "such other officers as may be provided for in the by-laws," has been clarified and elaborated in this Court's recent pronouncement in *Matling Industrial and Commercial Corporation v. Coros*, where it held, thus:

> Conformably with Section 25, **a position must be expressly mentioned in the [b]y-[l]aws in order to be considered as a corporate office**. **Thus, the creation of an office pursuant to or under a [b]y-[l]aw enabling provision is not enough to make a position a corporate office**. [In] *Guerrea v. Lezama* [citation omitted] the first ruling on the matter, held that **the only officers of a corporation were those given that character either by the Corporation Code or by the [b]y-[l]aws; the rest of the corporate officers could be considered only as employees or subordinate officials**. Thus, it was held in *Easycall Communications Phils., Inc. v. King* [citation omitted]:
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> > **An "office" is created by the charter of the corporation** and the officer is elected by the directors or stockholders. On the other hand, an **employee occupies no office and generally is employed** not by the action of the directors or stockholders but **by the managing officer of the corporation who also determines the compensation to be paid to such employee**.
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> xxx xxx xxx
>
> **This interpretation is the correct application of Section 25 of the Corporation Code,** which plainly states that the corporate officers are the President, Secretary, Treasurer and such other officers as may be provided for in the [b]y-[l]aws. **Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation's [b]y[l]aws**.
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> **A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the**

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[35] *Easycall Communications Phils., Inc. v. King*, *supra* note 30 at 302.

[b]y-[l]aws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the **SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993** [citation omitted], to wit:

> Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate [b]y-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code** and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.[36] [Emphasis supplied.]

A careful perusal of petitioner corporation's by-laws, particularly paragraph 1, Section 1, Article IV,[37] would explicitly reveal that its corporate officers are composed only of: (1) Chairman; (2) President; (3) one or more Vice-President; (4)

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[36] *Matling Industrial and Commercial Corporation v. Coros, supra* note 32 at 26-27.

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ARTICLE IV

OFFICERS

Section 1. Election/Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the Chairman, the President, one or more Vice-President, the Treasurer, and the Secretary, at said meeting.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

Treasurer; and (5) Secretary.[38] **The position of General Manager was not among those enumerated**.

Paragraph 2, Section 1, Article IV of petitioner corporation's by-laws, empowered its Board of Directors to appoint such other officers as it may determine necessary or proper.[39] It is by virtue of this enabling provision that petitioner corporation's Board of Directors allegedly approved a resolution to make the position of General Manager a corporate office, and, thereafter, appointed respondent thereto making him one of its corporate officers. All of these acts were done without first amending its by-laws so as to include the General Manager in its roster of corporate officers.

With the given circumstances and in conformity with *Matling Industrial and Commercial Corporation v. Coros*, this Court rules that respondent was not a corporate officer of petitioner corporation because his position as General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation's by-laws empowering its Board of Directors to create additional officers, *i.e.*, General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. *Matling* clearly enunciated that the board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code.[40] In view thereof, this Court holds that unless and until petitioner corporation's by-laws is amended for the inclusion of General Manager in the list of its corporate officers, such position cannot be considered

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[38] CA *rollo*, pp. 183-186.

[39] *Id*.

[40] *Matling Industrial and Commercial Corporation v. Coros, supra* note 32 at 27.

as a corporate office within the realm of Section 25 of the Corporation Code.

This Court considers that the interpretation of Section 25 of the Corporation Code laid down in *Matling* safeguards the constitutionally enshrined right of every employee to security of tenure. To allow the creation of a corporate officer position by a simple inclusion in the corporate by-laws of an enabling clause empowering the board of directors to do so can result in the circumvention of that constitutionally well-protected right.[41]

It is also of no moment that respondent, being petitioner corporation's General Manager, was given the functions of a managing director by its Board of Directors. As held in *Matling*, the only officers of a corporation are those given that character either by the Corporation Code or by the corporate by-laws. It follows then that the corporate officers enumerated in the by-laws are the exclusive officers of the corporation while the rest could only be regarded as mere employees or subordinate officials. Respondent, in this case, though occupying a high ranking and vital position in petitioner corporation but which position was not specifically enumerated or mentioned in the latter's by-laws, can only be regarded as its employee or subordinate official.[42] Noticeably, respondent's compensation as petitioner corporation's General Manager was set, fixed and determined not by the latter's Board of Directors but simply by its President, petitioner Lucila. The same was not subject to the approval of petitioner corporation's Board of Directors. This is an indication that respondent was an employee and not a corporate officer.

To prove that respondent was petitioner corporation's corporate officer, petitioners presented before the NLRC an undated Secretary's Certificate showing that corporation's Board of Directors approved a resolution making respondent's position of General Manager a corporate office. The submission, however, of the said undated Secretary's Certificate will not

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[41] *Id.* at 27.

[42] *Id.*

change the fact that respondent was an employee. The certification does not amount to an amendment of the by-laws which is needed to make the position of General Manager a corporate office.

Moreover, as has been aptly observed by the Court of Appeals, the board resolution mentioned in that undated Secretary's Certificate and the latter itself were obvious fabrications, a mere afterthought. Here we quote with conformity the Court of Appeals findings on this matter stated in this wise:

> The board resolution is an obvious fabrication. Firstly, if it had been in existence since [29 August 1994], why did not [herein petitioners] attach it to their [M]otion to [D]ismiss filed on [26 August 1999], when it could have been the best evidence that [herein respondent] was a corporate officer? Secondly, why did they report the [respondent] instead as [herein petitioner corporation's] employee to the Social Security System [(SSS)] on [11 October 1994] or a later date than their [29 August 1994] board resolution? Thirdly, why is there no indication that the [respondent], the person concerned himself, and the [SEC] were furnished with copies of said board resolution? And, lastly, why is the corporate [S]ecretary's [C]ertificate not notarized in keeping with the customary procedure? That is why we called it manipulative evidence as it was a shameless sham meant to be thrown in as a wild card to muddle up the [D]ecision of the Labor Arbiter to the end that it be overturned as the latter had firmly pointed out that [respondent] is not a corporate officer under [petitioner corporation's by-laws]. Regrettably, the [NLRC] swallowed the bait hook-line-and sinker. It failed to see through its nature as a belatedly manufactured evidence. **And even on the assumption that it were an authentic board resolution, it did not make [respondent] a corporate officer as the board did not first and properly create the position of a [G]eneral [M]anager by amending its by-laws**.
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> (2) The scope of the term "officer" in the phrase "and such other officers as may be provided for in the by-laws["] (Sec. 25, par. 1), would naturally depend much on the provisions of the by-laws of the corporation. (SEC Opinion, [4 December 1991.]) If the by-laws enumerate the officers to be elected by the board, the provision is conclusive, and the **board is without power to create new offices without amending the by-laws**. (SEC

Opinion, [19 October 1971.])

(3) If, for example, the general manager of a corporation is not listed as an officer, he is to be classified as an employee although he has always been considered as one of the principal officers of a corporation [citing De Leon, H. S., The Corporation Code of the Philippines Annotated, 1993 Ed., p. 215.][43] [Emphasis supplied.]

That respondent was also a director and a stockholder of petitioner corporation will not automatically make the case fall within the ambit of intra-corporate controversy and be subjected to RTC's jurisdiction. To reiterate, not all conflicts between the stockholders and the corporation are classified as intra-corporate. Other factors such as the status or relationship of the parties and the nature of the question that is the subject of the controversy[44] must be considered in determining whether the dispute involves corporate matters so as to regard them as intra-corporate controversies.[45] As previously discussed, respondent was not a corporate officer of petitioner corporation but a mere employee thereof so there was no intra-corporate relationship between them. With regard to the subject of the controversy or issue involved herein, *i.e.*, respondent's dismissal as petitioner corporation's General Manager, the same did not present or relate to an intra-corporate dispute. To note, there was no evidence submitted to show that respondent's removal as petitioner corporation's General Manager carried with it his removal as its director and stockholder. Also, petitioners' allegation that respondent's claim of 30% share of petitioner corporation's net profit was by reason of his being its director and stockholder was without basis, thus, self-serving. Such an allegation was tantamount to a mere speculation for petitioners' failure to substantiate the same.

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[43] *Rollo*, pp. 48-49.

[44] *Nacpil v. International Broadcasting Corporation*, *supra* note 33 at 416; *Union Motors Corporation v. The National Labor Relations Commission*, *supra* note 33 at 319.

[45] *Real v. Sangu Philippines, Inc. and/or Kiichi Abe*, G.R. No. 168757, 19 January 2011.

In addition, it was not shown by petitioners that the position of General Manager was offered to respondent on account of his being petitioner corporation's director and stockholder. Also, in contrast to NLRC's findings, neither petitioner corporation's by-laws nor the Management Contract stated that respondent's appointment and termination from the position of General Manager was subject to the approval of petitioner corporation's Board of Directors. If, indeed, respondent was a corporate officer whose termination was subject to the approval of its Board of Directors, why is it that his termination was effected only by petitioner Lucila, President of petitioner corporation? The records are bereft of any evidence to show that respondent's dismissal was done with the conformity of petitioner corporation's Board of Directors or that the latter had a hand on respondent's dismissal. No board resolution whatsoever was ever presented to that effect.

With all the foregoing, this Court is fully convinced that, indeed, respondent, though occupying the General Manager position, was not a corporate officer of petitioner corporation rather he was merely its employee occupying a high-ranking position.

Accordingly, respondent's dismissal as petitioner corporation's General Manager did not amount to an intra-corporate controversy. Jurisdiction therefor properly belongs with the Labor Arbiter and not with the RTC.

Having established that respondent was not petitioner corporation's corporate officer but merely its employee, and that, consequently, jurisdiction belongs to the Labor Arbiter, this Court will now determine if respondent's dismissal from employment is illegal.

It was not disputed that respondent worked as petitioner corporation's General Manager from its incorporation on 15 August 1994 until he was dismissed on 30 June 1997. The cause of his dismissal was petitioner corporation's cessation of business operations due to poor sales collection aggravated by the inefficient management of its affairs.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer. The latter's failure to discharge that burden would necessarily result in a finding that the dismissal is unjustified.[46]

Under Article 283 of the Labor Code, as amended, **one of the authorized causes in terminating the employment of an employee is the closing or cessation of operation of the establishment or undertaking**. Article 283 of the Labor Code, as amended, reads, 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 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. x x x 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 (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**. [Emphasis supplied.]

From the afore-quoted provision, the **closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise**. If the closure or cessation was due to serious business losses or financial reverses, it is incumbent upon the employer to sufficiently and convincingly prove the same. If it is otherwise, the employer can lawfully close shop anytime as long as it was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees

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[46] *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 759 (2005).

and as long as the terminated employees were paid in the amount corresponding to their length of service.[47]

Accordingly, under Article 283 of the Labor Code, as amended, there are **three requisites for a valid cessation of business operations**: (a) service of a **written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month before the intended date** thereof; (b) the cessation of business **must be *bona fide* in character**; and (c) **payment to the employees of termination pay** amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

In this case, it is obvious that petitioner corporation's cessation of business operations was not due to serious business losses. Mere poor sales collection, coupled with mismanagement of its affairs does not amount to serious business losses. Nonetheless, petitioner corporation can still validly cease or close its business operations because such right is legally allowed, so long as it was not done for the purpose of circumventing the provisions on termination of employment embodied in the Labor Code.[48] As has been stressed by this Court in *Industrial Timber Corporation v. Ababon*, thus:

> Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.[49]

A careful perusal of the records revealed that, indeed, petitioner corporation has stopped and ceased business operations beginning 30 June 1997. This was evidenced by a notarized Affidavit of Non-Operation dated 31 August 1998. There was also no showing

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[47] *Industrial Timber Corporation v. Ababon*, 515 Phil. 805, 819 (2006).

[48] *Id.* at 818.

[49] *Id.* at 819. *See* also *Alabang Country Club, Inc. v. National Labor Relations Commission*, 503 Phil. 937, 952-953 (2005).

that the cessation of its business operations was done in bad faith or to circumvent the Labor Code. Nevertheless, in doing so, petitioner corporation failed to comply with the one-month prior written notice rule. The records disclosed that respondent, being petitioner corporation's employee, and the DOLE were not given a written notice at least one month before petitioner corporation ceased its business operations. Moreover, the records clearly show that respondent's dismissal was effected on the same date that petitioner corporation decided to stop and cease its operation. Similarly, respondent was not paid separation pay upon termination of his employment.

As respondent's dismissal was **not** due to serious business losses, respondent is entitled to payment of separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher. The rationale for this was laid down in *Reahs Corporation v. National Labor Relations Commission*,[50] thus:

> **The grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee**, except only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition. **In the absence of such proof of serious business losses or financial reverses, the employer closing his business is obligated to pay his employees and workers their separation pay**.
>
> The rule, therefore, is that **in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay**. **This is consistent with the state policy of treating labor as a primary social economic force, affording full protection to its rights as well as its welfare**. The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons.[51] [Emphasis supplied.]

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[50] G.R. No. 117473, 15 April 1997, 271 SCRA 247.

[51] *Id.* at 254.

As previously discussed, respondent's dismissal was due to an authorized cause, however, petitioner corporation failed to observe procedural due process in effecting such dismissal. In *Culili v. Eastern Telecommunications Philippines, Inc.*,[52] this Court made the following pronouncements, thus:

> x x x there are **two aspects which characterize the concept of due process under the Labor Code**: one is **substantive** — whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is **procedural** — the manner in which the dismissal was effected.
>
> Section 2(d), Rule I, Book VI of the Rules Implementing the Labor Code provides:
>
> > (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
> >
> > x x x x x x x x x
> >
> > For termination of employment as defined in Article 283 of the Labor Code, the **requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination**, **specifying the ground or grounds for termination**.
>
> In *Mayon Hotel & Restaurant v. Adana*, [citation omitted] we observed:
>
> > The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination.[53] [Emphasis supplied].

The records of this case disclosed that there was absolutely no written notice given by petitioner corporation to the respondent

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[52] G.R. No. 165381, 9 February 2011.

[53] *Id*.

and to the DOLE prior to the cessation of its business operations. This is evident from the fact that petitioner corporation effected respondent's dismissal on the same date that it decided to stop and cease its business operations. The necessary consequence of such failure to comply with the one-month prior written notice rule, which constitutes a violation of an employee's right to statutory due process, is the payment of indemnity in the form of nominal damages.[54] In *Culili v. Eastern Telecommunications Philippines, Inc.*, this Court further held:

> In *Serrano v. National Labor Relations Commission* [citation omitted], we noted that "a job is more than the salary that it carries." There is a psychological effect or a stigma in immediately finding one's self laid off from work. This is exactly why our labor laws have provided for mandating procedural due process clauses. Our laws, **while recognizing the right of employers to terminate employees it cannot sustain, also recognize the employee's right to be properly informed of the impending severance of his ties with the company he is working for.** x x x.
>
> x x x Over the years, this Court has had the opportunity to reexamine the sanctions imposed upon employers who fail to comply with the procedural due process requirements in terminating its employees. In *Agabon v. National Labor Relations Commission* [citation omitted], this Court reverted back to the doctrine in *Wenphil Corporation v. National Labor Relations Commission* [citation omitted] and held that **where the dismissal is due to a just or authorized cause, but without observance of the due process requirements, the dismissal may be upheld but the employer must pay an indemnity to the employee**. The sanctions to be imposed however, must be stiffer than those imposed in *Wenphil* to achieve a result fair to both the employers and the employees.
>
> In *Jaka Food Processing Corporation v. Pacot* [citation omitted], this Court, taking a cue from *Agabon*, held that since there is a clear-cut distinction between a dismissal due to a just cause and a dismissal due to an authorized cause, the legal implications for employers who fail to comply with the notice requirements must also be treated differently:

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[54] *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, 29 September 2010, 631 SCRA 529, 542-543.

> Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[55] [Emphasis supplied.]

Thus, in addition to separation pay, respondent is also entitled to an award of nominal damages. In conformity with this Court's ruling in *Culili v. Eastern Telecommunications Philippines, Inc.* and *Shimizu Phils. Contractors, Inc. v. Callanta*, both citing *Jaka Food Processing Corporation v. Pacot*,[56] this Court fixed the amount of nominal damages to ₱50,000.00.

With respect to petitioners' contention that the Management Contract executed between respondent and petitioner Lucila has no binding effect on petitioner corporation for having been executed way before its incorporation, this Court finds the same meritorious.

Section 19 of the Corporation Code expressly provides:

> **Sec. 19.** ***Commencement of corporate existence.*** – A private corporation formed or organized under this Code **commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal**; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law. [Emphasis supplied.]

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[55] *Culili v. Eastern Telecommunications Philippines, Inc., supra* note 53.

[56] 494 Phil. 114, 122-123 (2005).

Logically, there is no corporation to speak of prior to an entity's incorporation. And no contract entered into before incorporation can bind the corporation.

As can be gleaned from the records, the Management Contract dated 16 January 1994 was executed between respondent and petitioner Lucila months before petitioner corporation's incorporation on 15 August 1994. Similarly, it was done when petitioner Lucila was still the President of Marc Marketing, Inc. Undeniably, it cannot have any binding and legal effect on petitioner corporation. Also, there was no evidence presented to prove that petitioner corporation adopted, ratified or confirmed the Management Contract. It is for the same reason that petitioner corporation cannot be considered estopped from questioning its binding effect now that respondent was invoking the same against it. In no way, then, can it be enforced against petitioner corporation, much less, its provisions fixing respondent's compensation as General Manager to 30% of petitioner corporation's net profit. Consequently, such percentage cannot be the basis for the computation of respondent's separation pay. This finding, however, will not affect the undisputed fact that respondent was, indeed, the General Manager of petitioner corporation from its incorporation up to the time of his dismissal.

Accordingly, this Court finds it necessary to still remand the present case to the Labor Arbiter to conduct further proceedings for the sole purpose of determining the compensation that respondent was actually receiving during the period that he was the General Manager of petitioner corporation, this, for the proper computation of his separation pay.

As regards petitioner Lucila's solidary liability, this Court affirms the same.

As a rule, corporation has a personality separate and distinct from its officers, stockholders and members such that **corporate officers are not personally liable for their official acts unless it is shown that they have exceeded their authority**. However, this corporate veil can be pierced when the notion of the legal entity is used as a means to perpetrate fraud, an

illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues. Under the Labor Code, for instance, when a corporation violates a provision declared to be penal in nature, the penalty shall be imposed upon the guilty officer or officers of the corporation.[57]

Based on the prevailing circumstances in this case, petitioner Lucila, being the President of petitioner corporation, acted in bad faith and with malice in effecting respondent's dismissal from employment. Although petitioner corporation has a valid cause for dismissing respondent due to cessation of business operations, however, the latter's dismissal therefrom was done abruptly by its President, petitioner Lucila. Respondent was not given the required one-month prior written notice that petitioner corporation will already cease its business operations. As can be gleaned from the records, respondent was dismissed outright by petitioner Lucila on the same day that petitioner corporation decided to stop and cease its business operations. Worse, respondent was not given separation pay considering that petitioner corporation's cessation of business was not due to business losses or financial reverses.

WHEREFORE, premises considered, the Decision and Resolution dated 20 June 2005 and 7 March 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 76624 are hereby *AFFIRMED* with the *MODIFICATION* finding respondent's dismissal from employment legal but without proper observance of due process. Accordingly, petitioner corporation, jointly and solidarily liable with petitioner Lucila, is hereby ordered to pay respondent the following; (1) separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher, to be computed from the commencement of employment until termination; and (2) nominal damages in the amount of ₱50,000.00.

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[57] *Reahs Corporation v. National Labor Relations Commission, supra* note 51 at 255.

This Court, however, finds it proper to still remand the records to the Labor Arbiter to conduct further proceedings for the sole purpose of determining the compensation that respondent was actually receiving during the period that he was the General Manager of petitioner corporation for the proper computation of his separation pay.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182915. December 12, 2011]

MARIALY O. SY, VIVENCIA PENULLAR, AURORA AGUINALDO, GINA ANIANO,* GEMMA DELA PEÑA, EFREMIA* MATIAS, ROSARIO BALUNSAY, ROSALINDA PARUNGAO, ARACELI* RUAZA, REGINA RELOX, TEODORA VENTURA, AMELIA PESCADERO, LYDIA DE GUZMAN, HERMINIA HERNANDEZ, OLIVIA ABUAN, CARMEN PORTUGUEZ, LYDIA PENNULAR,* EMERENCIANA WOOD, PRISCILLA* ESPINEDA, NANCY FERNANDEZ, EVA* MANDURIAGA, CONSOLACION SERRANO, SIONY CASILLAN, LUZVIMINDA GABUYA, MYRNA TAMIN, EVELYN REYES, EVA AYENG, EDNA YAP, RIZA* DELA CRUZ ZUÑIGA, TRINIDAD RELOX, MARLON FALLA, MARICEL

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* Also Spelled as Anano, Eufemia, Aracelli, Penullar Priscila, Eve and Liza in some parts of the records.

OCON, and ELVIRA MACAPAGAL, *petitioners, vs.* **FAIRLAND KNITCRAFT CO., INC.,** *respondent.*

[G.R. No. 189658. December 12, 2011]

SUSAN T. DE LEON, *petitioner, vs.* **FAIRLAND KNITCRAFT CO., INC., MARIALY O. SY, VIVENCIA PENULLAR, AURORA AGUINALDO, GINA ANIANO, GEMMA DELA PEÑA, EFREMIA MATIAS, ROSARIO BALUNSAY, ROSALINDA PARUNGAO, ARACELI RUAZA, REGINA RELOX, TEODORA VENTURA, AMELIA PESCADERO, RICHON APARRE, LYDIA DE GUZMAN, HERMINIA HERNANDEZ, OLIVIA ABUAN, CARMEN PORTUGUEZ, LYDIA PENNULAR, EMERENCIANA WOOD, PRISCILLA ESPINEDA, NANCY FERNANDEZ, EVA MANDURIAGA, CONSOLACION SERRANO, SIONY CASILLAN, LUZVIMINDA GABUYA, MYRNA TAMIN, EVELYN REYES, EVA AYENG, EDNA YAP, RIZA DELA CRUZ ZUÑIGA, TRINIDAD RELOX, MARLON FALLA, MARICEL OCON, and ELVIRA MACAPAGAL,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING; ELEMENTS. — "There is labor-only contracting when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present: (a) The person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer."

2. ID.; ID.; ID.; A CONTRACTOR IS PRESUMED TO BE A LABOR-ONLY CONTRACTOR UNLESS SUCH CONTRACTOR OVERCOMES THE BURDEN OF PROVING THAT IT HAS SUBSTANTIAL CAPITAL, INVESTMENT, TOOLS AND THE LIKE. — [T]he Court finds that Susan's effort to negate Fairland's ownership of the work premises is futile. The logical conclusion now is that Weesan does not have its own workplace and is only utilizing the workplace of Fairland to whom it supplied workers for its garment business. Suffice it to say that "[t]he presumption is that a contractor is a labor-only contractor unless such contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like." As Susan/Weesan was not able to adduce evidence that Weesan had any substantial capital, investment or assets to perform the work contracted for, the presumption that Weesan is a labor-only contractor stands.

3. ID.; LABOR RELATIONS ; TERMINATION OF EMPLOYMENT; CLOSURE OR CESSATION OF BUSINESS; REQUIREMENTS. — Article 283 of the Labor Code allows as a mode of termination of employment the closure or termination of business. "Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer." "The decision to close business [or to temporarily suspend operation] is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher."

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; SUBSTITUTION OF PARTIES; FORMAL SUBSTITUTION OF PARTIES IS NOT NECESSARY WHEN

THE HEIRS THEMSELVES VOLUNTARILY APPEARED, PARTICIPATED, AND PRESENTED EVIDENCE DURING THE PROCEEDINGS. — [T]he lack of formal substitution of the deceased worker Richon did not result to denial of due process as to affect the validity of the proceedings before the NLRC since his heir, Luzvilla, was aware of the proceedings therein. In fact, she is considered to have voluntarily appeared before the said tribunal when she signed the workers' Memorandum of Appeal filed therewith. "This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings." Hence, the NLRC did not err in giving due course to the appeal with respect to Richon.

5. ID.; ID.; JURISDICTION OVER THE PERSON OF THE DEFENDANT; HOW ACQUIRED. —"It is basic that the Labor Arbiter cannot acquire jurisdiction over the person of the respondent without the latter being served with summons." However, "if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance."

6. ID.; ID.; ID.; MAY BE ACQUIRED THROUGH VOLUNTARY APPEARANCE IN COURT; CASE AT BAR. — From the records, it appears that Atty. Geronimo first entered his appearance on behalf of Susan/Weesan in the hearing held on April 3, 2003. Being then newly hired, he requested for an extension of time within which to file a position paper for said respondents. On the next scheduled hearing on April 28, 2003, Atty. Geronimo again asked for another extension to file a position paper for all the respondents considering that he likewise entered his appearance for Fairland. Thereafter, said counsel filed pleadings such as Respondents' Position Paper and Respondents' Consolidated Reply on behalf of all the respondents namely, Susan/Weesan, Fairland and Debbie. The fact that Atty. Geronimo entered his appearance for Fairland and Debbie and that he actively defended them before the Labor Arbiter raised the presumption that he is authorized to appear for them. As held in *Santos*, it is unlikely that Atty. Geronimo would have been so irresponsible as to represent Fairland and Debbie if he were not in fact authorized. As an officer of the Court, Atty. Geronimo is presumed to have acted with due propriety. Moreover, "[i]t strains credulity that a counsel who

has no personal interest in the case would fight for and defend a case with persistence and vigor if he has not been authorized or employed by the party concerned."

7. LEGAL ETHICS; ATTORNEYS; AUTHORITY OF ATTORNEY TO APPEAR; THE PRESUMPTION OF AUTHORITY OF COUNSEL TO APPEAR IN BEHALF OF A CLIENT IS FOUND IN THE RULES OF COURT AND IN THE NEW RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION; EXPLAINED. — The presumption of authority of counsel to appear on behalf of a client is found both in the Rules of Court and in the New Rules of Procedure of the NLRC. x x x Between the two provisions providing for such authority of counsel to appear, the Labor Arbiter is primarily bound by the latter one, the NLRC Rules of Procedure being specifically applicable to labor cases. As Atty. Geronimo consistently indicated his PTR and IBP numbers in the pleadings he filed, there is no reason for the Labor Arbiter not to extend to Atty. Geronimo the presumption that he is authorized to represent Fairland. Even if we are to apply Sec. 21, Rule 138 of the Rules of Court, the Labor Arbiter cannot be expected to require Atty. Geronimo to prove his authority under said provision since there was no motion to that effect from either party showing reasonable grounds therefor. Moreover, the fact that Debbie signed the verification attached to the position paper filed by Atty. Geronimo, without a secretary's certificate or board resolution attached thereto, is not sufficient reason for the Labor Arbiter to be on his guard and require Atty. Geronimo to prove his authority. Debbie, as General Manager of Fairland is one of the officials of the company who can sign the verification without need of a board resolution because as such, she is in a position to verify the truthfulness and correctness of the allegations in the petition.

8. ID.; ID.; ID.; THE PRESUMPTION OF AUTHORITY CANNOT BE OVERCOME BY A MERE DENIAL BY A PARTY THAT HE AUTHORIZED AN ATTORNEY TO APPEAR FOR HIM, IN THE ABSENCE OF A COMPELLING REASON. — Although we note that Fairland filed a disbarment case against Atty. Geronimo due to the former's claim of unauthorized appearance, we hold that same is not sufficient to overcome the presumption of authority. Such mere filing is not proof of Atty. Geronimo's alleged unauthorized appearance. Suffice it to say that an

attorney's presumption of authority is a strong one. "A mere denial by a party that he authorized an attorney to appear for him, in the absence of a compelling reason, is insufficient to overcome the presumption, especially when the denial comes after the rendition of an adverse judgment," such as in the present case.

9. LABOR AND SOCIAL LEGISLATION; LABOR CODE; APPEALS; NATIONAL LABOR RELATIONS COMMISSION; THE FINALITY OF DECISIONS, ORDERS OR AWARDS IS RECKONED FROM THE COUNSEL'S DATE OF RECEIPT THEREOF. — Article 224 [of the Labor Code] contemplates the furnishing of copies of final decisions, orders or awards *both* to the parties and their counsel in connection with the execution of such final decisions, orders or awards. However, for the purpose of computing the period for filing an appeal from the NLRC to the CA, same shall be counted from receipt of the decision, order or award by the counsel of record pursuant to the established rule that notice to counsel is notice to party. And since the period for filing of an appeal is reckoned from the counsel's receipt of the decision, order or award, it necessarily follows that the reckoning period for their finality is likewise the counsel's date of receipt thereof, if a party is represented by counsel. Hence, the date of receipt referred to in Sec. 14, Rule VII of the then in force New Rules of Procedure of the NLRC which provides that decisions, resolutions or orders of the NLRC shall become executory *after 10 calendar days from receipt of the same*, refers to the date of receipt by counsel. Thus contrary to the CA's conclusion, the said NLRC Decision became final, as to Fairland, 10 calendar days after Atty. Tecson's receipt thereof. In sum, we hold that the Labor Arbiter had validly acquired jurisdiction over Fairland and its manager, Debbie, through the appearance of Atty. Geronimo as their counsel and likewise, through the latter's filing of pleadings on their behalf.

10. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; WHEN AFFIRMED BY THE COURT OF APPEALS, ARE CONCLUSIVE UPON THE PARTIES AND BINDING ON THE SUPREME COURT. – [A] careful examination of the records reveals other telling facts that Fairland is Susan/Weesan's principal, to wit: (1) aside from sewing machines, Fairland also

lent Weesan other equipment such as fire extinguishers, office tables and chairs, and plastic chairs; (2) no proof evidencing the contractual arrangement between Weesan and Fairland was ever submitted by Fairland; (3) while both Weesan and Fairland assert that the former had other clients aside from the latter, no proof of Weesan's contractual relationship with its other alleged client is extant on the records; and (4) there is no showing that any of the workers were assigned to other clients aside from Fairland. Moreover, as found by the NLRC and affirmed by both the Special Former Special Eighth Division in CA-G.R. SP No. 93860 and the First Division in CA-G.R. SP No. 93204, the activities, the manner of work and the movement of the workers were subject to Fairland's control. It bears emphasizing that "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, as in the present case, are conclusive upon the parties and binding on this Court."

11. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING; THE PRINCIPAL EMPLOYER IS SOLIDARILY LIABLE WITH THE LABOR-ONLY CONTRACTOR FOR THE RIGHTFUL CLAIMS. — Viewed in its entirety, we thus declare that Fairland is the principal of the labor-only contractor, Weesan. Fairland, therefore, as the principal employer, is solidarily liable with Susan/Weesan, the labor-only contractor, for the rightful claims of the employees. Under this set-up, Susan/Weesan, as the "labor-only" contractor, is deemed an agent of the principal, Fairland, and the law makes the principal responsible to the employees of the "labor-only" contractor as if the principal itself directly hired or employed the employees.

APPEARANCES OF COUNSEL

Rogelio De Guzman for Marialy Sy, *et al.*

Malabanan & Andico-Malabanan Law Offices for Susan T. De Leon.

Merlina O. Tecson for Fairland Knitcraft Co., Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

The issues of labor-only contracting and the acquisition of a labor tribunal of jurisdiction over the person of a respondent are the matters up for consideration in these consolidated Petitions for Review on *Certiorari*.

Assailed in G.R. No. 182915 is the May 9, 2008 Resolution[1] of the Special Ninth Division of the Court of Appeals (CA) in CA-G.R. SP No. 93204 which reversed and set aside the July 25, 2007 Decision[2] of the CA's First Division and ordered the exclusion of Fairland Knitcraft Co., Inc. (Fairland) from the decisions of the labor tribunals. Said July 25, 2007 Decision, on the other hand, affirmed the November 30, 2004 Decision[3] and August 26, 2005 Resolution[4] of the National Labor Relations Commission (NLRC) which, in turn, reversed and set aside the November 26, 2003 Decision[5] of the Labor Arbiter finding the dismissal as valid.

On the other hand, assailed in G.R. No. 189658 is the July 20, 2009 Decision[6] of the CA's Special Former Special Eighth Division in CA-G.R. SP No. 93860, which affirmed the aforesaid November 30, 2004 Decision and August 26, 2005 Resolution of the NLRC.

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[1] CA *rollo* (CA-G.R. SP No. 93204), pp. 1093-1109; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Vicente Q. Roxas and Pampio A. Abarintos.

[2] *Id.* at 819-844; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by then Presiding Justice Ruben T. Reyes (later to become a member of this Court) and Associate Justice Regalado E. Maambong.

[3] Records, Vol. 1, pp. 231-255; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[4] *Id.* at 281-282.

[5] *Id.* at 115-120.

[6] CA *rollo* (CA-G.R. SP No. 93860), pp. 802-823; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and concurred in by Associate Justices Arturo G. Tayag and Ramon M. Bato, Jr.

Likewise assailed is the October 1, 2009 CA Resolution[7] denying the Motion for Reconsideration thereto.

Factual Antecedents

Fairland is a domestic corporation engaged in garments business, while Susan de Leon (Susan) is the owner/proprietress of Weesan Garments (Weesan). On the other hand, the complaining workers (the workers) are sewers, trimmers, helpers, a guard and a secretary who were hired by Weesan as follows:

NAME	DATE HIRED	SALARIES
Marialy O. Sy	06-23-97	₱ 1,500.00/week
Lydia Penullar	04-99	1,000.00/week
Lydia De Guzman	08-01-98	1,000.00/week
Olivia Abuan	08-95	1,300.00/week
Evelyn Reyes	11-2000	1,000.00/week
Myrna Tamin	11-2000	1,000.00/week
Elvira Macapagal	04-01-02	1,000.00/week
Edna Yap	10-24-99	700.00/week
Rosario Balunsay	01-21-98	1,400.00/week
Rosalinda P. Parungao	03-02-01	1,000.00/week
Gemma Dela Peña	11-24-99	1,000.00/week
Emerenciana Wood	01-98	1,400.00/week
Carmen Portuguez	11-2000	800.00/week
Gina G. Anano	09-98	1,500.00/week
Aurora Aguinaldo	01-2000	1,000.00/week
Amelia Pescadero	01-96	1,000.00/week
Siony Casillan	05-2002	1,000.00/week
Consolacion Serrano	10-2001	900.00/week
Teodora Ventura	01-2000	1,000.00/week
Regina Relox	05-97	1,500.00/week
Eufemia Matias	03-2000	1,000.00/week
Herminia Hernandez	08-95	1,000.00/week
Richon Aparre	07-99	1,200.00/week
Eve Manduriaga	02-2000	1,000.00/week
Priscila Espineda	11-2000	1,300.00/week
Aracelli Ruaza	03-2000	1,000.00/week
Nancy Fernandez	11-2000	1,400.00/week
Eva Ayeng	11-2000	1,000.00/week
Luzviminda Gabuya	11-2000	1,000.00/week
Liza Dela Cuz Zuñiga	10-2001	1,200.00/week
Vivencia Penullar	01-2000	1,500.00/week
Trinidad Relox	08-96	1,200.00/week
Marlon Falla	06-24-00	840.00/week
Maricel Ocon	01-15-01	1,500.00/week[8]

[7] *Id.* at 879.

[8] Records, Vol. I, p. 30.

On December 23, 2002, workers Marialy O. Sy, Vivencia Penullar, Aurora Aguinaldo, Gina Aniano, Gemma dela Peña and Efremia Matias filed with the Arbitration Branch of the NLRC a Complaint[9] for underpayment and/or non-payment of wages, overtime pay, premium pay for holidays, 13th month pay and other monetary benefits against Susan/Weesan. In January 2003, the rest of the aforementioned workers also filed similar complaints. Eventually all the cases were consolidated as they involved the same causes of action.

On February 5, 2003, Weesan filed before the Department of Labor and Employment-National Capital Region (DOLE-NCR) a report on its temporary closure for a period of not less than six months. As the workers were not anymore allowed to work on that same day, they filed on February 18, 2003 an Amended Complaint,[10] and on March 13, 2003, another pleading entitled Amended Complaints and Position Paper for Complainants,[11] to include the charge of illegal dismissal and impleaded Fairland and its manager, Debbie Manduabas (Debbie), as additional respondents.

A Notice of Hearing[12] was thereafter sent to Weesan requesting it to appear before Labor Arbiter Ramon Valentin C. Reyes (Labor Arbiter Reyes) on April 3, 2003, at 10:00 a.m. On said date and time, Atty. Antonio A. Geronimo (Atty. Geronimo) appeared as counsel for Weesan and requested for an extension of time to file his client's position paper.[13] On the next hearing on April 28, 2003, Atty. Geronimo also entered his appearance for Fairland and again requested for an extension of time to file position paper.[14]

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[9] *Id.* at 2.

[10] *Id.* at 25-28.

[11] *Id.* at 29-35.

[12] *Id.* at 38.

[13] See Constancia for the April 3, 2003 hearing, *id.* at 43.

[14] *Id.* at 44.

On May 16, 2003, Atty. Geronimo filed two separate position papers – one for Fairland[15] and another for Susan/Weesan.[16] The Position Paper for Fairland was verified by Debbie while the one for Susan/Weesan was verified by Susan. To these pleadings, the workers filed a Reply.[17]

Atty. Geronimo then filed a Consolidated Reply[18] verified[19] both by Susan and Debbie.

On November 25, 2003, the workers submitted their Rejoinder.[20]

Ruling of the Labor Arbiter

On November 26, 2003, Labor Arbiter Reyes rendered his Decision,[21] the dispositive portion of which reads:

> WHEREFORE, premises all considered, judgment is hereby rendered, as follows:
>
> Dismissing the complaint for lack of merit; and ordering the respondents to pay each complainant ₱5,000.00 by way of financial assistance.
>
> SO ORDERED.[22]

Ruling of the National Labor Relations Commission

The workers filed their appeal which was granted by the NLRC. The dispositive portion of the NLRC Decision[23] reads:

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

[16] *Id.* at 52-56.

[17] *Id.* at 97-100.

[18] *Id.* at 105-108.

[19] *Id.* at 108.

[20] *Id.* at 111-112.

[21] *Supra* note 5.

[22] Records, Vol. I, p.120.

[23] *Supra* note 3.

WHEREFORE, premises considered, the appealed decision is hereby set aside and the dismissal of complainants is declared illegal.

Respondents are, therefore, ordered to reinstate complainants to their original or equivalent position with full backwages with legal interests thereon from February 5, 2003, until actually reinstated and fully paid, with retention of seniority rights and are further ordered to pay solidarily to the complainants the difference of their underpaid/unpaid wages, unpaid holidays, unpaid 13th month pays and unpaid service incentive leaves with legal interests thereon, to wit:

xxx xxx xxx

In the event that reinstatement is not possible, respondents are ordered to pay solidarily to complainants their respective separation pays computed as follows:

xxx xxx xxx

Respondents are likewise ordered to pay ten (10%) percent of the gross award as and by way of attorney's fees.

SO ORDERED.[24]

Hence, Atty. Geronimo filed a Motion for Reconsideration.[25] However, Fairland filed another Motion for Reconsideration[26] through Atty. Melina O. Tecson (Atty. Tecson) assailing the jurisdiction of the Labor Arbiter and the NLRC over it, claiming that it was never summoned to appear, attend or participate in all the proceedings conducted therein. It also denied that it engaged the services of Atty. Geronimo.

The NLRC however, denied both motions for lack of merit.[27]

Fairland and Susan thus filed their separate Petitions for *Certiorari* before the CA docketed as CA-G.R. SP No. 93204 and CA-G.R. SP No. 93860, respectively.

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[24] Records, Vol. I, pp. 249-254.

[25] *Id.* at 259-261.

[26] *Id.* at 261A-274.

[27] *Supra* note 4.

Ruling of the Court of Appeals in CA-G.R. SP No. 93204

On July 25, 2007, the CA's First Division denied Fairland's petition.[28] It affirmed the NLRC's ruling that the workers were illegally dismissed and that Weesan and Fairland are solidarily liable to them as labor-only contractor and principal, respectively.

Fairland filed its Motion for Reconsideration[29] as well as a Motion for Voluntary Inhibition[30] of Associate Justices Celia C. Librea-Leagogo and Regalado E. Maambong from handling the case. As the Motion for Voluntary Inhibition was granted through a Resolution[31] dated November 8, 2007, the case was transferred to the CA's Special Ninth Division for resolution of Fairland's Motion for Reconsideration.[32]

On May 9, 2008, the CA's Special Ninth Division reversed[33] the First Division's ruling. It held that the labor tribunals did not acquire jurisdiction over the person of Fairland, and even assuming they did, Fairland is not liable to the workers since Weesan is not a mere labor-only contractor but a bona fide independent contractor. The Special Ninth Division thus annulled and set aside the assailed NLRC Decision and Resolution insofar as Fairland is concerned and excluded the latter therefrom. The dispositive portion of said Resolution reads:

WHEREFORE**,** the Motion for Reconsideration filed by the movant is GRANTED.

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[28] *Supra* note 2.

[29] CA *rollo* (CA-G.R. SP No. 93204), pp. 954-988.

[30] *Id.* at 989-992.

[31] *Id.* at 1037-1045; penned by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

[32] Upon the inhibition of Justices Leagogo (*ponente*) and Maambong, the case was re-raffled to Justice Monina Arevalo-Zenarosa as new *ponente* on November 14, 2007. The case was again re-raffled on January 16, 2008 to Justice Bienvenido L. Reyes (*ponente*) and the members of his Division. See *rollo* cover of CA-G.R. SP No. 93204.

[33] *Supra* note 1.

The July 25, 2007 Decision of the First Division of this Court finding that the NLRC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction and denying the Petition is REVERSED and SET ASIDE.

Consequently, the Decision and Resolution issued by the public respondent on November 30, 2004 and August 26, 2005, respectively, are hereby ANNULLED and SET ASIDE insofar as [it] concerns the petitioner Fairland Knitcraft Co., Inc. [which] is hereby ordered dropped and excluded therefrom.

SO ORDERED.[34]

Aggrieved, the workers filed before us their Petition for Review on *Certiorari* docketed as G.R. No. 182915.

Ruling of the Court of Appeals in CA-G.R. SP No. 93860

With regard to Susan's petition, the CA Special Ninth Division issued on May 11, 2006 a Resolution[35] temporarily restraining the NLRC from enforcing its assailed November 30, 2004 Decision and thereafter the CA Special Eighth Division issued a writ of preliminary prohibitory injunction.[36] On July 20, 2009, the Special Former Special Eighth Division of the CA resolved the case through a Decision,[37] the dispositive portion of which reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The Decision dated November 30, 2004 and Resolution dated August 26, 2005 of the National Labor Relations Commission (NLRC) in CA No. 039375-04 (NLRC NCR 00-12-11294-02, 00-01-00027-03, 00-01-00131-

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[34] CA *rollo* (CA-G.R. SP No. 93204), p. 1109.

[35] CA *rollo* (CA-G.R. SP No. 93860), pp. 730-737; penned by Associate Justice Lucas P. Bersamin (now a Member of this Court) and concurred in by Associate Justices Renato C. Dacudao and Mariflor Punzalan Castillo.

[36] See Resolution dated July 13, 2006, *id*. at 789-798; penned by Associate Justice Lucas P. Bersamin (now a member of this Court) and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Ramon M. Bato, Jr.

[37] *Supra* note 6.

03, 00-01-00820-03 and 00-01-01249-03) are hereby AFFIRMED and UPHELD.

The writ of preliminary prohibitory injunction issued by this Court on July 13, 2006 is hereby LIFTED and SET ASIDE.

With cost against petitioner.

SO ORDERED.[38]

Susan moved for reconsideration[39] which was denied by the CA in its October 1, 2009 Resolution.[40]

Hence, she filed before this Court a Petition for Review on *Certiorari* docketed as G.R. No. 189658 which was denied in this Court's December 16, 2009 Resolution[41] on technicality and for failure to sufficiently show any reversible error in the assailed judgment.

Susan and Fairland filed their respective Motions for Reconsideration.[42] But before said motions could be resolved, the Court ordered the consolidation of Susan's petition with that of the workers.[43]

Susan's Motion for Reconsideration of this Court's December 16, 2009 Resolution in G.R. No. 189658 is granted. Consequently, her Petition for Review on Certiorari is reinstated.

With Susan and Fairland's respective Motions for Reconsideration still unresolved, this Court shall first address them.

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[38] CA *rollo* (CA-G.R. SP No. 93860), p. 823.

[39] See Susan's Motion for Reconsideration, *id*. at 855-862.

[40] *Supra* note 7.

[41] *Rollo* (G.R. No. 189658), pp. 455-456.

[42] See Susan's Motion for Reconsideration, *id*. at 529-537 and Fairland's Motion for Reconsideration, *id*. at 459-509.

[43] *Rollo* (G.R. No. 182915), p. 597.

One of the grounds for the denial of Susan's petition was her failure to indicate the date of filing her Motion for Reconsideration with the CA as required under Section 4(b),[44] Rule 45 of the Rules of Court. However, "failure to comply with the rule on a statement of material [date] in the petition may be excused [if] the [date is] evident from the records."[45] In the case of Susan, records show that she received the copy of the Decision of the CA on July 24, 2009. She then timely filed her Motion for Reconsideration *via* registered mail on August 7, 2009 as shown by the envelope[46] with stamped receipt of the Batangas City Post Office bearing the date August 7, 2009. The fact of such filing was also stated in the Motion for Extension of Time to File Petition for Review[47] that she filed before this Court which forms part of the records of this case. Hence, it is clear that Susan seasonably filed her Motion for Reconsideration.

Moreover, while we note that Susan's petition was also denied on the ground of no reversible error committed by the CA, we deem it proper, in the interest of justice, to take a second look on the merits of Susan's petition and reinstate G.R. No. 189658. This is also to harmonize our ruling in these consolidated petitions and avoid confusion that may arise in their execution. Hence, we grant Susan's Motion for Reconsideration and consequently, reinstate her Petition for Review on *Certiorari*.

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[44] Section 4. *Contents of petition.* — The petition shall x x x

x x x x x x x x x

(b) Indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, **when a motion for new trial or reconsideration, if any, was filed** and when notice of the denial thereof was received;

x x x x x x x x x

[45] *Great Southern Maritime Services Corp. v. Acuña,* 492 Phil. 518, 527 (2005).

[46] Stitched to the *rollo* of CA-G.R. SP No. 93860 between pp. 855 and 856 where the first and second pages of Susan's Motion for Reconsideration may be found.

[47] *Rollo* (G.R. No. 189658), p. 3.

As to Fairland's Motion for Reconsideration, we shall treat the same as its comment to Susan's petition, Fairland being one of the respondents therein.

Issues

In G.R. No. 189658, Susan imputes upon the CA the following errors:

I.

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER IS A LABOR-ONLY CONTRACTOR ACTING AS AN AGENT OF RESPONDENT FAIRLAND.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT THE INDIVIDUAL PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

THE COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE RAISED BY PETITIONER IN HER REPLY DATED JULY 8, 2006 REGARDING THE PROPRIETY OF THE APPEAL TAKEN BY PRIVATE RESPONDENT RICHON CAINOY APARRE WHO WAS ALREADY DEAD PRIOR TO THE FILING OF THE MEMORANDUM OF APPEAL BEFORE THE NLRC.[48]

Susan's Arguments

Susan insists that the CA erred in ruling that Weesan is a labor-only contractor based on the finding that its workplace is owned by Fairland. She maintains that the place is owned by De Luxe Shirt Factory, Inc. (De Luxe) and not by Fairland as shown by the Contracts of Lease between Weesan and De Luxe.

Susan also avers that the CA erred in ruling that Weesan was guilty of illegal dismissal. She maintains that the termination of the workers was due to financial losses suffered by Weesan

[48] *Id*. at 20.

as shown by various documents submitted by the latter to the tribunals below. In fact, Weesan submitted its Establishment Termination Report with the DOLE-NCR and same was duly received by the latter.

Lastly, Susan argues that the appeal of one of the workers, Richon Cainoy Aparre (Richon), should not have been given due course because in the Notice of Appeal with Appeal Memorandum filed with the NLRC, a certain Luzvilla A. Rayon (Luzvilla), whose identity was never established, signed for and on his behalf. However, there is no information submitted before the NLRC that Richon is already dead, and in any event, no proper substitution was ever made.

The Workers' Arguments

The workers claim that Weesan is a labor-only contractor because it does not have substantial capital or investment in the form of tools, equipment, machineries, and work premises, among others, and that the workers it recruited are performing activities which are directly related to the garments business of Fairland. Hence, Weesan should be considered as a mere agent of Fairland, who shall be responsible to the workers as if they were directly employed by it (Fairland).[49]

The workers also allege that the temporary suspension of operations of Weesan was motivated not by a desire to prevent further losses, but to discourage the workers from ventilating their claims for non-payment/underpayment of wages and benefits. The fact that Weesan was experiencing serious business losses was not sufficiently established and therefore the termination of the workers due to alleged business losses is invalid.[50]

Fairland's Arguments

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[49] See Memorandum for Petitioners, *rollo* (G.R. No. 182915), pp. 408-482.

[50] *Id*.

Fairland maintains that it was never served with summons to appear in the proceedings before the Labor Arbiter nor furnished copies of the Labor Arbiter's Decision and Resolution on the workers' complaints for illegal dismissal; that it never voluntarily appeared before the labor tribunals through Atty. Geronimo;[51] that it is a separate and distinct business entity from Weesan; that Weesan is a legitimate job contractor, hence, the workers were actually its (Weesan's) employees; and that, consequently, the workers have no cause of action against Fairland.[52]

At any rate, assuming that the workers have a cause of action against Fairland, their claims are already barred by prescription. Of the 34 individual complainants (the workers), only six were employees of Weesan during the period of its contractual relationship with Fairland in 1996 and 1997. They were Marialy Sy, Olivia Abuan, Amelia Pescadero, Regina Relox, Hermina Hernandez and Trinidad Relox. These workers filed their complaints in December 2002 and January 2003 or more than four years from the expiration of Weesan's contractual arrangement with Fairland in 1997. Article 291 of the Labor Code provides that all money claims arising from employer-employee relationship shall be filed within three years from the time the cause of action accrued; otherwise, they shall be forever barred. Illegal dismissal prescribes in four years and damages due to separation from employment for alleged unjustifiable causes injuring a plaintiff's right must likewise be brought within four years under the Civil Code. Clearly, the claims of said six employees are already barred by prescription.[53]

In G.R. No. 182915, the workers advance the following issues:

I.

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[51] See Fairland's Motion for Reconsideration, *supra* note 42.

[52] *Id*.

[53] *Id*.

Whether x x x the National Labor Relations Commission acquired jurisdiction over the [person of the] respondent[;]

II.

Whether x x x the decision of the National Labor Relations Commission became final and executory[; and]

III.

Whether x x x respondent is solidarily liable with WEESAN GARMENT/ SUSAN DE LEON[.][54]

The Workers' Arguments

The workers contend that the Labor Arbiter and the NLRC properly acquired jurisdiction over the person of Fairland because the latter voluntarily appeared and actively participated in the proceedings below when Atty. Geronimo submitted on its behalf a Position Paper verified by its manager, Debbie. As manager, Debbie knew of all the material and significant events which transpired in Fairland since she had constant contact with the people in the day-to-day operations of the company. Thus, the workers maintain that the Labor Arbiter and the NLRC acquired jurisdiction over the person of Fairland and the Decisions rendered by the said tribunals are valid and binding upon it.

Lastly, the workers aver that Fairland is solidarily liable with Susan/Weesan because it was shown that the latter was indeed the sewing arm of the former and is a mere "labor-only contractor."

Fairland's Arguments

In gist, Fairland contests the labor tribunals' acquisition of jurisdiction over its person either through service of summons or voluntary appearance. It denies that it engaged the services of Atty. Geronimo and asserts that it has its own legal counsel, Atty. Tecson, who would have represented it had it known of the pendency of the complaints against Fairland.

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[54] *Rollo* (G.R. No. 182915), p. 17.

Fairland likewise emphasizes that when it filed its Motion for Reconsideration with the NLRC, it made an express reservation that the same was without prejudice to its right to question the jurisdiction over its person and the binding effect of the assailed decision. In the absence, therefore, of a valid service of summons or voluntary appearance, the proceedings conducted and the judgment rendered by the labor tribunals are null and void as against it. Hence, Fairland cannot be held solidarily liable with Susan/Weesan.

Our Ruling

We grant the workers' petition (G.R. No. 182915) but deny the petition of Susan (G.R. No. 189658).

G.R. No. 189658

Susan/Weesan is a mere labor-only contractor.

"There is labor-only contracting when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

(a) The person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and

(b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer."[55]

Here, there is no question that the workers, majority of whom are sewers, were recruited by Susan/Weesan and that they performed activities which are directly related to Fairland's principal business of garments. What must be determined is whether Susan/Weesan has substantial capital or investment in the form of tools, equipment, machineries, work premises, among others.

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[55] *Escario v. National Labor Relations Commission,* 388 Phil. 929, 938 (2000).

We have examined the records but found nothing therein to show that Weesan has investment in the form of tools, equipment or machineries. The records show that Fairland has to furnish Weesan with sewing machines for it to be able to provide the sewing needs of the former.[56] Also, save for the Balance Sheets[57] purportedly submitted by Weesan to the Bureau of Internal Revenue (BIR) indicating its fixed assets (factory equipment) in the amount of ₱243,000.00, Weesan was unable to show that apart from the borrowed sewing machines, it owned and possessed any other tools, equipment, and machineries necessary to its being a contractor or sub-contractor for garments. Neither was Weesan able to prove that it has substantial capital for its business.

Likewise significant is the fact that there is doubt as to who really owns the work premises occupied by Weesan. As may be recalled, the workers emphasized in their Appeal Memorandum[58] filed with the NLRC that Susan/Weesan was a labor-only contractor and that Fairland was its principal. To buttress this, they alleged that the work premises utilized by Weesan is owned by Fairland, which significantly, was not in the business of renting properties. They also advanced that there was no showing that Susan/Weesan paid any rentals for the use of the premises. They contended that all that Susan had was a Mayor's Permit for Weesan indicating 715 Ricafort Street, Tondo, Manila as its address.

Susan failed to refute these allegations before the NLRC and attributed such failure to her former counsel, Atty. Geronimo. But when Susan's petition for *certiorari* was given due course by the CA, she finally had the chance to answer the same by denying that Fairland owned the work premises. Susan instead claimed that Weesan rented the premises from another entity, De Luxe. To support this, she attached to her petition two

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[56] Records, Vol. I, pp. 49-51.

[57] For the years 2000, 2001 and 2002, *id*. at 208, 211 & 214.

[58] *Id*. at 129-152.

Contracts of Lease[59] purportedly entered into by her and De Luxe for the lease of the premises covering the periods August 1, 1997 to July 31, 2000 and January 1, 2001 to December 31, 2004.

On the other hand, the workers in their Comment[60] filed in CA-G.R. SP No. 93204 (Fairland's petition for *certiorari* before the CA), pointed out that in Fairland's Amended Articles of Incorporation,[61] five out of the seven incorporators listed therein appeared to be residents of the same 715 Ricafort St., Tondo, Manila. To the workers, this is a clear indication that Fairland indeed owned Weesan's work premises. Fairland, for its part, tried to explain this by saying that its incorporators, just like Weesan, were also mere lessees of a portion of the multi-storey building owned by De Luxe located at 715 Ricafort St., Tondo, Manila. It also claimed that two years prior to Weesan's occupation of said premises in 1996, the five incorporators alluded to already transferred.[62]

We cannot, however, ignore the apt observation on the matter made by the CA's Special Former Special Eighth Division in its Decision in CA-G.R. SP No. 93860, *viz*:

> The work premises are likewise owned by Fairland, which petitioner tried to disprove by presenting a purported Contract of Lease with another entity, De Luxe Shirt Factory Co., Inc. **However, there is no competent proof it paid the supposed rentals to said 'owner'**. **Curiously, under the item 'Rent Expenses' in its audited financial statement, only equipment rental was listed therein without any disbursement/expense for rental of factory premises**, which only buttressed the claim of private respondents that the place where they reported to and performed sewing jobs for petitioner [Susan] and Fairland at No. 715 Ricafort St., Tondo, Manila, belonged to Fairland.[63] (Emphasis supplied.)

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[59] CA *rollo* (CA-G.R. SP No. 93860), pp. 383-388.

[60] *Id.* (CA-G.R. SP No. 93204), pp. 516-521.

[61] *Id*. at 522-526.

[62] See Petitioner's (Fairland) Reply, *id*. at 543-554.

[63] *Id.* (CA-G.R. SP No. 93860), p. 817.

Susan contests this pronouncement by pointing out that although only sewing machines were specified under the entry "Rent Expenses" in its financial statement, the rent for the factory premises is already deemed included therein since the contracts of lease she entered into with De Luxe referred to both the factory premises and machineries.

We, however, find this contention implausible.

We went over the said contracts of lease and noted that same were principally for the lease of the premises in 715 Ricafort St., Tondo, Manila. Only incidental thereto is the inclusion therein of the equipment found in said premises. Hence, we cannot see why the rentals for the work premises, for which Susan even went to the extent of executing a contract with the purported lessor, was not included in the entry for rent expenses in Weesan's financial statement. Even if we are to concede to Susan's claim that the entry for rent expenses already includes the rentals for the work premises, we wonder why the rental expenses for the year 2000 which was ₱396,000.00 is of the same amount with the rental expenses for the year 2001. As borne out by the Contract of Lease covering the period August 1, 1997 to July 31, 2000, the monthly rent for the work premises was pegged at ₱25,000.00.[64] However, in January to December 2001, same was increased to ₱27,500.00.[65] There being an increase in the rentals for the work premises, how come that Weesan's rental expenses for the year 2001 is still ₱396,000.00? This could only mean that said entry really only refers to the rentals of sewing machines and does not include the rentals for the work premises. Moreover, we note that Susan could have just simply submitted receipts for her payments of rentals to De Luxe. However, she failed to present even a single receipt evidencing such payment.

In an attempt to prove that it is De Luxe and not Fairland which owned the work premises, Susan attached to her petition the following: (1) a plain copy of Transfer Certificate of Title

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[64] *Rollo* (G.R. No. 189658), p. 311.

[65] *Id.* at 314.

(TCT) No. 139790[66] and Declaration of Real Property[67] both under the name of De Luxe; and, (2) Real Property Tax receipts issued to De Luxe for the years 2000-2004.[68] However, the Court finds these documents wanting. Nowhere from the said TCT and Declaration of Real Property can it be inferred that the property they refer to is the same property as that located at 715 Ricafort St., Tondo, Manila. Although in said Declaration, 715 Ricafort St., Tondo is the indicated address of the declarant (De Luxe), the address of the property declared is merely "*Ricafort, Tondo I-A*". The same thing can also be said with regard to the real property tax receipts. The entry under the box *Location of Property* in the receipt for 2001 is "I - 718 Ricafort" and in the receipts for 2002, 2003, and 2004, the entries are either "I – Ricafort St., Tondo" or merely "I-Ricafort St."

In sum, the Court finds that Susan's effort to negate Fairland's ownership of the work premises is futile. The logical conclusion now is that Weesan does not have its own workplace and is only utilizing the workplace of Fairland to whom it supplied workers for its garment business.

Suffice it to say that "[t]he presumption is that a contractor is a labor-only contractor unless such contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like."[69] As Susan/Weesan was not able to adduce evidence that Weesan had any substantial capital, investment or assets to perform the work contracted for, the presumption that Weesan is a labor-only contractor stands.[70]

The National Labor Relations Commission and the Court of Appeals

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[66] *Id.* at 440-442.

[67] *Id.* at 443-444.

[68] *Id.* at 445-449.

[69] *7K Corporation v. National Labor Relations Commission*, G.R. No. 148490, November 22, 2006, 507 SCRA 509, 523.

[70] *Id*.

did not err in their findings of illegal dismissal.

To negate illegal dismissal, Susan relies on the due closure of Weesan pursuant to the Establishment Termination Report it submitted to the DOLE-NCR.

Indeed, Article 283[71] of the Labor Code allows as a mode of termination of employment the closure or termination of business. "Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer."[72] "The decision to close business [or to temporarily suspend operation] is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is *bona fide, i.e.,* its purpose is to advance the interest of the employer and not to defeat or

[71] 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 Ministry 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.

[72] *Eastridge Golf Club, Inc. vs. Eastridge Golf Club Inc., Labor Union-Super,* G.R. No. 166760, August 22, 2008, 563 SCRA 93, 105.

circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/ cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher."[73]

Here, Weesan filed its Establishment Termination Report[74] allegedly due to serious business losses and other economic reasons. However, we are mindful of the doubtful character of Weesan's application for closure given the circumstances surrounding the same.

First, workers Marialy Sy, Vivencia Penullar, Aurora Aguinaldo, Gina Aniano, Gemma Dela Peña and Efremia Matias filed before the Labor Arbiter their complaint for underpayment of salary, non-payment of benefits, damages and attorney's fees against Weesan on December 23, 2002.[75] Summons[76] was accordingly issued and same was received by Susan on January 15, 2003.[77] Meanwhile, other workers followed suit and filed their respective complaints on January 2, 6, 17 and 28, 2003.[78] Shortly thereafter or merely eight days after the filing of the last complaint, Weesan filed with the DOLE-NCR its Establishment Termination Report.

Second, the Income Tax Returns[79] for the years 2000, 2001 and 2002 attached to the Establishment Termination Report, although bearing the stamped receipt of the Revenue District Office where they were purportedly filed, contain no signature

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[73] *Id.* at 106-107.

[74] Records, Vol. I, p. 57.

[75] *Id.* at 1.

[76] *Id.* at 5.

[77] See the Return Card attached to the Summons, *id*.

[78] *Id.* at 9, 13, 19 and 24.

[79] *Id.* at 58-60.

or initials of the receiving officer. The same holds true with Weesan's audited financial statements.[80] This engenders doubt as to whether these documents were indeed filed with the proper authorities.

Third, there was no showing that Weesan served upon the workers written notice at least one month before the intended date of closure of business, as required under Art. 283 of the Labor Code. In fact, the workers alleged that when Weesan filed its Establishment Termination Report on February 5, 2003, it already closed the work premises and did not anymore allow them to report for work. This is the reason why the workers on February 18, 2003 amended their complaint to include the charge of illegal dismissal.[81]

It bears stressing that "[t]he burden of proving that x x x a temporary suspension is *bona fide* falls upon the employer."[82] Clearly here, Susan/Weesan was not able to discharge this burden. The documents Weesan submitted to support its claim of severe business losses cannot be considered as proof of financial crisis to justify the temporary suspension of its operations since they clearly appear to have not been duly filed with the BIR. Weesan failed to satisfactorily explain why the Income Tax Returns and financial statements it submitted do not bear the signature of the receiving officers. Also hard to ignore is the absence of the mandatory 30-day prior notice to the workers.

Hence, the Court finds that Susan failed to prove that the suspension of operations of Weesan was *bona fide* and that it complied with the mandatory requirement of notice under the law. Susan likewise failed to discharge her burden of proving that the termination of the workers was for a lawful cause. Therefore, the NLRC and the CA, in CA-G.R. SP No. 93860,

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[80] *Id.* at 62-63, 65-66 and 68-69.

[81] *Id.* at 25.

[82] *San Pedro Hospital of Digos, Inc. v. Sec. of Labor,* 331 Phil. 390, 406 (1996).

did not err in their findings that the workers were illegally dismissed by Susan/Weesan.

The formal substitution of the deceased worker Richon Aparre is not necessary as his heir voluntarily appeared and participated in the proceedings before the National Labor Relations Commission.

In *Sarsaba v. Fe Vda. de Te*, we held that:[83]

The rule on substitution of parties is governed by Section 16,[84] Rule 3 of the [Rules of Court].

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance with the Rules results in the denial of the right to due process for

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[83] G.R. No. 175910, July 30, 2009, 594 SCRA 410, 428-429.

[84] Section 16. *Death of party; duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.

Here, the lack of formal substitution of the deceased worker Richon did not result to denial of due process as to affect the validity of the proceedings before the NLRC since his heir, Luzvilla, was aware of the proceedings therein. In fact, she is considered to have voluntarily appeared before the said tribunal when she signed the workers' Memorandum of Appeal filed therewith. "This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings."[85] Hence, the NLRC did not err in giving due course to the appeal with respect to Richon.

Fairland's claim of prescription deserves scant consideration.

Fairland asserts that assuming that the workers have valid claims against it, same only pertain to six out of the 34 workers-complainants. According to Fairland, these six workers were the only ones who were in the employ of Weesan at the time Fairland and Weesan had existing contractual relationship in 1996 to 1997. But then, Fairland contends that the claims of these six workers have already been barred by prescription as they filed their complaint more than four years from the expiration of the alleged contractual relationship in 1997. However, the Court notes that the records are bereft of anything that provides for such alleged contractual relationship and the period covered by it. Absent anything to support Fairland's claim, same deserves scant consideration.

Interestingly, we noticed Fairland's letter[86] dated January 31, 2003 informing Weesan that it would temporarily not be availing of the latter's sewing services and at the same time requesting

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[85] *Regional Agrarian Reform Adjudication Board v. Court of Appeals,* G.R. No. 165155, April 13, 2010, 618 SCRA 181, 201.

[86] Records, Vol. I, p. 51.

for the return of the sewing machines it lent to Weesan. Assuming said letter to be true, why was Fairland terminating Weesan's services only on January 31, 2003 when it is now claiming that its contractual relationship with the latter only lasted until 1997? Thus, we find the contentions rather abstruse.

G.R. No. 182915

"It is basic that the Labor Arbiter cannot acquire jurisdiction over the person of the respondent without the latter being served with summons."[87] However, "if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance."[88]

Although not served with summons, jurisdiction over Fairland and Debbie was acquired through their voluntary appearance.

It can be recalled that the workers' original complaints for non-payment/ underpayment of wages and benefits were only against Susan/Weesan. For these complaints, the Labor Arbiter issued summons[89] to Susan/Weesan which was received by the latter on January 15, 2003.[90] The workers thereafter amended their then already consolidated complaints to include illegal dismissal as an additional cause of action as well as Fairland and Debbie as additional respondents. We have, however, scanned the records but found nothing to indicate that summons with respect to the said amended complaints was ever served upon Weesan, Susan, or Fairland. True to their claim, Fairland and Debbie were indeed never summoned by the Labor Arbiter.

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[87] *Larkins v. National Labor Relations Commission,* 311 Phil. 687, 693 (1995).

[88] *Rapid City Realty and Development Corp. v. Villa,* G.R. No. 184197, February 11, 2010, 612 SCRA 302, 305.

[89] Records, Vol. I, p. 5.

[90] See the return card attached to the Summons, *id.*

The crucial question now is: *Did Fairland and Debbie voluntarily appear before the Labor Arbiter as to submit themselves to its jurisdiction?*

Fairland argued before the CA that it did not engage Atty. Geronimo as its counsel. However, the Court held in *Santos v. National Labor Relations Commission*,[91] *viz*:

> In the instant petition for *certiorari*, petitioner Santos reiterates that he should not have been adjudged personally liable by public respondents, the latter not having validly acquired jurisdiction over his person whether by personal service of summons or by substituted service under Rule 19 of the Rules of Court.
>
> Petitioner's contention is unacceptable. The fact that Atty. Romeo B. Perez has been able to timely ask for a deferment of the initial hearing on 14 November 1986, coupled with his subsequent active participation in the proceedings, should disprove the supposed want of service of legal processes. Although as a rule, modes of service of summons are strictly followed in order that the court may acquire jurisdiction over the person of a defendant, such procedural modes, however, are liberally construed in quasi-judicial proceedings, substantial compliance with the same being considered adequate. Moreover, jurisdiction over the person of the defendant in civil cases is acquired not only by service of summons but also by voluntary appearance in court and submission to its authority. 'Appearance' by a legal advocate is such 'voluntary submission to a court's jurisdiction'. It may be made not only by actual physical appearance but likewise by the submission of pleadings in compliance with the order of the court or tribunal.
>
> To say that petitioner did not authorize Atty. Perez to represent him in the case is to unduly tax credulity. Like the Solicitor General, the Court likewise considers it unlikely that Atty. Perez would have been so irresponsible as to represent petitioner if he were not, in fact, authorized. Atty. Perez is an officer of the court, and he must be presumed to have acted with due propriety. The employment of a counsel or the authority to employ an attorney, it might be pointed out, need not be proved in writing; such fact could [be] inferred from circumstantial evidence. x x x[92] (Citations omitted.)

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[91] 325 Phil. 145 (1996).

[92] *Id.* at 155-156.

From the records, it appears that Atty. Geronimo first entered his appearance on behalf of Susan/Weesan in the hearing held on April 3, 2003.[93] Being then newly hired, he requested for an extension of time within which to file a position paper for said respondents. On the next scheduled hearing on April 28, 2003, Atty. Geronimo again asked for another extension to file a position paper for all the respondents considering that he likewise entered his appearance for Fairland.[94] Thereafter, said counsel filed pleadings such as Respondents' Position Paper[95] and Respondents' Consolidated Reply[96] on behalf of all the respondents namely, Susan/Weesan, Fairland and Debbie. The fact that Atty. Geronimo entered his appearance for Fairland and Debbie and that he actively defended them before the Labor Arbiter raised the presumption that he is authorized to appear for them. As held in *Santos,* it is unlikely that Atty. Geronimo would have been so irresponsible as to represent Fairland and Debbie if he were not in fact authorized. As an officer of the Court, Atty. Geronimo is presumed to have acted with due propriety. Moreover, "[i]t strains credulity that a counsel who has no personal interest in the case would fight for and defend a case with persistence and vigor if he has not been authorized or employed by the party concerned."[97]

We do not agree with the reasons relied upon by the CA's Special Ninth Division in its May 9, 2008 Resolution in CA-G.R. No. 93204 when it ruled that Fairland, through Atty. Geronimo, did not voluntarily submit itself to the Labor Arbiter's jurisdiction.

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[93] See Constancia for the hearing held on April 3, 2003, records, vol. I, p. 43.

[94] See Constancia for the hearing held on April 28, 2003, *id*. at 44.

[95] *Id.* at 45-48 & 52-56.

[96] *Id*. at 105-108.

[97] *Paramount Insurance Corporation v. Japzon,* G.R. No. 68037, July 29, 1992, 211 SCRA 879, 886.

In so ruling, the CA noted that Atty. Geronimo has no prior authorization from the board of directors of Fairland to handle the case. Also, the alleged verification signed by Debbie, who is not one of Fairland's duly authorized directors or officers, is defective as no board resolution or secretary's certificate authorizing her to sign the same was attached thereto. Because of these, the Special Ninth Division held that the Labor Arbiter committed grave abuse of discretion in not requiring Atty. Geronimo to show his proof of authority to represent Fairland considering that the latter is a corporation.

The presumption of authority of counsel to appear on behalf of a client is found both in the Rules of Court and in the New Rules of Procedure of the NLRC.[98]

Sec. 21, Rule 138 of the Rules of Court provides:

> Sec. 21. *Authority of attorney to appear* – An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions.

On the other hand, Sec. 8, Rule III of the New Rules of Procedure of the NLRC,[99] which is the rules prevailing at that time, states in part:

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[98] The NLRC Rules in force at that time.

[99] The present Section 8, Rule III of the 2005 Revised Rules of Procedure of the NLRC partly reads:

> SECTION 8. APPEARANCES. – a) A lawyer appearing for a party is presumed to be properly authorized for that purpose. In every case, he shall indicate in his pleadings and motions his Attorney's Roll Number, as well as his PTR and IBP numbers for the current year. x x x

SECTION 8. APPEARANCES. — An attorney appearing for a party is presumed to be properly authorized for that purpose. However, he shall be required to indicate in his pleadings his PTR and IBP numbers for the current year.

Between the two provisions providing for such authority of counsel to appear, the Labor Arbiter is primarily bound by the latter one, the NLRC Rules of Procedure being specifically applicable to labor cases. As Atty. Geronimo consistently indicated his PTR and IBP numbers in the pleadings he filed, there is no reason for the Labor Arbiter not to extend to Atty. Geronimo the presumption that he is authorized to represent Fairland.

Even if we are to apply Sec. 21, Rule 138 of the Rules of Court, the Labor Arbiter cannot be expected to require Atty. Geronimo to prove his authority under said provision since there was no motion to that effect from either party showing reasonable grounds therefor. Moreover, the fact that Debbie signed the verification attached to the position paper filed by Atty. Geronimo, without a secretary's certificate or board resolution attached thereto, is not sufficient reason for the Labor Arbiter to be on his guard and require Atty. Geronimo to prove his authority. Debbie, as General Manager of Fairland is one of the officials of the company who can sign the verification without need of a board resolution because as such, she is in a position to verify the truthfulness and correctness of the allegations in the petition.[100]

Although we note that Fairland filed a disbarment case against Atty. Geronimo due to the former's claim of unauthorized appearance, we hold that same is not sufficient to overcome the presumption of authority. Such mere filing is not proof of Atty. Geronimo's alleged unauthorized appearance. Suffice it to say that an attorney's presumption of authority is a strong one.[101] "A mere denial by a party that he authorized an attorney

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[100] *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue,* G.R. No. 151413, February 13, 2008, 545 SCRA 10, 18-19.

[101] AGPALO, RUBEN E., *LEGAL AND JUDICIAL ETHICS,* Eighth Ed. (2009), p. 328.

to appear for him, in the absence of a compelling reason, is insufficient to overcome the presumption, especially when the denial comes after the rendition of an adverse judgment,"[102] such as in the present case.

Citing *PNOC Dockyard and Engineering Corporation v. National Labor Relations Commission*,[103] the CA likewise emphasized that in labor cases, both the party and his counsel must be duly served their separate copies of the order, decision or resolution unlike in ordinary proceedings where notice to counsel is deemed notice to the party. It then quoted Article 224 of the Labor Code as follows:

> ARTICLE 224. *Execution of decisions, orders or awards.* – (a) the Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, *motu proprio* or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or [R]egional Director, the Commission, the Labor Arbiter or Med-Arbiter, or Voluntary Arbitrators. In any case, it shall be the duty of the responsible officer to **separately furnish immediately the counsels of record and the parties with copies of said decision, orders or awards.** Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions x x x (Emphasis in the original).[104]

The CA then concluded that since Fairland and its counsel were not separately furnished with a copy of the August 26, 2005 NLRC Resolution denying the motions for reconsideration of its November 30, 2004 Decision, said Decision cannot be enforced against Fairland. The CA likewise concluded that because of this, said November 30, 2004 Decision which held

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[102] *Id*. at 328-329.

[103] 353 Phil. 431 (1998).

[104] See pp. 11-12 of the Resolution dated May 9, 2008 of the CA's Special Ninth Division, CA *rollo* (CA-G.R. No. 93204), pp. 1103-1104.

Susan/Weesan and Fairland solidarily liable to the workers, has not attained finality.

We cannot agree. In *Ginete v. Sunrise Manning Agency*[105] we held that:

The case of *PNOC Dockyard and Engineering Corporation vs. NLRC* cited by petitioner enunciated that 'in labor cases, *both* the party and its counsel must be duly served their separate copies of the order, decision or resolution; unlike in ordinary judicial proceedings where notice to counsel is deemed notice to the party.' Reference was made therein to Article 224 of the Labor Code. But, as correctly pointed out by private respondent in its Comment to the petition, Article 224 of the Labor Code does not govern the procedure for filing a petition for *certiorari* with the Court of Appeals from the decision of the NLRC but rather, it refers to the execution of 'final decisions, orders or awards' and requires the sheriff or a duly deputized officer to furnish both the parties and their counsel with copies of the decision or award for that purpose. There is no reference, express or implied, to the period to appeal or to file a petition for *certiorari* as indeed the caption is 'execution of decisions, orders or awards'. Taken in proper context, Article 224 contemplates the furnishing of copies of 'final decisions, orders or awards' and could not have been intended to refer to the period for computing the period for appeal to the Court of Appeals from a non-final judgment or order. The period or manner of 'appeal' from the NLRC to the Court of Appeals is governed by Rule 65 pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes vs. NLRC*. Section 4 of Rule 65, as amended, states that the 'petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed'.

Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that '(F)or the purposes of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record.' Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for *certiorari* filed with the Court of Appeals from decisions of the NLRC. **This procedure is in line with the**

[105] 411 Phil. 953. 957-958 (2001).

established rule that notice to counsel is notice to party and when a party is represented by counsel, notices should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent. It is to be noted also that Section 7 of the NLRC Rules of Procedure provides that '(A)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure'' a provision which is similar to Section 23, Rule 138 of the Rules of Court. More importantly, Section 2, Rule 13 of the 1997 Rules of Civil Procedure analogously provides that if any party has appeared by counsel, service upon him shall be made upon his counsel. (Citations omitted; emphasis supplied)

To stress, Article 224 contemplates the furnishing of copies of final decisions, orders or awards *both* to the parties and their counsel in connection with the execution of such final decisions, orders or awards. However, for the purpose of computing the period for filing an appeal from the NLRC to the CA, same shall be counted from receipt of the decision, order or award by the counsel of record pursuant to the established rule that notice to counsel is notice to party. And since the period for filing of an appeal is reckoned from the counsel's receipt of the decision, order or award, it necessarily follows that the reckoning period for their finality is likewise the counsel's date of receipt thereof, if a party is represented by counsel. Hence, the date of receipt referred to in Sec. 14, Rule VII of the then in force New Rules of Procedure of the NLRC[106] which provides that decisions, resolutions or orders of the NLRC shall become executory *after 10 calendar days from receipt of the same*, refers to the date of receipt by counsel. Thus contrary to the CA's conclusion, the said NLRC Decision

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[106] Sec. 14, Rule VII of the 2005 Revised NLRC Rules now reads:

Sec. 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT – a) Finality of the Decisions, Resolutions or Orders of the Commission. – Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties. x x x

became final, as to Fairland, 10 calendar days after Atty. Tecson's receipt[107] thereof.[108] In sum, we hold that the Labor Arbiter had validly acquired jurisdiction over Fairland and its manager, Debbie, through the appearance of Atty. Geronimo as their counsel and likewise, through the latter's filing of pleadings on their behalf.

Fairland is Weesan's principal.

In addition to our discussion in G.R. No. 189658 with respect to the finding that Susan/Weesan is a mere labor-only contractor which we find to be likewise significant here, a careful examination of the records reveals other telling facts that Fairland is Susan/Weesan's principal, to wit: (1) aside from sewing machines, Fairland also lent Weesan other equipment such as fire extinguishers, office tables and chairs, and plastic chairs;[109] (2) no proof evidencing the contractual arrangement between Weesan and Fairland was ever submitted by Fairland; (3) while both Weesan and Fairland assert that the former had other clients aside from the latter, no proof of Weesan's contractual relationship with its other alleged client is extant on the records; and (4) there is no showing that any of the workers were assigned to other clients aside from Fairland. Moreover, as found by the NLRC and affirmed by both the Special Former Special Eighth Division in CA-G.R. SP No. 93860 and the First Division in CA-G.R. SP No. 93204, the activities, the manner of work and the movement of the workers were subject to Fairland's control. It bears emphasizing that "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, as in the present case, are conclusive upon the parties and binding on this Court."[110]

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[107] See proof of receipt, records, vol. I, p. 284.

[108] By then, Fairland was already being represented by Atty. Melina O. Tecson after the latter filed before the NLRC a Motion for Reconsideration claiming that Fairland was not aware of the complaints filed against it and that it never engaged the services of Atty. Geronimo.

[109] Records, Vol. I, p. 50.

[110] *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals*, 505 Phil. 10, 24 (2005).

Viewed in its entirety, we thus declare that Fairland is the principal of the labor-only contractor, Weesan.

Fairland, therefore, as the principal employer, is solidarily liable with Susan/Weesan, the labor-only contractor, for the rightful claims of the employees. Under this set-up, Susan/Weesan, as the "labor-only" contractor, is deemed an agent of the principal, Fairland, and the law makes the principal responsible to the employees of the "labor-only" contractor as if the principal itself directly hired or employed the employees.[111]

WHEREFORE, the Court,

1) in G.R. No. 189658, *DENIES* the Petition for Review on *Certiorari*. The assailed Decision dated July 20, 2009 and Resolution dated October 1, 2009 of the Special Former Special Eighth Division of the Court of Appeals in CA-G.R. No. 93860 are *AFFIRMED*.

2) in G.R. No. 182915, *GRANTS* the Petition for Review on *Certiorari*. The assailed Resolution dated May 9, 2008 of the Special Ninth Division of the Court of Appeals in CA-G.R. No. 93204 is hereby *REVERSED and SET ASIDE* and the Decision dated July 25, 2007 of the First Division of the Court of Appeals is *REINSTATED and AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Brion,[**] *and Perlas-Bernabe,*[**] *JJ.,* concur.

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[111] *7K Corporation v. National Labor Relations Commission, supra* note 69.

[**] Designated as additional member per raffle dated October 10, 2011.

EN BANC

[A.C. No. 5355. December 13, 2011]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **ATTY. DANIEL B. LIANGCO,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS MISCONDUCT; REFERS TO ANY INEXCUSABLE, SHAMEFUL OR FLAGRANT UNLAWFUL CONDUCT ON THE PART OF A PERSON CONCERNED WITH THE ADMINISTRATION OF JUSTICE.— In *Sps. Donato v. Atty. Asuncion, Jr.* citing *Yap v. Judge Aquilino A. Inopiquez, Jr.,* this Court explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.,* conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.

2. ID.; ID.; A JUDGE IS EXPECTED TO BE WELL-VERSED IN THE RULES OF PROCEDURE; CASE AT BAR.— As a member of the bar and former judge, respondent is expected to be well-versed in the Rules of Procedure. This expectation is imposed upon members of the legal profession, because membership in the bar is in the category of a mandate for public service of the highest order. Lawyers are oath-bound servants of society whose conduct is clearly circumscribed by inflexible norms of law and ethics, and whose primary duty is the advancement of the quest for truth and justice, for which they have sworn to be fearless crusaders. As judge of a first-level court, respondent is expected to know that he has no jurisdiction to entertain a petition for declaratory relief. Moreover, he is presumed to know that in his capacity as judge, he cannot render a legal opinion in the absence of a justiciable question. Displaying an utter lack of familiarity with the rules, he in effect erodes the public's confidence in the competence of our courts. Moreover, he demonstrates his ignorance of the power and responsibility that attach to the processes and issuances of a judge, and that he as a member of the bar should know.

3. ID.; ID.; A JUDGE WHO DISOBEYS THE BASIC RULES OF JUDICIAL CONDUCT ALSO VIOLATES THE LAWYER'S OATH. — In *Collantes v. Renomeron*, we ruled therein that the misconduct of the respondent therein as a public official also constituted a violation of his oath as a lawyer x x x. Recently, in *Samson v. Judge Caballero*, we ruled that because membership in the bar is an integral qualification for membership in the bench, the moral fitness of a judge also reflects the latter's moral fitness as a lawyer. A judge who disobeys the basic rules of judicial conduct also violates the lawyer's oath.

4. LEGAL ETHICS.; ATTORNEYS; DISBARMENT PROCEEDINGS; CONSIDERED *SUI GENERIS*; PURPOSE. — Disbarment proceedings are *sui generis*. As such, they render the underlying motives of complainant unimportant and of little relevance. The purpose of disbarment proceedings is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice – an issue which the complainant's personal motives have little relevance. For this reason, upon information of an alleged wrongdoing, the Court may initiate the disbarment proceedings *motu proprio*.

VELASCO, *J.*, *concurring opinion:*

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; CANNOT BE AVAILED OF TO ASSAIL THE RESOLUTIONS OF THE INTEGRATED BAR OF THE PHILIPPINES BOARD OF GOVERNORS RECOMMENDING SUSPENSION FROM THE PRACTICE OF LAW OR DISBARMENT.— [T]he filing of a Petition for Review on *Certiorari* assailing the IBP Board of Governors' Resolution adopting and approving the recommendation of the IBP Commission on Bar Discipline to disbar him is not available to respondent. x x x Under the Resolution issued on June 17, 2008 in B.M. No. 1755, the Court emphasized the application of x x x Sec. 12 of Rule 139-B [of the Rules of Court] x x x. [I]t is clear that if the IBP Board of Governors—from the report and recommendation of the IBP CBD—exonerates the respondent or metes a penalty other than suspension or disbarment, the exoneration of respondent or imposition of minor penalties becomes final and executory when no motion for reconsideration is filed by a party. **And when a**

motion for reconsideration is filed and then resolved by the IBP Board of Governors, the aggrieved party may file a petition for review under Rule 45 to further assail the IBP Board of Governors' disposition. In case the imposable penalty is suspension from the practice of law or disbarment, the approval by the IBP Board of Governors for such sanctions is **merely recommendatory**, regardless of whether a party files a motion for reconsideration or not, and the entire case records of the administrative case is transmitted to the Court for appropriate action on such recommendation. In the instant case, the IBP Board of Governors recommended respondent's disbarment through its issuance of Resolution No. XVIII-2008-525 on October 9, 2008. Thus, there is no need for respondent to file a petition for review under Rule 45 to assail said IBP resolution as such is only recommendatory and is subject to immediate appropriate review and disposition by this Court. The Rules clearly do not grant respondent the remedy of a petition for review under Rule 45 since such is not necessary for the Court immediately reviews for appropriate action all resolutions from the IBP Board of Governors recommending suspension from the practice of law or disbarment.

APPEARANCES OF COUNSEL

Avelino L. Liangco and *Ricardo M. Sagmit, Jr.* for respondent.

D E C I S I O N

PER CURIAM:

The Case

This is an administrative Complaint for Disbarment filed by the Office of the Court Administrator (OCA) against respondent Atty. Daniel B. Liangco.

In a *per curiam En Banc* Resolution in *Gozun v. Hon. Liangco*,[1] dated 30 August 2000, this Court ordered the dismissal

[1] A. M. No. MTJ-97-1136, 30 August 2000, 339 SCRA 253.

from service of respondent as judge of the Municipal Trial Court (MTC) of San Fernando, Pampanga and as acting judge of the Municipal Circuit Trial Court (MCTC) of Mexico-San Luis, Pampanga. His dismissal was with forfeiture of all his retirement benefits and accumulated leave credits; and with prejudice to his reinstatement or reemployment in any branch, instrumentality or agency of the government, including government-owned or -controlled corporations. The Court further directed the OCA to initiate disbarment proceedings against him for misconduct as a member of the bar. Hence, this present case for resolution by the Court.

The Facts

We quote the facts as stated in A. M. No. MTJ-97-1136,[2] as follows:

Complainant Hermogenes T. Gozun (hereinafter referred to as "Gozun") was in open and adverse possession of subject land for a period of more than thirty years. His family's house was erected on the land. The house was made of old vintage lumber, cement, hollow blocks, G. I. sheet roofing and other strong materials. Gozun inherited the house and lot from his parents.

The municipality of San Luis, Pampanga claimed to own the same lot.

On January 12, 1996, the Sangguniang Bayan of San Luis, Pampanga issued Resolution No. 26-96, stating:

> "RESOLVED AS IT IS HEREBY RESOLVED that the Sangguniang Bayan of San Luis, Pampanga do hereby consider (*sic*) the lot under Tax Dec. No. 114 owned by the Municipal Government of San Luis, Pampanga, specifically the lot where Mr. Hermogenes Gozun and family were squatting (*sic*) as the new site of the Rural Health Center will rise (*sic*).

On May 17, 1996, the Sangguniang Bayan issued Resolution No. 34-96 to amend the correct Resolution No. 26-96.

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[2] *Rollo,* pp. 142-147.

On May 24, 1996, Romulo M. Batu, Vice Mayor, on behalf of the Sangguniang Bayan, filed with the MTC, San Luis, Pampanga, a petition for declaratory relief. We quote the petition:

"PETITION FOR DECLARATORY RELIEF

"THE HONORABLE
JUDGE DANIEL LIANGCO

"In behalf of the Sangguniang Bayan of San Luis, Pampanga, We would like to petition your good office to render legal opinion on the following matters, to wit:

"1. The validity of the attached Resolution.

"2. The powers of the Municipal Mayor to enforce said Resolution.

"3. To issue an order to the PNP to assist the Municipal Mayor in implementing said Resolution.

"These request are (*sic*) in connection with our plan to construct a new site for the Rural Health Center of San Luis, Pampanga. However, the designated place thereof is presently being squatted (*sic*) by a certain Mr. Hermogenes Gozun and inspite of the official notice of Atty. Benlfre S. Galang, our Provincial Legal Officer, and personal request of our Municipal Mayor Jovito C. Bondoc to Mr. Gozun to vacate his (*sic*) premises, he continues to defy such notices and request to the detriment of the proposed project.

"WHEREFORE, it is respectfully prayed that this petition will merit your favorable consideration and appropriate action for the sake of public interest."

On the very same day, May 24, 1996, respondent judge issued a resolution, reasoning: First, the municipality of San Luis, Pampanga through its Sangguniang Bayan may enact resolutions and ordinances to regulate the use of property within its jurisdiction. Second, Resolution No. 34-96 is not contrary to law, morals and public policy. Third, the municipal mayor through an executive order may order the Philippine National Police or any government law enforcement agency to enforce or implement the resolution, using reasonable force if necessary and justified. Fourth, squatting in government property is considered a "nuisance *per se*." Respondent judge ruled:

> "With the issuance by the Municipal Mayor of an executive order, the municipality of San Luis may order the Philippine National Police (PNP) stationed in San Luis, Pampanga to effect the eviction of Hermogenes Gozun and all other persons who may be claiming any right under him from Lot No. 114 covered by tax Declaration No. 6030 (*underscoring ours*)."

Again, on the same day, March 24, 1996, the municipal mayor, Jovito C. Bondoc, pursuant to the aforequoted resolution, issued Executive Order No. 1, series of 1996, ordering the PNP to implement Resolution No. 34-96.

Note that complainant Gozun was not served with summons or given notice of the petition for declaratory relief.

On June 2, 1996, complainant Gozun learned about the resolution.

On June 3, 1996, complainant Gozun's wife together with other public school teachers went to the office of the respondent judge. When asked about the resolution, respondent judge answered, "*Ing Apung Guinu yu y Mayor Bondoc at kaya ko makisabi*" ("Your God is Mayor Bondoc and you should talk to him").

On August 8, 1996, agents of the municipal government demolished complainant Gozun's house, using respondent judge's resolution and the mayor's executive order as basis.

On December 18, 1996, complainant Gozun filed this administrative complaint with the Office of the Court Administrator. He averred that respondent judge's issuance of the resolution amounts to "gross misconduct, gross inefficiency and incompetence." Complainant Gozun further accused the municipal mayor of having bribed respondent judge. Mayor Bondoc told complainant Gozun that "the respondent judge is in his pocket…because he (Mayor Bondoc) has given him (respondent judge) a lot of things ("*dacal naku a regalo kaya*").

On January 20, 1997, the Office of the Court Administrator submitted the petition to this Court for its consideration, recommending that the complaint be given due course.

On March 21, 1997, the Court resolved to require respondent judge to comment thereon, within ten (10) days from notice.

On May 15, 1997, respondent judge submitted his comment, denying the charges and urging that the case be dismissed.

On June 23, 1997, we referred the case back to the Office of the Court Administrator for evaluation, report and recommendation.

On April 13, 2000, after investigation, Court Administrator Alfredo L. Benipayo submitted a memorandum, recommending the dismissal from office of respondent judge.[3]

A.M. No. MTJ-97-1136
Dismissal of Respondent from the Bench

The OCA Resolution was forwarded to this Court for evaluation and action and docketed as A.M. No. MTJ-97-1136. On 30 August, 2000, the Court *En Banc* promulgated a *per curiam* Resolution adopting the report and recommendation of the Court Administrator. It ruled that respondent had blatantly ignored the basic rules of fair play, in addition to acting without jurisdiction in entertaining a Petition for Declaratory Relief despite his being a judge of a first-level court.[4] The Court also pointed out that his ruling on the said Petition resulted in the demolition of the house of complainant Gozun, thus rendering his family homeless.[5] It described respondent's acts as biased and "maleficent" and ruled that those acts merited the punishment of dismissal from the service,[6] *viz*:

IN VIEW WHEREOF, the Court **hereby orders the DISMISSAL** of respondent Judge Daniel B. Liangco, Municipal Trial Judge, Municipal Trial Court, San Fernando, Pampanga, and Acting Judge Municipal Circuit Trial Court (MCTC), Mexico-San Luis, Pampanga, from the service, with forfeiture of all retirement benefits and accumulated leave credits, if any, and with prejudice to reinstatement or reemployment in any branch, instrumentality or agency of the Government, including government-owned or controlled corporations.

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[3] *Rollo*, p. 136.

[4] *Rollo*, p. 147.

[5] *Id*. at 148.

[6] *Id*. at 152.

The Court directs the Court Administrator to initiate disbarment proceedings against respondent Judge for misconduct as a member of the bar within thirty (30) days from finality of his decision.

This decision is immediately executory.

SO ORDERED.[7]

A.C. No. 5355
Disbarment

On 10 November 2000, the OCA filed a Complaint for Disbarment against respondent.[8] In its Complaint dated 06 November 2000, docketed as Administrative Case No. (A.C.) 5355, the OCA charged him with gross misconduct for acting with manifest bias and partiality towards a party, as well as for inexcusable ignorance of well-established rules of procedure that challenged his competence to remain a member of the legal profession. Thus, it prayed that he be disbarred, and that his name be stricken off the Roll of Attorneys.[9]

On 28 November 2000, the Court *En Banc* promulgated a Resolution requiring respondent to file his Comment on the Complaint for Disbarment against him.[10] On 01 June 2001, he filed his Comment on/Answer to Complaint for Disbarment,[11] appealing for understanding and asking that the Court allow him to continue practicing as a lawyer. He reasoned that when he acted on the Petition for Declaratory Relief filed by the *Sangguniang Bayan* of the Municipality of San Luis, Pampanga, he was merely rendering a legal opinion "honestly and in good faith";[12] and that his actions were not attended by malice, bad faith or any other ulterior motive.[13] He further pleads for

[7] *Id.* at 152.

[8] *Id.* at 154.

[9] *Rollo*, p. 159.

[10] *Id.* at 172.

[11] *Id.* at 198.

[12] *Id.* at 200.

[13] *Id.*

compassion from this Court and for permission to remain a member of the bar, because the practice of law is his only means of livelihood to support his family.[14]

On 07 August 2001, the Court *En Banc* noted the submission of respondent and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt of the records of the case.[15]

IBP's Report and Recommendation

The IBP held a series of hearings on the disbarment case with respondent's participation. On 03 October 2003, the investigating commissioner issued her Report and Recommendation[16] finding justification for the disbarment of respondent and recommending that his name be struck off the Roll of Attorneys. The investigating commissioner found that, based on the facts of the case, there was clear, convincing and satisfactory evidence to warrant the disbarment of respondent.[17] She observed that he had exhibited lapses, as well as ignorance of well-established rules and procedures. She also observed that the present Complaint was not the first of its kind to be filed against him. She further noted that before his dismissal from the judiciary, respondent was suspended for six (6) months when he assigned to his court, without a raffle, fifty-four (54) cases for violation of Presidential Decree No. 1602 – a violation of Supreme Court Circular No. 7 dated 23 September 1974. Also, pending with the Supreme Court were three (3) administrative cases filed against him for dishonesty, gross ignorance of the law, and direct bribery. In the bribery

[14] *Id.* at 207.

[15] *Id.* at 212.

[16] The Report and Recommendation dated 03 October 2003 promulgated by the IBP Commission on Bar Discipline in *OCA v. Atty. Daniel B. Liangco* docketed as Adm. Case No. 5355 was penned by Commissioner Rebecca Villanueva-Maala.

[17] IBP Commission on Bar Discipline Records, Vol. IV, p. 3.

case, he was caught by the National Bureau of Investigation in an entrapment operation.[18]

On 30 January 2009, respondent filed a Motion for Reconsideration[19] of the Report and Recommendation of the IBP. He alleged that the evidence presented in the proceedings for his dismissal as judge was the same as that which was used in the disbarment case against him. Thus, because he did not have the chance to cross-examine the witnesses, he claimed to have been deprived of due process.[20] In addition, respondent emphasized the submission by Gozun of an Affidavit of Desistance from the Complaint the latter had originally filed against him and contended that the case should have been dismissed.[21] Lastly, respondent averred that he had endeavored to improve himself as a devout Catholic by joining religious organizations. He also impressed upon the IBP his effort to improve on his knowledge of the law by attending Mandatory Continuing Legal Education (MCLE).[22]

On 12 May 2009, respondent filed a Supplemental Motion for Reconsideration[23] wherein he implored the IBP to take a second look at his case. He emphasized the submission by Gozun of an Affidavit of Desistance and the fact that the former had already suffered the supreme penalty of dismissal as MTC judge.[24] Respondent also reiterated the grounds already stated in his first Motion for Reconsideration.

On 09 October 2008, the IBP board of governors passed Resolution No. XVIII-2008-525,[25] which adopted the Report

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[18] *Id.* at 4.

[19] *Id.* at 14.

[20] *Id.* at 15.

[21] *Id.*

[22] *Id.* at 24.

[23] IBP Commission on Bar Discipline Records, Vol. IV, p. 34.

[24] *Id.* at 37.

[25] Resolution No. XVIII-2008-525 was signed by Tomas N. Prado, National Secretary of the IBP Board of Governors, *id.* at 1.

and Recommendation of the investigating commissioner, who found that respondent had acted with manifest bias and partiality in favor of a party-litigant and shown inexcusable ignorance of the Rules of Procedure. The Resolution likewise adopted the recommendation to disbar respondent.

On 30 June 2011, the IBP Commission on Bar Discipline transmitted the case records of A. C. No. 5355 to this Court, which noted it on 16 August 2011.[26]

The Court's Ruling

The Court affirms *in toto* the findings and recommendations of the IBP.

The evidence on record overwhelmingly supports the finding that respondent is guilty of gross misconduct and inexcusable ignorance of well-established rules of procedures.

Gross Misconduct

In *Sps. Donato v. Atty. Asuncion, Jr.*[27] citing *Yap v. Judge Aquilino A. Inopiquez, Jr.*,[28] this Court explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.,* conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.

In the case at bar, respondent acted upon the Petition for Declaratory Relief filed by the *Sangguniang Bayan* of San Luis, Pampanga, without the mandatory notice to Gozun who would be affected by the action. The records show that respondent, upon receipt of the Petition, had it docketed in his court, designated Gozun as respondent in the case title, and

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[26] Letter dated 30 June 2011 by Alicia A. Risos-Vidal, IBP Director for Bar Discipline addressed to Chief Justice Renato C. Corona.

[27] A.C. No. 4914, 03 March 2004, 424 SCRA 199.

[28] A.M. No. MTJ-02-1431, 09 May 2003, 403 SCRA 141.

quickly disposed of the matter by issuing a Resolution – all on the same day that the Petition was filed without notice and hearing. Respondent admitted that, to his mind, he was merely rendering a legal opinion at the local government's behest, which he gladly and expeditiously obliged. Without denying this fact in his Comment, he admitted that he had erred in acting upon the Petition, but emphasized that his actions were not attended by malice or bad faith.[29]

We find his statements hard to believe.

The undue haste with which respondent acted on the Petition negates good faith on his part. Moreover, the testimonial evidence on record indicates that he maintained close relations with the municipal vice-mayor of San Luis, Pampanga, a party-litigant who had an obvious interest in the outcome of the case. The testimony of Romulo A. Batu, former vice-mayor of San Luis, Pampanga, showed that respondent denigrated his impartiality as a judge is as follows:

COMM. SANSANO:

> You don't remember therefore that at any time at all you were with the mayor in going to see the respondent?

WITNESS: (Mr. Batu)

> I do not know any instance that the mayor visited the respondent, Your Honor. I do not know any instance that I was with him.

COMM. SANSANO:

> But other than the occasion of the filing of this request there were times when you went to see the respondent also in his office?

WITNESS:

> There was no other visit, Your Honor.

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[29] *Rollo,* p. 203.

COMM. SANSANO:

> So May 24, 1996 was the first time you went to see him in his office?

WITNESS:

> Before that, Your Honor, *nagpupunta na kami doon kung minsan may nagpapatulong na mga may kaso*.

COMM. SANSANO:

> *Yon ang tanong ko kanina sa iyo kung bago* May 24 *pumupunta ka na sa opisina niyang datihan*?

WITNESS:

> Yes, Your Honor.[30]

The testimony of respondent's own witness clearly showed his wanton disregard of Canon 1, Sections 4 and 5 of the New Code of Judicial Conduct for the Philippine Judiciary, which requires the observance of judicial independence and its protection from undue influence, whether from private or from public interests.[31]

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[30] IBP Commission on Bar Discipline Records, Vol. III, TSN, 26 June 2002, pp. 46-47.

[31] New Code of Judicial Conduct for the Philippine Judiciary:

CANON1

INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

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SEC. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SEC. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

In *Edaño v. Judge Asdala*,[32] we explained the rationale behind this imposition:

As the visible representation of the law and justice, judges, such as the respondent, are expected to conduct themselves in a manner that would enhance the respect and confidence of the people in the judicial system. The New Code of Judicial Conduct for the Philippine Judiciary mandates that judges must not only maintain their independence, integrity and impartiality; but they must also avoid any appearance of impropriety or partiality, which may erode the people's faith in the judiciary. Integrity and impartiality, as well as the appearance thereof, are deemed essential not just in the proper discharge of judicial office, but also to the personal demeanor of judges. This standard applies not only to the decision itself, but also to the process by which the decision is made. Section 1, Canon 2, specifically mandates judges to "ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of reasonable observers." Clearly, it is of vital importance not only that independence, integrity and impartiality have been observed by judges and reflected in their decisions, but that these must also appear to have been so observed in the eyes of the people, so as to avoid any erosion of faith in the justice system. Thus, judges must be circumspect in their actions in order to avoid doubt and suspicion in the dispensation of justice. To further emphasize its importance, Section 2, Canon 2 states:

> Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

As early as June 6, 2003, OCA Circular No. 70-2003 has directed judges as follows:

> In view of the increasing number of reports reaching the Office of the Court Administrator that judges have been meeting with party litigants inside their chambers, judges are hereby cautioned to avoid in-chambers sessions without the other party and his counsel present, and to observe prudence at all times in their conduct to the end that they only act impartially and with propriety but are also perceived to be impartial and proper.

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[32] A.M. No. RTJ-06-1974, 26 July 2007, 528 SCRA 212.

Impartiality is essential to the proper discharge of the judicial office. It applies not only to "the decision itself but also to the process by which the decision is made." As such, judges must ensure that their "conduct, both in and out of the court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary." In the same vein, the Code of Judicial Conduct behooves all judges to avoid impropriety and the appearance of impropriety in all their activities, as such is essential to the performance of all the activities of a judge in order to maintain the trust and respect of the people in the judiciary.

Also relevant is Canon 3, particularly Section 2 of the new code, which exhorts judges not only to be impartial in deciding the cases before them, but also to project the image of impartiality.[33] Unfortunately, as shown by the facts of the case, these rules were not properly observed by respondent as a judge of a first-level court.

Inexcusable Ignorance of the Law

We are appalled by respondent's ignorance of the basic rules of procedure. His wanton use of court processes in this case without regard for the repercussions on the rights and property of others clearly shows his unfitness to remain a member of the bar.

A cursory look at the Resolution dated 24 May 1996 issued by respondent would prompt an ordinary person to conclude that an action in the form of a Petition for Declaratory Relief was indeed filed, because it bears the name and the branch of

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[33] New Code of Judicial Conduct for the Philippine Judiciary:

Canon 3

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself, but also to the process by which the decision is made.

x x x x x x x x x

SEC. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the Judiciary.

the court of law that issued it. It had a docket number and the names of the parties involved. The Resolution even states the justiciable question to be resolved and accordingly makes a judicial determination thereof. In reality, though, there was no notice sent to Gozun, the named respondent in the Petition; nor was a hearing held to thresh out the issues involved. As far as respondent was concerned, he simply issued a "legal opinion," but one with all the hallmarks of a valid issuance by a court of law, despite the absence of mandatory processes such as notice – especially to Gozun – and hearing. Even this excuse is unacceptable. Judges do not, and are not allowed, to issue legal opinions. Their opinions are always in the context of judicial decisions, or concurring and dissenting opinions in the case of collegiate courts, and always in the context of contested proceedings.

What is most unfortunate is that the *Sanguniang Bayan*, relying on the Resolution respondent issued, caused the demolition of the house of Gozun and his family, who were thus ejected from the property they had been occupying for decades. In effect, Gozun was deprived of his property without due process. To us, this is precisely the injustice that members of the bench and the bar are sworn to guard against. Regrettably, respondent as judge was even instrumental in its commission. When his liability for his act was invoked, he casually justifies them as honest mistakes not attended by malice or bad faith. His justification is unacceptable to us.

As a member of the bar and former judge, respondent is expected to be well-versed in the Rules of Procedure. This expectation is imposed upon members of the legal profession, because membership in the bar is in the category of a mandate for public service of the highest order. Lawyers are oath-bound servants of society whose conduct is clearly circumscribed by inflexible norms of law and ethics, and whose primary duty is the advancement of the quest for truth and justice, for which they have sworn to be fearless crusaders.[34]

[34] Apostacy in the Legal Profession, 64 SCRA 784.

As judge of a first-level court, respondent is expected to know that he has no jurisdiction to entertain a petition for declaratory relief. Moreover, he is presumed to know that in his capacity as judge, he cannot render a legal opinion in the absence of a justiciable question. Displaying an utter lack of familiarity with the rules, he in effect erodes the public's confidence in the competence of our courts. Moreover, he demonstrates his ignorance of the power and responsibility that attach to the processes and issuances of a judge, and that he as a member of the bar should know.

Canon 1 of the Code of Professional Responsibility mandates that a lawyer must uphold the Constitution and promote respect for the legal processes.[35] Contrary to this edict, respondent malevolently violated the basic constitutional right of Gozun not to be deprived of a right or property without due process of law.

Under Canon 10, Rule 10.03, respondent as lawyer is mandated to observe the Rules of Procedure and not to misuse them to defeat the ends of justice.[36] In this case, however, the opposite happened. Respondent recklessly used the powers of the court to inflict injustice.

Should the misconduct of respondent as judge also warrant his disbarment from the legal profession? We answer in the affirmative.

In *Collantes v. Renomeron*,[37] we ruled therein that the misconduct of the respondent therein as a public official also constituted a violation of his oath as a lawyer:

As the late Chief Justice Fred Ruiz Castro said:

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[35] Code of Professional Responsibility: Canon 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

[36] *Id.*, Canon 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

x x x x x x x x x

Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse to defeat the ends of justice.

[37] A.C. No. 3056, 16 August 1991, 200 SCRA 584.

> "A person takes an oath when he is admitted to the Bar which is designed to impress upon him his responsibilities. He thereby becomes an 'officer of the court' on whose shoulders rest the grave responsibility of assisting the courts in the proper, fair, speedy and efficient administration of justice. As an officer of the court he is subject to a rigid discipline that demands that in his every exertion the only criterion be that truth and justice triumph. This discipline is what has given the law profession its nobility, its prestige, its exalted place. From a lawyer, to paraphrase Justice Felix Frankfurter, are expected those qualities of truth-speaking, a high sense of honor, full candor, intellectual honesty, and the strictest observance of fiduciary responsibility - all of which, throughout the centuries, have been compendiously described as 'moral character.'
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> xxx xxx xxx
>
> "A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." (Rule 7.03, Code of Professional Responsibility.)
>
> This Court has ordered that only those who are "competent, honorable, and reliable" may practice the profession of law (*Noriega vs. Sison*, 125 SCRA 293) for every lawyer must pursue "only the highest standards in the practice of his calling" (*Court Administrator vs. Hermoso*, 150 SCRA 269, 278).

Recently, in *Samson v. Judge Caballero*,[38] we ruled that because membership in the bar is an integral qualification for membership in the bench, the moral fitness of a judge also reflects the latter's moral fitness as a lawyer. A judge who disobeys the basic rules of judicial conduct also violates the lawyer's oath.

We note that on 25 August 2011, respondent filed a Petition for Review on *Certiorari* assailing Resolution No. XVIII-2008-525 dated 09 October 2008 promulgated by the IBP board of governors, which adopted and approved the findings of the investigating commissioner recommending his disbarment.

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[38] A.M. No. RTC-08-2138, 05 August 2009, 595 SCRA 42 .

Respondent alleged therein that he had served as assistant provincial prosecutor in the Office of the Provincial Prosecutor of Pampanga for thirteen (13) years prior to his dismissal as MTC judge of San Luis, Pampanga and as acting MCTC judge of Mexico-San Luis, Pampanga. He also complains that he was deprived of due process by the IBP board of governors when it approved and adopted the findings of the investigating commissioner recommending his disbarment; and he prays for a second look at his case, considering the withdrawal of the Complaint originally filed by Gozun.

In the light of our ruling in this case, we can no longer consider the undocketed Petition for Review on *Certiorari* filed by respondent. In the first place, such kind of petition is not available to assail the resolution of the IBP in an administrative case. His remedies from an adverse resolution is to seek a reconsideration of the same, and when denied, to raise the same defenses against administrative liability before this Court. He has availed of both remedies in this case.

Disbarment proceedings are *sui generis.* As such, they render the underlying motives of complainant unimportant and of little relevance. The purpose of disbarment proceedings is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice – an issue which the complainant's personal motives have little relevance. For this reason, upon information of an alleged wrongdoing, the Court may initiate the disbarment proceedings *motu proprio*.[39]

Recently in *Garrido v. Atty. Garrido,*[40] we reiterated the unique characteristic of disbarment proceedings and their purpose in this wise:

> Laws dealing with double jeopardy or with procedure – such as the verification of pleadings and prejudicial questions, or in this case, prescription of offenses or the filing of affidavits of desistance by the complainant – do not apply in the determination of a lawyer's

[39] *Que v. Atty. Revilla, Jr.*, A.C. No. 7054, 04 December 2009, 607 SCRA 1.

[40] A.C. No. 6593, 04 February 2010, 611 SCRA 508.

qualifications and fitness for membership in the Bar. We have so ruled in the past and we see no reason to depart from this ruling. First, admission to the practice of law is a component of the administration of justice and is a matter of public interest because it involves service to the public. The admission qualifications are also qualifications for the continued enjoyment of the privilege to practice law. Second, lack of qualifications or the violation of the standards for the practice of law, like criminal cases, is a matter of public concern that the State may inquire into through this Court. In this sense, the complainant in a disbarment case is not a direct party whose interest in the outcome of the charge is wholly his or her own; effectively, his or her participation is that of a witness who brought the matter to the attention of the Court.

Thus, despite Gozun's desistance in A.M. No. MTJ-97-1136, from whence this case originated, respondent is not exonerated.

WHEREFORE, this Court resolves to *DISBAR* Atty. Daniel B. Liangco for the following offenses:

1. *GROSS MISCONDUCT* in violation of Canon 1, Sections 4 and 5 of the New Code of Judicial Conduct for the Philippine Judiciary
2. *INEXCUSABLE IGNORANCE OF THE LAW* in violation of Canons 1 and 10, Rule 10.03 of the Code of Professional Responsibility

Let a copy of this Decision be attached to the personal records of Atty. Daniel B. Liangco in the Office of the Bar Confidant and another copy furnished the Integrated Bar of the Philippines.

The Bar Confidant is hereby directed to strike out the name of Daniel B. Liangco from the Roll of Attorneys.

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., see concurring opinion.

Corona, C.J. and *Brion, J.,* No part due to past relationship with respondent.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the *ponencia.* I would like, however, to elucidate on the petition for review under Rule 45 of the Rules of Court filed by respondent Atty. Daniel B. Liangco.

When respondent was dismissed by the Court in *Gozun v. Liangco*,[1] We directed the OCA to initiate disbarment proceedings against him. The OCA filed the instant disbarment case on the grounds of gross misconduct for acting with manifest bias and partiality and for inexcusable ignorance of well-established rules of procedure. After respondent filed his Comment on the complaint, the Court issued a Resolution on August 7, 2001 referring the instant case to the IBP for investigation, report and recommendation.

Eventually, on October 23, 2003, the IBP Commission on Bar Discipline filed its Report with the IBP Board of Governors with a recommendation for the disbarment of respondent, which was approved by the IBP Board of Governors through the issuance of Resolution No. XVIII-2008-525 on October 9, 2008. On January 30, 2009, respondent filed his motion for reconsideration, and on May 12, 2009, a supplemental motion for reconsideration.

On June 30, 2011, the IBP Commission on Bar Discipline transmitted the records of the instant case to the Court, which duly noted it on August 16, 2011.

However, on August 25, 2011, respondent filed a Petition for Review on *Certiorari* assailing Resolution No. XVIII-2008-525 dated October 9, 2008. It must be emphasized that the filing of a Petition for Review on *Certiorari* assailing the IBP Board of Governors' Resolution adopting and approving the recommendation of the IBP Commission on Bar Discipline to disbar him is not available to respondent. In fact, it is not necessary under the Rules.

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[1] AM. No. MTJ-97-1136, August 30, 2000, 339 SCRA 253.

Sec. 12 of Rule 139-B, of the Rules of Court pertinently provide:

SEC. 12. *Review and decision by the Board of Governors.* – (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report.

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

(c) If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

(d) Notice of the resolution or decision of the Board shall be given to all parties through their counsel. A copy of the same shall be transmitted to the Supreme Court.

Under the Resolution issued on June 17, 2008 in B.M. No. 1755, the Court emphasized the application of the above-quoted Sec. 12 of Rule 139-B, thus:

In case a decision is rendered by the BOG [Board of Governors] that **exonerates the respondent or imposes a sanction less than suspension or disbarment**, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. **If the motion is denied, said party can file a petition for review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion**. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.

If the **imposable penalty is suspension from practice of law or disbarment**, the BOG shall issue a resolution setting forth its findings and recommendations. The aggrieved party can file a motion for reconsideration of said resolution with the BOG within fifteen (15) days from notice. The **BOG shall first resolve the incident and shall thereafter elevate the assailed resolution with the entire case records to this Court for final action**. If the **15-day period lapses without any motion for reconsideration having been filed, then the BOG shall likewise transmit to this Court the resolution with the entire case records for appropriate action**. (Emphasis supplied)

From the foregoing, it is clear that if the IBP Board of Governors—from the report and recommendation of the IBP CBD—exonerates the respondent or metes a penalty other than suspension or disbarment, the exoneration of respondent or imposition of minor penalties becomes final and executory when no motion for reconsideration is filed by a party. **And when a motion for reconsideration is filed and then resolved by the IBP Board of Governors, the aggrieved party may file a petition for review under Rule 45 to further assail the IBP Board of Governors' disposition**.

In case the imposable penalty is suspension from the practice of law or disbarment, the approval by the IBP Board of Governors for such sanctions is **merely recommendatory**, regardless of whether a party files a motion for reconsideration or not, and the entire case records of the administrative case is transmitted to the Court for appropriate action on such recommendation.

In the instant case, the IBP Board of Governors recommended respondent's disbarment through its issuance of Resolution No. XVIII-2008-525 on October 9, 2008. Thus, there is no need for respondent to file a petition for review under Rule 45 to assail said IBP resolution as such is only recommendatory and is subject to immediate appropriate review and disposition by this Court. The Rules clearly do not grant respondent the remedy of a petition for review under Rule 45 since such is not necessary for the Court immediately reviews for appropriate action all resolutions from the IBP Board of Governors recommending suspension from the practice of law or disbarment.

EN BANC

[A.M. No. P-11-2927. December 13, 2011]
(Formerly A.M. OCA IPI No. 10-3532-P)

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES-OFFICE OF THE COURT ADMINISTRATOR (OCA), *complainant, vs.* **WILMA SALVACION P. HEUSDENS, CLERK IV MUNICIPAL TRIAL COURT IN CITIES, TAGUM CITY,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO TRAVEL; LIMITATIONS. —** [T]he exercise of one's right to travel or the freedom to move from one place to another, as assured by the Constitution, is **not absolute**. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that "neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law." x x x Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country. In such a case, permission of the court is necessary. Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of legislation. In the exercise of legislative inquiry, Congress has the power to issue a *subpoena* and *subpoena duces tecum* to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House; or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by the Senate President.

2. **ID.; JUDICIAL DEPARTMENT; SUPREME COURT; EMPOWERED TO OVERSEE ALL MATTERS RELATING TO THE EFFECTIVE SUPERVISION AND MANAGEMENT OF ALL COURTS AND PERSONNEL UNDER IT. —** With respect to

the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the ***"Supreme Court shall have administrative supervision over all courts and the personnel thereof."*** This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986, considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B). Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

3. ID.; ID.; ID.; OCA CIRCULAR NO. 49-2003; ISSUED TO REGULATE THE FOREIGN TRAVEL IN AN UNOFFICIAL CAPACITY OF THE EMPLOYEES OF THE JUDICIARY. — [W]ith respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel. To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or

regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel.

4. ID.; ID.; ID.; ID.; TRAVEL NOTIFICATION AND AUTHORITY REQUIREMENTS; MUST BE COMPLIED WITH BY EVERY COURT EMPLOYEE. — Given the exacting standard expected from each individual called upon to serve in the Judiciary, it is imperative that every court employee comply with the travel notification and authority requirements as mandated by OCA Circular No. 49-2003. A court employee who plans to travel abroad must file his leave application prior to his intended date of travel with sufficient time allotted for his application to be processed and approved first by the Court. He cannot leave the country without his application being approved, much less assume that his leave application would be favorably acted upon. In the case at bench, respondent should have exercised prudence and asked for the status of her leave application before leaving for abroad.

5. ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER 292 (ADMINISTRATIVE CODE OF 1987); LEAVE APPLICATIONS; SHOULD BE ACTED UPON WITHIN FIVE WORKING DAYS AFTER ITS RECEIPT, OTHERWISE THE LEAVE APPLICATION SHALL BE DEEMED APPROVED. — [U]nder the Omnibus Rules Implementing Book V of Executive Order *(EO)* No. 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application shall be deemed approved. x x x Applying x x x [Section 49, Rule XVI of the Omnibus Rules on Leave], the Court held in the case of *Commission on Appointments v. Paler* that an employee could not be considered absent without leave since his application was deemed approved. In said case, there was no action on his application within five (5) working days from receipt thereof. The ruling in *Paler*, however, *is not squarely applicable* in this case. *First*, the employee in said case was governed by CSC Rules only. In the case of respondent, like the others who are serving the Judiciary, she is governed not only by CSC Rules but also by OCA Circular No. 49-2003 which imposes guidelines on requests for travel abroad for judges and court personnel. *Second*, in *Paler*, the employee submitted his leave application with complete requirements before his intended travel date. No additional requirement was asked to

be filed. In the case of respondent, she submitted her leave application but did not fully comply with the clearance and accountability requirements enumerated in OCA Circular No. 49-2003. *Third*, in *Paler*, there was no approval or disapproval of his application within 5 working days from the submission of the requirements. In this case, there was no submission of the clearance requirements and, hence, the leave application could not have been favorably acted upon.

6. ID.; JUDICIAL DEPARTMENT; SUPREME COURT; OCA CIRCULAR NO. 49-2003; TRAVEL NOTIFICATION AND AUTHORITY REQUIREMENTS; THE REQUIREMENT OF SEEKING CLEARANCE FROM THE SUPREME COURT SAVINGS AND LOAN ASSOCIATION IN CASE AT BAR IS PROPER. — Regarding the requirement of the OCA that an employee must also seek clearance from the SCSLA, the Court finds nothing improper in it. OCA is not enforcing the collection of a loan extended to such employee. Although SCSLA is a private entity, it cannot be denied that its functions and operations are inextricably connected with the Court. x x x The Court stresses that it is not sanctioning respondent for going abroad with an unpaid debt but for failing to comply with the requirements laid down by the office of which she is an employee. When respondent joined the Judiciary and volunteered to join the SCSLA, she agreed to follow the requirements and regulations set forth by both offices. When she applied for a loan, she was not forced or coerced to accomplish the requirements. Everything was of her own volition. In this regard, having elected to become a member of the SCSLA, respondent voluntarily and knowingly committed herself to honor these undertakings. By accomplishing and submitting the said undertakings, respondent has clearly agreed to the limitations that would probably affect her constitutional right to travel. By her non-compliance with the requirement, it can be said that she has waived, if not constricted, her right. An employee cannot be allowed to enjoy the benefits and privileges of SCSLA membership and at the same time be exempted from her voluntary obligations and undertakings.

7. ID.; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS; PENALTY. — Following the Uniform

Rules on Administrative Cases in the Civil Service, the Court considers a violation of reasonable office rules and regulations as a light offense and punishable with reprimand on the first offense; suspension for one to thirty days on the second; and dismissal from the service on the third infraction. Considering that this appears to be respondent's first infraction, the OCA recommended that she be penalized with a reprimand and warned that a repetition of the same or similar offense would be dealt with more severely.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER 292 (ADMINISTRATIVE CODE OF 1987); LEAVE APPLICATIONS; SHOULD BE ACTED UPON WITHIN FIVE WORKING DAYS AFTER ITS RECEIPT, OTHERWISE THE LEAVE APPLICATION IS DEEMED APPROVED.— Under the Omnibus Rules Implementing Book V of EO 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application is deemed approved. Section 49, Rule XVI of the Omnibus Rules on Leave reads: "SEC. 49. Period within which to act on leave application. – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, **the application for leave of absence shall be deemed approved."** Thus, this Court, in the recent case of *Commission on Appointments v. Paler*, held that respondent Paler could not be considered absent without leave since his leave application was deemed approved. There was no final approval or disapproval of Paler's application within five working days from receipt of his leave application as required by Section 49. More so in this case, where the leave application was received by the OCA two months before the intended leave but was only acted upon after the intended leave. **Thus, respondent's leave of absence was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave.**

2. ID.; JUDICIAL DEPARTMENT; SUPREME COURT; OCA CIRCULAR NO. 49-2003; TRAVEL NOTIFICATION AND AUTHORITY REQUIREMENTS; THE REQUIREMENT OF SECURING CLEARANCE AS TO MONEY AND PROPERTY

ACCOUNTABILITY REFERS TO ACCOUNTABILITY TO THE GOVERNMENT, NOT TO A PRIVATE COMPANY LIKE THE SUPREME COURT SAVINGS AND LOAN ASSOCIATION.— I disagree with the majority's view that clearance from the SCSLA is required before a court employee can exercise his or her constitutional right to travel abroad. **The SCSLA is a private association with private funds, even if some of its investors are Supreme Court officials.** The OCA has no power to enforce the collection of loans extended by a private lender, under pain of denying a constitutional right of a citizen if he does not secure clearance from the private lender. Although OCA Circular No. 49-2003 provides that "clearance as to money and property accountability" is one of the requirements to be submitted, this refers to accountability to the government, not to a private company like the SCSLA. Even if the OCA's Certificate of Clearance Form requires the SCSLA's conformity, such requirement has no legal basis. The OCA does not have jurisdiction to require such clearance because that would be tantamount to making the Court a collecting agent of the SCSLA which is a private association.

3. **ID.; ID.; ID.; ID.; ID.; REQUIRING A COURT EMPLOYEE TO SECURE CLEARANCE FROM THE SUPREME COURT SAVINGS AND LOAN ASSOCIATION BEFORE HE CAN TRAVEL ABROAD UNDULY RESTRICTS HIS RIGHT TO TRAVEL; CASE AT BAR.—** [T]he OCA has no right to deny a court employee's constitutional right to travel just to enforce collection of the SCSLA's loans to its members. There is no law prohibiting a person from traveling abroad just because he has an existing debt or financial obligation. Requiring the court employee clearance from the SCSLA is no different from requiring the court employee to secure a clearance from his or her creditor banks before he or she can travel abroad. That would unduly restrict a citizen's right to travel which is guaranteed by Section 6, Article III of the 1987 Constitution x x x.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO TRAVEL; CANNOT BE IMPAIRED WITHOUT DUE PROCESS OF LAW.—** Although the constitutional right to travel is not absolute, it can only be restricted **in the interest of national security, public safety, or public health, as may be provided by law**. x x x The constitutional right to travel cannot be impaired without due process of law. Here, due process of

law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. Neither the OCA nor the majority can point to the existence of such a law. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right. The only exception recognized so far is when a court orders the impairment of the right to travel abroad in connection with a pending criminal case. Another possible exception is if Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. These exceptions, however, do not apply in the present case. Here, respondent was not even facing a preliminary investigation or an administrative complaint when she left the country. The SCSLA clearance is not required by any law before a court employee can travel abroad. The SCSLA clearance is not even specifically required under OCA Circular No. 49-2003. Clearly, respondent has submitted to the OCA all the requirements for her leave application two months prior to her intended leave. Thus, respondent's leave application was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave and the Omnibus Rules Implementing Book V of EO 292.

5. ID.; ID.; ID.; RIGHT TO PRIVACY; REFERS TO THE RIGHT OF AN INDIVIDUAL TO BE LET ALONE, OR TO BE FREE FROM UNWARRANTED PUBLICITY, OR TO LIVE WITHOUT UNWARRANTED INTERFERENCE BY THE PUBLIC IN MATTERS IN WHICH THE PUBLIC IS NOT NECESSARILY CONCERNED.— During her approved leave of absence, respondent's time was her own personal time and she could be wherever she wanted to be. The Court cannot inquire what respondent does during her leave of absence since that would constitute unwarranted interference into her private affairs and would encroach on her right to privacy. The right to privacy is "the right of an individual to be let alone, or to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Under Article 26 of the Civil Code, the right to privacy is expressly protected.

6. ID.; ID.; RIGHT TO TRAVEL; ONCE A LEAVE OF ABSENCE IS APPROVED, ANY RESTRICTION DURING THE APPROVED LEAVE ON THE RIGHT TO TRAVEL OF A GOVERNMENT EMPLOYEE VIOLATES HIS CONSTITUTIONAL RIGHT TO TRAVEL.— There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

D E C I S I O N

MENDOZA, *J.*:

This case stemmed from the leave application for foreign travel[1] sent through mail by Wilma Salvacion P. Heusdens *(respondent)*, Staff Clerk IV of the Municipal Trial Court in Cities, Tagum City, Davao del Norte.

Records disclose that on July 10, 2009, the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator *(OCA)*, received respondent's leave application for foreign travel from September 11, 2009 to October 11, 2009. Respondent left for abroad without waiting for the result of her application. It turned out that no travel authority was issued in her favor because she was not cleared of all her accountabilities as evidenced by the Supreme Court Certificate of Clearance. Respondent reported back to work on October 19, 2009.[2]

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[1] *Rollo*, p. 5.

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

The OCA, in its Memorandum[3] dated November 26, 2009, recommended the disapproval of respondent's leave application. It further advised that respondent be directed to make a written explanation of her failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003. On December 7, 2009, then Chief Justice Reynato S. Puno approved the OCA recommendation.

Accordingly, in a letter[4] dated January 6, 2010, OCA Deputy Court Administrator Nimfa C. Vilches informed respondent that her leave application was disapproved and her travel was considered unauthorized. Respondent was likewise directed to explain within fifteen (15) days from notice her failure to comply with the OCA circular.

In her Comment[5] dated February 2, 2010, respondent admitted having travelled overseas without the required travel authority. She explained that it was not her intention to violate the rules as she, in fact, mailed her leave application which was approved by her superior, Judge Arlene Lirag-Palabrica, as early as June 26, 2009. She honestly believed that her leave application would be eventually approved by the Court.

The OCA, in its Report[6] dated March 8, 2011, found respondent to have violated OCA Circular No. 49-2003 for failing to secure the approval of her application for travel authority.

Hence, the OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that respondent be deemed guilty for violation of OCA Circular No. 49-2003 and be reprimanded with a warning that a repetition of the same or similar offense in the future would be dealt with more severely.

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

[4] *Id*. at 4.

[5] *Id*. at 3.

[6] *Id*. at 9-11.

OCA Circular No. 49-2003 (B) specifically requires that:

B. Vacation Leave to be Spent Abroad.

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 6 November 2000,[7] all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:

(a) For Judges

xxx xxx xxx

(b) For Court Personnel:

• application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad;

• application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge;

• clearance as to money and property accountability;

• clearance as to pending criminal and administrative case filed against him/her, if any;

• for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals; and

• Supreme Court clearance.

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two

[7] Reiterated in SC Memorandum No. 32-2011 dated September 20, 2011 entitled "Reiterating the Policy on Foreign Travels even at the Traveller's Expense."

weeks of the intended travel shall not be favorably acted upon. [Underscoring supplied]

Paragraph 4 of the said circular also provides that "judges and personnel who shall leave the country without travel authority issued by the Office of the Court Administrator *shall be subject to disciplinary action*." In addition, Section 67 of the Civil Service Omnibus Rules on Leave[8] expressly provides that "any violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave, shall be a *ground for disciplinary action*." In fact, every government employee who files an application for leave of absence for at least thirty (30) calendar days is instructed to submit a clearance as to money and property accountabilities.[9]

In this case, respondent knew that she had to secure the appropriate clearance as to money and property accountability to support her application for travel authority. She cannot feign ignorance of this requirement because she had her application for clearance circulated through the various divisions. She, however, failed to secure clearance from the Supreme Court Savings and Loan Association *(SCSLA)* where she had an outstanding loan.

There is no dispute, therefore, that although respondent submitted her leave application for foreign travel, she failed to comply with the clearance and accountability requirements. As the OCA Circular specifically cautions that "no action shall be taken on requests for travel authority with incomplete requirements," it was expected that her leave application would, as a consequence, be disapproved by the OCA.

Considering that respondent was aware that she was not able to complete the requirements, her explanation that she honestly believed that her application would be approved is unacceptable. Thus, her leaving the country, without first awaiting the approval or non-approval of her application to travel abroad from the OCA, was violative of the rules.

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[8] Amended by CSC MC No. 41, s. 1998.

[9] See instructions at the back of Application for Leave, Civil Service Form No. 6, Revised 1984.

On the Constitutional Right to Travel

It has been argued that OCA Circular No. 49-2003 (B) on vacation leave to be spent abroad unduly restricts a citizen's right to travel guaranteed by Section 6, Article III of the 1987 Constitution.[10] Section 6 reads:

> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the **right to travel** be impaired except in the interest of **national security**, **public safety**, or **public health**, as **may be provided by law**. [Emphases supplied]

Let there be no doubt that the Court recognizes a citizen's constitutional right to travel. It is, however, ***not*** *the issue in this case*. The only issue in this case is the non-compliance with the Court's rules and regulations. It should be noted that respondent, in her Comment, *did not raise any constitutional concerns*. In fact, she was apologetic and openly admitted that she went abroad without the required travel authority. Hence, this is not the proper vehicle to thresh out issues on one's constitutional right to travel.

Nonetheless, granting that it is an issue, the exercise of one's right to travel or the freedom to move from one place to another,[11] as assured by the Constitution, is **not absolute**. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that "neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law." Some of these statutory limitations are the following:

1] *The Human Security Act of 2010 or Republic Act (R.A.) No. 9372*. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.

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[10] Dissenting Opinion of Mr. Justice Carpio, dated November 9, 2011, p. 7.

[11] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 353.

2] *The Philippine Passport Act of 1996 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

3] *The "Anti- Trafficking in Persons Act of 2003" or R.A. No. 9208.* Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011,[12] allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.

4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R. A. No. 8042, as amended by R.A. No. 10022*. In enforcement of said law, the Philippine Overseas Employment Administration *(POEA)* may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.

5] *The Act on Violence against Women and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.

6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."

Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country.[13] In such a case, permission of the court is necessary. Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of legislation.

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[12] Entitled "Strengthening the Travel Control and Enforcement Unit (TCEU) under Airport Operations Division (AOD) and defining the duties and functions thereof;" dated June 30, 2011.

[13] *Silverio v. Court of Appeals*, G.R. No. 94284, April 8, 1991, 195 SCRA 760, 765.

In the exercise of legislative inquiry, Congress has the power to issue a *subpoena* and *subpoena duces tecum* to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House;[14] or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by the Senate President.[15]

Supreme Court has administrative supervision over all courts and the personnel thereof

With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the ***"Supreme Court shall have administrative supervision over all courts and the personnel thereof."*** This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986,[16] considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).

Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law

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[14] House Rules and Procedure Governing Inquiries in Aid of Legislation, adopted on August 28, 2001, Section 7.

[15] Senate Rules of Procedure Governing Inquiries in Aid of Legislation, adopted on August 21, 1995, Section 17.

[16] Executive Order No. 6 is hereby modified to the extent that the Chief Justice and Associate Justices of the Supreme Court are hereby exempted from the provisions thereof requiring them to secure the prior approval of the Office of the President in connection with the travel abroad.

The Supreme Court may promulgate guidelines on travels abroad for its members and that of the lower court and their respective employees.

Requests for permission to travel abroad from members and employees of the judiciary shall henceforth be obtained from the Supreme Court.

and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

As earlier stated, with respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel.

To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel.

Given the exacting standard expected from each individual called upon to serve in the Judiciary, it is imperative that every court employee comply with the travel notification and authority requirements as mandated by OCA Circular No. 49-2003. A court employee who plans to travel abroad must file his leave application prior to his intended date of travel with sufficient time allotted for his application to be processed and approved first by the Court. He cannot leave the country without his application being approved, much less assume that his leave

application would be favorably acted upon. In the case at bench, respondent should have exercised prudence and asked for the status of her leave application before leaving for abroad.

Indeed, under the Omnibus Rules Implementing Book V of Executive Order *(EO)* No. 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application shall be deemed approved. Section 49, Rule XVI of the Omnibus Rules on Leave reads:

> SEC. 49. Period within which to act on leave applications. – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved.

Applying this provision, the Court held in the case of *Commission on Appointments v. Paler*[17] that an employee could not be considered absent without leave since his application was deemed approved. In said case, there was no action on his application within five (5) working days from receipt thereof.[18]

The ruling in *Paler*, however, *is not squarely applicable* in this case. *First*, the employee in said case was governed by CSC Rules only. In the case of respondent, like the others who are serving the Judiciary, she is governed not only by CSC Rules but also by OCA Circular No. 49-2003 which imposes guidelines on requests for travel abroad for judges and court personnel. *Second*, in *Paler*, the employee submitted his leave application with complete requirements before his intended travel date. No additional requirement was asked to be filed. In the case of respondent, she submitted her leave application but did not fully comply with the clearance and accountability requirements enumerated in OCA Circular No. 49-2003. *Third*, in *Paler*, there was no approval or disapproval of his application

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[17] G.R. No. 172623, March 3, 2010, 614 SCRA 127.

[18] Case initially cited in the Dissenting Opinion of Mr. Justice Carpio, November 15, 2011, p. 5.

within 5 working days from the submission of the requirements. In this case, there was no submission of the clearance requirements and, hence, the leave application could not have been favorably acted upon.

SCSLA membership is voluntary

Regarding the requirement of the OCA that an employee must also seek clearance from the SCSLA, the Court finds nothing improper in it. OCA is not enforcing the collection of a loan extended to such employee.[19] Although SCSLA is a private entity, it cannot be denied that its functions and operations are inextricably connected with the Court. *First*, SCSLA was primarily established as a savings vehicle for Supreme Court and lower court employees. The membership, which is *voluntary*, is open only to Supreme Court justices, officials, and employees with permanent, coterminous, or casual appointment, as well as to first and second-level court judges and their personnel.[20] An eligible employee who applies for membership with SCSLA must submit, together with his application, his latest appointment papers issued by the Supreme Court.[21] *Second*, when an employee-member applies for a SCSLA loan, he or she is asked to authorize the Supreme Court payroll office to deduct the amount due and remit it to SCSLA. *Third*, the employee-borrower likewise undertakes to assign in favor of SCSLA, in case of non-payment, his capital deposit, including earned dividends, all monies and monetary benefits due or would be due from his office, Government Service Insurance System or from any government office or other sources, to answer the

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[19] Dissenting Opinion of Mr. Justice Carpio, dated November 9, 2011, p. 6.

[20] Last of Two Parts: How to Avail of Loans from the SCSLA, Benchmark Online October 2007, <http://sc.judiciary.gov.ph/publications/benchmark/2007/10/100731.php> (visited October 5, 2011).

[21] SCSLA Membership Application Form (Revised Form 22-For Lower Court Members).

remaining balance of his loan.[22] *Fourth*, every employee-borrower must procure SCSLA members to sign as co-makers for the loan[23] and in case of leave applications that would require the processing of a Supreme Court clearance, another co-maker's undertaking would be needed.

The Court stresses that it is not sanctioning respondent for going abroad with an unpaid debt but for failing to comply with the requirements laid down by the office of which she is an employee. When respondent joined the Judiciary and volunteered to join the SCSLA, she agreed to follow the requirements and regulations set forth by both offices. When she applied for a loan, she was not forced or coerced to accomplish the requirements. Everything was of her own volition.

In this regard, having elected to become a member of the SCSLA, respondent voluntarily and knowingly committed herself to honor these undertakings. By accomplishing and submitting the said undertakings, respondent has clearly agreed to the limitations that would probably affect her constitutional right to travel. By her non-compliance with the requirement, it can be said that she has waived, if not constricted, her right. An employee cannot be allowed to enjoy the benefits and privileges of SCSLA membership and at the same time be exempted from her voluntary obligations and undertakings.

A judiciary employee who leaves for abroad without authority must be prepared to face the consequences

Lest it be misunderstood, a judge or a member of the Judiciary, who is not being restricted by a criminal court or any other agency pursuant to any statutory limitation, *can leave for abroad*

[22] Undertaking found under Promissory Note in SCSLA Loan Application for Supreme Court Members (Form 23) and Lower Court Members (Form 25).

[23] Undertaking found under Co-makers Understanding in SCSLA Loan Application for Supreme Court Members (Form 23) and Lower Court Members (Form 25).

without permission but he or she must be prepared to face the consequences for his or her violation of the Court's rules and regulations. Stated otherwise, he or she should expect to be subjected to a disciplinary action. In the past, the Court was not hesitant to impose the appropriate sanctions and penalties.

In *Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Calacal*,[24] a utility worker of the Metropolitan Trial Court was found guilty of violating OCA Circular No. 49-2003 for going overseas without the required travel authority and was reprimanded and warned that a repetition of the same or similar offense would be penalized more severely. In that case, the Court stressed that unawareness of the circular was not an excuse from non-compliance therewith.[25]

In *Reyes v. Bautista*,[26] a court stenographer was found guilty of violation of OCA Circular No. 49-2003 for traveling abroad without securing the necessary permission for foreign travel. She was also found guilty of dishonesty when she indicated in her application that her leave would be spent in the Philippines, when in truth it was spent abroad. Because of the employee's numerous infractions, she was dismissed from the service with forfeiture of all benefits and privileges, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government owned or controlled corporations.

In *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*,[27] a branch clerk

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[24] A.M. No. P-09-2670, October 16, 2009, 604 SCRA 1.

[25] *Id.*, citing *Noynay-Arlos v. Conag*, A.M. No. P-01-1503, January 27, 2004, 421 SCRA 138, 146; *Reports on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC, General Trias, Cavite*, A.M. No. 99-11-157-MTC, August 7, 2000, 337 SCRA 347, 352; *Re: Financial Audit in RTC, General Santos City*, A.M. No. 96-1-25-RTC, April 18, 1997, 271 SCRA 302, 311.

[26] 489 Phil. 85, 91-92 (2005).

[27] A.M. No. P-06-2217, July 30, 2009, 594 SCRA 242, 258.

of court of the Municipal Trial Court of Meycauayan, Bulacan, was found guilty of dishonesty for falsifying her Daily Time Record and leaving the country without the requisite travel authority. She was suspended from the service for one (1) year without pay, with a warning that a repetition of the same or similar offense would be dealt with more severely.

Following the Uniform Rules on Administrative Cases in the Civil Service, the Court considers a violation of reasonable office rules and regulations as a light offense and punishable with reprimand on the first offense; suspension for one to thirty days on the second; and dismissal from the service on the third infraction. Considering that this appears to be respondent's first infraction, the OCA recommended that she be penalized with a reprimand and warned that a repetition of the same or similar offense would be dealt with more severely.

The Court, nonetheless, takes note of the belated action (4 months) of the Leave Division on her application for leave which she submitted two months before her intended departure date. The Leave Division should have acted on the application, favorably or unfavorably, before the intended date with sufficient time to communicate it to the applicant. If an applicant has not complied with the requirements, the Leave Division should deny the same and inform him or her of the adverse action. As respondent was not informed of the denial of her application within a reasonable time, respondent should only be admonished.

WHEREFORE, respondent Wilma Salvacion P. Heusdens, Clerk IV Municipal Trial Court in Cities, Tagum City, is hereby *ADMONISHED* for traveling abroad without any travel authority in violation of OCA Circular No. 49-2003, with a *WARNING* that a repetition of the same or similar offense would be dealt with more severely.

The Leave Division, OAS-OCA, is hereby directed to act upon applications for travel abroad at least five (5) working days before the intended date of departure.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., see dissenting opinion.

Abad and *Sereno, JJ.,* join the dissenting opinion of Justice A.T. Carpio.

Perez, J., no part.

DISSENTING OPINION

CARPIO, *J.*:

This case involves a government employee's constitutional right to travel abroad.

Respondent Wilma Salvacion P. Heusdens (respondent), Clerk IV of the Municipal Trial Court in Cities in Tagum City, traveled abroad without travel authority as required by OCA Circular No. 49-2003. The majority holds that respondent has violated OCA Circular No. 49-2003, and must accordingly be admonished.

I disagree.

The pertinent provisions of OCA Circular No. 49-2003[1] read:

B. VACATION LEAVE TO BE SPENT ABROAD

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:

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[1] GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSIONS FOR TRAVEL/STAY ABROAD.

(a) For Judges:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Executive Judge
- certification from the Statistics Division, Court Management Office, OCA as to the condition of the docket

(b) For Court Personnel:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge
- clearance as to money and property accountability
- clearance as to pending criminal and administrative case filed against him/her, if any
- for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals
- Supreme Court clearance

2. **Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period.** No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

xxx xxx xxx

4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action. (Emphasis supplied)

Respondent filed a *leave application for travel abroad* covering the period from 11 September 2009 to 11 October 2009. Respondent's leave application, favorably recommended by Presiding Judge Lirag-Palabrica, was received by the Employees

Leave Division, Office of the Administrative Services, Office of the Court Administrator (OCA) on 10 July 2009. When respondent did not receive any action from the OCA on her leave application, she went ahead with her intended leave and travel abroad believing that her leave application would be eventually approved by the Court. Respondent reported back to work after her leave.

On 26 November 2009, more than two months after the start of respondent's intended leave, the OCA issued a memorandum recommending disapproval of respondent's leave application. Thus, in a letter dated 6 January 2010, the OCA informed respondent that her leave application was disapproved and her travel abroad was unauthorized. The OCA subsequently recommended that respondent be reprimanded for violating OCA Circular No. 49-2003.

Under Section 60 of Executive Order No. 292[2] (EO 292), officers and employees in the Civil Service are entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission.

Executive Order No. 6[3] (EO 6), issued by then President Corazon C. Aquino on 12 March 1986, provides for the procedure in the disposition of requests of government officials and employees for authority to travel abroad.[4] EO 6 states:

> [T]he travels abroad of government officials and employees shall be authorized by the heads of the ministries and government-owned or controlled corporations, except those of the following government officials which shall be submitted to the Office of the President for decision:

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[2] Administrative Code of 1987.

[3] PROVIDING PROCEDURES IN THE DISPOSITION OF REQUESTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FOR AUTHORITY TO TRAVEL ABROAD.

[4] On 27 October 1992, then President Fidel V. Ramos issued Memorandum Circular No. 18, which clarified the rules and regulations on travel abroad of government officials and employees. The procedure regarding requests for travel authority was further streamlined under Executive Order No. 459, issued by then President Gloria Macapagal-Arroyo on 1 September 2005.

1. Members of the Cabinet, Deputy Ministers and heads of Financial Institutions.
2. Justices of the Supreme Court and Intermediate Appellate Court.
3. Members of Constitutional Commissions.
4. Those which require full powers.

On 31 July 1986, Memorandum Order No. 26[5] was issued, modifying EO 6, thus:

> Executive Order No. 6 is hereby modified to the extent that the Chief Justice and Associate Justices of the Supreme Court are hereby exempted from the provisions thereof requiring them to secure the prior approval of the Office of the President in connection with their travel abroad.
>
> The Supreme Court may promulgate guidelines on travels abroad for its members and that of the lower courts and their respective employees.
>
> Requests for permission to travel abroad from members and employees of the judiciary shall henceforth be obtained from the Supreme Court.

In accordance with Memorandum Order No. 26, the Supreme Court issued A.M. No. 96-3-06-0 dated 19 March 1996, providing guidelines on requests for travel abroad on official business or official time by all members and personnel of the Judiciary. In A.M. No. 99-12-08-SC dated 6 November 2000, administrative matters relating to foreign travel of judges and court personnel were referred to the Chief Justice and the Chairmen of the Divisions for their appropriate action.

On 20 May 2003, OCA Circular No. 49-2003 was issued, containing the guidelines on requests for travel abroad for judges and court personnel pursuant to the Supreme Court resolutions

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[5] MODIFYING EXECUTIVE ORDER NO. 6 PROVIDING PROCEDURES RELATIVE TO REQUESTS OF GOVERNMENT OFFICIALS AND EMPLOYEES FOR AUTHORITY TO TRAVEL ABROAD. Issued on 31 July 1986.

in A.M. No. 96-3-06-0 and A.M. No. 99-12-08-SC. **OCA Circular No. 49-2003 provides that complete requirements should be submitted to the OCA at least two weeks before the intended period of travel.**

Respondent's leave application for travel abroad was received by the OCA on 10 July 2009, or two months before her intended leave from 11 September 2009 to 11 October 2009. However, it was only on 26 November 2009, or after respondent's intended leave, that the OCA issued a memorandum recommending disapproval of her leave application. Furthermore, it was only in a letter dated 6 January 2010 that the OCA informed respondent of the disapproval of her leave application. Clearly, the OCA's letter dated 6 January 2010 disapproving the leave application came too late. Although OCA Circular No. 49-2003 does not provide for the time frame within which to act on the leave application, it is understood that it should be prior to the applicant's intended leave. The requirement that the leave application be submitted to the OCA at least two weeks before the intended leave for travel is to give sufficient time for its approval or disapproval before the intended leave.

Under the Omnibus Rules Implementing Book V of EO 292, a leave application should be acted upon within five (5) working days after its receipt, otherwise the leave application is deemed approved. Section 49, Rule XVI of the Omnibus Rules on Leave reads:

> SEC. 49. Period within which to act on leave application. – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, **the application for leave of absence shall be deemed approved.** (Emphasis supplied)

Thus, this Court, in the recent case of *Commission on Appointments v. Paler*,[6] held that respondent Paler could not

[6] G.R. No. 172623, 3 March 2010, 614 SCRA 127.

be considered absent without leave since his leave application was deemed approved. There was no final approval or disapproval of Paler's application within five working days from receipt of his leave application as required by Section 49. More so in this case, where the leave application was received by the OCA two months before the intended leave but was only acted upon after the intended leave. **Thus, respondent's leave of absence was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave.**

The majority states that although respondent submitted her leave application for foreign travel, she failed to comply with the clearance and accountability requirements because she "**failed to secure clearance from the Supreme Court Savings and Loan Association (SCSLA) where she had an outstanding loan**." Thus, since OCA Circular No. 49-2003 specifically provides that "no action shall be taken on requests for travel authority with incomplete requirements," the majority rationalizes that respondent should have expected that her leave application would be disapproved.

I disagree with the majority's view that clearance from the SCSLA is required before a court employee can exercise his or her constitutional right to travel abroad. **The SCSLA is a private association with private funds, even if some of its investors are Supreme Court officials.** The OCA has no power to enforce the collection of loans extended by a private lender, under pain of denying a constitutional right of a citizen if he does not secure clearance from the private lender. Although OCA Circular No. 49-2003 provides that "clearance as to money and property accountability" is one of the requirements to be submitted, this refers to accountability to the government, not to a private company like the SCSLA. Even if the OCA's Certificate of Clearance Form requires the SCSLA's conformity, such requirement has no legal basis. The OCA does not have jurisdiction to require such clearance because that would be tantamount to making the Court a collecting agent of the SCSLA which is a private association.

Indeed, the OCA has no right to deny a court employee's constitutional right to travel just to enforce collection of the SCSLA's loans to its members. There is no law prohibiting a person from traveling abroad just because he has an existing debt or financial obligation. Requiring the court employee clearance from the SCSLA is no different from requiring the court employee to secure a clearance from his or her creditor banks before he or she can travel abroad. That would unduly restrict a citizen's right to travel which is guaranteed by Section 6, Article III of the 1987 Constitution:

> SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.** (Emphasis supplied)

Although the constitutional right to travel is not absolute, it can only be restricted **in the interest of national security, public safety, or public health, as may be provided by law**. As held in *Silverio v. Court of Appeals*:[7]

> Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). **Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party** (See *Salonga v. Hermoso & Travel Processing Center*, No. 53622, 25 April 1980, 97 SCRA 121).[8] (Emphasis supplied)

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[7] G.R. No. 94284, 8 April 1991, 195 SCRA 760.

[8] *Id*. at 765.

The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. Neither the OCA nor the majority can point to the existence of such a law. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right. The only exception recognized so far is when a court orders the impairment of the right to travel abroad in connection with a pending criminal case.[9] Another possible exception is if Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. These exceptions, however, do not apply in the present case. Here, respondent was not even facing a preliminary investigation or an administrative complaint when she left the country.

The SCSLA clearance is not required by any law before a court employee can travel abroad. The SCSLA clearance is not even specifically required under OCA Circular No. 49-2003. Clearly, respondent has submitted to the OCA all the requirements for her leave application two months prior to her intended leave. Thus, respondent's leave application was deemed approved as of 15 July 2009 pursuant to Section 49, Rule XVI of the Omnibus Rules on Leave and the Omnibus Rules Implementing Book V of EO 292.[10]

During her approved leave of absence, respondent's time was her own personal time and she could be wherever she wanted to be. The Court cannot inquire what respondent does during her leave of absence since that would constitute unwarranted interference into her private affairs and would

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[9] *Dr. Cruz v. Judge Iturralde*, 450 Phil. 77 (2003); *Hold-Departure Order issued by Judge Occiano*, 431 Phil. 408 (2002); *Silverio v. Court of Appeals*, G.R. No. 94284, 8 April 1991, 195 SCRA 760.

[10] Section 49, Rule XVI of the Omnibus Rules on Leave reads:

SEC. 49. Period within which to act on leave application. — Whenever the application for leave of absence, including terminal leave, is

encroach on her right to privacy. The right to privacy is "the right of an individual to be let alone, or to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."[11] Under Article 26 of the Civil Code, the right to privacy is expressly protected:

> Art. 26. **Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons**. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
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> 1. Prying into the privacy of another's residence;
> 2. Meddling with or disturbing the private life or family relations of another;
> 3. Intriguing to cause another to be alienated from his friends;
> 4. Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition. (Emphasis supplied)

Furthermore, respondent's travel abroad, **during her approved leave**, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, **during her approved leave**, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.

There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated

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not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, **the application for leave of absence shall be deemed approved**. (Emphasis supplied)

[11] 1 A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 108 (1990).

the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

This Court should be the first to protect the right to travel of its employees, a right enshrined not only in the Bill of Rights but also in the United Nations Universal Declaration of Human Rights as well as in the International Covenant on Civil and Political Rights.[12] The Philippines is a signatory to the Declaration[13] and a state party to the Covenant.[14] In fact, the duty of this Court under Section 5(5), Article VIII of the Constitution is to "promulgate rules concerning the protection and enforcement of constitutional rights," not to curtail such rights. Neither can this Court promulgate rules that "diminish"

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[12] Article 13 of the UN Universal Declaration of Human Rights provides: "Everyone has the right to leave any country, including his own, and to return to his country." Article 12 of the International Covenant on Civil and Political Rights provides: "Everyone shall be free to leave any country, including his own."

[13] In *Mejoff v. Director of Prisons* (90 Phil. 70 [1951]), this Court held that the principles set forth in the Declaration are part of the law of the land. See also *Government of Hongkong Special Administrative Region v. Olalia, Jr. and Muñoz*, G.R. No. 153675, 19 April 2007, 521 SCRA 470.

[14] Ratified by the Philippines on 23 October 1986.

or even "modify" substantive rights[15] like the constitutional right to travel.

Accordingly, I vote to **DISMISS** the administrative complaint against Wilma Salvacion P. Heusdens, Clerk IV, Municipal Trial Court in Cities, Tagum City.

EN BANC

[G.R. No. 152375. December 13, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FOURTH DIVISION), JOSE L. AFRICA (Substituted By His Heirs), MANUEL H. NIETO, JR., FERDINAND E. MARCOS (Substituted By His Heirs), IMELDA R. MARCOS, FERDINAND R. MARCOS, JR., JUAN PONCE ENRILE, and POTENCIANO ILUSORIO (substituted by his heirs),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS OR ORDERS; FINAL JUDGMENT AND INTERLOCUTORY ORDER, DISTINGUISHED.— Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A

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[15] Section 5 (5), Article VIII of the Constitution provides: "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of Procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory and the aggrieved party's remedy is a petition for *certiorari* under Rule 65.

2. **ID.; ID.; MOTION FOR RECONSIDERATION; THE PROSCRIPTION AGAINST A SECOND MOTION FOR RECONSIDERATION IS DIRECTED AGAINST A JUDGMENT OR FINAL ORDER.—** As Section 5, Rule 37 of the Rules of Court clearly provides, the proscription against a second motion for reconsideration is directed against "a judgment or *final* order." Although a second motion for reconsideration of an interlocutory order can be denied on the ground that it is a mere "rehash" of the arguments already passed upon and resolved by the court, it cannot be rejected on the ground that it is forbidden by the law or by the rules as a prohibited motion.

3. **ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE RESORTED TO BY AN AGGRIEVED PARTY TO QUESTION AN INTERLOCUTORY ORDER.—** Under Section 1, Rule 41 of the Rules of Court, an aggrieved party may appeal from a judgment or final order which completely disposes of a case *or* from an order that the Rules of Court declares to be appealable. While this provision prohibits an appeal from an interlocutory order, the aggrieved party is afforded the chance to question an interlocutory order through a special civil action of *certiorari* under Rule 65; the petition must be filed within sixty days from notice of the assailed judgment, order, resolution, or denial of a motion for reconsideration.

4. **ID.; ID.; ID.; ID.; MAY ISSUE NOTWITHSTANDING THE EXISTENCE OF AN AVAILABLE ALTERNATIVE REMEDY, IF SUCH REMEDY IS INADEQUATE OR INSUFFICIENT.—** For a petition for *certiorari* to prosper, Section 1, Rule 65 of the Rules of Court requires, among others, that neither an appeal nor any plain, speedy and adequate **remedy** in the ordinary course of law is available to the aggrieved party. As a matter of exception, the writ of *certiorari* may issue notwithstanding the existence of an available alternative remedy, if such remedy

is inadequate or insufficient in relieving the aggrieved party of the injurious effects of the order complained of.

5. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT PRESENT WHERE THERE IS NO CLEAR SHOWING OF CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AFFECTING THE EXERCISE OF JURISDICTION.— [T]he Sandiganbayan undoubtedly **erred on a question of law** in its ruling, but this legal error did not necessarily amount to a grave abuse of discretion in the absence of a clear showing that its action was a capricious and whimsical exercise of judgment affecting its exercise of jurisdiction. Without this showing, the Sandiganbayan's erroneous legal conclusion was only an **error of judgment,** or, at best, an *abuse of discretion* but not a grave one.

6. ID.; ID.; TRIAL; ADMISSION OF ADDITIONAL EVIDENCE IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— [T]here was nothing intrinsically objectionable in the petitioner's motion to reopen its case before the court ruled on its formal offer of evidence. The Rules of Court does not prohibit a party from requesting the court to allow it to present additional evidence even after it has rested its case. Any such opportunity, however, for the ultimate purpose of the admission of additional evidence is already addressed to the *sound discretion of the court*. It is from the prism of the exercise of this discretion that the Sandiganbayan's refusal to reopen the case (for the purpose of introducing, "marking and offering" additional evidence) should be viewed. We can declare this Sandiganbayan action invalid if it had acted with grave abuse of discretion.

7. ID.; ID.; ID.; ORDER OF TRIAL; A PARTY'S DECLARATION OF THE COMPLETION OF THE PRESENTATION OF HIS EVIDENCE PREVENTS HIM FROM INTRODUCING FURTHER EVIDENCE; EXCEPTIONS.— The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court x x x. Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice. A party's declaration of the

completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

8. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MUST BE ESTABLISHED FOR A REVIEWING COURT TO PROPERLY INTERFERE WITH THE LOWER COURT'S EXERCISE OF DISCRETION UNDER THE EXCEPTION OF SECTION 5(f), RULE 30 OF THE RULES OF COURT.— [T]he exercise of the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** – *i.e.*, on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice." For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

9. ID.; ID.; CONSOLIDATION; A PROCEDURAL DEVICE GRANTED TO THE COURT AS AN AID IN DECIDING HOW CASES IN ITS DOCKET ARE TO BE TRIED.— Consolidation is a procedural device **granted to the court as an aid in deciding how cases in its docket are to be tried** so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule permits the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases.

10. ID.; ID.; ID.; IN THE CONTEXT OF LEGAL PROCEDURE, THE TERM "CONSOLIDATION" IS USED IN THREE DIFFERENT SENSES.— In the context of legal procedure, the term "consolidation" is used in three different senses: "(1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi-consolidation*) (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*) (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)"

11. ID.; ID.; DEPOSITIONS; NATURE.— A deposition is chiefly a mode of discovery whose primary function is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial. Since depositions are principally made available to the parties as a means of informing themselves of all the relevant facts, **depositions are not meant as substitute for the actual testimony in open court of a party or witness**. Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132 of the Rules of Court.

12. ID.; ID.; ID.; ANY DEPOSITION OFFERED TO PROVE THE FACTS SET FORTH THEREIN, IN LIEU OF THE ACTUAL OR ORAL TESTIMONY OF THE DEPONENT IN OPEN COURT MAY BE OPPOSED BY THE ADVERSE PARTY AND EXCLUDED UNDER THE HEARSAY RULE.— [A]ny deposition offered to prove the facts set forth therein, in lieu of the actual oral testimony of the deponent in open court, may be opposed by the adverse party and excluded under the hearsay rule – *i.e.*, that the adverse party had or has no opportunity to cross-examine the deponent at the time that his testimony is offered. **That opportunity for cross-examination was afforded during**

the *taking* of the deposition alone is no argument, as the opportunity for cross-examination must normally be accorded a party at the time that the testimonial evidence is actually *presented* against him during the trial or hearing of a case. However, under certain conditions and for certain ***limited*** purposes laid down in Section 4, Rule 23 of the Rules of Court, the deposition may be used without the deponent being actually called to the witness stand.

13. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; FORMER TESTIMONY OR DEPOSITION; TO BE ADMISSIBLE, THE ADVERSE PARTY MUST HAVE HAD AN OPPORTUNITY TO CROSS-EXAMINE THE WITNESS OR THE DEPONENT IN THE PRIOR PROCEEDING.— Section 47, Rule 130 of the Rules of Court is an entirely different provision. While a *former testimony or deposition* appears under the *Exceptions to the Hearsay Rule*, the classification of *former testimony or deposition* as an admissible hearsay is not universally conceded. A fundamental characteristic of hearsay evidence is the adverse party's lack of opportunity to cross-examine the out-of-court declarant. However, Section 47, Rule 130 explicitly requires, *inter alia*, for the admissibility of a *former testimony or deposition* that the adverse party must have had an opportunity to cross-examine the witness or the deponent in the prior proceeding. This opportunity to cross-examine though is not the ordinary cross-examination afforded an adverse party in usual trials regarding "matters stated in the direct examination or connected therewith." Section 47, Rule 130 of the Rules of Court contemplates a different kind of cross-examination, whether actual or a mere opportunity, whose adequacy depends on the requisite identity of issues in the former case or proceeding and in the present case where the former testimony or deposition is sought to be introduced. Section 47, Rule 130 requires that the issues involved in both cases must, at least, be substantially the same; otherwise, there is no basis in saying that the former statement was — or would have been — sufficiently tested by cross-examination or by an opportunity to do so. (The requirement of similarity though does not mean that all the issues in the two proceedings should be the same. Although some issues may not be the same in the two actions, the admissibility of a former testimony on an issue which is similar in both actions

cannot be questioned.) These considerations, among others, make Section 47, Rule 130 a distinct rule on evidence and therefore should not be confused with the general provisions on deposition under Rule 23 of the Rules of Court. In other words, even if the petitioner complies with Rule 23 of the Rules of Court on the use of depositions, the observance of Section 47, Rule 130 of the Rules of Court cannot simply be avoided or disregarded.

14. ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES FOR ADMISSION.— Section 47, Rule 130 of the Rules of Court lays down the following requisites for the *admission* of a testimony or deposition given at a former case or proceeding. "1. The testimony or deposition of a witness deceased or otherwise unable to testify; 2. The testimony was given in a former case or proceeding, judicial or administrative; 3. Involving the same parties; 4. Relating to the same matter; 5. The adverse party having had the opportunity to cross-examine him."

15. ID.; ID.; ID.; ID.; ID.; ID.; RATIONALE FOR ADMISSIBILITY.— The reasons for the admissibility of testimony or deposition taken at a former trial or proceeding are the necessity for the testimony and its trustworthiness. However, before the *former testimony or deposition* can be introduced in evidence, *the proponent must first lay the proper predicate* therefor x x x.

16. ID.; RULE 23 AND RULE 130 OF THE RULES OF COURT; THE PHRASE "UNABLE TO TESTIFY" APPEARING THEREIN REFERS TO A PHYSICAL INABILITY TO APPEAR AT THE WITNESS STAND AND TO GIVE A TESTIMONY.— For the admission of a *former testimony or deposition*, Section 47, Rule 130 of the Rules of Court simply requires, *inter alia*, that the witness or deponent be "*deceased or unable to testify*." On the other hand, in using a deposition that was taken *during the pendency of an action*, Section 4, Rule 23 of the Rules of Court provides several grounds that will justify dispensing with the actual testimony of the deponent in open court and specifies, *inter alia*, the circumstances of the deponent's inability to attend or testify, as follows: "(3) that the witness is **unable to** attend or **testify** because of age, sickness, infirmity, or imprisonment[.]" The phrase "unable to testify" appearing in both Rule 23 and Rule 130 of the Rules

of Court refers to a physical inability to appear at the witness stand and to give a testimony. Hence notwithstanding the deletion of the phrase "out of the Philippines," which previously appeared in Section 47, Rule 130 of the Rules of Court, *absence from jurisdiction* — the petitioner's excuse for the non-presentation of Bane in open court — may still constitute inability to testify under the same rule. This is not to say, however, that resort to deposition on this instance of unavailability will always be upheld. **Where the deposition is taken not for discovery purposes, but to accommodate the deponent, then the deposition should be rejected in evidence**. Although the testimony of a witness has been given in the course of a former proceeding between the parties to a case on trial, this testimony alone is not a ground for its admission in evidence. The witness himself, if available, must be produced in court as if he were testifying *de novo* since his testimony given at the former trial is mere hearsay. The deposition of a witness, otherwise available, is also inadmissible for the same reason.

17. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; FORMER TESTIMONY OR DEPOSITION; THE REQUIREMENT OF OPPORTUNITY TO CROSS-EXAMINE IS SATISFIED WHEN THERE IS AN IDENTITY OF PARTIES.— The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called. *This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial.* The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard against falsehoods and frauds. x x x To render the testimony of a witness admissible at a later trial or action, the parties to the first proceeding must be the same as the parties to the later proceeding. Physical

identity, however, is not required; substantial identity or identity of interests suffices, as where the subsequent proceeding is between persons who represent the parties to the prior proceeding by privity in law, in blood, or in estate. The term "privity" denotes mutual or successive relationships to the same rights of property.

18. ID.; ID.; ID.; ID.; ID.; WAIVER OF THE RIGHT TO CROSS-EXAMINATION, NOT ESTABLISHED IN CASE AT BAR.— [W]e do not believe that the petitioner could reasonably expect that the individual notices it sent to the respondents would be sufficient to bind them to the conduct of the then opponent's (Africa's) cross-examination since, to begin with, they were not even parties to the action. Additionally, we observe that in the notice of the deposition taking, conspicuously absent was any indication sufficient to forewarn the notified persons that their inexcusable failure to appear at the deposition taking would amount to a waiver of their right of cross-examination, without prejudice to the right of the respondents to raise their objections at the appropriate time. We would be treading on dangerous grounds indeed were we to hold that **one not a party to an action, *and neither in privity nor in substantial identity of interest* with any of the parties in the same action, can be bound by the action or omission of the latter, by the mere expedient of a notice**. Thus, we cannot simply deduce a resultant waiver from the respondents' mere failure to attend the deposition-taking despite notice sent by the petitioner.

19. ID.; ID.; JUDICIAL NOTICE; REFERS TO THE COGNIZANCE OF CERTAIN FACTS THAT JUDGES MAY PROPERLY TAKE AND ACT ON WITHOUT PROOF BECAUSE THESE FACTS ARE ALREADY KNOWN TO THEM.— Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed. The foundation for judicial notice may be traced to the civil and canon law maxim, *manifesta* (*or notoria*) *non indigent probatione*. The taking of judicial notice means that the court will dispense with the traditional form of presentation of

evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

20. ID.; ID.; ID.; COURTS ARE NOT AUTHORIZED TO TAKE JUDICIAL NOTICE OF THE CONTENTS OF THE RECORDS OF OTHER CASES; EXCEPTIONS.— In adjudicating a case on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge. This rule though admits of exceptions. As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, **with the knowledge of**, *and* **absent an objection from**, **the adverse party, reference is made to it for that purpose**, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and **admitted as a part of the record of the case then pending**. Courts must also take judicial notice of the records of another case or cases, where sufficient basis exists in the records of the case before it, warranting the dismissal of the latter case.

CARPIO, *J.*, *dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITIONS; MAY BE USED AGAINST ANY PARTY WHO WAS PRESENT OR REPRESENTED AT THE TAKING OF THE DEPOSITION OR WHO HAD DUE NOTICE THEREOF. — All the defendants of Civil Case No. 0009 were given notice of the scheduled testimony by oral deposition of Maurice V. Bane. Furthermore, the notice stated that "[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009." Since notices have been duly served on all the defendants, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent. Indeed, under Section 4, Rule 23 of the Rules of Civil Procedure, the deposition **"may be used against any party who was present or represented at the taking of the deposition or who had due**

notice thereof." x x x Granting that among the defendants in the main Civil Case No. 0009, only Victor Africa is a party to the incident Civil Case No. 0130, still all the other defendants in Civil Case No. 0009 were given notice of the scheduled deposition-taking. The reason why all the defendants were given notice of the said deposition-taking was because at that time, Civil Case No. 0130 was already consolidated with Civil Case No. 0009 and as emphasized in the second amended notice, "**[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009**."

2. ID.; ID.; CONSOLIDATION; CONSOLIDATION OF ACTIONS; MERGES THE DIFFERENT ACTIONS INTO ONE SINGLE ACTION AND THE RIGHTS OF THE PARTIES ARE ADJUDICATED IN A SINGLE JUDGMENT. — In Philippine jurisprudence, ***the consolidation of cases merges the different actions into one and the rights of the parties are adjudicated in a single judgment*** x x x. Indeed, when consolidated cases are appealed to the Supreme Court or when the Court orders consolidation of cases, the Justice to whom the consolidated cases are assigned renders a single decision, adjudicating all the rights of the parties in the consolidated cases. The Chief Justice assigns the consolidated cases to the Member-in-Charge to whom the case having the lower or lowest docket number has been raffled. x x x The 12 April 1993 Resolution of the Sandiganbayan ordered the consolidation of the incidental cases, including Civil Case No. 0130, with the main case, Civil Case No. 0009. **Unlike a mere order of a joint hearing or trial of any or all the matters in issue in the actions, the consolidation of actions merges the different actions into one single action**. This means that evidence, such as depositions, taken after the consolidation is admissible in all the actions consolidated whenever relevant or material. In this case, since the notice and the deposition-taking was after the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, the deposition could be admitted as evidence in the consolidated cases.

3. ID.; ID.; ID.; THE PURPOSE THEREOF IS TO AVOID MULTIPLICITY OF SUITS, PREVENT DELAY, CLEAR CONGESTED DOCKETS, SIMPLIFY THE WORK OF THE TRIAL COURT, AND SAVE UNNECESSARY COSTS AND

EXPENSES. — The purpose of consolidation is to avoid multiplicity of suits, prevent delay, clear congested dockets, simplify the work of the trial court, and save unnecessary costs and expenses. The consolidation of actions involving a common question of law or fact seeks to prevent a repetition of evidence, such that the testimony of witnesses may be used in all the consolidated cases whenever it is relevant or material.

4. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; FORMER TESTIMONY OR DEPOSITION; RULE THEREON DOES NOT APPLY WHERE THE DEPOSITION WAS NOT TAKEN IN A FORMER CASE OR PROCEEDING; CASE AT BAR.— Section 47, Rule 130 does not apply in this case since the Bane deposition was not taken in a former case or proceeding. The records show that the **Bane deposition was taken when the cases were already consolidated.** Clearly, there is no "former proceeding" to speak of which would require the application of Section 47, Rule 130. **The Bane deposition was taken in CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)**. In fact, in the *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination*, filed on 25 September 1996, the title of the case was "*REPUBLIC OF THE PHILIPPINES, Plaintiff, versus JOSE L. AFRICA, ET AL., Defendants*" with case number "CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)." Thus, Justice Brion's reliance on Section 47, Rule 130 is misplaced. Besides, even if Section 47 is applicable, the Bane deposition may still be given in evidence against the respondents since all of them were given notice of the deposition, and thus had the opportunity to cross-examine the deponent had they participated in the deposition-taking. Since notices have been duly served on all the respondents, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent. In this case, the Sandiganbayan granted the request for the taking of the deposition of Maurice V. Bane, who was Executive Vice-President and Treasurer of ETPI from 1974 until his retirement in 1987. In October 1996, during the deposition-taking, Maurice V. Bane was already 72 years old and residing at 1 Ecton Hall, Church Way, Ecton, Northants (England). Clearly, under Section 4(c)(2) of Rule 23, the deposition of Maurice V. Bane can be used as direct

evidence. In fact, in its Resolutions issued on 21 August 2000 and 3 April 2001, the Sandiganbayan stated that the deposition of Maurice V. Bane has "**become part and parcel of the record of this main case (Civil Case No. 0009) since Civil Case No. 0130 is an incident to the same.**"

5. ID.; RULES OF PROCEDURE; IN ALL CASES INVOLVING ALLEGED ILL-GOTTEN WEALTH BROUGHT BY OR AGAINST THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, IT IS THE POLICY OF THE SUPREME COURT TO SET ASIDE TECHNICALITIES AND FORMALITIES THAT SERVE MERELY TO DELAY THEIR JUDICIOUS RESOLUTION. — Although petitioner, in its formal offer of evidence in Civil Case No. 0009, inadvertently omitted the deposition of Maurice V. Bane, petitioner thereafter filed an urgent motion praying that it be allowed to introduce as additional evidence the deposition of Maurice V. Bane. The Sandiganbayan should have granted this motion or the succeeding *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane)* filed on 16 November 2001. As held in the 1997 case of *Republic v. Sandiganbayan (Third Division)*: "In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution. This Court prefers to have such cases resolved on the merits before the Sandiganbayan. Substantial justice to all parties, not mere legalisms or perfection of form, should now be relentlessly pursued. Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

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Agcaoili Law Offices for P. Ilusorio.

Robert A.C. Sison and *Vicente Millora* for Imelda R. Marcos.

M.M. Lazaro and Associates for Nieto Jr.
Edgar Dennis Padernal for Juan Ponce Enrile.
Marcos Ochoa Serapio and Tan Law Firm for Ferdinand Marcos, Jr.

D E C I S I O N

BRION, *J.*:

Before us is the petition for *certiorari*[1] filed by the Republic of the Philippines (*petitioner*) to set aside the February 7, 2002 resolution (*2002 resolution*)[2] of the Sandiganbayan[3] denying the petitioner's *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane)* (*3rd motion*).

THE ANTECEDENTS

On July 22, 1987, the petitioner Republic of the Philippines, through the Presidential Commission on Good Government (*PCGG*), filed a complaint (**docketed as Civil Case No. 0009**) against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (collectively, *the respondents*) for **reconveyance, reversion, accounting, restitution**, and **damages** before the Sandiganbayan. The petitioner alleged, *inter alia*, that the respondents illegally manipulated the purchase of the major shareholdings of Cable and Wireless Limited in Eastern Telecommunications Philippines, Inc. (*ETPI*), which shareholdings respondents Jose Africa and Manuel Nieto, Jr. held for themselves and, through their holdings and the corporations they organized, beneficially for respondents Ferdinand E. Marcos and Imelda R. Marcos.[4]

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[1] Under Rule 65 of the Rules of Court.

[2] Penned by Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer; *rollo*, pp. 60-67.

[3] Fourth Division.

[4] Petitioner's *Motion to Admit Supplemental Offer of Evidence and Comment/Opposition Ad Cautelam; rollo*, pp. 370-371.

Civil Case No. 0009 is the main case subject of the present petition. **Victor Africa (*Africa*), son of the late Jose L. Africa, was not impleaded in and so is plainly not a party to Civil Case No. 0009**.[5]

Civil Case No. 0009 spawned numerous incidental cases,[6] among them, Civil Case No. 0130.[7] **The present respondents were not made parties either in Civil Case No. 0130**.

I. *Civil Case No. 0130*

In the August 7, 1991 PCGG-conducted ETPI stockholders meeting, a PCGG-controlled board of directors was elected. Later, the registered ETPI stockholders convened a special stockholders meeting wherein another set of board of directors was elected. As a result, two sets of ETPI board and officers were elected.[8]

Thereafter, Africa, as an ETPI stockholder, filed a petition for *certiorari*, with prayer for a temporary restraining order/ preliminary injunction with the Sandiganbayan (**docketed as Civil Case No. 0130**), seeking to nullify the August 5, 1991 and August 9, 1991 Orders of the PCGG. These Orders directed Africa:

> [T]o account for his sequestered shares in ETPI and to cease and desist from exercising voting rights on the sequestered shares in the special stockholders' meeting to be held on August 12, 1991, from representing himself as a director, officer, employee or agent of ETPI, and from participating, directly or indirectly[,] in the management of ETPI.[9]

During the pendency of Africa's petition, Civil Case No. 0130, Africa filed a motion with the Sandiganbayan, alleging that since January 29, 1988 the PCGG had been "illegally 'exercising' the

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[5] See *Republic v. Sandiganbayan*, 334 Phil. 475 (1997).

[6] Petitioner's *Reply; id.* at 744-745.

[7] Entitled *Victor Africa v. Presidential Commission on Good Government*.

[8] See *Republic of the Phils. v. Sandiganbayan*, 450 Phil. 98, 104 (2003).

[9] *Id.* at 103.

rights of stockholders of ETPI,"[10] especially in the election of the members of the board of directors. Africa prayed for the issuance of an order for the "calling and holding of [ETPI] annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines."[11]

In its November 13, 1992 resolution, the Sandiganbayan favored Africa's motion in this wise:

> WHEREFORE, it is ordered that an annual stockholders meeting of the [ETPI], for 1992 be held on Friday, November 27, 1992, at 2:00 o'clock in the afternoon, at the ETPI Board Room, Telecoms Plaza, 7th Floor, 316 Gil J. Puyat Avenue, Makati, Metro Manila. x x x The stockholders meeting shall be conducted under the supervision and control of this Court, through Mr. Justice Sabino R. de Leon, Jr. [O]nly the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.
>
> The following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or in a proper case the underlying assets of the corporation concerned) constitute ill-gotten wealth[.][12]

The PCGG assailed this resolution before this Court *via* a petition for *certiorari* docketed as **G.R. No. 107789**[13] **(*PCGG's petition*)**, imputing grave abuse of discretion on the Sandiganbayan for holding, *inter alia*, that the registered stockholders of ETPI had the right to vote.[14] In our November 26, 1992 Resolution, we enjoined the Sandiganbayan from implementing its assailed resolution.

In the meantime, in an **April 12, 1993 resolution,** the Sandiganbayan ordered the **consolidation of Civil Case No.**

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[10] *Id.* at 104.

[11] *Id.* at 103.

[12] *Id.* at 104-105.

[13] Resolved by this Court on April 30, 2003.

[14] *Republic of the Phils. v. Sandiganbayan*, *supra* note 8.

0130, among others, with Civil Case No. 0009, with the latter as the main case and the former merely an incident.[15]

During the pendency of PCGG's petition (G.R. No. 107789), the PCGG filed with this Court a "Very Urgent Petition for Authority to Hold Special Stockholders' Meeting for [the] Sole Purpose of Increasing [ETPI's] Authorized Capital Stock" (*Urgent Petition*). In our May 7, 1996 Resolution, we referred this Urgent Petition to the Sandiganbayan for reception of

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[15] *Rollo,* p. 304. The other incident cases which were consolidated with the main case are as follows:

1. Civil Case No. 0043 (*Polygon Investors and Managers, Inc. v. PCGG*) – a complaint praying that judgment be rendered enjoining the PCGG, its commissioners, officers, employees, agents and/or representatives from enforcing and/or implementing a writ of sequestration.

2. Civil Case No. 0044 (*Aerocom Investors and Managers, Inc. v. PCGG*) – a complaint praying that the Writ of Sequestration dated June 15, 1988 and Mission Order No. MER-88-20 dated August 1, 1988 be declared null and void *ab initio*.

3. Civil Case No. 0045 (*Africa v. PCGG*) – an amended complaint praying that judgment be rendered restraining (a) defendant Eduardo M. Villanueva from representing himself and acting as Director, President and/or General Manager of ETPI and committing or continuing to exercise the power, authority and functions appertaining to such office; and (b) defendant PCGG from directly or indirectly interfering with the management of ETPI.

4. Civil Case No. 0047 (*Africa v. Gutierrez, et al.*) – a complaint praying that defendants be enjoined from acting as directors of ETPI.

5. Civil Case No. 0131 (*Traders Royal Bank v. PCGG, Africa, et al.*) – complaint praying that defendants be ordered to interplead and litigate their conflicting claims.

6. Civil Case No. 0139 (*Far East Bank and Trust Company v. PCGG, Africa, et al*.) – a complaint praying that defendants be directed to interplead and litigate their respective claims on the proceeds of the deposit accounts maintained with plaintiff and that judgment be accordingly rendered.

7. Civil Case No. 0143 (*Standard Chartered Bank v. PCGG, Africa, Nieto, et al*.) – a complaint praying that judgment be rendered requiring all the defendants to interplead among themselves and litigate to determine who are the legitimate signatories of OWNI in its accounts with the plaintiff.

evidence and *immediate* resolution.[16] **The Sandiganbayan included the Urgent Petition in Civil Case No. 0130**.[17]

In the proceedings to resolve the Urgent Petition, the testimony of Mr. Maurice V. Bane (former director and treasurer-in-trust of ETPI) was taken– at the petitioner's instance and after serving notice of the deposition-taking on the respondents[18] – on October 23 and 24, 1996 by way of deposition upon oral examination (*Bane deposition*) before Consul General Ernesto Castro of the Philippine Embassy in London, England.

Invoking Section 1, Rule 24 (of the old Rules of Court), purportedly allowing the petitioner to depose Bane **without leave**

8. Civil Case No. 0128 (*Traders Royal Bank v. PCGG*) – a complaint praying that defendants be directed to interplead and litigate their conflicting claims between them, and that judgment be rendered accordingly.

9. Civil Case No. 0106 (*Domestic Satellite Philippines, Inc. v. PCGG and Asset Privatization Trust*) – a petition praying that PCGG be ordered to withdraw its objection to the alleged settlement agreed upon between DOMSAT and APT.

10. Civil Case No. 0114 (*PHILCOMSAT and POTC v. PCGG*) – a complaint seeking to declare as null and void the writs of sequestration issued by PCGG over plaintiffs-corporations and to enjoin PCGG and its officers, agents, and nominees from interfering with the management and operations of the plaintiffs-corporations. (Records, Volume III, pp. 451-452; 841-843.)

[16] Resolution dated December 13, 1996; *id*. at 300.

[17] *Ibid*.

[18] Petitioner sent to the respondents a *Notice to Take Oral Deposition of Mr. Maurice V. Bane* dated August 30, 1996, **pursuant to Section 1, Rule 24** of the Revised Rules of Court (Records, Volume XXXVI, pp. 11534-11535), which the Sandiganbayan "noted." Considering Victor Africa's manifestation, among others, that he was not available on the previously scheduled dates, on September 25, 1996, the petitioner filed and sent a *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane upon Oral Examination* (*Rollo*, pp. 68-71). The *Second Amended Notice* reads:

> The right to take deposition *de bene esse* is a precautionary privilege to prevent [the] loss of evidence in the event the attendance of the witness at the trial cannot be procured. Hence, Section 1, Rule 24 of the Revised Rules of Court, specifically grants the plaintiff **the right to depose Mr. Maurice Bane without leave of court**. x x x.

of court, *i.e.*, as a matter of right after the defendants have filed their answer, the notice stated that "[t]he purpose of the deposition is for [Bane] to identify and testify on the facts set forth in his affidavit[19] x x x so as to prove the ownership issue in favor of [the petitioner] and/or establish the *prima facie* factual foundation for sequestration of [ETPI's] Class A stock in support of the [Urgent Petition]."[20] The notice also states that the petitioner shall use the Bane deposition "in evidence… in the main case of Civil Case No. 0009."[21] On the scheduled deposition date, only Africa was present and he cross-examined Bane.

On December 13, 1996, the Sandiganbayan resolved the Urgent Petition by granting authority to the PCGG (i) "to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock" and (ii) "to vote therein the sequestered Class 'A' shares of stock."[22] Thus, a special stockholders meeting was held, as previously scheduled, on March 17, 1997 and the increase in ETPI's authorized capital stock was "unanimously approved."[23] From this ruling, Africa went to this Court *via* a petition for *certiorari*[24] docketed as **G.R. No. 147214 *(Africa's petition)***.

We jointly resolved the PCGG's and Africa's petitions, and ruled:

It should moreover be noted that Mr. Maurice Bane, who resides in England, has resigned from Cable and Wireless and is unable to travel to Manila to attend or testify before this Honorable Court. Section 4, Rule 24, allows Plaintiff to use Mr. Maurice V. Bane's proposed deposition in evidence **insofar as the same may be admissible under the Rules of Evidence**. (underscoring and boldfacing supplied)

[19] *Rollo*, pp. 292-297.

[20] *Id.* at 68-69. The records show that Maurice Bane executed the aforesaid affidavit dated January 1991 in Makati, Metro Manila, Philippines. Records, Volume III, pp. 683-688.

[21] *Id.* at 69.

[22] *Id.* at 299-321.

[23] *Republic of the Phils. v. Sandiganbayan, supra* note 8, at 109.

[24] Resolved by this Court on April 30, 2003.

This Court notes that, like in Africa's motion to hold a stockholders meeting (to elect a board of directors), the Sandiganbayan, in the PCGG's petition to hold a stockholders meeting (to amend the articles of incorporation to increase the authorized capital stock), again failed to apply the two-tiered test. On such determination hinges the validity of the votes cast by the PCGG in the stockholders meeting of March 17, 1997. This lapse by the Sandiganbayan leaves this Court with no other choice but to remand these questions to it for proper determination.

xxx xxx xxx

WHEREFORE**,** this Court Resolved to REFER the petitions at bar to the Sandiganbayan for reception of evidence to determine whether there is a *prima facie* evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the PCGG to vote them in a stockholders meeting to elect the ETPI Board of Directors and to amend the ETPI Articles of Incorporation for the sole purpose of increasing the authorized capital stock of ETPI.

The Sandiganbayan shall render a decision thereon within sixty (60) days from receipt of this Resolution and in conformity herewith.

II. *Civil Case No. 0009*

Although Civil Case No. 0009 was filed on July 22, 1987, it was only on November 29, 1996 and March 17, 1997 that the first pre-trial conference was scheduled and concluded.[25]

In its Pre-Trial Brief[26] dated August 30, 1996, the petitioner offered to present the following witnesses:

> WITNESSES TO BE PRESENTED AND A BRIEF DESCRIPTION OF THEIR TESTIMONIES
>
> (1) Maurice V. Bane – representative of Cable and Wireless Limited (C & W) at the time ETPI was organized.

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[25] Sandiganbayan Third Division Pre-Trial Order dated March 17, 1997, p. 1; *rollo*, p. 576. Penned by Associate Justice Sabino R. de Leon, Jr., and concurred in by Associate Justices Cipriano A. del Rosario and Leonardo I. Cruz.

[26] Records, Volume XXXVI, p. 11405.

x x x x x x x x x

(2) Mr. Manuel H. Nieto – x x x

(3) Ms. Evelyn Singson – x x x

(4) Mr. Severino P. Buan, Jr. – x x x

(5) Mr. Apolinario K. Medina - x x x

(6) Mr. Potenciano A. Roque – x x x

(7) Caesar Parlade — x x x

IIa. ***Motion to Admit the Bane Deposition***

At the trial of Civil Case No. 0009, the petitioner filed a *Motion*[27] (*1st motion*), stating that –

1. In the hearings of the incidents of [Civil Case No. 0009], *i.e.*, Civil Case Nos. 0048, 0050, 0130, 0146[28] the following witnesses were presented therein:

   a. Cesar O.V. Parlade
   b. *Maurice Bane*
   c. Evelyn Singson
   d. Leonorio Martinez
   e. Ricardo Castro; and
   f. Rolando Gapud

2. [The petitioner] wishes to adopt in [Civil Case No. 0009] their testimonies and the documentary exhibits presented and identified by them, since their testimonies and the said

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[27] Dated January 21, 1998; *id*. at 322-329. Originally, what the petitioner filed was a Manifestation that it was adopting the testimonies of specified witnesses, among others. However, on January 8, 1998, the Sandiganbayan required the petitioner "to file a corrected pleading in the form of a motion in lieu of the Manifestation." (Records, Volume XLIV, pp. 128-130, 175).

[28] Civil Case Nos. 0048, 0050 and 0146 were ordered consolidated with Civil Case No. 0009 by the Court in *Africa v. PCGG*, G.R. Nos. 83831, 85594, 85597, and 85621, January 9, 1992, 205 SCRA 38.

documentary exhibits are very relevant to prove the case of the [petitioner] in [Civil Case No. 0009].

3. The adverse parties in the aforementioned incidents had the opportunity to cross-examine them.

The respondents filed their respective Oppositions to the 1st motion;[29] in turn, the petitioner filed a Common Reply[30] to these Oppositions.

On April 1, 1998, the Sandiganbayan[31] promulgated a resolution[32] (*1998 resolution*) denying the petitioner's 1st motion, as follows:

Wherefore, the [petitioner's] Motion x x x is –

1. **partly denied** insofar as [the petitioner] prays therein to adopt the testimonies on oral deposition of Maurice V. Bane and Rolando Gapud **as part of its evidence in Civil Case No. 0009 for the reason that said deponents according to the [petitioner] are not available for cross-examination in this Court by the [respondents]**. (emphasis added)

2. partly Granted, in the interest of speedy disposition of this long pending case, insofar as plaintiff prays therein to adopt certain/particular testimonies of Cesar O. Parlade, Evelyn Singson, Leoncio Martinez, and Ricardo Castro and documentary exhibits which said witnesses have identified in incident Civil Case Nos. xxx 0130 xxx, subject to the following conditions :

1. xxx
2. xxx
3. That the said witnesses be presented in this Court so that they can be cross-

[29] Records, Volume XLIV, pp. 278-282 and 497-500; Volume XLV, pp. 3-6 and 22-26.

[30] Dated March 13, 1998; *Rollo*, pp. 593-597.

[31] Fourth Division.

[32] Penned by Associate Justice Sabino R. de Leon, Jr., and concurred in by Associate Justices Narciso S. Nario and Teresita J. Leonardo-de Castro (now a Member of this Court); *rollo*, pp. 331-338.

> examined on their particular testimonies in incident Civil Cases xxx [by the respondents].

IIb. *Urgent Motion and/or Request for Judicial Notice*

The petitioner did not in any way question the 1998 resolution, and instead made its Formal Offer of Evidence on December 14, 1999.[33] **Significantly, the Bane deposition was not included as part of its offered exhibits**. Rectifying the omission, the petitioner filed an *Urgent Motion and/or Request for Judicial Notice*[34] (*2nd motion*) dated February 21, 2000, with the alternative prayer that:

> 1. An order forthwith be issued **re-opening** the plaintiff's case and setting the same for trial any day in April 2000 for the sole purpose of introducing additional evidence and limited only to the marking and offering of the [Bane deposition] which already forms part of the records and used in Civil Case No. 0130 x x x;
>
> 2. In the alternative, x x x the [Sandiganbayan] to take judicial notice of the facts established by the [Bane deposition], together with the marked exhibits appended thereto. [emphasis ours]

On August 21, 2000, the Sandiganbayan promulgated a resolution[35] (*2000 resolution*) denying the petitioner's 2nd motion:

> Judicial notice is found under Rule 129 which is titled "What Need Not Be Proved." Apparently, this provision refers to the Court's duty to consider admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in resolving cases before it. The duty of the Court is mandatory and in those cases where it is discretionary, the initiative is upon the Court. Such being the case, the Court finds the Urgent Motion and/or Request for Judicial Notice

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[33] *Id*. at 18.

[34] *Id*. at 339-346.

[35] Penned by Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer; *id*. at 352-355.

as something which need not be acted upon as the same is considered redundant.

On the matter of the [Bane deposition], [its] admission is done through the ordinary formal offer of exhibits wherein the defendant is given ample opportunity to raise objection on grounds provided by law. Definitely, it is not under Article (*sic*) 129 on judicial notice. [Emphasis ours]

On November 6, 2000 and on several dates thereafter, the respondents separately filed their respective demurrers to evidence.[36] On the other hand, the petitioner moved for the reconsideration of the 2000 resolution, but was rebuffed by the Sandiganbayan in its April 3, 2001 resolution[37] (*2001 resolution*).

IIc. *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice Bane)*

On November 16, 2001, the petitioner filed its 3rd Motion, seeking once more the admission of the Bane deposition.[38] On February 7, 2002 (pending resolution of the respondents' demurrers to evidence),[39] **the Sandiganbayan promulgated the assailed 2002 resolution,[40] denying the petitioner's 3rd motion**. The Sandiganbayan ruled:

But in the court's view, it is not really a question of whether or not plaintiff has already rested its case as to obviate the further presentation of evidence. It is not even a question of whether the non-appearing defendants are deemed to have waived their right to cross-examine Bane as to qualify the admission of the deposition sans such cross-examination. Indeed, We do not see any need to dwell on these matters in view of

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[36] *Id.* at 777-778.

[37] *Id.* at 357-359.

[38] *Id.* at 360-368.

[39] The Sandiganbayan (Fourth Division) promulgated on April 1, 2003 a resolution denying the demurrers to evidence filed by the respondents; *id.* at 777-790.

[40] *Supra* note 2.

this Court's *Resolution* rendered on April 1, 1998 which already denied the introduction in evidence of Bane's deposition and **which has become final in view of plaintiff's failure to file any motion for reconsideration or appeal within the 15-day reglementary period**. Rightly or wrongly, the resolution stands and for this court to grant plaintiff's motion at this point in time would in effect sanction plaintiff's disregard for the rules of procedure. Plaintiff has slept on its rights for almost two years and it was only in February of 2000 that it sought to rectify its ineptitude by filing a motion to reopen its case as to enable it to introduce and offer Bane's deposition as additional evidence, or in the alternative for the court to take judicial notice of the allegations of the deposition. But how can such a motion be granted when it has been resolved as early as 1998 that the deposition is inadmissible. Without plaintiff having moved for reconsideration within the reglementary period, **the resolution has attained finality** and its effect cannot be undone by the simple expedient of filing a motion, which though purporting to be a novel motion, is **in reality a motion for reconsideration of this court's 1998 ruling**. [emphases ours]

The resolution triggered the filing of the present petition.

THE PETITION

The petitioner filed the present petition claiming that the Sandiganbayan committed grave abuse of discretion:

I.

x x x IN HOLDING THAT ITS INTERLOCUTORY ORDER IN 1998 HAD BECOME FINAL.

II.

x x x IN x x x REFUSING TO ADMIT THE BANE DEPOSITION – WHICH WAS ALREADY ADMITTED AS EVIDENCE IN AN INCIDENT CASE (CIVIL CASE NO. 0130) – AS PART OF PETITIONER'S EVIDENCE IN THE MAIN x x x CASE (CIVIL CASE NO. 0009).

III.

x x x IN REFUSING TO ADMIT A HIGHLY RELEVANT AND IMPORTANT PIECE OF EVIDENCE FOR THE PETITIONER ON THE BASIS OF FLIMSY AND TENUOUS TECHNICAL GROUNDS.

The petitioner[41] argues that the 1998 resolution of the Sandiganbayan is merely an interlocutory order; thus, the petitioner's failure to question this 1998 resolution could not have given it a character of "finality" so long as the main case remains pending.[42] On this basis, the petitioner concludes that the Sandiganbayan's denial of its 3rd motion was plainly tainted with grave abuse of discretion.

On the issue of the Sandiganbayan's refusal (in its 2002 resolution) either to take judicial notice of or to admit the Bane deposition as part of its evidence, the petitioner asserts that Civil Case No. 0130 (where the Bane deposition was originally taken, introduced and admitted in evidence) is but a "child" of the "parent" case, Civil Case No. 0009; under this relationship, evidence offered and admitted in any of the "children" cases should be considered as evidence in the "parent" case.

Lastly, the petitioner claims that given the crucial importance of the Bane deposition, the Sandiganbayan should not have denied its admission on "flimsy grounds," considering that:

1. It was also already stated in the notice (of the taking of the Bane deposition) **that it would be used as evidence in Civil Case No. 0009**. Notices having been duly served on all the parties concerned, they must accordingly be deemed to have **waived** their right to cross-examine the witness when they failed to show up.

2. The Bane deposition was a very **vital** cog in the case of the petitioner relative to its allegation that the respondents' interest in ETPI and related firms properly belongs to the government.

3. The non-inclusion of the Bane deposition in the petitioner's formal offer of evidence was obviously **excusable** considering the period that had lapsed from the time the case was filed

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[41] Represented by the Office of the Solicitor General. While this case was pending, then Chief Presidential Legal Counsel Eduardo Antonio Nachura was appointed Solicitor General, formerly a Member of this Court.

[42] *Rollo*, p. 28, citing *People v. MTC of Quezon City*, 333 Phil. 500 (1996).

and the voluminous records that the present case has generated.[43]

THE RESPONDENTS' COMMENTS and THE PETITIONER'S REPLY

In the **respondents' Comments**[44] (filed in compliance with our Resolution of April 10, 2002[45]), they claim that the present petition was filed out of time — *i.e.*, beyond the 60-day reglementary period prescribed under Section 4, Rule 65 of the Rules of Court.[46] This assertion proceeds from the view that the petitioner's 3rd motion, being a mere rehash of similar motions earlier filed by the petitioner, likewise simply assails the Sandiganbayan's 1998 resolution. Along the same line, they posit that the petitioner's 3rd motion actually partakes of a proscribed third motion for reconsideration of the Sandiganbayan's 1998 resolution.[47] They likewise assert, on the assumption that the 1998 resolution is interlocutory in character, that the petitioner's failure to contest the resolution by way of *certiorari* within the proper period gave the 1998 resolution a character of "finality."

The respondents further claim that after a party *has rested its case*, the admission of a supplemental offer of evidence

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[43] *Id.* at 35-50.

[44] In his *Manifestation*, respondent Ferdinand R. Marcos, Jr. stated that he was adopting the *Comment* of respondent Nieto; *id.* at 856-857. On the other hand, respondent Juan Ponce Enrile and the substituted heirs of respondent Jose Africa merely reiterated the arguments advanced by respondent Nieto.

[45] *Id.* at 471.

[46] Section 4, Rule 65 of the Rules of Court reads:

When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

[47] Respondent Nieto's *Comment*, citing *GSIS v. CA*, 334 Phil. 163 (1997); *rollo*, p. 490.

requires the reopening of the case at the discretion of the trial court; the Sandiganbayan simply exercised its sound discretion in refusing to reopen the case since the evidence sought to be admitted was "within the knowledge of the [petitioner] and available to [it] before [it] rested its case."[48] The respondents also advert to the belated filing of the petitioner's 3rd motion – *i.e.*, after the respondents had filed their respective demurrers to evidence.

On the petitioner's claim of waiver, the respondents assert that they have not waived their right to cross-examine the deponent; the Sandiganbayan recognized this right in its 1998 resolution and the petitioner never questioned this recognition. They also assert that the allegations in the Bane deposition cannot be a proper subject of judicial notice under Rule 129 of the Rules of Court. The respondents lastly submit that the Bane deposition is inadmissible in evidence because the petitioner failed to comply with the requisites for admission under Section 47, Rule 130 of the Rules of Court.

In its **Reply**,[49] the petitioner defends the timeliness of the present petition by arguing that a party may opt to wait out and collect a pattern of questionable acts before resorting to the extraordinary remedy of *certiorari*. The petitioner stresses that it filed the 3rd motion precisely because of the Sandiganbayan's 2000 resolution, which held that the admission of the Bane deposition should be done through the ordinary formal offer of evidence. Thus, the Sandiganbayan seriously erred in considering the petitioner's 3rd motion as a proscribed motion for reconsideration. The petitioner generally submits that the dictates of substantial justice should have guided the Sandiganbayan to rule otherwise.

The petitioner also clarifies that it has not yet rested its case although it has filed a formal offer of evidence. A party normally

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[48] Respondent Nieto's *Comment*, citing Vicente J. Francisco, *The Revised Rules of Court in the Philippines*, p. 338; *id.* at 489.

[49] *Id.* at 521-528.

rests his case only *after* the admission of the pieces of evidence he formally offered; before then, he still has the opportunity to present further evidence to substantiate his theory of the case should the court reject any piece of the offered evidence.[50]

The petitioner further maintains that the mere reasonable opportunity to cross-examine the deponent is sufficient for the admission of the Bane deposition considering that the deponent is not an ordinary witness who can be easily summoned by our courts in light of his foreign residence, his citizenship, and his advanced age. The petitioner asserts that Rule 24 (now Rule 23), and not Section 47, Rule 130, of the Rules of Court should apply to the present case, as explicitly stated in the notice of the deposition-taking.

To date, respondents Imelda Marcos and the heirs of Potenciano Ilusorio have yet to file their respective comments on the petition. Given the time that had lapsed since we required their comments, we resolve to dispense with the filing of these comments and to consider this petition submitted for decision.

THE ISSUES

On the basis of the pleadings, we summarize the pivotal issues for our resolution, as follows:

1. Whether the petition was filed within the required period.

2. Whether the Sandiganbayan committed grave abuse of discretion –

   i. In holding that the 1998 resolution has already attained finality;

   ii. In holding that the petitioner's 3rd motion partakes of a prohibited motion for reconsideration;

   iii. In refusing to re-open the case given the critical importance of the Bane deposition to the petitioner's cause; and

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[50] Petitioner's *Reply* (to Nieto's *Comment*), citing Regalado, *Remedial Law Compendium*, p. 582, 2001 ed.; *id.* at 522.

iv. In refusing to admit the Bane deposition notwithstanding the prior consolidation of Civil Case No. 0009 and Civil Case No. 0130.

3. Whether the Bane deposition is admissible under —

i. Rule 23, Section 4, par. (c) alone *or* in relation to Section 47,Rule 130 of the Rules of Court; and

ii. The principle of judicial notice.

THE COURT'S RULING

We deny the petition for lack of merit.

I. Preliminary Considerations

I (a). The interlocutory nature of the Sandiganbayan's 1998 resolution.

In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[51] In this case, we must preliminarily determine whether the 1998 resolution is "final" or "interlocutory" in nature.

Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made.[52] A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental

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[51] *Raymundo v. Isagon Vda. de Suarez*, G.R. No. 149017, November 28, 2008, 572 SCRA 384.

[52] *Investments, Inc. v. Court of Appeals*, 231 Phil. 302 (1987), cited in *Denso (Phils.), Inc. v. Intermediate Appellate Court*, 232 Phil. 256 (1987).

matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory[53] and the aggrieved party's remedy is a petition for *certiorari* under Rule 65. Jurisprudence pointedly holds that:

> As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term "final" judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.
>
> On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically **provisional in its application**.[54] (emphasis supplied)

Under these guidelines, we agree with the petitioner that the 1998 resolution is interlocutory. The Sandiganbayan's denial of the petitioner's 1st motion through the 1998 Resolution came at a time when the petitioner had not even concluded the presentation of its evidence. Plainly, the denial of the motion did not resolve the merits of the case, as something still had to be done to achieve this end.

We clarify, too, that an interlocutory order remains under the control of the court until the case is finally resolved on the merits. The court may therefore modify or rescind the order upon sufficient grounds shown at any time before final judgment.[55]

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[53] *Rudecon Management Corp. v. Singson*, 494 Phil. 581 (2005).

[54] *Tomacruz-Lactao v. Espejo*, 478 Phil. 755 (2004).

[55] Jose Y. Feria and Maria Concepcion Noche, 2 CIVIL PROCEDURE ANNOTATED, 2001 ed., pp. 151-152, citing *Manila Electric Co. v. Artiaga and Green*, 50 Phil. 144, 147 (1927). This proceeds from the court's inherent

In this light, the Sandiganbayan's 1998 resolution – which merely denied the adoption of the Bane deposition as part of the evidence in Civil Case No. 0009 – could not have attained finality (in the manner that a decision or final order resolving the case on the merits does) despite the petitioner's failure to move for its reconsideration or to appeal.[56]

I (b). The 3rd motion was not prohibited by the Rules.

We also agree with the petitioner that its 3rd motion cannot be considered as a proscribed third (actually second) motion for reconsideration of the Sandiganbayan's 1998 resolution. As Section 5, Rule 37 of the Rules of Court clearly provides, the proscription against a second motion for reconsideration is directed against "a judgment or *final* order." Although a second motion for reconsideration of an interlocutory order can be denied on the ground that it is a mere "rehash" of the arguments already passed upon and resolved by the court, it cannot be rejected on the ground that it is forbidden by the law or by the rules as a prohibited motion.[57]

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power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby (*Bangko Silangan Development Bank v. Court of Appeals*, 412 Phil. 755 [2001]).

[56] Rule 41, Section 1 of the Rules of Court reads:

> ***Subject of appeal.*** — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No appeal may be taken from:
>
> x x x x x x x x x
>
> (c) An interlocutory order;
>
> x x x x x x x x x
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[57] *Rollo*, p. 31, citing *Philgreen Trading Construction Corp. v. Court of Appeals*, 338 Phil. 433 (1997).

I (c). The 1998 resolution was not ripe for a petition for *certiorari.*

Under Section 1, Rule 41 of the Rules of Court, an aggrieved party may appeal from a judgment or final order which completely disposes of a case *or* from an order that the Rules of Court declares to be appealable. While this provision prohibits an appeal from an interlocutory order, the aggrieved party is afforded the chance to question an interlocutory order through a special civil action of *certiorari* under Rule 65; the petition must be filed within sixty days from notice of the assailed judgment, order, resolution, or denial of a motion for reconsideration.

On the premise that the 1998 resolution is interlocutory in nature, the respondents insist that the 60-day period for filing a petition for *certiorari* should be reckoned from the petitioner's notice of the Sandiganbayan's 1998 resolution. They argue that since this ruling had long been rendered by the court, the petitioner's subsequent filing of similar motions was actually a devious attempt to resuscitate the long-denied admission of the Bane deposition.

We do not find the respondents' submission meritorious. While the 1998 resolution is an interlocutory order, as correctly argued by the petitioner and impliedly conceded by the respondents, the claim that the 1998 resolution should have been immediately questioned by the petitioner on *certiorari* is not totally correct as a petition for *certiorari* is not grounded solely on the issuance of a disputed interlocutory ruling.[58] For a petition for *certiorari* to prosper, Section 1, Rule 65 of the Rules of Court requires, among others, that neither an appeal nor any plain, speedy and adequate **remedy** in the ordinary course of law is available to the aggrieved party. As a matter of exception, the writ of *certiorari* may issue notwithstanding the existence of an available alternative remedy, if such remedy is inadequate or insufficient

[58] *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483 (2001).

in relieving the aggrieved party of the injurious effects of the order complained of.[59]

We note that at the time of its 1st motion in Civil Case No. 0009, the petitioner had not yet concluded the presentation of its evidence, much less made any formal offer of evidence. At this stage of the case, the prematurity of using the extraordinary remedy of *certiorari* to question the admission of the Bane deposition is obvious. After the denial of the 1st motion, the plain remedy available to the petitioner was to move for a reconsideration to assert and even clarify its position on the admission of the Bane deposition. The petitioner could introduce[60] anew the Bane deposition and include this as evidence in its formal offer[61] – as the petitioner presumably did in Civil Case No. 0130.

Thus, at that point, the case was not yet ripe for the filing of a petition for *certiorari*, and the denial of the 1st motion could not have been the reckoning point for the period of filing such a petition.

II. The Sandiganbayan's ruling on the finality of its 1998 resolution was legally erroneous but did not constitute grave abuse of discretion

In light of the above discussions and conclusions, the Sandiganbayan undoubtedly **erred on a question of law** in its ruling, but this legal error did not necessarily amount to a grave

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[59] *Africa v. Hon. Sandiganbayan,* 350 Phil. 846 (1998).

[60] When a deposition is presented at trial and admitted by the court, it is competent evidence for the party in whose behalf it was taken, although it may not have been actually read when introduced in evidence. (Vicente J. Francisco, 2 *The Revised Rules of Court in the Philippines*, p. 127, 1966, citing *Baron v. David*, 51 Phil. 1 [1927].)

[61] Section 34, Rule 132 of the Rules of Court reads:

> ***Offer of evidence.*** — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

abuse of discretion in the absence of a clear showing that its action was a capricious and whimsical exercise of judgment affecting its exercise of jurisdiction.[62] Without this showing, the Sandiganbayan's erroneous legal conclusion was only an **error of judgment,** or, at best, an *abuse of discretion* but not a grave one. For this reason alone, the petition should be dismissed.

Despite this conclusion, however, we opt not to immediately dismiss the petition in light of the unique circumstances of this case where the petitioner cannot *entirely* be faulted for not availing of the remedy at the opportune time, and where the case, by its nature, is undoubtedly endowed with public interest and has become a matter of public concern.[63] In other words, we opt to resolve the petition on the merits to lay the issues raised to rest and to avoid their recurrence in the course of completely resolving the merits of Civil Case No. 0009.

Although the word "rested" nowhere appears in the Rules of Court, ordinary court procedure has inferred it from an overview of trial sequence under Section 5, Rule 30 (which capsulizes the order of presentation of a party's evidence during trial), read in relation to Rule 18 on Pre-Trial,[64] both of the Rules of Court. Under Section 5, Rule 30, after a party has adduced his direct evidence in the course of discharging the burden of

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[62] *Leviste v. Court of Appeals*, G.R. No. 189122, March 17, 2010, 615 SCRA 619, 633, citing *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, July 21, 2009, 593 SCRA 316, 344.

[63] *Republic of the Philippines v. Sandiganbayan*, 453 Phil. 1059 (2003).

[64] Section 6, Rule 18 of the Rules of Court requires the parties to state in their respective Pre-Trial Briefs the following:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The **issues to be tried or resolved**;

proof,[65] he is considered to have rested his case, and is thereafter allowed to offer rebutting evidence only.[66] Whether a party has rested his case in some measure depends on his manifestation in court on whether he has concluded his presentation of evidence.[67]

In its second and third motions, respectively, the petitioner expressly admitted that "due to oversight, [the petitioner] *closed and rested* its case";[68] and that it "had *terminated the presentation of its evidence* in x x x Civil Case No. 0009."[69]

(d) The **documents or exhibits to be presented**, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The **number and names of the witnesses, and the substance of their respective testimonies**.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (emphases added)

[65] Section 1, Rule 131 of the Rules of Court reads:

> ***Burden of proof.*** — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim or defense** by the amount of evidence required by law. (emphasis added)

[66] See Manuel V. Moran, 2 *Comments on the Rules of Court*, 1996 ed., p. 140.

[67] Section 1, Rule 33 of the Rules of Court reads:

> ***Demurrer to evidence.*** — After the plaintiff has **completed the presentation of his evidence**, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (emphasis added)

[68] Petitioner's *Urgent Motion and/or Request for Judicial Notice*, p. 3; *rollo*, p. 341.

[69] Petitioner's *Motion to Admit Supplemental; Offer of Evidence.*, p. 6; *id*. at 365.

In the face of these categorical **judicial admissions**,[70] the petitioner cannot suddenly make an about-face and insist on the introduction of evidence out of the usual order. Contrary to the petitioner's assertion, the resting of its case could not have been conditioned on the admission of the evidence it formally offered. To begin with, the Bane deposition, which is the *lone* piece of evidence subject of this present petition, was not among the pieces of evidence included in its formal offer of evidence and thus could not have been admitted or rejected by the trial court.

The Court observes with interest that it was only in this present petition for *certiorari* that the petitioner had firmly denied having rested its case.[71] Before then, the petitioner never found it appropriate to question on *certiorari* the Sandiganbayan's denial of its 2nd motion which prayed, *inter alia*, for the **reopening** of the case. This is a fatal defect in the petitioner's case.

Although the denial of the petitioner's first motion did not necessitate an immediate recourse to the corrective writ of *certiorari*, the denial of the 2nd motion dictated a different course of action. The petitioner's non-observance of the proper procedure for the admission of the Bane deposition, while seemingly innocuous, carried fatal implications for its case. Having been rebuffed on its first attempt to have the Bane deposition adopted in Civil Case No. 0009, and without seeking reconsideration of the denial, the petitioner presented its other pieces of evidence

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[70] Section 4, Rule 129 of the Rules of Court reads:

Judicial admissions. – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[71] In page 6 of the petitioner's *Motion to Admit Supplemental Offer of Evidence*, the petitioner admitted the termination of the presentation of its evidence; yet, in page 4 of the petitioner's *Reply* (to respondent Nieto's opposition to petitioner's *Motion to Admit Supplemental Offer of Evidence*), the petitioner stated that it has not yet rested its case.

and eventually *rested* its case. This time, the petitioner forgot about the Bane deposition and so failed to include that piece of evidence in its formal offer of evidence.

More than two years later, the petitioner again tried to squeeze in the Bane deposition into its case. In resolving the petitioner's motion for reconsideration of the Sandiganbayan's 2000 resolution, the Sandiganbayan held that the Bane deposition has "become part and parcel" of Civil Case No. 0009. This pronouncement has obscured the real status of the Bane deposition as evidence (considering that, earlier, the Sandiganbayan already denied the petitioner's attempt to adopt the Bane deposition as evidence in Civil Case No. 0009 for the deponent cannot be cross-examined in court). Nevertheless, the Sandiganbayan *ultimately denied* the petitioner's motion to reopen the case. Having judicially admitted the resting of its case, the petitioner should have already questioned the denial of its 2nd motion by way of *certiorari*, since the denial of its attempt to reopen the case effectively foreclosed all avenues available to it for the consideration of the Bane deposition. Instead of doing so, however, **the petitioner allowed the 60-day reglementary period, under Section 4, Rule 65 of the Rules of Court, to lapse**, and proceeded to file its 3rd motion.

Significantly, the petitioner changed its legal position in its 3rd motion by denying having rested its case and insisting on the introduction of the Bane deposition. Rebuffed once more, the petitioner filed the present petition, inviting our attention to the Sandiganbayan's resolutions,[72] which allegedly gave it "mixed signals."[73] By pointing to these resolutions, ironically, even the petitioner impliedly recognized that they were then already ripe for review on *certiorari*. What the petitioner should have realized was that its 2nd motion unequivocally aimed to reopen the case for the introduction of further evidence consisting of the Bane deposition. Having been *ultimately* denied by the court, the

[72] Dated August 21, 2000 and April 3, 2001.

[73] *Rollo*, pp. 31 and 34.

petitioner could not have been prevented from taking the proper remedy notwithstanding any perceived ambiguity in the resolutions.

On the other end, though, there was nothing intrinsically objectionable in the petitioner's motion to reopen its case before the court ruled on its formal offer of evidence. The Rules of Court does not prohibit a party from requesting the court to allow it to present additional evidence even after it has rested its case. Any such opportunity, however, for the ultimate purpose of the admission of additional evidence is already addressed to the *sound discretion of the court*. It is from the prism of the exercise of this discretion that the Sandiganbayan's refusal to reopen the case (for the purpose of introducing, "marking and offering" additional evidence) should be viewed. We can declare this Sandiganbayan action invalid if it had acted with grave abuse of discretion.

III. The Sandiganbayan gravely abused its discretion in ultimately refusing to reopen the case for the purpose of introducing and admitting in evidence the Bane deposition

The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:

> Sec. 5. Order of trial. – Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.] [emphasis ours]

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon[74]

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[74] James M. Henderson, 6 *Commentaries on the Law of Evidence in Civil Cases Based Upon the Works of Burr W. Jones*, § 2502, pp. 4950-4951.

and such evidence cannot be given piecemeal.[75] The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.[76]

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence;[77] but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other;[78] or where the evidence sought to be presented is in the nature of *newly discovered* evidence,[79] the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

Largely, the exercise of the court's discretion[80] under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** – *i.e.*, on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice." For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive

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[75] *Director of Lands v. Roman Archbishop of Manila*, 41 Phil. 121 (1920).

[76] *Ibid.*

[77] John Henry Wigmore, 6 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, 1940, p. 519.

[78] *Director of Lands v. Roman Archbishop of Manila, supra* note 75.

[79] *Seares v. Hernando, etc., et al.*, 196 Phil. 487 (1981).

[80] 88 C.J.S. § 104, p. 217; 5A C.J.S. § 1606, p. 102; and *Lopez v. Liboro*, 81 Phil. 431 (1948).

duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.[81] Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment[82] or mere abuse of discretion.[83]

In *Lopez v. Liboro*,[84] we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight. (citations omitted; emphases ours)

Likewise, in *Director of Lands v. Roman Archbishop of Manila*,[85] we ruled:

> The strict rule is that the plaintiff must try his case out when he commences. Nevertheless, a relaxation of the rule is permitted in the sound discretion of the court. "The proper rule for the exercise of this discretion," it has been said by an eminent author, "is, that **material testimony should not be excluded because offered by the plaintiff after the defendant has rested, although not in rebuttal, unless it has been kept back by a trick, and for the purpose of deceiving the defendant and affecting his case injuriously**."

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[81] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755 (2003).

[82] *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 564.

[83] *Leviste v. Court of Appeals*, *supra* note 80, at 501.

[84] *Supra* note 80, at 434.

[85] *Supra* note 75, at 124.

These principles find their echo in Philippine remedial law. While the general rule is rightly recognized, the Code of Civil Procedure authorizes the judge "for special reasons," to change the order of the trial, and "for good reason, in the furtherance of justice," to permit the parties "to offer evidence upon their original case." These exceptions are made stronger when one considers the character of registration proceedings and the fact that where so many parties are involved, and action is taken quickly and abruptly, conformity with precise legal rules should not always be expected. **Even at the risk of violating legal *formulæ*, an opportunity should be given to parties to submit additional corroborative evidence in support of their claims of title, if the ends of justice so require**. (emphasis ours)

In his commentaries, Chief Justice Moran had this to say:

However, the court for good reasons, may, in the furtherance of justice, permit the parties to offer evidence upon their original case, and its ruling will not be disturbed where no abuse of discretion appears, Generally, **additional evidence** is allowed when x x x; **but it may be properly disallowed where it was withheld deliberately and without justification**.[86]

The weight of the exception is also recognized in foreign jurisprudence.[87]

Under these guidelines, we hold that the Sandiganbayan gravely abused its discretion in refusing to reopen the

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[86] Manuel V. Moran, *supra* note 66, at 141, citing 64 C.J. 160-163.

[87] In *Hampson v. Taylor* (8 A. 331, 23 A. 732, 15 R.I. 83, January 11, 1887) the Rhode Island Supreme Court ruled:

> We are of the opinion that it was entirely within the discretion of the court to open the case for further testimony. The counsel for the plaintiff says, in excuse for the omission, that it was conceded at the former trial, without contest, that the place of the accident was a part of the public highway, and he was thus put off his guard. It **is quite common for the court to allow a party to submit further testimony, after he has rested, when his opponent attempts to take advantage of some formal point which has been inadvertently overlooked, since it is or ought to be the aim of the court, in ordering the course of proof, to further, not to defeat the ends of justice.**

case. Instead of squarely ruling on the petitioner's 2nd motion to avoid any uncertainty on the evidentiary status of the Bane deposition, the Sandiganbayan's action actually left the petitioner's concern in limbo by considering the petitioner's motion "redundant." This is tantamount to a refusal to undertake a positive duty as mandated by the circumstances and is equivalent to an act outside the contemplation of law.

It has not escaped our notice that at the time the petitioner moved to re-open its case, the respondents had not yet even presented their evidence in chief. The respondents, therefore, would not have been prejudiced by allowing the petitioner's introduction of the Bane deposition, which was concededly omitted "through oversight."[88] The higher interest of substantial justice, of course, is another consideration that cannot be taken lightly.[89]

In light of these circumstances, the Sandiganbayan should not have perfunctorily applied Section 5, Rule 30 of the Rules of Court on the petitioner's request to reopen the case for the submission of the Bane deposition.

On the basis of this conclusion, a remand of this case should follow as a matter of course. The state of the parties' submissions and the delay that has already attended this aspect of Civil Case No. 0009, however, dictate against this obvious course of action. At this point, the parties have more than extensively argued for or against the admission of the Bane deposition. Civil Case No. 0009 is a 25-year old sequestration case that is now crying out for complete resolution. Admissibility, too, is an issue that would have again been raised on remand and would surely stare us in the face after remand.[90] We are thus

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[88] *Rollo*, p. 18.

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

[90] In *W. W. Dearing v. Fred Wilson & Co., Inc.*, 187 Phil. 488, 493-494 (1980), we held:

> Anent grave abuse of discretion, in *Icutanim v. Hernandez*, x x x it was held that *appeal and not certiorari, is the proper remedy for the correction of any error as to the competency of a witness*

left with no choice but to resolve the issue of admissibility of the Bane deposition here and now.

IV. The admissibility of the Bane deposition

IV (a). The consolidation of Civil Case No. 0009 and Civil Case No. 0130 did not dispense with the usual requisites of admissibility

In support of its 3rd motion, the petitioner argues that the Bane deposition can be admitted in evidence without observing the provisions of Section 47, Rule 130 of the Rules of Court.[91] The petitioner claims that in light of the prior consolidation of Civil Case No. 0009 and Civil Case No. 0130, among others,[92]

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committed by an inferior court in the course of trial, since such a situation involves an error of law constituting a violation of the rules of evidence, apart from the fact that to allow any special civil action under the circumstances would lead to multiplicity of suits and lead to protracted if not endless trials. *Similarly and for the same reasons, that rule would apply to the admission or rejection of a deposition being offered as evidence*. Thus, the jurisprudential rule is that the admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law but not an abuse of discretion, much less a grave one. Again, the reason for this rule [is that] the procedure for the taking of depositions whether oral or thru written interrogatories is outlined in the rules leaving no discretion to the Court to adopt any other not substantially equivalent thereto. Should the judge substantially deviate from what the rule prescribes, he commits a legal error, not an abuse of discretion. (citation omitted; emphases and underscoring ours)

[91] Petitioner's *Reply to the Opposition* (filed by the substituted heirs of respondent Jose Africa), p. 7; *rollo*, p. 462.

[92] Section 9 of Presidential Decree 1606, in effect at the time of the consolidation, provides:

> ***Rule-making Power***. The Sandiganbayan shall have the power to promulgate its own rules of procedure and, pending such promulgation, the Rules of Court shall govern its proceedings.

the "former case or proceeding" that Section 47, Rule 130 speaks of no longer exists.

Rule 31 of the old Rules of Court[93] – the rule in effect at the time Civil Case Nos. 0009 and 0130 were consolidated – provided that:

Rule 31
Consolidation or Severance

Section 1. *Consolidation*. – When actions involving a common question of law or fact are pending before the court, **it may order a joint hearing or trial** of any or all the matters in issue in the actions; **it may order all the actions consolidated**; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.[94] (emphasis ours)

Consolidation is a procedural device **granted to the court as an aid in deciding how cases in its docket are to be tried** so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule permits the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases.[95]

A reading of Rule 31 of the Rules of Court easily lends itself to two observations. *First*, Rule 31 is completely silent on the effect/s of consolidation on the cases consolidated; on the parties and the causes of action involved; and on the evidence presented in the consolidated cases. *Second*, while Rule 31 gives the court the discretion either to order a joint hearing or trial, or to order the actions consolidated, jurisprudence will

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[93] 1964 Rules of Court. This provision was copied verbatim under the present rules.

[94] This provision, in turn, is an exact reproduction of Rule 42(a) of the 1938 Federal Rules of Civil Procedure of the United States.

[95] Wright and Miller, *Federal Practice and Procedure*: Civil 2d § 2381, p. 427.

show that the term "consolidation" is used generically and even synonymously with joint hearing or trial of several causes.[96] In fact, the title "consolidation" of Rule 31 covers all the different senses of consolidation, as discussed below.

These observations are not without practical reason. Considering that consolidation is basically a function given to the court, the latter is in the best position to determine for itself (given the nature of the cases, the complexity of the issues involved, the parties affected, and the court's capability and resources *vis-à-vis* all the official business pending before it, among other things) what "consolidation" will bring, bearing in mind the rights of the parties appearing before it.

To disregard the kind of consolidation effected by the Sandiganbayan on the simple and convenient premise that the deposition-taking took place *after* the Sandiganbayan ordered the consolidation is to beg the question. It is precisely the silence of our Rules of Procedure and the dearth of applicable case law on the *effect* of "consolidation" that strongly compel this Court to determine the kind of "consolidation" effected to directly resolve the very issue of admissibility in this case.

In the context of legal procedure, the term "consolidation" is used in three different senses:[97]

(1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (*quasi-consolidation*)[98]

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[96] See *People v. Sandiganbayan*, 456 Phil. 707 (2003); *Cojuangco, Jr. v. Court of Appeals*, G.R. No. 37404, November 18, 1991, 203 SCRA 619; *Caños v. Hon. Peralta, etc., et al.*, 201 Phil. 422 (1982).

[97] Wright and Miller, *supra* note 95, at 429.

[98] 1 C.J.S. § 107, p. 1341; Wright and Miller, *Federal Practice and Procedure*: Civil 2d § 2382.

(2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*)[99]

(3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (*consolidation for trial*)[100]

Considering that the Sandiganbayan's order[101] to consolidate several incident cases does not at all provide a hint on the extent of the court's exercise of its discretion as to the effects of the consolidation it ordered – in view of the function of this procedural device to principally aid the court itself in dealing with its official business – we are compelled to look deeper into the voluminous records of the proceedings conducted below.

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[99] 1 C.J.S. § 107, *id.*; Wright and Miller, *id*. at 429. See *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc*., G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618.

[100] 1 C.J.S. § 107, *id.*; 1 Am. Jur. 2d § 131, p. 804; Wright and Miller, *id*.

[101] The April 15, 1993 Resolution ordering consolidation reads:

> Submitted for resolution is the Motion for Consolidation, dated June 22, 1992, filed by the Republic of the Philippines (represented by the PCGG), counsel.
>
> The record shows that there is no opposition in the above-entitled cases to the said motion. It also appears that the subject matters of the above entitled cases are and/or may be treated as mere incidents in Civil Case No. 0009.
>
> WHEREFORE, the above-entitled cases are hereby ordered consolidated with Civil Case No. 0009, and shall henceforth be consolidated and treated as mere incidents of said Civil Case No. 0009. (Records, Volume III, pp. 843-844.)

We note that there is nothing that would even suggest that the Sandiganbayan in fact intended a merger of causes of action, parties and evidence.[102] To be sure, there would have been no need for a motion to adopt (which did not remain unopposed) the testimonies in the incident cases had a merger actually resulted from the order of consolidation, for in that case, the Sandiganbayan can already take judicial notice of the same.

Significantly, even the petitioner itself *viewed* consolidation, at most, to be merely a consolidation for trial.[103] Accordingly, despite the consolidation in 1993, the petitioner acceded to the Sandiganbayan's 1998 Resolution (which denied the petitioner's 1st Motion on the ground that the witnesses, whose testimony in the incident cases is sought to be adopted, "are not available for cross-examination in" the Sandiganbayan) *by presenting these other witnesses again in the main case, so that the respondents can cross-examine them.*

These considerations run counter to the conclusion that the Sandiganbayan's order of consolidation had actually resulted in the complete merger of the incident cases with the main case, in the *sense of actual consolidation*, and that the parties in these consolidated cases had (at least constructively) been

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[102] See Victor Africa's Motion (Records, Volume XVIII, pp. 6717-6722).

[103] In its Motion for Consolidation, the petitioner argued:

> 4. On various dates, several actions were filed which are intimately related with Civil Case No. 0009, involving as they are the *same subject matter and substantially the same parties* x x x.
>
> x x x x x x x x x
>
> 10. Besides, the present Motion for Consolidation is not without a paradigm which was recently sketched by [the Sandiganbayan]. **During the hearing on April 6, 1992 of *Africa vs. PCGG*, docketed as Civil Case No. 0127, [the Sandiganbayan] resolved to conduct a joint trial** of the said case and of *OWNI vs. Africa*, docketed as Civil Case No. 0126, inasmuch as both cases are intimately related. **The consolidation of the above-captioned cases would be merely a step in the same direction** already taken by [the Sandiganbayan] in Africa and OWNI. (Records, Volume XV, pp. 5617-5622.)

aware of and had allowed actual consolidation without objection.[104]

Considering, too, that the consolidated actions were originally independent of one another and the fact that in the present case the party respondents to Civil Case No. 0009 (an action for reconveyance, accounting, restitution and damages) are **not** parties to Civil Case No. 0130 (a special civil action filed by an ETPI stockholder involving a corporate squabble within ETPI),

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[104] In the 1966 edition of Vicente J. Francisco's Revised Rules of Court, Francisco wrote:

> The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of actions involved had originally been joined in a single action, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct, and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action (1 C.J.S., 113, pp. 1371-1372).

At the very beginning of the discussion on consolidation of actions in the *Corpus Juris Secundum*, the following caveat appears:

> The term consolidation is used in three different senses. First, where several actions are combined into one and lose their separate identity and become a single action in which a single judgment is rendered; second, where all except one of several actions are stayed until one is tried, in which case the judgment in the one is conclusive as to the others; third, where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. **The failure to distinguish between these methods of procedure, which are entirely distinct, the two latter, strictly speaking, not being consolidation, a fact which has not always been noted, has caused some confusion and conflict in the cases**. (1 C.J.S., 107, pp. 1341-1342) (Emphasis added).

In defining the term "consolidation of actions," Francisco provided a colatilla that the term "consolidation" is used in three different senses, citing 1 C.J.S. 1341 and 1 Am. Jur. 477 (Francisco, *Revised Rules of Court*, p. 348).

the conclusion that the Sandiganbayan in fact intended an *actual consolidation* **and,** together with the parties affected,[105] acted towards that end — where the actions become fused and unidentifiable from one another and where the evidence appreciated in one action is also appreciated in another action – must find support in the proceedings held below. This is particularly true in a case with the magnitude and complexity of the present case. Otherwise, to impose upon the respondents the effects of an actual consolidation (which find no clear support in the provisions of the Rules of Court, jurisprudence,[106] and even in the proceedings before the Sandiganbayan itself and despite the aforementioned considerations) results in an outright deprivation of the petitioner's right to due process. We reach this conclusion especially where the evidence sought to be admitted is *not simply a testimony taken in one of the several cases, but a deposition upon oral examination taken in another jurisdiction and whose admission is governed by specific provisions on our rules on evidence*.

We stress on this point, too, that while the Sandiganbayan ordered the consolidation in 1993 (that is, *before* the deposition was taken), neither does the Pre-Trial Order[107] issued by the

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[105] The respondents vigorously opposed the petitioner's motion to adopt the testimony of, among others, Maurice Bane, and the Sandiganbayan ruled in favor of the respondents, without the petitioner questioning this development until after two years later. This circumstance cannot be taken lightly in view of the petitioner's gross procedural deficiency in the handling of this main case.

[106] In those cases where the Court ordered or affirmed the order of consolidation, even without expressly providing for the admissibility of evidence in all of the consolidated cases, the parties are the same and/or the issues are relatively simple and/or the causes of action could have actually been stated in one complaint (see *Domdom v. Third and Fifth Divisions of the Sandiganbayan*, G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528; *Active Wood Products Co., Inc. v. Court of Appeals*, G.R. No. 86603, February 5, 1990, 181 SCRA 774; *Delta Motor Sales Corporation v. Mangosing*, No. L-41667, April 30, 1976, 70 SCRA 598; *Sideco v. Paredes, et al.*, 74 Phil. 6 (1942).

[107] Dated March 17, 1997; *rollo*, pp. 576-587.

Sandiganbayan **in 1997** in Civil Case No. 0009 contain any reference, formal or substantive, to Civil Case No. 0130.[108] *Interestingly, in its Pre-Trial Brief dated August 30, 1996,*[109] *the petitioner even made a representation to present Bane as one of its witnesses.*

IV (b). Use of deposition under Section 4, Rule 23 and as a former testimony under Section 47, Rule 130

Since the present consolidation did not affect Civil Case No. 0130 as an original, albeit incidental, case, the admissibility of the Bane deposition cannot avoid being measured against the requirements of Section 47, Rule 130 of the Rules of Court – the rule on the admissibility of testimonies or deposition taken in a different proceeding. In this regard, the petitioner argues that Section 4, Rule 23 of the Rules of Court (then Rule 24)[110] must, at any rate, prevail over Section 47, Rule 130[111] of the same Rules.

At the outset, we note that when the petitioner's motion to adopt the testimonies taken in the incident cases drew individual oppositions from the respondents, the petitioner represented to the Sandiganbayan its willingness to comply with the provisions of Section 47, Rule 130 of the Rules of Court,[112] and, in fact,

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[108] Under Section 7, Rule 18 of the Rules of Court, a Pre-Trial Order controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

[109] Records, Volume XXXVI, p. 11405.

[110] 1964 Rules of Court, Rule 24, Depositions and Discovery.

[111] Petitioner's *Reply with Manifestation to Respondent Enrile's Comment*, pp. 12-13; *rollo*, pp. 679-680.

[112] Records, Volume XLV, pp. 110-112. Petitioner's Common Reply reads:

> 1. While it is true that Section 47, Rule 130 of the Rules of Court provides:
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> x x x x x x x x x

again presented some of the witnesses. The petitioner's about-face two years thereafter even contributed to the Sandiganbayan's own inconsistency on how to treat the Bane deposition, in particular, as evidence.

Section 4, Rule 23 of the Rules of Court on "Deposition Pending Action" (deposition *de bene esse*) provides for the circumstances when depositions may be used in the trial, or at the hearing of a motion or an interlocutory proceeding.

SEC. 4. *Use of depositions.* — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, **so far as admissible under the rules of evidence**, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

xxx xxx xxx

(c) The deposition of a witness, whether or not a party, **may be used** by any party **for any purpose if the court finds**: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used[.] [emphasis ours]

> [petitioner] wishes to inform this Honorable Court that in order to substantially comply with the aforementioned requirements, it would be willing to present subject witnesses, except for Maurice Bane and Rolando Gapud whose availability are difficult to obtain being foreign residents, only to be cross-examined by the defendants who had no opportunity to cross-examine them in said previous proceeding.

On the other hand, Section 47, Rule 130 of the Rules of Court provides:

> **SEC. 47.** ***Testimony or deposition at a former proceeding.*** – The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, **may be given in evidence** against the adverse party who had the opportunity to cross-examine him.

A plain reading of Rule 23 of the Rules of Court readily rejects the petitioner's position that the Bane deposition can be admitted into evidence without observing the requirements of Section 47, Rule 130 of the Rules of Court.

Before a party can make **use** of the deposition taken at the trial of a pending action, Section 4, Rule 23 of the Rules of Court does not only require due observance of its sub-paragraphs (a) to (d); it also requires, as a condition for admissibility, compliance with "the rules on evidence." *Thus, even Section 4, Rule 23 of the Rules of Court makes an implied reference to Section 47, Rule 130 of the Rules of Court before the deposition may be* ***used*** *in evidence*. By reading Rule 23 in isolation, the petitioner failed to recognize that the principle conceding admissibility to a deposition under Rule 23 should be consistent with the rules on evidence under Section 47, Rule 130.[113] In determining the admissibility of the Bane deposition, therefore, reliance cannot be given on one provision to the exclusion of the other; **both provisions must be considered**. This is particularly true in this case where the evidence in the prior proceeding does not simply refer to a witness' testimony in open court but to a deposition taken under another and farther jurisdiction.

A common thread that runs from Section 4, Rule 23 of the Rules of Court and Section 47, Rule 130 of the same Rules is their mutual reference to depositions.

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[113] *Dasmariñas Garments, Inc. v. Reyes,* G.R. No. 108229, August 24, 1993, 225 SCRA 622.

A deposition is chiefly a mode of discovery whose primary function is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial.[114] Since depositions are principally made available to the parties as a means of informing themselves of all the relevant facts, **depositions are not meant as substitute for the actual testimony in open court of a party or witness**. Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132 of the Rules of Court.[115]

> ***Examination to be done in open court.*** — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

Indeed, any deposition offered to prove the facts set forth therein, in lieu of the actual oral testimony of the deponent in open court, may be opposed by the adverse party and excluded under the hearsay rule – *i.e.*, that the adverse party had or has no opportunity to cross-examine the deponent at the time that his testimony is offered. **That opportunity for cross-examination was afforded during the *taking* of the deposition alone is no argument, as the opportunity for cross-examination must normally be accorded a party at the time that the testimonial evidence is actually *presented* against him during the trial or hearing of a case.**[116] However, under certain conditions and for certain ***limited*** purposes laid down in Section 4, Rule 23 of the Rules of Court, the deposition

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[114] *Jonathan Landoil International Co., Inc. v. Mangudadatu*, G.R. No. 155010, August 16, 2004, 436 SCRA 559, 573, citing *Fortune Corporation v. CA*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 362.

[115] *Dasmariñas Garments, Inc. v. Reyes, supra* note 113.

[116] *Ibid*.

may be used without the deponent being actually called to the witness stand.[117]

Section 47, Rule 130 of the Rules of Court is an entirely different provision. While a *former testimony or deposition* appears under the *Exceptions to the Hearsay Rule*, the classification of *former testimony or deposition* as an admissible hearsay is not universally conceded.[118] A fundamental characteristic of hearsay evidence is the adverse party's lack of opportunity to cross-examine the out-of-court declarant. However, Section 47, Rule 130 explicitly requires, *inter alia*, for the admissibility of a *former testimony or deposition* that the adverse party must have had an opportunity to cross-examine the witness or the deponent in the prior proceeding.

This opportunity to cross-examine though is not the ordinary cross-examination[119] afforded an adverse party in usual trials regarding "matters stated in the direct examination or connected therewith." Section 47, Rule 130 of the Rules of Court contemplates a different kind of cross-examination, whether actual or a mere opportunity, whose adequacy depends on the requisite identity of issues in the former case or proceeding

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[117] *Ibid*.

[118] Jovito R. Salonga, *Philippine Law of Evidence*, p. 540, 2nd ed., 1958. John Henry Wigmore, *supra* note 77, at 51-53. But the generally accepted view, followed by our own rules on evidence, is that prior testimony or deposition is an exception to hearsay prohibition. (*McCormick on Evidence* by Edward Cleary, § 254, p. 759, 3rd ed., Hornbook Series, Lawyer's ed., 1984).

[119] Section 6, Rule 132 of the Rules of Court reads:

> ***Cross-examination; its purpose and extent.*** — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

and in the present case where the former testimony or deposition is sought to be introduced.

Section 47, Rule 130 requires that the issues involved in both cases must, at least, be substantially the same; otherwise, there is no basis in saying that the former statement was — or would have been — sufficiently tested by cross-examination or by an opportunity to do so.[120] (The requirement of similarity though does not mean that all the issues in the two proceedings should be the same.[121] Although some issues may not be the same in the two actions, the admissibility of a former testimony on an issue which is similar in both actions cannot be questioned.[122])

These considerations, among others, make Section 47, Rule 130 a distinct rule on evidence and therefore should not be confused with the general provisions on deposition under Rule 23 of the Rules of Court. In other words, even if the petitioner complies with Rule 23 of the Rules of Court on the use of depositions, the observance of Section 47, Rule 130 of the Rules of Court cannot simply be avoided or disregarded.

Undisputably, the Sandiganbayan relied on the Bane deposition, taken in Civil Case No. 0130, for purposes of this very same case. Thus, *what the petitioner established* and *what the Sandiganbayan found*, for purposes of using the Bane deposition, refer only to the circumstances laid down under Section 4(c), Rule 23 of the Rules of Court, not necessarily to those of Section 47, Rule 130 of the Rules of Court, as a distinct rule on evidence that imposes further requirements in the use of depositions in a *different* case or proceeding. In other words, the prior use of the deposition under Section 4(c), Rule 23 cannot be taken as compliance with Section 47, Rule 130 which considers the same deposition as hearsay, unless the requisites for its admission

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[120] John Henry Wigmore, *supra* note 77, at 83.

[121] Oscar M. Herrera, 5 *Remedial Law*, 1999, pp. 773, 774-775.

[122] *Id.* at 773, citing *Gibson v. Gagnon*, 82 Colo 108, 257, p. 348; 2 Jones, Sec. 9:25.

under this rule are observed. The aching question is whether the petitioner complied with the latter rule.

Section 47, Rule 130 of the Rules of Court lays down the following requisites for the *admission* of a testimony or deposition given at a former case or proceeding.

1. The testimony or deposition of a witness deceased or otherwise unable to testify;
2. The testimony was given in a former case or proceeding, judicial or administrative;
3. Involving the same parties;
4. Relating to the same matter;
5. The adverse party having had the opportunity to cross-examine him.[123]

The reasons for the admissibility of testimony or deposition taken at a former trial or proceeding are the necessity for the testimony and its trustworthiness.[124] However, before the *former testimony or deposition* can be introduced in evidence, *the proponent must first lay the proper predicate* therefor,[125] *i.e.*, the party must establish the basis for the admission of the Bane deposition in the realm of admissible evidence. This basis is the prior issue that we must now examine and resolve.

IV (c). Unavailability of witness

For the admission of a *former testimony or deposition*, Section 47, Rule 130 of the Rules of Court simply requires, *inter alia*, that the witness or deponent be "*deceased or unable to testify.*" On the other hand, in using a deposition that was taken *during*

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[123] Manuel V. Moran, 5 *Comments on the Rules of Court*, 1980 ed., p. 409.

[124] Vicente J. Francisco, *Evidence*, 1955, p. 646.

[125] Ricardo J. Francisco, 7 *The Revised Rules of Court in the Philippines, Evidence*, Part I, 1997 ed., pp. 628-629.

the pendency of an action, Section 4, Rule 23 of the Rules of Court provides several grounds that will justify dispensing with the actual testimony of the deponent in open court and specifies, *inter alia*, the circumstances of the deponent's inability to attend or testify, as follows:

> (3) that the witness is **unable to** attend or **testify** because of age, sickness, infirmity, or imprisonment[.] [emphases ours][126]

The phrase "unable to testify" appearing in both Rule 23 and Rule 130 of the Rules of Court refers to a physical inability to appear at the witness stand and to give a testimony.[127] Hence notwithstanding the deletion of the phrase "out of the Philippines," which previously appeared in Section 47, Rule 130 of the Rules of Court, *absence from jurisdiction*[128] — the petitioner's excuse for the non-presentation of Bane in open court — may still constitute inability to testify under the same rule. This is not to say, however, that resort to deposition on this instance of unavailability will always be upheld. **Where the deposition is taken not for discovery purposes, but to accommodate the deponent, then the deposition should be rejected in evidence**.[129]

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[126] Prior to the revision of the rules on evidence, the phrase "out of the Philippines" appeared in the context of the witness' unavailability (Section 41, Rule 130 of the 1964 Rules of Court). After the revision (the latest amendments to the rules on evidence became effective on July 1, 1989), this phrase was deleted from the present Section 47, Rule 130 of the Rules of Court. In contrast, the same phrase, which appeared in Rule 24 of the old Rules (Rule 24, Deposition and Discovery, 1964 Rules of Court), was retained in the present Rule 23 of the Rules of Court on depositions. The phrase "unable to testify," however, survived the amendment of the rules and was retained in both Section 47, Rule 130 of the Rules of Court and Section 4(c), Rule 23 of the same Rules.

[127] Vicente J. Francisco, *Evidence*, *supra* note 124, at 649.

[128] John Henry Wigmore, 5 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, § 1404, p. 149.

[129] *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96 (1999).

Although the testimony of a witness has been given in the course of a former proceeding between the parties to a case on trial, this testimony alone is not a ground for its admission in evidence. The witness himself, if available, must be produced in court as if he were testifying *de novo* since his testimony given at the former trial is mere hearsay.[130] The deposition of a witness, otherwise available, is also inadmissible for the same reason.

Indeed, the Sandiganbayan's reliance on the Bane deposition in the *other* case (Civil Case No. 0130) is an argument in favor of the requisite unavailability of the witness. For purposes of the *present* case (Civil Case No. 0009), however, the Sandiganbayan would have no basis to presume, and neither can or should we, that the previous condition, which previously allowed the use of the deposition, remains and would thereby justify the use of the same deposition in *another case or proceeding*, even if the other case or proceeding is before the same court. Since the basis for the admission of the Bane deposition, in principle, being necessity,[131] the burden of establishing its existence rests on the party who seeks the admission of the evidence. This burden cannot be supplanted *by assuming* the continuity of the previous condition or conditions in light of the general rule against the non-presentation of the deponent in court.[132]

IV (d). The requirement of opportunity of the adverse party to cross-examine; identity of parties; and identity of subject matter

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[130] Ricardo J. Francisco, *supra* note 125, at 627, cited in the *Comment* filed by the substituted heirs of respondent Jose Africa, p. 3.

[131] John Henry Wigmore, *supra* note 128, at 148.

[132] To make matters worse, by not questioning the Sandiganbayan's denial of its 1st Motion (to Adopt), the petitioner has impliedly acceded to the Sandiganbayan's ruling that the non-presentation of the deponent in court for cross-examination is unjustified. Unfortunately, the petitioner "realized" its mistake only two precious years later.

The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination.[133] The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called.[134] *This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial*. The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard[135] against falsehoods and frauds.

In resolving the question of whether the requirement of opportunity to cross-examine has been satisfied, we have to consider first the required identity of parties as the present opponent to the admission of the Bane deposition to whom the opportunity to cross-examine the deponent is imputed may not after all be the same "adverse party" who actually had such opportunity.

To render the testimony of a witness admissible at a later trial or action, the parties to the first proceeding must be the same as the parties to the later proceeding. Physical identity, however, is not required; substantial identity[136] or identity of interests[137] suffices, as where the subsequent proceeding is between persons who represent the parties to the prior proceeding

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[133] Ricardo J. Francisco, *supra* note 125, at 220.

[134] *Id.* at 219.

[135] Edward Cleary, *supra* note 118, at 48.

[136] Manuel V. Moran, *supra* note 123, at 410.

[137] Jovito R. Salonga, *supra* note 118, at 542.

by privity in law, in blood, or in estate. The term "privity" denotes mutual or successive relationships to the same rights of property.[138]

In the present case, the petitioner failed to impute, much less establish, the identity of interest or privity between the then opponent, Africa, and the present opponents, the respondents. While Africa is the son of the late respondent Jose Africa, at most, the deposition should be admissible only against him as an ETPI stockholder who filed the *certiorari* petition docketed as Civil Case No. 0130 (and, unavoidably, as successor-in-interest of the late respondent Jose Africa). While Africa and the respondents are all ETPI stockholders, this commonality does not establish at all any privity between them for purposes of binding the latter to the acts or omissions of the former respecting the cross-examination of the deponent. The sequestration of their shares does not result in the integration of their rights and obligations as stockholders which remain distinct and personal to them, *vis-a-vis* other stockholders.[139]

IV (d1). The respondents' notice of taking of Bane deposition is insufficient evidence of waiver

The petitioner staunchly asserts that the respondents have waived their right to cross-examine the deponent for their failure to appear at the deposition-taking despite individual notices previously sent to them.[140]

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[138] Oscar M. Herrera, *supra* note 121, at 772. Privies are distributed into several classes, according to the manner of the relationship. Thus, there are privies in estate, as donor and donee, lessor and lessee, and joint tenants; privies in blood, as heir and ancestor; privies in representation as executor and testator, administrator and intestate; privies in law for the law without privity of blood and estate casts the land upon another as by escheat. (*Id.* at 542.)

[139] Notably, Africa was not impleaded in Civil Case No. 0009 (*Republic v. Sandiganbayan*, G.R. No. 106244, January 22, 1997, 266 SCRA 515).

[140] Petitioner's *Reply* to Nieto's Comment, p. 4; and petitioner's *Reply with Manifestation* to *Respondent Enrile's Comment*, pp. 11-12. *Rollo*, pp. 678-679.

In its first *Notice to Take Oral Deposition of Mr. Maurice V. Bane dated* August 30, 1996,[141] the petitioner originally intended to depose Mr. Bane on September 25-26 1996. Because it failed to specify in the notice the purpose for taking Mr. Bane's deposition, the petitioner sent a *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination* where it likewise moved the scheduled deposition-taking to October 23-26, 1996.

The records show that Africa moved several times for protective orders against the intended deposition of Maurice Bane.[142] On the other hand, among the respondents, only respondent Enrile appears to have filed an Opposition[143] to the petitioner's first notice, where he squarely raised the issue of reasonability of the petitioner's nineteen-day first notice. While the Sandiganbayan denied Africa's motion for protective orders,[144] it strikes us that *no ruling was ever handed down* on respondent Enrile's Opposition.[145]

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[141] Records, Volume XXXVI, p. 11534.

[142] Records, Volume XXXVI, pp. 11574-11578; Volume XXXVII, pp. 11649- 11654; 11704-11709.

[143] Records, Volume XXXVI, pp. 11610-11612.

[144] Records, Volume XXXVII, pp. 11719-11720.

[145] While the Sandiganbayan recognized that the petitioner intends to use the Bane deposition in Civil Case No. 0009 (as stated in the *Second Amended Notice of the Taking of the Bane Deposition*), the Sandiganbayan denied Africa's Motion as if Africa himself was impleaded in and is a party who can be bound by the proceedings and the judgment in Civil Case No. 0009 (except only as a substituted heir of the late respondent Jose Africa). In denying Victor Africa's motion (forgetting about the concern raised by respondent Enrile – which is equally applicable to the other respondents), the Sandiganbayan seemed oblivious of the fact that the respondents who were non-parties to Civil Case 0130 (where the deposition was taken) should be heard. Apparently, the Sandiganbayan relied blindly on the petitioner's assertion that the taking of deposition is a matter of right and failed to address the consequences and/or issues that may arise from the apparently innocuous statement that the petitioner intends to use the Bane deposition in Civil Case No. 0009 (where only the respondents, and not Africa, are parties). The Sandiganbayan ruled:

> "More importantly, under Section 1 of Rule 24 the taking of such deposition, after the answer has been served, is a matter of right and can be resorted to without leave of court." (Records, XXXVII, pp. 11719-11720).

It must be emphasized that even under Rule 23, the admission of the deposition upon oral examination is not simply based on the fact of prior notice on the individual sought to be bound thereby. In *Northwest Airlines v. Cruz*,[146] we ruled that –

> The provision explicitly vesting in the court the power to order that the deposition shall not be taken connotes the authority to exercise discretion on the matter. However, the discretion conferred by law is not unlimited. It must be exercised, not arbitrarily or oppressively, but in a reasonable manner and in consonance with the spirit of he law. **The courts should always see to it that the safeguards for the protection of the parties and deponents are firmly maintained.** As aptly stated by Chief Justice Moran:
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> > . . . . (T)his provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: "Any discovery involves a prying into another person's affairs — prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid." For this reason, courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both. (emphasis ours)

In the present case, not only did the Sandiganbayan fail to rule on respondent Enrile's Opposition (which is equally applicable to his co-respondents), it also failed to provide even the bare minimum "safeguards for the protection of," (more so) *non-parties*,[147] and to ensure that these safeguards are firmly

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[146] 376 Phil. 111-112 (1999).

[147] In its Motion for Summary Judgment, dated January 28, 1997, the petitioner itself conceded that respondents are **not** parties to Civil Case No. 0130, where the deposition was taken:

> 7. In this connection, we are not unmindful of the observation of [the Sandiganbayan] that:
>
> > The principal issue in the main case, Civil Case No. 0009 x x x which is an action for reversion, forfeiture, accounting and damages, is whether or not there is preponderance of evidence that the Class

maintained. Instead, the Sandiganbayan simply bought the petitioner's assertion (that the taking of Bane deposition is a matter of right) and treated the lingering concerns – *e.g.*, reasonability of the notice; and the non-party status of the respondents in Civil Case No. 0130 — at whose incident (docketed as G.R. No. 107789) the Bane deposition was taken — rather perfunctorily to the prejudice of the respondents.

In conjunction with the order of consolidation, the petitioner's reliance on the prior notice on the respondents, as adequate opportunity for cross-examination, cannot override the *non-party status* of the respondents in Civil Case No. 0130 – the effect of consolidation being merely for trial. As non-parties, they cannot be bound by proceedings in that case. *Specifically*, they cannot be bound by the taking of the Bane deposition without the consequent impairment of their right of cross-examination.[148] *Opportunity for cross-examination*, too, even assuming its presence, cannot be singled out as basis for the admissibility of a *former testimony or deposition* since such admissibility is also anchored on the requisite identity of parties. To reiterate, although the Sandiganbayan considered the Bane deposition in resolving Civil Case No. 0130, its action was premised on Africa's status as a party in that case where the Bane deposition was taken.

"A" shareholding in ETPI is ill-gotten wealth x x x. That point should not be pre-empted in the resolution of the subject incident in G.R. No. 107789 x x x

8. Nor are we unmindful that this Honorable Court made clear that the finding in its December 13, 1996 resolution "does not render moot and academic the principal issue in the main case, Civil Case No. 0009, which is: whether or not there is preponderance of evidence of alleged ill-gotten wealth of the defendants therein, especially Jose Africa, Roberto S. Benedicto and Manuel H. Nieto, Jr., *none of whom is a party either in incident Civil Case No. 0130 or in the subject G.R. No. 107789*. (Italics supplied) (Records, XL, pp. 12568-12569.)

[148] *Mabayo Farms, Inc. v. Court of Appeals*, G.R. No. 140058, August 1, 2002, 386 SCRA 110; and *Development Bank of the Philippines v. Bautista, et al.*, 135 Phil. 201 (1968).

Corollarily, the idea of privity also permeates Rule 23 of the Rules of Court through its Section 5 which provides:

> ***Effect of substitution of parties.*** — Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is afterward brought between *the same parties or their representatives or successors in interest*, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. [italics and underscoring ours]

In light of these considerations, we reject the petitioner's claim that the respondents waived their right to cross-examination when they failed to attend the taking of the Bane deposition. Incidentally, the respondents' vigorous insistence on their right to cross-examine the deponent speaks loudly that they never intended any waiver of this right.

Interestingly, the petitioner's notice of the deposition-taking relied on Rule 23 of the Rules of Court. Section 15 of this rule reads:

> ***Deposition upon oral examination; notice; time and place.*** — A party desiring to take the deposition of any person upon oral examination shall give reasonable *notice in writing to every other* ***party to the action***. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

Under this provision, we do not believe that the petitioner could reasonably expect that the individual notices it sent to the respondents would be sufficient to bind them to the conduct of the then opponent's (Africa's) cross-examination since, to begin with, they were not even parties to the action. Additionally, we observe that in the notice of the deposition taking, conspicuously absent was any indication sufficient to forewarn the notified persons that their inexcusable failure to appear at the deposition taking would amount to a waiver of their right

of cross-examination, without prejudice to the right of the respondents to raise their objections at the appropriate time.[149] We would be treading on dangerous grounds indeed were we to hold that **one not a party to an action, *and neither in privity nor in substantial identity of interest* with any of the parties in the same action, can be bound by the action or omission of the latter, by the mere expedient of a notice**. Thus, we cannot simply deduce a resultant waiver from the respondents' mere failure to attend the deposition-taking despite notice sent by the petitioner.

Lastly, we see no reason why the Bane deposition could not have been taken earlier in Civil Case No. 0009 – the principal action where it was sought to be introduced – while Bane was still here in the Philippines. We note in this regard that the Philippines was no longer under the Marcos administration and had returned to normal democratic processes when Civil Case No. 0009 was filed. *In fact, the petitioner's notice itself states that the "purpose*

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[149] Section 6, Rule 23 of the Rules of Court reads:

Objections to admissibility. — Subject to the provisions of Section 29 of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Section 17, Rule 23 of the Rules of Court reads:

Record of examination; oath; objections.— The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officers, who shall propound them to the witness and record the answers verbatim.

of the deposition is for Mr. Maurice Bane to identify and testify on the facts set forth in his Affidavit," which Mr. Bane had long executed in 1991 in Makati, Metro Manila.[150] Clearly, a deposition could then have been taken — without compromising the respondents' right to cross-examine a witness against them — considering that the principal purpose of the deposition is *chiefly* a mode of discovery. These, to our mind, are avoidable omissions that, when added to the deficient handling of the present matter, add up to the ***gross deficiencies of the petitioner*** in the handling of Civil Case No. 0009.

After failing to take Bane's deposition in 1991 and in view of the peculiar circumstances of this case, the *least* that the petitioner could have done was to ***move*** for the taking of the Bane deposition and proceed with the deposition immediately upon securing a favorable ruling thereon. On that occasion, where the respondents would have a chance to be heard, the respondents cannot avoid a resultant waiver of their right of cross-examination if they still fail to appear at the deposition-taking. **Fundamental fairness dictates this course of action**. It must be stressed that not only were the respondents non-parties to Civil Case No. 0130, they likewise have no interest in Africa's *certiorari* petition asserting his right as an ETPI stockholder.

Setting aside the petitioner's flip-flopping on its own representations,[151] this Court can only express dismay on why the petitioner had to let Bane leave the Philippines before taking his deposition despite having knowledge already of the substance of what he would testify on. Considering that the testimony of Bane

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[150] Records, Volume XXXVII, pp. 11628-11623.

[151] See the petitioner's Pre-Trial Brief (Records, Volume XXXVI, p. 11405) where the petitioner made a representation to present Mr. Maurice Bane. See the petitioner's Common Reply (Records, Volume XLV, pp. 110-112) where the petitioner conceded the applicability of Section 47, Rule 130; see the petitioner's Motion for Summary Judgment (Records, Volume XL, pp. 12568-12569) where the petitioner admitted that the respondents were not parties to Civil Case No. 0130 (where the deposition was taken) and Victor Africa was neither a party to Civil Case No. 0009.

is allegedly a "vital cog" in the petitioner's case against the respondents, the Court is left to wonder why the petitioner had to take the deposition *in an incident* case (instead of the main case) *at a time when it became the technical* right of the petitioner to do so.

V. The petitioner cannot rely on principle of judicial notice

The petitioner also claims that since the Bane deposition had already been previously introduced and admitted in Civil Case No. 0130, then the Sandiganbayan should have taken judicial notice of the Bane deposition as part of its evidence.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[152] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.[153]

The foundation for judicial notice may be traced to the civil and canon law maxim, *manifesta* (*or notoria*) *non indigent probatione*.[154] The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

The concept of judicial notice is embodied in Rule 129 of the Revised Rules on Evidence. Rule 129 either requires the court to take judicial notice, *inter alia*, of "the official acts of the x x x judicial departments of the Philippines,"[155] or gives

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[152] Ricardo J. Francisco, *supra* note 125, at 69.

[153] Oscar M. Herrera, *supra* note 121, at 72.

[154] Manifest things require no proof; what is known by the magistrate need not be proved; Jovito R. Salonga, *supra* note 118, at 45; and Eduardo B. Peralta, Jr., *Perspectives of Evidence*, 2005, p. 52, citing 1 Jones on Evidence, p. 209.

[155] Section 1, Rule 129 of the Revised Rules on Evidence.

the court the discretion to take judicial notice of matters "ought to be known to judges because of their judicial functions."[156] On the other hand, a party-litigant may ask the court to take judicial notice of any matter and the court may allow the parties to be heard on the propriety of taking judicial notice of the matter involved.[157] In the present case, after the petitioner filed its *Urgent Motion and/or Request for Judicial Notice*, the respondents were also heard through their corresponding oppositions.

In adjudicating a case on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge.[158] This rule though admits of exceptions.

As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, **with the knowledge of**, *and* **absent an objection from**, **the adverse party, reference is made to it for that purpose**, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and **admitted as a part of the record of the case then pending**.[159]

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[156] *Id.*, Section 2.

[157] *Id.*, Section 3.

[158] Manuel V. Moran, *supra* note 123, at 47-48, citing *Municipal Council of San Pedro Laguna v. Colegio de San Jose*, 65 Phil. 318 (1938); and *Prieto v. Arroyo*, 121 Phil. 1335 (1965).

[159] In *Occidental Land Transportation Co., Inc. v. Court of Appeals*, G.R. No. 96721, March 19, 1993, 220 SCRA 167, 176, citing *Tabuena v. Court of Appeals*, 196 SCRA 656 (1991), we stated:

Courts must also take judicial notice of the records of another case or cases, where sufficient basis exists in the records of the case before it, warranting the dismissal of the latter case.[160]

And unlike the factual situation in *Tabuena v. CA*, the decision in Civil Case No. 3156 formed part of the records of the instant case (Civil Case No. 2728) with the knowledge of the parties and in the absence of their objection. This fact was pointed out by the lower court, to wit:

The x x x findings of the Oroquieta Court became as conclusive upon the company and its driver by their acquiescence and silence x x x. (Decision of lower court, p. 12; records, p. 239)

x x x x x x x x x

Returning to Exhibit "O", *supra* (Decision, Civil Case No. 3156, CFI, Branch III, Oroquieta City), the Court hastens to add: Said exhibit has not been objected to nor commented upon by the defendants Company and Enerio, through their counsel, x x x.

This being the case, petitioners were aware that Exhibit "O" (Decision in Civil Case No. 3156) had formed part of the records of the case and would thereby be considered by the trial court in its decision.

[160] Section 1, Rule 9 of the Rules of Court reads:

Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (underscoring ours)

In *Lewin v. Galang, etc.*, 109 Phil. 1041, 1045 (1960), cited by the petitioner, the Court held:

> In view of this special defense [*res judicata*], the court below should have taken judicial notice of the *habeas corpus* proceedings instituted by petitioner before the same Court of First Instance of Manila and before the same judge, Case No. 28409, *Ted Lewin v. Commissioner of Immigration and Commissioner of Customs*, and we find that practically the same facts relied upon in petitioner's present petition for declaratory judgment are the very facts upon which petitioner based his request for the issuance of the writ of *habeas corpus* in the previous case.

In *Tiburcio, et al. v. People's Homesite and Housing Corporation, et al.*, 106 Phil. 477, 483-484 (1959), likewise cited by the petitioner, we held:

The issue before us does not involve the applicability of the rule on mandatory taking of judicial notice; neither is the applicability of the rule on discretionary taking of judicial notice seriously pursued. Rather, the petitioner approaches the concept of judicial notice from a ***genealogical perspective*** of treating whatever evidence offered in any of the "children" cases – Civil Case 0130 – as evidence in the "parent" case – Civil Case 0009 — or "of the whole family of cases."[161] To the petitioner, the supposed relationship of these cases warrants the taking of judicial notice.

We strongly disagree. *First*, the supporting cases[162] the petitioner cited are inapplicable either because these cases involve

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Appellants finally claim that the lower court erred in dismissing the complaint on the ground of *res judicata* by taking judicial notice of its own records in Land Registration Case No. L-3 invoking in support of their contention the principle that a court cannot take judicial notice of the contents of the records of other cases even when such cases had been tried by the same court and notwithstanding the [fact] that both cases may have been tried before the same judge. While the principle invoked is considered to be the general rule, the same is not absolute. There are exceptions to this rule. Thus, as noted by former Chief Justice Moran:

> In some instance[s], courts have taken judicial notice of proceedings in other causes, because of their close connection with the matter in controversy. x x x
>
> Moreover, appellants' objection to the action of the trial court on this matter is merely technical because they do not dispute the fact that appellant x x x, who instituted the present case, is the same person who filed the application in Land Registration Case No. L-3 for the registration of the same parcel of land which application was denied by the court x x x. It may therefore be said that in the two cases there is not only identity of subject matter but identity of parties and causes of action. Indeed, the trial court did not err in dismissing the complaint on the ground of *res judicata*.

[161] Petitioner's *Reply with Manifestation* (to respondent Enrile's *Comment*) enumerates the various "family member" cases which arose from the present and main case, Civil Case No. 0009.

[162] *De los Angeles v. Hon. Cabahug, et al.*, 106 Phil. 839 (1959); *Lewin v. Galang, etc., supra* note 160; and *Tiburcio, et al. v. People's Homesite and Housing Corporation, et al., supra* note 160.

only a single proceeding or an exception to the rule, which proscribes the courts from taking judicial notice of the contents of the records of other cases.[163] *Second*, the petitioner's proposition is obviously obnoxious to a system of orderly procedure. The petitioner itself admits that the present case has generated a lot of cases, which, in all likelihood, involve issues of varying complexity. If we follow the logic of the petitioner's argument, we would be espousing judicial confusion by indiscriminately allowing the admission of evidence in one case, which was presumably found competent and relevant in another case, simply based on the supposed lineage of the cases. It is the duty of the petitioner, as a party-litigant, to properly lay before the court the evidence it relies upon in support of the relief it seeks, instead of imposing that same duty on the court. We invite the petitioner's attention to our prefatory pronouncement in *Lopez v. Sandiganbayan*:[164]

> Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and *it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely*. (emphasis ours)

We therefore refuse, in the strongest terms, to entertain the petitioner's argument that we should take judicial notice of the Bane deposition.

VI. Summation

To recapitulate, we hold that: **(1)** the Sandiganbayan's denial of the petitioner's 3rd motion – the *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice Bane)* – was a legal error that did not amount to grave abuse of discretion;

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[163] *Lewin v. Galang, etc., supra*; and *Tiburcio, et al. v. People's Homesite and Housing Corporation, et al., supra*.

[164] 319 Phil. 387, 389 (1995).

(2) the Sandiganbayan's refusal to reopen the case at the petitioner's instance was tainted with grave abuse of discretion; and **(3)** notwithstanding the grave abuse of discretion, **the petition must ultimately fail** as the Bane deposition is not admissible under the rules of evidence.[165]

VII. Refutation of Justice Carpio's Last Minute Modified Dissent

At the last minute, Justice Carpio circulated a modified dissent, quoting the Bane deposition. His covering note states:

> I have revised my dissenting opinion to include the Bane deposition so that the Court and the public will understand what the Bane deposition is all about. (underlining added)

In light of this thrust, a discussion refuting the modified dissent is in order.

First: **Contents of the Bane deposition not an Issue.** The dissent perfectly identified what is at issue in this case – *i.e.*, the ***admissibility* of the Bane deposition**. Admissibility is concerned with the competence *and* relevance[166] of the evidence, whose admission is sought. While the dissent quoted at length the Bane deposition, it may not be amiss to point out that **the relevance of the Bane deposition** (or, to adopt the dissent's characterization, whether "Maurice V. Bane is a vital witness") is ***not*** an issue here unless it can be established *first* that the Bane deposition is a **competent evidence**.

Second: **Misrepresentation of Cited Authority.** The dissent insists that "in Philippine Jurisprudence, the consolidation of cases merges the different actions into one and the rights of the parties are adjudicated in a single judgment," citing Vicente J. Francisco. In our discussion on consolidation, we footnoted

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[165] Rules of Court, Rule 130, Section 47.

[166] Revised Rules on Evidence, Rule 128, Section 3.

the following in response to the dissent's position, which we will restate here for emphasis:

In the 1966 edition of Vicente J. Francisco's Revised Rules of Court, Francisco wrote:

The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of actions involved had originally been joined in a single action, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct, and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action (1 C.J.S., 113, pp. 1371-1372).

At the very beginning of the discussion on consolidation of actions in the *Corpus Juris Secundum*, the following caveat appears:

The term consolidation is used in three different senses. First, where several actions are combined into one and lose their separate identity and become a single action in which a single judgment is rendered; second, where all except one of several actions are stayed until one is tried, in which case the judgment in the one is conclusive as to the others; third, where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. **The failure to distinguish between these methods of procedure, which are entirely distinct, the two latter, strictly speaking, not being consolidation, a fact which has not always been noted, has caused some confusion and conflict in the cases**. (1 C.J.S., 107, pp. 1341-1342) (Emphasis added).

In defining the term "consolidation of actions," **Francisco provided a colatilla that the term "consolidation" is used in three different senses**, citing 1 C.J.S. 1341 and 1 Am. Jur. 477 (Francisco, *Revised Rules of Court*, p. 348).

From the foregoing, it is clear that the dissent appears to have quoted Francisco's statement out of context. As it is, the issue

of the effect of consolidation on evidence is at most an unsettled matter that requires the approach we did in the majority's discussion on consolidation.[167]

Third: **Misappreciation of the Purpose of Consolidation.** The dissent then turns to the purpose of consolidation – to "expeditiously settle the interwoven issues involved in the consolidated cases" and "the simplification of the proceedings." It argues that this can only be achieved if the repetition of the same evidence is dispensed with.

It is unfortunate that the dissent refuses to recognize the fact that since consolidation is primarily addressed to the court concerned to aid it in dispatching its official business, it would be in keeping with the orderly trial procedure if the court should have a say on what consolidation would actually bring[168] (*especially* where several cases are involved which have become relatively complex). In the present case, there is nothing in the proceedings below that would suggest that the Sandiganbayan or the parties themselves (the petitioner and the respondents) had in mind a consolidation *beyond* joint hearing or trial. Why should this Court – which is not a trial court – impose a purported effect that has no factual or legal grounds?

Fourth: **The Due Process Consideration.** The dissent argues that even if the consolidation only resulted in a joint

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[167] The dissent then compares the proceedings in the Court when cases are consolidated to support its position that consolidation results in the merger of the different causes of action. However, **it is not exactly appropriate to compare the consolidation of cases in the Supreme Court with the consolidation ordered by the Sandiganbayan because the Supreme Court is NOT a trier of facts**. *First*, the scope of our review is limited generally to "questions of law." Hence, no issue of prejudice to other parties can arise should petitions in the Court be consolidated. *Second,* **unlike consolidated cases in the Supreme Court, the Sandiganbayan itself had, in fact, separately adjudged** an incident of Civil Case No. 0130 and the few other incident cases **independent** of Civil Case No. 0009.

[168] Correctible under Rule 65 of the Rules of Court.

hearing or trial, the "respondents are still bound by the Bane deposition considering that they were given notice of the deposition-taking." **The issue here boils down to one of due process** – the fundamental reason why a hearsay statement (not subjected to the rigor of cross-examination) is generally excluded in the realm of admissible evidence – especially when read in light of the **general rule** that depositions are ***not*** meant as substitute for the actual testimony, in open court, of a party or witness.

Respondent Enrile had a pending Opposition to the notice of deposition-taking (questioning the reasonableness thereof – an issue applicable to the rest of the respondents) which the Sandiganbayan failed to rule on. To make the Sandiganbayan's omission worse, the Sandiganbayan blindly relied on the petitioner's assertion that the deposition-taking was a matter of right and, thus, failed to address the consequences and/or issues that may arise from the apparently innocuous statement of the petitioner (that it intends to use the Bane deposition in Civil Case No. 0009, where only the respondents, and not Africa, are the parties).[169] There is simply the absence of "due" in due process.

Fifth: **Misstatement of the Sandiganbayan's Action.** The dissent repeatedly misstates that the Sandiganbayan "granted" the request for the deposition-taking. For emphasis, the **Sandiganbayan did not "grant" the request** since the petitioner staunchly asserted that the deposition-taking was a *matter of right*. No one can deny the complexity of the issues that these consolidated cases have reached. Considering the consolidation of cases of this nature, **the most minimum of fairness demands upon the petitioner to *move* for the taking of the Bane deposition and for the Sandiganbayan to make a ruling thereon** (including the opposition filed by respondent Enrile which equally applies to his co-respondents). The burgeoning omission and failures that have prevailed in this

[169] When it denied Africa's separate opposition.

case cannot be cured by this Court without itself being guilty of violating the constitutional guarantee of due process.

Sixth: **Issues Posed and Resolved Go Beyond Technicalities.** The above conclusions, contrary to the petitioner's claim, are not only matters of technicality. Admittedly, rules of procedure involve technicality, to which we have applied the liberality that technical rules deserve. But the resolution of the issues raised goes beyond pure or mere technicalities as the preceding discussions show. They involve issues of due process and basic unfairness to the respondents, particularly to respondent Enrile, who is portrayed in the Bane deposition to be acting in behalf of the Marcoses so that these shares should be deemed to be those of the Marcoses. They involved, too, principles upon which our rules of procedure are founded and which we cannot disregard without flirting with the violation of guaranteed substantive rights and without risking the disorder that these rules have sought to avert in the course of their evolution.

In the Court *En Banc* deliberations of December 6, 2011, the Court failed to arrive at a conclusive decision because of a tie vote (7-7, with one Justice taking no part). The same vote resulted in the re-voting of December 13, 2011. In this light, the *ponencia* is deemed sustained.

WHEREFORE, *premises considered,* we *DISMISS* the petition for lack of merit. No costs.

SO ORDERED.

Corona, C.J., Peralta, Bersamin, del Castillo, Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see Dissenting Opinion.

Velasco, Jr., J., I join the opinion of J.A.T. Carpio with the qualification that the Bane deposition cannot be used against resp. Juan Ponce Enrile because of his opposition thereto.

Abad, Villarama, Jr., Sereno, Reyes, and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Carpio.

Leonardo-de Castro, J., no part.

DISSENTING OPINION

CARPIO, *J.*:

This is a special civil action for *certiorari*[1] filed by the Republic of the Philippines (petitioner), through the Presidential Commission on Good Government (PCGG), seeking to set aside the Resolution dated 7 February 2002 of the Sandiganbayan, which denied petitioner's *Motion to Admit Supplemental Offer of Evidence* (*Re: Deposition of Maurice V. Bane*).

The case pertains to the complaint filed before the Sandiganbayan by petitioner against private respondents for reconveyance, reversion, accounting, restitution, and damages. The complaint, which was filed on 22 July 1987, was docketed as Civil Case No. 0009. Civil Case No. 0009 involves, among others, the shares of private respondents in Eastern Telecommunications Philippines, Inc. (ETPI), which were allegedly ill-gotten and were eventually sequestered by the government.[2]

The issue in this *certiorari* proceeding concerns the admissibility of the deposition of Maurice V. Bane, taken primarily for testimony regarding the interlocutory issue in Civil Case No. 0130, which is one of the incident cases of Civil Case No. 0009.

Civil Case No. 0130 is a petition for *certiorari* filed with the Sandiganbayan by Victor Africa, son of Jose L. Africa,[3] who is one of the defendants in Civil Case No. 0009, against the PCGG. Victor Africa filed the petition, seeking to nullify the PCGG orders directing him, among others, to account for his sequestered shares in ETPI. **In a Resolution dated 12**

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] See Petition for *Certiorari*, dated 14 March 2002, p. 12; *rollo*, p. 13.

[3] Upon his demise, Jose L. Africa was eventually substituted by his heirs as defendants in Civil Case No. 0009. Victor Africa is one of the legal representatives/forced heirs of deceased respondent Jose L. Africa; Sandiganbayan Resolution issued on 1 April 1998, p. 6; *rollo*, p. 336.

April 1993,[4] the Sandiganbayan ordered the consolidation of the main case, Civil Case No. 0009, with several incident cases including Civil Case No. 0130.[5]

On 25 September 1996, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, petitioner filed with the Sandiganbayan a *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination.*[6] On 23 and 24 October 1996, the deposition upon oral examination of Maurice V. Bane, former director and treasurer-in trust of ETPI, was taken before Consul General Ernesto Castro at the Philippine Embassy in London, England. Among the defendants in the main Civil Case No. 0009, only Victor Africa appeared during the taking of the deposition.

On 22 January 1998, petitioner filed a motion[7] praying that it be allowed to adopt the testimonies of several of its witnesses in incidental Civil Case Nos. 0048, 0050, 0130 and 0146, including the deposition of Maurice V. Bane, as its evidence in the main case, Civil Case No. 0009. On 1 April 1998, the Sandiganbayan issued a Resolution, denying in part the motion as regards the adoption of the testimony on oral deposition of Maurice V. Bane (and Rolando Gapud) as part of petitioner's evidence in Civil Case No. 0009, "for the reason that said deponents according to the plaintiff, are not available for cross examination in this Court by the defendants."[8]

On 14 December 1999, petitioner made its *Formal Offer of Evidence* consisting of Exhibits "A" to "XX-27". However, through oversight, petitioner failed to include among its exhibits

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[4] Promulgated on 15 April 1993.

[5] See Sandiganbayan Resolution issued on 1 April 1998, p. 5; *rollo*, p. 335; Records, pp. 6646-6649.

[6] *Rollo,* pp. 68-71.

[7] *Id.* at 322-329.

[8] See Sandiganbayan Resolution issued on 1 April 1998, p. 6; *rollo*, p. 336.

the deposition of Maurice V. Bane. Thus, in its *Urgent Motion And/Or Request for Judicial Notice* dated 21 February 2000, petitioner prayed that it be allowed to introduce as additional evidence the deposition of Maurice V. Bane, or in the alternative, for the Sandiganbayan to take judicial notice of the facts established by the said deposition. On 21 August 2000, the Sandiganbayan issued a Resolution denying petitioner's motion. The Resolution stated:

> Allegedly the deposition of Maurice V. Bane was introduced as PCGG's evidence in Civil Case No. 0130 (in relation to G.R. No. 107789) which is an incident of and consolidated with the above-entitled case in connection with PCGG's "Very Urgent Petition for Authority to Hold Special Stockholders Meeting for the Purpose of Increasing ETPI's Authorized Capital Stock" and the said deposition of Maurice V. Bane is now a part and parcel of the record of this main case.
>
> Judicial notice is found under Rule 129 which is titled "What Need Not Be Proved." Apparently, this provision refers to the Court's duty to consider admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in resolving cases before it. The duty of the Court is mandatory and in those cases where it is discretionary, the initiative is upon the Court. Such being the case, the Court finds the Urgent Motion and/or Request for judicial notice as something which need not be acted upon as the same is considered redundant.
>
> On the matter of the deposition of Maurice V. Bane, the admission of the same is done through the ordinary formal offer of exhibits wherein the defendant is given ample opportunity to raise objection on grounds provided by law. Definitely, it is not under Article 129 on judicial notice.[9]

Petitioner moved for reconsideration, which the Sandiganbayan denied in a Resolution issued on 3 April 2001. The Resolution stated:

> In the subject Resolution [issued on 21 August 2000], this Court ruled that the Urgent Motion and/or Request for Judicial Notice was something that need not be acted upon as the same was already **considered redundant, the deposition of Bane, having become part and**

[9] Sandiganbayan Resolution issued on 21 August 2000, pp. 3-4; *rollo*, pp. 354-355.

parcel of the record of this main case since Civil Case No. 0130 is an incident to the same.

This Court further held that the admission of same is done through ordinary formal offer of exhibits wherein defendant is given ample opportunity to raise objection on grounds provided by law, and not under Rule 129 on judicial notice.

WHEREFORE, there being no other issue which merit consideration of this Court, the Motion for Reconsideration is hereby denied.[10] (Emphasis supplied)

On 16 November 2001, petitioner filed a *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane)*, seeking once again the admission of the deposition. On 7 February 2002, the Sandiganbayan promulgated the assailed Resolution, denying petitioner's motion. The Sandiganbayan ruled:

The only issue that the court is actually called upon to address in the pending incident is whether or not We should allow plaintiff-movant's *Supplemental Offer of Evidence* consisting of the deposition of Maurice V. Bane.

xxx xxx xxx

Defendants' *Opposition* to the pending incident as well as plaintiff's *Reply* to the *Opposition* gave various reasons why the motion should or should not be granted. But in the court's view, it is not really a question of whether or not plaintiff has already rested its case as to obviate the further presentation of evidence. It is not even a question of whether the non-appearing defendants are deemed to have waived their right to cross-examine Bane as to qualify the admission of the deposition sans such cross-examination. Indeed, We do not see any need to dwell on these matters in view of this court's *Resolution* rendered in April 1, 1998 which already denied the introduction in evidence of Bane's deposition and which has become final in view of plaintiff's failure to file any motion for reconsideration or appeal within the 15-day reglementary period. Rightly or wrongly, the resolution stands and for this court to grant plaintiff's motion at this point in time would in effect sanction plaintiff's disregard for the rules of procedure. Plaintiff has slept on its rights for almost

[10] Sandiganbayan Resolution issued on 3 April 2001, p. 2; *rollo*, p. 358.

two years and it was only in February of 2000 that it sought to rectify its ineptitude by filing a motion to reopen its case as to enable it to introduce and offer Bane's deposition as additional evidence, or in the alternative for the court to take judicial notice of the allegations of the deposition. But how can such a motion be granted when it has been resolved as early as 1998 that the deposition is inadmissible. Without plaintiff having moved for reconsideration within the reglementary period, the resolution has attained finality and its effect cannot be undone by the simple expedient of filing a motion, which though purporting to be a novel motion, is in reality a motion for reconsideration of this court's 1998 ruling. Hence, the subsequent motions, including the present incident are deemed moot and academic.[11]

Hence, this petition for *certiorari*.

I vote to grant the petition.

It is important to note that the *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination,* filed on 25 September 1996, was **after** the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, through the Sandiganbayan Resolution dated 12 April 1993. This is evident in the caption of the notice, thus:

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
MANILA

Third Division

Republic of the Philippines,
Plaintiff,

-versus-

CIVIL CASE NO. 0009
(Incident Case No. 0130
and G.R. No. 107789)

JOSE L. AFRICA, *ET AL.*,
Defendants.

[11] *Rollo,* pp. 63, 65-67.

It should be noted that the late Jose L. Africa, one of the defendants in Civil Case No. 0009, has been substituted by his heirs, including his son Victor Africa. Thus, Justice Brion's statement that Victor Africa is "plainly not a party to Civil Case No. 0009"[12] is misleading. Although Victor Africa was not originally impleaded in Civil Case No. 0009, Victor Africa became one of the substitute defendants in Civil Case No. 0009 upon the demise of Jose L. Africa. In fact, Victor Africa, as substitute defendant in Civil Case No. 0009, has filed with the Sandiganbayan several pleadings[13] and his *Offer of Evidence*.[14]

All the defendants of Civil Case No. 0009 were given notice of the scheduled testimony by oral deposition of Maurice V. Bane. Furthermore, the notice stated that "[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009."[15] Since notices have been duly served on all the defendants, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent. Indeed, under Section 4, Rule 23 of the Rules of Civil Procedure, the deposition **"may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof."** Section 4, Rule 23 reads:

> Sec. 4. Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, **any part or all of a deposition, so far as admissible under the rules of evidence, may be**

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[12] Justice Brion's modified draft Decision, p. 2.

[13] *Comment cum Opposition*, filed on 18 July 2008, SB records (Civil Case No. 0009), Volume 66, pp. 126-136; *Rejoinder*, filed on 14 September 2009, SB records (Civil Case No. 0009), Volume 67, pp. 206-210; *Comment cum Opposition*, filed on 14 September 2009, SB records (Civil Case No. 0009), Volume 67, pp. 212-213; *Memorandum*, filed on 8 February 2010, SB records (Civil Case No. 0009), Volume 68, pp. 62-73.

[14] *Offer of Evidence* filed on 14 May 2008, SB records (Civil Case No. 0009), Volume 65, pp. 539-545; *Supplemental Offer of Evidence* filed on 4 September 2008, SB records (Civil Case No. 0009), Volume 66, pp. 242-243.

[15] Underscoring in the original.

used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as witness;

(b) The deposition of a party or of any one who at the time of the taking of the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) **that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines**, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and

(d) if only part of the deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. (Emphasis supplied)

Granting that among the defendants in the main Civil Case No. 0009, only Victor Africa is a party to the incident Civil Case No. 0130, still all the other defendants in Civil Case No. 0009 were given notice of the scheduled deposition-taking. The reason why all the defendants were given notice of the said deposition-taking was because at that time, Civil Case No. 0130 was already consolidated with Civil Case No. 0009 and as emphasized in the second amended notice, "**[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009**."[16]

[16] Underscoring in the original; boldfacing supplied.

The Sandiganbayan Resolution dated 12 April 1993 which consolidated the main case, Civil Case No. 0009, with several incident cases including Civil Case No. 0130, reads:

Republic of the Philippines
SANDIGANBAYAN
Manila

- - - -

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

-versus- **CIVIL CASE NO. 0009**

JOSE L. AFRICA, *ET AL.*,
Defendants.
x - x
VICTOR AFRICA, *ET AL.*,
Intervenors,
x - x
POLYGON INVESTORS AND MANAGERS, INC.,
Plaintiff,

-versus- CIVIL CASE NO. 0043

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *ET AL.*,
Defendants.
x - x
AEROCOM INVESTORS AND MANAGERS, INC.,
Plaintiff,

-versus- CIVIL CASE NO. 0044

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *ET AL.*,
Defendants.
x -x

JOSE L. AFRICA, *ET AL.*,
Plaintiffs,

-versus- CIVIL CASE NO. 0045

EDUARDO M. VILLANUEVA and
PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT,
Defendants.
x - x
JOSE L. AFRICA, *ET AL.*,
Plaintiffs,

-versus- CIVIL CASE NO. 0047

MELQUIADES GUTIERREZ,
ET AL.,
Defendants.
x - x
VICTOR AFRICA, *ET AL.*,
Plaintiffs,

-versus- **CIVIL CASE NO. 0130**

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, *ET AL.*,
Defendants.

x- x
TRADERS ROYAL BANK,
Plaintiff,

-versus- CIVIL CASE NO. 0131

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, *ET AL.*,
Defendants.
x - x
FAR EAST BANK & TRUST CO.,
Plaintiff,

-versus- CIVIL CASE NO. 0139

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, *ET AL.*,
Defendants.
x - x
STANDARD CHARTERED BANK,
Plaintiff,

-versus- CIVIL CASE NO. 0143

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, *ET AL.*,
Defendants.
x -x
TRADERS ROYAL BANK,
Plaintiff,

-versus- CIVIL CASE NO. 0128

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, *ET AL.*,
Defendants.
x - x
DOMESTIC SATELLITE
PHILIPPINES, INC.,
Petitioner,

-versus- CIVIL CASE NO. 0106

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT AND THE
ASSET PRIVATIZATION TRUST,
Respondents.
x -x
PHILIPPINE COMMUNICATIONS
SATELLITE CORPORATION AND
PHILIPPINE OVERSEAS TELE-
COMMUNICATIONS CORPORATION,
Plaintiffs,

-versus- CIVIL CASE NO. 0114

PRESIDENTIAL COMMISSION Present:

ON GOOD GOVERNMENT,
Defendant.

HERMOSISIMA, J., Chairman,
DEL ROSARIO & DE LEON, JJ.

Promulgated: April 15, 1993

x -x

R E S O L U T I O N

DE LEON, *J.*:

Submitted for resolution is the Motion for Consolidation, dated June 22, 1992, filed by the Republic of the Philippines (represented by the PCGG), through counsel.

The record shows that there is no opposition in the above-entitled cases to the said motion. It also appears that the subject matters of the above-entitled cases are and/or may be treated as mere incidents in Civil Case No. 0009.

WHEREFORE, the above-entitled cases are hereby ordered consolidated with Civil Case No. 0009, and shall henceforth be considered and treated as mere incidents of said Civil Case No. 0009.

SO ORDERED.

Manila, Philippines, April 12, 1993.[17]

Section 1, Rule 31 of the Rules of Court provides:

Section 1. Consolidation. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; **it may order all the actions consolidated;** and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (Emphasis supplied)

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[17] SB Records (Civil Case No. 0009), Volume 18, pp. 6646-6649. (Boldfacing supplied)

The 12 April 1993 Resolution of the Sandiganbayan ordered a *consolidation* of all the cases, not merely a joint hearing or trial.

Justice Brion maintains that to resolve the issue of the admissibility of the Bane deposition, the effect of the consolidation of Civil Case No. 0130 with Civil Case No. 0009 should first be determined. Justice Brion emphasizes that despite the consolidation, the two cases remain distinct and separate from each other, such that a mere notice of deposition taking, even if under the expressed intent of using the testimony in evidence in the main case, cannot automatically bind the private respondents who were not previously heard thereon.

In his modified draft Decision, Justice Brion posits that the consolidation of Civil Case No. 0009 with several incident cases including Civil Case No. 0130 is merely a "consolidation for trial." On page 31 of the modified Draft Decision, a "consolidation for trial," as defined in American jurisprudence is:

> Where several actions are ordered to be tried together but each retains its separate character and requires entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other.

In this kind of consolidation, the cases are merely tried together but a decision is rendered separately in each case.

In Philippine jurisprudence, ***the consolidation of cases merges the different actions into one and the rights of the parties are adjudicated in a single judgment***, thus:

> **The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of action involved had originally been joined in a single action**, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. **After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct,**

and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action.[18] (Emphasis supplied)

Indeed, when consolidated cases are appealed to the Supreme Court or when the Court orders consolidation of cases, the Justice to whom the consolidated cases are assigned renders a single decision, adjudicating all the rights of the parties in the consolidated cases.[19] The Chief Justice assigns the consolidated cases to the Member-in-Charge to whom the case having the lower or lowest docket number has been raffled.[20]

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[18] 2 V. FRANCISCO, *THE REVISED RULES OF COURT IN THE PHILIPPINES* 352-353 (1973).

[19] See *Republic of the Philippines v. Sandiganbayan*, G.R. Nos. 166859, 169203 & 180702, 12 April 2011; *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, 7 July 2009, 592 SCRA 169; *Grefalde v. Sandiganbayan*, 401 Phil. 553 (2000).

[20] *Active Wood Products, Co. Inc. v. Court of Appeals*, 260 Phil. 825 (1990). Section 5, Rule 9 of the Internal Rules of the Supreme Court reads:

SEC. 5. *Consolidation of cases*. – The Court may order the consolidation of cases involving common questions of law or fact. The Chief Justice shall assign the consolidated cases to the Member-in-Charge to whom the case having the lower or lowest docket number has been raffled, subject to equalization of cases load by raffle. The Judicial Records Office shall see to it that (a) the *rollos* of the consolidated cases are joined together to prevent the loss, misplacement or detachment of any of them; and (b) the cover of each *rollo* indicates the G.R. or UDK number of the case with which the former is consolidated.

The Member-in-Charge who finds after study that the cases do not involve common questions of law or of fact may request the Court to have the case or cases returned to the original Member-in-Charge.

The Sandiganbayan has a similar rule regarding the consolidation of cases. Section 2, Rule XII of the Revised Internal Rules of Sandiganbayan (A.M. No. 02-6-07-SB dated 28 August 2002) provides:

SEC. 2. *Consolidation of Cases.*— Cases arising from the same incident or series of incidents, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is raffled.

(a) Before Cases Are Raffled — Should the propriety of consolidation appear upon the filing of the cases concerned as determined by the Raffle Committee, all such cases shall be consolidated and considered as one case

The 12 April 1993 Resolution of the Sandiganbayan ordered the consolidation of the incidental cases, including Civil Case No. 0130, with the main case, Civil Case No. 0009. **Unlike a mere order of a joint hearing or trial of any or all the matters in issue in the actions, the consolidation of actions merges the different actions into one single action**. This means that evidence, such as depositions, taken after the consolidation is admissible in all the actions consolidated whenever relevant or material. In this case, since the notice and the deposition-taking was after the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, the deposition could be admitted as evidence in the consolidated cases.[21]

The purpose of consolidation is to avoid multiplicity of suits, prevent delay, clear congested dockets, simplify the work of the trial court, and save unnecessary costs and expenses.[22] The consolidation of actions involving a common question of law or fact seeks to prevent a repetition of evidence, such that the testimony of witnesses may be used in all the consolidated cases whenever it is relevant or material.

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for purposes of the raffle and inventory of pending cases assigned to each of the Divisions.

(b) After Cases Are Raffled — Should the propriety of such consolidation become apparent only after the cases are raffled, consolidation may be effected upon written motion of a litigant concerned filed with the Division taking cognizance of the case to be consolidated. If the motion is granted, consolidation shall be made to the Division in which the case with the lowest docket number is assigned. The Division to which the cases are consolidated shall transfer to the Division from which the consolidated cases came, an equivalent number of cases of approximately the same age, nature and stage in the proceedings, with proper notice to the parties in said cases.

[21] It is even held in American jurisprudence that "[w]here two or more actions are consolidated, a deposition taken in one of them prior to the consolidation is admissible on the trial of the consolidated action." (1 C.J.S. 1375)

[22] *Philippine National Bank v. Gotesco Tyan Ming Development, Inc.*, G.R. No. 183211, 5 June 2009, 588 SCRA 798; *Republic of the Philippines v. Court of Appeals*, 451 Phil. 497 (2003).

In *Bank of Commerce v. Perlas-Bernabe*,[23] the Court ordered the consolidation of two cases which involve the same focal issue and require substantially the same evidence on the matter. Similarly, in *Domdom v. Third and Fifth Division of the Sandiganbayan*,[24] the Court ordered the consolidation of cases in the Sandiganbayan, where the core element of the cases is substantially the same and the main witness is also the same. The Court held:

> In *Teston v. Development Bank of the Philippines*, the Court laid down the requisites for the consolidation of cases, *viz*:
>
> "A court may order several actions pending before it to be tried together where they arise from **the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence**, *provided* that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantive rights of the parties."
>
> The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court – in short, the attainment of justice with the least expense and vexation to the parties-litigants.
>
> xxx xxx xxx
>
> In the present case, it would be more in keeping with law and equity if all the cases filed against petitioner were consolidated with that having the lowest docket number pending with the Third Division of the Sandiganbayan. The only notable differences in these cases lie in the date of the transaction, the entity transacted with and the amount involved. The charge and core element are the same – *estafa* through falsification of documents based on alleged overstatements of claims for miscellaneous and extraordinary expenses. Notably, the main witness is also the same – Hilconeda P. Abril.
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> It need not be underscored that consolidation of cases, when proper, results in the simplification of proceedings which saves time,

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[23] G.R. No. 172393, 20 October 2010, 634 SCRA 107.

[24] G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528.

the resources of the parties and the courts and the abbreviation of trial. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts. Above all, consolidation avoids the possibility of rendering conflicting decisions in two or more cases which would otherwise require a single judgment.[25] (Emphasis and underscoring in the original)

In this case, Maurice V. Bane is a vital witness in the main Civil Case No. 0009 and the incidental Civil Case No. 0130. In fact, as pointed out by Justice Brion, in petitioner's Pre-Trial Brief dated 30 August 1996, petitioner offered to present Maurice V. Bane as one of the witnesses in the main Civil Case No. 0009. Thus, when petitioner filed on 25 September 1996 its *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination*, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, petitioner emphasized that "**[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 10779 as well as in the main case of Civil Case No. 0009**." In fact, all the respondents were given the chance to be heard considering that all the defendants of Civil Case No. 0009 were given notice of the scheduled testimony by oral deposition of Maurice V. Bane, which was taken on 23 and 24 October 1996. This is very clear from petitioner's *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination*, filed on 25 September 1996, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, thus:

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
MANILA

Third Division

Republic of the Philippines,
Plaintiff,

[25] *Id.* at 535-536.

CIVIL CASE NO. 0009
-versus- (Incident Case No. 0130
and G.R. No. 107789)

JOSE L. AFRICA, *ET AL*.,
Defendants.

x- -x

SECOND AMENDED NOTICE TO TAKE DEPOSITION OF MR. MAURICE V. BANE UPON ORAL EXAMINATION

- -

Pursuant to Rule 24[26] of the Revised Rules of Court, **notice is hereby given to defendants Jose L. Africa (deceased) thru his Estate represented by Victor Africa and Atty. Juan de Ocampo and Atty. Yolanda Javellana, Manuel H. Nieto, Jr., Ferdinand E. Marcos (deceased) thru his Estate represented by Special Administratrix BIR Commissioner Liwayway Vinzons-Chato, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio thru their counsels on records that Plaintiff thru the undersigned counsel will take the testimony by oral deposition of Mr. Maurice V. Bane** c/o Cable & Wireless Plc., 124 Theobalds Road, London WC1X 8RX, England on October 23, 24 and 25, 1996 at 9:00 a.m. and 2:00 p.m., until finished before the Philippine Consul General in London, England, in his office or in a suitable place in London or in Wales, England, as may be advised to the parties.

The purpose of the deposition is for Mr. Maurice Bane to identify and testify on the facts set forth in his Affidavit hereto attached as Annex "A" so as to prove the ownership issue in favor of plaintiff and/or establish *prima facie* factual foundation for sequestration of Eastern's Class A stock in support of the "Very Urgent Petition For Authority To Hold Special Stockholders' Meeting For the Sole Purpose of Increasing Eastern's Authorized Capital Stock" (Incident Case No. 0130 – G.R. No. 107789). The deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009. (Underscoring in the original; boldfacing supplied)

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[26] Now Rule 23 of the 1997 Rules of Civil Procedure.

In his modified draft Decision, Justice Brion maintains that respondents' notice of the taking of the Bane deposition is insufficient waiver of their right to appear and cross-examine the deponent when they failed to show up at the deposition-taking. Justice Brion insists that respondents "cannot be bound by the taking of the Bane deposition without the consequent impairment of their right to cross-examine."[27]

I disagree. The 12 April 1993 Resolution of the Sandiganbayan, ordering the consolidation of the incidental cases, including Civil Case No. 0130, with the main case, Civil Case No. 0009, effectively merged the different actions into one single action. The consolidation of the cases was meant to expeditiously settle the interwoven issues involved in the consolidated cases. The simplification of the proceedings with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts can be achieved when repetition of the same evidence or presentation of identical witnesses is dispensed with. This means that evidence, such as depositions, taken after the consolidation is admissible in all the actions consolidated whenever relevant or material. In this case, since the notice and the deposition-taking was after the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, the deposition could be admitted as evidence in the consolidated cases. This Court has even held in *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*[28] that in consolidated cases, "[t]he evidence in each case effectively became the evidence of both, and there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case." Besides, even assuming that the 12 April 1993 Resolution of the Sandiganbayan merely ordered a joint hearing or a "consolidation for trial," private respondents are still bound by the Bane deposition considering that they were given notice of the deposition-taking. The evidence adduced in a joint trial binds all the parties. Otherwise, what would be

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[27] Justice Brion's modified draft Decision, p. 47.

[28] G.R. Nos. 138701-02, 17 October 2006, 504 SCRA 618, 634.

the point of holding a joint trial if common witnesses have to be presented again in each of the cases and the same evidence offered again and again? Precisely, a joint trial aims to prevent repetition of the same or common evidence and to spare the common witnesses from the unnecessary inconvenience of testifying on the same issues in separate proceedings if the cases were not jointly tried. To rule otherwise is to frustrate the purpose of a joint trial which is to prevent delay and save unnecessary costs and expense.[29]

In *Tan v. Lim*,[30] the Court even allowed evidence that has not been formally offered in a case which was jointly heard with another case because evidence offered during the joint hearing was deemed evidence for both cases which were jointly heard. The Court ruled:

> It may be true that Section 34, Rule 132 of the Rules directs the court to consider no evidence which has not been formally offered and that under Section 35, documentary evidence is offered after presentation of testimonial evidence. However, a liberal interpretation of these Rules would have convinced the trial court that a separate formal offer of evidence in Civil Case No. 6518 was superfluous because not only was an offer of evidence made in Civil Case No. 6521 that was being jointly heard by the trial court, counsel for Jose Renato Lim had already declared he was adopting these evidences for Civil Case No. 6518. The trial court itself stated that it would freely utilize in one case evidence adduced in the other only to later abandon this posture. Jose Renato Lim testified in Civil Case No. 6518. The trial court should have at least considered his testimony since at the time it was made, the Rules provided that testimonial evidence is deemed offered at the time the witness is called to testify. Rules of procedure should not be applied in a very rigid, technical case as they are devised chiefly to secure and not defeat substantial justice.[31]

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[29] *Mendoza v. Court of Appeals*, 240 Phil. 561 (1987).

[30] 357 Phil. 452 (1998).

[31] *Id.* at 478-479.

Furthermore, Justice Brion posits that in determining the admissibility of the Bane deposition, not only Section 4, Rule 23 must be considered but also Section 47, Rule 130. The said provisions read:

Sec. 4. [Rule 23] Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, **any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof**, in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as witness;

(b) The deposition of a party or of any one who at the time of the taking of the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) **that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines**, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and

(d) if only part of the deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Sec. 47. [Rule 130] *Testimony or deposition at a former proceeding*. – The testimony or deposition of a witness deceased or unable to testify, **given in a former case or proceeding**, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him. (Emphasis supplied)

In my opinion, Section 47, Rule 130 does not apply in this case since the Bane deposition was not taken in a former case or proceeding. The records show that the **Bane deposition was taken when the cases were already consolidated.** Clearly, there is no "former proceeding" to speak of which would require the application of Section 47, Rule 130. **The Bane deposition was taken in CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)**. In fact, in the *Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination,* filed on 25 September 1996, the title of the case was "REPUBLIC OF THE PHILIPPINES, Plaintiff, versus JOSE L. AFRICA, *ET AL.*, Defendants" with case number "CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)." Thus, Justice Brion's reliance on Section 47, Rule 130 is misplaced. Besides, even if Section 47 is applicable, the Bane deposition may still be given in evidence against the respondents since all of them were given notice of the deposition, and thus had the opportunity to cross-examine the deponent had they participated in the deposition-taking. Since notices have been duly served on all the respondents, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent.

In this case, the Sandiganbayan granted the request for the taking of the deposition of Maurice V. Bane, who was Executive Vice-President and Treasurer of ETPI from 1974 until his retirement in 1987.[32] In October 1996, during the deposition-taking, Maurice V. Bane was already 72 years old and residing at 1 Ecton Hall, Church Way, Ecton, Northants (England).[33] Clearly, under Section 4(c)(2) of Rule 23,[34] the deposition of Maurice V. Bane can be

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[32] Transcript of the notes on the Deposition of Maurice V. Bane, p. 10; *rollo*, p. 89.

[33] Transcript of the notes on the Deposition of Maurice V. Bane, p. 8; *rollo*, p. 87.

[34] Sec. 4. [Rule 23] Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, **any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof**, in accordance with any one of the following provisions:

used as direct evidence. In fact, in its Resolutions issued on 21 August 2000 and 3 April 2001, the Sandiganbayan stated that the deposition of Maurice V. Bane has "**become part and parcel of the record of this main case (Civil Case No. 0009) since Civil Case No. 0130 is an incident to the same.**"

A cursory reading of the Bane deposition, which took two days to complete and covers 211 pages of the transcript of record of the proceedings and the testimony, reveals that it is a critical and vital evidence in the case of petitioner against private respondents with regard to its allegation in Civil Case No. 0009 that private respondents' shareholdings in ETPI were illegally purchased and rightly belongs to the Government.

The testimony of the witness, Maurice V. Bane, was offered for the following purposes:

> [I]n general the testimony is offered to prove that the Class A stockholdings in Eastern Telecommunications Philippines Inc, or "Eastern" for short, otherwise referred to as the Filipino 60% equity, is ill gotten in nature; that the actual and/or beneficial owner of said shares was the late President Ferdinand Marcos; and that accordingly, said shares are subject to reversion and/or forfeiture in favor of the Plaintiff Republic of the Philippines in this case. Specifically, the testimony is offered to establish the environmental facts and attendant circumstances surrounding the formation and organization of Eastern in 1974; that there was duress and/or compulsion exerted upon Cable & Wireless and its wholly owned subsidiary, the Eastern Extension Australasia Telegraph Company, of which the witness was the then General Manager in the Philippines, such that Cable & Wireless and Eastern Extension Australasia were forced or compelled to give up their legitimate business activities in the Philippines which was 100% British owned in favor of Eastern, which was to be newly organized

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x x x x x x x x x

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) **that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines**, unless it appears that his absence was procured by the party offering the deposition; (Emphasis supplied)

as a 60/40 Filipino company, with 40% being for the account of the company of the witness, Mr. Bane.

In short, the witness will establish in these proceedings that President Marcos and/or his emissaries or parties acting on his behalf gave the witness only two possible options which was: (1) a 40% equity in the company to be newly organized, which is Eastern in exchange for surrendering all of the assets and franchise of Eastern Extension Australasia; or 100% of nothing, meaning that if the witness and his company refused to give up their legitimate business in the Philippines then Marcos made it clear that there will be no more Eastern Extension Australasia that would be operating in the Philippines.

Lastly, the testimony is offered to prove the ownership issue that is involved in this case in favor of the Plaintiff, and also support the pending petition of Eastern Telecoms to increase its authorized capital stock from the present 250 million pesos to 4 billion pesos by allowing the PCGG to vote the sequestered Class A stock in the company. Hence, the testimony will establish the *prima facie* factual foundation for maintaining the sequestration of the Class A stock.[35]

In the deposition of Maurice V. Bane, he identified and affirmed his Affidavit[36] dated 9 January 1999. Excerpts from Bane's testimony during the deposition-taking are as follows:

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[35] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 8-9; *rollo*, pp. 87-88.

[36]

A F F I D A V I T

I, MAURICE V. BANE, of legal age married, a British [words missing from photocopy], and with business address at Eastern Telecommunications [missing words] Inc., Telecoms Plaza, Sen. Gil Puyat Avenue, Makati, Manila, after being duly sworn, do hereby depose and say,

1. I am presently the Senior Adviser of Eastern Telecommunications Philippines, Inc. ("ETPI"), a Philippine corporation duly registered and authorized to engage in the business of telecommunications in the Philippines since 1974;

2. Until my retirement, I served as the representative of Cable and Wireless, Ltd., ("C&W") a British company that presently owns 40% of the outstanding capital stocks of "ETPI", "C&W", through its wholly owned subsidiary, Eastern Extension Australasia and China Telephone Co.,

MR. LIM: Mr. Bane, paragraph 2 of your affidavit refers to a company ETPI, the acronym in letter "ETPI." May I ask you, sir, what is ETPI?

("EEATC"), was formerly the sole owner and operator of the franchise that is now owned and held by "ETPI". The company has been operating in the Philippines since 1880 initially under a royal decree from Spain. Following the Pacific War in 1945, the franchise was renewed in 1952 by the Philippine Government under then President Elpidio Quirino;

3. In the late 60's the possibility of establishing earth satellite stations in the Philippines arose as a result of heavy pressure from the U.S. Military who were to be its major users. Many companies and consortiums, including "EEATC" bidded for the contract. Then President Marcos finally awarded the contract together with the franchise to the Philippines Overseas Telecommunications Corp. ("POTC") which at that time was relatively unknown in the international communications industry. The prime movers of "POTC" were Messrs. Potenciano Ilusorio, Honorio Poblador, Manuel H. Nieto, Jr. and Roberto S. Benedicto, who were all known Marcos associates. This group became very much a part of the Philippines telecommunications scene.

4. "EEATC" forged a partnership with "POTC" for the establishment of a tropospheric scatter system communications with Taiwan. A franchise, Oceanic Wireless Network, Inc. was purchased and all government approvals were obtained by Messrs. Nieto and Ilusorio. The system was installed and during its inauguration, the principal guests were President and Mrs. Marcos, showing perhaps the political influence of Nieto and Ilusorio.

5. When President Marcos declared Martial Law in September 1972, it was clear that his grip on the country was virtually complete. "C&W" was fully aware of its uneasy tenure in the Philippines. In March 1973, then Secretary of National Defense Juan Ponce Enrile called us to a conference at Camp Crame. I attended the said meeting together with the representatives of RCA and Globe Mackay. Secretary Enrile firmly told us that we had until July, 1974 to organize ourselves into 60/40 corporations with Filipino majority ownership and, if we did not comply, the Government would take the necessary action.

6. I pointed out that "EEATC" was not covered by the Laurel-Langley Act since we were a British corporation with a fully constitutional franchise. Secretary Enrile said that if we did not comply with his directive, there would be no more "EEATC";

7. While we might have legal and valid grounds to contest the directive, under the prevailing martial law restrictions we had little recourse but to comply. After considering all economic and political factors, it was felt that some form of partnership with the POTC group would be the most advantageous option;

A That's Eastern Telecommunications Philippines, Incorporated.

Q ETPI and Eastern refer to the same company, which is Eastern Telecoms or the full name thereof, Eastern Telecommunications Philippines, Inc?

A That's correct, yes.

Q Again, your Honor, for consistency in the proceedings, instead of ETPI, the questions and the answers will refer to

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8. Prior to the above, discussions had been held with Ilusorio and Poblador, who then appeared in charge of POTC – discussions were generally unsatisfactory since it was quite hard to pin Ilusorio down and we gained the impression that they wanted us to give them their participation in "EEATC" with minimal monetary consideration in return for political protection;

9. In approximately April/May 1973, rapid changes took place in POTC. Ilusorio and Poblador appeared to have lost their control in POTC and Nieto emerged as the controlling figure. We learned much later that this was upon the instructions of President Marcos. Thus, discussions concerning "EEATC" were continued with Nieto;

10. The time factor was important with July 1974 over the horizon and it was agreed to call a meeting with the accounting group of SyCip, Gorres and Velayo as intermediary. At the said meeting, we found that Atty. Jose Africa was the main representative of Nieto/POTC. He had previously not seemed a major figure in the group although he had attended several board meetings of Oceanic Wireless. Africa quickly spelt out the rules – that they were interested in the proposition and that we were to deal only with the DAN group (composed of Roberto Benedicto, Jose Africa and Manuel Nieto, Jr.). We were informed that this was at the express wish of President Marcos who had appointed their group to control the telecommunications interests;

11. Negotiations were thereafter commenced with Mr. Eduardo M. Villanueva of SGV as intermediary, David West and W. H. Davies were the major "C&W" participants. We also requested Atty. Luciano Salazar Law Office to represent us on legal matters;

12. The figure eventually negotiated for the assets (net book value only and no good will) was Ten Million Pesos (₱10,000,000.00) on the basis of which the BAN group will put up Six Million Pesos (₱6,000,000.00). Further meetings took place to finalize the details but Africa later informed us that they could not raise the required amount. As a compromise, he suggested that the new corporation raise a bank loan from which "C&W" could be paid. While we were not happy with this arrangement, we resigned ourselves to the fact that we would have to accede. It was agreed that stockholders'

"Eastern Telecommunications Philippines, Inc" as simply "Eastern." Paragraph 2 also of your affidavit refers to "EEATC." Please, sir, tell us, Mr. Bane, what position, what particular position you held in EEATC when it was operating in the Philippines?

A I was the general manager.

Q Was that the highest position in the Philippines? Was that the highest office in EEATC in the Philippine operation?

A Yes, it was, yes, the British terminology for these things quite often is that we always used to refer to "managers" but the American terminology, of course, is usually "president" it was the equivalent of.

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contribution would be Five Million Pesos (₱5,000,000.00) plus a bank loan of Seven Million Pesos (₱7,000,000.00) to cover asset payment and working capital. Africa then advised that they could only raise One Million Pesos (₱1,000,000.00) and "C&W" could loan them Two Million Pesos (₱2,000,000.00). Again, we were unhappy but again we complied;

13. All the necessary documents, articles, by-laws and stockholders agreements were drawn up by the Salazar Law Office. Of particular delicacy was the issue of franchise. It was decided that the old franchise should be retained in all detail but this was to be transferred to a new company to be called Eastern Telecommunications Philippines, Inc. Atty. Salazar drafted the Presidential Decree for the transfer of the franchise. The draft was personally delivered to Nieto who committed to secure President Marcos' approval and signature. True enough, Marcos signed the P.D. Drafted by Atty. Salazar in its entirety, without any revision or amendment. This was convincing evidence of the political power and influence of the BAN group;

14. After complying with all the registration requirements and other government regulations, "ETPI" commenced to fully operate as a telecommunications company under its new franchise in August 1974;

15. I am executing this affidavit to attest to the truth of the foregoing facts in order to elucidate on the events and circumstances that led to the transfer of the assets and franchise of "EEATC" in favor of "ETPI" and the emergence of BAN group thereat.

Affiant further sayeth naught.
09 January 1991, Makati, Metro Manila.

(signed)
MAURICE V. BANE
Affiant

Q Thank you, sir. Now, just for clarity can you elaborate on what was EEATC in relation to Cable and Wireless or C&W?

MR. AFRICA: He has already answered, your Honor.

A Yes, it was a wholly, 100% owned subsidiary of Cable and Wireless.[37]

xxx xxx xxx

Q x x x Mr. Bane, I would refer you back to paragraph 3 of your affidavit, sir. I noted from your narration in paragraph 3 that the earth satellite stations contract which you had just explained was awarded after bidding by President Marcos to a company you mentioned here which is Philippines Overseas Telecommunications Corporation, or POTC. My question is: do you know this POTC, what was it?

A Yes, it was the - - I think I'm correct in saying - - it was the management arm of Philcomsat. Philcomsat, Philippines Telecommunications Satellite Corporation. POTC, well the managers of Philcomsat, and I understand that the shareholders were the same in each case.

Q In this paragraph, sir, you stated in reference to Philippine Overseas Telecommunications Corporation or POTC that it was "relatively unknown in the international telecommunications industry." Could you explain that?[38]

xxx xxx xxx

A Well, there were some, I should imagine, some ten or twelve companies were bidding or hoping to be awarded the earth station contract. Among those was my own company, Eastern - - EEATC. We had not heard of, any of us: RCA, ITT, the large number of other domestic companies such as Clavicili and others, were all bidding for this earth station and none of us had heard of POTC until it suddenly emerged that it was a company that had been formed and that very shortly

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[37] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 16-17; *rollo*, pp. 95-96.

[38] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 19-20; *rollo*, pp. 98-99.

after our bids all went in, we heard that it had been, that the contract had been awarded to Philippines Overseas Telecommunications Corporation.

Q Thank you, sir. (*Off the record)* May I proceed, your Honor? Did you find out who were the people behind POTC?

A Yes.

Q And who were they?

A To the best of my recollection the incorporators were Potenciano Ilusorio, Honorio Poblador, Ambassador Nieto, Ambassador Benedicto, and I think there were two other gentlemen, one of them I think was the brother in law of Mr. Nieto and the other one I cannot recall - - no, I can't recall his name. He died fairly soon after, I think, that was formed.[39]

x x x x x x x x x

MR. LIM: Mr. Bane, you mentioned personalities like Potenciano Ilusorio, Honorio Poblador, Manuel Nieto Jr., Roberto Benedicto. My question to you, sir, is: what was your personal impression of these gentlemen *vis-a-vis*, for instance, the Marcos administration?

A Well, it was common knowledge among the expatriate, senior expatriate community that these gentlemen were close associates of President Marcos.

MR. AFRICA: May I also object again, your Honor please, to the statement of the witness. Again, it's not a statement of fact but only a matter of discussion among his co-workers, but facts again are different from what his perception was.

MR. LIM: That is noted, your Honor.

CONSUL GENERAL: That is noted, Mr. Africa.

MR. LIM: Mr. Witness, was this group of people, these gentlemen or personalities that you have mentioned, do you know if

[39] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 20-21; *rollo*, pp. 99-100.

they were later on identified with any particular business or industry sector in the Philippines?

A Yes, they were identified with telecommunication interests.

Q Was there an occasion when your own company, EEATC, forged a partnership or business with POTC?

A Yes, there was.

Q What was the business that the two companies forged or engaged in?

A That business was to establish a tropospheric scatter system between the Philippines and Taiwan. In actual fact, it was three companies involved: it was POTC and also Western Union International in the United States, and Eastern Extension or EEATC.

xxx xxx xxx

Q So that tropospheric scatter system became operational?

A Oh yes, yes.

Q Do you know if the system was inaugurated?

A It was, yes.

Q Who were the principal guests during the inauguration?

A President and Mrs. Marcos.

Q Now what technical qualification did your company, EEATC, have to operate that tropospheric scatter system?

A In addition to being a 20% stockholder, my company was appointed as managers. Eastern, with the backing of Cable & Wireless, was able to provide all the necessary technical expertise for the implementation and operation of the system. Cable & Wireless as such has done these systems, a large number of these systems worldwide, so we had all the experience necessary.

Q At that time, meaning at the time this tropospheric scatter system was established, what was your company then, what was your company at that time?

A Eastern Extension Australasia and China Telegraph.

Q EEATC?

A EEATC.

Q If you don't mind, sir, kindly refer to that as EEATC instead of Eastern. What technical qualification did POTC have to be able to be EEATC's partner in this tropospheric system business?

A To the best of my knowledge little or no technical qualification.[40]

xxx xxx xxx

Q Now Mr. Bane, let me now take you to paragraph 5 of your affidavit and if I may read to you, sir. Paragraph 5: When President Marcos declared Martial Law in September 1972, it was clear that his grip on the country was virtually complete. C&W was fully aware of its uneasy tenure in the Philippines. In March 1973, then Secretary of National Defense Juan Ponce Enrile called us to a conference at Camp Crame. I attended said meeting together with the representatives of RCA and Globe Mackay. Secretary Enrile firmly told us that we had until July 1974 to organize ourselves into 60/40 corporations with Filipino majority ownership and, if we did not comply, the Government would take the necessary action. First of all, please explain and elucidate on your statement "C&W was aware of its uneasy tenure in the Philippines."

A Well, prior to Martial Law we were operating quite comfortably as a company, but with the implementation of Martial Law there was great deal of uncertainty as to what might happen in the country under Martial Law. In other countries it had been known that things were, shall we say, nationalized or taken over and, of course, there was a certain degree of unease among us when we discussed in the Cable & Wireless that something similar might happen in the Philippines.

Q Now you made mention in this paragraph that I read of other companies, namely RCA and Globe Mackay. What were these companies?

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[40] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 23-25; *rollo*, pp. 102-104.

A They were similar to EEATC, operating in exactly the same fashion, doing the same type of business, all three of us were competing against each other for international business.

Q Do you know the nationality of RCA and Globe Mackay?

A They were both 100% American corporations.

Q Whereas EEATC was, according to you, 100% British?

A That is correct, yes.

Q Except for that difference in the nationality the three of you, meaning EEATC, RCA and Globe Mackay, were engaged in the same kind of business which was telecommunications in the Philippines?

A Correct.

xxx xxx xxx

Q Now, can you remember where in Camp Crame this meeting took place?

A Yes, it was in a fairly large boardroom. I would imagine the table was large enough to accommodate about 16 people. I had the impression that it was the board room perhaps attached to the Secretary of Defense's office in Camp Crame.

Q Now, was it actually Secretary of National Defense Juan Ponce Enrile who met with you?

A Yes, it was.

Q In person?

A In person.

Q Now, in paragraph 6 of your affidavit which is a reference to what transpired in that meeting, you stated, and I would like to quote the short sentence in paragraph 6: "I pointed out that - - " I withdraw the question. Mr. Witness, what transpired in this meeting with Secretary Enrile? In other words, why did he call you together with RCA and Globe Mackay people to a meeting?

A Well, he said, as far as I can recall and after all it's a long time ago, he recalled that the meeting was to in effect spell out the rules in terms of telecommunications. He pointed

out to RCA and ITT that under the Laurel-Langley Act, which was due I think in July 1974 to expire, that they would have to go 60% Philippine ownership. I think that I'm pretty sure that Mr. Voss or his lawyer did say that their franchise in actual fact was established in 1924 and therefore it fell without, beyond the Laurel-Langley Act, but I seem to recall that Attorney Enrile said that that's not germane, you will go 60/40. He also said to us, EEATC, that you will go 60/40.

xxx xxx xxx

MR. LIM: x x x My question, sir, is: what exactly did Secretary Enrile tell you, and I refer to your person, and your lawyer who was with you, Attorney Luciano Salazar?

A After he dealt with RCA and Globe Mackay, I said to him: well, the Laurel-Langley Act does not apply to EEATC; we are 100% British corporation, our franchise goes back to 1880 and we were the first company, actually, to connect the Philippines to the outside world in communications, granted by Queen Isabella of Spain, I think, and after the War, the Second World War, the franchise was renewed by President Quirino in 1952, I think it was.

xxx xxx xxx

Q You mean to tell the court that Secretary Enrile also included your company EEATC to be made 60/40?

A Oh yes.

Q Now, your companion, Attorney Luciano Salazar, did he say anything to Mr. Enrile?

A Yes, he did.

Q What was his remark or explanation if any?

A He said that the franchise was perfectly constitutional and that Mr. Bane was quite correct and that legally there was no reason for Eastern to go 60/40.

Q When you say now, just now Eastern you are referring to EEATC?

A EEATC, yes.

xxx xxx xxx

MR. LIM: Did Secretary Enrile respond favorably to the explanations of Attorney Salazar?

A No, he did not. He said that if EEATC did not move to a 60/40 position then there would be no EEATC.

xxx xxx xxx

Q What options did Secretary Enrile give you during this meeting?

MR. AFRICA: Same objection, your Honor please, which is that Secretary Enrile is the best witness for this particular aspect.

MR. LIM: Same request for - - subject to a court ruling later.

A Two options really: to become 60/40 Filipino corporation or to, in effect, have 100% of nothing, because there would not be any EEATC.[41]

xxx xxx xxx

MR. LIM: Thank you, your Honor. Mr. Bane, we ended your testimony with your confirmation that the events narrated in paragraph 7 up to paragraph 14 of your affidavit all transpired after that meeting in March 1973 with Secretary Enrile, so my question now is: in particular what followed after that meeting with Secretary Enrile, was the formation and organization of Eastern in 1974?

A Mmm.

Q Is that correct?

A Well, yes, the events really were I had to advise Cable & Wireless Hong Kong, who were very closely connected with the Philippines, of the situation and I said we had no alternative but to go to a 60/40 corporation. It was decided that I should come back to London and discuss it with the directors of Cable & Wireless in London. Also, we were asked at the meeting, which perhaps I forgot earlier on, by Secretary Enrile for progress reports of moving to 60/40 corporation.

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[41] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 26-31, 33, 35; *rollo*, pp. 105-110, 112, 114.

So I wrote a letter to Secretary Enrile and said that we were now actively planning and that I had already spoken to one or two other telecommunication corporations but that I had to return to London to discuss it with my senior directors. It was difficult at that time because it was Martial Law. No people were allowed to leave the Philippines so, through that letter, I made an application to leave and I was granted leave to come back to the UK to discuss with Cable & Wireless the formation of a 60/40 corporation.

Q Eventually, after clearing all those hurdles, after doing all the groundwork, I mean after passing through all the groundwork and the details, eventually what transpired was the organization of Eastern in 1974 as a 60/40 Filipino corporation?

A That is correct, yes.

Q And the 40% or minority equity was taken by your company, Cable & Wireless?

A Correct, yes.

Q Mr. Bane, would you, and I refer to your person, have agreed to divest of 100% British owned EEATC if pressure was not exerted on you by Secretary Enrile?

MR. AFRICA: Objected to, your Honor please, no relevance.

MR. LIM: I am asking the witness for his answer to the basic facts that now present themselves as a result of the previous testimony.

MR. AFRICA: The same objection, your Honor. It calls for a personal opinion.

MR. LIM: Subject to the court's ruling may I ask the witness to answer? May I repeat the question, sir? Would you, and I refer to you person, have acceded or agreed to divesting yourself of 100% British owned EEATC in favor of only 40% equity in a new corporation, if pressure was not exerted on you by Secretary Enrile?

A No, I would not; I would have continued with EEATC as 100% British Corporation. You see, you have to appreciate that I had all the resources and all the backing and all the

financial support of Cable & Wireless who were the largest telecommunications operator in the world. We could have quite easily – and I know that finance would have been available from them – we could have quite easily continued as 100% British corporation.

Q Would Cable & Wireless, your own company, have agreed to the divestment of 100% British owned EEATC if pressure was not exerted by Secretary Enrile?

A No, I don't think they would.

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MR. LIM: In other words, you are saying that had it not been for that fateful meeting with Secretary Enrile and the pressure was brought to bear on your person and your company you would not have agreed to organizing Eastern in 1974?

MR. AFRICA: Same objection, your Honor, please, calling for an opinion and a conclusion.

A No, I would not.

MR. LIM: And the same thing is true with your company, C&W, there would have been no permission or approval from C&W?

MR. AFRICA: Same objection, your Honor, please.

A No, they would not.

MR. LIM: And when you say no, you would not, you are saying that your person and C&W would not have agreed to divesting EEATC of 100% British control?

MR. AFRICA: Same objection, your Honor, please.

A Correct.

MR. LIM: He said "That's correct." Did you, and I refer to your person, or Attorney Salazar check or try to find out if Secretary Enrile was acting for President Marcos in reference to this March 1973 meeting?

A No, no we didn't. It was under Martial Law and I mean when you spoke of President Marcos you spoke of Secretary Enrile, they were the two very close people. Martial Law, after all, was declared as a result of an apparent attempted

assassination on Secretary Enrile. There was no point in us trying to appeal to President Marcos. We had to accept that what Secretary Enrile said was in effect President Marcos.[42]

xxx xxx xxx

MR LIM.: Now, subject to the same request for a later ruling from the court, do I understand it, Mr. Bane, that initially you were talking to Ilusorio and Poblador?

A That's correct.

Q But later in the negotiations the two were out and you were now just talking to Mr Nieto?

A Not just to Mr. Nieto; we were also talking to Attorney Jose Africa.

Q So let me clarify that. After the Enrile meeting and because of your decision to just go along with what Enrile wanted, there was this process set into motion to organize a new outfit and at the start you were talking to Ilusorio and Poblador, is that right?

A Correct.

Q Later on, and this was before Eastern was organized, you continued the negotiations, this time with Ambassador Manuel Nieto junior and Attorney Jose L. Africa, is that correct?

A Correct.

Q Now, there is a statement in paragraph 9: "We learned much later that this was upon the instructions of President Marcos." Who told you that President Marcos had issued the instruction to be dealing with Nieto?

MR. AFRICA: Objected to, your Honor, asking for –

MR. LIM: I am asking the source of the statement.

MR. AFRICA: My objections, I am just putting it on record: objected to for asking for hearsay evidence.

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[42] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 37-41; *rollo*, pp. 116-120.

MR. LIM: Subject to a later ruling, your Honor.

A It was either Ambassador Nieto or Attorney Africa.

Q Now, I show you paragraph 10 of your affidavit which is continued, I am sorry I show you paragraph 10, I draw your attention to paragraph 10 of your affidavit which is found on page 4. Do you confirm and ratify in particular what is stated in paragraph 10 of the affidavit?

MR. AFRICA: Subject to question and answer later on, your Honor, please.

A Yes.

MR. LIM: Thank you, sir. May I request, your Honor, that the entire paragraph 10 be sub marked as Exhibit C-12-C-1 and that the last sentence therein reading: "Africa quickly spelt out the rules – that they were interested in the proposition and that we were to deal only with the BAN group (composed of Roberto Benedicto, Jose Africa and Manuel Nieto, Jr.,). We were informed that this was at the express wish of President Marcos who had appointed their group to control telecommunications interests;" that that particular sentence be now underscored but same would be part of C-12-C-1 which is the entire paragraph 10, but the last sentence I request that it be underlined or underscored for emphasis. (Marked)

Q What participation did you have in the organization of Eastern?

A I was very deeply involved, together with our director from London, Wilfred H. Davies and also our finance director, David West.

Q Were you one of the incorporators of Eastern?

A I was, yes.

Q Did you sign the Articles of Incorporation of Eastern?

A I did.

Q Would you have agreed to be one of the incorporators of Eastern and signed its Articles if no pressure was exerted on you by Secretary Enrile?

MR. AFRICA: Objected to, your Honor, please.

MR. LIM: I request an answer for the same reason.

A No, I don't think I would.

Q What is that, Mr Bane?

A No, I would not, no.

Q You are telling the honorable court that your agreeing to incorporate Eastern and your having signed the Articles of Eastern was the result of that pressure during the Enrile meeting in March of 1973?

MR. AFRICA: Same objection, your Honor.

A Yes, that is correct, because we would have continued as 100% British corporation. So the pressure was brought to bear upon us to go to a 60/40 corporation.

MR. LIM: I notice from the Articles of Incorporation of Eastern that you are the Treasurer in Trust, that you were the Treasurer in Trust, meaning the Treasurer upon the incorporation of Eastern?

A Yes, that's true.[43]

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MR. LIM: That is the tenor of the affidavit. Just to satisfy that concern I will rephrase the question. Do you know what happened to the assets of EEATC when Eastern was incorporated on June 10, 1974?

A Yes, Eastern purchased all the assets of EEATC.

Q I would like to draw your attention to paragraph 12 of your affidavit which I read: "The figure eventually negotiated for the assets (net book value only and no good will) was ten million pesos (₱10,000,000.00) on the basis of which the BAN group will put up six million pesos (₱6,000,000.00). Further

[43] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 47-50; *rollo*, pp. 126-129.

meetings took place to finalize the details but Africa later informed us that they could not raise the required amount. As a compromise, he suggested that the new corporation raise a bank loan from which 'C&W' could be paid. While we were not happy with this arrangement, we resigned ourselves to the fact that we would have to accede. It was agreed that stockholders' contribution would be five million pesos (₱5,000,000.00) plus a bank loan of seven million pesos (₱7,000,000.00) to cover asset payment and working capital. Africa then advised that they could only raise one million pesos (₱1,000,000.00) and 'C&W' could loan them two million pesos (₱2,000,000.00). Again, we were unhappy but again we complied." My question is: do you confirm the correctness of this narration including the figures mentioned here?

MR. AFRICA: Subject to question and answer, your Honor please, as there are statements which are of conclusion and/or hearsay.

A Yes, I do confirm that that's precisely what happened.

MR. LIM: What this one million pesos which was the amount that the Africa group said they could only raise, what was this one million?

A Well, it was their contribution to the capital of the company.

Q Aside from the one million pesos contribution to the capital of Eastern from the Filipino group of Benedicto, Africa, and Nieto, do you know if additional contributions in terms of money were made by them afterwards?

A Well, in as much as that they repaid the loans that C&W granted them out of the dividends yes, there were in effect contributions, I suppose.

Q How much was the amount of the loan?

A Two million pesos.

Q That two million pesos loan was repaid by the Filipino group out of stock dividends?

A No, out of – yes, stock dividends, yes, cash dividends.

Q Cash dividends?

A Cash dividends as I recall.

Q Now, aside from that were there any subsequent contributions to the capital of Eastern from the Filipino group?

A Not as far as I can recall, no.

Q So in terms of cold cash or money, what they contributed initially was only one million pesos?

A Correct.

Q The loan that they got from C&W of two million was repaid to the company, or to C&W in terms of the dividends?

MR. AFRICA: Already answered, your Honor.

A Yes, yes, correct.

MR. LIM: Who granted the loan to the Filipino group?

A The Hong Kong and Shanghai Bank. Well, they didn't grant it to the Filipino group; they granted it to Eastern.

Q And was there a guarantee made for that loan?

MR. AFRICA: Leading, your Honor please.

A Yes, a guarantee was made by Cable & Wireless.

MR. LIM: I request, your Honor, for emphasis that paragraph 12 of the affidavit which has been read into the record and which has been confirmed by the witness be bracketed and sub marked as Exhibit C-12-d-1, paragraph 12. (Marked)

Mr Bane, would you or your company Cable & Wireless have agreed to that kind of payment arrangement, which is to pay in dividends, if it were not for the pressure from Secretary Enrile?

MR. AFRICA: Same objection, your Honor please.

A No, we would not; it wasn't, it was not standard business practice in any way at all. We would not normally have agreed to a condition such as that.

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Q Mr Bane, what was the position of Manuel Nieto Jr. in Eastern after incorporation?

A He was the President.

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Q Now, Mr Bane, paragraph 13 of your affidavit mentions that: "Attorney Luciano Salazar drafted the Presidential Decree for the transfer of EEATC's franchise to Eastern, that said draft decree was personally delivered to Manuel Nieto, Jr., who committed to secure President Marcos' approval and signature." Do I take it that this was in 1974 contemporaneously with the organization of Eastern?

A Yes, it was.

Q You said Manuel Nieto Jr., was the Eastern President?

A That's correct.

Q Was Mr. Nieto able to secure the approval of President Marcos to the transfer of EEATC's franchise to Eastern?

A Yes, he was, it was issued under Presidential Decree.

Q If I show you a copy of that Presidential Decree would you be able to recognize it in the sense that it refers to your company, the former EEATC, not former, the EEATC?

A Yes. (Handed)

Q At this point, your Honor, I make of record that this representation has handed to Mr. Maurice Bane Exhibit C Motion Increase in Capital.

A Yes, that is indeed the Presidential Decree.

Q Your Honor, may I make a little correction in my manifestation. What I handed to the witness is a photocopy of Presidential Decree 489[44] with the Exhibit marking being reproduced as part of the document, the document actually marked as Exhibit C is now part of the case records. Now, Mr. Witness, please tell the court whether you had any personal

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[44] AUTHORIZING "THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED" TO TRANSFER THE FRANCHISE GRANTED TO THAT COMPANY UNDER REPUBLIC ACT NO. 808, AS AMENDED BY REPUBLIC ACT NO. 5002, TO THE EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.

participation in the preparation of this particular decree PD 489?

A Yes, I did. I consulted with Attorney Salazar. We went through the Eastern franchise and so to that extent, in putting this together, yes I did co-operate with Attorney Salazar, although of course Attorney Salazar was the prime person behind drafting the document.

Q Your affidavit mentions that this was approved by President Marcos in the entirety of the draft decree as prepared by Attorney Salazar and you, meaning no correction was made by Malacañang. My question is: what did that convey to you, meaning the fact that Marcos approved the Presidential Decree drafted by Attorney Salazar and yourself without revision or amendment?

MR. AFRICA: Objected to, your Honor please, asking for an opinion and a conclusion.

MR. LIM: That is very relevant, your Honor, the witness having participated in preparing this.

MR. AFRICA: Anyway, my objection is on the record.

A Well, Mr. Nieto undertook and promised us that he would get the draft Presidential Decree signed into law by President Marcos.

MR. LIM: And was he able to deliver on his promise?

A He certainly was. You can see the signature on the bottom.

Q Witness referring to –

A I do recognize that signature, yes, as President Marcos' signature.

Q Your Honor, at this point may I request that this draft – I'm sorry that this copy of PD 489 be again marked in this deposition proceedings as Exhibit D Deposition Bane and the signature of President Marcos at the bottom of page 2 pointed at by the witness be sub marked and bracketed as D-1 Deposition Bane. (Marked) Mr. Bane, did you also serve as director of Eastern, one of the directors, I mean, of Eastern?

A Yes, I was for a time, a short period of time.

Q Now, after Eastern's incorporation in 1974 did you carry on as an officer of Eastern?

A Yes, I did.

Q What positions?

A Executive Vice President and Treasurer.

Q And as you said this was up to 1987?

A Yes.

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Q Would you have acceded to that kind of set up, meaning having Filipino partners in the persons of Mr. Nieto and later Attorney Africa if it were not for the pressure from Secretary Enrile during your March 1973 meeting?

MR. AFRICA: Already answered, your Honor please.

A I can only repeat what I said before, that no, of course I would not.

MR. LIM: Now, during your stint with Eastern in association with Mr. Nieto and later with Attorney Jose Africa, do you know of instances when President Marcos intervened on behalf of Eastern, or showed personal interest for Eastern?

MR. AFRICA: Question is vague and intervene is an all-encompassing word.

MR. LIM: I reform, your Honor. Mr Bane, you said that from 1974 continuously up to 1987 you were associated with Eastern, you were one of its officers and you were working with Filipino directors or officers. During this time the President of the Philippines of course was continuously Mr. Marcos. My question, sir, is: during your incumbency in Eastern do you know of instances when President Marcos helped your company obtain correspondenceships, or in its competition with PLDT?

A Yes, I do, yes.

Q In what way did Marcos help Eastern?

A Well, once the company was formed and under the formation of the company Eastern or Cable & Wireless had a management contract to manage the company, we could see that

telecommunications development was very badly needed in the Philippines. The satellite earth station had been constructed and the Tropo had gone in, but there was still a very large demand for circuits. We therefore devised a plan to put underseas cables, telephone cables, from the Philippines to Japan, from the Philippines to Hong Kong, Philippines to Singapore and then latterly Philippines to Taiwan. For that we obviously needed approvals right at the top, because we were, in effect, in competition with PLDT. PLDT were really dragging their heels in development, perhaps because of lack of financing or whatever. So we saw an opportunity to perhaps establish Eastern as a major player in the Philippines telecommunications. I therefore drafted a letter which was – what is the word I'm looking for perhaps – which was fine tuned perhaps is the best word, by Attorney Jose Africa. And this set out Eastern's plans for development of submarine cable systems and everything else, and we asked at the bottom of the letter for Presidential approval. And this letter was signed by Ambassador Nieto; it was taken to Malacañang and it was signed, written across the top of the page, I think the words were just "Approved, President Marcos" so we received approval, direct approval from President Marcos to proceed with the implementation of this very big cable project. It meant to say that we had bypassed the national telecommunications commission under whose authority this would normally have been submitted, but knowing as we did that with PLDT's opposition we probably wouldn't have got it through the NTC.

Q So it was President Marcos himself who gave the approval for Eastern to undertake the construction of these submarine cables that you mentioned?

A That's correct, yes.

Q And can you tell us the significance of that designation, what happened to Eastern because it got this project?

A Well, by putting in the submarine cable systems, since we were financing them, we had to have the approval of, of course, the distant administration – in this case Hong Kong, Singapore and Taiwan, so one of the benefits that accrued from this was that we became a telephone correspondent to these countries. After all, these cables were very high capacity. I think to Hong Kong they were 1380 telephone circuits, to Japan 960

telephone circuits, so that what it did it was for the great benefit of the Philippines. We used the phrase in the letter "to make the Philippines the hub of telecommunications in South East Asia," which we hoped we were going to do and I think to a large extent we did do. The ultimate benefit to Eastern was quite considerable, it enormously increased cash flow and of course from that we financed the cables.[45]

xxx xxx xxx

Q Mr. Bane, you stated that you were with Eastern for 21 years?

A That's correct, yes.

Q 21 continuous years.

A With EEATC and with Eastern.

xxx xxx xxx

Q Mr. Bane, were there other stockholders of Class A during this 21 year period?

A The only changes that I was aware of that were made was that Attorney Jose Africa pointed out to me, after the incorporation, that they wanted to put some of the stock, or they would put some of the stock in the name of various companies. He also mentioned that of course they were going to put some small, a very small minority of shares in the names of family members. That's as far as I knew.

Q These companies, what companies were these? Or rather, excuse me sir, rather what would be the nature of these companies?

A I don't know, I don't know what the companies were. I do know the names. I think Ambassador Nieto's was Aerocom, was Ambassador Benedicto's Universal Molasses, I can't remember? And then Attorney Jose Africa, I think,was Polygon.

Q Now having been associated with Manuel Nieto Jr. and Jose L. Africa and also Mr. Benedicto for many years, did you come to know at any time during that period of association with them

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[45] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 56-65; *rollo*, pp. 135-144.

whether President Marcos had any participation or control in their stockholdings in Eastern?

MR. AFRICA: Please, objected to, your Honor, witness isn't competent. The best witnesses would be the persons themselves, not what this witness has been told.

MR. LIM: If the witness knows, your Honor.

MR. AFRICA: But what he was told, not what is true, or what is true and correct?

A No, I was not told that President Marcos had a stockholding in Eastern. There was, of course, speculation among ourselves as to – in a vague sort of way we often wondered. The only time that I actually knew that President Marcos had a significant stockholding in Eastern was when, after sequestration, Ambassador Nieto went on to television and stated on television that I think first of all he stated something about Philcomsat POTC and he then stated on television that President Marcos owned 40% of the stock of Eastern. That's the only time that I was, I had any direct, shall we say, or had been directly informed – by television of course – that President Marcos was a stockholder.[46]

In the 2006 case of *Yuchengco v. Sandiganbayan*,[47] this Court overturned the ruling of the Sandiganbayan's Partial Decision and held that the testimonies **through depositions** of Campos, Gapud and de Guzman established the Marcoses' beneficial ownership of Prime Holding Incorporated (PHI). The Court ruled that "the testimonies of Campos, Gapud, and de Guzman, persons who actually participated in the formation and early years of operation of PHI, constitute evidence that directly addresses the critical issue."[48]

In this case, the deponent Maurice V. Bane was the Executive Vice-President and Treasurer of ETPI from 1974 until his retirement in 1987. Maurice V. Bane had personal knowledge of and involvement in the circumstances leading to the formation of ETPI in 1974,

[46] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 76-78; *rollo*, pp. 155-157.

[47] 515 Phil. 1 (2006).

[48] *Id.* at 46.

which is crucial to petitioner's allegation that private respondents' interest in ETPI rightfully belongs to the Government. To dismiss the Bane deposition as inadmissible based on the tenuous ground that there was no "actual consolidation" of cases is to disregard the obvious fact that the Bane deposition was taken in **CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)** and that all the defendants (now private respondents) in Civil Case No. 0009 were duly notified of the scheduled deposition-taking.

Although petitioner, in its formal offer of evidence in Civil Case No. 0009, inadvertently omitted the deposition of Maurice V. Bane, petitioner thereafter filed an urgent motion praying that it be allowed to introduce as additional evidence the deposition of Maurice V. Bane. The Sandiganbayan should have granted this motion or the succeeding *Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane)* filed on 16 November 2001. As held in the 1997 case of *Republic v. Sandiganbayan (Third Division)*:[49]

> In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution. This Court prefers to have such cases resolved on the merits before the Sandiganbayan. Substantial justice to all parties, not mere legalisms or perfection of form, should now be relentlessly pursued. Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now.[50]

Accordingly, the Sandiganbayan Resolution dated 7 February 2002 should be reversed and set aside. The deposition of Maurice V. Bane taken on 23 to 24 October 1996, together with the accompanying documentary exhibits, should be admitted as part of petitioner's evidence. I vote to **GRANT** the petition and **REMAND** this case to the Sandiganbayan for further proceedings.

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[49] G.R. No. 113420, 7 March 1997, 269 SCRA 316.

[50] *Id.* at 334.

EN BANC

[G.R. No. 182748. December 13, 2011]

ARNEL COLINARES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THEREOF MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. —** When the accused invokes self-defense, he bears the burden of showing that he was legally justified in killing the victim or inflicting injury to him. The accused must establish the elements of self-defense by clear and convincing evidence. When successful, the otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.

2. **ID.; ID.; ID.; ELEMENTS OF SELF-DEFENSE IN HOMICIDE; UNLAWFUL AGGRESSION OF THE VICTIM AS AN INDISPENSABLE REQUIREMENT; NOT ESTABLISHED IN CASE AT BAR. —** In homicide, whether consummated, frustrated, or attempted, self-defense requires (1) that the person whom the offender killed or injured committed unlawful aggression; (2) that the offender employed means that is reasonably necessary to prevent or repel the unlawful aggression; and (3) that the person defending himself did not act with sufficient provocation. If the victim did not commit unlawful aggression against the accused, the latter has nothing to prevent or repel and the other two requisites of self-defense would have no basis for being appreciated. Unlawful aggression contemplates an actual, sudden, and unexpected attack or an imminent danger of such attack. A mere threatening or intimidating attitude is not enough. The victim must attack the accused with actual physical force or with a weapon. Here, the lower courts found that Arnel failed to prove the element of unlawful aggression. He alone testified that Jesus and Ananias rained fist blows on him and that Rufino and Ananias tried to stab him. x x x In contrast, the three witnesses testified that Arnel was the aggressor. Although their versions were mottled with inconsistencies, these do not detract from their

core story. The witnesses were one in what Arnel did and when and how he did it. Compared to Arnel's testimony, the prosecution's version is more believable and consistent with reality, hence deserving credence.

3. ID.; ATTEMPTED/FRUSTRATED HOMICIDE; MAIN ELEMENT IS ACCUSED'S INTENT TO TAKE THE VICTIM'S LIFE. — The main element of attempted or frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.

4. ID.; ATTEMPTED HOMICIDE; WHERE THE VICTIM'S WOUNDS ARE NOT FATAL. — The Court is inclined to hold Arnel guilty only of attempted, not frustrated, homicide. In *Palaganas v. People*, we ruled that when the accused intended to kill his victim, as shown by his use of a deadly weapon and the wounds he inflicted, but the victim did not die because of timely medical assistance, the crime is frustrated murder or frustrated homicide. If the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide.

5. ID.; ID.; PENALTY ALLOWS THE RIGHT TO APPLY FOR PROBATION UPON REMAND OF THE CASE TO RTC. — [T]he Court finds Arnel guilty only of the lesser crime of attempted homicide and holds that the maximum of the penalty imposed on him should be lowered to imprisonment of four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum. With this new penalty, it would be but fair to allow him the right to apply for probation upon remand of the case to the RTC.

6. ID.; PROBATION LAW (PD 968); RULE THAT NO APPLICATION FOR PROBATION SHALL BE ALLOWED FOR DEFENDANT WHO HAS PERFECTED AN APPEAL FROM CONVICTION; CASE AT BAR AN EXCEPTION. — Section 4 of the probation law (PD 968) provides: "That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction." x x x But, as it happens, two judgments of conviction have been meted out to Arnel: one, a conviction for frustrated

homicide by the regional trial court, now set aside; and, two, a conviction for attempted homicide by the Supreme Court. x x x The Probation Law, said the Court in *Francisco [vs. Court of Appeals*], requires that an accused must not have appealed his conviction before he can avail himself of probation. This requirement "outlaws the element of speculation on the part of the accused—to wager on the result of his appeal—that when his conviction is finally affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an 'escape hatch' thus rendering nugatory the appellate court's affirmance of his conviction." Here, however, Arnel did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation. x x x [I]n appealing his case, Arnel raised the issue of correctness of the penalty imposed on him. He claimed that the evidence at best warranted his conviction only for attempted, not frustrated, homicide, which crime called for a probationable penalty. In a way, therefore, Arnel sought from the beginning to bring down the penalty to the level where the law would allow him to apply for probation.

7. ID.; ID.; ID.; ID.; PHILOSOPHY OF PROBATION IS ONE OF LIBERALITY TOWARDS THE ACCUSED. — The Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. As Justice Vicente V. Mendoza said in his dissent in *Francisco*, the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.

PERALTA, *J., dissenting and concurring opinion:*

1. CRIMINAL LAW; PROBATION LAW (PD 968); PROBATION, A SPECIAL PRIVILEGE GRANTED TO A PENITENT QUALIFIED OFFENDER. — Probation is not a right granted to a convicted offender. Probation is a special privilege granted by the State to a penitent qualified offender, who does not

possess the disqualifications under Section 9 of Presidential Decree (P.D.) No. 968, otherwise known as the Probation Law of 1976. Likewise, the Probation Law is not a penal law for it to be liberally construed to favor the accused.

2. ID.; ID.; AMENDMENT UNDER P.D. NO. 1990 PROVIDES THAT APPLICATION FOR PROBATION NO LONGER ALLOWED IF ACCUSED HAS PERFECTED APPEAL FROM THE JUDGMENT OF CONVICTION; RATIONALE.— [W]ith the subsequent amendment of Section 4 of P.D. No. 968 by P.D. No. 1990, the application for probation is no longer allowed if the accused has perfected an appeal from the judgment of conviction. Section 4 of the Probation Law now reads: Sec. 4. *Grant of Probation*. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, that **no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction**. x x x The reason for the disallowance is stated in the preamble of P.D. No. 1990. x x x In *Sable v. People*, the Court stated that "[Section 4 of] the Probation Law was amended to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid." Thus, probation should be availed of at the first opportunity by convicts who are willing to be reformed and rehabilitated; who manifest spontaneity, contrition and remorse. Verily, Section 4 of the Probation Law provides that the application for probation must be filed with the trial court within the 15-day period for perfecting an appeal. The need to file it within such period is intended to encourage offenders, who are willing to be reformed and rehabilitated, to avail themselves of probation at the first opportunity. If the application for probation is filed beyond the 15-day period, then the judgment becomes final and executory and the lower court can no longer act on the application for probation. On the other hand, if a notice of appeal is perfected, the trial court that rendered the judgment of conviction is divested of any jurisdiction to act on the case,

except the execution of the judgment when it has become final and executory. In view of the provision in Section 4 of the Probation Law that "*no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction*," prevailing jurisprudence treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it.

3. ID.; ID.; ID.; THAT APPEAL SHOULD NOT BAR THE ACCUSED FROM APPLYING FOR PROBATION IF APPEAL IS SOLELY TO REDUCE PENALTY WITHIN THE PROBATIONABLE LIMIT; ELUCIDATED. — [I]t has been proposed that an appeal should not bar the accused from applying for probation if the appeal is solely to reduce the penalty to within the probationable limit, as this is equitable. In this regard, an accused may be allowed to apply for probation even if he has filed a notice of appeal, provided that his appeal is limited to the following grounds: 1. When the appeal is merely intended for the *correction of the penalty imposed* by the lower court, which when corrected would entitle the accused to apply for probation; and 2. When the appeal is merely intended *to review the crime* for which the accused was convicted and that the accused should only be liable to the lesser offense which is necessarily included in the crime for which he was originally convicted and the proper penalty imposable is within the probationable period. In both instances, the penalty imposed by the trial court for the crime committed by the accused is more than six years; hence, the sentence disqualifies the accused from applying for probation. Thus, the accused should be allowed to file an appeal under the aforestated grounds to seek a review of the crime and/or penalty imposed by the trial court. If, on appeal, the appellate court finds it proper to modify the crime and/or the penalty imposed, and the penalty finally imposed is within the probationable period, then the accused should be allowed to apply for probation. In addition, *before* an appeal is filed based on the grounds enumerated above, the accused should first file a motion for reconsideration of the decision of the trial court anchored on the above-stated grounds and manifest his intent to apply for probation if the motion is granted. The motion for reconsideration will give the trial court an opportunity to review and rectify any errors in its judgment, while the manifestation of the accused will immediately show

that he is agreeable to the judgment of conviction and does not intend to appeal from it, but he only seeks a review of the crime and/or penalty imposed, so that in the event that the penalty will be modified within the probationable limit, he will apply for probation. What Section 4 of the Probation Law prohibits is an appeal from the *judgment of conviction*.

4. ID.; ID.; ID.; ID.; FURTHER DISCUSSION ON WHEN PROBATION IS ALLOWED AND WHEN NOT, FOR THE PROPER APPLICATION OF PROBATION LAW. — It is believed that the recommended grounds for appeal do not contravene Section 4 of the Probation Law, which expressly prohibits only an appeal from the judgment of conviction. In such instances, the ultimate reason of the accused for filing the appeal based on the aforestated grounds is to determine whether he may avail of probation based on the review by the appellate court of the crime and/or penalty imposed by the trial court. Allowing the aforestated grounds for appeal would give a qualified convicted offender the opportunity to apply for probation if his ground for appeal is found to be meritorious by the appellate court, thus, serving the purpose of the Probation Law to promote the reformation of a penitent offender outside of prison. On the other hand, probation should *not* be granted to the accused in the following instances: 1. When the accused is convicted by the trial court of a crime *where the penalty imposed is within the probationable period or a fine*, and the accused files a notice of appeal; and 2. When the accused files a notice of appeal which *puts the merits of his conviction in issue*, *even if* there is an alternative prayer for the correction of the penalty imposed by the trial court or for a conviction to a lesser crime, which is necessarily included in the crime in which he was convicted where the penalty is within the probationable period. Both instances violate the spirit and letter of the law, as Section 4 of the Probation Law prohibits granting an application for probation if an appeal from the *sentence of conviction* has been perfected by the accused. There is wisdom to the majority opinion, but the problem is that the law expressly prohibits the filing of an application for probation beyond the period for filing an appeal. When the meaning is clearly discernible from the language of the statute, there is no room for construction or interpretation. Thus, the remedy is the

amendment of Section 4 of P.D. No. 968, and not adaptation through judicial interpretation.

VILLARAMA, JR., *J., concurring and dissenting opinion:*

1. CRIMINAL LAW; PROBATION LAW; PERTINENT PRINCIPLES TO CONTROL THE ISSUE. — I submit the following principles [on Probation] which should be controlling on the present issue: 1. Probation being a mere privilege, this Court may not grant as relief the recognition that accused-appellant may avail of it as a matter of right. 2. The probation law is not a penal statute and therefore the principle of liberal interpretation is inapplicable. x x x It is settled that the Probation Law is not a penal statute. In the matter of interpretation of laws on probation, the Court has pronounced that "the policy of liberality of probation statutes cannot prevail against the categorical provisions of the law." In applying Sec. 4 of P.D. No. 968 to this and similar cases, the Court must carefully tread so as not to digress onto impermissible judicial legislation whereby in the guise of interpretation, the law is modified or given a construction which is repugnant to its terms. As oft-repeated, the remedy lies in the legislature and not judicial fiat.

2. ID.; ID.; AMENDMENT UNDER P.D. NO. 1990 THAT THE APPLICATION FOR PROBATION NOT ALLOWED IF ACCUSED HAS ALREADY PERFECTED APPEAL; PURPOSE IS TO MAKE APPEAL AND PROBATION MUTUALLY EXCLUSIVE REMEDIES. — We explained that the intention of the new law [amendment under P.D. 1990 of the Probation Law] is to make appeal and probation mutually *exclusive* remedies. Thus, where the penalty imposed by the trial court is *not* probationable, and the appellate court modifies the penalty by reducing it to within the probationable limit, the same prohibition should still apply and he is not entitled to avail of probation. In *Francisco v. Court of Appeals*, the Court categorically declared that "[P]robation is not a right of an accused, but rather an act of grace of clemency or immunity conferred by the court to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense of which he stands convicted." x x x The *ponencia* found the factual milieu in *Francisco* not on fours with this case. However, the accused here did not even raise the issue of his entitlement to probation either as an alternative

prayer to acquittal or as principal relief. x x x It must be stressed that in foreclosing the right to appeal his conviction once the accused files an application for probation, the State proceeds from the reasonable assumption that the accused's submission to rehabilitation and reform is indicative of remorse. And in prohibiting the trial court from entertaining an application for probation if the accused has perfected his appeal, the State ensures that the accused takes seriously the privilege or clemency extended to him, that at the very least he disavows criminal tendencies. Consequently, this Court's grant of relief to herein accused whose sentence was reduced by this Court to within the probationable limit, with a declaration that accused may now apply for probation, would diminish the seriousness of that privilege because in questioning his conviction accused never admitted his guilt. It is of no moment that the trial court's conviction of petitioner for frustrated homicide is now corrected by this Court to only attempted homicide. Petitioner's physical assault on the victim with intent to kill is unlawful or criminal **regardless of whether the stage of commission was frustrated or attempted only.** Allowing the petitioner the right to apply for probation under the reduced penalty glosses over the fact that accused's availment of appeal with such expectation amounts to the same thing: speculation and opportunism on the part of the accused in violation of the rule that appeal and probation are mutually exclusive remedies.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a) the need, when invoking self-defense, to prove all that it takes; b) what distinguishes frustrated homicide from attempted homicide; and c) when an accused who appeals may still apply for probation on remand of the case to the trial court.

The Facts and the Case

The public prosecutor of Camarines Sur charged the accused Arnel Colinares (Arnel) with frustrated homicide before the Regional Trial Court (RTC) of San Jose, Camarines Sur, in Criminal Case T-2213.[1]

Complainant Rufino P. Buena (Rufino) testified that at around 7:00 in the evening on June 25, 2000, he and Jesus Paulite (Jesus) went out to buy cigarettes at a nearby store. On their way, Jesus took a leak by the roadside with Rufino waiting nearby. From nowhere, Arnel sneaked behind and struck Rufino twice on the head with a huge stone, about 15 ½ inches in diameter. Rufino fell unconscious as Jesus fled.

Ananias Jallores (Ananias) testified that he was walking home when he saw Rufino lying by the roadside. Ananias tried to help but someone struck him with something hard on the right temple, knocking him out. He later learned that Arnel had hit him.

Paciano Alano (Paciano) testified that he saw the whole incident since he happened to be smoking outside his house. He sought the help of a *barangay tanod* and they brought Rufino to the hospital.

Dr. Albert Belleza issued a Medico-Legal Certificate[2] showing that Rufino suffered two lacerated wounds on the forehead, along the hairline area. The doctor testified that these injuries were serious and potentially fatal but Rufino chose to go home after initial treatment.

The defense presented Arnel and Diomedes Paulite (Diomedes). Arnel claimed self-defense. He testified that he was on his way home that evening when he met Rufino, Jesus, and Ananias who were all quite drunk. Arnel asked Rufino where he supposed the Mayor of Tigaon was but, rather than

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[1] Records, p. 25.

[2] *Id.* at 2.

reply, Rufino pushed him, causing his fall. Jesus and Ananias then boxed Arnel several times on the back. Rufino tried to stab Arnel but missed. The latter picked up a stone and, defending himself, struck Rufino on the head with it. When Ananias saw this, he charged towards Arnel and tried to stab him with a gaff. Arnel was able to avoid the attack and hit Ananias with the same stone. Arnel then fled and hid in his sister's house. On September 4, 2000, he voluntarily surrendered at the Tigaon Municipal Police Station.

Diomedes testified that he, Rufino, Jesus, and Ananias attended a pre-wedding party on the night of the incident. His three companions were all drunk. On his way home, Diomedes saw the three engaged in heated argument with Arnel.

On July 1, 2005 the RTC rendered judgment, finding Arnel guilty beyond reasonable doubt of frustrated homicide and sentenced him to suffer imprisonment from two years and four months of *prision correccional*, as minimum, to six years and one day of *prision mayor*, as maximum. Since the maximum probationable imprisonment under the law was only up to six years, Arnel did not qualify for probation.

Arnel appealed to the Court of Appeals (CA), invoking self-defense and, alternatively, seeking conviction for the lesser crime of attempted homicide with the consequent reduction of the penalty imposed on him. The CA entirely affirmed the RTC decision but deleted the award for lost income in the absence of evidence to support it.[3] Not satisfied, Arnel comes to this Court on petition for review.

In the course of its deliberation on the case, the Court required Arnel and the Solicitor General to submit their respective positions on whether or not, assuming Arnel committed only the lesser crime of attempted homicide with its imposable penalty of imprisonment of four months of *arresto mayor*, as minimum,

[3] *Rollo*, pp. 109-128. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ricardo R. Rosario concurring.

to two years and four months of *prision correccional*, as maximum, he could still apply for probation upon remand of the case to the trial court.

Both complied with Arnel taking the position that he should be entitled to apply for probation in case the Court metes out a new penalty on him that makes his offense probationable. The language and spirit of the probation law warrants such a stand. The Solicitor General, on the other hand, argues that under the Probation Law no application for probation can be entertained once the accused has perfected his appeal from the judgment of conviction.

The Issues Presented

The case essentially presents three issues:

1. Whether or not Arnel acted in self-defense when he struck Rufino on the head with a stone;

2. Assuming he did not act in self-defense, whether or not Arnel is guilty of frustrated homicide; and

3. Given a finding that Arnel is entitled to conviction for a lower offense and a reduced probationable penalty, whether or not he may still apply for probation on remand of the case to the trial court.

The Court's Rulings

One. Arnel claims that Rufino, Jesus, and Ananias attacked him first and that he merely acted in self-defense when he hit Rufino back with a stone.

When the accused invokes self-defense, he bears the burden of showing that he was legally justified in killing the victim or inflicting injury to him. The accused must establish the elements of self-defense by clear and convincing evidence. When successful, the otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.[4]

[4] *People v. Dagani*, G.R. No. 153875, August 16, 2006, 499 SCRA 64, 73-74.

In homicide, whether consummated, frustrated, or attempted, self-defense requires (1) that the person whom the offender killed or injured committed unlawful aggression; (2) that the offender employed means that is reasonably necessary to prevent or repel the unlawful aggression; and (3) that the person defending himself did not act with sufficient provocation.[5]

If the victim did not commit unlawful aggression against the accused, the latter has nothing to prevent or repel and the other two requisites of self-defense would have no basis for being appreciated. Unlawful aggression contemplates an actual, sudden, and unexpected attack or an imminent danger of such attack. A mere threatening or intimidating attitude is not enough. The victim must attack the accused with actual physical force or with a weapon.[6]

Here, the lower courts found that Arnel failed to prove the element of unlawful aggression. He alone testified that Jesus and Ananias rained fist blows on him and that Rufino and Ananias tried to stab him. No one corroborated Arnel's testimony that it was Rufino who started it. Arnel's only other witness, Diomedes, merely testified that he saw those involved having a heated argument in the middle of the street. Arnel did not submit any medical certificate to prove his point that he suffered injuries in the hands of Rufino and his companions.[7]

In contrast, the three witnesses—Jesus, Paciano, and Ananias—testified that Arnel was the aggressor. Although their versions were mottled with inconsistencies, these do not detract from their core story. The witnesses were one in what Arnel did and when and how he did it. Compared to Arnel's testimony, the prosecution's version is more believable and consistent with reality, hence deserving credence.[8]

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[5] *Oriente v. People*, G.R. No. 155094, January 30, 2007, 513 SCRA 348, 359.

[6] *People v. Se*, 469 Phil. 763, 770 (2004).

[7] Records, pp. 245-246 (TSN, May 5, 2004, pp. 28-29).

[8] *People v. Enfectana*, 431 Phil. 64, 76 (2002).

Two. But given that Arnel, the accused, was indeed the aggressor, would he be liable for frustrated homicide when the wounds he inflicted on Rufino, his victim, were not fatal and could not have resulted in death as in fact it did not?

The main element of attempted or frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent.[9] And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.[10]

Here, Arnel struck Rufino on the head with a huge stone. The blow was so forceful that it knocked Rufino out. Considering the great size of his weapon, the impact it produced, and the location of the wounds that Arnel inflicted on his victim, the Court is convinced that he intended to kill him.

The Court is inclined, however, to hold Arnel guilty only of attempted, not frustrated, homicide. In *Palaganas v. People*,[11] we ruled that when the accused intended to kill his victim, as shown by his use of a deadly weapon and the wounds he inflicted, but the victim did not die because of timely medical assistance, the crime is frustrated murder or frustrated homicide. If the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide.

Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds. While Dr. Belleza testified that "head injuries are always very serious,"[12] he could not categorically say that Rufino's wounds in this case were "fatal." Thus:

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[9] *People v. Pagador*, 409 Phil. 338, 351 (2001).

[10] *Rivera v. People*, 515 Phil. 824, 832 (2006).

[11] G.R. No. 165483, September 12, 2006, 501 SCRA 533, 555-556.

[12] Records, p. 82 (TSN, June 17, 2002, p. 6).

Q: Doctor, all the injuries in the head are fatal?
A: No, all traumatic injuries are potentially treated.

Q: But in the case of the victim when you treated him the wounds actually are not fatal on that very day?
A: I could not say, with the treatment we did, prevent from becoming fatal. But on that case the patient preferred to go home at that time.

Q: The findings also indicated in the medical certificate only refers to the length of the wound not the depth of the wound?
A: When you say lacerated wound, the entire length of the layer of scalp.

Q: So you could not find out any abrasion?
A: It is different laceration and abrasion so once the skin is broken up the label of the frontal lo[b]e, we always call it lacerated wound, but in that kind of wound, we did not measure the depth.[13]

Indeed, Rufino had two lacerations on his forehead but there was no indication that his skull incurred fracture or that he bled internally as a result of the pounding of his head. The wounds were not so deep, they merely required suturing, and were estimated to heal in seven or eight days. Dr. Belleza further testified:

Q: So, in the medical certificate the wounds will not require surgery?
A: Yes, Madam.

Q: The injuries are slight?
A: 7 to 8 days long, what we are looking is not much, we give antibiotics and antit[e]tanus – the problem the contusion that occurred in the brain.

x x x x x x x x x

[13] *Id*. at 83-84 (*id*. at 7-8).

Q: What medical intervention that you undertake?
A: We give antibiotics, Your Honor, antit[e]tanus and suturing the wounds.

Q: For how many days did he stay in the hospital?
A: Head injury at least be observed within 24 hours, but some of them would rather go home and then come back.

Q: So the patient did not stay 24 hours in the hospital?
A: No, Your Honor.

Q: Did he come back to you after 24 hours?
A: I am not sure when he came back for follow-up.[14]

Taken in its entirety, there is a dearth of medical evidence on record to support the prosecution's claim that Rufino would have died without timely medical intervention. Thus, the Court finds Arnel liable only for attempted homicide and entitled to the mitigating circumstance of voluntary surrender.

Three. Ordinarily, Arnel would no longer be entitled to apply for probation, he having appealed from the judgment of the RTC convicting him for frustrated homicide.

But, the Court finds Arnel guilty only of the lesser crime of attempted homicide and holds that the maximum of the penalty imposed on him should be lowered to imprisonment of four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum. With this new penalty, it would be but fair to allow him the right to apply for probation upon remand of the case to the RTC.

Some in the Court disagrees. They contend that probation is a mere privilege granted by the state only to qualified convicted offenders. Section 4 of the probation law (PD 968) provides: "That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment

[14] *Id.* at 84-85 (*id*. at 8-9).

of conviction."[15] Since Arnel appealed his conviction for frustrated homicide, he should be deemed permanently disqualified from applying for probation.

But, firstly, while it is true that probation is a mere privilege, the point is not that Arnel has the right to such privilege; he certainly does not have. What he has is the right to apply for that privilege. The Court finds that his maximum jail term should only be 2 years and 4 months. If the Court allows him to apply for probation because of the lowered penalty, it is still up to the trial judge to decide whether or not to grant him the privilege of probation, taking into account the full circumstances of his case.

Secondly, it is true that under the probation law the accused who appeals "from the judgment of conviction" is disqualified from availing himself of the benefits of probation. But, as it happens, two judgments of conviction have been meted out to Arnel: one, a conviction for frustrated homicide by the regional trial court, now set aside; and, two, a conviction for attempted homicide by the Supreme Court.

If the Court chooses to go by the dissenting opinion's hard position, it will apply the probation law on Arnel based on the trial court's annulled judgment against him. He will not be entitled to probation because of the severe penalty that such

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[15] Sec. 4, Presidential Decree 968 also known as the Probation Law of 1976, provides: SEC. 4. Grant of Probation. – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. **The filing of the application shall be deemed a waiver of the right to appeal.** (Emphasis supplied)

An order granting or denying probation shall not be appealable.

judgment imposed on him. More, the Supreme Court's judgment of conviction for a lesser offense and a lighter penalty will also have to bend over to the trial court's judgment—even if this has been found in error. And, worse, Arnel will now also be made to pay for the trial court's erroneous judgment with the forfeiture of his right to apply for probation. *Ang kabayo ang nagkasala, ang hagupit ay sa kalabaw* (the horse errs, the carabao gets the whip). Where is justice there?

The dissenting opinion also expresses apprehension that allowing Arnel to apply for probation would dilute the ruling of this Court in *Francisco v. Court of Appeals*[16] that the probation law requires that an accused must not have appealed his conviction before he can avail himself of probation. But there is a huge difference between *Francisco* and this case.

In *Francisco,* the Metropolitan Trial Court (MeTC) of Makati found the accused guilty of grave oral defamation and sentenced him to a prison term of one year and one day to one year and eight months of *prision correccional*, a clearly probationable penalty. Probation was his to ask! Still, he chose to appeal, seeking an acquittal, hence clearly waiving his right to apply for probation. When the acquittal did not come, he wanted probation. The Court would not of course let him. It served him right that he wanted to save his cake and eat it too. He certainly could not have both appeal and probation.

The Probation Law, said the Court in *Francisco,* requires that an accused must not have appealed his conviction before he can avail himself of probation. This requirement "outlaws the element of speculation on the part of the accused—to wager on the result of his appeal—that when his conviction is finally affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an 'escape hatch' thus rendering nugatory the appellate court's affirmance of his conviction."[17]

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[16] 313 Phil. 241, 255 (1995).

[17] *Id*.

Here, however, Arnel did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation. He was not in a position to say, "By taking this appeal, I choose not to apply for probation." The stiff penalty that the trial court imposed on him denied him that choice. Thus, a ruling that would allow Arnel to now seek probation under this Court's greatly diminished penalty will not dilute the sound ruling in *Francisco*. It remains that those who will appeal from judgments of conviction, when they have the option to try for probation, forfeit their right to apply for that privilege.

Besides, in appealing his case, Arnel raised the issue of correctness of the penalty imposed on him. He claimed that the evidence at best warranted his conviction only for attempted, not frustrated, homicide, which crime called for a probationable penalty. In a way, therefore, Arnel sought from the beginning to bring down the penalty to the level where the law would allow him to apply for probation.

In a real sense, the Court's finding that Arnel was guilty, not of frustrated homicide, but only of attempted homicide, is an original conviction that for the first time imposes on him a probationable penalty. Had the RTC done him right from the start, it would have found him guilty of the correct offense and imposed on him the right penalty of two years and four months maximum. This would have afforded Arnel the right to apply for probation.

The Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions.[18] As Justice Vicente V. Mendoza said in his dissent in *Francisco,* the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do

[18] *Yusi v. Honorable Judge Morales*, 206 Phil. 734, 740 (1983).

so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.[19]

One of those who dissent from this decision points out that allowing Arnel to apply for probation after he appealed from the trial court's judgment of conviction would not be consistent with the provision of Section 2 that the probation law should be interpreted to "provide an opportunity for the reformation of a penitent offender." An accused like Arnel who appeals from a judgment convicting him, it is claimed, shows no penitence.

This may be true if the trial court meted out to Arnel a correct judgment of conviction. Here, however, it convicted Arnel of the wrong crime, frustrated homicide, that carried a penalty in excess of 6 years. How can the Court expect him to feel penitent over a crime, which as the Court now finds, he did not commit? He only committed attempted homicide with its maximum penalty of 2 years and 4 months.

Ironically, if the Court denies Arnel the right to apply for probation under the reduced penalty, it would be sending him straight behind bars. It would be robbing him of the chance to instead undergo reformation as a penitent offender, defeating the very purpose of the probation law.

At any rate, what is clear is that, had the RTC done what was right and imposed on Arnel the correct penalty of two years and four months maximum, he would have had the right to apply for probation. No one could say with certainty that he would have availed himself of the right had the RTC done right by him. The idea may not even have crossed his mind precisely since the penalty he got was not probationable.

The question in this case is ultimately one of fairness. Is it fair to deny Arnel the right to apply for probation when the new penalty that the Court imposes on him is, unlike the one erroneously imposed by the trial court, subject to probation?

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[19] *Francisco v. Court of Appeals*, *supra* note 16, at 273.

WHEREFORE, the Court *PARTIALLY GRANTS* the petition, *MODIFIES* the Decision dated July 31, 2007 of the Court of Appeals in CA-G.R. CR 29639, *FINDS* petitioner Arnel Colinares *GUILTY* beyond reasonable doubt of attempted homicide, and *SENTENCES* him to suffer an indeterminate penalty from four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum, and to pay Rufino P. Buena the amount of ₱20,000.00 as moral damages, without prejudice to petitioner applying for probation within 15 days from notice that the record of the case has been remanded for execution to the Regional Trial Court of San Jose, Camarines Sur, in Criminal Case T-2213.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, Perez, Mendoza, and *Reyes, JJ.,* concur.

Brion and *Bersamin, JJ.,* join Justice Peralta's concurring and dissenting opinion.

Peralta and Villarama, Jr., JJ., see concurring and dissenting opinions.

Sereno, J., joins Justices Peralta and Villarama.

Perlas-Bernabe, J., joins Justice Villarama.

DISSENTING and CONCURRING OPINION

PERALTA, *J.*:

I concur with the disposition of the majority as to the conviction of the accused.

However, as to the question relating to the application of the Probation Law in this case, I respectfully dissent to the majority opinion.

Probation is not a right granted to a convicted offender. Probation is a special privilege granted by the State to a penitent

qualified offender,[1] who does not possess the disqualifications under Section 9 of Presidential Decree (P.D.) No. 968,[2] otherwise known as the Probation Law of 1976. Likewise, the Probation Law is not a penal law for it to be liberally construed to favor the accused.[3]

In the American law paradigm, probation is considered as an act of clemency and grace, not a matter of right.[4] It is a privilege granted by the State, not a right to which a criminal defendant is entitled.[5] In the recent case of *City of Aberdeen v. Regan*,[6] it was pronounced that:

> The granting of a deferred sentence and probation, following a plea or verdict of guilty, is a *rehabilitative* measure and, as such, is not a matter of *right* but is a matter of grace, privilege, or clemency granted to the *deserving*.[7]

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[1] *Sable v. People*, G.R. No. 177961, April 7, 2009, 584 SCRA 619, 625.

[2] Sec. 9. *Disqualified Offenders*. — The benefits of this Decree shall not be extended to those:

(a) Sentenced to serve a maximum term of imprisonment of more than six years;

(b) Convicted of subversion or any crime against the national security or the public order;

(c) Who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than Two Hundred Pesos;

(d) Who have been once on probation under the provisions of this Decree; and

(e) Who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

[3] *Pablo v. Castillo*, G.R. No. 125108, August 3, 2000, 337 SCRA 176, 181; *Llamado v. Court of Appeals*, G.R. No. 84850, June 29, 1989, 174 SCRA 566, 577.

[4] *People v. Anderson*, 50 Cal. 4th 19, 235 P.3d 11 (2010).

[5] *Dean v. State*, 57 So.3d 169 (2010).

[6] 170 Wash. 2d 103, 239 P.3d 1102 (2010).

[7] Emphasis supplied.

In this jurisdiction, the wisdom behind the enactment of our own Probation Law, as outlined in the said law, reads:

(a) promote the correction and rehabilitation of an offender by providing him with individualized treatment;

(b) provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and

(c) prevent the commission of offenses.[8]

Originally, P.D. No. 968[9] allowed the filing of an application for probation even if an appeal had been perfected by the convicted offender under Section 4, thus:

Section 4. ***Grant of Probation***. — Subject to the provisions of this Decree, the court may, **after it shall have convicted and sentenced a defendant** and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. **An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.**

An order granting or denying probation shall not be appealable.[10]

Thereafter, the filing of an application for probation pending appeal was still allowed when Section 4 of P.D. No. 968 was amended by P.D. No. 1257.[11]

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[8] P.D. No. 968, Section 2.

[9] Establishing a Probation System, Appropriating Funds Therefor and Other Purposes, July 24, 1976.

[10] Emphases supplied.

[11] Amending Certain Sections of Presidential Decree Numbered Nine Hundred and Sixty-Eight, Otherwise Known as The Probation Law of 1976, December 1, 1977.

However, with the subsequent amendment of Section 4 of P.D. No. 968 by P.D. No. 1990,[12] the application for probation is no longer allowed if the accused has perfected an appeal from the judgment of conviction. Section 4 of the Probation Law now reads:

Sec. 4. *Grant of Probation*. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, that **no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction**.

SECTION 1. Section 4 of Presidential Decree No. 968, otherwise known as the Probation Law of 1976, is hereby amended to read as follows:

SEC. 4. *Grant of Probation.* — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant but before he begins to serve his sentence and upon his application, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

The prosecuting officer concerned shall be notified by the court of the filing of the application for probation and he may submit his comment on such application within ten days from receipt of the notification.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine with subsidiary imprisonment in case of insolvency. **An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal. In the latter case, however, if the application is filed on or after the date of the judgment of the appellate court, said application shall be acted upon by the trial court on the basis of the judgment of the appellate court.**

An order granting or denying probation shall not be appealable. (Emphasis supplied.)

[12] Amending Presidential Decree No. 968, Otherwise Known as The Probation Law of 1976, October 5, 1985.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.[13]

The reason for the disallowance is stated in the preamble of P.D. No. 1990, thus:

WHEREAS, it has been the sad experience that persons who are convicted of offenses and who may be entitled to probation still appeal the judgment of conviction even up to the Supreme Court, only to pursue their application for probation when their appeal is eventually dismissed;

WHEREAS, the process of criminal investigation, prosecution, conviction and appeal entails too much time and effort, not to mention the huge expenses of litigation, on the part of the State;

WHEREAS, the time, effort and expenses of the Government in investigating and prosecuting accused persons from the lower courts up to the Supreme Court, are oftentimes rendered nugatory when, after the appellate Court finally affirms the judgment of conviction, the defendant applies for and is granted probation;

WHEREAS, *probation was not intended as an escape hatch and should not be used to obstruct and delay the administration of justice, but should be availed of at the first opportunity by offenders who are willing to be reformed and rehabilitated*;

WHEREAS, it becomes imperative to remedy the problems abovementioned confronting our probation system.[14]

In *Sable v. People*,[15] the Court stated that "[Section 4 of] the Probation Law was amended to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid."[16] Thus, probation

[13] Emphasis supplied.

[14] Italics supplied.

[15] *Supra* note 1.

[16] *Id.* at 627.

should be availed of at the first opportunity by convicts who are willing to be reformed and rehabilitated; who manifest spontaneity, contrition and remorse.[17]

Verily, Section 4 of the Probation Law provides that the application for probation must be filed with the trial court within the 15-day period for perfecting an appeal. The need to file it within such period is intended to encourage offenders, who are willing to be reformed and rehabilitated, to avail themselves of probation at the first opportunity.[18] If the application for probation is filed beyond the 15-day period, then the judgment becomes final and executory and the lower court can no longer act on the application for probation. On the other hand, if a notice of appeal is perfected, the trial court that rendered the judgment of conviction is divested of any jurisdiction to act on the case, except the execution of the judgment when it has become final and executory.

In view of the provision in Section 4 of the Probation Law that "*no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction*," prevailing jurisprudence[19] treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it.[20]

However, it has been proposed that an appeal should not bar the accused from applying for probation if the appeal is solely to reduce the penalty to within the probationable limit, as this is equitable.

In this regard, an accused may be allowed to apply for probation even if he has filed a notice of appeal, provided that his appeal is limited to the following grounds:

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[17] *Id*.

[18] *Id*.

[19] *Sable v. People*, *supra* note 1; *Francisco v. Court of Appeals*, G.R. No. 108747, April 6, 1995, 243 SCRA 384; *Llamado v. Court of Appeals*, G.R. No. 84850, June 29, 1989, 174 SCA 566.

[20] *Sable v. People*, *supra* note 1, at 628.

1. When the appeal is merely intended for the *correction of the penalty imposed* by the lower court, which when corrected would entitle the accused to apply for probation; and

2. When the appeal is merely intended *to review the crime* for which the accused was convicted and that the accused should only be liable to the lesser offense which is necessarily included in the crime for which he was originally convicted and the proper penalty imposable is within the probationable period.

In both instances, the penalty imposed by the trial court for the crime committed by the accused is more than six years; hence, the sentence disqualifies the accused from applying for probation. Thus, the accused should be allowed to file an appeal under the aforestated grounds to seek a review of the crime and/or penalty imposed by the trial court. If, on appeal, the appellate court finds it proper to modify the crime and/or the penalty imposed, and the penalty finally imposed is within the probationable period, then the accused should be allowed to apply for probation.

In addition, *before* an appeal is filed based on the grounds enumerated above, the accused should first file a motion for reconsideration of the decision of the trial court anchored on the above-stated grounds and manifest his intent to apply for probation if the motion is granted. The motion for reconsideration will give the trial court an opportunity to review and rectify any errors in its judgment, while the manifestation of the accused will immediately show that he is agreeable to the judgment of conviction and does not intend to appeal from it, but he only seeks a review of the crime and/or penalty imposed, so that in the event that the penalty will be modified within the probationable limit, he will apply for probation.

What Section 4 of the Probation Law prohibits is an appeal from the *judgment of conviction*, thus:

Sec. 4. *Grant of Probation.* — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced

a defendant and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, that **no application for probation shall be entertained or granted *if the defendant has perfected the appeal from the judgment of conviction***.[21]

An appeal from the judgment of conviction involves a review of the merits of the case and the determination of whether or not the accused is entitled to acquittal. However, under the recommended grounds for appeal which were enumerated earlier, the purpose of the appeal is not to question the judgment of conviction, but to question only the propriety of the sentence, particularly the penalty imposed, as the accused intends to apply for probation. If the appellate court finds it proper to modify the sentence, and the penalty finally imposed by the appellate court is within the probationable period, the accused should be allowed to apply for probation after the case is remanded to the trial court for execution.

It is believed that the recommended grounds for appeal do not contravene Section 4 of the Probation Law, which expressly prohibits only an appeal from the judgment of conviction. In such instances, the ultimate reason of the accused for filing the appeal based on the aforestated grounds is to determine whether he may avail of probation based on the review by the appellate court of the crime and/or penalty imposed by the trial court. Allowing the aforestated grounds for appeal would give a qualified convicted offender the opportunity to apply for probation if his ground for appeal is found to be meritorious by the appellate court, thus, serving the purpose of the Probation Law to promote the reformation of a penitent offender outside of prison.

On the other hand, probation should *not* be granted to the accused in the following instances:

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[21] Emphasis and underscoring supplied.

1. When the accused is convicted by the trial court of a crime *where the penalty imposed is within the probationable period or a fine*, and the accused files a notice of appeal; and

2. When the accused files a notice of appeal which *puts the merits of his conviction in issue*, *even if* there is an alternative prayer for the correction of the penalty imposed by the trial court or for a conviction to a lesser crime, which is necessarily included in the crime in which he was convicted where the penalty is within the probationable period.

Both instances violate the spirit and letter of the law, as Section 4 of the Probation Law prohibits granting an application for probation if an appeal from the *sentence of conviction* has been perfected by the accused.

There is wisdom to the majority opinion, but the problem is that the law expressly prohibits the filing of an application for probation beyond the period for filing an appeal. When the meaning is clearly discernible from the language of the statute, there is no room for construction or interpretation.[22] Thus, the remedy is the amendment of Section 4 of P.D. No. 968, and not adaptation through judicial interpretation.

CONCURRING AND DISSENTING OPINION

VILLARAMA, JR., *J.*:

I join the majority in ruling that petitioner should have been convicted only of the lesser crime of attempted homicide and that the maximum of the indeterminate prison term imposed on him should be lowered to four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum. However, I disagree with their conclusion (by 8-7 vote)that on grounds of fairness, the Court should now allow petitioner the right to apply for probation upon remand of the case to the trial court.

I submit the following principles which should be controlling on the present issue:

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[22] *Pablo v. Castillo*, *supra* note 3, at 181.

1. Probation being a mere privilege, this Court may not grant as relief the recognition that accused-appellant may avail of it as a matter of right.

2. The probation law is not a penal statute and therefore the principle of liberal interpretation is inapplicable.

With the enactment of P. D. No. 968 (Probation Law of 1976),this Court held that the rule that if the accused appeals his conviction solely to reduce the penalty, such penalty already probationable, and the appellate court grants his appeal he may still apply for probation, had already been abandoned. We explained that the intention of the new law is to make appeal and probation mutually *exclusive* remedies.[1] Thus, where the penalty imposed by the trial court is *not* probationable, and the appellate court modifies the penalty by reducing it to within the probationable limit, the same prohibition should still apply and he is not entitled to avail of probation.

In *Francisco v. Court of Appeals,*[2] the Court categorically declared that "[P]robation is not a right of an accused, but rather an act of grace of clemency or immunity conferred by the court to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense of which he stands convicted." Subsequently, the Court noted that the suggestion in *Francisco* that an appeal by the accused should not bar him from applying for probation where such appeal was solely for the purpose of correcting a wrong penalty – to reduce it to within the probationable range – may not be invoked by the accused in situations when he at the same time puts in issue the merits of his conviction.[3] The *ponencia* found the factual milieu in *Francisco* not on fours with this case. However, the accused here did not even raise the issue of his

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[1] *Bernardo v. Balagot*, G.R. No. 86561, November 10, 1992, 215 SCRA 526, 531.

[2] G.R. No. 108747, April 6, 1995, 243 SCRA 384.

[3] See *Lagrosa v.People*, G.R. No. 152044, July 3, 2003, 405 SCRA 357, 362.

entitlement to probation either as an alternative prayer to acquittal or as principal relief.

The majority reasoned that since the trial court imposed a (wrong) penalty beyond the probationable range,thus depriving the accused of the option to apply for probation when he appealed, the element of speculation that the law sought to curb was not present. Noting that the accused in this case claimed that the evidence at best warranted his conviction only for attempted, not frustrated homicide, the majority opined that said accused had, in effect, sought to bring down the penalty as to allow him to apply for probation.

I cannot concur with such proposition because it seeks to carve out an exception not found in and contrary to the purpose of the probation law.

The pronouncement in *Francisco* that the discretion of the trial court in granting probation is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused, underscored the paramount objective in granting probation, which is the reformation of the probationer. This notwithstanding, the majority suggests that remorse on the part of the accused is not required, or least irrelevant in this case because "the Court cannot expect petitioner to feel penitent over a crime, which the Court now finds, he did not commit," as he only committed attempted homicide.

It must be stressed that in foreclosing the right to appeal his conviction once the accused files an application for probation, the State proceeds from the reasonable assumption that the accused's submission to rehabilitation and reform is indicative of remorse. And in prohibiting the trial court from entertaining an application for probation if the accused has perfected his appeal, the State ensures that the accused takes seriously the privilege or clemency extended to him, that at the very least he disavows criminal tendencies. Consequently, this Court's grant of relief to herein accused whose sentence was reduced by this Court to within the probationable limit, with a declaration that accused may now apply for probation, would diminish the

seriousness of that privilege because in questioning his conviction accused never admitted his guilt. It is of no moment that the trial court's conviction of petitioner for frustrated homicide is now corrected by this Court to only attempted homicide. Petitioner's physical assault on the victim with intent to kill is unlawful or criminal**regardless of whether the stage of commission was frustrated or attempted only.** Allowing the petitioner the right to apply for probation under the reduced penalty glosses over the fact that accused's availment of appeal with such expectation amounts to the same thing: speculation and opportunism on the part of the accused in violation of the rule that appeal and probation are mutually exclusive remedies.

The *ponencia* then declares that the question in this case is ultimately one of fairness, considering the trial court's erroneous conviction that deprived petitioner of the right to apply for probation, from which he had no way of obtaining relief except by appealing the judgment.

Such liberality accorded to the accused, for the reason that it was not his fault that the trial court failed to impose the correct sentence, is misplaced.

It is settled that the Probation Law is not a penal statute.[4] In the matter of interpretation of laws on probation, the Court has pronounced that "the policy of liberality of probation statutes cannot prevail against the categorical provisions of the law."[5] In applying Sec. 4 of P.D. No. 968 to this and similar cases, the Court must carefully tread so as not to digress onto impermissible judicial legislation whereby in the guise of interpretation, the law is modified or given a construction which is repugnant to its terms. As oft-repeated, the remedy lies in the legislature and not judicial fiat.

I therefore maintain my dissent to the pronouncement in the *ponencia* recognizing the right of petitioner Arnel Colinares to apply for probation.

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[4] *Llamado v. Court of Appeals,* 174 SCRA 566 (1989).

[5] *Pablo v. Castillo,* G.R. No. 125108, August 3, 2000, 337 SCRA 176, 170.

EN BANC

[G.R. No. 185668. December 13, 2011]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION, *petitioner, vs.* **COURT OF APPEALS and MIA MANAHAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHERE PETITION FOR REVIEW IS AVAILABLE. — [P]etitioner availed of the wrong remedy to question the rulings of public respondent CA considering that it had the opportunity to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. x x x The period to file such petition, as provided in Section 2, Rule 45, is 15 days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. Since PAGCOR declares having received on December 2, 2008 a copy of the CA Resolution denying its Motion for Reconsideration, it had 15 days from the said date, or until December 17, 2008, within which to exercise the remedy of a petition for review on *certiorari* then available to it. PAGCOR's resort to Rule 65 of the Rules of Court is thus misplaced. It is explicit in Section 1, Rule 65 that before a party can resort to this remedy, there must be no other plain, speedy and adequate remedy that is available to the petitioner to question the findings and rulings of the CA. x x x Thus, jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil action of *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. x x x That the remedy of a Petition for Review on *Certiorari* was no longer available to PAGCOR at the time of filing of this petition is of no moment. Again, we emphasize that *certiorari* is not and cannot be a substitute for lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; ELUCIDATED. — "Grave abuse of discretion" under Rule 65 has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility, or the whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.

3. POLITICAL LAW; CIVIL SERVICE; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (CSC RESOLUTION NO. 99-1936) SEC. 16 ON THE REQUIREMENT OF A FORMAL CHARGE IN INVESTIGATIONS; DUE PROCESS POSTULATES COMPLIANCE THEREWITH. — Citing CSC Resolution No. 99-1936 entitled "Uniform Rules on Administrative Cases in the Civil Service," particularly Section 16 thereof on the requirement of a formal charge in investigations, the appellate court correctly ruled that: As contemplated under the foregoing provision, a formal charge is a written specification of the charge(s) against an employee. While its form may vary, it generally embodies a brief statement of the material and relevant facts constituting the basis of the charge(s); a directive for the employee to answer the charge(s) in writing and under oath, accompanied by his/her evidence; and advice for the employee to indicate in his/her answer whether he/she elects a formal investigation; and a notice that he/she may secure the assistance of a counsel of his/her own choice. x x x Reference to CSC Resolution No. 99-1936 is proper, being the law applicable to formal charges in the civil service prior to the imposition of administrative sanctions. The requirements under Section 16 thereof are clear, as it provides: x x x While due process in an agency investigation may be limited as compared to due process in criminal proceedings, where however a statute specifically provides for a procedure and grants particular rights to a party under investigation such as in the investigations of persons covered by the Civil Service Rules, these rights shall not be utterly disregarded, especially so when invoked by the party under investigation because these rights already form part of a procedural due process.

4. ID.; ID.; ID.; DECISION OR RESOLUTION AFTER PRELIMINARY INVESTIGATION; FORMAL CHARGE CAN BE MADE ONLY AFTER A FINDING OF *PRIMA FACIE* CASE DURING INVESTIGATION; VIOLATION THEREOF AS IN CASE AT BAR IS DENIAL OF DUE PROCESS. — [A] formal charge can be made only after a finding of *prima facie* case during investigations. Section 15 of CSC Resolution No. 99-1936 provides as follows: Section 15. **Decision or Resolution After Preliminary Investigation**. If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow. In the absence of a *prima facie* case, the complaint shall be dismissed. Even the filing by respondent Manahan of a motion for reconsideration of PAGCOR's decision to dismiss her from the service could not have cured the violation of her right to due process. After a clear denial of due process during the investigations, it was only through a decision that sufficiently apprised the respondent of the wrongful acts she supposedly committed and the rules she purportedly violated that Manahan could be able to truly defend herself. While a liberal construction of administrative rules of procedure is allowed and applied in some cases, this is resorted to when it can promote their objective and aid the parties in reaching a just, speedy and inexpensive determination of their respective claims and defenses. Without proper investigation and, thereafter, a decision that clearly indicated the facts constituting the offense imputed upon the respondent and the company rules she supposedly violated, the respondent did not get the chance to sufficiently defend herself; and more importantly, the petitioner, the CSC and the courts could not have had the chance to reasonably ascertain the truth which the CSC rules aim to accomplish.

APPEARANCES OF COUNSEL

Carlos R. Bautista, Jr., Roderick R. Consolacion & Ma. Concepcion A. Gloria for petitioner.

Cadiz Carag and De Mesa for private respondent.

D E C I S I O N

REYES, *J.*:

Before us is a Petition for *Certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure which assails the following decision and resolution of public respondent Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 100908, entitled *Philippine Amusement & Gaming Corporation v. Mia Manahan:*

(a) the Decision[2] dated October 2, 2008 which denied herein petitioner's Petition for Review and affirmed *in toto* the Resolutions dated July 10, 2007 and September 10, 2007 of the Civil Service Commission on the issue of PAGCOR's dismissal from the service of herein private respondent; and

(b) the Resolution[3] dated November 27, 2008 which denied the petitioner's Motion for Reconsideration of the Decision of October 2, 2008.

The Facts

Private respondent Mia Manahan (Manahan) was a Treasury Officer of petitioner Philippine Amusement and Gaming Corporation (PAGCOR) assigned in Casino Filipino-Manila Pavilion (CF-Pavilion). Among her functions as Treasury Officer was the handling of fund transfer requests received by CF-Pavilion and the supervision of the office's Vault-in-Charge and Senior Cashier.

On April 14, 2004, at around 1:30 in the afternoon, Manahan received from the fax machine of CF-Pavilion's SVIP-Treasury a document that appeared to be a Request for Fund Transfer[4]

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[1] *Rollo*, pp. 3-24.

[2] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Martin S. Villarama, Jr. (now a member of this court) and Noel G. Tijam, concurring; *id*. at 26-37.

[3] *Id.* at 40-41.

[4] *Id.* at 43.

coming from Casino Filipino-Laoag (CF-Laoag). The request was for Four Million Two Hundred Thousand Pesos (₱4,200,000.00) to be released by CF-Pavilion to "Arnulfo Fuentabella or David Fuentabella."

About 30 minutes from Manahan's receipt of the fax document, a person who represented himself to be "David Fuentabella" claimed from CF-Pavilion the amount of ₱4,200,000.00. Said "David Fuentabella" presented an SSS Identification Card[5] to prove his identity, duly accepted by the respondent, who as the Treasury Officer then on duty, also approved the release of the money and chips to the claimant. ₱2,000,000.00 was released in cash, and ₱2,200,000.00 was released in the form of chips.

At around 7:30 in the evening of April 15, 2004, the Treasury Officer of CF-Pavilion then on duty, Jennifer Bagtas, informed CF-Laoag through phone that the fund transfer for ₱4,200,000.00 had already been paid by CF-Pavilion to Mr. Fuentabella. However, CF-Laoag's Vault-in-Charge Norman Santiago and Treasury Head Joselito Ricafort denied that such fund transfer had been made by CF-Laoag to CF-Pavilion. Close to midnight of the same day, Manahan was called by PAGCOR's Assistant Chief Security Officer asking her to report immediately to CF-Pavilion, where she was informed of CF-Laoag's claim that it sent no fund transfer for ₱4,200,000.00 in favor of "Arnulfo or David Fuentabella." Manahan was interrogated by PAGCOR's Casino Operations Manager, Branch Manager and Senior Chief Security Officer on what transpired on April 14, 2004.

A notice of preventive suspension dated April 15, 2004 and signed by Dan N. Dia, Senior Branch Manager of CF-Pavilion, was received by Manahan on April 16, 2004. The pertinent portions of the notice read:

You are hereby informed of the charge against you of **SERIOUS PROCEDURAL DEVIATION/GROSS NEGLIGENCE**, arising from the anomalous fund transfer transaction in the amount of [₱]4.2 million,

[5] *Id.* at 44.

consummated at the VIP Booth last April 14, 2004 wherein you were on the 6-2PM duty.

Pending result of the investigation of the case, please be informed that you are hereby placed under preventive suspension effective immediately.[6]

From April 16 to 17, 2004, Manahan was instructed to report to the Corporate Office of PAGCOR where she was again questioned regarding the fund transfer incident. On April 21, 2004, she received a Notice to Appear and Explain of even date, signed by Atty. Noel Ostrea, Assistant Head of PAGCOR's Corporate Investigation Unit (CIU), and which reads in part:

The Corporate Investigation Unit is tasked to conduct a fact-finding inquiry into the performance by several Treasury officers and personnel of different casino branches, including yourself, of their duties and responsibilities in relation to the untoward events of 14 April 2004, and all circumstances pertinent thereto. We have invited you through CF-Pavilion to appear before us today. However, you failed to appear. In this regard, may we again invite you to appear before this Unit on Friday, 23 April 2004 at around 2:00 pm. Should you fail to do so, this will be deemed a waiver of your right to be heard, without further recourse.[7]

On April 26, 2004, Manahan filed with the CIU a Written Statement[8] giving her account of the events that transpired in relation to the disputed fund transfer. The Statement was filed in lieu of her oral testimony, after the CIU allegedly did not allow her to be assisted by counsel during the April 23, 2004 meeting and instead granted her the option to submit a written statement.[9]

Particularly on the matter of her failure to avert the release of ₱4.2 million under a spurious request for fund transfer,

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[6] *Id.* at 48.

[7] *Id.* at 49.

[8] *Id.* at 50-57.

[9] *Id.* at 50.

Manahan explained in her Written Statement that per actual practice, she was not required to confirm the fund transfer from CF-Laoag, it being sufficient that "David Fuentabella" was a regular player of CF-Pavilion and the request document she received was complete with pertinent information and the required signatures. Manahan also claimed that immediately after the release of the amount of ₱4.2 million to the claimant, she confirmed this fact by fax to CF-Laoag.

On June 2, 2004, Manahan finally received from PAGCOR's Human Resource Department (HRD) Senior Managing Head, Visitacion F. Mendoza, a letter of even date informing her of the PAGCOR Board of Directors' (BOD) decision to dismiss her from the service. The pertinent portions of the letter read:

> Please be informed that the Board of Directors in its meeting on June 1, 2004, resolved to dismiss you from the service effective April 16, 2004 due to the following offense:
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> > "Gross neglect of duty; Violations of company rules and regulations; Conduct prejudicial to the best interests of the corporation; and Loss of trust and confidence; Failure to comply with Treasury rules and regulations which resulted in payment of a spurious Fund Transfer amounting to [₱]4.2 million last April 14, 2004."[10]

Manahan filed a Motion for Reconsideration[11] of the PAGCOR BOD's decision to dismiss her from the service, giving the following grounds in support thereof: (1) she was deprived of her constitutional right to due process of law when the PAGCOR BOD outrightly dismissed her from service without informing her of the formal charges and apprising her of the documentary evidence against her; (2) she was not guilty of gross neglect of duty in allowing the spurious fund transfer considering that when she handled the fund transfer request, she did what was required of her per common practice in the Treasury Offices of PAGCOR; (3) she was not a confidential employee and

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[10] *Id.* at 208.

[11] *Id.* at 58-75.

thus could not have been dismissed on the ground of loss of trust and confidence; and, (4) even assuming that she committed an act of negligence, the loss incurred by PAGCOR was directly caused by a scheme employed by perpetrators who clearly knew of the lax internal controls observed by PAGCOR, making the penalty of dismissal too harsh and excessive as it was not commensurate to the act attributed to her. The motion was denied by the PAGCOR BOD for lack of merit, as disclosed in a letter[12] dated July 7, 2004 addressed to Manahan and also signed by HRD Senior Managing Head Mendoza.

Feeling aggrieved, Manahan appealed from the PAGCOR's rulings to the Civil Service Commission (CSC).

The Ruling of the CSC

On July 10, 2007, the CSC issued Resolution No. 071264[13] granting herein respondent Manahan's appeal from the decisions of PAGCOR. After a finding of violation of Manahan's right to due process, the Commission remanded the case to PAGCOR for the issuance of a formal charge, if warranted, then a formal investigation pursuant to the Uniform Rules on Administrative Cases in the Civil Service. It declared the preventive suspension of Manahan null and void for having been issued by virtue of an invalid charge and for its failure to specify the duration of preventive suspension. Further, the CSC noted that the order of dismissal served upon Manahan was a mere notice issued by the HRD Senior Managing Head informing her of the PAGCOR BOD's decision to dismiss her from the service, instead of a copy of the BOD Resolution on the order of dismissal.

Thus, the dispositive portion of the CSC Resolution reads:

WHEREFORE, the appeal of Mia B. Manahan, Treasury Officer, Philippine Amusement and Gaming Corporation (PAGCOR), Roxas Boulevard, Ermita, Metro Manila, is hereby **GRANTED**. Accordingly, the instant case is remanded to the PAGCOR for the issuance of the

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[12] *Id.* at 546.

[13] *Id.* at 177-185.

required formal charge, if the evidence so warrants, and thereafter to proceed with the formal investigation of the case. The formal investigation should be completed within three (3) calendar months from the date of receipt of the records of the case from the Commission. Within fifteen (15) days from the termination of the investigation, the disciplining authority shall render its decision; otherwise, the Commission shall vacate and set aside the appealed decision and declare respondent exonerated from the charge(s) against her, pursuant to Section 48, Rule III, Uniform Rules on Administrative Cases in the Civil Service.

The order of preventive suspension issued to Manahan is hereby declared **NULL AND VOID**. Thus, she should be paid the salaries and other benefits that should have accrued to her during the period of her preventive suspension.

The Director IV of the Civil Service Commission-National Capital Region (CSC-NCR) is hereby directed to monitor the implementation of this Resolution and submit a report to the Commission.[14]

PAGCOR's Motion for Reconsideration[15] was denied by the CSC via its Resolution No. 071779[16] dated September 10, 2007, prompting PAGCOR to file with public respondent CA a Petition for Review[17] under Rule 43 of the 1997 Rules of Civil Procedure with the following arguments: (1) the decision of the CSC was not supported by the evidence on record; and (2) the errors of law or irregularities attributed to the CSC were prejudicial to the interest of PAGCOR.

The Ruling of the CA

On October 2, 2008, the CA rendered the assailed Decision[18] affirming *in toto* the Resolutions of the CSC. The dispositive portion of the decision reads:

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

[15] *Id.* at 186-193.

[16] *Id.* at 210-214.

[17] *Id.* at 215-232.

[18] *Supra* note 2.

IN LIGHT OF ALL THE FOREGOING, the petition is **DENIED**. The assailed Resolutions of the Civil Service Commission dated 10 July 2007 and 10 September 2007 are **AFFIRMED *in toto***.

SO ORDERED.[19]

PAGCOR's Motion for Reconsideration[20] was denied by the CA *via* its Resolution[21] dated November 27, 2008.

The Present Petition

PAGCOR then filed the present Petition for *Certiorari* under Rule 65, assailing the rulings of the CA on the ground of grave abuse of discretion. The following arguments are presented to support the petition:

A. Public respondent CA acted with grave abuse of discretion in ruling contrary to its own precedent jurisprudence enunciated in the case of *Philippine Amusement and Gaming Corporation vs. Joaquin*,[22] wherein the validity of a Notice of Charges issued by a Senior Branch Manager of PAGCOR was upheld by the CA despite deficiencies in requirements under CSC rules;

B. The public respondent acted with grave abuse of discretion in ignoring that respondent Manahan was given the right to be heard; and

C. The public respondent acted with grave abuse of discretion in overlooking the undisputed facts supporting the petitioner's decision to dismiss respondent Manahan.

This Court's Ruling

After due study, this Court finds the petition bereft of merit.

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[19] *Rollo*, p. 37.

[20] *Id.* at 427-435.

[21] *Supra* note 3.

[22] CA-G.R. SP No. 93989, CA Decision dated July 12, 2007.

Before a party can resort to Rule 65 of the Rules of Court, there must be no other plain, speedy, and adequate remedy that is available to question the assailed ruling.

At the outset, we rule that the petitioner availed of the wrong remedy to question the rulings of public respondent CA considering that it had the opportunity to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Section 1 thereof provides:

Section 1. Filing of Petition with Supreme Court.

A **party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals**, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, **may file with the Supreme Court a verified petition for review on *certiorari***. The petition shall raise only questions of law which must be distinctly set forth. (emphasis supplied)

The period to file such petition, as provided in Section 2, Rule 45, is 15 days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. Since PAGCOR declares having received on December 2, 2008 a copy of the CA Resolution denying its Motion for Reconsideration, it had 15 days from the said date, or until December 17, 2008, within which to exercise the remedy of a petition for review on *certiorari* then available to it.

PAGCOR's resort to Rule 65 of the Rules of Court is thus misplaced. It is explicit in Section 1, Rule 65 that before a party can resort to this remedy, there must be no other plain, speedy and adequate remedy that is available to the petitioner to question the findings and rulings of the CA. It reads:

Section 1. Petition for *Certiorari*.

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of

jurisdiction, and **there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (emphasis supplied)

Thus, jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil action of *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[23] The proper remedy of the party aggrieved by a decision of the CA is a petition for review under Rule 45, which is not identical with a petition under Rule 65. Under Rule 45, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45.[24] One of the requisites of *certiorari* is that there is no available appeal or any plain, speedy and adequate remedy. Where an appeal was available, as in this case, *certiorari* will not prosper even if the ground therefor is grave abuse of discretion.[25]

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[23] *Catindig v. Vda. De Meneses*, G.R. No. 165851, February 2, 2011, 641 SCRA 350, 363.

[24] *Artistica Ceramica, Inc. v. Ciudad Del Carmen Homeowners' Association, Inc.*, G.R. Nos. 167583-84, June 16, 2010, 621 SCRA 22, 30.

[25] *San Pedro v. Asdala,* G.R. No. 164560, July 22, 2009, 593 SCRA 397, 402.

That the remedy of a Petition for Review on *Certiorari* was no longer available to PAGCOR at the time of filing of this petition is of no moment. Again, we emphasize that *certiorari* is not and cannot be a substitute for lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.[26] The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse.[27]

PAGCOR attempts to justify its resort to Rule 65 by reasoning that this petition does not involve a "novel question of law" required in appeals by *certiorari* under Rule 45. Rule 45, however, merely requires that there be a "question of law," which according to jurisprudence exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts,[28] as in this case. The rulings made by the CA and the issues now involved in this petition are on the application of the CSC rules and relevant jurisprudence on the right of the respondent to due process. While the case originally brought before the CSC delved on the grounds for the petitioner's decision to dismiss Manahan from the service, the issue now before us has become limited to the propriety and correctness of the case's remand to PAGCOR for further investigation after a finding of violation of the respondent's right to due process, a matter that involves the proper application of law and jurisprudence for its proper resolution.

In any case, even granting that this petition can be properly filed under Rule 65 of the Rules of Court, we hold that it is bound to fail. "Grave abuse of discretion" under Rule 65 has a specific meaning. It is the arbitrary or despotic exercise of

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[26] *Badillo v. Court of Appeals*, G.R. No. 131903, June 26, 2008, 555 SCRA 435, 452.

[27] *Id.* at 451.

[28] *New Rural Bank of Guimba (N.E.), Inc. v. Abad*, G.R. No. 161818, August 20, 2008, 562 SCRA 503, 509.

power due to passion, prejudice or personal hostility, or the whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[29] A review of the assailed rulings of the CA shows that it did not commit such grave abuse of discretion. On the contrary, its findings are supported by factual and legal bases.

From a valid dismissal from the government service, the requirements of due process must be complied with.

Citing CSC Resolution No. 99-1936 entitled "Uniform Rules on Administrative Cases in the Civil Service", particularly Section 16 thereof on the requirement of a formal charge in investigations, the appellate court correctly ruled that:

> As contemplated under the foregoing provision, a formal charge is a written specification of the charge(s) against an employee. While its form may vary, it generally embodies a brief statement of the material and relevant facts constituting the basis of the charge(s); a directive for the employee to answer the charge(s) in writing and under oath, accompanied by his/her evidence; and advice for the employee to indicate in his/her answer whether he/she elects a formal investigation; and a notice that he/she may secure the assistance of a counsel of his/her own choice. A cursory reading of the purported formal charge issued to Manahan shows that the same is defective as it does not contain the abovementioned statements, and it was not issued by the proper disciplining authority. Hence, under the foregoing factual and legal milieu, Manahan is not deemed to have been formally charged.[30]

Reference to CSC Resolution No. 99-1936 is proper, being the law applicable to formal charges in the civil service prior

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[29] *Beluso v. COMELEC*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[30] *Rollo*, pp. 32-33.

to the imposition of administrative sanctions. The requirements under Section 16 thereof are clear, as it provides:

> **Section 16**. *Formal Charge***.** – After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s) and a notice that he is entitled to be assisted by a counsel of his choice.
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> If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.
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> The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

Evidently, the petitioner failed to substantially comply with the requisite formal charge, as well as with the other requirements under CSC Resolution No. 99-1936 concerning the procedure for the conduct of an administrative investigation. What PAGCOR claims to be the formal charge it issued in compliance with the CSC rules was the memorandum addressed to Manahan under the subject "Preventive Suspension," which was issued by CF-Pavilion's Senior Branch Manager only, and which merely states, as follows:

> You are hereby informed of the charge against you of SERIOUS PROCEDURAL DEVIATION/GROSS NEGLIGENCE, arising from the anomalous fund transfer transaction in the amount of ₱4.2 million, consummated at the VIP Booth last April 14, 2004 wherein you were on the 6-2PM duty.[31]

[31] *Supra* note 6.

We find no reason to deviate from the appellate court's finding that a Senior Branch Manager is not among the company's disciplining authority, he or she being merely charged with the duty, among others, "to recommend disciplinary sanctions for violations of house rules and company policies and procedures."[32] The petitioner assails this finding and invokes the pronouncement of the CA in *Philippine Amusement and Gaming Corporation (PAGCOR) v. Joaquin*[33] to support its argument that a Senior Branch Manager is a competent disciplining authority. PAGCOR imputes grave abuse of discretion on the part of the CA in disregarding its own ruling in said case upholding the validity of the formal charge, issued also by a Senior Branch Manager. A perusal of the CA decision in *PAGCOR v. Joaquin* however reveals that the authority of a Senior Branch Manager to sign and issue a formal charge was not a matter raised in said case. The declaration of the Court against a "myopic interpretation of the legal requirement as to the issuance of a formal charge"[34] was made after it ordered the remand of the case by the CSC to PAGCOR for failure to meet two (2) requirements for a formal charge's validity, considering that: (1) the prescribed period given to respondent Joaquin to explain was only 48 hours, not 72, and (2) the notice failed to mention that the respondent was entitled to a lawyer. These requirements were declared remedied because exhaustive proceedings preceded the rendition by the PAGCOR BOD of its decision to dismiss Joaquin, together with the fact that she was allowed to be represented by two (2) counsels during the proceedings conducted by PAGCOR's Branch Management Panel.

The circumstances and procedural deficiencies are different in this case. It is worthy to note that the respondent herein had signified her desire to be represented by a counsel during the proceedings before PAGCOR, and even requested to be furnished with documents during the investigations then being

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[32] *Rollo*, p. 33.

[33] *Supra* note 22.

[34] *Id.* at 8.

conducted by the petitioner. Her requests were evidenced by her counsel's letter[35] dated April 19, 2004 to the PAGCOR's Head of Investigation Unit. Instead of allowing these reasonable requests of the respondent, PAGCOR, in its letter[36] dated April 26, 2004 to the respondent's counsel, replied that her requests deserved scant consideration, and were even premature, due to the following reasons:

> The presence of counsel is neither an antecedent nor indispensable element of administrative due process. In ***Sebastian, Sr. vs. Garchitorena*** **(G.R. No. 114028, October 18, 2000 [343 SCRA 463])**, Mr. Justice Sabino R. De Leon Jr. succinctly enunciated the *dictum* that:
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> "Entrenched is the rule that the rights provided in Section 12, Article III of the 1987 Constitution may be invoked only when a person is under 'custodial investigation' or is 'in custody investigation.' Custodial investigation has been defined as any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way.
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> "While an investigation conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such a body to furnish the person investigated with counsel. x x x
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> x x x x x x x x x
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> Ergo, **Manahan's counsel has neither right nor privilege to be furnished with any information gathered during the investigation. Although Ms. Manahan may be advised regarding the technical intricacies akin to the fact in issue, she may not be accompanied or represented by her lawyer during the investigation. This absolute prohibition is consistent with the internal rules and/or customary practice of PAGCOR. Hence, a lawyer stands as a mere bystander or a distant observer during all phases of the investigation process.**

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[35] *Rollo,* pp. 548-550.

[36] *Id.* at 551-554.

Needless to say, the witness' refusal to appear before the CIU shall be deemed a waiver of her right to be heard.[37] (emphasis supplied)

Thus, the petitioner did not refute Manahan's allegation in her Written Statement dated April 26, 2004 that she was not allowed to be assisted by counsel during the scheduled meeting with the CIU on April 23, 2004, when the CIU was to ask her questions and take her statement. This stance of PAGCOR was in clear disregard of the respondent's rights protected under the cited Section 16 of CSC Resolution No. 99-1936. While due process in an agency investigation may be limited as compared to due process in criminal proceedings, where however a statute specifically provides for a procedure and grants particular rights to a party under investigation such as in the investigations of persons covered by the Civil Service Rules, these rights shall not be utterly disregarded, especially so when invoked by the party under investigation, as was Manahan, because these rights already form part of a procedural due process.

The finding that PAGCOR failed to comply with the required procedure is further supported by the fact that in PAGCOR's letter dated April 26, 2004, it explained that the investigation process against the respondent had just commenced.[38] If this were the case, *i.e.*, that the investigation process had just began at that time, then the proceedings conducted by PAGCOR were clearly flawed, since a formal charge can be made only after a finding of *prima facie* case during investigations. Section 15 of CSC Resolution No. 99-1936 provides as follows:

Section 15. **Decision or Resolution After Preliminary Investigation**. If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow.

In the absence of a *prima facie* case, the complaint shall be dismissed.

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[37] *Id.* at 551-552.

[38] *Id.* at 3 and 553.

Even the filing by respondent Manahan of a motion for reconsideration of PAGCOR's decision to dismiss her from the service could not have cured the violation of her right to due process. After a clear denial of due process during the investigations, it was only through a decision that sufficiently apprised the respondent of the wrongful acts she supposedly committed and the rules she purportedly violated that Manahan could be able to truly defend herself. PAGCOR's letter dated June 2, 2004 to respondent Manahan on the BOD's decision to dismiss her from the service, again reproduced hereunder for emphasis, failed in this regard:

> Please be informed that the Board of Directors in its meeting on June 1, 2004, resolved to dismiss you from the service effective April 16, 2004 due to the following offense:
>
> "Gross neglect of duty; Violations of company rules and regulations; Conduct prejudicial to the best interests of the corporation; and Loss of trust and confidence; Failure to comply with Treasury rules and regulations which resulted in payment of a spurious Fund Transfer amounting to ₱4.2 Million last April 14, 2004."[39]

While a liberal construction of administrative rules of procedure is allowed and applied in some cases, this is resorted to when it can promote their objective and aid the parties in reaching a just, speedy and inexpensive determination of their respective claims and defenses.[40] Without proper investigation and, thereafter, a decision that clearly indicated the facts constituting the offense imputed upon the respondent and the company rules she supposedly violated, the respondent did not get the chance to sufficiently defend herself; and more importantly, the petitioner, the CSC and the courts could not have had the chance to reasonably ascertain the truth which the CSC rules aim to accomplish.

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[39] *Supra* note 10.

[40] *Civil Service Commission v. Colanggo,* G.R. No. 174935, April 30, 2008, 553 SCRA 640, 645.

This Court shall not delve into the sufficiency of grounds to justify the private respondent's dismissal from the service, as the said issue is among those for determination by PAGCOR following the remand of the case.

WHEREFORE, premises considered, the petition is hereby *DISMISSED*. The Decision dated October 2, 2008 and Resolution dated November 27, 2008 of the CA in CA-G.R. SP No. 100908 are hereby *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 186050. December 13, 2011]

ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR and BEVERLY LONGID, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, EDUARDO ERMITA, GILBERTO TEODORO, RONALDO PUNO, NORBERTO GONZALES, Gen. ALEXANDER YANO, Gen. JESUS VERZOSA, Brig. Gen. REYNALDO MAPAGU, Lt. P/Dir. EDGARDO DOROMAL, Maj. Gen. ISAGANI CACHUELA, Commanding Officer of the AFP-ISU based in Baguio City, PSS EUGENE MARTIN and several JOHN DOES,** *respondents.*

[G.R. No. 186059. December 13, 2011]

PRESIDENT GLORIA MACAPAGAL-ARROYO, SECRETARY EDUARDO ERMITA, SECRETARY GILBERTO TEODORO, SECRETARY RONALDO PUNO, SECRETARY NORBERTO GONZALES, GEN. ALEXANDER YANO, P/DGEN. JESUS VERZOSA, BRIG. GEN. REYNALDO MAPAGU, MAJ. GEN. ISAGANI CACHUELA and POL. SR. SUPT. EUGENE MARTIN, *petitioners, vs.* **ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR and BEVERLY LONGID,** *respondents.*

SYLLABUS

1. POLITICAL LAW; RULE ON THE WRIT OF AMPARO; EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES, ELUCIDATED. — The Rule on the Writ of *Amparo* was promulgated on October 24, 2007 amidst rising incidence of "extralegal killings" and "enforced disappearances." It was formulated in the exercise of this Court's expanded rule-making power for the protection and enforcement of constitutional rights enshrined in the 1987 Constitution, albeit limited to these two situations. "Extralegal killings" refer to killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, "enforced disappearances" are attended by the following characteristics: an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such person outside the protection of law.

2. ID.; ID.; JUDGMENT; PRIVILEGE OF THE WRIT REQUIRES THAT THE ALLEGATIONS BE PROVEN BY SUBSTANTIAL EVIDENCE. — Section 18 of the *Amparo* Rule provides: SEC. 18. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are **proven by substantial**

evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

3. ID.; ID.; ENFORCED DISAPPEARANCES; EVIDENTIARY STANDARD NOT FULFILLED BY MERE DOCUMENTED PRACTICE OF TARGETING ACTIVISTS IN THE MILITARY'S COUNTER-INSURGENCY PROGRAM. — We hold that documented practice of targeting activists in the military's counter-insurgency program by itself does not fulfill the evidentiary standard provided in the *Amparo* Rule to establish an enforced disappearance. In the case of *Roxas v. Macapagal-Arroyo*, the Court noted that the similarity between the circumstances attending a particular case of abduction with those surrounding previous instances of enforced disappearances does not, necessarily, carry sufficient weight to prove that the government orchestrated such abduction. Accordingly, the trial court in this case cannot simply infer government involvement in the abduction of James from past similar incidents in which the victims also worked or affiliated with the CPA and other left-leaning groups.

4. ID.; ID.; AMPARO PROCEEDINGS; THAT THE DOCTRINE OF COMMAND RESPONSIBILITY HAS LITTLE BEARING THEREIN; ELUCIDATED. — It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. **Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo.** In other words**, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed**. As the Court stressed in *Secretary of National Defense v. Manalo* (*Manalo*), the writ of amparo was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights

to life, liberty, and security of persons; the corresponding amparo suit, however, "is not an action to determine criminal guilt requiring proof beyond reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings." Of the same tenor, and by way of expounding on the nature and role of amparo, is what the Court said in *Razon v. Tagitis*: It does not determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extrajudicial killings]**; it determines *responsibility*, or at least *accountability*, for the enforced disappearance [threats thereof or extrajudicial killings] for purposes of imposing the appropriate remedies to address the disappearance [or extrajudicial killings].** x x x Subsequently, we have clarified that the inapplicability of the doctrine of command responsibility in an *amparo* proceeding does not, by any measure, preclude impleading military or police commanders on the ground that the complained acts in the petition were committed with their direct or indirect acquiescence. Commanders may therefore be impleaded—not actually on the basis of command responsibility—but rather on the ground of their **responsibility**, or at least **accountability**.

5. ID.; ID.; ID.; ID.; RESPONSIBILITY AND ACCOUNTABILITY AS APPLIED TO AMPARO PROCEEDINGS. — In *Razon, Jr. v. Tagitis*, the Court defined **responsibility** and **accountability** as these terms are applied to *amparo* proceedings, as follows: x x x **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to **the measure of remedies that should be addressed to those** who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who **carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance**. x x x

6. ID.; ID.; ACTIONS TAKEN BY RESPONDENT OFFICIALS ON THE DISAPPEARANCE OF JAMES BALAOS ARE VERY LIMITED, SUPERFICIAL AND ONE-SIDED, NOT EXCUSED BY ALLEGED NON-COOPERATION OF PETITIONERS. — [W]e agree with the trial court in finding that the actions taken by respondent officials are "very limited, superficial and one-sided." x x x Respondents reiterate that they did their job the best they could and fault the petitioners instead for their non-cooperation which caused delay in the investigation. They particularly blamed Beverly who failed to attend the October 15, 2008 invitation to appear before the investigators and shed light on James's disappearance. x x x [S]uch non-cooperation provides no excuse for respondents' incomplete and one-sided investigations. As we held in *Rubrico v. Macapagal-Arroyo:* x x x **As police officers, though, theirs was the duty to thoroughly investigate the abduction of Lourdes, a duty that would include looking into the cause, manner, and like details of the disappearance; identifying witnesses and obtaining statements from them; and following evidentiary leads**, x x x **and securing and preserving evidence related to the abduction and the threats that may aid in the prosecution of the person/s responsible**. x x x **The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end**. To repeat what the Court said in *Manalo*, **the right to security of persons is a guarantee of the protection of one's right by the government. And this protection includes conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind.** x x x "[The duty to investigate] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, **not a step taken by private interests that depends upon the initiative of the victim** or his family or upon offer of proof, without an effective search for the truth by the government."

7. ID.; ID.; ID.; FURTHER INVESTIGATION BY THE PNP AND CIDG, AND MONITORING OF THEIR INVESTIGATIVE ACTIVITIES BY THE TRIAL COURT, NECESSARY TO COMPLY WITH THE STANDARD OF DILIGENCE REQUIRED IN THE AMPARO RULE. — As to the matter of dropping

President Arroyo as party-respondent, though not raised in the petitions, we hold that the trial court clearly erred in holding that presidential immunity cannot be properly invoked in an *amparo* proceeding. As president, then President Arroyo was enjoying immunity from suit when the petition for a writ of *amparo* was filed. Moreover, the petition is bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

8. ID.; ID.; PRESIDENTIAL IMMUNITY FROM SUIT, APPLIED. — In order to effectively address thru the *amparo* remedy the violations of the constitutional rights to liberty and security of James who remains missing to date, the Court deems it appropriate to refer this case back to the trial court for further investigation by the PNP and CIDG and monitoring of their investigative activities that complies with the standard of diligence required by the *Amparo* Rule. Section 24 of Republic Act No. 6975, otherwise known as the "PNP Law" specifies the PNP as the governmental office with the mandate to "[i]nvestigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution." The trial court should further validate the results of such investigations and actions through hearings it may deem necessary to conduct.

9. ID.; ID.; INSPECTION ORDER AND PRODUCTION ORDER IN AMPARO PETITION; PLACE TO BE INSPECTED MUST BE REASONABLY DETERMINABLE, AND PRODUCTION ORDER MUST NOT BE PREDICATED ON BARE ALLEGATIONS. — An inspection order is an interim relief designed to give support or strengthen the claim of a petitioner in an *amparo* petition, in order to aid the court before making a decision. A basic requirement before an *amparo* court may grant an inspection order is that the place to be inspected is reasonably determinable from the allegations of the party seeking the order. In this case, the issuance of inspection order was properly denied since the petitioners specified several military and police establishments based merely on the allegation that the testimonies of victims and witnesses in *previous* incidents of similar abductions involving activists disclosed that those premises were used as detention centers. In the same vein, the prayer for issuance of a production order was predicated on petitioners' bare allegation that it obtained confidential

information from an unidentified military source, that the name of James was included in the so-called Order of Battle. Indeed, the trial court could not have sanctioned any "fishing expedition" by precipitate issuance of inspection and production orders on the basis of insufficient claims of one party. Nonetheless, the trial court is not precluded, as further evidence warrants, to grant the above interim reliefs to aid it in making a decision upon evaluation of the actions taken by the respondents under the norm of extraordinary diligence.

SERENO, *J., dissenting opinion:*

1. POLITICAL LAW; WRIT OF AMPARO; SERVES PREVENTIVE AND CURATIVE ROLES ON PROBLEMS OF EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES. — [T]his Court emphasized in the landmark case of *Secretary of National Defense v. Manalo*, [that] the writ of *amparo* serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.

2. ID.; ID.; PRESCRIBED SUBSTANTIAL EVIDENCE MUST BE FLEXIBLE AS TO CONSIDER EVIDENCE ADDUCED IN ITS TOTALITY; RULING IN *RODRIGUEZ V. HONDURAS*, NOTED. — Section 17 of the Rule on the Writ of *Amparo* prescribes the threshold of substantial evidence as necessary for establishing the claims of petitioners in G.R. No. 186050. While the substantial evidence rule remains the standard in *amparo* proceedings, flexibility should be observed. Courts must consider evidence adduced in its totality, including that which would otherwise be deemed inadmissible if consistent with the admissible evidence adduced. The ruling of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras* is worth noting. In that case, the tribunal found that once a pattern or practice of enforced disappearances supported or tolerated by the government is established, a present case of disappearance may be linked to that practice and proven through circumstantial evidence or logical inference. x x x

Following *Velasquez Rodriguez,* it may be established that enforced disappearances or extrajudicial killings naturally follow after a group's political classification and/or vilification as communist. In the case at bar, the majority opinion already took judicial notice that once the military perceives an organization to be a communist front, the latter will automatically be considered as an enemy of the State and, therefore, a target for liquidation.

3. ID.; ID.; DOCTRINE OF COMMAND RESPONSIBILITY; RECONCILED WITH THE STANDARD OF RESPONSIBILITY AND ACCOUNTABILITY IN THE CASE OF *BOAC V. CADAPAN,* TO BE USED IN AMPARO PROCEEDINGS. — It must be pointed out that the doctrine of command responsibility is not mutually exclusive with the standard of responsibility and accountability in *amparo* cases. *Boac v. Cadapan* gives guidance as to how the ostensible difference between command responsibility, on the one hand, and responsibility and accountability, on the other, can be reconciled as follows: [C]ommand responsibility may be loosely applied in amparo cases in order to ***identify those accountable individuals that have the power to effectively implement whatever processes an amparo court would issue***. In such application, the amparo court does not impute criminal responsibility but merely ***pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party***. Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency. x x x [T]he doctrine of command responsibility may be used in *amparo* proceedings to the extent of identifying the superiors accountable for the enforced disappearance or extrajudicial killing, and those who may be directed to implement the processes and reliefs in the *amparo* case.

4. ID.; ID.; FAILURE TO CONDUCT AN EFFECTIVE OFFICIAL INVESTIGATION MAKES THE RESPONDENT GOVERNMENT OFFICIALS RESPONSIBLE FOR THE ENFORCED DISAPPEARANCE IN CASE AT BAR. — A faithful interpretation of the Rule on the Writ of *Amparo,* as well as existing jurisprudence, supports the contention that the failure to conduct an effective official investigation is precisely the reason why respondents in G.R. No. 186059 should be held responsible or accountable for

the enforced disappearance of Balao. Section 1 of the Rule on the Writ of *Amparo* is clear that a violation of or threat to the right to life, liberty and security may be caused by either an act or an **omission** of a public official. In our jurisprudence on the writ of *amparo*, responsibility may refer to respondents' participation – by action or *omission* – in enforced disappearance, while accountability may attach to respondents who are **imputed with knowledge** relating to the enforced disappearance and who **carry the burden of disclosure**; or those who **carry, but have failed to discharge, the burden of extraordinary diligence in the investigation** of the enforced disappearance. Squarely passed upon in this Court's ruling in *Rodriguez* was the issue of whether the failure to conduct fair and effective investigation amounts to a violation of or threat to the right to life, liberty and security, *viz*: x x x Following the ruling in *Rodriguez*, an explicit finding by the majority that respondents conducted a superficial and ineffective investigation should be enough basis to hold them responsible or accountable for the disappearance of Balao under the Rule on the Writ of *Amparo*.

5. ID.; ID.; PRESIDENTIAL IMMUNITY; NON-SITTING PRESIDENT DOES NOT ENJOY IMMUNITY FROM SUIT FOR ACTS COMMITTED DURING HIS/HER TENURE.— The majority Decision states that former President Gloria Macapagal-Arroyo (former President Arroyo) should have been accorded presidential immunity, as she was the incumbent President when the present Petitions were filed. This position is not in accord with the ruling of this Court in *Estrada v. Desierto*, in which it was explicitly held that a non-sitting President does not enjoy immunity from suit **even for acts committed during the latter's tenure.** x x x In this Court's Resolution in *Estrada v. Desierto*, it was emphasized that presidential immunity from suit **exists only in concurrence with the President's incumbency**. x x x In the present case, the filing of the Petitions during the incumbency of former President Arroyo should not be a reason for according her presidential immunity. Thus, it would be legally imprecise to dismiss the present case as against former President Arroyo on account of presidential immunity from suit.

APPEARANCES OF COUNSEL

Reynaldo Cortes, Cheryl L. Daytec-Yangot, Mary Ann M. Bayang, Jennifer Asuncion and *Rex Lampa* for Arthur Balao, *et al.*

The Solicitor General for Cong. Gloria Macapagal-Arroyo, *et al.*

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are consolidated appeals under Section 19 of the Rule on the Writ of *Amparo* from the January 19, 2009 Judgment[1] of the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 63, in Special Proceeding No. 08-AMP-0001, entitled "*In the Matter of the Petition for Issuance of Writ of Amparo in favor of James Balao, Arthur Balao, et al. v. Gloria Macapagal-Arroyo, et al.*" The RTC granted the petition for the writ of *amparo* but denied the prayer for issuance of inspection, production and witness protection orders.

The Antecedents

On October 8, 2008, Arthur Balao, Winston Balao, Nonette Balao and Jonilyn Balao-Strugar, siblings of James Balao, and Beverly Longid (petitioners), filed with the RTC of La Trinidad, Benguet a Petition for the Issuance of a Writ of *Amparo*[2] in favor of James Balao who was abducted by unidentified armed men on September 17, 2008 in Tomay, La Trinidad, Benguet. Named respondents in the petition were then President Gloria Macapagal-Arroyo, Executive Secretary Eduardo R. Ermita, Defense Secretary Gilberto C. Teodoro, Jr.,Interior and Local Government Secretary Ronaldo V. Puno, National Security Adviser (NSA) Norberto B. Gonzales, Armed Forces of the

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[1] *Rollo* (G.R. No. 186050), Vol. I, pp. 26-38. Penned by Judge Benigno M. Galacgac.

[2] Records, Vol. I, pp. 1-33.

Philippines (AFP) Chief of Staff Gen. Alexander B. Yano, Philippine National Police (PNP) Police Director General Jesus A. Verzosa, Philippine Army (PA) Chief Brig. Gen. Reynaldo B. Mapagu, PNP Criminal Investigation and Detection Group (PNP-CIDG) Chief Lt. P/Dir. Edgardo Doromal, Northern Luzon Command (NOLCOM) Commander Maj. Gen. Isagani C. Cachuela, PNP-Cordillera Administrative Region Regional Director Police Senior Supt. Eugene Gabriel Martin, the Commanding Officer of the AFP Intelligence Service Unit (AFP-ISU) based in Baguio City and several John Does.

James M. Balao is a Psychology and Economics graduate of the University of the Philippines-Baguio (UP-Baguio). In 1984, he was among those who founded the Cordillera Peoples Alliance (CPA), a coalition of non-government organizations (NGOs) working for the cause of indigenous peoples in the Cordillera Region. As head of CPA's education and research committee, James actively helped in the training and organization of farmers. He was also the President of Oclupan Clan Association which undertakes the registration and documentation of clan properties to protect their rights over ancestral lands. In 1988, while working for the CPA, he was arrested on the charge of violation of the Anti-Subversion Law but the case was eventually dismissed for lack of evidence.

The testimonies and statements of eyewitnesses established the following circumstances surrounding James's disappearance:

On September 17, 2008, at around 8:30 in the morning, a man clad in black jacket, black shirt, black visor and gray pants was standing infront of Saymor's[3] Store at Tomay, La Trinidad, Benguet. He had a belt bag and a travelling bag which was placed on a bench. Vicky Bonel was at the time attending to the said store owned by her brother-in-law while Aniceto G. Dawing, Jr. and his co-employee were delivering bakery products thereat. A white van then arrived and stopped infront of the

[3] Referred to as Seymor's, Saymor, Saymore and Seymour's elsewhere in the records.

store. Five men in civilian clothes who were carrying firearms alighted from the van and immediately approached the man poking their guns on him. They grabbed and handcuffed him. The man was asking why he was being apprehended. One of the armed men addressed the people witnessing the incident, saying they were policemen. Another warned that no one should interfere because the man was being arrested for illegal drugs. Thereafter, they pushed the man inside the van. One of the armed men went back to the store to get the man's travelling bag. Before leaving the place, one of the armed men was also heard telling the driver of the van that they are going to proceed to Camp Dangwa (PNP Provincial Headquarters in La Trinidad, Benguet). The van headed towards the direction of La Trinidad town proper. The witnesses later identified the man as James Balao after seeing his photograph which appeared in posters announcing him as missing.

The petition alleged that in May 2008, James reported surveillances on his person to his family, particularly to his sister Nonette Balao (Nonette), and to CPA Chairperson Beverly Longid (Beverly). James supposedly observed certain vehicles tailing him and suspiciously parked outside his residence, one of which was a van with plate number USC 922. He also claimed to have received calls and messages through his mobile phone informing him that he was under surveillance by the PNP Regional Office and the AFP-ISU. To prove the surveillance, the informer gave the exact dates he visited his family, clothes he wore, and dates and times he goes home or visits friends and relatives. Attached to the petition were the affidavits[4] of Nonette and Beverly attesting to James's reports of surveillance to his family and to the CPA.

It was further alleged that on September 17, 2008, around 7:00 in the morning, James sent a text message to Nonette informing her that he was about to leave his rented house in Fairview Central, Baguio City and that he was going to their ancestral residence in Pico, La Trinidad, Benguet to do his

[4] Records, Vol. I, pp. 56-64.

laundry. The travel time from Fairview, Baguio City to Pico usually takes only 20 to 45 minutes. Around 8:00 a.m., Nonette, after discovering that James never reached their parents' house at Pico, started contacting their friends and relatives to ask about James's whereabouts. No one, however, had any idea where he was.

Thus, the Balao family, with the assistance of the CPA and other NGOs, tried to locate James. Teams were formed to follow James's route from Fairview, Baguio City to Pico, La Trinidad and people along the way were asked if they happened to see him. These searches, however, yielded negative results. One of the teams also went to the office of the AFP-ISU (PA-ISU) in Navy Base and the office of the Military Intelligence Group in Camp Allen, both in Baguio City, but the personnel in said offices denied any knowledge on James's whereabouts. The family likewise went to Baguio Police Station 7 to report James's disappearance. The report was duly entered on the blotter but there have been no developments as of the filing of the petition. They also sought the help of the media to announce James's disappearance and wrote several government agencies to inform them of his disappearance and enlist their help in locating him.

Petitioners, moreover, enumerated in their petition several incidents of harassments and human rights violations against CPA officers, staff and members.

Contending that there is no plain, speedy or adequate remedy for them to protect James's life, liberty and security, petitioners prayed for the issuance of a writ of *amparo* ordering the respondents to disclose where James is detained or confined, to release James, and to cease and desist from further inflicting harm upon his person. They likewise prayed for (1) an inspection order for the inspection of at least 11 military and police facilities which have been previously reported as detention centers for activists abducted by military and police operatives; (2) a production order for all documents that contain evidence relevant to the petition, particularly the Order of Battle List and any record or dossier respondents have on James; and (3) a witness protection order.

Petitioners simultaneously filed an Urgent *Ex-Parte* Motion[5] for the immediate issuance of a writ of *amparo* pursuant to Section 6 of the Rule on the Writ of *Amparo*.

On October 9, 2008, the Writ of *Amparo*[6] was issued directing respondents to file their verified return together with their supporting affidavit within five days from receipt of the writ.

Respondents in their Joint Return[7] stated: (1) that President Gloria Macapagal-Arroyo is immune from suit and should thus be dropped as party-respondent; (2) that only Arthur Balao should be named petitioner and the rest of the other petitioners dropped; (3) that there is no allegation of specific wrongdoing against respondents that would show their knowledge, involvement or participation in the abduction of James; (4) that Exec. Sec. Ermita, Sec. Teodoro, Sec. Puno, Sec. Gonzales, Gen. Yano, Gen. Cachuela, Gen. Mapagu and Gen. Verzosa in their respective affidavits denied having such participation or knowledge of James's abduction, set forth their actions taken in investigating the matter and undertaking to continue exerting extraordinary diligence in securing the liberty of James and bring all those responsible for his disappearance to the bar of justice, including military or police personnel when warranted by the findings of the investigations; (5) that Supt. Martin already ordered an investigation, came up with interviews of several witnesses, and held a dialogue with the Commander of the Military Intelligence Group I (MIG1) and the Commanding Officer of the Internal Service Unit-Internal Security Group, Philippine Army;and (6) that petitioners themselves did not cooperate with police authorities in the investigation and neither did they ask the National Bureau of Investigation to locate James.

Respondents contended that the petition failed to meet the requirement in the Rule on the Writ of *Amparo* that claims must be established by substantial evidence considering that:

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[5] *Id.* at 138-140.

[6] *Id.* at 141-142.

[7] *Id.* at 196-240.

(1) petitioners' allegations do not mention in anyway the manner, whether directly or indirectly, the alleged participation of respondents in the purported abduction of James; (2) Nonette and Beverly do not have personal knowledge of the circumstances surrounding the abduction of James, hence, their statements are hearsay with no probative value; and (3) the allegations in the petition do not show the materiality and relevance of the places sought to be searched/inspected and documents to be produced, specifically the requirement that the prayer for an inspection order shall be supported by affidavits or testimonies of witnesses having personal knowledge of the whereabouts of the aggrieved party.

Respondents further argued that it is the PNP as the law enforcement agency, and not the respondent military and executive officials, which has the duty to investigate cases of missing persons. At most, the AFP may inquire on the matters being alluded to them as may be ordered by the proper superior, which is primarily done for possible court martial proceedings. Hence, their common denials of having any knowledge, participation or authorization for the alleged disappearance of James Balao. Nonetheless, respondents executed their affidavits to show the actions they have taken and reports submitted to them by the proper authorities, as follows:

Executive Secretary Ermita stated that upon receipt of copy of the petition for a writ of *amparo*, he caused the issuance of a letter addressed to the PNP Chief and AFP Chief of Staff for the purpose of inquiring and establishing the circumstances surrounding the alleged disappearance of James Balao, and which letters also called for the submission of pertinent reports on the results of the investigation conducted, if any.[8]

Secretary Teodoro declared that soon after the promulgation by this Court of the Rule on the Writ of *Amparo*, he issued "Policy Directive on the Actions and Defenses Under the *Amparo* Rule" which instructed members of the AFP to undertake specific

[8] *Id.* at 327-328.

measures even without waiting for the filing of an *amparo* petition in court whenever any member of the AFP or any of its commands or units have been reported or published as being involved in the alleged violation of an individual's right to life, liberty and security or threat thereof, as a preparatory step in the filing of a verified return as required by A.M. No. 07-9-12-SC. The AFP was therein also directed to immediately coordinate with the PNP, NBI, DOJ and other government agencies in the attainment of the desired actions in the event a petition is filed. Said policy directive was contained in his Memorandum dated October 31, 2007 to the Chief of Staff, AFP, and there is no reason for him to doubt that the AFP will comply with it insofar as the present petition for writ of *amparo* is concerned.[9]

Secretary Puno confirmed receipt of a copy of the petition and said he will write to the PNP Chief to call for pertinent reports relative to the circumstances of the alleged "taking" of the person in whose favor the writ of *amparo* was sought. He undertook to make available any report he will receive from the PNP on the matter.[10]

NSA Gonzales asserted that as a public officer, he is presumed to have performed his duties in accordance with law, which presumption remains undisturbed amid gratuitous assumptions and conclusions in the petition devoid of factual and legal basis. Upon receipt of a copy of the petition, he caused to be issued letters/communications to the Director General of the National Intelligence Coordinating Agency, the PNP Chief and the AFP Chief of Staff for the purpose of making active inquiries and establishing the circumstances of the alleged disappearance insofar as the possible involvement of military/police personnel is concerned. He undertook to provide the material results of investigations conducted or to be conducted by the concerned agencies.[11]

General Yano narrated that prior to the receipt of a copy of the petition, he received a memorandum from the Department of

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[9] *Id.* at 340-344.

[10] *Id.* at 345-346.

[11] *Id.* at 347-351.

National Defense transmitting the letter of Bayan Muna Representative Teodoro A. Casiño inquiring about the alleged abduction of James Balao. On the basis of said memo, he directed by radio message the NOLCOM Commander to conduct a thorough investigation on the matter and to submit the result thereof to the AFP General Headquarters. This was also done in compliance with the Policy Directive issued by Defense Secretary Teodoro. He reiterated his October 6, 2008 directive to the PA Commanding General in another radio message dated October 16, 2008. He undertook to provide the court with material results of the investigations conducted by the concerned units as soon as the same are received by Higher Headquarters.[12]

Lt. Gen. Cachuela said that even prior to the receipt of a copy of the petition, he was already directed by Higher Headquarters to conduct a thorough investigation on the alleged abduction of James Balao. Acting on said directive, he in turn directed the 5th Infantry Division, PA to investigate the matter since the place of the commission of the abduction is within its area of responsibility. He undertook to furnish the court with a copy of the result of the investigation conducted or to be conducted, as soon as NOLCOM receives the same.[13]

BGen. Mapagu on his part declared that there is nothing in the allegations of the petition that would show the involvement of the PA in the reported disappearance of James Balao. He claimed that he immediately called the attention of the "concerned staff" to give some information regarding the case and directed them to submit a report if they are able to obtain information.[14]

Pol. Dir. General Verzosa set forth the actions and steps taken by the PNP, particularly the PNP Regional Office-Cordillera (PRO-COR) headed by PCSupt. Eugene Martin, being the lead PNP unit investigating the case of James Balao.[15]

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[12] *Id.* at 352-358.

[13] *Id.* at 359-365.

[14] *Id.* at 366.

[15] *Id.* at 367-372.

Pol. Chief Supt. Martin recounted that in the afternoon of September 17, 2008, CPA Chairperson Beverly Longid called up and informed him of the disappearance of James. On September 20, 2008, he was informed that James was allegedly missing and immediately ordered the Office of the Regional Intelligence Division (RID) to send flash alarm to all lower units to look for and locate James Balao. This was followed by a Memorandum with his picture and description. Upon his orders, Police Station 1 of the Baguio City Police Office (BCPO) immediately conducted inquiries at the boarding house of James at Barangay Fairview, Baguio City. Likewise, he ordered the creation of Task Force Balao to fast track the investigation of the case. He further instructed the RID to exert all efforts and supervise all lower units to intensify their investigation and ascertain the whereabouts and other circumstances surrounding the disappearance of James. Results of the investigations conducted were set forth in his affidavit. He had constant coordination with the CPA leaders and Balao family who divulged the plate numbers of vehicles allegedly observed by James prior to his disappearance as conducting surveillance on his person. Upon verification with the Land Transportation Office, the said vehicles were found to be registered under the following persons: TNH 787 – Narciso Magno of #20 Darasa, Tanauan, Batangas; and USC 922 – G & S Transport Corp. On October 6, 2008, he received information regarding an abduction incident in Tomay, La Trinidad whereupon he ordered the Provincial Director of Benguet to conduct an in-depth investigation; said investigation disclosed that the person abducted was indeed James. On October 8, 2008, Task Force Balao with the help of the CPA and Balao family were able to convince two witnesses in the abduction incident in Tomay, La Trinidad, Benguet to shed light on the incident; as a result, cartographic sketches of the suspects were made. In the morning of October 9, 2008, he presided over a dialogue which was attended by the Group Commander, MIG1 and Commanding Officer of ISU, ISG and PA, for the coordinated efforts to locate James. In the afternoon of the same day, he met with the family and relatives of James to inform them of initial efforts and investigation of the case. The

Task Force Balao was also able to secure the affidavits of witnesses Aniceto Dawing and Vicky Bonel, and invited some members of the CPA who retrieved James's personal belongings in Fairview, Baguio City and his companions prior to his disappearance on September 17, 2008 to appear before the Task Force Balao for some clarifications but none of them appeared. The case is still under follow-up and continuing investigation to know what really happened, identify the abductors, determine the real motive for the abduction and file the necessary charges in court against those responsible.[16]

Also attached to the Return are the more detailed reports (with attached affidavits of other witnesses) dated October 14, 2008 and October 6, 2008 submitted by Task Force Balao Commander P/S Supt. Fortunato B. Albas to the PNP Cordillera Regional Director. Pertinent portions of the two reports read:

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2. Inquiries conducted from Mr. Zusimo Unarosa, a resident of Nr 126, Purok 3, Central Fairview, Baguio City, claimed that on the 1st week of September 2008, he frequently observed two (2) unidentified male persons aged 50-70 years old and about 5'1" to 5'5" in height, bringing boxes from the house, the contents of which could not be determined. However, averred that these two (2) male personalities are not familiar in the *barangay*. He further stated that he had never seen a van conducting surveillance on the house and have not heard of any incident of kidnapping or abduction in the community.

3. Mr[.] Anselmo Alukim, a neighbor, residing adjacent to the house of the subject, when interviewed, averred that he observed some unidentified male and female persons visiting the said house.

4. Interview conducted on Mr[.] Danny Griba, a resident of said *barangay* averred that James Balao is not a resident or occupant of the said house and claimed that he only saw the subject last summer and stated there are five (5) unidentified persons occupying the said house. He further stated that three (3) male persons aged 40 to 50

[16] *Id.* at 248-250.

years old and a female aged between 20-30 years old goes out during day time with several boxes and returns at about 6:00 PM to 7:00 PM on board a taxi cab again with some boxes of undetermined contents.

5. Mrs[.] Corazon Addun, resident of Nr 114, Purok 3, Central Fairview, Baguio City averred that the subject is not residing in the said place and saw him only once, sometime on April 2008. She further narrated that a certain Uncle John aged 40 to 50 years old and a male person aged 20 to 30 are among the occupants of said house. Accordingly, on September 21, 2008, Uncle John went to the house of Mrs. Addun and over a cup of coffee told her that he will be going to Sagada, Mountain Province purposely to locate a missing colleague who was sent there. Accordingly[,] he received a phone call that his missing colleague (James Balao) did not reach the municipality and reported missing. After that short talk, she never saw Uncle John again. Additionally, she did not notice any vehicle conducting surveillance therein and any unusual incidents that transpired in said place.

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7. This office has likewise coordinated with MIG-1 and ISU, ISG, PA but both offices denied any knowledge on the alleged abduction of James Balao.

8. It was found out that it was SPO4 Genero Rosal, residing within the vicinity, who followed-up the incident because it was reported to him by his neighbors. That after he learned about [James' abduction], he contacted PDEA, La Trinidad PS, RID ad Intel BPPO to verify if they had an operation in Tomay, La Trinidad but all of them answered negative.

xxx xxx xxx[17]

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3. A photocopy of the photograph of James Balao was presented to the witnesses wherein they confirmed that the picture is the same person who was arrested and handcuffed. Another witness divulged that prior to the arrest of the person in the picture/photograph, a red motorcycle with two (2) male riders allegedly conducted surveillance

[17] *Id.* at 259-260.

along the highway about ten (10) meters away from the place where the victim was picked-up. Minutes later, a white Mitsubishi Adventure arrived and took the victim inside the car. The motorcycle riding in tandem followed the Mitsubushi Adventure en route to Camp Dangwa, La Trinidad, Benguet. Another witness overheard one of the abductors instructing the driver to quote "*pare sa* Camp Dangwa *tayo*."

4. Follow[-]up investigation resulted in the identification of a certain "KULOT" who also witnessed the alleged abduction. However, he was hesitant to talk and instead pointed to the driver of the delivery van of Helen's Bread. At about 8:30 AM of October 9, 2008, Aniceto Dawing Jr[.] *y* Gano, the driver of the delivery van of Helen's Bread, surfaced and gave his statements on what he witnessed on the alleged abduction.

5. On October 12, 2008, one Vicky Bonel *y* Felipe, 19 years old, single, native of Atok, Benguet, resident of Tomay, LTB and store keeper of Saymor[']s] Store appeared before the office of Benguet PPO and gave her sworn statement on the alleged abduction. A cartographic sketch was made on the person who identified himself as policeman. She further stated that it was when while she was tending her brother-in-law's store, gun-wielding men, of about six or more, handcuffed and shove the victim inside their vehicle. She recalled that she can recognize the abductors if she can see them again.

6. Another witness stated that she was preparing her merchandise in the waiting shed of Lower Tomay when she noticed a parked motorcycle beside the elementary school at about 7:00 AM of September 17, 2008. The rider of the bike was suspiciously scouring the area and kept on calling someone from his cellular phone before the abduction was made.

7. Baguio City Police Office conducted follow-up investigation and were able to secure affidavit of Florence Luken *y* Mayames, 47 years old, married, and a resident of 135 Central Fairview averred that James Balao together with a certain Uncle John about 65-75 years old, about 5'4" in height and a certain Rene about 30-35 years old and stands 5'5", were her neighbors for almost one year. She further stated that James Balao and company do not mingle with their neighbors and only one person is usually left behind while James and Rene goes out at 6:00 or 7:00 AM and goes back at around 6:00 or 7:00 PM.

She further averred that she did not notice any van or any kind of vehicle parked along the roadside infront of any residence not his neighbors nor any person or persons observing the occupants of the said house. Accordingly, at around 1:00 PM of September 26, 2008, a closed van (Ca[n]ter) with unknown plate number was seen parked infront of the said house and more or less (10) unidentified male person[s] aging from 20-23 and an unidentified female entered the alleged rented house of James Balao and took some table, chairs and cabinets then left immediately to unknown destination.

8. Mrs[.] Mina Cabati Serdan the owner of the house being rented by James Balao averred that sometime May of 2007, a certain Mr[.] June, a realtor agent, recommended to her that a certain James Balao will rent the house for one (1) year term with an agreed monthly rent of fifteen thousand pesos (₱15,000.00). She stated that James Balao had extended his stay for almost 4 months. On the last week of August 2008, Mrs[.] Serdan called up James Balao through phone to inform him that she will terminate his stay at the rented house on September 30, 2008. Mrs[.] Serdan further stated that [she]visited the rented house only twice and that was the only time she saw James Balao with an unidentified companions.

That she only discovered that James Balao was missing when a certain Carol informed her that he was missing. [Sh]e further stated that she visited her house and found out that the said occupants have already left on September 26, 2008 and discovered that all personal belongings of the occupants have already been taken out by the relatives.

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VI. ACTIONS TAKEN:

1. That a composite team "TASK FORCE BALAO" from this office and the Regional Headquarters headed by [P/S SUPT] FORTUNATO BASCO ALBAS was formed.

2. That the composite team of investigators conducted ocular inspection on the area.

3. On October 8, 2008, two (2) witnesses namely: Marjore Domingo Hipolito and Jenny Lynn Malondon Valdez gave their sworn statements and cartographic sketch of one of the abductors.

4. On the morning of October 9, 2008, a dialogue was presided by RD, PRO-COR and attended by the Group Commander, MIG1

and Commanding Officer of ISU, SG, PA. Both commanders denied the accusations against them.

5. In the afternoon of the same day, a meeting with the family and relatives of James Balao was again presided by RD, PRO-COR wherein the results of the initial efforts and investigation were given to the family. He also reported the surfacing of another two (2) witnesses who described the suspect who handcuffed James Balao.

6. PRO-Cordillera wrote a letter to the Cordillera Peoples Alliance requesting them to present Uncle John, Rene and his other companions who are then residing in the same boarding house including all his companions on September 17, 2008 and prior to his disappearance.

REMARKS:

Case is still under follow-up investigation to identify the alleged abductors to determine the real motive of the abduction and to file necessary charges against them in court.[18]

During the hearing, the affidavits and testimonies of the following witnesses were presented by petitioners:

Aniceto Dawing[19] testified that on September 17, 2008, around 8:00 in the morning, while he was delivering bread at Saymor's Store in Tomay, La Trinidad, Benguet, a white van stopped infront of them and five armed men alighted. The armed men, who introduced themselves as policemen in Filipino, held and pointed a gun at one male person. The armed men told the male person that he was being apprehended for illegal drugs. They then let the male person board the vehicle and informed him that they will proceed to Camp Dangwa. Dawing admitted that he did not know that it was James whom he saw that time and came to know only of his identity when he saw a poster bearing James's photograph. On cross-examination, he stated that the white van did not have any markings that it was a police vehicle and that the armed men were in civilian clothes and did not wear any police badges or identification cards. He

[18] *Id.* at 251-254.

[19] TSN, October 23, 2008, pp. 20-36.

just assumed that they were policemen because of their posture and haircut and because they introduced themselves as such.

Anvil Lumbag stated in his affidavit[20] that he was also at Saymor's Store in the morning of September 17, 2008 to buy chicken. He said that a Toyota Revo stopped infront of the store from where four men alighted. The men handcuffed a man who was standing infront of the store and uttered "*Walang makikialam, drugs kaso nito*" while pointing a gun at the said man. Then, they forced the man to board the Revo. Before the Revo fled, Lumbag heard one of the men say that they will be going to Camp Dangwa. Lumbag's affidavit, however, did not mention if it was James who was forcibly taken by the armed men.

Beverly Longid[21] testified that she got to know James when she was a member of the CPA youth organization in her student days. Every time James will have an activity that is CPA-related, he would coordinate with Beverly, she being the CPA chair. She also testified that prior to his disappearance, the last time she talked with James was in July or August of 2008 when he reported surveillances on his person by the PNP and the AFP. In her affidavit, she alleged that James reported to her several vehicles tailing him, one of which was a green van with plate number USC 922, the same plate number she had seen at the Intelligence Security Unit in Navy Base, Baguio City, and which was attached to a silver grey van.

Beverly admitted that at the time of the alleged abduction, she was in Baguio City, at the Office of the Cordillera People's Legal Center and that she only came to know that James was missing in the afternoon of September 18, 2008. She also confirmed that they met with Pol. Supt. Martin to seek assistance regarding James's disappearance.

Nonette Balao[22] testified that she was at her bakeshop located in Km. 4, La Trinidad, Benguet in the morning of

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[20] Records, Vol. I, pp. 454-455.

[21] TSN, October 30, 2008, pp. 3-32.

[22] *Id.* at 32-56.

September 17, 2008. At around 6:30 a.m., she received a text message from James saying that he will be going home to their ancestral home to do some laundry. Thirty minutes later, she received another text message from James saying that he was already leaving his place in Fairview, Baguio City. When around 8:00 a.m. James had not yet arrived at their ancestral home, she got worried. She texted him but failed to get a reply, so she tried to call him. His phone, however, had already been turned off. She then called the CPA office to check if James was there. She was told that he was not there so she went to James's house in Fairview at around 9:00 a.m. James's housemates, however, told her that he left at 7:00 a.m.

Nonette also testified that they only reported James's disappearance to the police on September 20, 2008 because they thought that it was necessary that a person be missing for at least 48 hours before the disappearance could be reported. They went to Sub-Station Police Precinct No. 1 in Baguio and to the police precinct in La Trinidad to report the matter. They also went to Camp Dangwa to see if James was there.

Nonette claimed that she became worried because James never switched off his mobile phone and since he already texted her that he was coming home, he could have texted again if there was a change of plans. Also, James had told them since April 2008 that he had been under surveillance. She does not know why James went to Tomay, La Trinidad.

Samuel Anongos stated in his affidavit[23] that he is a member of the Education Commission of the CPA. He claimed that when they conducted trainings and educational discussions on mining education in Abra, members of the AFP harassed the community and committed various human rights violations. The AFP also allegedly held community meetings where they said that the CPA is part of the New People's Army. Attached to Anongos's affidavit is a copy of a paper that the AFP was

[23] Records, Vol. I, p. 456.

allegedly distributing. It shows the organizational structure of the Communist Party of the Philippines-New People's Army (CPP-NPA) wherein CPA was identified as one of the organizations under the National Democratic Front (NDF).[24]

RTC Ruling

On January 19, 2009, the RTC issued the assailed judgment, disposing as follows:

> IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:
>
> ISSUE a Writ of Amparo Ordering the respondents to (a) disclose where James Balao is detained or confined, (b) to release James Balao considering his unlawful detention since his abduction and (c) to cease and desist from further inflicting harm upon his person; and
>
> DENY the issuance of INSPECTION ORDER, PRODUCTION ORDER and WITNESS PROTECTION ORDER for failure of herein Petitioners to comply with the stringent provisions on the Rule on the Writ of Amparo and substantiate the same.[25]

In denying respondents' prayer that President Arroyo be dropped as party-respondent, the RTC held that a petition for a writ of *amparo* is not "by any stretch of imagination a niggling[,] vexing or annoying court case"[26] from which she should be shielded. The RTC ruled that said petition is nothing more than a tool to aid the president to guarantee that laws on human rights are devotedly and staunchly carried out. It added that those who complain against naming the president as party-respondent are only those who "either do not understand what the Writ of *Amparo* is all about or who do not want to aid Her Excellency in her duty to supervise and control the machinery of government."[27]

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[24] *Id.* at 457.

[25] *Supra* note 1 at 38.

[26] *Id.* at 30.

[27] *Id.* at 31.

In upholding the standing of James's siblings and Beverly to file the petition, the RTC held that what Section 2 of the Rule on the Writ of *Amparo* rules out is the right to file similar petitions, meaning there could be no successive petitions for the issuance of a writ of *amparo* for the same party.

The RTC further held that "more likely than not," the motive for James's disappearance is his activist/political leanings and that James's case is one of an enforced disappearance as defined under the Rule on the Writ of *Amparo*. In so ruling, the RTC considered (1) the several incidents of harassment mentioned in Beverly's testimony and enumerated in the petition; and (2) the references in the petition to the CPA as a front for the CPP-NPA.

The RTC likewise ruled that the government unmistakably violated James's right to security of person. It found the investigation conducted by respondents as very limited, superficial and one-sided. The police and military thus miserably failed to conduct an effective investigation of James's abduction as revealed by the investigation report of respondents' own witnesses, Supt. Martin and P/S Supt. Fortunato Basco Albas, the Commander of Task Force Balao. It further noted that respondents did not investigate the military officials believed to be behind the abduction as said military officials were merely invited to a dialogue and there was no investigation made in Camp Dangwa where the abductors were believed to have taken James as narrated by the witnesses. Moreover, the RTC observed that despite the undertaking of respondents to investigate the abduction and provide results thereof, four months have passed but petitioners have not been furnished reports regarding the investigation.

As to the denial of the interim reliefs, the RTC stated that the stringent provisions of the rules were not complied with and granting said reliefs might violate respondents' constitutional rights and jeopardize State security.

Both parties appealed to this Court.

The Consolidated Petitions

Petitioners, in G.R. No. 186050, question the RTC's denial of the interim reliefs.

Respondents, on the other hand, assail in their petition in G.R. No. 186059, the issuance of the writ of *amparo*. They raise the following arguments:

I

THE TRIAL COURT'S JUDGMENT ORDERING RESPONDENT-PETITIONERS TO: (A) DISCLOSE WHERE JAMES BALAO IS DETAINED AND CONFINED; (B) TO RELEASE JAMES BALAO CONSIDERING HIS UNLAWFUL DETENTION SINCE HIS "ABDUCTION" AND (C) TO CEASE AND DESIST FROM FURTHER INFLICTING HARM UPON HIS PERSON IS BASED PURELY ON CONJECTURES, SURMISES AND HEARSAY EVIDENCE; HENCE, IT MUST BE SET ASIDE.

II

RESPONDENT-PETITIONERS HAD PROVEN THAT THEY OBSERVED EXTRAORDINARY DILIGENCE AS REQUIRED BY APPLICABLE LAWS, RULES AND REGULATIONS IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

III

THE FACTUAL CIRCUMSTANCES AND THE EVIDENCE PRESENTED IN THE *MANALO* CASE ARE TOTALLY DIFFERENT FROM THE CASE AT BAR; HENCE, THE TRIAL COURT GROSSLY ERRED IN APPLYING THE RULING THEREIN TO THE CASE AT BAR.

IV

THE TRIAL COURT CORRECTLY DENIED PETITIONER-RESPONDENTS' PRAYER FOR THE ISSUANCE OF AN INSPECTION ORDER, PRODUCTION ORDER AND A WITNESS PROTECTION ORDER.[28]

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[28] *Rollo* (G.R. No. 186059), Vol. II, pp. 1062-1063.

Our Ruling

The Rule on the Writ of *Amparo* was promulgated on October 24, 2007 amidst rising incidence of "extralegal killings" and "enforced disappearances." It was formulated in the exercise of this Court's expanded rule-making power for the protection and enforcement of constitutional rights enshrined in the 1987 Constitution, albeit limited to these two situations. "Extralegal killings" refer to killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings.[29] On the other hand, "enforced disappearances" are attended by the following characteristics: an arrest, detention, or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such person outside the protection of law.[30]

Section 18 of the *Amparo* Rule provides:

> SEC. 18. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are **proven by substantial evidence**, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied. (Emphasis supplied.)

The threshold issue in this case is whether the totality of evidence satisfies the degree of proof required by the *Amparo* Rule to establish an enforced disappearance.

In granting the privilege of the writ of *amparo*, the trial court ratiocinated:

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[29] As the term is used in United Nations Instruments, A.M. No. 07-9-12-SC, The Rule on the Writ of Amparo Resolution (Booklet), p. 50.

[30] As defined in the Declaration on the Protection of All Persons from Enforced Disappearances, *id.* at 50-51.

On record is evidence pointing to the more likely than not motive for James Balao's disappearance – his activist/political leanings. This is shown by the several incidents relating to harassments of activists as mentioned in the unrebutted testimony of Beverly Longid and the enumeration made in par. 48 (a) to (cc) of the petition. There were also references in the petition's pars. 52 *et. seq.* to the CPA (of which James Balao was an active staff) as a front organization of the Communist Party of the Philippines-New People's Army. More likely than not he was not taken to parts unknown for reasons other than his involvement in the CPA, that is, politically-motivated. **The Court considers these facts enough circumstances to establish substantial evidence of an enforced disappearance as defined under the Rule on the Writ of Amparo. For after all, substantial evidence requires nothing greater than "more likely than not" degree of proof.**[31](Emphasis supplied.)

The trial court gave considerable weight to the discussion in the petition of briefing papers supposedly obtained from the AFP (Oplan Bantay-Laya implemented since 2001) indicating that the anti-insurgency campaign of the military under the administration of President Arroyo included targeting of identified legal organizations under the NDF, which included the CPA, and their members, as "enemies of the state." The petition cited other documents confirming such "all-out war" policy which resulted in the prevalence of extrajudicial killings: namely, the published reports of the Melo Commission and the UNHRC's Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Mr. Philip Alston. The petition also enumerated previously documented cases of extralegal killings of activists belonging to militant groups, including CPA leaders and workers, almost all of which have been preceded by surveillance by military or police agents and acts of harassment. Consequently, petitioners postulated that the surveillance on James and his subsequent abduction are interconnected with the harassments, surveillance, threats and political assassination of other members and officers of CPA which is his organization.

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[31] *Rollo* (G.R. No. 186050), Vol. I, p. 35.

We hold that such documented practice of targeting activists in the military's counter-insurgency program by itself does not fulfill the evidentiary standard provided in the *Amparo* Rule to establish an enforced disappearance.

In the case of *Roxas v. Macapagal-Arroyo*,[32] the Court noted that the similarity between the circumstances attending a particular case of abduction with those surrounding previous instances of enforced disappearances does not, necessarily, carry sufficient weight to prove that the government orchestrated such abduction. Accordingly, the trial court in this case cannot simply infer government involvement in the abduction of James from past similar incidents in which the victims also worked or affiliated with the CPA and other left-leaning groups.

The petition further premised government complicity in the abduction of James on the very positions held by the respondents, stating that --

> The abduction of James Balao can only be attributed to the Respondents who have **command responsibility** of all the actions of their subordinates and who are the primary persons in the implementation of the government's all out war policy.[33] (Emphasis supplied.)

The Court in *Rubrico v. Macapagal-Arroyo*[34] had the occasion to expound on the doctrine of command responsibility and why it has little bearing, if at all, in *amparo* proceedings.

> The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal

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[32] G.R. No. 189155, September 7, 2010, 630 SCRA 211, 233.

[33] Records, Vol. I, p. 30.

[34] G.R. No. 183871, February 18, 2010, 613 SCRA 233.

complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "an omission mode of individual criminal liability," whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).

The doctrine has recently been codified in the Rome Statute of the International Criminal Court (ICC) to which the Philippines is signatory. Sec. 28 of the Statute imposes individual responsibility on military commanders for crimes committed by forces under their control. The country is, however, not yet formally bound by the terms and provisions embodied in this treaty-statute, since the Senate has yet to extend concurrence in its ratification.

While there are several pending bills on command responsibility, there is still no Philippine law that provides for criminal liability under that doctrine.

It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. **Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo.** In other words**, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed**. As the Court stressed in *Secretary of National Defense v. Manalo* (*Manalo*), the writ of *amparo* was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights to life, liberty, and security of persons; the corresponding amparo suit, however, "is not an action to determine criminal guilt requiring proof beyond reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings." Of the same tenor, and by way of expounding on the nature and role of amparo, is what the Court said in *Razon v. Tagitis*:

> It does not determine guilt nor pinpoint criminal culpability for the disappearance [threats thereof or extrajudicial killings]; **it determines *responsibility*, or at least *accountability*, for the enforced disappearance [threats thereof or extrajudicial killings] for purposes of imposing the appropriate remedies to address the disappearance [or extrajudicial killings].**
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> As the law now stands, extrajudicial killings and enforced disappearances in this jurisdiction are not crimes penalized separately from the component criminal acts undertaken to carry out these killings and enforced disappearances and are now penalized under the Revised Penal Code and special laws. The simple reason is that the Legislature has not spoken on the matter; the determination of what acts are criminal x x x are matters of substantive law that only the Legislature has the power to enact. x x x[35]

Subsequently, we have clarified that the inapplicability of the doctrine of command responsibility in an *amparo* proceeding does not, by any measure, preclude impleading military or police commanders on the ground that the complained acts in the petition were committed with their direct or indirect acquiescence. Commanders may therefore be impleaded—not actually on the basis of command responsibility—but rather on the ground of their **responsibility**, or at least **accountability**.[36]

In *Razon, Jr. v. Tagitis*,[37] the Court defined **responsibility** and **accountability** as these terms are applied to *amparo* proceedings, as follows:

> x x x **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to

[35] *Id.* at 251-254.

[36] *Roxas v. Macapagal-Arroyo*, *supra* note 32 at 232.

[37] G.R. No. 182498, December 3, 2009, 606 SCRA 598.

file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to **the measure of remedies that should be addressed to those** who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who **carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance**. x x x[38] (Emphasis supplied.)

Assessing the evidence on record, we find that the participation in any manner of military and police authorities in the abduction of James has not been adequately proven. The identities of the abductors have not been established, much less their link to any military or police unit. There is likewise no concrete evidence indicating that James is being held or detained upon orders of or with acquiescence of government agents. Consequently, the trial court erred in granting *amparo* reliefs by ordering the respondent officials (1) to disclose where James Balao is detained or confined, (2) to release him from such detention or confinement, and (3) to cease and desist from further inflicting harm upon his person. Such pronouncement of *responsibility* on the part of public respondents cannot be made given the insufficiency of evidence.[39] However, we agree with the trial court in finding that the actions taken by respondent officials are "very limited, superficial and one-sided." Its candid and forthright observations on the efforts exerted by the respondents are borne by the evidence on record, thus:

x x x the violation of the right to security as protection by the government is unmistakable. The police and the military miserably failed in conducting an effective investigation of James Balao's abduction as revealed by the investigation report of respondent's own witnesses Honorable Chief Superintendent Eugene Martin and Honorable Senior Superintendent Fortunato Albas. The investigation

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[38] *Id.* at 620-621.

[39] *Roxas v. Macapagal-Arroyo, supra* note 32 at 235.

was – to use the words in *The Secretary of National Defense, et al. v. Manalo, et al.* – "**verylimited, superficial and one-sided**."

The actions taken were simply these: (a) organization of the "Task Force Balao"; (b) conduct of ocular inspection at the place of abduction; (c) taking of sworn statements of civilian witnesses, whose testimonies did not prove much as shown by the continued disappearance of James Balao; (d) dialogue with implicated military officials as well as family members and friends of James Balao; and (e) writing of letter to the CPA. The Court does not want to second-guess police protocols in investigation but surely some things are amiss where the investigation DID NOT INVESTIGATE the military officials believed to be behind the abduction as they were merely invited to a dialogue and where the investigation DID NOT LEAD to Camp Dangwa where the abductors were supposed to have proceeded as narrated by the witnesses. To the mind of this Court, there is a seeming prejudice in the process of investigation to pin suspects who are not connected with the military establishments. By any measure, this cannot be a thorough and good faith investigation but one that falls short of that required by the Writ of Amparo.[40]

Respondents reiterate that they did their job the best they could and fault the petitioners instead for their non-cooperation which caused delay in the investigation. They particularly blamed Beverly who failed to attend the October 15, 2008 invitation to appear before the investigators and shed light on James's disappearance.

We are not persuaded.

First, the Task Force Balao had acknowledged the fact that Pol. Chief Supt. Martin was already in constant coordination with the Balao family and CPA, and hence the investigators could have readily obtained whatever information they needed from Beverly. Pol. Chief Supt. Martin even mentioned in his affidavit that Task Force Balao was able to secure the testimonies of two eyewitnesses with the help of Beverly and the Balao family, and that as a result cartographic sketches were made of some suspects.[41] Moreover, Beverly had explained during

[40] *Rollo* (G.R. No. 186050), Vol. I, p. 36.

[41] Records, Vol. I, p. 249.

the cross-examination conducted by Associate Solicitor Paderanga that she was at the time coordinating with national and local agencies even as the police investigation was ongoing.[42] There is nothing wrong with petitioners' simultaneous recourse to other legal avenues to gain public attention for a possible enforced disappearance case involving their very own colleague. Respondents should even commend such initiative that will encourage those who may have any information on the identities and whereabouts of James's abductors to help the PNP in its investigation.

Assuming there was reluctance on the part of the Balao family and CPA to submit James's relatives or colleagues for questioning by agents of the PNP and AFP, they cannot be faulted for such stance owing to the military's perception of their organization as a communist front: *ergo*, enemies of the State who may be targeted for liquidation. But more important, such non-cooperation provides no excuse for respondents' incomplete and one-sided investigations. As we held in *Rubrico v. Macapagal-Arroyo*[43]:

> As regards P/Supt. Romero and P/Insp. Gomez, the Court is more than satisfied that they have no direct or indirect hand in the alleged enforced disappearance of Lourdes and the threats against her daughters. **As police officers, though, theirs was the duty to thoroughly investigate the abduction of Lourdes, a duty that would include looking into the cause, manner, and like details of the disappearance; identifying witnesses and obtaining statements from them; and following evidentiary leads**, such as the Toyota Revo vehicle with plate number XRR 428, **and securing and preserving evidence related to the abduction and the threats that may aid in the prosecution of the person/s responsible**. As we said in *Manalo*, the right to security, as a guarantee of protection by the government, is breached by the superficial and one-sided—hence, ineffective—investigation by the military or the police of reported cases under their jurisdiction. As found by the CA, the local police stations concerned, including

[42] TSN, October 30, 2008, p. 27.

[43] *Supra* note 34.

P/Supt. Roquero and P/Insp. Gomez, did conduct a preliminary fact-finding on petitioners' complaint. They could not, however, make any headway, owing to what was perceived to be the refusal of Lourdes, her family, and her witnesses to cooperate. Petitioners' counsel, Atty. Rex J.M.A. Fernandez, provided a plausible explanation for his clients and their witnesses' attitude, "**[They] do not trust the government agencies to protect them**.The difficulty arising from a situation where the party whose complicity in extrajudicial killing or enforced disappearance, as the case may be, is alleged to be the same party who investigates it is understandable, though.

The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end. To repeat what the Court said in *Manalo,* **the right to security of persons is a guarantee of the protection of one's right by the government. And this protection includes conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind.** The nature and importance of an investigation are captured in the *Velasquez Rodriguez* case, in which the Inter-American Court of Human Rights pronounced:

> "[The duty to investigate] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, **not a step taken by private interests that depends upon the initiative of the victim** or his family or upon offer of proof, without an effective search for the truth by the government."[44] (Emphasis supplied.)

Indeed, why zero in on James' own kin and colleagues when independent eyewitnesses already provided firsthand accounts of the incident, as well as descriptions of the abductors? With the cartographic sketches having been made from interviews and statements of witnesses, the police investigators could have taken proper steps to establish the personal identities of said suspects and yet this was not done, the police investigators not even lifting a finger to ascertain whether the cartographic sketches would match with any enlisted personnel of AFP and PNP, or

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[44] *Id.* at 257-259.

their civilian agents/assets. As to the vehicles, the plate numbers of which have earlier been disclosed by James to his family and the CPA as used in conducting surveillance on him prior to his abduction, the military merely denied having a vehicle with such plate number on their property list despite the fact that the same plate number (USC 922) was sighted attached to a car which was parked at the PA-ISU compound in Navy Base, Baguio City. As to the other plate number given by James (TNH 787), while the police investigators were able to verify the name and address of the registered owner of the vehicle, there is no showing that said owner had been investigated or that efforts had been made to locate the said vehicle. Respondents' insistence that the CPA produce the alleged companions of James in his rented residence for investigation by the PNP team, while keeping silent as to why the police investigators had not actively pursued those evidentiary leads provided by eyewitnesses and the Balao family, only reinforce the trial court's observation that the investigators are seemingly intent on building up a case against other persons so as to deflect any suspicion of military or police involvement in James Balao's disappearance.

In view of the foregoing evidentiary gaps, respondents clearly failed to discharge their burden of extraordinary diligence in the investigation of James's abduction. Such ineffective investigation extant in the records of this case prevents us from completely exonerating the respondents from allegations of accountability for James' disappearance. The reports submitted by the PNP Regional Office, Task Force Balao and Baguio City Police Station do not contain meaningful results or details on the depth and extent of the investigation made. In *Razon, Jr. v. Tagitis*, the Court observed that such reports of top police officials indicating the personnel and units they directed to investigate can never constitute exhaustive and meaningful investigation, or equal detailed investigative reports of the activities undertaken to search for the victim.[45] In the same case we

[45] *Supra* note 37 at 707.

stressed that the standard of diligence required – the duty of public officials and employees to observe extraordinary diligence – called for extraordinary measures expected in the protection of constitutional rights and in the consequent handling and investigation of extra-judicial killings and enforced disappearance cases.

As to the matter of dropping President Arroyo as party-respondent, though not raised in the petitions, we hold that the trial court clearly erred in holding that presidential immunity cannot be properly invoked in an *amparo* proceeding. As president, then President Arroyo was enjoying immunity from suit when the petition for a writ of *amparo* was filed. Moreover, the petition is bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.[46]

In order to effectively address thru the *amparo* remedy the violations of the constitutional rights to liberty and security of James who remains missing to date, the Court deems it appropriate to refer this case back to the trial court for further investigation by the PNP and CIDG and monitoring of their investigative activities that complies with the standard of diligence required by the *Amparo* Rule. Section 24 of Republic Act No. 6975, otherwise known as the "PNP Law"[47] specifies the PNP as the governmental office with the mandate to "[i]nvestigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution." The trial court should further validate the results of such investigations and actions through hearings it may deem necessary to conduct.

Lastly, on the denial of the prayer for interim reliefs under the *Amparo* Rule.

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[46] *Rubrico v. Macapagal-Arroyo, supra* note 34 at 249.

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

An inspection order is an interim relief designed to give support or strengthen the claim of a petitioner in an *amparo* petition, in order to aid the court before making a decision.[48] A basic requirement before an *amparo* court may grant an inspection order is that the place to be inspected is reasonably determinable from the allegations of the party seeking the order.[49] In this case, the issuance of inspection order was properly denied since the petitioners specified several military and police establishments based merely on the allegation that the testimonies of victims and witnesses in *previous* incidents of similar abductions involving activists disclosed that those premises were used as detention centers. In the same vein, the prayer for issuance of a production order was predicated on petitioners' bare allegation that it obtained confidential information from an unidentified military source, that the name of James was included in the so-called Order of Battle. Indeed, the trial court could not have sanctioned any "fishing expedition" by precipitate issuance of inspection and production orders on the basis of insufficient claims of one party.

Nonetheless, the trial court is not precluded, as further evidence warrants, to grant the above interim reliefs to aid it in making a decision upon evaluation of the actions taken by the respondents under the norm of extraordinary diligence.

WHEREFORE, the petitions in G.R. Nos. 186050 and 186059 are *PARTLY GRANTED*. The Judgment dated January 19, 2009 of the Regional Trial Court of La Trinidad, Benguet, Branch 63, in Special Proceeding No. 08-AMP-0001 is *MODIFIED* as follows:

1) *REVERSING* the grant of the privilege of the writ of *amparo*;

2) *AFFIRMING* the denial of the prayer for inspection and production orders, without prejudice to the subsequent

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[48] *Roxas v. Macapagal-Arroyo, supra* note 32 at 237, citing *Yano v. Sanchez*, G.R. No. 186640, February 11, 2010, 612 SCRA 342, 362.

[49] *Id*.

grant thereof, in the course of hearing and other developments in the investigations by the Philippine National Police/Philippine National Police Criminal Investigation and Detection Group and the Armed Forces of the Philippines;

3) *ORDERING* the incumbent Chief of Staff of the Armed Forces of the Philippines, or his successor, and the incumbent Director General of the Philippine National Police, or his successor, to *CONTINUE* the investigations and actions already commenced by the Philippine National Police Regional Office–Cordillera, Baguio City Police, Northern Luzon Command, Philippine National Police/ Philippine National Police Criminal Investigation and Detection Group, Philippine Army-Intelligence Service Unit and other concerned units, and specifically take and continue to take the necessary steps:

   (a) to identify the persons described in the cartographic sketches submitted by Task Force Balao;

   (b) to locate and search the vehicles bearing the plate numbers submitted by the petitioners and which James Balao had reported to be conducting surveillance on his person prior to his abduction on September 17, 2008, and investigate the registered owners or whoever the previous and present possessors/transferees thereof; and to pursue any other leads relevant to the abduction of James Balao;

   The incumbent Armed Forces of the Philippines Chief of Staff, Philippine National Police Director General, or their successors, shall ensure that the investigations and actions of their respective units on the abduction of James Balao are pursued with extraordinary diligence as required by Sec. 17 of the *Amparo* Rule.

   For purposes of these investigations, the Philippine National Police/Philippine National Police Criminal Investigation and Detection Group shall periodically report

the detailed results of its investigation to the trial court for its consideration and action. On behalf of this Court, the trial court shall pass upon the sufficiency of their investigative efforts. The Philippine National Police and the Philippine National Police Criminal Investigation and Detection Group shall have six (6) months from notice hereof to undertake their investigations. Within fifteen (15) days after completion of the investigations, the Chief of Staff of the Armed Forces of the Philippines and the Director General of the Philippine National Police shall submit a full report of the results of the said investigations to the trial court. Within thirty (30) days thereafter, the trial court shall submit its *full report* to this Court.

These directives and those of the trial court made pursuant to this Decision shall be given to, and shall be directly enforceable against, whoever may be the incumbent Armed Forces of the Philippines Chief of Staff, Director General of the Philippine National Police and Chief of the Philippine National Police Criminal Investigation and Detection Group and other concerned units, under pain of contempt from this Court when the initiatives and efforts at disclosure and investigation constitute less than the EXTRAORDINARY DILIGENCE that the *Amparo* Rule and the circumstances of the case demand; and

4) *DROPPING* former President Gloria Macapagal-Arroyo as party-respondent in the petition for writ of *amparo*;

This case is hereby *REMANDED* to the Regional Trial Court of La Trinidad, Benguet, Branch 63 for continuation of proceedings in Special Proceeding No. 08-AMP-0001 for the purposes of monitoring compliance with the above directives and determining whether, in the light of any recent reports or recommendations, there would already be sufficient evidence to hold any of the public respondents responsible, or, at least, accountable. After making such determination, the trial court shall submit its own report and recommendation to this Court for final action. The trial court will

continue to have jurisdiction over this case in order to accomplish its tasks under this decision;

Accordingly, the public respondents shall remain personally impleaded in this petition to answer for any responsibilities and/or accountabilities they may have incurred during their incumbencies.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Carpio, J., joins the dissenting opinion of *J.* Sereno.

Sereno, J., see dissenting opinion.

DISSENTING OPINION

SERENO, *J.*:

The majority Decision precariously steers budding Philippine jurisprudence on the writ of *amparo* to a course that threatens to diminish the preventive and curative functions of this judicial relief. As this Court emphasized in the landmark case of *Secretary of National Defense v. Manalo*,[1] the writ of *amparo* serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances.[2] It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.[3]

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[1] G.R. No. 180906, 7 October 2008, 568 SCRA 1.

[2] *Id.* at 43.

[3] *Id*.

In the instant case, the *ponencia* denies the grant of the privilege of the writ of *amparo* on the ground that the totality of evidence presented by petitioners in G.R. No. 186060 does not satisfy the degree of proof required by the Rule on the Writ of *Amparo* to establish that James Balao (Balao) was a victim of enforced disappearance, and that respondents in G.R. No. 186059 were accountable or responsible therefor. In examining this Decision, five issues ought to be considered.

A. Similarity between past abductions and the present case of enforced disappearance

The majority is of the view that the "documented practice of targeting activists in the military's counter-insurgency program by itself does not fulfill the evidentiary standards provided in the *Amparo* Rule xxx." [4] Although I understand that the import of this statement is to the effect that establishing the existence of this practice should not be made the sole basis of determining responsibility or accountability in *amparo* caes, this ruling must nevertheless be clarified.

Section 17 of the Rule on the Writ of *Amparo*[5] prescribes the threshold of substantial evidence as necessary for establishing the claims of petitioners in G.R. No. 186050. While the substantial evidence rule remains the standard in *amparo* proceedings, flexibility should be observed. Courts must consider evidence adduced in its totality, including that which would otherwise be deemed inadmissible if consistent with the admissible evidence adduced.[6]

The ruling of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras*[7] is worth noting. In that

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[4] Majority Decision, p. 22.

[5] A.M. No. 07-9-12-SC.

[6] *Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598; Resolution, 16 February 2010, 612 SCRA 685.

[7] Judgment of 29 July 1988, Inter-Am.Ct.H.R. (Sec. C) No. 4 (1988).

case, the tribunal found that once a pattern or practice of enforced disappearances supported or tolerated by the government is established, a present case of disappearance may be linked to that practice and proven through circumstantial evidence or logical inference, *viz*:

> 124. The Commission's argument relies upon the proposition that ***the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference.*** Otherwise, it would be impossible to prove that an individual has been disappeared.
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> 126. The Court finds no reason to consider the Commission's argument inadmissible. ***If it can be shown that there was an official practice of disappearances in Honduras, carried out by the Government or at least tolerated by it, and if the disappearance of Manfredo Velásquez can be linked to that practice***, the Commission's allegations will have been proven to the Court's satisfaction, so long as the evidence presented on both points meets the standard of proof required in cases such as this. (Emphasis supplied.)

Following *Velasquez Rodriguez*, it may be established that enforced disappearances or extrajudicial killings naturally follow after a group's political classification and/or vilification as communist. In the case at bar, the majority opinion already took judicial notice that once the military perceives an organization to be a communist front, the latter will automatically be considered as an enemy of the State and, therefore, a target for liquidation. Despite this finding, the majority refused to even examine how the present case fits this pattern or practice, and simply dismissed the allegations of petitioners in G.R. No. 186050 by saying that the existence of similarities between previous and present circumstances of abduction do not necessarily meet the standards under the Rule on the Writ of *Amparo.*

B. Command Responsibility

The *ponencia* rejects the use of command responsibility in *amparo* proceedings on the ground that the manner of impleading commanders must be on the basis of their responsibility or accountability. It must be pointed out that the doctrine of command responsibility is not mutually exclusive with the standard of responsibility and accountability in *amparo* cases.

Boac v. Cadapan[8] gives guidance as to how the ostensible difference between command responsibility, on the one hand, and responsibility and accountability, on the other, can be reconciled as follows:

> [C]ommand responsibility may be loosely applied in amparo cases in order to ***identify those accountable individuals that have the power to effectively implement whatever processes an amparo court would issue***. In such application, the amparo court does not impute criminal responsibility but merely ***pinpoint the superiors it considers to be in the best position to protect the rights of the aggrieved party***.
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> Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency. (Emphasis supplied.)

Further, in *Noriel Rodriguez v. Arroyo*,[9] this Court unanimously ruled in this manner:

> Although originally used for ascertaining criminal complicity, the command responsibility doctrine has also found application in civil cases for human rights abuses. In the United States, for example, command responsibility was used in *Ford v. Garcia* and *Romagoza v. Garcia* – civil actions filed under the Alien Tort Claims Act and the Torture Victim Protection Act. This development in the use of command responsibility in civil proceedings shows that the application of this doctrine has been liberally extended even to cases not criminal

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[8] G.R. Nos. 184461-2, 31 May 2011.

[9] G.R. No. 191805, 15 November 2011.

in nature. Thus, it is our view that command responsibility may likewise find application in proceedings seeking the privilege of the writ of *amparo*. As we held in *Rubrico*:

> It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution.
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> If command responsibility were to be invoked and applied to these proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo*. As intimated earlier, however, the determination should not be pursued to fix criminal liability on respondents preparatory to criminal prosecution, or as a prelude to administrative disciplinary proceedings under existing administrative issuances, if there be any. (Emphasis supplied.)

Precisely in the case at bar, the doctrine of command responsibility may be used to determine whether respondents are accountable for and have the duty to address the abduction of Rodriguez in order to enable the courts to devise remedial measures to protect his rights. Clearly, nothing precludes this Court from applying the doctrine of command responsibility in *amparo* proceedings to ascertain responsibility and accountability in extrajudicial killings and enforced disappearances.

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As earlier pointed out, *amparo* proceedings determine (a) responsibility, or the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, and (b) accountability, or the measure of remedies that should be addressed to those (i) who exhibited involvement in the enforced disappearance without

bringing the level of their complicity to the level of responsibility defined above; or (ii) who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or (iii) those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. Thus, although there is no determination of criminal, civil or administrative liabilities, the doctrine of command responsibility may nevertheless be applied to ascertain responsibility and accountability within these foregoing definitions.

Thus, the doctrine of command responsibility may be used in *amparo* proceedings to the extent of identifying the superiors accountable for the enforced disappearance or extrajudicial killing, and those who may be directed to implement the processes and reliefs in the *amparo* case.

C. Limited, superficial and one-sided investigation

The *ponencia* admits that the commanders and military officers impleaded as respondents in G.R. No. 186050 have taken very limited, superficial and one-sided actions and have "clearly failed to discharge their burden of extraordinary diligence in the investigation."[10] Notwithstanding this explicit finding, the majority still refused the grant of the privilege of the writ. A faithful interpretation of the Rule on the Writ of *Amparo,* as well as existing jurisprudence, supports the contention that the failure to conduct an effective official investigation is precisely the reason why respondents in G.R. No. 186059 should be held responsible or accountable for the enforced disappearance of Balao.

Section 1 of the Rule on the Writ of *Amparo* is clear that a violation of or threat to the right to life, liberty and security may be caused by either an act or an **omission** of a public official. In our jurisprudence on the writ of *amparo*, responsibility may refer to respondents' participation – by action or *omission* – in enforced disappearance, while accountability may attach

[10] Majority Decision, pp. 25 and 28.

to respondents who are **imputed with knowledge** relating to the enforced disappearance and who **carry the burden of disclosure**; or those who **carry, but have failed to discharge, the burden of extraordinary diligence in the investigation** of the enforced disappearance.

Squarely passed upon in this Court's ruling in *Rodriguez*[11] was the issue of whether the failure to conduct fair and effective investigation amounts to a violation of or threat to the right to life, liberty and security, *viz*:

> The Rule on the Writ of *Amparo* explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an omission of a public official. Moreover, in the context of *amparo* proceedings, responsibility may refer to the participation of the respondents, by action or omission, in enforced disappearance. Accountability, on the other hand, may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance.

In this regard, we emphasize our ruling in *Secretary of National Defense v. Manalo* that the right to security of a person includes the positive obligation of the government to ensure the observance of the duty to investigate, *viz*:

> Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of *Amparo*, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person

[11] *Supra* note 9.

is rendered ineffective if government does not afford protection to these rights especially when they are under threat. **Protection includes conducting effective investigations,** organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the Velasquez Rodriguez Case, *viz*:

> **(The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.** An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.
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Similarly, the European Court of Human Rights (ECHR) has interpreted the "right to security" not only as prohibiting the State from arbitrarily depriving liberty, but imposing a positive duty on the State to afford protection of the right to liberty. The ECHR interpreted the "right to security of person" under Article 5(1) of the European Convention of Human Rights in the leading case on disappearance of persons, *Kurt v. Turkey.* In this case, the claimant's son had been arrested by state authorities and had not been seen since. **The family's requests for information and investigation regarding his whereabouts proved futile. The claimant suggested that this was a violation of her son's right to security of person**. The ECHR ruled, *viz*:

> ... any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness... Having assumed control over that individual it is incumbent on the authorities to account for his or her whereabouts. For this reason, Article 5 must be seen as **requiring the authorities to take effective measures to safeguard against the risk of**

> **disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since**.

In the instant case, this Court rules that **respondents in G.R. No. 191805 are responsible or accountable for the violation of Rodriguez's right to life, liberty and security on account of their abject failure to conduct a fair and effective official investigation of his ordeal in the hands of the military.** Respondents Gen. Ibrado, PDG. Verzosa, Lt. Gen. Bangit, Maj. Gen. Ochoa, Col. De Vera and Lt. Col. Mina only **conducted a perfunctory investigation, exerting no efforts to take Ramirez's account of the events into consideration. Rather, these respondents solely relied on the reports and narration of the military**. The ruling of the appellate court must be emphasized:

> In this case, respondents Ibrado, Verzosa, Bangit, Tolentino, Santos, De Vera, and Mina are accountable, for **while they were charged with the investigation of the subject incident, the investigation they conducted and/or relied on is superficial and one-sided.** The records disclose that the military, in investigating the incident complained of, depended on the *Comprehensive Report of Noriel Rodriguez @Pepito* prepared by 1Lt. Johnny Calub for the Commanding Officer of the 501st Infantry Brigade, 5th Infantry Division, Philippine Army. Such report, however, is merely based on the narration of the military. No efforts were undertaken to solicit petitioner's version of the subject incident and no witnesses were questioned regarding the alleged abduction of petitioner.
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> xxx xxx xxx

Clearly, **the absence of a fair and effective official investigation into the claims of Rodriguez violated his right to security**, for which respondents in G.R. No. 191805 must be held responsible or accountable. (Emphasis supplied.)

Following the ruling in *Rodriguez*, an explicit finding by the majority that respondents conducted a superficial and ineffective investigation should be enough basis to hold them responsible or accountable for the disappearance of Balao under the Rule on the Writ of *Amparo*.

D. Presidential immunity from suit

The majority Decision states that former President Gloria Macapagal-Arroyo (former President Arroyo) should have been accorded presidential immunity, as she was the incumbent President when the present Petitions were filed. This position is not in accord with the ruling of this Court in *Estrada v. Desierto*,[12] in which it was explicitly held that a non-sitting President does not enjoy immunity from suit **even for acts committed during the latter's tenure**, *viz*:

> We reject [Estrada's] argument that he cannot be prosecuted for the reason that he must first be convicted in the impeachment proceedings. The impeachment trial of petitioner Estrada was aborted by the walkout of the prosecutors and by the events that led to his loss of the presidency. Indeed, on February 7, 2001, the Senate passed Senate Resolution No. 83 "Recognizing that the Impeachment Court is *Functus Officio*." Since the Impeachment Court is now *functus officio*, it is untenable for petitioner to demand that he should first be impeached and then convicted before he can be prosecuted. The plea if granted, would put a perpetual bar against his prosecution. Such a submission has nothing to commend itself for it will place him in a better situation than **a non-sitting President who has not been subjected to impeachment proceedings and yet can be the object of a criminal prosecution.** To be sure, the debates in the Constitutional Commission make it clear that when impeachment proceedings have become moot due to the resignation of the President, the proper criminal and civil cases may already be filed against him, *viz*:
>
> x x x x x x x x x
>
> "Mr. Aquino. On another point, if an impeachment proceeding has been filed against the President, for example, and the President resigns before judgment of conviction has been rendered by the impeachment court or by the body, how does it affect the impeachment proceeding? Will it be necessarily dropped?
>
> Mr. Romulo. If we decide the purpose of impeachment to remove one from office, then his resignation would render the case moot and academic. However, as the provision says, the

[12] G.R. Nos. 146710-15, 146738, 2 March 2001, 353 SCRA 452.

criminal and civil aspects of it may continue in the ordinary courts."

This is in accord with our ruling in In Re: Saturnino Bermudez that **"incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure" but not beyond.**

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We now come to the scope of immunity that can be claimed by petitioner as a non-sitting President. The cases filed against petitioner Estrada are criminal in character. They involve plunder, bribery and graft and corruption. By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the alleged mantle of immunity of a non-sitting president. Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability. **It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.**

Indeed, a critical reading of current literature on executive immunity will reveal **a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right.** In the 1974 case of *US v. Nixon*, US President Richard Nixon, a sitting President, was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. Seven advisers of President Nixon's associates were facing charges of conspiracy to obstruct justice and other offenses which were committed in a burglary of the Democratic National Headquarters in Washington's Watergate Hotel during the 1972 presidential campaign. President Nixon himself was named an unindicted co-conspirator. President Nixon moved to quash the subpoena on the ground, among others, that the President was not subject to judicial process and that he should first be impeached and removed from office before he could be made amenable to judicial proceedings. The claim was rejected by the US Supreme Court. It concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of

due process of law in the fair administration of criminal justice." In the 1982 case of *Nixon v. Fitzgerald*, the US Supreme Court further held that the immunity of the President from civil damages covers only "official acts." Recently, the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v. Jones* where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.[13] (Emphasis supplied.)

In this Court's Resolution in *Estrada v. Desierto*,[14] it was emphasized that presidential immunity from suit **exists only in concurrence with the President's incumbency**:

Petitioner stubbornly clings to the contention that he is entitled to absolute immunity from suit. His arguments are merely recycled and we need not prolong the longevity of the debate on the subject. In our Decision, we exhaustively traced the origin of executive immunity in our jurisdiction and its bends and turns up to the present time. We held that **given the intent of the 1987 Constitution to breathe life to the policy that a public office is a public trust, the petitioner, as a non-sitting President, cannot claim executive immunity for his alleged criminal acts committed while a sitting President.** Petitioner's rehashed arguments including their thinly disguised new spins are based on the rejected contention that he is still President, albeit, a President on leave. His stance that his immunity covers his entire term of office or until June 30, 2004 disregards the reality that he has relinquished the presidency and there is now a new *de jure* President.

Petitioner goes a step further and avers that even a non-sitting President enjoys immunity from suit during his term of office. He buttresses his position with the deliberations of the Constitutional Commission, *viz*:

"Mr. Suarez. Thank you.

The last question is with reference to the Committee's omitting in the draft proposal the immunity provision for the

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[13] *Id.* at 521-523.

[14] Resolution in G.R. Nos. 146710-15, 146738, 3 April 2001, 356 SCRA 108.

President. I agree with Commissioner Nolledo that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the president shall be immune from suit during his tenure, considering that if we do not provide him that kind of an immunity, he might be spending all his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

Fr. Bernas:

The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

Mr. Suarez:

So there is no need to express it here.

Fr. Bernas:

There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.

Mr. Suarez:

On the understanding, I will not press for any more query, madam President.

I thank the Commissioner for the clarification."

Petitioner, however, fails to distinguish between term and tenure. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds office. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. From the deliberations, **the intent of the framers is clear that the immunity of the president from suit is concurrent only with his tenure and not his term.**[15] (Emphasis supplied.)

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[15] *Id.* at 149-150.

In the present case, the filing of the Petitions during the incumbency of former President Arroyo should not be a reason for according her presidential immunity. Thus, it would be legally imprecise to dismiss the present case as against former President Arroyo on account of presidential immunity from suit. Rather, the dismissal should be on a finding that petitioners in G.R. No. 186050 failed to make allegations or adduce evidence to show her responsibility or accountability for violation of or threat to Balao's right to life, liberty and security.

E. Referral to the trial court for further investigation by the Philippine National Police (PNP) and the Criminal Investigation and Detection Group (CIDG)

The *ponencia* orders the referral of this case back to the trial court for further investigation by the PNP and CIDG. As previously discussed, an explicit finding of absence of a fair and effective investigation should have been sufficient to grant the privilege of the writ of *amparo.* After all, there is no finding of criminal, civil or administrative liability in *amparo* proceedings. In fact, granting the privilege of the writ may include an order instructing respondents to conduct further investigation, if such a directive is deemed as an appropriate remedial measure under the premises to protect the rights under the writ.

In closing, it is worthy to consider that in disposing of cases involving extrajudicial killings and enforced disappearances for which the writ of *amparo* is sought, this Court must always go back to its pronouncement in *Secretary of National Defense* emphasizing the twin roles of the writ of *amparo*. This judicial relief, far from pinning administrative, civil or criminal culpability on respondents, was crafted to serve as a preventive and curative tool to address these human rights violations. Unfortunately, by refusing the maximize the possible measure of remedies allowed under the Rule on the Writ of *Amparo* and enunciated in domestic and international jurisprudence, the majority Decision ultimately dilutes the power of the writ.

SECOND DIVISION

[A.C. No. 7649. December 14, 2011]

SIAO ABA, MIKO LUMABAO, ALMASIS LAUBAN, and BENJAMIN DANDA, *complainants, vs.* **ATTYS. SALVADOR DE GUZMAN, JR., WENCESLAO "PEEWEE" TRINIDAD, and ANDRESITO FORNIER,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRESUMED TO HAVE PERFORMED HIS DUTIES ACCORDING TO OATH AND IS INNOCENT OF CHARGES AGAINST HIM UNTIL PROVEN GUILTY. — Section 3(a), Rule 131 of the Rules of Court provides that a person is presumed innocent of crime or wrongdoing. This Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.

2. ID.; DISBARMENT PROCEEDINGS; BURDEN OF PROOF RESTS UPON THE COMPLAINANT. — Burden of proof is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.

3. ID.; ID.; REQUIRES CLEARLY PREPONDERANT EVIDENCE; WHERE OPPOSING EVIDENCE ARE EQUALLY BALANCED, EQUIPOISE DOCTRINE MANDATES THAT THE DECISION SHOULD BE AGAINST THE PARTY WITH THE BURDEN OF PROOF. — Weight and sufficiency of evidence, under Rule 133 of the Rules of Court, is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact. It depends upon its practical effect in inducing belief for the party on the judge trying the case. Consequently, in the

hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence, in that order. Considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that clearly preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar. x x x When the evidence of the parties are evenly balanced or there is doubt on which side the evidence preponderates, the decision should be against the party with the burden of proof, according to the equipoise doctrine.

4. ID.; ID.; ID.; PREPONDERANCE OF EVIDENCE, ELUCIDATED. — Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

5. ID.; ID.; REVIEW AND DECISION BY THE BOARD OF GOVERNORS (OF THE IBP); THE ADMINISTRATIVE CASE IS DEEMED TERMINATED IF THE PENALTY IMPOSED IS LESS THAN SUSPENSION OR DISBARMENT UNLESS COMPLAINANT FILES A PETITION WITH THE COURT. — Under Section 12(c) of Rule 139-B, the administrative case is deemed terminated if the penalty imposed by the Board of Governors of the Integrated Bar of the Philippines is less than suspension or disbarment (such as reprimand, admonition or fine), unless the complainant files a petition with this Court within 15 days from notice: (c) If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand,

or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

APPEARANCES OF COUNSEL

Renato MA. S. Callanta, Jr. for Wenceslao Trinidad.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint filed by Siao Aba, Miko Lumabao, Almasis Lauban and Benjamin Danda (complainants) against lawyers Salvador De Guzman, Jr., Wenceslao "Peewee" Trinidad, and Andresito Fornier (respondents). Complainants claim that respondents instigated and filed fabricated criminal complaints against them before the Iligan City Prosecutor's Office for Large Scale and Syndicated Illegal Recruitment and Estafa under I.S. No. 06-1676 and I.S. No. 06-1835.[1] Complainants pray for the imposition of the grave penalty of disbarment upon respondents.[2] Attached to complainants' letter-complaint is the *Joint Counter-Affidavit and Affidavit of Complaint*[3] allegedly submitted by complainants in the preliminary investigation of the criminal complaints.

The Facts

Complainants claim that in January 2006 they met former Pasay City Regional Trial Court Judge Salvador P. De Guzman, Jr. (De Guzman) in Cotabato City.[4] De Guzman allegedly persuaded

[1] *Rollo*, p. 1.

[2] *Id.* at 2.

[3] *Id.* at 3-10.

[4] *Id.* at 4.

them to file an illegal recruitment case (I.S. No. 2006-C-31, *Lauban, et al. vs. Alvarez, Amante, Montesclaros, et al.*) against certain persons, in exchange for money.[5] De Guzman allegedly represented to complainants that his group, composed of Pasay City Mayor Wenceslao "Peewee" Trinidad (Trinidad), Atty. Andresito Fornier (Fornier), Everson Lim Go Tian, Emerson Lim Go Tian, and Stevenson Lim Go Tian (Go Tian Brothers), were untouchable.[6]

In the third week of February 2006, complainants allegedly received from De Guzman a prepared Joint Complaint-Affidavit with supporting documents, which they were directed to sign and file.[7] The Joint Complaint-Affidavit and supporting documents were allegedly fabricated and manufactured by De Guzman.[8]

During the I.S. No. 2006-C-31 proceedings before the Cotabato City Prosecutor's Office, complainants allegedly received several phone calls from De Guzman, Trinidad, Fornier, and the Go Tian brothers, all of them continuously telling complainants to pursue the case.[9] When complainants asked De Guzman what would happen if a warrant of arrest would be issued, De Guzman allegedly replied, *"Ipa tubus natin sa kanila, perahan natin sila."*[10]

Complainants claim they were bothered by their conscience, and that is why they told De Guzman and his group that they planned to withdraw the criminal complaint in I.S. No. 2006-C-31.[11] Complainants were allegedly offered by respondents ₱200,000.00 to pursue the case, but they refused.[12] Complainants

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[5] *Id.*

[6] *Id.*

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

[8] *Id.*

[9] *Id.* at 5.

[10] *Id.*

[11] *Id.*

[12] *Id.*

were once again allegedly offered by respondents One Million Pesos (₱1,000,000.00) to pursue the case until the end, but they refused again.[13] For this reason, respondents allegedly orchestrated the filing of fabricated charges for syndicated illegal recruitment and estafa (I.S. No. 06-1676 and I.S. No. 06-1835) against complainants in Iligan City.[14] On 30 November 2006, Aba claims to have received a text message from De Guzman, saying, "*Gud p.m. Tago na kayo. Labas today from Iligan Warrant of Arrest. No Bail. Dating sa Ctbto pulis mga Wednesday. Gud luck kayo.*"[15]

In support of their allegations in the administrative complaint, complainants submitted the allegedly fabricated complaint,[16] supporting documents,[17] letter of De Guzman to Cotabato City Councilor Orlando Badoy,[18] De Guzman's Affidavit of Clarification submitted in I.S. No. 2006-C-31,[19] and other relevant documents. Subsequently, complainants filed a Motion to Dismiss Complaint against Atty. Trinidad and Atty. Fornier,[20] and prayed that the complaint be pursued against De Guzman.

Trinidad, on the other hand, in his Comment filed with this Court[21] and Position Paper filed with the Commission on Bar Discipline,[22] denied all the allegations in the complaint. Trinidad vehemently declared that he has never communicated with any of the complainants and has never been to Cotabato.[23] He further claimed that the subscribed letter-complaint does not contain ultimate facts because it does not specify the times, dates, places

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[13] *Id.* at 6.
[14] *Id.* at 7.
[15] *Id.* at 6.
[16] *Id.* at 11-14.
[17] *Id.* at 15-61.
[18] *Id.* at 24.
[19] *Id.* at 27-29.
[20] *Id.* at 493-498.
[21] *Id.* at 135-167.
[22] *Id.* at 549-560.
[23] *Id.* at 140, 507.

and circumstances of the meetings and conversations with him.[24] Trinidad asserted that the complaint was a fabricated, politically motivated charge, spearheaded by a certain Joseph Montesclaros (Montesclaros), designed to tarnish Trinidad's reputation as a lawyer and city mayor.[25] Trinidad claims that Montesclaros was motivated by revenge because Montesclaros mistakenly believed that Trinidad ordered the raid of his gambling den in Pasay City.[26] Trinidad also claims that he, his family members and close friends have been victims of fabricated criminal charges committed by the syndicate headed by Montesclaros.[27]

Trinidad pointed out that this syndicate, headed by Montesclaros, is abusing court processes by filing fabricated criminal complaints of illegal recruitment in remote areas with fabricated addresses of defendants.[28] Since the defendants' addresses are fabricated, the defendants are not informed of the criminal complaint, and thus the information is filed with the court.[29] Consequently, a warrant of arrest is issued by the court, and only when the warrant of arrest is served upon the defendant will the latter know of the criminal complaint.[30] At this point, Montesclaros intervenes by extorting money from the defendant in order for the complainants to drop the criminal complaint.[31] To prove the existence of this syndicate, Trinidad presented the letter of Eden Rabor, then a second year law student in Cebu City, to the Philippine Center for Investigative Journalism and to this Court, requesting these institutions to investigate the syndicate of Montesclaros, who has victimized a Canadian citizen who was at that time jailed

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[24] *Id.* at 149.

[25] *Id.* at 151.

[26] *Id.* at 152.

[27] *Id.* at 151.

[28] *Id.* at 138-139.

[29] *Id.*

[30] *Id*.

[31] *Id.* at 156-157.

in Cebu City due to an extortion racket.[32] Trinidad also presented the Decision of Branch 65 of the Regional Trial Court of Tarlac City on the illegal recruitment charge against his friend, Emmanuel Cinco, which charge was dismissed because the charge was fabricated, as admitted by complainants themselves.[33]

Trinidad further claimed that, in some cases, the Montesclaros syndicate included some of their members as respondents to divert suspicion.[34] Trinidad pointed out that his wife was a victim of this fabricated criminal charge of illegal recruitment filed in Marawi City.[35] Fortunately, when the warrant of arrest was being served in Pasay City Hall, Trinidad's wife was not there.[36] Lastly, Trinidad declared that Montesclaros has perfected the method of filing fabricated cases in remote and dangerous places to harass his victims.[37]

Fornier, on the other hand, in his Comment filed with this Court[38] and Position Paper filed with the Commission on Bar Discipline,[39] claimed that in his 35 years as a member of the bar, he has conducted himself professionally in accordance with the exacting standards of the legal profession.[40] Fornier denied knowing any of the complainants, and also denied having any dealings or communication with any of them. He likewise claimed that he has not filed, either for himself or on behalf of a client, any case, civil, criminal or otherwise, against complainants.[41] Fornier claimed that he was included in this case for acting as

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[32] *Id.* at 169-171.

[33] *Id.* at 181-182.

[34] *Id.* at 158.

[35] *Id.* at 153.

[36] *Id.* at 152.

[37] *Id.* at 156.

[38] *Id.* at 240-300.

[39] *Id.* at 584-612.

[40] *Id.* at 244-245.

[41] *Id.* at 245.

defense counsel for the Go Tian Brothers in criminal complaints for illegal recruitment.[42] Fornier claimed that the Go Tian Brothers are victims of an extortion racket led by Montesclaros.[43] For coming to the legal aid of the Go Tian Brothers, Fornier exposed and thwarted the plan of the group of Montesclaros to extort millions of pesos from his clients.[44] Fornier claimed that the filing of the complaint is apparently an attempt of the syndicate to get even at those who may have exposed and thwarted their criminal designs at extortion.[45] Fornier prays that the Court will not fall prey to the scheme and machinations of this syndicate that has made and continues to make a mockery of the justice system by utilizing the courts, the Prosecutor's Offices, the Philippine National Police and the Philippine Overseas Employment Administration in carrying out their criminal activities.[46] Lastly, Fornier claimed that complainants failed to establish the charges against him by clear, convincing and satisfactory proof, as complainants' affidavits are replete with pure hearsay, speculations, conjectures and sweeping conclusions, unsupported by specific, clear and convincing evidence.[47]

De Guzman, on the other hand, instead of filing a Comment with this Court, filed a Motion to Dismiss Complaint[48] on the ground that the *Joint Counter-Affidavit and Affidavit of Complaint* attached to the Letter-Complaint, which was made the basis of this administrative complaint, are spurious.[49] According to the Certification issued by the Office of the City Prosecutor in Iligan City, complainants Lauban, Lumabao and Aba, who

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[42] *Id.* at 245-246.

[43] *Id.* at 246.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id.* at 247.

[48] *Id.* at 218-220.

[49] *Id.* at 219.

were charged for violation of Republic Act No. 8042 (Migrant Workers Act), which charge was subsequently dismissed through a Joint Resolution rendered by the Prosecutor, did not submit any Joint Counter-Affidavit in connection with the charge, nor did they file any Affidavit of Complaint against any person.[50]

In his Position Paper filed with the Commission on Bar Discipline,[51] De Guzman stated he is an 81-year old retired Regional Trial Court judge.[52] He pointed out that there are no details regarding the allegations of grave and serious misconduct, dishonesty, oppression, bribery, falsification of documents, violation of lawyers' oath and other administrative infractions.[53] De Guzman invited the attention of the Investigating Commissioner to his Affidavit of Clarification which he submitted in I.S. No. 2006-C-31 to deny any participation in the preparation of the criminal complaint and to narrate in detail how he became involved in this case which was masterminded by Montesclaros.[54] In his Affidavit of Clarification,[55] De Guzman claimed that he had no participation in the preparation of the criminal complaint in I.S. No. 2006-C-31, and he was surprised to receive a photocopy of the counter-affidavit of Rogelio Atangan, Atty. Nicanor G. Alvarez, Lolita Zara, Marcelo Pelisco and Atty. Roque A. Amante, Jr., implicating him in the preparation of the complaint.[56] De Guzman stated that he was surprised to find his and his clients' names in the counter-affidavit, and for this reason, felt under obligation to make the Affidavit of Clarification.[57] Lastly, De Guzman declared that he has "no

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[50] *Id.* at 221.

[51] *Id.* at 572-575.

[52] *Id.* at 572.

[53] *Id*.

[54] *Id.* at 573.

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

[56] *Id.* at 27.

[57] *Id*.

familiarity with the complainants or Tesclaros Recruitment and Employment Agency, nor with other respondents in the complaint, but he believes that Atty. Roque A. Amante, Jr. and Atty. Nicanor G. Alvarez are the key players of Joseph L. Montesclaros in the illegal recruitment business."[58]

During the mandatory conference hearings on 28 November 2008[59] and 13 March 2009,[60] none of the complainants appeared before the Investigating Commissioner to substantiate the allegations in their complaint despite due notice.[61]

Report and Recommendation of the Commission on Bar Discipline

The recommendation of the Investigating Commissioner of the Commission on Bar Discipline reads:

> In view of the foregoing, the charges against the Respondent Trinidad and Fornier are deemed to be without basis and consequently, the undersigned recommends DISMISSAL of the charges against them.
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> As to Respondent de Guzman, a former Regional Trial Court Judge, there is enough basis to hold him administratively liable. Accordingly, a penalty of SUSPENSION for two (2) months is hereby recommended.[62]

The Investigating Commissioner found, after a careful perusal of the allegations in the complaint as well as in the attachments, that complainants failed to substantiate their charges against respondents Trinidad and Fornier.[63] Other than bare allegations, complainants did not adduce proof of Trinidad and Fornier's supposed involvement or participation directly or indirectly in

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[58] *Id.* at 29.

[59] *Id.* at 515.

[60] *Id.* at 541.

[61] *Id.* at 515, 541.

[62] *Id.* at 733-737.

[63] *Id.* at 734.

the acts constituting the complaint.[64] In addition, complainants, on their own volition, admitted the non-participation and non-involvement of Trinidad and Fornier when complainants filed their *Motion to Dismiss Complaint against Atty. Trinidad and Atty. Fornier Only*.[65] For these reasons, the Investigating Commissioner recommended that the charges against Trinidad and Fornier be dismissed for utter lack of merit.

On the other hand, the Investigating Commissioner stated that De Guzman failed to deny the allegations in the Letter-Complaint or to explain the import of the same.[66] Moreover, De Guzman failed to controvert the "truly vicious evidence" against him:

> But what should appear to be a truly vicious evidence for Respondent is the letter he sent to Orlando D. Badoy, City Councilor, Cotabato City dated February 16, 2006. This letter was alleged in and attached to the Joint Counter-Affiavit with Affidavit of Complaint. The letter had confirmed the allegation of his travel to Cotabato City to file charges against persons he did not identify. He intriguingly mentioned the name Ben Danda as the one to whom he handed the complaint. Danda, incidentally, was one of those who executed the Letter of Complaint along with Siao Aba, Miko Lumabao, Benjamin Danda and Almasis Lauban which was filed before the Supreme Court.[67]

The Decision of the Board of Governors of the Integrated Bar of the Philippines

The Board of Governors of the Integrated Bar of the Philippines adopted the recommendation of the Investigating Commissioner's Report and Recommendation on the dismissal of the charges against Fornier and Trinidad.[68] In De Guzman's case, the Board

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[64] *Id*.

[65] *Id.* at 735.

[66] *Id.* at 736.

[67] *Id*.

[68] *Id.* at 731.

of Governors increased the penalty from a suspension of two (2) months to a suspension of two (2) years from the practice of law for his attempt to file illegal recruitment cases to extort money:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED **with modification**, and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the case against Respondents Trinidad and Fornier is without merit, the same is hereby **DISMISSED**. However, Atty. Salvador De Guzman, Jr. is hereby **SUSPENDED** from the practice of law for two (2) years for his attempt to file illegal recruitment cases in order to extort money.[69]

The Issue

The issue in this case is whether Trinidad, Fornier and De Guzman should be administratively disciplined based on the allegations in the complaint.

The Ruling of this Court

We adopt the Decision of the Board of Governors and the Report and Recommendation of the Investigating Commissioner on the dismissal of the charges against Trinidad and Fornier.

We reverse the Decision of the Board of Governors and the Report and Recommendation of the Investigating Commissioner with regard to De Guzman's liability, and likewise dismiss the charges against De Guzman.

Presumption, Burden of Proof and Weight of Evidence

Section 3(a), Rule 131 of the Rules of Court provides that a person is presumed innocent of crime or wrongdoing. This Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he

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[69] *Id*.

is presumed to have performed his duties in accordance with his oath.[70]

Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[71]

Weight and sufficiency of evidence, under Rule 133 of the Rules of Court, is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact. It depends upon its practical effect in inducing belief for the party on the judge trying the case.[72]

Consequently, in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence, in that order.[73] Considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that clearly preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar.[74]

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[70] *In Re: De Guzman,* 154 Phil. 127 (1974); *De Guzman v. Tadeo,* 68 Phil. 554 (1939); *In Re: Tiongko,* 43 Phil. 191 (1922); *Acosta v. Serrano,* 166 Phil. 257 (1977).

[71] *Santos v. Dichoso,* 174 Phil. 115 (1978); *Noriega v. Sison,* 210 Phil. 236 (1983).

[72] *Lim v. Court of Appeals,* 324 Phil. 400, 413 (1996).

[73] *Manalo v. Roldan-Confesor,* G.R. No. 102358, 19 November 1992, 215 SCRA 808.

[74] *Santos v. Dichoso, supra* note 71; *Noriega v. Sison, supra* note 71.

Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[75] It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[76] Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

When the evidence of the parties are evenly balanced or there is doubt on which side the evidence preponderates, the decision should be against the party with the burden of proof, according to the equipoise doctrine.[77]

To summarize, the Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.

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[75] *Habagat Grill v. DMC-Urban Property Developer, Inc.,* 494 Phil. 603, 613 (2005); *Bank of the Philippine Islands v. Reyes,* G.R. No. 157177, 11 February 2008, 544 SCRA 206, 216.

[76] *Republic v. Bautista,* G.R. No. 169801, 11 September 2007, 532 SCRA 598, 612.

[77] *Rivera v. Court of Appeals,* 348 Phil. 734, 743 (1998); *Marubeni Corp. v. Lirag,* 415 Phil. 29 (2001).

De Guzman's Liability

The Court reverses the Decision of the Board of Governors and the Report and Recommendation of the Investigating Commissioner regarding De Guzman's liability for the following reasons: (a) the documents submitted by complainants in support of their complaint are not credible; (b) complainants did not appear in any of the mandatory conference proceedings to substantiate the allegations in their complaint; and (c) complainants were not able to prove by preponderance of evidence that De Guzman communicated with them for the purpose of filing fabricated illegal recruitment charges for purposes of extortion.

The documents submitted by complainants are clearly not credible. First, complainants submitted a *Joint Counter-Affidavit and Affidavit of Complaint*, which contained all their allegations of misconduct against De Guzman, Trinidad and Fornier. Complainants misled the Investigating Commissioner, the Board of Governors of the Integrated Bar of the Philippines, and this Court into believing that the *Joint Counter-Affidavit and Affidavit of Complaint* was submitted to the Office of the City Prosecutor in Iligan to rebut the illegal recruitment charges against them. The *Joint Counter-Affidavit and Affidavit of Complaint* purportedly appears to be subscribed and sworn to before a prosecutor. After inquiry by De Guzman, however, the Office of the City Prosecutor of Iligan issued a Certification denying the submission of this document by complainants:

> This is to certify that based on available records of the Office, ALMASIS LAUBAN, MIKO LUMABAO and SIAO ALBA were among the respondents named and charged with Violation of Republic Act No. 8042 under I.S. No. 06-1835, Page 254, Vol. XVI, and I.S. No. 06-1676, Page 240, Vol. XVI, which complaints were dismissed thru a Joint Resolution dated December 29, 2006 rendered by the Office.
>
> **This is to certify further that the abovenamed persons did not submit any Joint Counter-Affidavit in connection to the complaints**

filed against them, and neither did they file any Affidavit of Complaint against any person.[78] (Emphasis supplied)

To repeat, complainants deceived and misled the Investigating Commissioner, the Board of Governors of the Integrated Bar of the Philippines, and this Court into believing that the *Joint Counter-Affidavit and Affidavit of Complaint*, which contained all their allegations of misconduct, were submitted and sworn to before a prosecutor. This deception gives doubt to the credibility of the other documents complainants submitted in support of their administrative charges against respondents. Worse, complainants submitted falsified documents to the Investigating Commissioner, the Board of Governors, and this Court.

Second, De Guzman, Fornier and Trinidad all claim that complainants are part of a syndicate headed by Montesclaros that has perfected the filing of fabricated criminal charges. Given this claim that complainants are well-adept in filing fabricated criminal charges supported by fabricated documents, this Court is more cautious in appreciating the supporting documents submitted by complainants. Complainants bear the burden of proof to establish that all the documents they submitted in support of their allegations of misconduct against respondents are authentic. Unfortunately, complainants did not even attend any mandatory conference called by the Investigating Commissioner to identify the documents and substantiate or narrate in detail the allegations of misconduct allegedly committed by respondents. To make matters worse, the *Joint Counter-Affidavit and Affidavit of Complaint* complainants attached to their Letter-Complaint, which supposedly contained all their allegations of misconduct against respondents, is spurious, not having been submitted to the Office of the City Prosecutor of Iligan, despite purportedly having the signature and seal of the prosecutor.

Third, the allegations of complainants lack material details to prove their communication with De Guzman. If De Guzman

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[78] *Rollo*, p. 221.

really called and texted them that a warrant of arrest would be issued, what mobile number did De Guzman use? Out of the voluminous documents that complainants submitted, where is the warrant for their arrest? What is their occupation or profession? Who are these complainants? These questions are unanswered because complainants did not even bother to attend any mandatory conference called by the Investigating Commissioner, despite due notice. For this reason, the allegations of De Guzman's misconduct are really doubtful.

Lastly, the supposedly "vicious" evidence against De Guzman, which was a letter he allegedly sent to Cotabato City Councilor Orlando Badoy, is not credible. This letter states:

Dear Orly,

Thank you very much for a wonderful visit to Cotabato City. I learned much about the South and the way of life there.

It took me time to prepare the complaint to be filed. In the meantime, the son-of-a-gun filed charges against us in Marawi City! I have addressed the affidavit-complaint directly to your man, Ben Danda, with instructions for him and the other two complainants to sign the same before an assistant prosecutor and file with City Prosecutor Bagasao. But we are relying on you to orchestrate the whole thing, from the prosecutor to the RTC Judge, especially the warrants of arrest.

Thank you and best regards.[79]

The signatures of De Guzman in his Affidavit of Clarification and in the purported letter have material discrepancies. At the same time, complainants did not even explain how they were able to get a copy of the purported letter. Complainants did not present the recipients, Orlando Badoy or Atty. Francis V. Gustilo, to authenticate the letter. In addition, none of the complainants appeared before the Investigating Commissioner to substantiate their allegations or authenticate the supporting documents.

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[79] *Id.* at 24.

The Investigating Commissioner, on the other hand, put a lot of weight and credibility into this purported letter:

> Again, to the extreme amazement of the undersigned, Respondent failed to offer denial of the letter or explain the import of the same differently from what is understood by the Complainants. But even with that effort, the letter is so plain to understand. Verily, the undersigned cannot ignore the same and the message it conveys.[80]

Generally, the letter would have been given weight, if not for the fact that complainants, whom respondents claim are part of an extortion syndicate, are consistently involved in the fabrication of evidence in support of their criminal complaints. Moreover, contrary to the Investigating Commissioner's observation, De Guzman actually denied any involvement in the preparation of complainants' criminal complaint in I.S. No. 2006-C-31. In his Affidavit of Clarification, De Guzman stated:

> 1.5. Undersigned has no participation in the above-captioned complaint, but to his surprise, he recently received a photocopy of (a) the counter-affidavit of Rogelio Atangan, (b) Atty. Nicanor G. Alvarez, (c) Lolita Zara, (d) Marcelo Pelisco, and (e) Atty. Roque A. Amante Jr. (his records at the Surpeme Court does not have any "Daryll");
>
> 1.6. Undersigned counsel's name and that of his clients appear in the counter-affidavit of Atty. Nicanor G. Alcarez (Montesclaros' lawyer who appeared in the sala of Pasay RTC Judge Francisco Mendiola as against the undersigned), or Marcelo Pelisco, a known henchman of Montesclaros and a squatter at the Monica Condominium, and Atty. Amante, and for this reason, undersigned counsel feels under obligation to make this affidavit of clarification for the guidance of the Investigating Prosecutor;
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> xxx xxx xxx
>
> 4.4. Undersigned has no familiarity with the Tesclaros Recruitment & Employment Agency nor with the complainants (except for Laura Timbag Tuico of Cotabato City), nor with the other respondents, but he believes that Atty. Roque A. Amante Jr. and Atty. Nicanor G.

[80] *Id.* at 736.

Alvarez are the key players of Joseph L. Montesclaros in the illegal recruitment business.[81]

For these reasons, the Court finds that the documents submitted by complainants in support of their complaint against De Guzman are not credible. Accordingly, the Court dismisses the charges against De Guzman.

De Guzman enjoys the legal presumption that he committed no crime or wrongdoing. Complainants have the burden of proof to prove their allegations of misconduct against De Guzman. Complainants were not able to discharge this burden because the documents they submitted were not authenticated and were apparently fabricated. Also, complainants did not appear in the mandatory conference proceedings to substantiate the allegations in their complaint. In disbarment proceedings, what is required to merit the administrative penalty is preponderance of evidence, which weight is even higher than substantial evidence in the hierarchy of evidentiary values. Complainants were not able to prove by preponderance of evidence that De Guzman communicated with them and persuaded them to file fabricated charges against other people for the purpose of extorting money. In fact, even if the evidence of the parties are evenly balanced, the Court must rule in favor of De Guzman according to the equipoise doctrine. For these reasons, the Court reverses the Decision of the Board of Governors and the Report and Recommendation of the Investigating Commissioner, and accordingly dismisses the charges against De Guzman.

Trinidad's and Fornier's Liabilities

The Court adopts the findings of fact and the report and recommendation of the Investigating Commissioner with respect to Trinidad's and Fornier's liabilities:

A careful persusal of the allegations in as well as the attachments to the Joint Counter Affidavit with Affidavit of Complaint reveals that Complainants failed miserably to substantiate their charges

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

against Respondents. Other than their bare allegations, the Complainants did not adduce proof of Respondent's supposed involvement or participation directly or indirectly in the acts complained of. For instance, they failed to prove though faintly that Respondents had gone to Cotabato City to personally induce and persuade the complainants to file illegal recruitment charges against Atty. Nicanor G. Alvarez and sixteen (16) others or that they have prodded and stirred them to do so as they did by any form of communication. The supposed telephone call the Respondents and their supposed cohorts had made during the proceedings before the Cotabato City Prosecutor's Office to the Complainants is unbelievable and absurd. It is inconceivable that Complainants could have answered the calls of six (6) persons during a serious proceeding such as the inquest or preliminary investigation of a criminal complaint before the City Prosecutor. To the undersigned, the fallacy of the allegation above strongly militates against the reliabiity of Complainants' charges against Respondents.

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But on top of all, the Complainants had by their own volition already made unmistakable Respondents' non-participation or non-involvement in the charges they have filed when they wittingly filed their Motion to Dismiss Complaint against Atty. Trinidad and Atty. Fornier Only. The undersigned realizes only too well that the filing of a Motion to Dismiss is proscribed in this Commission, however, any such pleading must be appreciated as to its intrinsic merit. A clear reading of the same reveals that the Complainants had wanted to clarify that they have erroneously included Respondents Trinidad and Fornier as parties to the case. In particular, they explained that they had no communication or dealings whatsoever with the said lawyers as to inspire belief that the latter had some involvement in their charges. The undersigned finds the affidavit persuasive and for that he has no reason to ignore the import of the same as a piece of evidence.[82]

At any rate, we consider the case against Trinidad and Fornier terminated. Under Section 12(c) of Rule 139-B, the administrative case is deemed terminated if the penalty imposed by the Board of Governors of the Integrated Bar of the Philippines is less

[82] *Id.* at 734-735.

than suspension or disbarment (such as reprimand, admonition or fine), unless the complainant files a petition with this Court within 15 days from notice:

> c. If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand, or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within fifteen (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

Here, complainants did not appeal the Decision of the Board of Governors dismissing the charges against Trinidad and Fornier. In fact, complainants filed with this Court a Motion to Dismiss Complaint Against Trinidad and Fornier.

WHEREFORE, we *AFFIRM* the Decision of the Board of Governors of the Integrated Bar of the Philippines, adopting the Report and Recommendation of the Investigating Commissioner, and *DISMISS* the charges against Attys. Wenceslao "Peewee" Trinidad and Andresito Fornier for utter lack of merit. We *REVERSE* the Decision of the Board of Governors of the Integrated Bar of the Philippines, modifying and increasing the penalty in the Report and Recommendation of the Investigating Commissioner, and accordingly *DISMISS* the charges against Atty. Salvador P. De Guzman, Jr. also for utter lack of merit.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-07-2069. December 14, 2011]
(Formerly OCA I.P.I. No. 05-2257-RTJ)

ESPINA & MADARANG CO. & MAKAR AGRICULTURAL COMMERCIAL & DEVELOPMENT CORP. (MAKAR), REPRESENTED BY RODRIGO A. ADTOON, *petitioners, vs.* **HON. CADER P. INDAR Al Haj, Judge, Regional Trial Court, Branch 14, Region 12, Cotabato City and its OIC, Branch Clerk of Court, ABIE M. AMILIL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; CODE OF JUDICIAL CONDUCT; STANDARDS OF COMPETENCE AND DILIGENCE REQUIRED OF JUDGES; CASE AT BAR. — [R]espondent Judge Indar failed to conform with the high standards of competence and diligence required of judges under Canon 3 of the *Code of Judicial Conduct*, particularly the following Rules: Rule 3.01. A judge shall be faithful to the law and maintain professional competence. Rule 3.02. In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interest, public opinion or fear or criticism. Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel. Rule 3.09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity. x x x [R]espondent Judge Indar failed to exert due diligence required of him to ascertain the facts of the case before he came out with the Order dated February 14, 2005. Had he taken time and effort to read and examine the pleadings and the records of the case, he could have known that the Order dated December 7, 1983 was already nullified and set aside by the Court of Appeals. x x x Respondent Judge Indar should be reminded of his personal responsibility

in the making of his decisions and orders. He should not rely on anybody else for the examination and study of the records to properly ascertain the facts of each case that he handles.

2. ID.; ID.; CLERKS OF COURT; RESPONSIBILITY; ON RECORD KEEPING. — In *Atty. Legaspi, Jr. v. Atty. Montero III*, this Court expounded on the responsibility of the Clerks of Court. x x x [Thus], It is respondent Amilil's duty as OIC Clerk of Court to safely keep all files, pleadings and files committed to his charge. As custodian of these records, it is incumbent upon him to see to it that court orders were sent with dispatch to the parties concerned. Respondent Amilil should ensure an orderly and efficient record management system to assist all personnel, including respondent Judge Indar, in the performance of their respective duties.

3. ID.; ID.; JUDGES; GROSS MISCONDUCT; PENALTY. — Rule 140 of the Rules of Court provides: SEC. 8. *Serious charges*. – Serious charges include: x x x 3. Gross misconduct constituting violations of the Code of Judicial Conduct. SEC. 11. *Sanctions*. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

4. ID.; ID.; SIMPLE NEGLECT OF DUTY; PENALTY. — Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, as amended by CSC Memorandum Circular No. 19, provides that: SEC. 22. Administrative Offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effect on said acts on the government service. x x x The following are less grave offenses with their corresponding penalties: (a) Simple Neglect of Duty 1st Offense – Suspension for one (1) month and (1) day to six (6) months, 2nd Offense – Dismissal x x x Under the Civil Service Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense

penalized with suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal for the second offense.

5. ID.; ID.; PUBLIC OFFICERS; PROPER DECORUM, EMPHASIZED. — Respondents Judge Indar and Amilil are reminded that as public officers, they are recipients of public trust, and are thus under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. As held in *Office of the Court Administrator v. Judge Liwanag:* Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to observe, in view of their exalted position as keepers of the public faith. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary.

APPEARANCES OF COUNSEL

Flaviano Oclarit & Associates for complainants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is an administrative case against respondents Judge Cader P. Indar Al Haj (Judge Indar) and Officer-in-Charge (OIC) Clerk of Court Abie M. Amilil (Amilil), both of the Regional Trial Court (RTC), Branch 14, Cotabato City, filed by complainants Espina & Madarang Company and Makar Agricultural Commercial & Development Corporation, represented by Rodrigo A. Adtoon (complainants). In a verified complaint[1] dated April 12, 2005, complainants charged respondents

[1] *Rollo,* pp. 1-13.

Judge Indar and Amilil with serious misconduct, grave abuse of discretion, oppression, evident bad faith, manifest partiality and gross ignorance of the law in connection with the issuance of an Order[2] dated February 14, 2005 in Special Proceeding No. 2004-074, entitled *In the Matter of Insolvencia Voluntaria de Olarte Hermanos y Cia, Heirs of the Late Alberto P. Olarte, etc., Petitioners*.

As gathered from the complaint and the subsequent documents filed, the antecedent facts of the case, originally docketed as OCA-I.P.I. No. 05-2257-RTJ, are as follows:

On August 23, 1929, Olarte Hermanos *y* Cia (Olarte Hermanos) entered into a contract of loan and mortgage with El Hogar Filipino whereby the former mortgaged to the latter a parcel of land in Makar, Cotabato City and covered by Original Certificate of Title (OCT) No. 12 to secure a loan of ₱160,000.00. When Olarte Hermanos defaulted in its payments on the loan, El Hogar Filipino filed an action for judicial foreclosure of the mortgage. On August 17, 1932, the mortgage was ordered foreclosed and the decision became final on January 6, 1933.

On August 21, 1933, Olarte Hermanos filed a petition for voluntary insolvency, Insolvency Case No. 90, entitled *In the Matter of Insolvencia Voluntaria de Olarte Hermanos y Cia.* On August 28, 1933, Olarte Hermanos was declared insolvent and the sheriff was ordered to take possession of all properties, books of accounts, and furniture of the insolvent corporation.

On October 14, 1933, the mortgaged property of Olarte Hermanos was sold at public auction with El Hogar Filipino as the highest bidder. The sale was confirmed by the court on December 24, 1933. Thereafter, El Hogar Filipino sold the land to Salud, Soledad, Mercedes and Asuncion, all surnamed Espina (the Espina sisters). Sometime in 1958, the Espina sisters sold the same to Makar Agricultural Corporation, which in turn sold a portion to Espina and Madarang Company.

[2] *Id.* at 63-64.

The insolvency case was archived without having been terminated with the onset of World War II.

On November 18, 1983, Alberto Olarte, Sr. (Olarte) filed a motion for the appointment as receiver of the insolvent corporation. Judge Eduardo P. Singayao (Judge Singayao), then the Presiding Judge of RTC, Branch 14, Cotabato City, granted said appointment of Olarte and re-docketed the case as *Spl. Proceeding No. 2004-074*. Subsequently, Rodolfo Pascual (Pascual) also petitioned the court to be a co-receiver of Olarte Hermanos. As receivers, Olarte and Pascual took possession of the assets of the corporation, among which was the piece of land covered by OCT No. 12. A portion of this land was, however, already registered in the name of herein complainants after the sale from the Espina sisters.

On December 7, 1983, Judge Singayao issued an order[3] to the Provincial Sheriffs of Maguindanao and Cotabato City to place the receivers in possession of the property covered by OCT No. 12, as well as all subdivisions and portions thereof, its fruits and all proceeds of the sale of any portion of the property, and to submit to the court an inventory of any assets of the insolvent corporation.

Herein complainants then filed a petition for *certiorari* before the Intermediate Appellate Court, docketed as CA-G.R. SP No. 02613 and entitled *Espina & Madarang Co. v. Judge Eduardo Singayao*. On November 21, 1985, the Court of Appeals nullified and set aside the said orders of Judge Singayao and declared as permanent the writ of preliminary injunction it issued against Judge Singayao from implementing its orders.[4] It held thus:

> We are of the opinion that the order of 7 December 1983 was issued with grave abuse of discretion as it was issued without affording petitioners and other interested parties a chance to be heard thereon

[3] *Id.* at 75-79.

[4] *Id.* at 99-106.

despite the fact that the circumstances demanded such a hearing. The order in effect nullified a mortgage contract entered into more than fifty (50) years ago and which had not been challenged all that time. The order set aside judicial foreclosure proceedings terminated more than fifty (50) years ago which has in its favor at least the presumption of regularity, especially when the proceedings were had in the very same court where the insolvency proceeding was pending. The order nullified the mortgage contract entered into fifty (50) years earlier on the sole representation of private respondent Alberto Olarte that his brother, Jose Olarte, was not authorized to enter into the mortgage contract, and that his (Alberto Olarte's) signature in the Board Resolution authorizing the mortgage was forged, without receiving evidence, or hearing petitioners, on the truth of such representation considering the rather belated accusation of Alberto Olarte. The order dispossessed present owners and possessors of the property in question who have held title thereto prior to said order and had been in peaceful and unquestioned possession of their respective holdings all that time, some of whom have not even been made parties to the insolvency case. The order does not only transfer possession of the property to private respondents, but directs that the proceeds of the sales thereof through the years be turned over to private respondents. By this, private respondents would have their cake and eat it too. The respondent Court correctly assessed the prejudicial effects of the questioned order when it set said order aside on 3 January 1984, for the reasons "that the right(s) of third parties are affected and considering further that the enforcement of the Order of (the) Court dated December 7, 1983 might cause deprivation of property without due process of law of third parties who are not impleaded in this case, and for the court to be given an opportune time to review the entire records of the case and hear the parties and their respective counsels."

xxx xxx xxx

WHEREFORE, the orders of 7 December 1983 and 12 January 1984 and the first order of 30 January 1984 advising Branch XXII of the RTC of General Santos City to stay all proceedings in Civil Case No. 2866 are declared null and void and are set aside.

The portion of the second order of 30 January 1984 denying Makar's motion to transfer the insolvency proceedings to the RTC in General Santos City is declared as valid, but the portion lifting the order of 3 January 1984 and directing the Register of Deeds of

General Santos City to comply with the order of 7 December 1983, is declared null and void and is set aside.

The writ of preliminary injunction issued by this Court is hereby made permanent.[5]

This decision of the Court of Appeals was appealed to the Supreme Court *via* a petition for review on *certiorari*, which was docketed as G.R. No. 73457. On August 13, 1986, said petition was dismissed for lack of merit. Thereafter, the decision of this Court became final and executory on September 22, 1986.

After almost twenty years, in February 2005, new incidents transpired in connection with the case.

In the Order dated February 14, 2005, respondent Judge Indar, now the Presiding Judge of RTC, Branch 14 of Cotabato City, granted an *ex parte* petition for the issuance of a writ of possession filed by the heirs of Olarte to revive the December 7, 1983 Order of Judge Singayao. In full, said order reads:

This is an action for Execution of the Order dated December 7, 1983, directing the registration thereof with the Registry of Deeds of General Santos City, the dispositive portion [of] which is hereunder quoted:

> WHEREFORE, in pursuance of the Civil Code and the Insolvency Law, order is hereby issued, to the Register of Deeds of General Santos City, to annotate the deletion on the registry of book and on the face of Certificate of Title No. 12 and all subsequent titles derived therefrom, the annotation of the cancellation thereof by Transfer Certificate of Title No. 886 and annotation of the mortgage by virtue of this order.
>
> Further, order is hereby issued to the Provincial Sheriffs of Maguindanao and Cotabato City, to place the receiver appointed by the Court in possession of the property covered by Certificate of Title No. 12 and/or covered by titles derived therefrom and all proceeds of the sale thereof of portions of the same and all its fruits[.]

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[5] *Id.* at 104-106.

> Finally, order is issued to the receiver to register this Order with Register of Deeds of General Santos City, and to take possession of the property covered by Certificate of Title No. 12, all subdivisions and portions thereof, its fruits and all proceeds of the sale thereof or any portion of the same to submit to the Court an inventory of any assets of the insolvent that comes to this possession.
>
> SO ORDERED.
>
> Given at Cotabato City, Philippines, this 7th day of December 1983.
>
> SGD. EDUARDO P. SINGAYAO
> Regional Trial Court Judge

The issue in the instant case is whether or not the final and executory order can be implemented after the lapse of the 5-year and/or 10-year prescriptive period provided for under Rule 39 –

> Section 6. Execution by motion or by independent action.
>
> A final and executory judgment or order may be executed on motion within Five (5) years from the date of its entry. After the lapse of such time and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within Five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The former Presiding Judge of this Court denied this action and the petitioners filed a Motion for Reconsideration of the order of denial on October 7, 2004, which issue was left unresolved that prompted the petitioners to file a Supplemental Motion now submitted for the consideration by this Court;

The petitioner posited that Section 6 of Rule 39 of the Rules on Civil Procedure is not applicable to Special Proceedings in land registration and cited are jurisprudence of the Honorable Supreme Court hereunder quoted:

"Neither this section is applicable to Special Proceedings such as land registration cases, hence, the right to ask for a writ of possession therein never prescribes (*CF Heirs of Marcos vs. De Banwar*, L-22110, September 28, 1968, S*ta. Ana vs. Menia*, L-15564, April 23, 1961)."

The Five-year limitation rule for the execution on motion of judgment does not apply to special proceedings, like Cadastral proceedings (*Rodil vs. Benedicto* 95 SCRA, January 22, 1980);

Further the petitioners in the Supplemental Motion for Execution argued that while the statute of limitations may constitute a bar to its execution, however, this is thoroughly explained and amplified by petitioners in their petition and in the motion for execution.

Consequently, this Court resolves to GRANT the petition. The Order sought to be implemented has become final and executory, and therefore, a ministerial duty of this Court to order its execution directing the Provincial Sheriff to execute the Order dated December 7, 1983.[6]

On March 4, 2005, respondent Amilil issued a Certificate of Finality[7] of the Order dated February 14, 2005, stating therein that neither a motion for reconsideration nor an appeal had been filed within the fifteen (15)-day reglementary period.

It appears, however, that on February 28, 2005, complainants as intervenors in the case below, filed by registered mail a Motion for Reconsideration and To Set Aside Order of February 14, 2005.[8] Said pleading was received by the lower court on March 7, 2005.[9] Complainants stated that "[t]he order dated December 7, 1983 issued by Judge Eduardo P. Singayao in Sp. Case No. 90 was declared NULL AND VOID and set aside by the Court of Appeals in CA-GR No. 02613 entitled, *Espina and Madarang Company v. Judge Eduardo Singayao* in its decision dated November 21, 1985."[10] Complainants explained further that the said decision of the Court of Appeals, when appealed to the Supreme Court in G.R. No. 73457, was dismissed for lack of merit on August 13, 1986.

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[6] *Id.* at 20-21.

[7] *Id.* at 22.

[8] *Id.* at 119-121.

[9] *Id.* at 119.

[10] *Id.* at 265.

Complainants also filed a Motion to Withdraw or Revoke Certificate of Finality[11] dated March 5, 2005, alleging that:

> The intervenors, Makar Agricultural Corporation and Espina and Madarang Company by counsel respectfully move the Honorable Court to order the Withdrawal or Revocation of the "Certificate of Finality" of the Order of this Honorable Court dated February 14, 2005 and in support of this motion respectfully allege: THAT –
>
> 1. The Intervenors were not served a copy of the order of this Honorable Court dated February 14, 2005 granting petitioner's [the Olarte heirs'] motion for "enforcement" of the VOID order of Judge Eduardo Singayao dated December 7, 1983 declared NULL and VOID by the Court of Appeals in CA-GR No. 02613.
>
> 2. The Intervenors whose appearance in the case was approved by the Honorable Court filed a motion for reconsideration on February 28, 2005 by Registered Mail per Registry Receipt No. 3180 of the Gen. Santos City Post Office. Hence, said order has not become final and executory and the Sheriff should not yet comply with the said order which was declared by the Court of Appeals and affirmed by the Supreme Court NULL and VOID and permanently enjoined from execution.
>
> 3. The Clerk of Court, Abie M. Amilil, should be advised to immediately withdraw his certification.
>
> 4. Further, the insolvency case was ordered terminated and closed by Judge Japal Guiani on March 4, 1987 and affirmed by the Supreme Court in G.R. No. 80784 promulgated on August 2, 1984, copy of which is hereto attached as Annex "A".

Thus, in an Order[12] dated April 12, 2005, respondent Judge Indar reconsidered and set aside his Order dated February 14, 2005 for the execution of the Order dated December 7, 1983 by Judge Singayao. Respondent Judge Indar also ordered the recall of the Certificate of Finality issued by respondent Amilil.

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[11] *Id.* at 271-272.

[12] *Id.* at 262-263.

Not satisfied with the recall of the said orders, complainants filed the instant administrative case charging respondents Judge Indar and Amilil with serious misconduct, grave abuse of discretion, oppression, evident bad faith, manifest partiality and gross ignorance of the law. Complainants allege that respondents Judge Indar and Amilil are "guilty of violating the permanent writ of injunction which the Intermediate Appellate Court issued in CA-G.R. SP No. 02613 and affirmed by the Honorable Supreme Court in G.R. No. 73457, (which voided the December 7, 1983 order of Judge Singayao), by resurrecting the same in an order issued *ex parte* on February 14, 2005, and directed the implementation thereof, despite knowledge of its nullity."[13]

In their undated Comment,[14] respondents Judge Indar and Amilil deny the allegations in the complaint. Respondent Judge Indar claims that since the filing of the petition to revive the case was made on May 3, 2004, neither party made any reference to the fact that the Order dated December 7, 1983 of Judge Singayao had been nullified and set aside by the Court of Appeals and the Supreme Court. He also asserts that he issued the Order dated February 14, 2005 on the ground that he found the party's motion for execution meritorious. It was only when complainants filed a motion for reconsideration to set aside the said order did he come to know of the said Court of Appeals and Supreme Court decisions. Respondent Judge Indar intimated that he even had to go through six volumes of *rollo* in the bodega and verify with the Court of Appeals the authenticity of its decision dated November 21, 1986 since what he found attached to the records was an unreadable and uncertified copy of the said decision.

Respondents Judge Indar and Amilil contend that the administrative case filed against them is designed to harass and malign them. They allege that two other complaints have been filed against them by the complainants – for indirect contempt before the Court of Appeals, and for graft and

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[13] *Id.* at 11.

[14] *Id.* at 52-62.

corruption before the Ombudsman for Mindanao. Thus, respondents Judge Indar and Amilil also seek the disbarment of complainants' counsels for allegedly being dishonest and in bad faith when they filed the instant administrative case.

In the Resolution[15] dated July 25, 2007, this Court resolved, among others, to re-docket the administrative complaint as a regular administrative matter and to refer the case to the Executive Justice of the Court of Appeals, Cagayan de Oro Station, for raffle among the Justices for investigation, report and recommendation within sixty (60) days from receipt of records thereof.

Immediately thereafter, Associate Justice Elihu A. Ybañez of the Court of Appeals, to whom the instant case was raffled, sent notices to the parties for the setting of the hearings on October 17, 18 and 19, 2007.[16]

Respondents Judge Indar and Amilil filed a Manifestation for the Dismissal of Complaint for Being Moot and Academic and Charging complainants' Counsel for Forum Shopping,[17] stating that respondent Judge Indar would be attending the Philippine Judges Association 2007 Convention in Manila and would then be unavailable for hearing on the said dates.

Thus, on October 17, 2007, only counsel for complainants appeared and submitted a Motion to Withdraw Complaint[18] dated October 9, 2007. In the meantime, the scheduled settings on October 18 and 19, 2007 were also cancelled.

Respondents Judge Indar and Amilil also filed a Manifestation for Withdrawal of Counter-Complaint Against Atty. Nilo J. Flaviano[19] dated October 16, 2007, seeking the withdrawal of

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[15] *Id.* at 240.

[16] *Id.* at 245-246.

[17] *Id.* at 247-252.

[18] *Id.* at 303-309.

[19] *Id.* at 320-321.

their counter-complaint against the complainants' counsel "[a]s a matter of goodwill reciprocity to complainant's *(sic)* counsel's good faith."[20]

In the Resolution[21] dated November 7, 2007, Investigating Justice Ybañez denied complainants' motion to withdraw complaint, arguing that the court's disciplinary authority over its officials and employees cannot be dependent on or frustrated by private arrangements between the parties, and that an administrative complaint cannot be simply withdrawn at any time by the complainants because there is a need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities.

Consequently, schedule for the hearings was again set for November 14 and 15, 2007. Parties were also warned that failure to appear at the hearings and to present their evidence on the said dates shall be construed as a waiver of their right to present evidence, in which event the case will be determined on the basis of available records.

On November 14, 2007, only Rodrigo A. Adtoon, complainants' representative, appeared. He informed the Investigating Justice that their counsel was indisposed and reiterated the withdrawal of the complaint but presented no authority to the effect that complainants were no longer interested in pursuing their complaint. Thus, the Investigating Justice considered the case submitted for resolution.[22]

Thereafter, in a Report[23] dated December 10, 2007, Investigating Justice Ybañez made the following recommendation:

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[20] *Id.* at 320.

[21] *Id.* at 370-372.

[22] *Id.* at 375-377.

[23] *Id.* at 388-410.

Recommendation

The facts established from the records of the case and the pleadings filed before the Investigating Justice are insufficient to support a finding of gross ignorance of the law on the part of the respondent Judge. To be held liable therefore, "the judge must be shown to have committed an error that was gross or patent, deliberate and malicious." Respondent Judge may have erred in the issuance of the February 14, 2005 Order, but such error has not been shown to be gross or patent. Neither is there any clear and sufficient basis for finding respondent Judge liable for gross negligence and issuance of an unjust interlocutory order. He cannot, however, be completely absolved of administrative liability.

The respondent Judge displayed conduct that fell short of the standards expected of a magistrate of the law. A judge should be industriously devoted to the study of the law, for having accepted his position, he owes it to the dignity of the court he sits in. It is indeed demanded that a judge should strive for excellence. To keep the idealism alive and the passion burning, a judge need not only remind himself of this stirring message on who is fit to be a judge: "A man of learning who spends tirelessly the weary hours after midnight acquainting himself with the great body of traditions and the learning of the law."

In the present case, respondent Judge was remiss in his duty to be attentive, patient, studious and careful to diligently ascertain the facts. He should thus be CENSURED because the Code of Judicial Ethics requires him to observe due care in the performance of his official functions and to be the embodiment of, among other desirable characteristics, judicial competence. His Order dated April 12, 2005 setting aside the Order dated February 14, 2005 and recalling the Certificate of Finality dated March 4, 2005 notwithstanding.

As regards the respondent OIC Branch Clerk of Court, the records and the pleadings filed before the Investigating Judge have established his administrative liability. From his failure to inform the Judge of the existence of the IAC and SC Decisions nullifying the December 7, 1983 Order of the Court despite knowledge thereof, failure to make sure that parties were furnished a copy of the court orders as OIC Branch Clerk of Court, particularly the February 14, 2005 Order which complainants were not furnished a copy thereof, and questionable haste in the issuance of Certificate of Finality, respondent OIC Branch Clerk of Court should thus be SUSPENDED

FOR TWO (2) MONTHS WITHOUT PAY with a stern warning that repetition of the same shall be dealt with more severely.[24]

The findings of Investigating Justice Ybanez are well taken. We, however, modify the penalties imposed upon respondents Judge Indar and Amilil, consistent with Rule 140 of the Rules of Court.

In *Judge Salvador v. Serrano*,[25] we ruled, thus:

> This Court stresses once more that the administration of justice is a sacred task; by the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public office is a public trust and all public officers must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency. It condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary. Thus, every employee or officer involved in this task should be circumscribed with the heavy burden of responsibility and their conduct must, at all times, be above suspicion.[26]

Here, respondent Judge Indar failed to conform with the high standards of competence and diligence required of judges under Canon 3 of the *Code of Judicial Conduct*, particularly the following Rules:

> Rule 3.01. A judge shall be faithful to the law and maintain professional competence.
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> Rule 3.02. In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interest, public opinion or fear or criticism.

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[24] *Id.* at 408-410.

[25] 516 Phil. 412 (2006).

[26] *Id.* at 430-431.

Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

In the instant case, respondent Judge Indar failed to exert due diligence required of him to ascertain the facts of the case before he came out with the Order dated February 14, 2005. Had he taken time and effort to read and examine the pleadings and the records of the case, he could have known that the Order dated December 7, 1983 was already nullified and set aside by the Court of Appeals.

We likewise find unsatisfactory the excuses given by respondent Judge Indar that neither the previous judges handling the case nor the parties themselves made any reference to the fact that the Order of December 7, 1983 had already been nullified and set aside, and that there were voluminous records to read and study. Respondent Judge Indar should be reminded of his personal responsibility in the making of his decisions and orders. He should not rely on anybody else for the examination and study of the records to properly ascertain the facts of each case that he handles. He cannot simply pass the blame on his staff and hide behind the incompetence of his subordinates. Moreover, respondent Judge Indar should have been more cautious since the case involved was an old inherited case with voluminous records and what was sought to be executed was an order issued almost twenty (20) years ago. It is incumbent upon him to devise an efficient court management system since he is the one directly responsible for the proper discharge of his functions.

While respondent Judge Indar had already issued an Order dated April 12, 2005 which set aside and recalled the Order dated February 14, 2005 and the Certificate of Finality dated March 4, 2005, he was still remiss of his duties to be circumspect,

diligent and careful in the performance of his official functions and be the embodiment of judicial competence.

We emphasized in *Mactan Cebu International Airport Authority v. Judge Hontanosas, Jr.*[27] that:

> Admittedly, judges cannot be held to account for erroneous judgments rendered in good faith. However, this defense has been all too frequently cited to the point of staleness. In truth, good faith in situations of infallible discretion inheres only within the parameters of tolerable judgment and does not apply where the issues are so simple and the applicable legal principle evident and basic as to be beyond permissible margins of error. Indeed, while a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives.[28]

Thus, this Court is in agreement with the findings of Investigating Justice Ybanez that respondent Judge Indar displayed conduct that fell short of the standards of competence, integrity and diligence expected of a magistrate of law.

With regard to respondent Amilil, this Court agrees with the Investigating Justice that the records and pleadings filed have established his administrative liability. First, respondent Amilil failed to inform respondent Judge Indar of the existence of the Court of Appeals and Supreme Court decisions which have nullified and set aside the Order dated December 7, 1983 which was sought to be enforced. Second, he failed to inform and send the parties their respective notices and court orders particularly the Order dated February 14, 2005. Third, respondent Amilil issued the Certificate of Finality dated March 4, 2005 without verifying if indeed a motion for reconsideration was filed in connection with the case.

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[27] 484 Phil. 194 (2004).

[28] *Id.* at 212.

To reiterate, complainants filed by registered mail a Motion for Reconsideration and To Set Aside Order of February 14, 2005. It was therefore incorrect for respondent Amilil to certify that the Order dated February 14, 2005 had become final and executory because no appeal had been taken from it nor a motion for its reconsideration filed. The issuance by respondent Amilil of a false certification creates confusion since the facts were neither verified nor confirmed.

In *Atty. Legaspi, Jr. v. Atty. Montero III*,[29] this Court expounded on the responsibility of the Clerks of Court, thus:

> Under the 2002 Revised Manual for Clerks of Court, the branch clerk of court as the administrative officer of the court, among others, controls and supervises the safekeeping of court records. Moreover, Section 7, Rule 136 of the Rules of Court specifically mandates the clerk of court to "safely keep all records, papers, files, exhibits and public property committed to his charge." As custodian of the records of the court, it is the duty of the clerk of court to ensure not only that the same are safely kept in his or her possession, but also those [that] will be readily available upon the request of the parties or order of the court.
>
> Indeed, the clerk of court is an essential officer of our judicial system. As a ranking officer of the court, he performs delicate administrative functions vital to the prompt and proper administration of justice. As custodian of judicial records, it is incumbent upon the clerk of court to ensure an orderly and efficient court management system in the court, and to supervise the personnel under his office to function effectively. A clerk of court plays a key role in the complement of the court and cannot be permitted to slacken his job under one pretext or another. In fact, it has been held that branch clerks of court are chiefly responsible for the shortcomings of subordinates to whom administrative functions normally pertaining to the branch clerk of court were delegated. Hence, clerks of court must be assiduous in performing official duty and in supervising and managing court dockets and records.[30]

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[29] 496 Phil. 46 (2005).

[30] *Id.* at 52-54.

Clearly, it is respondent Amilil's duty as OIC Clerk of Court to safely keep all files, pleadings and files committed to his charge. As custodian of these records, it is incumbent upon him to see to it that court orders were sent with dispatch to the parties concerned. Respondent Amilil should ensure an orderly and efficient record management system to assist all personnel, including respondent Judge Indar, in the performance of their respective duties. Unfortunately, respondent Amilil failed to live up to these standards.

As to the penalties to be imposed upon respondent Judge Indar, this Court finds the same too light for the infractions he committed. Rule 140 of the Rules of Court provides:

SEC. 8. *Serious charges*. – Serious charges include:

x x x x x x x x x

3. Gross misconduct constituting violations of the Code of Judicial Conduct.

SEC. 11. *Sanctions*. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

To our mind, the gravity of the infractions committed by respondent Judge Indar merits a higher penalty than the censure recommended by the Investigating Justice. We likewise note that this is not respondent Judge Indar's first offense. In *A.M. No. RTJ-05-1953*, we imposed upon him a fine of Ten Thousand (₱10,000.00) Pesos for violating Section 5, Rule 58 of the Rules of Court, when he issued a preliminary injunction without any hearing and prior notice to the parties. Thus, this Court finds

respondent Judge Indar guilty of gross misconduct for committing violations of the Code of Judicial Conduct, for which we shall impose a fine of Twenty-Five Thousand (₱25,000.00) Pesos.

However, with regard to the penalty imposed on respondent Amilil, we find the same commensurate with his infractions. Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, as amended by CSC Memorandum Circular No. 19, provides that:

> SEC. 22. Administrative Offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effect on said acts on the government service.
>
> xxx xxx xxx
>
> The following are less grave offenses with their corresponding penalties:
>
> (a) Simple Neglect of Duty
>
> 1st Offense – Suspension for one (1) month and (1) day to six (6) months
>
> 2nd Offense – Dismissal

Clearly, the acts of respondent Amilil constitute simple neglect of duty for which he must be made administratively liable. Under the Civil Service Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense penalized with suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal for the second offense.

Respondents Judge Indar and Amilil are reminded that as public officers, they are recipients of public trust, and are thus under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. As held in *Office of the Court Administrator v. Judge Liwanag*[31]:

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[31] A.M. No. MTJ-02-1440, February 28, 2006, 483 SCRA 417.

Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to observe, in view of their exalted position as keepers of the public faith. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary.[32]

WHEREFORE, the Court finds respondent Judge Cader P. Indar Al Haj *GUILTY* of gross misconduct for committing violations of the Code of Judicial Conduct, and is FINED the amount of Twenty-Five Thousand (₱25,000.00) Pesos. He is likewise WARNED that a repetition of the foregoing or similar transgressions shall be dealt with more severely.

Respondent OIC Branch Clerk of Court Abie M. Amilil is also found *GUILTY* of neglect of duty and is SUSPENDED for two (2) months without pay with a stern warning that repetition of the same shall be dealt with more severely.

SO ORDERED.

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

[32] *Id.* at 430.

FIRST DIVISION

[G.R. No. 161718. December 14, 2011]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **DING VELAYO SPORTS CENTER, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; AN EXPRESS AGREEMENT WHICH GIVES THE LESSEE THE SOLE OPTION TO RENEW THE LEASE IS FREQUENT AND SUBJECT TO STATUTORY RESTRICTIONS, VALID AND BINDING ON THE PARTIES.— Petitioner argues that the renewal of the Contract of Lease cannot be made to depend on the sole will of respondent for the same would then be void for being a potestative condition. We do not agree. As we have already explained in *Allied Banking Corporation v. Court of Appeals*: x x x **An express agreement which gives the lessee the sole option to renew the lease is frequent and subject to statutory restrictions, valid and binding on the parties.** This option, which is provided in the same lease agreement, is fundamentally part of the consideration in the contract and is no different from any other provision of the lease carrying an undertaking on the part of the lessor to act conditioned on the performance by the lessee. It is a purely executory contract and at most confers a right to obtain a renewal if there is compliance with the conditions on which the right is made to depend. The right of renewal constitutes a part of the lessee's interest in the land and forms a substantial and integral part of the agreement. **The fact that such option is binding only on the lessor and can be exercised only by the lessee does not render it void for lack of mutuality. After all, the lessor is free to give or not to give the option to the lessee.** And while the lessee has a right to elect whether to continue with the lease or not, once he exercises his option to continue and the lessor accepts, both parties are thereafter bound by the new lease agreement. Their rights and obligations become mutually fixed, and the lessee is entitled to retain possession of the property for the duration of the new lease, and the lessor may hold him

liable for the rent therefor. The lessee cannot thereafter escape liability even if he should subsequently decide to abandon the premises. Mutuality obtains in such a contract and equality exists between the lessor and the lessee since they remain with the same faculties in respect to fulfillment.

2. ID.; ID.; ID.; LEASE AGREEMENT GRANTING THE RESPONDENT, AS LESSEE, THE SOLE OPTION TO RENEW THE LEASE, UPHELD.— Paragraph 17 of the Contract of Lease dated May 14, 1976 between petitioner and respondent solely granted to respondent the option of renewing the lease of the subject property, the only express requirement was for respondent to notify petitioner of its decision to renew the lease within 60 days prior to the expiration of the original lease term. It has not been disputed that said Contract of Lease was willingly and knowingly entered into by petitioner and respondent. Thus, petitioner freely consented to giving respondent the exclusive right to choose whether or not to renew the lease. As we stated in *Allied Banking*, the right of renewal constitutes a part of the interest of respondent, as lessee, in the subject property, and forms a substantial and integral part of the lease agreement with petitioner. Records show that respondent had duly complied with the only condition for renewal under Section 17 of the Contract of Lease by notifying petitioner 60 days prior to the expiration of said Contract that it chooses to renew the lease. We cannot now allow petitioner to arbitrarily deny respondent of said right after having previously agreed to the grant of the same.

3. ID.; ID.; ID.; THE EXERCISE BY THE LESSEE OF ITS OPTION TO RENEW THE LEASE IS NOT SUBJECT TO NEGOTIATION; RATIONALE.— Equally unmeritorious is the assertion of petitioner that paragraph 17 of the Contract of Lease dated May 14, 1976 merely provides a procedural basis for a negotiation for renewal of the lease and the terms thereof. The exercise by respondent of its option to renew the lease need no longer be subject to negotiations. We reiterate the point we made in *Allied Banking* that: [I]f we were to adopt the contrary theory that the terms and conditions to be embodied in the renewed contract were still subject to mutual agreement by and between the parties, then the option – which is an integral part of the consideration for the contract – would be rendered worthless. For then, the lessor could easily defeat the lessee's right of

renewal by simply imposing unreasonable and onerous conditions to prevent the parties from reaching an agreement, as in the case at bar. As in a statute, no word, clause, sentence, provision or part of a contract shall be considered surplusage or superfluous, meaningless, void, insignificant or nugatory, if that can be reasonably avoided. To this end, a construction which will render every word operative is to be preferred over that which would make some words idle and nugatory.

4. ID.; ID.; ID.; ID.; IN CASE THE LESSEE EXERCISES ITS OPTION TO RENEW THE LEASE, BUT THERE ARE NO SPECIFIED TERMS AND CONDITIONS FOR THE NEW CONTRACT OF LEASE, THE SAME TERMS AND CONDITIONS AS THE ORIGINAL CONTRACT OF LEASE SHALL CONTINUE TO GOVERN.— In case the lessee chooses to renew the lease but there are no specified terms and conditions for the new contract of lease, the same terms and conditions as the original contract of lease shall continue to govern, as the following survey of cases in *Allied Banking* would show: x x x [i]n the case of *Hicks v. Manila Hotel Company*, a similar issue was resolved by this Court. It was held that **'such a clause relates to the very contract in which it is placed, and does not permit the defendant upon the renewal of the contract in which the clause is found, to insist upon different terms than those embraced in the contract to be renewed';** and that **'a stipulation to renew always relates to the contract in which it is found and the rights granted thereunder, unless it expressly provides for variations in the terms of the contract to be renewed.**' x x x. In sum, the renewed contract of lease of the subject property between petitioner and respondent shall be based on the same terms and conditions as the original contract of lease. The "original contract of lease" does not pertain to the Contract of Lease dated May 14, 1976 between petitioner and respondent alone, but also to the Contract of Lease dated February 15, 1967 between petitioner (then still called CAA) and Salem, as well as the Contract of Lease dated November 26, 1974 between petitioner and Velayo Export – all three contracts being inextricably connected. Since the Contract of Lease between petitioner and Salem was for a term of 25 years, then the renewed contract of lease of between petitioner and respondent shall be for another term of 25 years. This construction of the renewal

clause under paragraph 17 of the Contract of Lease dated May 14, 1976 between petitioner and respondent is most consistent with the intent of the parties at the time of the execution of said Contract and most effectual in implementing the same.

5. ID.; ID.; ID.; THE OBLIGATION OF THE RESPONDENT IS DEEMED COMPLIED WITH WHEN THE PETITIONER DID NOT REGISTER ANY PROTEST OR OBJECTION TO THE ALLEGED INCOMPLETENESS OF OR IRREGULARITY IN THE PERFORMANCE BY THE RESPONDENT OF ITS OBLIGATION TO BUILD AND DEVELOP IMPROVEMENTS ON THE SUBJECT PROPERTY.— While the Contract of Lease expressly obligated respondent to build certain improvements, such as parking, shopping mall, and sports facilities, the belated insistence by petitioner on compliance with the same appears to be a mere afterthought. Article 1235 of the Civil Code states that "[w]hen the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with." As aptly observed by the RTC, paragraphs 9 and 10 of the Contract of Lease likewise expressly require respondent to submit, for **prior approval** by petitioner, all construction plans on the subject property; and to complete the contemplated improvements thereon **within a year**. The Contract of Lease was executed on May 14, 1976, and the one-year period expired on May 14, 1977. Yet, petitioner did not register any protest or objection to the alleged incompleteness of or irregularity in the performance by respondent of its obligation to build and develop improvements on the subject property. In fact, upon the expiration of the original 25-year lease period in February 1992, petitioner was already ready and willing to accept and appropriate as its own the improvements built on the subject property in 1992. Petitioner only raised the issue of the purported incompleteness/irregularity of the said improvements when it was brought to court by respondent for refusing to renew the lease.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE RULES AND REGULATIONS; PUBLICATION IS INDISPENSABLE IN ORDER THAT ALL STATUTES, INCLUDING ADMINISTRATIVE RULES THAT ARE INTENDED TO ENFORCE OR IMPLEMENT EXISTING LAWS, ATTAIN BINDING

FORCE AND EFFECT.— Petitioner later demanded an increase in lease rentals based on subsequent administrative issuances raising the rates for the rental of its properties. But the RTC found that the adverted administrative orders were not published in full, thus, the same were legally invalid within the context of Article 2 of the Civil Code which provides that "[l]aws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. x x x" In *Tañada v. Tuvera*, we enunciated that publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect, to wit: We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature. Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.

7. ID.; ID.; ID.; A PARTY MAY RAISE THE UNCONSTITUTIONALITY OR INVALIDITY OF AN ADMINISTRATIVE REGULATION ON EVERY OCCASION THAT SAID REGULATION IS BEING ENFORCED.— There is no basis for the argument of petitioner that the validity of its administrative orders cannot be collaterally attacked. To the contrary, we have previously declared that a party may raise the unconstitutionality or invalidity of an administrative regulation on every occasion that said regulation is being enforced. Since it is petitioner which first invoked its administrative orders to justify the increase in lease rentals of respondent, then respondent may raise before the court the invalidity of said administrative orders on the ground of non-publication thereof.

8. CIVIL LAW; ESTOPPEL; PRINCIPLE, EXPLAINED; ESSENTIAL ELEMENTS; PRINCIPLE, NOT APPLICABLE.— [P]etitioner cannot oppose the renewal of the lease because of estoppel. Our following disquisition in *Kalalo*

v. Luz is relevant herein: Under Article 1431 of the Civil Code, in order that estoppel may apply the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. x x x. An essential element of estoppel is that **the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped**, and this element is wanting in the instant case. In *Cristobal vs. Gomez*, this Court held that no estoppel based on a document can be invoked by one who has not been misled by the false statements contained therein. And in *Republic of the Philippines vs. Garcia, et al.*, this Court ruled that there is no estoppel when the statement or action invoked as its basis did not mislead the adverse party. Estoppel has been characterized as harsh or odious, and not favored in law. When misapplied, estoppel becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. Estoppel cannot be sustained by mere argument or doubtful inference; **it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence.** No party should be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel *in pais* must be applied strictly and should not be enforced unless substantiated in every particular. The essential elements of estoppel *in pais* may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that his conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. **As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in questions; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment**

or prejudice. x x x. There is an utter lack of clear, convincing, and satisfactory evidence on the part of petitioner, as the party claiming estoppel, of the second and third elements for the application of said principle against respondent.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Arturo S. Santos for respondent.

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 January 8, 2004 of the Court Appeals in CA-G.R. CV No. 68787, affirming the Decision[2] dated October 29, 1999 of Branch 111 of the Regional Trial Court (RTC) of Pasay City in Civil Case No. 8847, which granted the Complaint for Injunction, Consignation, and Damages with prayer for a Temporary Restraining Order filed by respondent Ding Velayo Sports Center, Inc. against petitioner Manila International Airport Authority (MIAA), and essentially compelled petitioner to renew the lease of respondent over a parcel of land within the airport premises.

Below are the facts as culled from the records of the case:

On February 15, 1967, petitioner (then still called the Civil Aeronautics Administration or CAA) and Salem Investment Corporation (Salem) entered into a Contract of Lease whereby petitioner leased in favor of Salem a parcel of land known as Lot 2-A, with an area of 76,328 square meters, located in front of the Manila International Airport (MIA) in Pasay City, and

[1] *Rollo*, pp. 44-52; penned by Associate Justice Eloy R. Bello, Jr. with Associate Justices Amelita G. Tolentino and Arturo D. Brion (now a member of this Court), concurring.

[2] Records, pp. 1108-1125.

registered under Transfer Certificate of Title (TCT) No. 6735 in the name of the Republic (Lot 2-A). Petitioner and Salem entered into said Contract of Lease for the following reasons:

> WHEREAS, this particular portion of land is presently an eyesore to the airport premises due to the fact that a major portion of it consists of swampy and *talahib* infested silt and abandoned fishponds and occupied by squatters and some [petitioner's] employees with ungainly makeshift dwellings;
>
> WHEREAS, the LESSOR, in accordance with its general plan to improve and beautify the airport premises, is interested in developing this particular area by providing such facilities and conveniences as may be necessary for the comfort, convenience and relaxation of transients, tourists and the general public;
>
> WHEREAS, the LESSEE, a corporation engaged in hostelry and other allied business, is ready, willing and able to cooperate with the LESSOR in the implementation of this general development plan for the airport premises;
>
> x x x x x x x x x
>
> WHEREAS, the LESSEE's main interest is to have a sufficient land area within which to construct a modern hotel with such facilities as would ordinarily go with modern hostelry, including recreation halls, facilities for banks, tourist agencies, travel bureaus, laundry shops, postal stations, curio and native shops and other allied business calculated to make the hotel and its facilities comfortable, convenient and attractive, and for this purpose, an initial land area of some Thirty[-]Five Thousand Ten (35,010) square meters would be first utilized.[3]

The term of the lease and renewal thereof as stipulated upon by petitioner and Salem are as follows:

> 3. That the term of the lease shall be for a period of Twenty-Five (25) years, commencing from the date of receipt of approval of this Contract by the Secretary of Public Works and Communications, and at the option of the LESSEE, renewable for another Twenty-Five (25) years. It is understood, that after the first 25 years lease, the ownership of, and full title to, all the buildings and permanent

[3] *Rollo,* pp. 63-65.

improvements introduced by the LESSEE on the leased premises including those introduced on the Golf Driving Range shall automatically vest in the LESSOR, without cost.

Upon the termination of the lease or should the LESSEE not exercise this option for renewal, the LESSEE shall deliver the peaceful possession of all the building and other permanent improvements herein above referred to, with the understanding that the LESSEE shall have the right to remove from the premises such equipment, furnitures, accessories and other articles as would ordinarily be classified as movable property under pertinent provisions of law.

4. That the renewal of this lease contract shall be for another period of Twenty-Five (25) years, under the same terms and conditions herein stipulated; provided, however that, since the ownership of the hotel building and permanent improvement have passed on the LESSOR, the LESSEE shall pay as rental, in addition to the rentals herein agreed upon, an amount equivalent to One percent (1%) of the appraised value of the hotel building and permanent improvements at the time of expiration of Twenty-Five (25) years lease period, payable annually.[4]

Subsequently, in a Transfer of Lease Rights and Existing Improvements dated September 30, 1974, Salem conveyed in favor of Ding Velayo Export Corporation (Velayo Export), for the consideration of ₱1,050,000.00, its leasehold rights over a portion of Lot 2-A, measuring about 15,534 square meters, with the improvements thereon, consisting of an unfinished cinema-theater. Accordingly, petitioner and Velayo Export executed a Contract of Lease dated November 26, 1974 pertaining to the aforementioned leased portion of Lot 2-A.

In turn, Velayo Export executed a Transfer of Lease Rights dated April 27, 1976 by which it conveyed to respondent, for the consideration of ₱500,000.00, its leasehold rights over an 8,481-square meter area (subject property) out of the 15,534-square meter portion it was leasing from petitioner. As a result, petitioner and respondent executed another Contract of Lease[5] dated May 14, 1976 covering the subject property.

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[4] *Id.* at 67-68.

[5] Records, pp. 8-13.

The Contract of Lease dated May 14, 1976 between petitioner (as lessor) and respondent (as lessee) specified how respondent shall develop and use the subject property:

2. That the LESSEE shall utilize the premises as the site for the construction of a Sports Complex facilities and shopping centers in line with the Presidential Decree for Sports Development and Physical Fitness, including the beautification of the premises and providing cemented parking areas.

3. That the LESSEE shall construct at its expense on the leased premises a parking area parallel to and fronting the Domestic Airport Terminal to be open to the traveling public free of charge to ease the problem of parking congestion at the Domestic Airport.[6]

Pursuant to the aforequoted objectives, respondent agreed to the following:

9. Physical improvements on building spaces and areas subject of this agreement may be undertaken by and at the expenses of the LESSEE. However, no improvements may be commenced without prior approval of the plans by the LESSOR and, whenever deemed necessary a cash deposit shall be made in favor of the LESSOR which shall be equivalent to the cost of restoration of any portion affected by such alteration or improvements;

10. The LESSEE agrees and binds himself to complete the physical improvements or contemplated structures within the leased premises for a period of one (1) year. Failure on the part of the LESSEE to do so within said period shall automatically revoke the Contract of Lease without necessity of judicial process.[7]

The lease rental shall be computed as follows:

5. That the LESSEE shall pay to the LESSOR as monthly rentals for the leased premises the rate of ₱0.45 per square meter for the

[6] *Rollo*, p. 88.

[7] *Id.* at 87.

first 300 square meters, ₱0.30 per square meter for the next 500 square meters, and ₱0.25 per square meter for the remaining area pursuant to Part VIII, Section 4 of Administrative Order No. 4, Series of 1970, which in the case of the 8,481 square meters herein leased shall amount to ₱2,205.25 per month, or a royalty equivalent to one percent (1%) of the monthly gross income of the LESSEE, whichever is higher.

6. That for the purpose of accurately determining the monthly gross income, the LESSEE hereby gives its consent for the examination of the books by authorized representatives of the LESSOR or the Commission on Audit;

x x x x x x x x x

13. If, during the lifetime of this agreement and upon approval by the LESSOR, the leased area is increased or diminished, or the LESSEE is relocated to another area, rentals, fees, and charges imposed shall be amended accordingly. Subsequent amendments to the Administrative Order which will affect an increase of the rates of fees, charges and rentals agreed upon in this contract shall automatically amend this contract to the extent that the rates of fees, rentals, and charges are increased.

In the event of relocation of the LESSEE to other areas, the cost of relocation shall be shouldered by the LESSEE.[8]

Nonpayment of lease rentals shall have the following consequence:

8. Failure on the part of the LESSEE TO PAY ANY fees, charges, rentals or the royalty of one percent (1%) within thirty (30) days after receipt of written demand, the LESSOR shall deny the LESSEE of the further use of the leased premises and /or any of its facilities, utilities and services. x x x.[9]

The Contract of Lease prohibits respondent from transferring its leasehold rights, engaging in any other business outside those mentioned in said Contract, and subletting the premises whether in whole or in part, thus:

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[8] *Id.* at 86-87.

[9] *Id.* at 87.

16. The LESSEE agrees not to assign, sell, transfer or mortgage his rights under this agreement or sublet the whole or part of premises covered by it to a third party or parties nor engage in any other business outside of those mentioned in this contract. Violation of this provision shall also be a ground for revocation of the lease contract without need of judicial process.[10]

Period of the lease and renewal thereof are governed by paragraphs 4 and 17 of the Contract of Lease that read:

4. That the period of this lease shall take effect from June 1, 1976 up to February 15, 1992 which is equivalent to the unexpired portion of the lease contract executed between [petitioner] and Ding Velayo Export Corporation.

x x x x x x x x x

17. The LESSEE, if desirous of continuing his lease, should notify the LESSOR sixty (60) days prior to expiration of the period agreed upon for the renewal of the Contract of Lease.[11]

The lease may be revoked/terminated under the following conditions:

15. This contract of lease may be terminated by other party upon thirty (30) days notice in writing. Failure on the part of the LESSEE to comply with any of the provisions of this lease contract or any violation of any rule or regulations of the Airport shall give the LESSOR the right to revoke this contract effective thirty (30) days after notice of revocation without need of judicial demand. However, the LESSEE shall remain liable and obligated to pay rentals and other fees and charges due and in arrears with interest at the rate of twelve percent (12%) per annum;

x x x x x x x x x

18. Upon termination or revocation of this contract of lease as herein provided, the LESSEE shall deliver possession of the premises to the LESSOR in the same condition that they were received giving allowance to normal wear and tear and to damage or destruction caused

[10] *Id.* at 88.

[11] *Id.* at 86-88.

by act of God. All permanent improvements, however, which the LESSEE might have constructed in the premises by virtue hereof shall upon the termination of this lease automatically become the absolute property of the LESSOR without cost;

19. In the event that the LESSOR shall need the leased premises in its airport development program, the LESSEE agrees to vacate the premises within thirty (30) days from receipt of notice. All improvements not removed by the LESSEE within the thirty (30) day period shall become the property of the LESSOR without cost.[12]

Respondent began occupying the subject property and paying petitioner the amount of ₱2,205.25 per month as rental fee. Respondent then constructed a multi-million plaza with a three-storey building on said property. Respondent leased spaces in the building to various business proprietors.

In a Letter[13] dated April 11, 1979, petitioner requested respondent for a copy of the latter's Gross Income Statement from December 1977 to December 1978, duly certified by a certified public accountant, for the purpose of computing the royalty equivalent to 1% of the monthly gross income of respondent. Acceding to this request, respondent sent petitioner a Letter[14] dated May 31, 1979 and appended therewith the requested income statements which disclosed that the total gross income of respondent for the period in question amounted to ₱1,972,968.11. Respondent also submitted to petitioner and the Commission on Audit (COA) its duly audited financial statements[15] for the years 1984 to 1988. Meanwhile, petitioner had continued billing respondent the amount of ₱2,205.25 as monthly rental fee, which the latter obediently paid.

Petitioner eventually issued Administrative Order (AO) No. 4, series of 1982,[16] and AO No. 1, series of 1984, fixing various

[12] *Id.* at 87-88.

[13] *Id.* at 544.

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

[15] *Id.* at 549-582.

[16] *Id.* at 846.

rates for the lease rentals of its properties. AO No. 4, series of 1982, and AO No. 1, series of 1984, allegedly effected an increase in the lease rental of respondent for the subject property, as provided for in paragraph 13 of the Contract of Lease dated May 14, 1976 between petitioner and respondent. However, said issuances were subjected to review for revision purposes and their implementation was suspended. Still, petitioner, through a letter dated September 23, 1986, required respondent to pay a moratorium rental at the rate of ₱5.00 per square meter rate per month or a total of ₱42,405.00 every month.

In a Letter[17] dated October 18, 1986, respondent opposed the implementation of any increase in its lease rental for the subject property. Respondent wrote:

> We believe that an increase in rental of a property which does not form part of the Airport or its immediate premises, like the premises leased to DVSC, although owned by MIAA is not covered by Batas Pambansa Blg. 325 or Finance Ministry Order No. 6-83. Furthermore, the language of B.P. No. 325 and Ministry Order No. 6-83 authorizes the fixing or revision of fees and charges only for "services and functions."
>
> x x x x x x x x x
>
> Assuming that the increase in rental of MIAA property is authorized by B.P. No. 325 and Ministry Order No. 6-83, such increase as ordered in your moratorium rental rate insofar as it is made applicable to DVSC is not valid.
>
> The increase which is around 2,000 percent or 20 times above present rental rate is unreasonably high. Both B.P. No. 325 and Ministry Order No. 6-83 prescribed only "just and reasonable rates sufficient to cover administrative costs."
>
> Such increase in rental is uncalled for considering that:
>
> Upon termination of the lease, all the improvements on the property shall belong to MIAA without costs. The original cost of the buildings and other improvements on the land we have leased is ₱10,600,000.00.

[17] *Id.* at 465-466.

Said improvements would now cost over ₱30,000,000.00. In effect the Government would be collecting another ₱2.0 million a year.

We, therefore, request that the moratorium rate be not applied to us.

Following the foregoing exchange, petitioner had kept on charging respondent the original monthly rental of ₱2,205.25.

More than 60 days prior to the expiration of the lease between petitioner and respondent, the latter, through its President, Conrado M. Velayo (Velayo), sent the former a Letter[18] dated December 2, 1991 stating that respondent was interested in renewing the lease for another 25 years.

Petitioner, through its General Manager, Eduardo O. Carrascoso, in a Letter[19] dated February 24, 1992, declined to renew the lease, ordered respondent to vacate the subject property within five days, and demanded respondent to pay arrears in lease rentals as of January 1992 in the sum of ₱15,671,173.75.

Velayo, on behalf of respondent, replied to petitioner through a Letter[20] dated March 3, 1992 that reads:

This refers to your letters which we received on 26 February 1992 and 27 February 1992, respectively, the first as a response to our letter of 2 December 1991 where we informed you of our intention to renew our lease contract, and the second wherein you asked us to vacate within five (5) days the leased premises.

Your second letter surprised us inasmuch as we have been negotiating with you for the renewal of our lease. In addition, your sudden decision gave us no time to discuss your terms and conditions with our Board considering that the issues involved major decision.

For a smoother transition and for the mutual interest of the government, the tenants and ourselves, may we request for a reconsideration of your decision, and we be given up to the end of

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[18] *Id.* at 14.

[19] *Id.* at 15.

[20] *Id.* at 16.

March 1992 to peacefully turn-over to you the leased premises. This will enable you to create a committee that will take-over the leased property and its operations.

Likewise, consistent with our previous stand as communicated to you by our legal counsel, copy of which is hereto attached, we deny any liability on rental increases.

In Letters[21] all dated March 10, 1992, Velayo informed petitioner that he already sent individual letters to Manila Electric Company, Philippine Long Distance Telephone Company, and Manila Waterworks and Sewerage System, instructing the said utility companies that succeeding billings for electric, telephone, and water consumptions should already be transferred to the account of petitioner in light of the expected turn-over of the subject property and improvements thereon from respondent to petitioner.

However, around the same time, Samuel Alomesen (Alomesen) became the new President and General Manager of respondent, replacing Velayo. Alomesen, acting on behalf of respondent, sent petitioner a Letter[22] dated March 25, 1992, revoking the aforementioned Letters dated March 3 and 10, 1992 since these were purportedly sent by Velayo without authority from respondent's Board of Directors. Respondent expressed its interest in continuing the lease of the subject property for another 25 years and tendered to petitioner a manager's check in the amount of ₱8,821.00 as payment for the lease rentals for the subject property from December 1991 until March 1992.

Petitioner entirely disregarded the claims of respondent and threatened to take-over the subject property.

On March 30, 1992, respondent filed against petitioner before the RTC a Complaint for Injunction, Consignation, and Damages with a Prayer for a Temporary Restraining Order.[23] Respondent

[21] *Id.* at 17-20.

[22] *Id.* at 21.

[23] *Id.* at 25-26.

essentially prayed for the RTC to order the renewal of the Contract of Lease between the parties for another 25-year term counted from February 15, 1992. On even date, the RTC issued a Temporary Restraining Order[24] preventing petitioner and all persons acting on its behalf from taking possession of the entire or any portion of the subject property, from administering the said property, from collecting rental payments from sub-lessees, and from taking any action against respondent for the collection of alleged arrears in rental payments until further orders from the trial court.

In its Answer,[25] petitioner contended that its Contract of Lease with respondent was already terminated on February 15, 1992, the expiration date explicitly stated under paragraph 4 of the same Contract. Petitioner was not bound to renew the Contract of Lease with respondent. The renewal provision under paragraph 17 of the Contract was not automatic but merely directory and procedural and that, in any event, Velayo, the former President of respondent, already conceded to the non-renewal of the Contract.

Petitioner likewise invoked paragraph 15 of the Contract of Lease, *i.e.*, its right to revoke the said Contract in case of violation of any of the provisions thereof by respondent. Petitioner averred that respondent committed the following violations: (1) respondent failed to fulfill the conditions set forth under paragraphs 2 and 3 of the Contract as it did not establish a shopping center on the subject property and did not help ease the problems of parking congestion at the Domestic Airport; (2) respondent "sub-leased" the subject property in defiance of the prohibition under paragraph 16 of the Contract; and (3) respondent did not pay the lease rentals in accordance with paragraphs 5 and 13 of the Contract, thus, incurring a total outstanding balance of ₱15,671,173.75 as of February 1992.

By way of counter-claim, petitioner demanded that respondent pay the total outstanding balance of its lease rentals for the

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[24] *Id.* at 29.

[25] *Id.* at 32-44.

subject property and turn-over lease rentals it had collected from sub-lessees beginning February 15, 1992.

After the preliminary hearing, the RTC issued a Writ of Preliminary Injunction[26] against petitioner on April 30, 1992 upon the posting by respondent of a bond in the amount of ₱100,000.00.

In an Order[27] dated June 11, 1996, the RTC denied the Omnibus Motion of petitioner for the dissolution of the writ of injunction and appointment of a receiver for the fruits of the subject property; and at the same time, granted the motion of respondent for the consignment of their monthly lease rentals for the subject property with the RTC.

The RTC terminated the pre-trial proceedings in an Order[28] dated October 23, 1997 for failure of the parties to amicably settle the dispute. Thereafter, trial on the merits ensued.

Respondent presented the testimonies of Mariano Nocom, Jr.,[29] Gladioluz Segundo,[30] Mariano Nocom, Sr.,[31] and Rosila Mabanag.[32] The RTC admitted all the documentary evidence of respondent in an Order[33] dated December 14, 1998.

Petitioner, on the other hand, presented the lone testimony of their accounting manager, Arlene Britanico.[34] Among the numerous documents submitted by petitioner as evidence were its own issuances imposing various rates for the lease of its

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[26] *Id.* at 97-98.

[27] *Id.* at 242-245.

[28] *Id.* at 296.

[29] TSN, July 24, 1998 and August 7, 1998.

[30] TSN, August 7, 1998 and September 11, 1998.

[31] TSN, September 18, 1998.

[32] TSN, November 5, 1998.

[33] Records, p. 385.

[34] TSN, December 17, 1998.

properties, which allegedly effected an increase in the lease rentals of respondent for the subject property, specifically, AO No. 4, series of 1982;[35] AO No. 1, series of 1984;[36] AO No. 1, series of 1990;[37] AO No. 1, series of 1993;[38] Resolution No. 94-74,[39] Resolution No. 96-32,[40] and Resolution No. 97-51,[41] all amending AO No. 1, series of 1993; and AO No. 1, series of 1998.[42] All of the documentary evidence of petitioner were admitted by the RTC in an Order[43] dated May 28, 1999.

In its Decision dated October 29, 1999, the RTC ruled in favor of respondent, disposing thus:

> WHEREFORE, judgment is hereby rendered in favor of [respondent] and against [petitioner].
>
> Accordingly, [petitioner] is hereby ordered to:
>
> 1. Grant renewal of the lease contract for the same term as stipulated in the old contract and the rental to be based on the applicable rate of the time or renewal;
> 2. To respect and maintain [respondent's] peaceful possession of the premises;
> 3. To accept the rental payment consigned by the [respondent] to the court beginning December 1991 onward until and after a renewal has been duly executed by both parties;
> 4. To pay [respondent] as and by way of attorney's fees the sum of ₱500,000.00; and

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[35] Records, pp. 840-853.

[36] *Id.* at 854-871.

[37] *Id.* at 872-890.

[38] *Id.* at 895-915.

[39] *Id.* at 891-894.

[40] *Id.* at 916.

[41] *Id.* at 917-927.

[42] *Id.* at 929-960.

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

5. To pay the cost of suit.[44]

Petitioner appealed the RTC judgment before the Court of Appeals and assigned these errors:

I. The trial court gravely erred in declaring that [respondent] is entitled to a renewal of the contract of lease.

II. The trial court gravely erred in ordering the renewal of the contract of lease despite of the fact that it has no legal authority to do so.

III. The trial court gravely erred in declaring that [respondent] did not violate the terms and conditions of the contract.

IV. The trial court gravely erred in declaring that [petitioner's] act of effecting the increase in the rental during the stipulated lifetime of the contract has no valid basis.

V. The trial court gravely erred in not finding that [petitioner] is entitled to its counterclaim.[45]

The Court of Appeals promulgated its Decision on January 8, 2004, finding no reversible error in the appealed judgment of the RTC and decreeing as follows:

WHEREFORE, finding no reversible error committed by the trial court, the instant appeal is hereby DISMISSED, and the assailed decision is hereby AFFIRMED.[46]

Hence, the instant Petition for Review, wherein petitioner basically attributed to the Court of Appeals the very same errors it assigned to the RTC.

Petitioner argues that the renewal of the Contract of Lease cannot be made to depend on the sole will of respondent for the same would then be void for being a potestative condition.

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[44] *Id.* at 1125.

[45] CA *rollo*, p. 29.

[46] *Rollo*, p. 52.

We do not agree. As we have already explained in *Allied Banking Corporation v. Court of Appeals*[47]:

Article 1308 of the Civil Code expresses what is known in law as the principle of mutuality of contracts. It provides that "the contract must bind both the contracting parties; its validity or compliance cannot be left to the will of one of them." This binding effect of a contract on both parties is based on the principle that the obligations arising from contracts have the force of law between the contracting parties, and there must be mutuality between them based essentially on their equality under which it is repugnant to have one party bound by the contract while leaving the other free therefrom. The ultimate purpose is to render void a contract containing a condition which makes its fulfillment dependent solely upon the uncontrolled will of one of the contracting parties.

An express agreement which gives the lessee the sole option to renew the lease is frequent and subject to statutory restrictions, valid and binding on the parties. This option, which is provided in the same lease agreement, is fundamentally part of the consideration in the contract and is no different from any other provision of the lease carrying an undertaking on the part of the lessor to act conditioned on the performance by the lessee. It is a purely executory contract and at most confers a right to obtain a renewal if there is compliance with the conditions on which the right is made to depend. The right of renewal constitutes a part of the lessee's interest in the land and forms a substantial and integral part of the agreement.

The fact that such option is binding only on the lessor and can be exercised only by the lessee does not render it void for lack of mutuality. After all, the lessor is free to give or not to give the option to the lessee. And while the lessee has a right to elect whether to continue with the lease or not, once he exercises his option to continue and the lessor accepts, both parties are thereafter bound by the new lease agreement. Their rights and obligations become mutually fixed, and the lessee is entitled to retain possession of the property for the duration of the new lease, and the lessor may hold him liable for the rent therefor. The lessee cannot thereafter escape liability even if he should subsequently decide to abandon the premises. Mutuality obtains in such a contract and equality exists between the

[47] *Allied Banking Corporation v. Court of Appeals*, 348 Phil. 382 (1998).

lessor and the lessee since they remain with the same faculties in respect to fulfillment.[48]

Paragraph 17 of the Contract of Lease dated May 14, 1976 between petitioner and respondent solely granted to respondent the option of renewing the lease of the subject property, the only express requirement was for respondent to notify petitioner of its decision to renew the lease within 60 days prior to the expiration of the original lease term. It has not been disputed that said Contract of Lease was willingly and knowingly entered into by petitioner and respondent. Thus, petitioner freely consented to giving respondent the exclusive right to choose whether or not to renew the lease. As we stated in *Allied Banking*, the right of renewal constitutes a part of the interest of respondent, as lessee, in the subject property, and forms a substantial and integral part of the lease agreement with petitioner. Records show that respondent had duly complied with the only condition for renewal under Section 17 of the Contract of Lease by notifying petitioner 60 days prior to the expiration of said Contract that it chooses to renew the lease. We cannot now allow petitioner to arbitrarily deny respondent of said right after having previously agreed to the grant of the same.

Equally unmeritorious is the assertion of petitioner that paragraph 17 of the Contract of Lease dated May 14, 1976 merely provides a procedural basis for a negotiation for renewal of the lease and the terms thereof. The exercise by respondent of its option to renew the lease need no longer be subject to negotiations. We reiterate the point we made in *Allied Banking* that:

> [I]f we were to adopt the contrary theory that the terms and conditions to be embodied in the renewed contract were still subject to mutual agreement by and between the parties, then the option — which is an integral part of the consideration for the contract — would be rendered worthless. For then, the lessor could easily defeat the lessee's right

[48] *Id.* at 390-391.

of renewal by simply imposing unreasonable and onerous conditions to prevent the parties from reaching an agreement, as in the case at bar. As in a statute, no word, clause, sentence, provision or part of a contract shall be considered surplusage or superfluous, meaningless, void, insignificant or nugatory, if that can be reasonably avoided. To this end, a construction which will render every word operative is to be preferred over that which would make some words idle and nugatory.[49]

In case the lessee chooses to renew the lease but there are no specified terms and conditions for the new contract of lease, the same terms and conditions as the original contract of lease shall continue to govern, as the following survey of cases in *Allied Banking* would show:

In *Ledesma v. Javellana* this Court was confronted with a similar problem. In that case the lessee was given the sole option to renew the lease, but the contract failed to specify the terms and conditions that would govern the new contract. When the lease expired, the lessee demanded an extension under the same terms and conditions. The lessor expressed conformity to the renewal of the contract but refused to accede to the claim of the lessee that the renewal should be under the same terms and conditions as the original contract. In sustaining the lessee, this Court made the following pronouncement:

> x x x [i]n the case of *Hicks v. Manila Hotel Company*, a similar issue was resolved by this Court. It was held that **'such a clause relates to the very contract in which it is placed, and does not permit the defendant upon the renewal of the contract in which the clause is found, to insist upon different terms than those embraced in the contract to be renewed';** and that **'a stipulation to renew always relates to the contract in which it is found and the rights granted thereunder, unless it expressly provides for variations in the terms of the contract to be renewed.'**

The same principle is upheld in American Law regarding the renewal of lease contracts. In 50 Am. Jur. 2d, Sec. 1159, at p. 45, we find the following citations: **'The rule is well-established that a general covenant to renew or extend a lease which makes no provision**

[49] *Id.* at 393.

as to the terms of a renewal or extension implies a renewal or extension upon the same terms as provided in the original lease.'

In the lease contract under consideration, there is no provision to indicate that the renewal will be subject to new terms and conditions that the parties may yet agree upon. It is to renewal provisions of lease contracts of the kind presently considered that the principles stated above squarely apply. We do not agree with the contention of the appellants that if it was intended by the parties to renew the contract under the same terms and conditions stipulated in the contract of lease, such should have expressly so stated in the contract itself. The same argument could easily be interposed by the appellee who could likewise contend that if the intention was to renew the contract of lease under such new terms and conditions that the parties may agree upon, the contract should have so specified. Between the two assertions, there is more logic in the latter.

The settled rule is that in case of uncertainty as to the meaning of a provision granting extension to a contract of lease, the tenant is the one favored and not the landlord. 'As a general rule, in construing provisions relating to renewals or extensions, where there is any uncertainty, the tenant is favored, and not the landlord, because the latter, having the power of stipulating in his own favor, has neglected to do so; and also upon the principle that every man's grant is to be taken most strongly against himself (50 Am Jur. 2d, Sec. 1162, p. 48; see also 51 C.J.S. 599).'[50] (Emphases supplied.)

Being consistent with the foregoing principles, we sustain the interpretation of the RTC of paragraph 17 of the Contract of Lease dated May 14, 1976 between petitioner and respondent, to wit:

[Paragraph 17 of the Contract of Lease dated May 14, 1976] admits several meanings. **In simpler terms, the phrase, *i.e.*, "if desirous of continuing his lease, may be simply restated, *i.e.*, if he wants to go on with his lease, considering the word `CONTINUE' in its verb form ordinarily means – to go on in present state, or even restated in another way – if desirous of extending his lease, because the word `continue' in its verb form also means – extend uniformly."**

[50] *Id.* at 392-393.

Thus, if we are to adopt the interpretation of [petitioner] that the stipulation merely established the procedural basis for a negotiation for renewal then the aforequoted phrase would be rendered a mere surplusage, meaningless and insignificant. But if we are to prod deeper to the very context of the entire stipulations setforth in the contract and from what is obvious with respect to the intentions of the contracting parties based on their contemporaneous and subsequent acts including but not limited to the historical antecedents of the agreement then an interpretation invariably different from that of [petitioner] becomes inevitable.

Specifically, the extraneous source of the lease contract in question could be the original and renewed contract of lease by and between **Salem Investment Corporation and CAA** – the predecessor-in-interest of [petitioner] – executed on **February 10, 1967** (Exh. "M")**.** Under the said lease contract between CAA and Salem, the term is for a period of twenty-five (25) years renewable for another 25 years at the option of the lessee – Salem (Exh. "Y-1"). Later, with the approval of CAA, Salem transferred its leasehold rights over a portion of the land leased to **Ding Velayo Export Corporation** on **September 30, 1974** (Exh. "N") and in turn Velayo Export transferred its leasehold rights over a portion of the leased land transferred to it by Salem to **Velayo Sports Complex, Inc.** – [respondent] herein – on **April 29, 1976** (Exh. "O"). **Thus, on May 14, 1976, [respondent] and CAA, predecessor-in-interest of [petitioner], concluded the lease agreement in question with a term equivalent to the unexpired portion of the lease between Velayo Export and CAA.**

As culled from the transfers effected prior to the May 14, 1976 agreement of [respondent] and [petitioner]'s predecessor-in-interest, the renewal of the contract was clearly at the option of the lessee. Considering that there was no evidence positively showing that [respondent] and CAA expressly intended the removal of the option for the renewal of the lease contract from the lessee, it is but logical to conclude, although the stipulation setforth in paragraph 17 appears to have been worded or couched in somewhat uncertain terms, that the parties agreed that the option should remain with the lessee. **This must be so because based on the context of their agreements and bolstered by the testimony of Mr. Mariano Nocom of Salem Investment and particularly Rosila Mabanag, one of the signatory witness to the contract and a retired employee of CAA's Legal Division the parties really intended a renewal for the same term**

as it was then the usual practice of CAA to have the term of leases on lands where substantial amount will be involved in the construction of the improvements to be undertaken by the lessee to give a renewal. In fact, it clearly appears that the right of renewal constitutes a part of the lessee's interest in the land considering the multimillion investments it made relative to the construction of the building and facilities thereon and forms a substantial and integral part of the agreement.[51] (Emphases supplied.)

In sum, the renewed contract of lease of the subject property between petitioner and respondent shall be based on the same terms and conditions as the original contract of lease. The "original contract of lease" does not pertain to the Contract of Lease dated May 14, 1976 between petitioner and respondent alone, but also to the Contract of Lease dated February 15, 1967 between petitioner (then still called CAA) and Salem, as well as the Contract of Lease dated November 26, 1974 between petitioner and Velayo Export – all three contracts being inextricably connected. Since the Contract of Lease between petitioner and Salem was for a term of 25 years, then the renewed contract of lease of between petitioner and respondent shall be for another term of 25 years. This construction of the renewal clause under paragraph 17 of the Contract of Lease dated May 14, 1976 between petitioner and respondent is most consistent with the intent of the parties at the time of the execution of said Contract and most effectual in implementing the same.

In addition to challenging the exclusive right of respondent to renew the Contract of Lease over the subject property, petitioner insists on its right to refuse the renewal because of purported violations of the said Contract by respondent, particularly: (1) subleasing of the premises; (2) failure to ease the problems of parking congestion at the Domestic Airport and to provide a shopping center and sports facilities, such as an oval track and a swimming pool; and (3) failure to pay monthly lease rentals in the form of royalties equivalent to 1% of the

[51] Records, pp. 1121-1122.

gross income of respondent or in accordance with the rates fixed in the administrative orders of petitioner.

We find no violations by the respondent of the Contract of Lease dated May 14, 1976 as to justify the revocation or refusal to renew of said Contract by petitioner.

The RTC is once again correct in its construal that paragraph 16 of the Contract of Lease, prohibiting the subleasing of the "premises," refers only to the subject property. We stress that when the said Contract was executed on May 14, 1976, the "premises" leased by petitioner to respondent, and which respondent was not allowed to sublease, is the subject property, *i.e.*, an idle piece of land with an area of 8,481 square meters. More importantly, being the builder of the improvements on the subject property, said improvements are owned by respondent until their turn-over to petitioner at the end of the 25-year lease in 1992. As respondent is not leasing the improvements from petitioner, then it is not subleasing the same to third parties.

While the Contract of Lease expressly obligated respondent to build certain improvements, such as parking, shopping mall, and sports facilities, the belated insistence by petitioner on compliance with the same appears to be a mere afterthought.

Article 1235 of the Civil Code states that "[w]hen the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with."

As aptly observed by the RTC, paragraphs 9 and 10 of the Contract of Lease likewise expressly require respondent to submit, for **prior approval** by petitioner, all construction plans on the subject property; and to complete the contemplated improvements thereon **within a year**. The Contract of Lease was executed on May 14, 1976, and the one-year period expired on May 14, 1977. Yet, petitioner did not register any protest or objection to the alleged incompleteness of or irregularity in the performance by respondent of its obligation to build and develop improvements on the subject property. In fact, upon

the expiration of the original 25-year lease period in February 1992, petitioner was already ready and willing to accept and appropriate as its own the improvements built on the subject property in 1992. Petitioner only raised the issue of the purported incompleteness/irregularity of the said improvements when it was brought to court by respondent for refusing to renew the lease.

Just as the RTC adjudged, no fault could be attributed to respondent for deficient payment of lease rentals. Lease rentals were based on either the rates fixed by AO No. 4, series of 1970, or 1% of the monthly gross income of respondent, whichever is higher. At the very beginning of the lease, respondent had been paying monthly lease rentals based on the rates fixed by AO No. 4, series of 1970, which amounted to ₱2,205.25 per month. When requested, respondent submitted to petitioner its gross income statements, so petitioner could very well compute the 1% royalty. However, petitioner continued to charge respondent only ₱2,205.25 monthly lease rental, which the latter faithfully paid.

Petitioner later demanded an increase in lease rentals based on subsequent administrative issuances raising the rates for the rental of its properties. But the RTC found that the adverted administrative orders were not published in full, thus, the same were legally invalid within the context of Article 2 of the Civil Code which provides that "[l]aws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. x x x" In *Tañada v. Tuvera*,[52] we enunciated that publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect, to wit:

> We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

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[52] 230 Phil. 528 (1986).

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[53]

There is no basis for the argument of petitioner that the validity of its administrative orders cannot be collaterally attacked. To the contrary, we have previously declared that a party may raise the unconstitutionality or invalidity of an administrative regulation on every occasion that said regulation is being enforced.[54] Since it is petitioner which first invoked its administrative orders to justify the increase in lease rentals of respondent, then respondent may raise before the court the invalidity of said administrative orders on the ground of non-publication thereof.

Finally, petitioner cannot oppose the renewal of the lease because of estoppel. Our following disquisition in *Kalalo v. Luz*[55] is relevant herein:

Under Article 1431 of the Civil Code, in order that estoppel may apply the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Said article provides:

> "Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

An essential element of estoppel is that **the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped**, and this element is wanting in the instant case. In *Cristobal vs. Gomez*, this Court held that no estoppel based on a document can be invoked by one who has

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[53] *Id.* at 535.

[54] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198, 204-205.

[55] 145 Phil. 152 (1970).

not been misled by the false statements contained therein. And in *Republic of the Philippines vs. Garcia, et al.*, this Court ruled that there is no estoppel when the statement or action invoked as its basis did not mislead the adverse party. Estoppel has been characterized as harsh or odious, and not favored in law. When misapplied, estoppel becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. Estoppel cannot be sustained by mere argument or doubtful inference; **it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence.** No party should be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel *in pais* must be applied strictly and should not be enforced unless substantiated in every particular.

The essential elements of estoppel *in pais* may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that his conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. **As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in questions; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.**[56] (Emphases ours.)

Indeed, Velayo's Letters dated March 3 and 10, 1992 to petitioner may have already expressed acquiescence to the non-renewal of the lease and turn-over of the improvements on the subject property to petitioner. But not long thereafter, Alomesen, the new President of respondent, already wrote another Letter dated March 25, 1992, which revoked Velayo's earlier Letters

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

for having been sent without authority of the Board of Directors of respondent, insisted on the renewal of the lease, and tendered payment of past due lease rentals. Respondent, through Alomesen, timely acted to correct Velayo's mistakes. In the 15-day interval between Velayo's Letter dated March 10, 1992 and Alomesen's Letter dated March 25, 1992, there is no showing that petitioner, relying in good faith on Velayo's Letters, acted or did not act as to have caused it injury, detriment, or prejudice. There is an utter lack of clear, convincing, and satisfactory evidence on the part of petitioner, as the party claiming estoppel, of the second and third elements for the application of said principle against respondent.

WHEREFORE, the instant Petition is hereby *DENIED* for lack of merit. The Decision dated January 8, 2004 of the Court Appeals in CA-G.R. CV No. 68787, which affirmed the Decision dated October 29, 1999 of Branch 111 of the RTC of Pasay City in Civil Case No. 8847, is hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172458. December 14, 2011]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; A PLEADING FILED BY ORDINARY MAIL OR BY PRIVATE MESSENGERIAL SERVICE IS DEEMED FILED ON THE DAY IT IS ACTUALLY

RECEIVED BY THE COURT, AND NOT ON THE DAY IT WAS MAILED OR DELIVERED TO THE MESSENGERIAL SERVICE.— It is stated under Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals that the Rules of Court shall apply suppletorily. Thus, the manner in which petitions are filed before the CTA is also covered by the relevant provision of the Rules of Court x x x. To recall, PNB filed its petition with the CTA *En Banc* four days beyond the ***extended*** period granted to it to file such petition. PNB argues that it was filed on time since it was mailed on *the last day of the extended period*, which was on December 23, 2005. It has been established that a pleading "filed by ordinary mail or by private messengerial service x x x is deemed filed on the day it is actually received by the court, and not on the day it was mailed or delivered to the messengerial service." In *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission*, we said: The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.

2. ID.; ID.; ID.; SERVICE BY ORDINARY MAIL IS ALLOWED ONLY IN INSTANCES WHERE NO REGISTRY SERVICE EXISTS.— It is, however, curious why PNB chose to risk the holiday traffic in an effort to personally file its petition with the CTA *En Banc*, when it already filed a copy to the other party, the CIR, *via* registered mail. Considering the circumstances, it would have been more logical for PNB to send its petition to the CTA *En Banc* on the same occasion it sent a copy to the CIR, especially since that day was already the last day given to PNB to file its petition. Moreover, PNB offered no justification as to why it sent its petition via ordinary mail instead of registered mail. "Service by ordinary mail is allowed only in instances where no registry service exists." Rule 13, Section 7 reads: **Sec. 7.** *Service by mail.* Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (l0) days if undelivered. **If no registry service is available in the locality**

of either the sender or the addressee, service may be done by ordinary mail.

3. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATORY REQUIREMENT OF ATTACHING DUPLICATE ORIGINALS OR CERTIFIED TRUE COPIES OF THE ASSAILED DECISION TO A PETITION FOR REVIEW IS A SUFFICIENT GROUND FOR THE DISMISSAL THEREOF.—** This Court has already upheld the mandatory character of attaching duplicate originals or certified true copies of the assailed decision to a petition for review. Moreover, pursuant to Section 7, Rule 43 of the Rules of Court, non-compliance with such mandatory requirement is a sufficient ground to dismiss the petition, *viz*: **Sec. 7.** *Effect of failure to comply with requirements.* The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**

4. **ID.; ID.; ID.; FAILURE TO ATTACH THE REQUIRED AFFIDAVIT OF SERVICE IS NOT FATAL IF THE REGISTRY RECEIPT ATTACHED TO THE PETITION CLEARLY SHOWS SERVICE TO THE OTHER PARTY AND THAT THE PARTY ADEQUATELY EXPLAINED HIS FAILURE TO ABIDE BY THE RULES.—** Although the failure to attach the required affidavit of service is not fatal if the registry receipt attached to the petition clearly shows service to the other party, it must be remembered that this was not the only rule of procedure PNB failed to satisfy. In *Suarez v. Judge Villarama, Jr.* we said: It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.

5. **ID.; RULES OF PROCEDURE; ONE CANNOT ESCAPE THE RIGID OBSERVANCE OF BASIC PROCEDURAL RULES IN A PETITION FOR REVIEW BY CLAIMING LACK OF FORESIGHT; NEITHER CAN IT BE TRIFLED WITH AS**

A MERE TECHNICALITY TO SUIT THE INTEREST OF A PARTY.— This Court agrees with the CTA *En Banc* that PNB has not demonstrated any cogent reason for this Court to take an exception and excuse PNB's blatant disregard of the basic procedural rules in a petition for review. Furthermore, the timely perfection of an appeal is a mandatory requirement. One cannot escape the rigid observance of this rule by claiming oversight, or in this case, lack of foresight. Neither can it be trifled with as a "mere technicality" to suit the interest of a party. Verily, the periods for filing petitions for review and for *certiorari* are to be observed religiously. "Just as [the] losing party has the privilege to file an appeal within the prescribed period, so does the winner have the x x x right to enjoy the finality of the decision." In *Air France Philippines v. Leachon*, we held: Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.

6. ID.; ID.; THE COURT MAY DEVIATE FROM PROCEDURAL RULES ONLY IF THE APPEAL IS MERITORIOUS ON ITS FACE.— While it is true that the Court may deviate from the rule, this is true only if the appeal is meritorious on its face. The Court has not hesitated to relax the procedural rules in order to serve and achieve substantial justice. "In the circumstances obtaining in this case however, the occasion does not warrant the desired relaxation." PNB has not offered any meritorious legal defense to justify the suspension of the rules in its favor. The CTA Division has taken into consideration all of the evidence submitted by the PNB, and actually allowed it a refund of ₱1,428,661.66, in addition to the ₱4,154,353.42 the BIR already gave. The CTA Division explained why it disallowed the remaining balance of ₱445,578.92 in its Decision dated August 11, 2005. When PNB moved to

reconsider this decision, it did not offer the CTA any other evidence or explanation aside from the ones the CTA Division had already evaluated. Nevertheless, the CTA carefully considered and deliberated anew PNB's grounds, albeit they found them lacking in merit. Thus, it cannot be said that PNB was deprived of its day in court, as in fact, it was given all the time it had asked for. While PNB may believe that it has a meritorious legal defense, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.

APPEARANCES OF COUNSEL

Flerida P. Zaballa-Banzuela for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This **Petition for Review on *Certiorari***[1] seeks to reverse and set aside the January 27, 2006[2] and April 19, 2006[3] **Resolutions** of the **Court of Tax Appeals *En Banc* (CTA *En Banc*)** in **C.T.A. E.B. NO. 145**, which dismissed outright the Petition for Review filed by the Philippine National Bank (PNB) dated December 27, 2005 for being filed four days beyond the additional 15 days granted to file such petition.

On April 15, 1999, petitioner PNB filed with the Bureau of Internal Revenue (BIR) its Tentative Return for 1998 with the documents enumerated in the "List of Attachments to Annual Income Tax Return Calendar Year Ended December 31, 1998"

[1] Rule 45 of the 1997 Rules of Court.

[2] *Rollo*, pp. 12-14; Ordered by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

enclosed. On September 30, 1999, PNB filed its Amended Income Tax Return for 1998, with the corresponding attachments to an amended annual income tax return appended, including copies of the Certificates and Schedule of Creditable Withholding Taxes for 1998. PNB likewise filed its Corporate Quarterly Returns for the calendar year 1998.[4]

On February 8, 2001, PNB filed with respondent Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of ₱6,028,594.00, which were payments made in excess of its income tax liability for 1998.[5]

As BIR did not act upon PNB's claim for refund, PNB, on March 30, 2001, filed with the Second Division of the Court of Tax Appeals (CTA Division) a Petition for Review,[6] and prayed that it be refunded or issued a tax credit certificate in the amount of ₱6,028,594.00, representing creditable taxes withheld from PNB's income from the sale of real property, rental income, commissions, and management fees for the taxable year 1998.

In his Answer,[7] the CIR alleged that PNB's claim for refund/tax credit is subject first to an investigation and that it failed to establish its right to a refund.

After PNB had rested its case, the CIR manifested that he would not be presenting evidence. The parties were thereafter required to submit their memoranda.[8]

On May 19, 2003, the BIR issued in PNB's favor Tax Credit Certificate No. SN 023837 for ₱4,154,353.42, leaving a balance of ₱1,874,240.58 out of PNB's total claim of ₱6,028,594.00.

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[3] *Id.* at 8-11.

[4] *Id.* at 79.

[5] Records (CTA Division), p. 6.

[6] *Id.* at 1-5.

[7] *Id.* at 375-378.

[8] *Rollo*, p. 22.

PNB then informed the CTA Division of such tax credit certificate, and manifested that its acceptance was without prejudice to recovering the balance of its total claim.[9]

Consequently, the CIR filed a Motion,[10] asking that he be allowed to present evidence on PNB's excluded claim. The CIR argued that the amount of ₱1,874,240.58 was disallowed because it was not remitted to the BIR, as verified by its Regional Accounting Division.[11]

On August 11, 2005, the CTA Division rendered its Decision,[12] the dispositive portion of which reads:

> WHEREFORE, premises considered, the present Petition For Review is hereby partially **GRANTED**. Respondent is hereby ORDERED to REFUND or ISSUE a Tax Credit Certificate in favor of herein petitioner in the amount of **₱1,428,661.66,** representing the latter's unutilized creditable withholding tax for the year 1998.[13]

The CTA Division held that payments of withholding taxes for a certain taxable year were creditable to the payee's income tax liability as determined after it had filed its income tax returns the following year. The CTA Division said that since PNB posted net losses, it was not liable for any income tax and consequently, the taxes withheld during the course of the taxable year, which was 1998, while collected legally under Revenue Regulations No. 02-98, Section 2.57 (B), became untenable and took on the nature of erroneously collected taxes at the end of that year. The CTA Division averred that while the right to a refund is not automatic and must be established by sufficient evidence, there is nothing in the Tax Code that would suggest that the actual remittance of the withholding tax is a condition precedent

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[9] Records (CTA Division), pp. 579-580.

[10] *Id.* at 589-592.

[11] *Rollo*, p. 86.

[12] *Id.* at 77-92; penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

[13] *Id.* at 91.

to claim for a tax refund. Moreover, the CTA Division added, that the CIR failed to present the certification to prove his contention of PNB's non-remittance of the disallowed amount. However, the CTA Division affirmed the disallowance of eight transactions, amounting to ₱445,578.92 as they had already been reported as income for other years, had not been recorded, or were not supported by pertinent documents.[14]

On September 14, 2005, PNB filed a Motion for Partial Reconsideration,[15] asserting its entitlement to be refunded the amount of ₱445,578.92, by explaining each transaction involved and pinpointed by the CTA Division. This however was still denied by the CTA Division in its Resolution[16] dated November 15, 2005, for lack of merit.

Aggrieved, PNB, filed a partial appeal by way of Petition for Review[17] under Section 18 of Republic Act No. 9282[18] before the CTA *En Banc*, to review and modify the CTA Division's August 11, 2005 Decision. This petition was received by the CTA *En Banc* on December 27, 2005, four days beyond the additional 15 days granted to PNB to file its petition.

Thus, on January 27, 2006, the CTA *En Banc* issued a Resolution[19] denying due course and consequently dismissing PNB's petition for the following reasons:

1) The Petition For Review was filed four (4) days late on December 27, 2005, the reglementary deadline for the timely filing of such petition being December 23, 2005.

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[14] *Id.* at 84-90.

[15] Records (CTA Division), pp. 691-695.

[16] *Rollo*, pp. 93-94.

[17] Records (CTA *En Banc*), pp. 7-16.

[18] 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.

[19] *Rollo*, pp. 12-14.

Appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non-compliance is fatal having the effect of rendering the judgment final and executory (*Cabellan vs. Court of Appeals, 304 SCRA 119*). Not only that, late appeals deprives the appellate court of jurisdiction to alter the final judgment much less entertain the appeal (*Pedrosa vs. Hill, 257 SCRA 373*).

2) The petition is not accompanied by the duplicate original or certified true copies of the assailed Decision dated August 11, 2005 and Resolution dated November 15, 2005, in violation of *Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals,* in relation to *Section 6, Rule 43 of the Rules of Court.*

3) The Petition does not contain an Affidavit of Service, in violation of *Section 13, Rule 13 of the Rules of Court.*

In the case of *Policarpio vs. Court of Appeals, 269 SCRA 344, 351,* the Supreme Court did not hesitate to dismiss the petition for failure to attach an affidavit of service.

Lastly, *Section 7 of Rule 43 of the Rules of Court* provides that:

> SEC. 7. *Effect of failure to comply with requirements.*— The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

Persistent in its claim, PNB filed a Motion for Reconsideration with Manifestation of Compliance[20] on February 23, 2006, and answered each ground propounded by the CTA *En Banc* in its Resolution.

PNB asserted that its petition was filed on December 23, 2005, which was the last day of the additional 15-day period granted by the CTA *En Banc, via* LBC Express, as shown by the copy of LBC Official Receipt No. 12990350[21] dated

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[20] *Id.* at 57-69.

[21] Records (CTA *En Banc*), p. 60.

December 23, 2005. PNB explained that its counsel, Atty. Flerida P. Zaballa-Banzuela, accompanied by her administrative assistant, tried to personally file the petition with the CTA *En Banc* on December 23, 2005. However, PNB claimed, that due to heavy traffic, Atty. Zaballa-Banzuela arrived at the CTA office in Quezon City at 4:30 p.m., just as the CTA personnel were leaving the CTA premises in their shuttle bus.[22]

PNB attached to its Motion the Affidavit[23] of Christopher Sarmiento, the Security Guard who was then assigned at the CTA main gate. Sarmiento averred that he did not allow Atty. Zaballa-Banzuela to enter the CTA compound because there was no one left to receive her document. He also alleged that Atty. Zaballa-Banzuela even tried to ask some of the CTA personnel who were on board the CTA shuttle that passed her by, if they could receive her document, but they declined. This was corroborated by Atty. Zaballa-Banzuela's administrative assistant, Macrina J. Cataniag, in her Affidavit,[24] also annexed to PNB's Motion.

PNB argued that while its petition was deposited with LBC Express on December 23, 2005, very well within the reglementary period, CTA *En Banc* received it only on December 27, 2005, as December 24 to 26, 2005 were holidays.[25]

Addressing the second ground that the CTA *En Banc* used to dismiss the petition, PNB said that its non-submission of the duplicate original or certified true copy of the CTA Division's decision and resolution was not intended for delay but was "mere inadvertence and unintentional, but an honest mistake, an oversight, an unintentional omission, and a human error occasioned by too much pressure of work."[26]

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[22] *Id.* at 47.

[23] *Id.* at 61.

[24] *Id.* at 62.

[25] *Id.* at 48.

[26] *Id.* at 48-49.

In compliance, PNB attached to its Motion the Affidavit of Service[27] and certified true copies of the CTA Division's decision and resolution supposed to be attached to its petition before the CTA *En Banc*.

On April 19, 2006, the CTA *En Banc* denied PNB's motion for lack of merit. The CTA *En Banc* held that "absent any cogent explanation [to not] comply with the rules, the rules must apply to the petitioner as they do to all."[28] The CTA *En Banc* ratiocinated in this wise:

> It is a jurisprudential rule that the date [of] delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading (*Benguet Electric Corporation, Inc. vs. NLRC, 209 SCRA 60-61*). Clearly, the present Petition For Review was filed four (4) days late.
>
> The instant Petition For Review is an appeal from the decision of the Court in Division. Accordingly, the applicable rule is that the fifteen-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature; that failure to file an appeal within the reglementary period renders the assailed decision final and executory and no longer subject to review (*Armigos vs. Court of Appeals, 179 SCRA 1; Jocson vs. Baguio, 179 SCRA 550*). Petitioner had thus lost its right to appeal from the decision of this Court in Division.[29]

The CTA *En Banc* added:

> Although petitioner subsequently attached to its present motion, certified true copies of the assailed Decision, dated August 11, 2005, and Resolution, dated November 15, 2005, and the Affidavit of Service, this did not stop the questioned decision from becoming final and executory. It has been held that strict compliance with procedural requirements in taking an appeal cannot be substituted by "good faith

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

[28] *Rollo,* p. 9.

[29] *Id.*

compliance". To rule otherwise would defeat the very purpose of the rules of procedure, *i.e.*, to "facilitate the orderly administration of justice" (*Santos vs. Court of Appeals, 198 SCRA 806, 810; Ortiz vs. Court of Appeals, 299 SCRA 712*).[30]

PNB thereafter filed a Petition for Review[31] before this Court on June 16, 2006, which was the last day of the additional thirty days it was granted[32] to file such petition.

In order to convince this Court to allow its petition, PNB posits the following arguments:

I

THE HONORABLE COURT OF TAX APPEALS *EN BANC* ERRED IN FAILING TO CONSIDER THE EXPLANATION SUBMITTED BY PNB IN ITS MOTION FOR RECONSIDERATION WITH MANIFESTATION OF COMPLIANCE WITH RESPECT TO THE FILING OF THE PETITION ON DECEMBER 23, 2005 (THE DUE DATE FOR FILING THEREOF) VIA LBC SERVICE INSTEAD OF REGISTERED MAIL WITH RETURN CARD.

II

THE PROCEDURAL LAPSE OBSERVED BY THE HONORABLE COURT OF TAX APPEALS SHOULD BE LIBERALLY CONSTRUED IN THE INTEREST OF SUBSTANTIAL JUSTICE, AS POSTULATED IN VARIOUS SUPREME COURT DECISIONS.

III

THE PETITION FILED BY PNB BEFORE THE CTA *EN BANC* RAISES A MERITORIOUS LEGAL DEFENSE WARRANTING JUDICIAL RESOLUTION.[33]

PNB once again narrated the circumstances leading to its counsel's decision to mail its petition for review via LBC

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[30] *Id.* at 10.

[31] *Id.* at 18-38.

[32] *Id.* at 16.

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

Express, a private letter-forwarding company, instead of registered mail. It claims that since this Court has repeatedly pronounced the primacy of substantive justice over technical rules, then its procedural lapses should likewise be excused, especially since no substantial rights of the CIR are affected.

This Court's Ruling

The only issue to be resolved here is whether or not this Court should require the CTA *En Banc* to give due course to C.T.A. E.B. No. 145 despite PNB's failure to comply with the formal requirements of the Revised Rules of the Court of Tax Appeals and the Rules of Court in filing a petition for review with the CTA *En Banc*.

Not having been successfully convinced by PNB, we answer the above issue in the negative.

This Court would like to underscore the fact that PNB failed to comply with not just one, but **three** procedural rules when it filed its petition for review with the CTA *En Banc*.

Petition was filed late

It is stated under Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals that the Rules of Court shall apply suppletorily. Thus, the manner in which petitions are filed before the CTA is also covered by the relevant provision of the Rules of Court, to wit:

> Rule 13. x x x.
>
> x x x x x x x x x
>
> **Sec. 3.** *Manner of filing.* The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them **by registered mail**. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, **as shown by the post office stamp on the envelope or the registry receipt**, **shall be considered as the date of their filing, payment,**

or deposit in court. The envelope shall be attached to the record of the case. (Emphases ours.)

To recall, PNB filed its petition with the CTA *En Banc* four days beyond the ***extended*** period granted to it to file such petition. PNB argues that it was filed on time since it was mailed on *the last day of the extended period*, which was on December 23, 2005. It has been established that a pleading "filed by ordinary mail or by private messengerial service x x x is deemed filed on the day it is actually received by the court, and not on the day it was mailed or delivered to the messengerial service."[34] In *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission*,[35] we said:

> The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.[36]

It is worthy to note that PNB already asked for an additional period of 15 days within which to file its petition for review with the CTA *En Banc*. This period expired on December 23, 2005. Knowing fully well that December 23, 2005 not only fell on a Friday, followed by three consecutive non-working days, but also belonged to the busiest holiday season of the year, PNB should have exercised more prudence and foresight in filing its petition.

It is, however, curious why PNB chose to risk the holiday traffic in an effort to personally file its petition with the CTA *En Banc*, when it already filed a copy to the other party, the CIR, *via* registered mail.[37] Considering the circumstances, it

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[34] *Industrial Timber Corp. v. National Labor Relations Commission*, G.R. No. 111985, June 30, 1994, 233 SCRA 597, 602.

[35] G.R. No. 89070, May 18, 1992, 209 SCRA 55.

[36] *Id.* at 60-61.

[37] Records (CTA *En Banc*), p. 66.

would have been more logical for PNB to send its petition to the CTA *En Banc* on the same occasion it sent a copy to the CIR, especially since that day was already the last day given to PNB to file its petition. Moreover, PNB offered no justification as to why it sent its petition via ordinary mail instead of registered mail. "Service by ordinary mail is allowed only in instances where no registry service exists."[38] Rule 13, Section 7 reads:

> **Sec. 7.** *Service by mail.* Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (l0) days if undelivered. **If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail**. (Emphasis ours.)

Petition was not accompanied by the required duplicate originals or certified true copies of the decision and resolution being assailed, and Affidavit of Service

The following provisions are instructive:

Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals:

> SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition**. (Emphasis supplied.)

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[38] *Bank of the Philippine Islands v. Far East Molasses Corporation*, G.R. No. 89125, July 2, 1991, 198 SCRA 689, 701.

Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals:

Sec. 4(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

Sections 6, Rule 43 of the Rules of Court:

Sec. 6. *Contents of the petition.* The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; **(c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from,** together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis ours.)

This Court has already upheld the mandatory character of attaching duplicate originals or certified true copies of the assailed decision to a petition for review.[39] Moreover, pursuant to Section 7, Rule 43 of the Rules of Court, non-compliance with such mandatory requirement is a sufficient ground to dismiss the petition, *viz*:

Sec. 7. *Effect of failure to comply with requirements.* The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** (Emphasis ours.)

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[39] *Spouses Lim v. Uni-Tan Marketing Corporation*, 427 Phil. 762, 770-771 (2002).

Anent the failure to attach the Affidavit of Service, Section 13, Rule 13 of the Rules of Court provides:

> **Sec. 13.** *Proof of service.* Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Although the failure to attach the required affidavit of service is not fatal if the registry receipt attached to the petition clearly shows service to the other party,[40] it must be remembered that this was not the only rule of procedure PNB failed to satisfy. In *Suarez v. Judge Villarama, Jr.*[41] we said:

> It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[42]

This Court agrees with the CTA *En Banc* that PNB has not demonstrated any cogent reason for this Court to take an exception and excuse PNB's blatant disregard of the basic procedural rules in a petition for review. Furthermore, the timely

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[40] *Philippine Amusement and Gaming Corporation v. Angara*, 511 Phil. 486, 498 (2005).

[41] G.R. No. 124512, June 27, 2006, 493 SCRA 74.

[42] *Id.* at 83-84.

perfection of an appeal is a mandatory requirement. One cannot escape the rigid observance of this rule by claiming oversight, or in this case, lack of foresight. Neither can it be trifled with as a "mere technicality" to suit the interest of a party. Verily, the periods for filing petitions for review and for *certiorari* are to be observed religiously. "Just as [the] losing party has the privilege to file an appeal within the prescribed period, so does the winner have the x x x right to enjoy the finality of the decision."[43] In *Air France Philippines v. Leachon*,[44] we held:

> Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[45]

While it is true that the Court may deviate from the foregoing rule, this is true only if the appeal is meritorious on its face. The Court has not hesitated to relax the procedural rules in order to serve and achieve substantial justice. "In the circumstances obtaining in this case however, the occasion does not warrant the desired relaxation."[46] PNB has not offered any meritorious legal defense to justify the suspension of the rules in its favor. The CTA Division has taken into consideration all of the evidence submitted by the PNB, and actually allowed

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[43] *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).

[44] G.R. No. 134113, October 12, 2005, 472 SCRA 439.

[45] *Id.* at 442-443.

[46] *Id.* at 443.

it a refund of ₱1,428,661.66, in addition to the ₱4,154,353.42 the BIR already gave. The CTA Division explained why it disallowed the remaining balance of ₱445,578.92 in its Decision dated August 11, 2005. When PNB moved to reconsider this decision, it did not offer the CTA any other evidence or explanation aside from the ones the CTA Division had already evaluated. Nevertheless, the CTA carefully considered and deliberated anew PNB's grounds, albeit they found them lacking in merit. Thus, it cannot be said that PNB was deprived of its day in court, as in fact, it was given all the time it had asked for.

While PNB may believe that it has a meritorious legal defense, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.[47]

WHEREFORE, the petition is hereby *DENIED* for lack of merit.

SO ORDERED.

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

[47] *Saint Louis University v. Cordero,* 478 Phil. 739 (2004).

FIRST DIVISION

[G.R. No. 172553. December 14, 2011]

OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, HONORABLE VICTOR C. FERNANDEZ, in his capacity as Deputy Ombudsman for Luzon, and THE GENERAL INVESTIGATION BUREAU-A, Represented by MARIA OLIVIA ELENA A. ROXAS, *petitioners, vs.* **JESUS D. FRANCISCO, SR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; PREVENTIVE SUSPENSION; EXPLAINED; THE TOTAL PREVENTIVE SUSPENSION SHOULD NOT EXCEED SIX MONTHS.— The Court finds that the petition at bar, which seeks the reinstatement of the Order of preventive suspension dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon, has been rendered moot. In view of the x x x supervening event that occurred after the filing of the instant petition, the same has ceased to present a justiciable controversy. In *Ombudsman v. Peliño*, the Court clarified that "[p]reventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the purpose thereof is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him." Section 24 of Republic Act No. 6770 expressly provides for the power of the Ombudsman or his Deputy to place a public officer or employee under preventive suspension, to wit: SECTION 24. *Preventive Suspension*. — x x x. **The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay**, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. x x x To recall in the instant case, the Order of the Office of the Deputy Ombudsman

for Luzon dated May 30, 2005, which placed the respondents in Administrative Case No. OMB-C-A-05-0032-A under preventive suspension, was received by respondent Francisco on July 1, 2005. Instead of filing a motion for reconsideration thereon, Francisco filed before the Court of Appeals a Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. The appellate court, however, did not issue a temporary restraining order or a preliminary injunction. Accordingly, the six-month period of the preventive suspension was not interrupted. Having received notice of the Order on July 1, 2005, the period of suspension lapsed on December 28, 2005.

2. REMEDIAL LAW; APPEALS; ISSUES; MOOT AND ACADEMIC; COURTS HAVE REFRAINED FROM EVEN EXPRESSING AN OPINION IN A CASE WHERE THE ISSUES HAVE BECOME MOOT AND ACADEMIC, THERE BEING NO MORE JUSTICIABLE CONTROVERSY TO SPEAK OF, SO THAT A DETERMINATION THEREOF WOULD BE OF NO PRACTICAL USE OR VALUE.— Of greater importance, however, is the fact that Administrative Case No. OMB-C-A-05-0032-A was already terminated by the Office of the Deputy Ombudsman for Luzon when it dismissed the case in a Joint Resolution, approved by the Acting Ombudsman on February 28, 2008. Consequently, the Order of the Office of the Deputy Ombudsman for Luzon placing Francisco and his co-respondents under preventive suspension in Administrative Case No. OMB-C-A-05-0032-A has already lost its significance. *Barbieto v. Court of Appeals* reiterates that "[t]ime and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value."

3. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE MOOT AND ACADEMIC PRINCIPLE; NOT APPLICABLE.— While the Court is mindful of the principle that "[t]he 'moot and academic' principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the

constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review," the above exceptions do not find application in the instant case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Roberto A. San Jose for respondent.

R E S O L U T I O N

LEONARDO–DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated December 23, 2005 and the Resolution[3] dated May 3, 2006 of the Court of Appeals in CA-G.R. SP No. 90567. The decision of the appellate court reversed the Order[4] dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon in Administrative Case No. OMB-C-A-05-0032-A, while its resolution denied the motion for reconsideration of herein petitioners.

We quote hereunder the preliminary facts of the case, as succinctly stated in the Decision of the Court of Appeals dated December 23, 2005:

Sometime in November 1998, Ligorio Naval filed a complaint before the Office of the Ombudsman, accusing Jessie Castillo, the mayor of

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[1] *Rollo*, pp. 9-29.

[2] *Id.* at 75-81; penned by Associate Justice Santiago Javier Ranada with Associate Justices Mariano C. del Castillo (now a member of this Court) and Mario L. Guariña III, concurring.

[3] *Id.* at 70-73.

[4] Records, pp. 23-25; penned by Director Joaquin F. Salazar and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

the Municipality of Bacoor, Cavite, among others, of violating Section[s] 3(e), (g) and (j) of the Anti-Graft and Corrupt Practices Act, in relation to the award of the construction of the municipal building of Bacoor, Cavite, worth more than 9 Million Pesos, to St. Martha's Trading and General Contractors. Naval alleged that the latter was not qualified for the award; its license had expired at the time the contract was signed, and was classified as belonging to Category "C," hence, may only undertake projects worth 3 Million Pesos or lower. The complaint was docketed as **OMB-1-98-2365.**

Castillo submitted certifications to the effect that the contractor was not a holder of an expired license, and was classified as a Category "A" contractor.

On 29 April 1999, the Ombudsman ruled that Naval's allegation of lack of qualification of the contractor has been satisfactorily controverted by Castillo, and dismissed the complaint. Naval moved for reconsideration, which was denied on 27 August 1999.

In a series of communications with Deputy Ombudsman Margarito P. Gervacio, Jr., Naval insinuated that his evidence [was] not considered and the complaint was dismissed in exchange for millions of pesos. Ombudsman Gervacio relayed the said allegations to Ombudsman Aniano Desierto, who ordered a reevaluation of the 29 April 1999 decision.

In a Memorandum dated 30 May 2000, Graft Investigation and Prosecution Officer II, Julieta Calderon, recommended that OMB-1-98-2365 be revived, re-docketed, and be subjected to a further preliminary investigation, with the inclusion of additional respondents. On 30 September 2000, Ombudsman Gervacio approved the said memorandum. Thereafter, the Fact-Finding and Intelligence Bureau of the Ombudsman executed a complaint-affidavit for gross negligence and conduct prejudicial to the interest of the service, against 5 municipal officers, including [Jesus Francisco], which was docketed as **OMB-C-A-05-0032-A**.[5] (Emphases ours.)

The respondents specifically named in Administrative Case No. OMB-C-A-05-0032-A were Saturnino F. Enriquez, Salome O. Esagunde, Federico Aquino, Eleuterio Ulatan and herein

[5] *Rollo*, pp. 76-77.

respondent Jesus D. Francisco, Sr.,[6] all of whom were members of the Prequalification, Bids and Awards Committee (PBAC) of the Municipality of Bacoor, Cavite. Francisco was then the Municipal Planning and Development Officer of the Municipality of Bacoor, Cavite.

The complaint stated, among others, that when the Municipality of Bacoor conducted its prequalification of documents and bidding, St. Martha's Trading and General Contractor's license was not renewed. Furthermore, the said contractor was allegedly not qualified to undertake the construction of the ₱9.5 million project as it can only enter into a contract for a project that is worth ₱3 million or less. The complaint likewise sought to place the aforementioned individuals under preventive suspension pending the investigation of the case.[7]

On May 30, 2005, Director Joaquin F. Salazar of the Office of the Deputy Ombudsman for Luzon issued an Order[8] preventively suspending the above PBAC members. The same was approved by Deputy Ombudsman for Luzon Victor C. Fernandez on May 31, 2005.[9] The Order decreed thus:

> WHEREFORE, in accordance with Section 24, R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, respondents Saturnino F. Enriquez, Salome Esagunde, **Jesus D. Francisco, Sr.,** Federico Aquino, and Eleuterio Ulatan, all municipal employees of Bacoor, Cavite are hereby **PREVENTIVELY SUSPENDED** during the pendency of this case until its termination, but not to exceed the total period of six (6) months without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.

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[6] Records, p. 1.

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

[8] *Id.* at 23-25; penned by Director Joaquin F. Salazar.

[9] *Id.* at 25.

In accordance with Section 27, par. (1), R.A. No. 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.[10] (Emphasis ours.)

Francisco received the above Order on July 1, 2005.[11] Consequently, on July 22, 2005, he filed before the Court of Appeals a Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. He argued that the Office of the Deputy Ombudsman for Luzon committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered his preventive suspension since the transactions questioned in the case had already been passed upon in OMB-1-98-2365 entitled, *Naval v. Castillo*, which was dismissed for lack of merit. Furthermore, Francisco averred that the imposition of preventive suspension was not justified given that: (1) he was charged with gross negligence and conduct prejudicial to the interest of the service, not dishonesty, oppression, grave misconduct or neglect in the performance of duty, as required by law; (2) it was not shown that he caused prejudice to the government that would warrant his removal from office; and (3) his stay in office would not prejudice the case filed against him as the documentary evidence therein were not in his possession.[12]

On December 2, 2005, Francisco moved for the early resolution of his petition, reiterating his prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

On December 23, 2005, the Court of Appeals rendered its assailed Decision, finding in favor of Francisco. Thus, said the Court of Appeals:

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[10] *Id.* at 24.

[11] CA *rollo*, p. 36.

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

The petition has merit.

Francisco argues that while he may not have been charged in OMB-1-98-2365, which was dismissed, still the transaction involved therein is the same transaction for which he was charged in OMB-C-A-05-0032-A, thus barred under the principle of *res judicata*.

We agree. The respondents in OMB-C-A-05-0032-A were administratively charged for gross negligence and conduct prejudicial to the interest of the service *when they awarded the contract to construct their municipal hall to St. Martha's Contractor, allegedly an unqualified contractor, because both at the time of the bidding and at the time of contract signing, the contractor had an expired license. Moreover, St. Martha's Contractor belongs to "small B" category, which means it cannot enter into a contract for a project worth 3 Million Pesos or less. Therefore, the respondents should have disqualified the said contractor*.

The said allegation was the exact matter decided by the Ombudsman in OMB-1-98-2365, to wit:

"x x x x x x x x x

> Contrary to the allegation of the complainant that the awardee, St. Martha's Trading and General Contractor was not qualified to undertake the project being classified under "Category C", respondent submitted a xerox copy of a letter dated 05 January 1999 of Jaime Martinez, OIC-Engineer DPWH, Trece Martirez City stating that St. Martha's Trading & General Contractor is classified under "Category A". He likewise submitted a certification dated 06 April 1999 issued by Carolina C. Saunar, Supervising TIDS of the Philippine Contractors Accreditation Board to the effect that St. Martha's Trading & General Contractor is a holder of Contractor's License No. 24109 originally issued on 18 December 1997 with Category "A" and classification of General Building and General Engineering. x x x.
>
> After a thorough study and evaluation of the records of the case as well as after the conduct of an actual ocular investigation, this Office finds the defenses interposed by the respondent to be meritorious."

A judgment bars a subsequent action, with the concurrence of the following requirements: (a) the first judgment must be a final one; (b) the court rendering the judgment must have jurisdiction over the

subject matter and over the parties; (c) it must be a judgment or order on the merits; and (d) there must be between the two cases, identity of parties, identity of subject matter and identity of action.

The order of dismissal in OMB-1-98-2365 should operate as a bar to OMB-C-A-05-0032-A. There is no question that the order dismissing the charges in OMB-1-98-2365, is a judgment on the merits, by a court having jurisdiction over the subject matter and over the parties, and had attained finality. There is, between OMB-1-98-2365 and OMB-C-A-05-0032-A, an identity of parties, an identity of subject matter and an identity of action. While it may be argued that there was no absolute identity of parties, a shared identity of interest by the parties in both cases is sufficient to invoke the coverage of the principle. The substitution of parties will not remove the case from the doctrine of *res judicata*; otherwise, the parties could renew the litigation by the simple expedient of substitution of parties.

WHEREFORE, the petition is hereby **GRANTED**. The 30 May 2005 order of the Office of the Ombudsman in OMB-C-A-05-0032-A is hereby **SET ASIDE**.[13]

On January 18, 2006, the Office of the Deputy Ombudsman for Luzon filed a Motion for Reconsideration[14] on the above decision, but the same was denied in the assailed Resolution dated May 3, 2006.

On June 26, 2006, the Office of the Deputy Ombudsman for Luzon and the General Investigation Bureau-A of the said office, through the OSG (petitioners), filed the instant petition, praying for the reversal of the adverse rulings of the Court of Appeals.

Respondent filed his Comment[15] on January 8, 2007 while petitioners filed a Reply[16] on March 19, 2007. In a Resolution[17] dated April 23, 2007, the Court directed the parties to submit

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[13] *Rollo*, pp. 78-80.

[14] CA *rollo*, pp. 69-78.

[15] *Rollo*, pp. 57-64.

[16] *Id.* at 82-94.

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

their respective memoranda. The OSG, in a Manifestation and Motion,[18] adopted its Petition and Reply as its Memorandum in the instant case. In turn, respondent filed his Memorandum[19] on September 7, 2007.

Upon elevation of the records to this Court, it became apparent that the Office of the Deputy Ombudsman for Luzon issued a Joint Resolution,[20] dismissing Administrative Case No. OMB-C-A-05-0032-A for lack of probable cause. The said resolution was approved by Acting Ombudsman Orlando C. Casimiro on **February 28, 2008**.[21]

The Court finds that the petition at bar, which seeks the reinstatement of the Order of preventive suspension dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon, has been rendered moot. In view of the above-stated supervening event that occurred after the filing of the instant petition, the same has ceased to present a justiciable controversy.

In *Ombudsman v. Peliño*,[22] the Court clarified that "[p]reventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the purpose thereof is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him."

Section 24 of Republic Act No. 6770 expressly provides for the power of the Ombudsman or his Deputy to place a public officer or employee under preventive suspension, to wit:

SECTION 24. *Preventive Suspension*. — The Ombudsman or his Deputy may preventively suspend any officer or employee under

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[18] *Id.* at 98-100.

[19] *Id.* at 104-119.

[20] Records, pp. 73-80.

[21] *Id.* at 80.

[22] G.R. No. 179261, April 18, 2008, 552 SCRA 203, 216.

his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis ours.)

Similarly, Section 9, Rule III of the Rules of Procedure of the Ombudsman[23] in administrative cases recites:

SECTION 9. *Preventive Suspension*. – Pending investigation, the respondent may be preventively suspended without pay if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct, or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the just, fair and independent disposition of the case filed against him.

The preventive suspension shall continue until the case is terminated; however, the total period of preventive suspension should not exceed six months. Nevertheless, when the delay in the disposition of the case is due to the fault, negligence or any cause attributable to the respondent, the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis ours.)

To recall in the instant case, the Order of the Office of the Deputy Ombudsman for Luzon dated May 30, 2005, which placed the respondents in Administrative Case No. OMB-C-A-05-0032-

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[23] Ombudsman Administrative Order No. 7 dated April 10, 1990, as amended by Administrative Order No. 17 dated September 15, 2003.

A under preventive suspension, was received by respondent Francisco on July 1, 2005. Instead of filing a motion for reconsideration[24] thereon, Francisco filed before the Court of Appeals a Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. The appellate court, however, did not issue a temporary restraining order or a preliminary injunction. Accordingly, the six-month period of the preventive suspension was not interrupted. Having received notice of the Order on July 1, 2005, the period of suspension lapsed on December 28, 2005.[25]

Of greater importance, however, is the fact that Administrative Case No. OMB-C-A-05-0032-A was already terminated by the

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[24] Section 8, Rule III of the Rules of Procedure of the Office of the Ombudsman states that:

SEC. 8. *Motion for Reconsideration or Reinvestigation*; *Grounds*— Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

[25] See *Radaza v. Court of Appeals* (G.R. No. 177135, October 15, 2008, 569 SCRA 223, 237) where the Court explained that:

"In ascertaining the last day of the period of suspension, one (1) month is to be treated as equivalent to thirty (30) days, such that six (6) months is equal to one hundred eighty (180) days. x x x. This is in line with the provisions of Article 13 of the New Civil Code, which provides:

ART. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days of twenty[-]four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included."

Office of the Deputy Ombudsman for Luzon when it dismissed the case in a Joint Resolution, approved by the Acting Ombudsman on February 28, 2008. Consequently, the Order of the Office of the Deputy Ombudsman for Luzon placing Francisco and his co-respondents under preventive suspension in Administrative Case No. OMB-C-A-05-0032-A has already lost its significance.

Barbieto v. Court of Appeals[26] reiterates that "[t]ime and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value."

While the Court is mindful of the principle that "[t]he 'moot and academic' principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review,"[27] the above exceptions do not find application in the instant case.

WHEREFORE, the Court hereby *DENIES* the instant petition for mootness. No costs.

SO ORDERED.

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

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[26] G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840.

[27] *David v. Macapagal-Arroyo*, G.R. No. 171369, May 3, 2006, 489 SCRA 160, 214-215.

[*] Per Raffle dated December 14, 2011.

THIRD DIVISION

[G.R. No. 175444. December 14, 2011]

JAIME ABALOS and SPOUSES FELIX SALAZAR and CONSUELO SALAZAR, GLICERIO ABALOS, HEIRS OF AQUILINO ABALOS, namely: SEGUNDA BAUTISTA, ROGELIO ABALOS, DOLORES A. ROSARIO, FELICIDAD ABALOS, ROBERTO ABALOS, JUANITO ABALOS, TITA ABALOS, LITA A. DELA CRUZ AND HEIRS OF AQUILINA ABALOS, namely: ARTURO BRAVO, PURITA B. MENDOZA, LOURDES B. AGANON, CONSUELO B. SALAZAR, PRIMA B. DELOS SANTOS, THELMA APOSTOL and GLECERIO ABALOS, *petitioners, vs.* **HEIRS OF VICENTE TORIO, namely: PUBLIO TORIO, LIBORIO TORIO, VICTORINA TORIO, ANGEL TORIO, LADISLAO TORIO, PRIMO TORIO and NORBERTO TORIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FAILURE TO PERFECT AN APPEAL RENDERS THE JUDGMENT FINAL AND EXECUTORY.— [T]he Court agrees with the observation of respondents that some of the petitioners in the instant petition were the intervenors when the case was filed with the MTC. Records would show that they did not appeal the Decision of the MTC. The settled rule is that failure to perfect an appeal renders the judgment final and executory. Hence, insofar as the intervenors in the MTC are concerned, the judgment of the MTC had already become final and executory.

2. ID.; ID.; PETITIONS FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE NOT REVIEWABLE THEREIN; EXCEPTIONS; PRESENT.— It also bears to point out that the main issue raised in the instant petition, which is the character or nature of petitioners' possession of the subject parcel of land, is factual in nature. Settled is the rule that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of

the Rules of Court. Section 1 of Rule 45 states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." Doubtless, the issue of whether petitioners possess the subject property as owners, or whether they occupy the same by mere tolerance of respondents, is a question of fact. Thus, it is not reviewable. Nonetheless, the Court has, at times, allowed exceptions from the abovementioned restriction. Among the recognized exceptions are the following: (*a*) When the findings are grounded entirely on speculation, surmises, or conjectures; (*b*) When the inference made is manifestly mistaken, absurd, or impossible; (*c*) When there is grave abuse of discretion; (*d*) When the judgment is based on a misapprehension of facts; (*e*) When the findings of facts are conflicting; (*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) When the CA's findings are contrary to those by the trial court; (*h*) When the findings are conclusions without citation of specific evidence on which they are based; (*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. In the present case, the findings of fact of the MTC and the CA are in conflict with those of the RTC.

3. CIVIL LAW; PRESCRIPTION; ACQUISITIVE PRESCRIPTION; ORDINARY ACQUISITIVE PRESCRIPTION DISTINGUISHED FROM EXTRAORDINARY ACQUISITIVE PRESCRIPTION.— Petitioners claim that they have acquired ownership over the disputed lot through ordinary acquisitive prescription. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for ten (10) years. Without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for thirty (30) years.

4. ID.; ID.; ID.; POSSESSION IN GOOD FAITH, EXPLAINED. ACTS OF POSSESSORY CHARACTER EXECUTED DUE

TO LICENSE OR BY MERE TOLERANCE OF THE OWNER ARE INADEQUATE FOR PURPOSES OF ACQUISITIVE PRESCRIPTION.— Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership. There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right. In the instant case, it is clear that during their possession of the property in question, petitioners acknowledged ownership thereof by the immediate predecessor-in-interest of respondents. This is clearly shown by the Tax Declaration in the name of Jaime for the year 1984 wherein it contains a statement admitting that Jaime's house was built on the land of Vicente, respondents' immediate predecessor-in-interest. Petitioners never disputed such an acknowledgment. Thus, having knowledge that they nor their predecessors-in-interest are not the owners of the disputed lot, petitioners' possession could not be deemed as possession in good faith as to enable them to acquire the subject land by ordinary prescription. In this respect, the Court agrees with the CA that petitioners' possession of the lot in question was by mere tolerance of respondents and their predecessors-in-interest. Acts of possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de dueño*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.

5. ID.; ID.; ID.; SERVICE OF SUMMONS UPON THE PARTIES EFFECTIVELY INTERRUPTS THEIR POSSESSION OF THE PROPERTY.— [T]he CA correctly held that even if the character of petitioners' possession of the subject property had become adverse, as evidenced by their declaration of the same for tax purposes under the names of their predecessors-in-interest, their possession still falls short of the required period of thirty (30) years in cases of extraordinary acquisitive prescription. Records show that the earliest Tax Declaration in the name of petitioners was in 1974. Reckoned from such date, the thirty-year period was completed in 2004. However, herein respondents' complaint was filed in 1996, effectively interrupting petitioners' possession upon

service of summons on them. Thus, petitioners' possession also did not ripen into ownership, because they failed to meet the required statutory period of extraordinary prescription.

6. ID.; ID.; ID.; EVIDENCE RELATIVE TO THE POSSESSION UPON WHICH THE ALLEGED PRESCRIPTION IS BASED MUST BE CLEAR, COMPLETE AND CONCLUSIVE IN ORDER TO ESTABLISH THE PRESCRIPTION.— This Court has held that the evidence relative to the possession upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish the prescription. In the present case, the Court finds no error on the part of the CA in holding that petitioners failed to present competent evidence to prove their alleged good faith in neither possessing the subject lot nor their adverse claim thereon. Instead, the records would show that petitioners' possession was by mere tolerance of respondents and their predecessors-in-interest.

7. REMEDIAL LAW; APPEALS; ISSUES; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE TRIAL COURT NEED NOT BE, AND ORDINARILY WILL NOT BE, CONSIDERED BY A REVIEWING COURT.— [A]s to the issue of whether the due execution and authenticity of the deed of sale upon which respondents anchor their ownership were not proven, the Court notes that petitioners did not raise this matter in their Answer as well as in their Pre-Trial Brief. It was only in their Comment to respondents' Petition for Review filed with the CA that they raised this issue. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.

8. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; BARE DENIALS WILL NOT SUFFICE TO OVERCOME THE PRESUMPTION OF REGULARITY OF A NOTARIZED DOCUMENT.— Indeed, settled is the rule in our jurisdiction that a notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld. In the instant case, petitioners'

bare denials will not suffice to overcome the presumption of regularity of the assailed deed of sale.

APPEARANCES OF COUNSEL

Arsenio A. Merrera for petitioners.
Nolan R. Evangelista for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision[1] dated June 30, 2006 and Resolution[2] dated November 13, 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 91887. The assailed Decision reversed and set aside the Decision[3] dated June 14, 2005 of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, while the questioned Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On July 24, 1996, herein respondents filed a Complaint for Recovery of Possession and Damages with the Municipal Trial Court (MTC) of Binmaley, Pangasinan against Jaime Abalos (Jaime) and the spouses Felix and Consuelo Salazar. Respondents contended that: they are the children and heirs of one Vicente Torio (Vicente) who died intestate on September 11, 1973; at the time of the death of Vicente, he left behind a parcel of land

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring; Annex "J" to Petition, *rollo*, pp. 87-98.

[2] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Asuncion-Vicente and Vicente S.E. Veloso, concurring; Annex "L" to Petition, *id*. at 107-109.

[3] Records, pp. 316-324.

measuring 2,950 square meters, more or less, which is located at San Isidro Norte, Binmaley, Pangasinan; during the lifetime of Vicente and through his tolerance, Jaime and the Spouses Salazar were allowed to stay and build their respective houses on the subject parcel of land; even after the death of Vicente, herein respondents allowed Jaime and the Spouses Salazar to remain on the disputed lot; however, in 1985, respondents asked Jaime and the Spouses Salazar to vacate the subject lot, but they refused to heed the demand of respondents forcing respondents to file the complaint.[4]

Jaime and the Spouses Salazar filed their Answer with Counterclaim, denying the material allegations in the Complaint and asserting in their Special and Affirmative Defenses that: respondents' cause of action is barred by acquisitive prescription; the court *a quo* has no jurisdiction over the nature of the action and the persons of the defendants; the absolute and exclusive owners and possessors of the disputed lot are the deceased predecessors of defendants; defendants and their predecessors-in-interest had been in actual, continuous and peaceful possession of the subject lot as owners since time immemorial; defendants are faithfully and religiously paying real property taxes on the disputed lot as evidenced by Real Property Tax Receipts; they have continuously introduced improvements on the said land, such as houses, trees and other kinds of ornamental plants which are in existence up to the time of the filing of their Answer.[5]

On the same date as the filing of defendants' Answer with Counterclaim, herein petitioners filed their Answer in Intervention with Counterclaim. Like the defendants, herein petitioners claimed that their predecessors-in-interest were the absolute and exclusive owners of the land in question; that petitioners and their predecessors had been in possession of the subject lot since time immemorial up to the present; they have paid real property taxes and introduced improvements thereon.[6]

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

[5] *Id.* at 34-39.

[6] *Id.* at 10-16.

After the issues were joined, trial ensued.

On December 10, 2003, the MTC issued a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing consideration[s], the Court adjudged the case in favor of the plaintiffs and against the defendants and defendants-intervenors are ordered to turn over the land in question to the plaintiffs (Lot Nos. 869 and 870, Cad. 467-D. Binmaley Cadastre located in Brgy. San Isidro Norte, Binmaley, Pangasinan with an area of 2,950 sq. m., more or less, bounded and described in paragraph 3 of the Complaint[)]; ordering the defendants and defendants-intervenors to remove their respective houses standing on the land in dispute; further ordering the defendants and defendants-intervenors, either singly or jointly to pay the plaintiffs land rent in the amount of ₱12,000.00 per year to be reckoned starting the year 1996 until defendants and defendants-intervenors will finally vacate the premises; furthermore, defendants and defendants-intervenors are also ordered to pay, either singly or jointly, the amount of ₱10,000.00 as and by way of attorney's fees and costs of suit.
>
> SO ORDERED.[7]

Jaime and the Spouses Salazar appealed the Decision of the MTC with the RTC of Lingayen, Pangasinan.[8] Herein petitioners, who were intervenors, did not file an appeal.

In its Decision dated June 14, 2005, the RTC ruled in favor of Jaime and the Spouses Salazar, holding that they have acquired the subject property through prescription. Accordingly, the RTC dismissed herein respondents' complaint.

Aggrieved, herein respondents filed a petition for review with the CA assailing the Decision of the RTC.

On June 30, 2006, the CA promulgated its questioned Decision, the dispositive portion of which reads, thus:

> WHEREFORE, the petition is GRANTED. The Decision dated June 14, 2005 of the Regional Trial Court, Branch 69, Lingayen,

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[7] *Id.* at 273.

[8] See Notice of Appeal, *id*. at 274.

Pangasinan is hereby REVERSED and SET ASIDE. In its stead, a new one is entered reinstating the Decision dated December 10, 2003 of the Municipal Trial Court of Binmaley, Pangasinan.

SO ORDERED.[9]

Jaime and the Spouses Salazar filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution dated November 13, 2006.

Hence, the instant petition based on a sole assignment of error, to wit:

THE COURT OF APPEALS ERRED IN NOT APPRECIATING THAT THE PETITIONERS HEREIN ARE NOW THE ABSOLUTE AND EXCLUSIVE OWNERS OF THE LAND IN QUESTION BY VIRTUE OF ACQUISITIVE PRESCRIPTION.[10]

The main issue raised by petitioners is whether they and their predecessors-in-interest possessed the disputed lot in the concept of an owner, or whether their possession is by mere tolerance of respondents and their predecessors-in-interest. Corollarily, petitioners claim that the due execution and authenticity of the deed of sale upon which respondents' predecessors-in-interest derived their ownership were not proven during trial.

The petition lacks merit.

Preliminarily, the Court agrees with the observation of respondents that some of the petitioners in the instant petition were the intervenors[11] when the case was filed with the MTC. Records would show that they did not appeal the Decision of the MTC.[12] The settled rule is that failure to perfect an appeal

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[9] CA *rollo*, p. 94.

[10] *Rollo,* p. 8.

[11] Except for Jaime Abalos and the spouses Felix and Consuelo Salazar, all petitioners in the instant petition were intervenors in the case filed with the MTC.

[12] See Notice of Appeal, records, p. 274.

renders the judgment final and executory.[13] Hence, insofar as the intervenors in the MTC are concerned, the judgment of the MTC had already become final and executory.

It also bears to point out that the main issue raised in the instant petition, which is the character or nature of petitioners' possession of the subject parcel of land, is factual in nature.

Settled is the rule that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court.[14] Section 1 of Rule 45 states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth."

Doubtless, the issue of whether petitioners possess the subject property as owners, or whether they occupy the same by mere tolerance of respondents, is a question of fact. Thus, it is not reviewable.

Nonetheless, the Court has, at times, allowed exceptions from the abovementioned restriction. Among the recognized exceptions are the following:

(*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;

(*b*) When the inference made is manifestly mistaken, absurd, or impossible;

(*c*) When there is grave abuse of discretion;

(*d*) When the judgment is based on a misapprehension of facts;

(*e*) When the findings of facts are conflicting;

(*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

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[13] *Province of Camarines Sur v. Heirs of Agustin Pato,* G.R. No. 151084, July 2, 2010, 622 SCRA 644, 652, citing *M.A. Santander Construction, Inc. v. Villanueva,* G.R. No. 136477, November 10, 2004, 441 SCRA 525, 530.

[14] *Heirs of Felicidad Vda. de Dela Cruz v. Heirs of Pedro T. Fajardo,* G.R. No. 184966, May 30, 2011, 649 SCRA 463, 470.

(*g*) When the CA's findings are contrary to those by the trial court;

(*h*) When the findings are conclusions without citation of specific evidence on which they are based;

(*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[15]

In the present case, the findings of fact of the MTC and the CA are in conflict with those of the RTC.

After a review of the records, however, the Court finds that the petition must fail as it finds no error in the findings of fact and conclusions of law of the CA and the MTC.

Petitioners claim that they have acquired ownership over the disputed lot through ordinary acquisitive prescription.

Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.[16] Ordinary acquisitive prescription requires possession in good faith and with just title for ten (10) years.[17] Without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for thirty (30) years.[18]

Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the

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[15] *Spouses Andrada v. Pilhino Sales Corporation,* G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10.

[16] Civil Code, Art. 1117.

[17] Civil Code, Art. 1134.

[18] Civil Code, Art. 1137; *Tan v. Ramirez,* G.R. No. 158929, August 3, 2010, 626 SCRA 327, 336; *Aguirre v. Heirs of Lucas Villanueva,* G.R. No. 169898, October 27, 2006, 505 SCRA 855, 860.

owner thereof, and could transmit his ownership.[19] There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.[20]

In the instant case, it is clear that during their possession of the property in question, petitioners acknowledged ownership thereof by the immediate predecessor-in-interest of respondents. This is clearly shown by the Tax Declaration in the name of Jaime for the year 1984 wherein it contains a statement admitting that Jaime's house was built on the land of Vicente, respondents' immediate predecessor-in-interest.[21] Petitioners never disputed such an acknowledgment. Thus, having knowledge that they nor their predecessors-in-interest are not the owners of the disputed lot, petitioners' possession could not be deemed as possession in good faith as to enable them to acquire the subject land by ordinary prescription. In this respect, the Court agrees with the CA that petitioners' possession of the lot in question was by mere tolerance of respondents and their predecessors-in-interest. Acts of possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription.[22] Possession, to constitute the foundation of a prescriptive right, must be *en concepto de dueño,* or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.[23]

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[19] *Villanueva v. Branoco,* G.R. No. 172804, January 24, 2011, 640 SCRA 308, 320; *Imuan v. Cereno,* G.R. No. 167995, September 11, 2009, 599 SCRA 423, 433.

[20] *Id*.

[21] Exhibit "K", records, p. 264.

[22] *Lamsis v. Donge-e,* G.R. No. 173021, October 20, 2010, 634 SCRA 154, 172.

[23] *Esguerra v. Manantan,* G.R. No. 158328, February 23, 2007, 516 SCRA 561, 573; *Marcelo v. Court of Appeals*, G.R. No. 131803, April 14, 1999, 305 SCRA 800, 807-808.

Moreover, the CA correctly held that even if the character of petitioners' possession of the subject property had become adverse, as evidenced by their declaration of the same for tax purposes under the names of their predecessors-in-interest, their possession still falls short of the required period of thirty (30) years in cases of extraordinary acquisitive prescription. Records show that the earliest Tax Declaration in the name of petitioners was in 1974. Reckoned from such date, the thirty-year period was completed in 2004. However, herein respondents' complaint was filed in 1996, effectively interrupting petitioners' possession upon service of summons on them.[24] Thus, petitioners' possession also did not ripen into ownership, because they failed to meet the required statutory period of extraordinary prescription.

This Court has held that the evidence relative to the possession upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish the prescription.[25] In the present case, the Court finds no error on the part of the CA in holding that petitioners failed to present competent evidence to prove their alleged good faith in neither possessing the subject lot nor their adverse claim thereon. Instead, the records would show that petitioners' possession was by mere tolerance of respondents and their predecessors-in-interest.

Finally, as to the issue of whether the due execution and authenticity of the deed of sale upon which respondents anchor their ownership were not proven, the Court notes that petitioners did not raise this matter in their Answer as well as in their Pre-Trial Brief. It was only in their Comment to respondents' Petition for Review filed with the CA that they raised this issue. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need

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[24] Article 1120 of the Civil Code provides that "[p]ossession is interrupted for the purposes of prescription, naturally or civilly." Article 1123 of the same Code further provides that "[c]ivil interruption is produced by judicial summons to the possessor."

[25] *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010, 630 SCRA 573, 584.

not be, and ordinarily will not be, considered by a reviewing court.[26] They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.[27]

Even granting that the issue of due execution and authenticity was properly raised, the Court finds no cogent reason to depart from the findings of the CA, to wit:

x x x x x x x x x

Based on the foregoing, respondents [Jaime Abalos and the Spouses Felix and Consuelo Salazar] have not inherited the disputed land because the same was shown to have already been validly sold to Marcos Torio, who, thereupon, assigned the same to his son Vicente, the father of petitioners [herein respondents]. A valid sale was amply established and the said validity subsists because the deed evidencing the same was duly notarized.

There is no doubt that the deed of sale was duly acknowledged before a notary public. As a notarized document, it has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[28]

Indeed, settled is the rule in our jurisdiction that a notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.[29] In the instant case, petitioners' bare denials will not suffice to overcome the presumption of regularity of the assailed deed of sale.

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[26] *American Home Insurance Co. of New York v. F.F. Cruz & Co., Inc.*, G.R. No. 174926, August 10, 2011.

[27] *Id.*

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

[29] *Spouses Palada v. Solidbank Corporation*, G.R. No. 172227, June 29, 2011; *Emilio v. Rapal*, G.R. No. 181855, March 30, 2010, 617 SCRA 199, 202-203; *Heirs of the Deceased Spouses Vicente S. Arcilla and Josefa Asuncion Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 564.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 91887 are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177751. December 14, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FLORENCIO AGACER, EDDIE AGACER, ELYNOR AGACER, FRANKLIN AGACER and ERIC[*] AGACER,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; WHEN IT EXISTS; PROOF OF A PREVIOUS AGREEMENT AND DECISION TO COMMIT THE CRIME IS NOT ESSENTIAL BUT THE FACT THAT THE MALEFACTORS ACTED IN UNISON PURSUANT TO THE SAME OBJECTIVE SUFFICES.— "Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." In conspiracy, it is not necessary to adduce direct evidence of a previous agreement to commit a crime. It "may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest." Proof of a previous agreement and decision to commit the crime is not essential but the fact that the malefactors acted in unison pursuant to the

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[*] Also spelled as Erick in some parts of the records.

same objective suffices. Here, while there is no proof of any previous agreement among appellants to commit the crime and while it was established during trial that Eddie alone shot Cesario, the acts of all appellants before, during and after the incident establish the existence of conspiracy to kill Cesario beyond reasonable doubt.

2. ID.; ID.; ID.; WHEN ESTABLISHED, THE EVIDENCE AS TO WHO AMONG THE APPELLANTS DELIVERED THE FATAL BLOW IS NO LONGER INDISPENSABLE SINCE IN CONSPIRACY, A PERSON MAY BE CONVICTED FOR THE CRIMINAL ACT OF ANOTHER.— [T]he acts of the assailants constitute proof of their unanimity in design, intent and execution. They "performed specific acts with closeness and coordination as to unmistakably indicate a common purpose and design" to ensure the death of Cesario. We thus uphold the lower courts' finding that appellants conspired to commit the crime of murder against Cesario. Having established conspiracy, appellants' assertion that each of them can only be made liable for his own acts deserves no merit. Evidence as to who among the appellants delivered the fatal blow is therefore no longer indispensable since in conspiracy, a person may be convicted for the criminal act of another. In a conspiracy, the act of one is deemed the act of all.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS IN ORDER TO BE APPRECIATED.— "There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make." Two conditions must concur for treachery to be appreciated. First, is the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate. Second, the means of execution was deliberate or consciously adopted. "The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor."

4. ID.; ID.; ID.; WHERE THE MODE OF ATTACK DID NOT SPRING FROM THE UNEXPECTED TURN OF EVENTS

BUT WAS CLEARLY THOUGHT OF BY THE APPELLANTS, IT NO LONGER MATTERS THAT THE ASSAULT WAS FRONTAL SINCE ITS SWIFTNESS AND UNEXPECTEDNESS DEPRIVED THE VICTIM OF A CHANCE TO REPEL IT OR OFFER ANY RESISTANCE IN DEFENSE OF HIS PERSON.— In this case, treachery is evident from the same circumstances we have already discussed. From the facts, Cesario could not have been aware that he would be surrounded, attacked and killed by the appellants who were all related to him. He could not have also been aware that Eddie had a shotgun concealed in a sack because if he was, he would not have casually approached Florencio when the latter summoned him. Unfortunately, while Cesario was advancing towards Florencio, Eddie shot him at close range without any warning whatsoever. Evidently, the crime was committed in a manner that there was no opportunity for Cesario to defend himself. Also, the mode of attack did not spring from the unexpected turn of events but was clearly thought of by the appellants. Hence, it no longer matters that the assault was frontal since its swiftness and unexpectedness deprived Cesario of a chance to repel it or offer any resistance in defense of his person.

5. ID.; ID.; ID.; WHEN TREACHERY IS PRESENT AND ALLEGED IN THE INFORMATION, IT QUALIFIES THE KILLING AND RAISES IT TO THE CATEGORY OF MURDER.— Appellants' contention that treachery was not alleged with certainty in the Information is also devoid of merit. In *People v. Villacorta* the Court appreciated treachery as an aggravating circumstance, it having been alleged in the Information and proved during trial that the "x x x accused, armed with a sharpened bamboo stick, with intent to kill, treachery and evident premeditation, did then and there willfully and feloniously attack, assault and stab with the said weapon one DANILO SALVADOR CRUZ x x x." Similarly, we hold that treachery was sufficiently alleged in the Information when it reads, *viz*: x x x the above-name[d] accused, armed with a long firearm, a bow and arrow, a bolo and stones, with intent to kill, with evident premeditation and with **treachery**, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack, stone and shoot one Cesario Agacer, inflicting upon the latter [bruises] and multiple gunshot wounds in his body which caused his death. "Well-

settled is the rule that when x x x treachery x x x is present and alleged in the Information, it qualifies the killing and raises it to the category of murder."

6. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; ABSENT UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM, ACCUSED'S CLAIM OF SELF-DEFENSE MUST FAIL.— While it is the burden of the prosecution to establish the guilt of the accused beyond reasonable doubt, this burden shifts when the accused admits the killing and pleads self-defense by way of justification. It therefore becomes vital for the accused to show clear and convincing evidence that he acted in self-defense. In so doing, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence. The accused must also prove the following elements of self-defense: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel the attack; and (3) the lack of sufficient provocation on the part of the person defending himself. In the justifying circumstance of self-defense, unlawful aggression is a condition *sine qua non*. Self-defense, complete or incomplete, cannot be considered a justification, unless the victim commits an unlawful aggression against the person defending himself. Here, Florencio failed to prove that he defended himself against the unlawful aggression of Cesario. He failed to present any evidence to substantiate his claim that there was an actual or imminent peril to his life or limb. x x x. Hence, there being no unlawful aggression on the part of Cesario, Florencio's claim of self-defense must fail.

7. ID.; ID.; ID.; THE DOVETAILING FINDINGS OF THE MEDICO-LEGAL EXPERT AND THE EYEWITNESS ACCOUNT OF THE PROSECUTION WITNESSES DESERVE MORE CREDENCE THAN THE UNSUBSTANTIATED CLAIM OF SELF-DEFENSE.— Another basis for appellants' conviction is the finding of the medico-legal expert that the cause of Cesario's death was multiple gunshot wounds found mostly at the "infero-lateral portion of the anterior chest, right side." This corroborates the testimonies of Genesis and Roden that Cesario was shot in his chest. These dovetailing findings of the medico-legal expert and the eyewitness accounts of Genesis and Roden also deserve more credence

than the unsubstantiated claim of self-defense of Florencio, who, interestingly, gave contradictory testimony. Florencio claimed that he could not see the gun used by Cesario in shooting him as tall cogonal grass obstructed his view, yet he could clearly recall that he saw the bullet-riddled Cesario fall. These contradictory statements of Florencio all the more convince us to believe the testimonies of prosecution witnesses that no exchange of gunfire actually transpired between Cesario and Florencio. Rather, it was only Eddie who wielded a gun and shot Cesario.

8. ID.; ID.; DEFENSE OF RELATIVES; ELEMENTS; UNAVAILING ABSENT UNLAWFUL AGRESSION ON THE PART OF THE VICTIM.— Florencio also invokes the justifying circumstance of defense of relatives, which has three elements, to wit, (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) in case of provocation given by the person being attacked, the person making defense had no part therein. Like in the case of self-defense, unlawful aggression is also an indispensable element in defense of relative. As discussed, there is no unlawful aggression on the part of Cesario. Hence, Florencio's reliance on this justifying circumstance is likewise unavailing.

9. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES TO BE APPRECIATED IN FAVOR OF THE ACCUSED; NOT PRESENT.— [F]lorencio's subsequent presentation of himself at the police station cannot be considered as a "voluntary surrender" which would mitigate the penalty imposed. "A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities either because (a) he acknowledges his guilt or (b) he wishes to save them the trouble and expense necessarily incurred in his search and capture." Here, Florencio cannot be considered to have surrendered voluntarily since his act did not emanate from a natural impulse to admit the killing of Cesario or to save the police officers the effort and expense that would be incurred in his search and incarceration. Although he submitted a medico-legal certificate purportedly to show that his injuries prevented him from immediately surrendering to the authorities, same, however, does not certify as to the period of his incapacity or the period during

which he required medical attendance. Thus, there can be no explanation why he surrendered only on April 16, 1998 or 14 days after the commission of the crime. To us, Florencio's surrender was a mere afterthought undeserving of any consideration. Indeed, the failure of Florencio to immediately surrender militates against his claim that he killed Cesario in self-defense and in defense of relatives since an innocent person will not hesitate to take the prompt and necessary action to exonerate himself of the crime imputed to him.

10. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF EYEWITNESSES, GIVEN IN A CLEAR, NATURAL AND SPONTANEOUS MANNER, AND ABSENT ANY EVIDENCE THAT THEY HARBOR ANY ILL-WILL AGAINST THE APPELLANT, ARE ACCEPTED AS TRUE FOR BEING CONSISTENT WITH THE NATURAL ORDER OF EVENTS, HUMAN NATURE AND THE PRESUMPTION OF GOOD FAITH.— [W]e find no reason to disturb the conclusion of the trial court, as affirmed by the CA. The testimonies of the eyewitnesses presented by the prosecution were given in a clear, natural and spontaneous manner. Their positive identification of the appellants as the persons responsible for the death of Cesario has been clearly, categorically and consistently established on record. Moreover, we note that no evidence was presented to establish that these eyewitnesses harbored any ill-will against the appellants or that they have reasons to fabricate their testimonies. These kinds of testimonies are accepted as true for being consistent with the natural order of events, human nature and the presumption of good faith.

11. CRIMINAL LAW; MURDER; PROPER PENALTY.— Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. As correctly imposed by the trial court and as affirmed by the CA, appellants must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.

12. ID.; ID.; CIVIL-LIABILITY OF THE APPELLANTS.— For the victim's death resulting from the crime, the heirs are entitled to the following awards: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3)

moral damages; (4) exemplary damages; and (5) temperate damages. Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. "As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family." Also under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, like treachery, as in this case. Thus, the award of ₱30,000.00 for exemplary damages is in order. As regards actual damages, the son of Cesario, Neldison, testified that the sum of ₱40,000.00 was spent for the coffin of his father but was unable to present receipts to substantiate such claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted, as it is hereby granted, in lieu thereof. "Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved." The heirs of Cesario are also entitled to an interest on all the amounts of damages we have awarded at the legal rate of 6% from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This case involves a man who was killed by his own relatives. Convicted for the crime of murder by the lower courts, the indicted relatives are now before us assailing their guilty verdict.

Factual Antecedents

This is an appeal from the November 17, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01543, affirming with modification the August 7, 2001 Decision[2] of the Regional Trial Court, Branch 8, Aparri, Cagayan which found appellants Florencio Agacer (Florencio), Franklin Agacer (Franklin), Elynor Agacer (Elynor), Eric Agacer (Eric) and Eddie Agacer (Eddie), guilty beyond reasonable doubt of the crime of murder for the killing of Cesario Agacer (Cesario).

As mentioned, all the appellants were related to Cesario. Florencio was Cesario's nephew and is the father of Franklin while the brothers Elynor, Eric and Eddie are his nephews.

On March 2, 1999, an Information[3] for Murder was filed against the five appellants, the accusatory portion of which reads as follows:

> That on or about April 2, 1998, in the municipality of Sta. Ana, Provinvce of Cagayan, and within the jurisdiction [of] this Honorable Court, the above-named accused, armed with a long firearm, a bow and arrow, a bolo and stones, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there wilfully, unlawfully and feloniously assault, attack, stone and shoot one Cesario Agacer, inflicting upon the latter [bruises] and multiple gunshot wounds in his body which caused his death.
>
> That the killing was aggravated by the use of an unlicensed firearm.
>
> CONTRARY TO LAW.[4]

On October 14, 1999, Florencio, Elynor, Franklin and Eric entered separate pleas of "not guilty" during their arraignment.[5] On January

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[1] CA *rollo*, pp. 143-160; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe (now a member of this Court).

[2] Records, pp. 267-284; penned by Presiding Judge Conrado F. Manauis.

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

[4] *Id.*

[5] *Id.* at 103.

11, 2000, Eddie likewise pleaded "not guilty."[6] Thereafter, trial ensued.

Version of the Prosecution

The prosecution's version of the events is as follows:

Cesario was a 55-year old farmer and owner of a ricefield situated in Dungeg, Santa Ana, Cagayan. On April 2, 1998, at around 9:00 a.m., he was clearing a section of his farm and preparing the beddings for the rice seedlings intended for the coming planting season. Farm laborers Genesis Delantar (Genesis), his brother Andy, Rafael Morgado and brothers Roden (Roden) and Ric (Ric) Vallejo were nearby in a separate section of the same ricefield harvesting Cesario's *palay*.

According to prosecution witnesses Genesis and Roden, it was at that moment while Cesario was tending to his farm when appellants suddenly emerged from a nearby banana plantation and surrounded Cesario. Visibly intimidated, Cesario moved backwards and retreated to where the other farm laborers were working. However, Franklin set afire the rice straws that covered Cesario's rice seedlings. This prompted Cesario to return to put out the fire and save his rice seedlings. At this point, Franklin and Eric started throwing stones at Cesario which forced the latter to retreat again. Thereafter, Florencio, while standing side by side with Eric, signaled Cesario to come closer. Cesario obliged but when he was just around five meters away from the group, Eddie suddenly pulled out a gun concealed inside a sack and, without warning, shot Cesario hitting him in the left portion of his chest. Almost simultaneously, Elynor took aim at Cesario with his bow and arrow but missed his mark. As Cesario fell, appellants fled towards the irrigation canal, where another gunshot rang. Thereafter, a short firearm was thrown from where the appellants ran towards the direction of Cesario's fallen body. Appellants then immediately left the scene of the crime onboard a hand tractor and a tricycle.

[6] *Id.* at 145.

After these events unfolded, Genesis and the other farm laborers scampered away in different directions. Genesis then reached *Barangay* Capanikian and informed Cesario's son, Neldison Agacer (Neldison), of the death of his father. At around 3:00 p.m., Cesario's friends in said *barangay* went to the scene of the crime and retrieved his corpse. During the autopsy, a total of eight entrance wounds were found, mostly on the chest of Cesario's cadaver. According to the Medico-Legal Officer, the fatal gunshot wounds were inflicted by the use of a firearm capable of discharging several slugs simultaneously.

Version of the Defense

The appellants denied the accusations against them and claimed that Florencio only acted in self-defense and in defense of relatives. As proof, appellants presented Florencio who testified that on April 2, 1998, he proceeded to Dungeg, Sta. Ana, Cagayan, from his residence in Merde, also in Sta. Ana, Cagayan, to prepare seed beddings in the ricefield over which he and his uncle Cesario had an existing dispute. At around 8:00 a.m., he claimed that Cesario attempted to prevent him from preparing the seed beds. When Florencio persisted and argued that he inherited the land from his father, Cesario departed through a cogonal area. Moments later, Cesario returned and shouted at him not to continue working on the land. At that time, Florencio noticed that Cesario was holding an object. Suspecting that Cesario may be armed, he shouted to Eric, Franklin, Eddie and Elynor, who had just arrived, to run away. The four heeded his warning and scampered in different directions. Cesario then chased Florencio who ran and jumped into the irrigation canal to hide in the tall cogon grasses. However, Cesario was not deterred and continued to search for him. When Florencio saw that Cesario was already close, he suddenly grabbed Cesario's buckshot gun and successfully disarmed him. Thereupon, Cesario drew another firearm and shot Florencio several times. As Cesario was shooting him, Florencio also fired the gun he earlier grabbed from Cesario and hit the latter. Finding out that he too was hit in the arm, he shouted to his nephews for help. They responded by taking

him to a hospital for treatment. On April 16, 1998, he went to the police to surrender.

Elynor and Eddie corroborated this version in their respective testimonies.[7]

Ruling of the Trial Court

The trial court found the prosecution's evidence sufficient to prove appellants' guilt beyond reasonable doubt. It held that appellants acted in conspiracy in inflicting upon Cesario, in a treacherous manner, multiple gunshot wounds. However, the trial court did not appreciate evident premeditation as a qualifying aggravating circumstance for failure to establish its elements as clearly as the criminal act itself. It also did not consider as aggravating circumstance the use of an unlicensed firearm since the firearm used in the killing was not presented in evidence.

The dispositive portion of the trial court's Decision[8] of August 7, 2001, reads:

> WHEREFORE, the Court finds all the accused FLORENCIO AGACER, EDDIE AGACER, ELYNOR AGACER, FRANKLIN AGACER and ERIC AGACER GUILTY beyond reasonable doubt of the crime of MURDER qualified [by] treachery and hereby sentence[s] them to:
>
> 1. suffer the penalty of *reclusion perpetua* with all the accessory penalties;
>
> 2. indemnify the heirs of the victim, the amount of ₱75,000.00 as death indemnity; the amount of ₱40,000.00 as actual damages and the amount of ₱30,000.00 as and by way of Attorney's fees.
>
> 3. pay the costs of litigation.
>
> SO ORDERED.[9]

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[7] TSN dated June 15, 2000 and August 15, 2000.

[8] *Supra* note 2.

[9] Records, pp. 283-284.

Appellants filed a Notice of Appeal,[10] which was approved by the trial court in its Order[11] of August 17, 2001. Pursuant thereto, the records of the case were elevated to this Court. However, in view of the Court's ruling in *People v. Mateo*[12] allowing an intermediate review by the CA where the penalty involved is death, *reclusion perpetua* as in this case, or life imprisonment, the case was transferred to said court for appropriate action and disposition.[13]

Ruling of the Court of Appeals

The CA affirmed the ruling of the trial court in all respects. It also awarded moral damages pursuant to the rule laid down in *People v. Dela Cruz*[14] and *People v. Panela*.[15] The dispositive portion of the November 17, 2006 Decision[16] of the CA reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered DENYING the instant appeal, and accordingly AFFIRMING *in toto* the herein impugned August 7, 2001 Decision of the RTC, Branch 08, of Aparri, Cagayan. Additionally, the amount of ₱50,000.00 is hereby awarded in favor of Cesario Agacer's surviving heirs as and by way of moral damages pursuant to the doctrine in the cases of **Dela Cruz** and **Panela**, as heretofore stated.
>
> SO ORDERED.[17]

Hence, the present appeal.

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[10] *Id.* at 295.

[11] *Id.* at 296.

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

[13] See Minute Resolution dated August 30, 2004, CA *rollo*, pp. 140-141.

[14] 402 Phil. 138, 151-152 (2001).

[15] 400 Phil. 107, 119 (2000).

[16] *Supra* note 1.

[17] CA *rollo*, p. 159.

Assignment of Errors

In their Brief,[18] appellants assigned the following errors:

I

THE LOWER COURT ERRED IN FINDING THAT CONSPIRACY EXISTED [AMONG] THE HEREIN ACCUSED-APPELLANTS IN THE KILLING OF CESARIO AGACER.

II

THE LOWER COURT LIKEWISE ERRED IN FINDING THAT TREACHERY AS A QUALIFYING CIRCUMSTANCE ATTENDED THE COMMISSION OF THE CRIME.

III

THE LOWER COURT FINALLY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS' GUILT HAS BEEN PROVED BEYOND REASONABLE DOUBT.[19]

Appellants contend that both lower courts erred in finding that they conspired to kill Cesario. They argue that there was no evidence sufficient to establish their intentional participation in the crime to achieve a common purpose. Thus, they claim that the criminal culpability arising from their acts, even if the same were all directed solely against one victim, is individual and not collective. Put differently, each of them is liable only for his own acts.

Appellants also contend that treachery did not attend the commission of the crime. They assert that treachery cannot be appreciated when an altercation precedes the killing. Here, Cesario already had a previous heated altercation with Florencio. Appellants aver that Cesario had only himself to blame for obliging when Florencio summoned him to come near considering that they just had a heated argument. According to them, Cesario literally courted danger by approaching Florencio instead of running away from him.

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[18] *Id.* at 54-68.

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

Lastly, appellants posit that they cannot be held guilty of murder since the qualifying circumstance of treachery was not alleged with clarity nor specified in the Information as required by Sections 8 and 9, Rule 110 of the Rules of Court.

In its Brief,[20] the People of the Philippines, through the Office of the Solicitor General (OSG) maintains that there was conspiracy among the appellants as shown by their collective acts before, during, and after the perpetration of the crime. Their specific acts are in fact indicative of a common design and intent to ensure the commission of the crime.[21] The OSG also belies the assertion of the appellants that treachery does not exist in this case. It insists that their attack on Cesario was sudden and unexpected, thereby depriving him of a chance to defend himself and ensuring its commission without risk to the appellants and without the slightest provocation on the part of the victim.[22]

Our Ruling

The appeal is unmeritorious.

Conspiracy was sufficiently established

"Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."[23] In conspiracy, it is not necessary to adduce direct evidence of a previous agreement to commit a crime.[24] It "may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and

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[20] *Id.* at 107-123.

[21] *Id.* at 112-117.

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

[23] REVISED PENAL CODE, Article 8.

[24] *People v. Perez*, G.R. No. 179154, July 31, 2009, 594 SCRA 701, 714.

community of interest."[25] Proof of a previous agreement and decision to commit the crime is not essential but the fact that the malefactors acted in unison pursuant to the same objective suffices.[26]

Here, while there is no proof of any previous agreement among appellants to commit the crime and while it was established during trial that Eddie alone shot Cesario, the acts of all appellants before, during and after the incident establish the existence of conspiracy to kill Cesario beyond reasonable doubt. First, all of them emerged at the same time from a banana plantation beside the ricefield. Second, they surprised Cesario by immediately surrounding him. Third, all of them were armed at the time of the incident. Eddie had a shotgun concealed in a sack, Florencio was armed with a bolo, Elynor had a bow and arrow, while Eric and Franklin had stones in their hands. Fourth, Eric and Franklin struck Cesario with stones moments before the shooting. Fifth, Eddie immediately shot Cesario at close range while the latter was approaching the group of appellants upon being summoned by Florencio. Sixth, Florencio, Franklin, Eric and Elynor stood just a meter away from Eddie when he shot Cesario, but did not do anything to stop or dissuade Eddie from the assault. Seventh, after Cesario was shot, all appellants departed from the scene of the crime together.

Undoubtedly, the acts of the assailants constitute proof of their unanimity in design, intent and execution.[27] They "performed specific acts with closeness and coordination as to unmistakably indicate a common purpose and design"[28] to ensure the death of Cesario. We thus uphold the lower courts' finding that appellants conspired to commit the crime of murder against Cesario.

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[25] *Id.* at 714-715.

[26] *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 541.

[27] *People v. Perez*, *supra* note 24 at 715.

[28] *Id.*

Having established conspiracy, appellants' assertion that each of them can only be made liable for his own acts deserves no merit. Evidence as to who among the appellants delivered the fatal blow is therefore no longer indispensable since in conspiracy, a person may be convicted for the criminal act of another.[29] In a conspiracy, the act of one is deemed the act of all.[30]

Essence of Treachery; Elements

We are also unimpressed with appellants' contention that both the trial and appellate courts erred in ruling that treachery qualified the killing of Cesario to murder. They maintain that since the attack on Cesario was frontal, there was therefore no element of surprise on the victim or suddenness of the assault that characterizes treachery.

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make."[31] Two conditions must concur for treachery to be appreciated. First, is the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate. Second, the means of execution was deliberate or consciously adopted.[32] "The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor."[33]

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[29] *People v. Dacillo*, 471 Phil. 497, 508 (2004).

[30] *People v. Caballero*, 448 Phil. 514, 529 (2003).

[31] REVISED PENAL CODE, Article 14(16).

[32] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 800.

[33] *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 560.

In this case, treachery is evident from the same circumstances we have already discussed above. From the facts, Cesario could not have been aware that he would be surrounded, attacked and killed by the appellants who were all related to him. He could not have also been aware that Eddie had a shotgun concealed in a sack because if he was, he would not have casually approached Florencio when the latter summoned him. Unfortunately, while Cesario was advancing towards Florencio, Eddie shot him at close range without any warning whatsoever. Evidently, the crime was committed in a manner that there was no opportunity for Cesario to defend himself. Also, the mode of attack did not spring from the unexpected turn of events but was clearly thought of by the appellants. Hence, it no longer matters that the assault was frontal since its swiftness and unexpectedness deprived Cesario of a chance to repel it or offer any resistance in defense of his person.[34]

Appellants' contention that treachery was not alleged with certainty in the Information is also devoid of merit. In *People v. Villacorta*[35] the Court appreciated treachery as an aggravating circumstance, it having been alleged in the Information and proved during trial that the "x x x accused, armed with a sharpened bamboo stick, with intent to kill, treachery and evident premeditation, did then and there willfully and feloniously attack, assault and stab with the said weapon one DANILO SALVADOR CRUZ x x x."

Similarly, we hold that treachery was sufficiently alleged in the Information when it reads, *viz*:

> x x x the above-name[d] accused, armed with a long firearm, a bow and arrow, a bolo and stones, with intent to kill, with evident premeditation and with **treachery**, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack, stone and shoot one Cesario Agacer, inflicting upon the latter [bruises] and multiple gunshot wounds in his body which caused his death.[36] (Emphasis supplied.)

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[34] *People v. Suelto*, 381 Phil. 851, 869 (2000).

[35] G.R. No. 186412, September 7, 2011.

[36] *Supra* note 3.

"Well-settled is the rule that when x x x treachery x x x is present and alleged in the Information, it qualifies the killing and raises it to the category of murder."[37]

Appellants failed to discharge their burden to prove Florencio's claim that he acted in self-defense and in defense of relatives.

Florencio admits that he shot Cesario but invokes defense of himself and of his relatives to escape criminal liability.

The Court is not convinced.

While it is the burden of the prosecution to establish the guilt of the accused beyond reasonable doubt, this burden shifts when the accused admits the killing and pleads self-defense by way of justification. It therefore becomes vital for the accused to show clear and convincing evidence that he acted in self-defense. In so doing, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[38]

The accused must also prove the following elements of self-defense: (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel the attack; and (3) the lack of sufficient provocation on the part of the person defending himself.[39] In the justifying circumstance of self-defense, unlawful aggression is a condition *sine qua non*.[40] Self-defense, complete or incomplete, cannot be considered a justification, unless the victim commits an unlawful aggression against the person defending himself.[41]

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[37] *People v. Lab-eo*, 424 Phil. 482, 496 (2002).

[38] *People v. Bracia*, G.R. No. 174477, October 2, 2009, 602 SCRA 351, 369.

[39] *People v. Comillo, Jr.*, G.R. No. 186538, November 25, 2009, 605 SCRA 756, 771.

[40] *Id.*

[41] *People v. Bracia, supra* note 38 at 370.

Here, Florencio failed to prove that he defended himself against the unlawful aggression of Cesario. He failed to present any evidence to substantiate his claim that there was an actual or imminent peril to his life or limb. Aside from his unreliable and self-serving claim, there is no proof that Cesario assaulted and shot him with a firearm during their struggle or, if at all, that there was indeed a struggle between them. On the other hand, the separate testimonies of prosecution witnesses Genesis and Roden negate Florencio's claim of unlawful aggression. The testimonies of these witnesses established that it was the appellants who emerged from a nearby banana plantation; that they surrounded Cesario and set to fire the rice straws covering his rice seedlings; that appellants were armed with different kinds of weapons, while Cesario was not; that Franklin and Elynor cast stones upon Cesario; and, that the one who pulled a gun from a sack and shot Cesario was Eddie, not Florencio. We thus hold that if there was unlawful aggression here, it came from appellants' end and not from Cesario. Hence, there being no unlawful aggression on the part of Cesario, Florencio's claim of self-defense must fail.

Another basis for appellants' conviction is the finding of the medico-legal expert that the cause of Cesario's death was multiple gunshot wounds found mostly at the "infero-lateral portion of the anterior chest, right side." This corroborates the testimonies of Genesis and Roden that Cesario was shot in his chest. These dovetailing findings of the medico-legal expert and the eyewitness accounts of Genesis and Roden also deserve more credence than the unsubstantiated claim of self-defense of Florencio, who, interestingly, gave contradictory testimony. Florencio claimed that he could not see the gun used by Cesario in shooting him as tall cogonal grass obstructed his view, yet he could clearly recall that he saw the bullet-riddled Cesario fall.[42] These contradictory statements of Florencio all the more convince us to believe the testimonies of prosecution witnesses that no exchange of gunfire actually transpired between Cesario

[42] TSN, August 22, 2000, pp. 9-11.

and Florencio. Rather, it was only Eddie who wielded a gun and shot Cesario.

Florencio also invokes the justifying circumstance of defense of relatives, which has three elements, to wit, (1) there was unlawful aggression on the part of the victim; (2) there was reasonable necessity of the means employed to prevent or repel it; and (3) in case of provocation given by the person being attacked, the person making defense had no part therein.[43] Like in the case of self-defense, unlawful aggression is also an indispensable element in defense of relative. As discussed, there is no unlawful aggression on the part of Cesario. Hence, Florencio's reliance on this justifying circumstance is likewise unavailing.

Similarly, Florencio's subsequent presentation of himself at the police station cannot be considered as a "voluntary surrender" which would mitigate the penalty imposed. "A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities either because (a) he acknowledges his guilt or (b) he wishes to save them the trouble and expense necessarily incurred in his search and capture."[44] Here, Florencio cannot be considered to have surrendered voluntarily since his act did not emanate from a natural impulse to admit the killing of Cesario or to save the police officers the effort and expense that would be incurred in his search and incarceration. Although he submitted a medico-legal certificate purportedly to show that his injuries prevented him from immediately surrendering to the authorities, same, however, does not certify as to the period of his incapacity or the period during which he required medical attendance. Thus, there can be no explanation why he surrendered only on April 16, 1998 or 14 days after the commission of the crime. To us, Florencio's surrender was a mere afterthought

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[43] *People v. Aleta*, G.R. No. 179708, April 16, 2009, 585 SCRA 578, 587.

[44] *People v. Rabanillo*, 367 Phil. 114, 128 (1999).

undeserving of any consideration. Indeed, the failure of Florencio to immediately surrender militates against his claim that he killed Cesario in self-defense and in defense of relatives since an innocent person will not hesitate to take the prompt and necessary action to exonerate himself of the crime imputed to him.

All told, we find no reason to disturb the conclusion of the trial court, as affirmed by the CA. The testimonies of the eyewitnesses presented by the prosecution were given in a clear, natural and spontaneous manner. Their positive identification of the appellants as the persons responsible for the death of Cesario has been clearly, categorically and consistently established on record. Moreover, we note that no evidence was presented to establish that these eyewitnesses harbored any ill-will against the appellants or that they have reasons to fabricate their testimonies.[45] These kinds of testimonies are accepted as true for being consistent with the natural order of events, human nature and the presumption of good faith.[46]

The Proper Penalty

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. As correctly imposed by the trial court and as affirmed by the CA, appellants must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.

The Civil Liability

For the victim's death resulting from the crime, the heirs are entitled to the following awards: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory

[45] *People v. Amodia*, *supra* note 26 at 534.

[46] *Id.*

damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[47]

Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime.[48] Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.[49] "As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family."[50] Also under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, like treachery,[51] as in this case. Thus, the award of ₱30,000.00 for exemplary damages is in order.[52]

As regards actual damages, the son of Cesario, Neldison, testified that the sum of ₱40,000.00 was spent for the coffin of his father but was unable to present receipts to substantiate such claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted, as it is hereby granted, in lieu thereof.[53] "Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim

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[47] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

[48] *Id.*

[49] *Id.*

[50] *Id.* at 530-531.

[51] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[52] *People v. Asis, supra* at 531.

[53] *Id.*

suffered pecuniary loss although the exact amount was not proved."[54]

The heirs of Cesario are also entitled to an interest on all the amounts of damages we have awarded at the legal rate of 6% from the date of finality of this Decision until fully paid.[55]

WHEREFORE, the Court *AFFIRMS* the November 17, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01543 which affirmed the August 7, 2001 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, finding appellants Florencio, Franklin, Elynor, Eddie and Eric, all surnamed Agacer, guilty beyond reasonable doubt of the crime of murder, with the following modifications:

(1) actual damages is DELETED;

(2) the appellants are ORDERED to pay the heirs of Cesario Agacer ₱25,000.00 as temperate damages; and

(3) the appellants are ORDERED to pay the heirs of Cesario Agacer interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

Costs against the appellants.

SO ORDERED.

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

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[54] *People v. Campos*, G.R. No. 176061, July 4, 2011.

[55] *Id.*

FIRST DIVISION

[G.R. No. 178218. December 14, 2011]

RAMONA RAMOS and THE ESTATE OF LUIS T. RAMOS, *petitioners, vs.* **PHILIPPINE NATIONAL BANK, OPAL PORTFOLIO INVESTMENTS (SPV-AMC), INC. and GOLDEN DRAGON STAR EQUITIES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; POINTS OF LAW, THEORIES, ISSUES, AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT OUGHT NOT TO BE CONSIDERED BY A REVIEWING COURT, AS THESE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTIONS; NOT PRESENT.— The general rule is that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process. Jurisprudence, nonetheless, provides for certain exceptions to the above rule. First, it is a settled rule that the issue of jurisdiction may be raised at any time, even on appeal, provided that its application does not result in a mockery of the tenets of fair play. Second, as held in *Lianga Lumber Company v. Lianga Timber Co., Inc.*, in the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. None of the above exceptions, however, applies to the instant case. As regards the first exception, the issue of jurisdiction was never raised at any point in this case. Anent

the second exception, the Court finds that the application of the same in the case would be improper, as further evidence is needed in order to answer and/or refute the issue raised in petitioners' new theory.

2. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; BLANKET CLAUSE OR DRAGNET CLAUSE; THE AMOUNTS NAMED AS CONSIDERATION IN A CONTRACT OF MORTGAGE DO NOT LIMIT THE AMOUNT FOR WHICH THE MORTGAGE MAY STAND AS A SECURITY IF, FROM THE FOUR CORNERS OF THE INSTRUMENT, THE INTENT TO SECURE FUTURE AND OTHER INDEBTEDNESS CAN BE GATHERED.— [I]t cannot be denied that the real estate mortgage executed by the parties provided that it shall stand as security for any "**subsequent** promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, *etc*." The same real estate mortgage likewise expressly covered "any and all other **obligations** of the Mortgagor to the Mortgagee **of whatever kind and nature** whether such obligations have been **contracted before, during or after the constitution of this mortgage**." Thus, from the clear and unambiguous terms of the mortgage contract, the same has application even to future loans and obligations of the mortgagor of any kind, not only agricultural crop loans. Such a "blanket clause" or "dragnet clause" in mortgage contracts has long been recognized in our jurisprudence. Thus, in another case, we held: As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage **may stand as security if, from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered.** This stipulation is valid and binding between the parties and is known as the "blanket mortgage clause" (also known as the "dragnet clause)." In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "such other loans or advances already obtained, or still to be obtained." The cross-collateral stipulation

in the mortgage contract between the parties is thus simply a variety of a dragnet clause. **After agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well**.

3. ID.; ID.; ID.; THE CREDITOR IS ALLOWED TO HOLD ON TO THE PREVIOUS SECURITY IN CASE OF DEFICIENCY AFTER RESORT TO THE SPECIAL SECURITY GIVEN FOR THE SUBSEQUENT LOANS.— [P]etitioners' reliance on *Prudential Bank v. Alviar* is sorely misplaced. In *Prudential*, the fact that another security was given for subsequent loans did not remove such loans from the ambit of the dragnet clause in a previous real estate mortgage contract. However, it was held in *Prudential* that the special security for subsequent loans must first be exhausted before the creditor may foreclose on the real estate mortgage. In other words, the creditor is allowed to hold on to the previous security (the real estate mortgage) in case of deficiency after resort to the special security given for the subsequent loans. Verily, even under the *Prudential* ruling cited by petitioners, they are not entitled to the release of the real estate mortgage and the titles to the properties mentioned therein.

4. ID.; ID.; PLEDGE; THE CREDITOR IN A CONTRACT OF PLEDGE CANNOT APPROPRIATE WITHOUT FORECLOSURE THE THINGS GIVEN BY WAY OF PLEDGE.— [W]e likewise find no reason to overturn the assailed ruling of the Court of Appeals that the contract of pledge between petitioners and PNB was not terminated by the Authorization letter issued by Luis Ramos in favor of PNB. The status of PNB as a pledgee of the sugar *quedans* involved in this case had long been confirmed by the Court in its Decision dated July 9, 1998 in *Philippine National Bank v. Sayo, Jr.* and the same is neither disputed in the instant case. We reiterate our ruling in *Sayo* that: The creditor, in a contract of real security, like pledge, cannot appropriate without foreclosure the things given by way of pledge. Any stipulation to the contrary, termed *pactum commissorio*, is null and void. The law requires foreclosure in order to allow a transfer of title of the good given by way of security from its pledgor, and before any such foreclosure, the pledgor, not the pledgee, is the owner of the goods.

5. ID.; ID.; ID.; IT IS THE FORECLOSURE OF THE THING PLEDGED THAT RESULTS IN THE SATISFACTION OF THE LOAN LIABILITIES TO THE PLEDGEE OF THE PLEDGORS; APPLIED.— A close reading of the Authorization executed by Luis Ramos reveals that it was nothing more than a letter that gave PNB the authority to dispose of and sell the sugar *quedans* after the maturity date thereof. As held by the Court of Appeals, the said grant of authority on the part of PNB is a standard condition in a contract of pledge, in accordance with the provisions of Article 2087 of the Civil Code that "it is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor." More importantly, Article 2115 of the Civil Code expressly provides that the sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. As we adverted to in *Sayo*, it is the foreclosure of the thing pledged that results in the satisfaction of the loan liabilities to the pledgee of the pledgors. Thus, prior to the actual foreclosure of the thing pleged, the sugar *quedan* financing loan in this case is yet to be settled. As matters stand, with more reason that PNB cannot be compelled to release the real estate mortgage and the titles involved therein since the issue of whether the sugar *quedan* financing loan will be fully paid through the pledged sugar receipts remains the subject of pending litigation.

APPEARANCES OF COUNSEL

Fidel Balao Escario, Jr. for petitioners.

Mary Ann B. Del Prado-Arañas for Philippine National Bank, Opal Portfolio Investments & Golden Dragon Star Equities, Inc.

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D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated November 8, 2006 and the Resolution[3] dated May 28, 2007 of the Court of Appeals in CA-G.R. CV No. 64360.

From the records of the case, the following facts emerge:

The Real Estate Mortgage

In 1973, Luis Ramos obtained a credit line under an agricultural loan account from the Philippine National Bank (PNB), Balayan Branch, for ₱83,000.00.[4] To secure the loan, the parties executed a Real Estate Mortgage[5] on October 23, 1973, the relevant provisions of which stated:

> That for and in consideration of certain loans, overdrafts and other credit accommodations obtained from the Mortgagee, which is hereby fixed at ₱83,000.00 Philippine Currency and to secure the payment of the same and those others that the Mortgagee may extend to the Mortgagor, including interest and expenses, and other obligations owing by the Mortgagor to the Mortgagee, whether direct or indirect principal or secondary, as appear in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which are described in the list inserted at the back of this document, or in a supplementary list attached hereto, together with all the buildings and improvements now existing or

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[1] *Rollo*, pp. 3-38.

[2] *Id.* at 39-53; penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now members of this Court), concurring.

[3] *Id.* at 54-56.

[4] TSN, May 28, 1998, p. 5.

[5] *Rollo*, pp. 57-62.

which may hereafter be erected or constructed thereon and all easements, sugar quotas, agricultural or land indemnities, aids or subsidies, including all other rights or benefits annexed to or inherent therein now existing or which may hereafter exist, and also other assets acquired with the proceeds of the loan hereby secured all of which the mortgagor declares that he is the absolute owner free from all liens and encumbrances. In case the Mortgagor executes subsequent promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, *etc*., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date thereof. This mortgage shall also stand as security for said obligations and any and all other obligations of the Mortgagor to the Mortgagee of whatever kind and nature whether such obligations have been contracted before, during or after the constitution of this mortgage. However, if the Mortgagor shall pay to the Mortgagee, its successors or assigns the obligations secured by this mortgage, together with interests, cost and other expenses, on or before the date they are due, and shall keep and perform all the covenants and agreements herein contained for the Mortgagor to keep and perform, then this mortgage shall be null and void, otherwise, it shall remain in full force and effect.[6]

The properties included in the mortgage were the parcels of land covered under Transfer Certificate of Title (TCT) Nos. 17217, (T-262) RT-644, 259, (T-265) RT-646, (T-261) RT-643[7] of the Registry of Deeds of Batangas. From the year 1973, Luis Ramos would renew the loan every year after paying the amounts falling due therein.[8]

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[6] *Id.* at 57.

[7] *Id.* at 59-62.

[8] TSN, December 18, 1997, p. 4; TSN, May 28, 1998, pp. 14-16.

The Sugar Quedan Financing Loans

On March 31, 1989, Luis Ramos and PNB entered into a Credit Line Agreement[9] in the amount of ₱50,000,000.00 under the bank's sugar *quedan* financing program. The agreement pertinently provided thus:

For and in consideration of the Bank agreeing to extend to the Borrower a Revolving Credit Line (the "Line") in an amount not to exceed PESOS: FIFTY MILLION ONLY (₱50,000,000.00), under the Bank's Sugar Quedan Financing Program for Crop Year 88/89, the parties hereto hereby agree as follows:

SECTION 1. TERMS OF THE LINE

1.01 Amount and Purpose of the Line. The Line shall be available to the Borrower in an aggregate amount not to exceed FIFTY MILLION ONLY Pesos (₱50,000,000.00). x x x Availments on the Line shall be used by the Borrower exclusively for additional capital in sugar quedan financing.

1.02 Availability Period; Availments. (a) Subject to the terms and conditions hereof, **the Line shall be available to the Borrower in several availments (individually an "Availment" and collectively the "Availments")** on any Banking Day x x x during the period commencing on the Effectivity Date x x x and terminating on the earliest of (i) August 31, 19__, or (ii) the date the Bank revokes the Line, or (iii) the date the Borrower ceases to be entitled to avail of the Line under the terms hereof.

x x x x x x x x x

1.03 Promissory Notes. **Availments on the Line shall be evidenced by promissory notes (individually a "Note" and collectively the "Notes") issued by the Borrower in favor of the Bank in the form and substance acceptable to the Bank.** Each Note shall be (i) dated the date of Availment, (ii) in the principal amount of such Availment, with interest thereon at the rate as provided in Section 1.04 hereof, and (iii) payable on the date occurring sixty (60) days from date of the availment, but in no case later than August 31, 19__ (the "Initial Repayment Date").

x x x x x x x x x

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[9] *Rollo*, pp. 63-76.

SECTION 3. SECURITY

3.01 Security Document. The full payment of any and all sums payable by the Borrower hereunder and under the Notes, the Renewal Notes and the other documents contemplated hereby and the performance of all obligations of the Borrower hereunder and under the Notes, the Renewal Notes and such other documents shall be **secured by a pledge** (the "Pledge") on the Borrower's quedans for crop year —-____, as more particularly described in and subject to the terms and conditions of that Contract of Pledge to be executed by the Borrower in favor of the Bank, which Contract shall in any event be in form and substance acceptable to the Bank (the "Security Document").[10] (Emphases ours.)

Pursuant to the above agreement, Luis Ramos obtained an availment of **₱7,800,000.00**, which was evidenced by a promissory note dated April 3, 1989.[11] Accordingly, Luis Ramos executed a Contract of Pledge[12] in favor of PNB on April 6, 1989. Pledged as security for the availment were two official warehouse receipts (*quedans*) for refined sugar issued by Noah's Ark Sugar Refinery (Noah's Ark), which bore the serial numbers NASR RS-18080 and NASR RS-18081.[13] The said *quedans* were duly indorsed to PNB.

On June 6, 1989, Luis Ramos procured another availment of **₱7,800,000.00** that was likewise contained in a promissory note[14] and for which he executed another Contract of Pledge[15] on the aforementioned *quedans* on even date.

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[10] *Id.* at 63-65.

[11] *Id.* at 77.

[12] *Id.* at 78-81.

[13] *Id.* at 82-85.

[14] *Id.* at 86.

[15] Records, pp. 43-46.

Thereafter, Luis Ramos was granted a renewal on the promissory notes dated April 3, 1989 and June 6, 1989. Hence, he executed in favor of PNB the promissory notes dated October 3, 1989 and October 9, 1989.[16]

Luis Ramos eventually failed to settle his sugar *quedan* financing loans amounting to ₱15,600,000.00. On December 28, 1989, he issued an Authorization[17] in favor of PNB, stating as follows:

AUTHORIZATION

KNOW ALL MEN BY THESE PRESENTS:

In consideration of my Sugar Quedan Financing line granted by Philippine National Bank, Balayan Branch in the amount of ₱50.0 Million, as evidenced by Credit Agreement dated March 31, 1989, **the undersigned, as borrower, authorizes the Philippine National Bank, Balayan Branch, or any of its duly authorized officer, to dispose and sell all the Quedan Receipts (Warehouse Receipts) pledged to said bank, after maturity date of the Sugar Quedan Financing line**.

> The Sugar Quedan Receipts are hereunder specifically enumerated:
> Official Warehouse Receipt (Quedan) Serial Nos.:
> 1) NASR RS – 18081 Crop Year 1988-89 (16,129.03 – 50 kilo bags)
> 2) NASR RS – 18080 Crop Year 1988-89 (16,393.44 – 50 kilo bags)

Incidentally, the above-mentioned sugar *quedans* became the subject of three other cases between PNB and Noah's Ark, which cases have since reached this Court.[18]

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[16] *Rollo*, pp. 87-88.

[17] *Id.* at 89.

[18] On March 16, 1990, PNB filed a complaint for specific performance with damages against Noah's Ark in view of the latter's refusal to deliver the stock of sugar covered by the *quedans* indorsed by Luis Ramos. The complaint was docketed as Civil Case No. 90-53023 in the RTC of Manila. Subsequently, PNB filed a motion for summary judgment. The RTC denied the motion, as well as the motion for reconsideration thereon. PNB elevated the case to the Court of Appeals *via* a special civil action for *certiorari*.

The Agricultural Crop Loan

Meanwhile, on August 7, 1989, the spouses Luis Ramos and Ramona Ramos (spouses Ramos) also obtained an agricultural

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In a Decision dated September 13, 1991, the appellate court set aside the ruling of the trial court and directed that "summary judgment be rendered forthwith in favor of PNB against Noah's Ark Sugar Refinery, *et al*., as prayed for in petitioner's Motion for Summary Judgment." The said judgment of the Court of Appeals became final and entry of judgment was made on May 26, 1992. The case was then remanded to the trial court. On June 18, 1992, instead of following the order of the Court of Appeals, the RTC dismissed the complaint of PNB.

PNB filed an appeal to this Court, which was docketed as **G.R. No. 107243** (*Philippine National Bank v. Noah's Ark Sugar Refinery*). In our Decision dated September 1, 1993, the Court reversed the decision of the RTC and ordered Noah's Ark:

(a) to deliver to the petitioner Philippine National Bank, 'the sugar stocks covered by the Warehouse Receipts/Quedans which are now in the latter's possession as holder for value and in due course; or alternatively, to pay (said) plaintiff actual damages in the amount of ₱39.1 million,' with legal interest thereon from the filing of the complaint until full payment; and

(b) to pay plaintiff Philippine National Bank attorney's fees, litigation expenses and judicial costs hereby fixed at the amount of One Hundred Fifty Thousand Pesos (₱150,000.00) as well as the costs.

Noah's Ark filed a motion for reconsideration, but we denied the same in an Order dated January 10, 1994.

Thereafter, Noah's Ark filed with the RTC an omnibus motion praying, *inter alia*, for the deferment of the proceedings until it can be heard on its claim for warehouseman's lien. The RTC granted Noah's Ark's motion and proceeded to receive evidence in support of the latter's claim for warehouseman's lien. In an Order dated March 1, 1995, the RTC declared that there existed in favor of Noah's Ark a valid warehouseman's lien and so, the execution of judgment was ordered stayed until PNB shall have satisfied the full amount of the lien.

PNB filed a petition before this Court, seeking the annulment of the resolutions of the RTC that authorized the reception of the evidence for the claim of warehouseman's lien and declared the validity of the said lien in favor of PNB. The petition was docketed as **G.R. No. 119231** (*Philippine National Bank v. Se*). In our Decision dated April 18, 1996, we denied PNB's petition, ruling that while PNB was entitled to the sugar stocks as endorsee of the *quedans*, the delivery to it shall only be effected upon its payment of storage fees to Noah's Ark.

loan of ₱160,000.00 from PNB. Said loan was evidenced by a promissory note[19] issued by the spouses on even date. The said loan was secured by the real estate mortgage previously executed by the parties on October 23, 1973.

On November 2, 1990, the spouses Ramos fully settled the agricultural loan of ₱160,000.00.[20] They then demanded from PNB the release of the real estate mortgage. PNB, however, refused to heed the spouses' demand.[21]

On February 28, 1996, the spouses Ramos filed a complaint for Specific Performance[22] against the PNB, Balayan Branch, which was docketed as Civil Case No. 3241 in the Regional Trial Court (RTC) of Balayan, Batangas. The spouses claimed that the actions of PNB impaired their rights in the properties included in the real estate mortgage. They alleged that they lost business opportunities since they could not raise enough capital, which they could have acquired by mortgaging or disposing of the said properties. The spouses Ramos prayed for the trial

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After the decision in G.R. No. 119231 became final and executory, Noah's Ark filed a motion for execution of its lien as warehouseman. PNB opposed the motion, arguing that the lien claimed in the amount of ₱734,341,595.06 was illusory and that there was no legal basis for the execution of Noah's Ark's lien as warehouseman until PNB compels the delivery of the sugar stocks. In an Order dated April 15, 1997, the RTC granted the motion for execution of Noah's Ark. PNB moved for the reconsideration of the said order but the same was denied. PNB, thus, instituted a petition for *certiorari* with the Court, ascribing grave abuse of discretion on the part of the RTC, which petition was docketed as **G.R. No. 129918** (*Philippine National Bank v. Sayo*).

In the Court's decision dated July 9, 1998, the status of PNB as a pledgee of the *quedans* was confirmed. Nonetheless, we stated that Noah's Ark was entitled to the warehouseman's lien and that the finality of the decision in G.R. No. 119231 sustained the said lien. The Court then remanded the case to the RTC to afford Noah's Ark the opportunity to adduce evidence on the amount due as warehouseman's lien.

[19] Records, p. 5.

[20] *Id.* at 2.

[21] *Id.* at 144.

[22] *Id.* at 1-4.

court to order PNB to release the real estate mortgage on their properties and to return to the spouses the TCTs of the properties subject of the mortgage.

In its Answer,[23] PNB countered that the spouses Ramos had no cause of action against it since the latter knew that the real estate mortgage secured not only their ₱160,000.00 agricultural loan but also the other loans the spouses obtained from the bank. Specifically, PNB alleged that the spouses' sugar *quedan* financing loan of ₱15,600,000.00 remained unpaid as the *quedans* were dishonored by the warehouseman Noah's Ark. PNB averred that it filed a civil action for specific performance against Noah's Ark involving the *quedans* and the case was still pending at that time. As PNB was still unable to collect on the *quedans*, it claimed that the spouses Ramos' loan obligations were yet to be fully satisfied. Thus, PNB argued that it could not release the real estate mortgage in favor of the spouses.

On March 26, 1999, the RTC rendered a Decision[24] in favor of the spouses Ramos, holding that:

> A careful analysis of the evidence on record clearly shows that there is merit to the [spouses Ramos'] complaint that their obligation with [PNB] has long been paid and satisfied.
>
> As the records show, PNB admitted that [Luis Ramos] has already paid his sugar crop loan in the amount of ₱160,000.00 x x x. The reason why it refused to release the certificates of titles to the [spouses Ramos] was allegedly because the said titles were also mortgaged to secure the other obligations of Luis Ramos, particularly the sugar crop loan in the amount of ₱15.6 Million. However, even assuming that its argument is correct that the said certificates of titles were also security for the said sugar financing loan, the same is of no consequence since the [spouses Ramos] have likewise fully paid the sugar loan when they effectively transferred the sugar quedans to [PNB] by issuing a letter authority, authorizing it to dispose and

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

[24] *Rollo*, pp. 94-115; penned by Executive Judge Elihu A. Ybanez.

sell all the Quedan Receipts (Warehouse Receipts) of the [spouses Ramos] which they pledged to the bank on December 29, 1989 x x x. [Luis Ramos] executed the said letter of authority to the PNB when he could not anymore afford to pay his loan which became due. There is no doubt that [PNB] accepted the said quedans with the understanding that the same shall be treated as payment of [spouses Ramos'] obligation, considering that it did not hesitate to proceed to demand from Noah's Ark Sugar Refinery, the delivery of the sugar stocks to them as new owners thereof. **It is, therefore, very clear that the authorization issued by [Luis Ramos] in favor of [PNB], giving the latter the right to dispose and sell the pledged warehouse receipts/quedans totally terminated the contract of pledge between the [spouses Ramos] and [PNB]. In effect there was a novation of their agreement and dation in payment set in between the parties thereby extinguishing the loan obligation of the [spouses Ramos], as provided in Article 1245 of the Civil Code**.

Article 1245 of the Civil Code provides that dation in payment is a special form of payment whereby property is alienated by the debtor to the creditor in satisfaction of a debt in money. As stated differently by the noted commentator Manresa, *dacion en pago* is the transfer of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an obligation. This was what precisely plaintiff Luis Ramos did in this case. He alienated the ownership of the sugar quedans and the goods covered by said quedans to [PNB] in satisfaction of his loan obligation with [PNB].

x x x x x x x x x

WHEREFORE, the defendant Philippine National Bank, Balayan Branch is hereby ORDERED to RELEASE the real estate mortgage on the properties of the [spouses Ramos] and to return to them all the transfer certificates of titles which were pledged as security for the agricultural loan which had long been paid and satisfied and to pay the costs.[25] (Emphasis ours.)

PNB filed a Notice of Appeal[26] involving the above decision, which was given due course by the RTC in an Order dated May 11, 1999. The records of the case were then forwarded

[25] *Id.* at 108-115.

[26] Records, p. 305.

to the Court of Appeals where the case was docketed as CA-G.R. CV No. 64360.

Before the appellate court, PNB contested the ruling of the RTC that the spouses Ramos have already settled their sugar *quedan* financing loan with PNB when they issued a letter of authority, which authorized PNB to sell the *quedan* receipts of the spouses Ramos. PNB also contended that the real estate mortgage executed by the spouses Ramos in its favor secured not only the spouses Ramos' agricultural crop loan in the amount of ₱160,000.00, but also their 1989 sugar *quedan* financing loan.[27]

On the other hand, the spouses Ramos averred that the authorization issued by Luis Ramos in favor of PNB, authorizing the latter to dispose and sell the pledged sugar *quedans* terminated the contract of pledge between the spouses Ramos and PNB. There was in effect a novation of the contract of pledge and, thereafter, dation in payment set in between the parties.[28] The spouses Ramos also claimed that the condition in the parties' real estate mortgage, which stated that the "mortgage shall also stand as security for said obligations and any and all other obligations of the MORTGAGOR to the MORTGAGEE of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of mortgage[,]" was essentially a contract of adhesion and violated the doctrine of mutuality of contract.[29]

On November 8, 2006, the Court of Appeals promulgated its assailed decision, reversing the judgment of the RTC. The appellate court elucidated thus:

> In the instant appeal, the trial court ruled that the issuance of [the] authorization letter by [spouses Ramos] in favor of [PNB]

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[27] CA *rollo*, pp. 39-40.

[28] *Id.* at 97-98.

[29] *Id.* at 102.

terminated the contract of pledge between the parties and in effect dation in payment sets-in.

We do not agree. **First**, *the authorization letter did not provide that ownership of the goods pledged would pass to [PNB] for failure of [spouses Ramos] to pay the loan on time*. This is contrary to the concept of *Dacion en pago* as the "delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation." **Second**, *the authorization merely provided for the appointment of [PNB] as attorney-in-fact with authority, among other things, to sell or otherwise dispose of the said real rights, in case of default by [spouses Ramos], and to apply the proceeds to the payment of the loan*. This provision is a standard condition in pledge contracts and is in conformity with **Article 2087 of the Civil Code**, which authorizes the pledgee to foreclose the pledge and alienate the pledged property for the payment of the principal obligation. **Lastly**, there was no meeting of the minds between [spouses Ramos] and [PNB] that the loan would be extinguished by dation in payment.

Article 1245 of the Civil Code provides that the law on sales shall govern an agreement of *dacion en pago*. A contract of sale is perfected at the moment there is a meeting of the minds of the parties thereto upon the thing which is the object of the contract and upon the price. x x x.

x x x x x x x x x

In this case, there was no meeting of the mind between the parties that would lead us to conclude that dation in payment has set-in. The trial court based its decision that there was dation in payment solely on the authorization letter, which we do not agree. This is because the authorization letter merely authorizes "*the Philippine National Bank, Balayan Branch, or any of its duly authorized officer, to dispose and sell all the Quedan Receipts (Warehouse Receipts) pledge to said bank, after maturity date of the Sugar Quedan Financing Loan.*"

Moreover, *in case of doubt as to whether a transaction is a pledge or dation in payment, the presumption is in favor of pledge, the latter being the lesser transmission of rights and interest.*

x x x x x x x x x

WHEREFORE, the appeal is hereby GRANTED. ACCORDINGLY, the Decision dated March 26, 1999 of the Regional Trial Court of Balayan, Batangas, Branch 9, is hereby REVERSED and a new one is entered ordering [PNB] to hold the release of all the transfer certificates of titles which were pledged as security for the agricultural loan of [spouses Ramos].[30]

On November 30, 2006, the spouses Ramos filed a Motion for Reconsideration[31] of the Court of Appeals decision. The spouses then asserted that it was unclear whether the parties intended that the real estate mortgage would also secure the sugar *quedan* financing loan, which was specifically secured by the pledge on the *quedans*. They alleged that the sugar *quedan* financing loan, the contract of pledge and the promissory notes did not even make any reference to the real estate mortgage. PNB apparently violated its implied duty of good faith by wrongfully retaining the spouses Ramos' collateral and improperly invoking the obscure terms of the real estate mortgage it prepared.

Subsequently, the spouses Ramos filed a Motion for Leave to File Supplemental Argument.[32] They added that PNB could not have acquired a security interest on the real estate mortgage for the purpose of the sugar *quedan* financing loan because when the real estate mortgage was constituted, the credit line from whence the sugar *quedan* financing loan was sourced did not yet exist. The spouses Ramos also argued that PNB was in bad faith in retaining the collateral of their real estate mortgage as it knew or should have known that the said security was already void given that the agricultural crop loan secured by the mortgage was already fully paid.

In the assailed Resolution dated May 28, 2007, the Court of Appeals denied the spouses Ramos' motion for reconsideration as it found no compelling reason to reverse its Decision dated November 8, 2006.

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[30] *Rollo*, pp. 48-53.

[31] *Id.* at 116-128.

[32] CA *rollo*, pp. 178-195.

On June 18, 2007, the counsel for the spouses Ramos notified the Court of Appeals that Luis Ramos had passed away and that the latter's wife, Ramona Ramos, acted as the legal representative of Luis' estate.

Thereafter, Ramona Ramos and the estate of Luis Ramos (petitioners) filed the instant petition in a final bid to have the real estate mortgage declared null and void as regards their sugar *quedan* financing loan, as well as to compel PNB to return the TCTs of the properties included in the said mortgage.

On September 10, 2007, PNB filed a Motion for Substitution of Party,[33] alleging that it has sold to Golden Dragon Star Equities, Inc. all of its rights, titles and interests in and all obligations arising out of or in connection with several cases, including the instant case. Afterwards, Golden Dragon Star Equities, Inc. assigned to Opal Portfolio Investments (SPV-AMC) Inc. all of its rights and obligations as a purchaser under the contract of sale with PNB. Thus, PNB prayed that it be substituted by Opal Portfolio Investments (SPV-AMC) Inc. as party respondent in the petition.

In the Resolution[34] dated October 10, 2007, the Court denied the above motion of PNB and instead ordered that Opal Portfolio Investments (SPV-AMC) Inc. and Golden Dragon Star Equities, Inc. be included as respondents in addition to PNB. The said corporations were then required to file their comment on the petition within ten days from notice.[35] On January 25, 2008, Opal Portfolio Investments (SPV-AMC) Inc. and Golden Dragon Star Equities, Inc. manifested that they were adopting as their own the comment filed by PNB.[36]

The Issues

Petitioners raise the following issues:

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[33] *Rollo*, pp. 172-190.

[34] *Id.* at 211-A.

[35] *Id.* at 221-A.

[36] *Id.* at 237-240.

1.

IS THE MEANING OF THE GENERAL TERMS OF THE REAL ESTATE MORTGAGE CLEAR AND LEAVE NO DOUBT THAT THERE IS NO NEED TO DETERMINE WHETHER THE PARTIES INTENDED TO CREATE AND PROVIDE SECURITY INTEREST ON THE REAL ESTATE COLLATERAL OF BORROWER LUIS T. RAMOS FOR THE SUGAR QUEDAN FINANCING LOAN GRANTED TO HIM BY LENDER PNB, IN ADDITION TO THE AGRICULTURAL CROP LOAN THAT WAS UNDISPUTEDLY AGREED UPON BY THEM TO BE COVERED BY THE COLLATERAL?

2.

SHOULD THE GENERAL TERMS OF THE REAL ESTATE MORTGAGE EXECUTED BY BORROWER LUIS T. RAMOS IN FAVOR OF LENDER PNB BE UNDERSTOOD TO INCLUDE IN ITS COVERAGE THE BORROWER'S SUGAR QUEDAN FINANCING LOAN THAT IS DIFFERENT FROM HIS AGRICULTURAL CROP LOAN UNDISPUTEDLY AGREED UPON BY THE PARTIES TO BE COVERED BY THE COLLATERAL?

3.

SHOULD THE REAL ESTATE MORTGAGE EXECUTED IN 1973 BE CONSIDERED VALID AND EXISTING SECURITY DEVICE AGREEMENT FOR SUGAR QUEDAN FINANCING LOAN OBTAINED PURSUANT TO CREDIT LINE AGREEMENT EXECUTED ONLY IN 1989?[37]

Petitioners principally argue that the scope and coverage of the real estate mortgage excluded the sugar *quedan* financing loan. Petitioners assert that the mortgage contained a blanket mortgage clause or a dragnet clause, which stated that the mortgage would secure not only the loans already obtained but also any other amount that Luis Ramos may loan from PNB. Petitioners posit that a dragnet clause will cover and secure a subsequent loan only if said loan is made in reliance on the original security containing the dragnet clause. Petitioners state that said condition did not exist in the instant case, as the sugar *quedan* financing loan was not obtained in reliance on the

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

previously executed real estate mortgage. Such fact was supposedly apparent from the documents pertaining to the sugar *quedan* financing loans, *i.e.*, the credit line agreement, the various promissory notes and the contracts of pledge.

PNB responded that the issue of whether the parties intended for the real estate mortgage to secure the sugar *quedan* financing loan was never raised in the RTC or in the Court of Appeals. Therefore, the same cannot be raised for the first time in the motion for reconsideration of the Court of Appeals decision and in the instant petition. Likewise, PNB asserts that the spouses Ramos consented to the terms of the real estate mortgage that the real properties subject thereof should be used to secure future and subsequent loans of the mortgagor. Since the spouses never contested the validity and enforceability of the real estate mortgage, the same must be respected and should govern the relations of the parties therein.

PNB also avers that the Court of Appeals did not err in ruling that there was no *dacion en pago* and/or novation under the circumstances prevailing in the instant case. The Authorization issued by Luis Ramos in favor of PNB did not terminate the contract of pledge between the parties as PNB was merely authorized to dispose and sell the sugar *quedans* to be applied as payment to the obligation. Hence, no transfer of ownership occurred. Article 2103 of the Civil Code expressly states that "unless the thing pledged is expropriated, the debtor continues to be the owner thereof." PNB argued that when it accepted the Authorization, it recognized that it was merely being authorized by Luis Ramos to dispose of the *quedans*. Therefore, until the spouses Ramos fully settle their loans from PNB, the latter believes that it has every right to retain possession of the properties offered as collateral thereto.

After due consideration of the issues raised, we are compelled to deny the petition.

To begin with, we note that, indeed, petitioners are presently raising issues that were neither invoked nor discussed before the RTC and the main proceedings before the Court of Appeals.

The very issues laid down by petitioners for our consideration were first brought up only in their motion for reconsideration of the Court of Appeals Decision dated November 8, 2006.

In their complaint before the RTC and in their reply to PNB's appeal to the Court of Appeals, petitioners relied on the theory that they have already settled all of their loan obligations with PNB, including their sugar *quedan* financing loan, such that they were entitled to the release of the real estate mortgage that secured the said obligations. When the Court of Appeals rendered the assailed decision, petitioners foisted a new argument in their motion for reconsideration that the parties did not intend for the sugar *quedan* financing loan to be covered by the real estate mortgage. Before this Court, petitioners are now reiterating and expounding on their argument that their sugar *quedan* financing loan was beyond the ambit of the previously executed real estate mortgage. We rule that such a change in petitioners' theory may not be allowed at such late a stage in the case.

The general rule is that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.[38]

Jurisprudence, nonetheless, provides for certain exceptions to the above rule. First, it is a settled rule that the issue of jurisdiction may be raised at any time, even on appeal, provided that its application does not result in a mockery of the tenets of fair play. Second, as held in *Lianga Lumber Company v. Lianga Timber Co., Inc.*,[39] in the interest of justice and within the sound discretion of the appellate court, a party may change

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[38] *Imani v. Metropolitan Bank & Trust Company*, G.R. No. 187023, November 17, 2010, 635 SCRA 357, 371.

[39] 166 Phil. 661, 687 (1977).

his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

None of the above exceptions, however, applies to the instant case. As regards the first exception, the issue of jurisdiction was never raised at any point in this case. Anent the second exception, the Court finds that the application of the same in the case would be improper, as further evidence is needed in order to answer and/or refute the issue raised in petitioners' new theory.

To recapitulate, petitioners are now claiming that the sugar *quedan* financing loan it availed from PNB was not obtained in reliance on the real estate mortgage. Petitioners even insist that the credit line agreement, the promissory notes and the contracts of pledge entered into by the parties were silent as to the applicability thereto of the real estate mortgage. Otherwise stated, petitioners are harping on the intention of the parties *vis-à-vis* the security arrangement for the credit line agreement and the availments thereof constituting the sugar *quedan* financing loan. The impropriety of the petitioners' posturing is further confounded by the fact that the credit line agreement under PNB's sugar *quedan* financing program and the availments thereto were entered into by Luis Ramos and PNB as far back as the year 1989. Petitioners' new theory, on the other hand, was only raised much later on the spouses' motion for reconsideration of the Court of Appeals decision dated November 8, 2006, or after a period of more or less seventeen years since the execution of the credit line agreement. The Court, therefore, finds itself unable to give credit to the new theory proffered by petitioners since to do so would gravely offend the rights of PNB to due process.

Even if the Court were willing to overlook petitioners' procedural misstep on appeal, their belatedly proffered theory still fails to convince us that the Court of Appeals committed any reversible error in its resolution of the present case.

According to petitioners, their case requires an application of Article 1371 of the Civil Code, which provides that "in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered." To their mind, the mere fact that the 1989 credit line agreement, the promissory notes and the contracts of pledge executed in relation to the sugar *quedan* financing loan contained no reference to the real estate mortgage is sufficient proof that the parties did not intend the real estate mortgage to secure the sugar *quedan* financing loan, but only the agricultural crop loans. The Court finds that it cannot uphold this proposition.

In *Prisma Construction & Development Corporation v. Menchavez*,[40] we discussed the settled principles that:

> Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. When the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs. In such cases, courts have no authority to alter the contract by construction or to make a new contract for the parties; a court's duty is confined to the interpretation of the contract the parties made for themselves without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words the contract does not contain. It is only when the contract is vague and ambiguous that courts are permitted to resort to the interpretation of its terms to determine the parties' intent.[41]

Here, it cannot be denied that the real estate mortgage executed by the parties provided that it shall stand as security for any "**subsequent** promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, *etc*." The same real estate mortgage likewise expressly covered "any and all other

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[40] G.R. No. 160545, March 9, 2010, 614 SCRA 590.

[41] *Id.* at 597-598.

obligations of the Mortgagor to the Mortgagee **of whatever kind and nature** whether such obligations have been **contracted before, during or after the constitution of this mortgage**." Thus, from the clear and unambiguous terms of the mortgage contract, the same has application even to future loans and obligations of the mortgagor of any kind, not only agricultural crop loans.

Such a "blanket clause" or "dragnet clause" in mortgage contracts has long been recognized in our jurisprudence. Thus, in another case, we held:

> As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage **may stand as security if, from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered.** This stipulation is valid and binding between the parties and is known as the "blanket mortgage clause" (also known as the "dragnet clause)."
>
> In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "such other loans or advances already obtained, or still to be obtained." The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. **After agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well**.[42] (Emphases supplied.)

Moreover, petitioners' reliance on *Prudential Bank v. Alviar*[43] is sorely misplaced. In *Prudential*, the fact that another security was given for subsequent loans did not remove such loans from the ambit of the dragnet clause in a previous real estate mortgage contract. However, it was held in *Prudential* that the special

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[42] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, G.R. No. 163825, July 13, 2010, 625 SCRA 21, 30-31.

[43] 502 Phil. 595 (2005).

security for subsequent loans must first be exhausted before the creditor may foreclose on the real estate mortgage. In other words, the creditor is allowed to hold on to the previous security (the real estate mortgage) in case of deficiency after resort to the special security given for the subsequent loans. Verily, even under the *Prudential* ruling cited by petitioners, they are not entitled to the release of the real estate mortgage and the titles to the properties mentioned therein.

Ultimately, we likewise find no reason to overturn the assailed ruling of the Court of Appeals that the contract of pledge between petitioners and PNB was not terminated by the Authorization letter issued by Luis Ramos in favor of PNB. The status of PNB as a pledgee of the sugar *quedans* involved in this case had long been confirmed by the Court in its Decision dated July 9, 1998 in *Philippine National Bank v. Sayo, Jr.*[44] and the same is neither disputed in the instant case. We reiterate our ruling in *Sayo* that:

> The creditor, in a contract of real security, like pledge, cannot appropriate without foreclosure the things given by way of pledge. Any stipulation to the contrary, termed *pactum commissorio*, is null and void. The law requires foreclosure in order to allow a transfer of title of the good given by way of security from its pledgor, and before any such foreclosure, the pledgor, not the pledgee, is the owner of the goods. x x x.[45]

A close reading of the Authorization executed by Luis Ramos reveals that it was nothing more than a letter that gave PNB the authority to dispose of and sell the sugar *quedans* after the maturity date thereof. As held by the Court of Appeals, the said grant of authority on the part of PNB is a standard condition in a contract of pledge, in accordance with the provisions of Article 2087 of the Civil Code that "it is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may

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[44] 354 Phil. 211 (1998).

[45] *Id.* at 244.

be alienated for the payment to the creditor." More importantly, Article 2115 of the Civil Code expressly provides that the sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. As we adverted to in *Sayo*, it is the foreclosure of the thing pledged that results in the satisfaction of the loan liabilities to the pledgee of the pledgors. Thus, prior to the actual foreclosure of the thing pleged, the sugar *quedan* financing loan in this case is yet to be settled.

As matters stand, with more reason that PNB cannot be compelled to release the real estate mortgage and the titles involved therein since the issue of whether the sugar *quedan* financing loan will be fully paid through the pledged sugar receipts remains the subject of pending litigation.

WHEREFORE, the petition is *DENIED*. The Decision dated November 8, 2006 and the Resolution dated May 28, 2007 of the Court of Appeals in CA-G.R. CV No. 64360 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[*] Per Raffle dated November 14, 2011.

FIRST DIVISION

[G.R. No. 183563. December 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HENRY ARPON *y* JUNTILLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; BEFORE THE AMENDMENT OF ART. 335 OF THE REVISED PENAL CODE OR AFTER THE EFFECTIVITY OF ANTI-RAPE LAW OF 1997, THE ELEMENTS REMAIN. — Presently, Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows: x x x In particular, "Article 266-A(1)(d) spells out the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve (12) years of age or is demented." The above provision came into existence by virtue of Republic Act No. 8353, or the Anti-Rape Law of 1997, which took effect on October 22, 1997. Prior to this date, the crime of rape was penalized under Article 335 of the Revised Penal Code, which provides: x x x In *People v. Macafe*, we explained the concept of statutory rape under Article 335 of the Revised Penal Code in this wise: Rape under paragraph 3 of [Article 335] is termed statutory rape as it departs from the usual modes of committing rape. **What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place**. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good. Manifestly, the elements of statutory rape in the above-mentioned provisions of law are essentially the same. Thus, whether the first incident of rape charged in this case did occur in 1995, *i.e.*, before the amendment of Article 335 of the Revised Penal Code, or in 1998, after the effectivity of the Anti-Rape Law of 1997, the prosecution has the burden to establish the fact of carnal knowledge and the age of AAA at the time of the commission of the rape.

2. ID.; RAPE; DATE OF THE COMMISSION OF THE RAPE IS NOT ESSENTIAL. — Contrary to the posturing of the accused-appellant, "the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman." "Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal."

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF THE RAPE VICTIM'S TESTIMONY CONSISTENT WITH THE MEDICAL FINDINGS, UPHELD. — As regards the first incident of rape, the RTC credited with veracity the substance of AAA's testimony. On this matter, we reiterate our ruling in *People v. Condes* that: x x x In the instant case, we have thoroughly scrutinized the testimony of AAA and we found no cogent reason to disturb the finding of the RTC that the accused-appellant indeed committed the first incident of rape charged. AAA positively identified the accused-appellant as the perpetrator of the dastardly crimes. With tears in her eyes, she clearly and straightforwardly narrated the said incident of rape as follows: x x x The above testimony of AAA was also corroborated by the Medico-Legal Report of Dr. Capungcol and Dr. Gagala, who found "old, healed, incomplete" hymenal lacerations on the private part of AAA. "[W]hen the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge."

4. ID.; ID.; EACH CHARGE OF RAPE IS SEPARATE AND DISTINCT CRIME THAT MUST BE PROVEN BEYOND REASONABLE DOUBT. — "It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence."

5. ID.; ID.; CREDIBILITY OF WITNESSES; RAPE VICTIM MAY DESCRIBE THE INCIDENTS OF RAPE IN A UNIFORM MANNER; CASE AT BAR. — The allegation of the accused-appellant that the testimony of AAA described the incidents of rape in a uniform manner does not convince this Court. To our mind, AAA's narration of the sexual abuses committed by

the accused-appellant contained an adequate recital of the evidentiary facts constituting the crime of rape, *i.e.*, that he placed his organ in her private part. "Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience — a verity born[e] out of human nature and experience."

6. ID.; ID.; MINOR DISAGREEMENT NOT SUFFICIENT TO PROMPT A RAPE VICTIM TO FALSELY TESTIFY AGAINST ACCUSED; CASE AT BAR. — [T]he Court rejects the contention of the accused-appellant that AAA may have been prompted to falsely testify against him (accused-appellant) in view of the latter's quarrel with AAA's parents when he refused to work with them in the rice fields. Aside from being uncorroborated, we find the same specious and implausible. "Where the charges against the appellant involve a heinous offense, a minor disagreement, even if true, does not amount to a sufficient justification for dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake."

7. ID.; ID.; ALIBI; CANNOT PREVAIL AGAINST POSITIVE IDENTIFICATION. — "Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed." "[S]ince alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime."

8. CRIMINAL LAW; STATUTORY RAPE; MINORITY OF THE VICTIM, ESTABLISHED AS PER GUIDELINES. — As to the accused-appellant's objection that there was no proof of the age of the victim, we affirm the trial court's finding that the prosecution sufficiently established the age of AAA when the incidents of rape were committed. The testimony of AAA that she was born on November 1, 1987, the voluntary stipulation of the accused, with assistance of counsel, regarding the minority of the victim during pre-trial and his testimony regarding his recollection of the age of the victim, his own niece, all militate

against accused-appellant's theory. In *People v. Pruna*, the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance x x x. Notably, in its Decision, the trial court observed that at the time she took the witness stand (when she was 14 years old), the victim, as to her body and facial features, was indeed a minor.

9. ID.; RAPE; ELEMENTS; ELEMENT OF FORCE, THREAT OR INTIMIDATION; REPLACED BY MORAL INFLUENCE AND ASCENDANCY WHEN COMMITTED BY AN ELDER CLOSE KIN. — That the carnal knowledge in this case was committed through force, threat or intimidation need no longer be belabored upon. "[I]n rape committed by close kin, such as the victim's father, step-father, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation."

10. ID.; ID.; PENALTIES; SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP TO THE VICTIM AS PER STIPULATION OF FACTS, APPRECIATED. — On the penalties imposable in the instant case, the former Article 335 of the Revised Penal Code, as amended, punishes the crime of rape with ***reclusion perpetua***. The sixth paragraph thereof also provides that: x x x Similarly, the present Article 266-B of the Revised Penal Code relevantly recites: x x x The Court finds that the circumstances of minority and relationship qualify the three (3) counts of rape committed by the accused-appellant. "As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt." In the instant case, the informations alleged that AAA was less than eighteen (18) years of age when the incidents of rape occurred and the accused-appellant is her uncle, a relative by consanguinity within the third civil degree. The said circumstances were also admitted by the accused-appellant during the pre-trial conference of the case and again admitted by him during his testimony. In *People v. Pepito*, the Court explained that "[t]he purpose of entering into a stipulation or admission of facts is to expedite trial and to relieve the parties and the court, as well, of the costs of proving facts which will not be disputed on trial and the truth

of which can be ascertained by reasonable inquiry. These admissions during the pre-trial conference are worthy of credit. Being mandatory in nature, the admissions made by appellant therein must be given weight." Consequently, for the first incident of rape, regardless of whether the same occurred in 1995 or in 1998, the imposition of the death penalty is warranted. For the second and third counts of rape, the imposable penalty is also death.

11. ID.; ID.; ID.; PENALTY WHERE MITIGATING CIRCUMSTANCE OF MINORITY (AGE 13 WHEN FIRST RAPE COMMITTED) CONSIDERED IN FAVOR OF APPELLANT EVEN WHEN THE SAME NOT MADE AN ISSUE ON APPEAL. — The RTC and the Court of Appeals failed to consider in favor of the accused-appellant the privileged mitigating circumstance of minority. Although this matter was not among the issues raised before the Court, we still take cognizance of the same in accordance with the settled rule that "[i]n a criminal case, an appeal throws open the entire case wide open for review, and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment." Pertinently, the first paragraph of Section 7 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," provides for the rule on how to determine the age of a child in conflict with the law, *viz*: x x x Furthermore, in *Sierra v. People*, we clarified that, in the past, the Court deemed sufficient the testimonial evidence regarding the minority and age of the accused provided the following conditions concur, namely: "(1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the time of the complained incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue." In the instant case, the accused-appellant testified that he was born on February 23, 1982 and that he was only 13 years old when the first incident of rape allegedly happened in 1995. Other than his testimony, no other evidence was presented to prove the date of his birth. However, the records of this case show neither any objection to the said testimony on the part of the prosecution, nor any

contrary evidence to dispute the same. Thus, the RTC and the Court of Appeals should have appreciated the accused-appellant's minority in ascertaining the appropriate penalty. Although the acts of rape in this case were committed before Republic Act No. 9344 took effect on May 20, 2006, the said law is still applicable given that Section 68 thereof expressly states: x x x *People v. Sarcia* further stressed that "[w]ith more reason, the Act should apply to [a] case wherein the conviction by the lower court is still under review." Thus, in the matter of assigning criminal responsibility, Section 6 of Republic Act No. 9344 is explicit in providing that: x x x As held in *Sierra*, the above provision effectively modified the minimum age limit of criminal irresponsibility in paragraphs 2 and 3 of the Revised Penal Code, as amended, "*i.e.*, from 'under nine years of age' and 'above nine years of age and under fifteen' (who acted without discernment) — to 'fifteen years old or under' and 'above fifteen but below 18' (who acted without discernment) in determining exemption from criminal liability." Accordingly, for the first count of rape, which in the information in Criminal Case No. 2000-01-46 was allegedly committed in 1995, the testimony of the accused-appellant sufficiently established that he was only 13 years old at that time. In view of the failure of the prosecution to prove the exact date and year of the first incident of rape, *i.e.*, whether the same occurred in 1995 or in 1998 as previously discussed, any doubt therein "should be resolved in favor of the accused, it being more beneficial to the latter." The Court, thus, exempts the accused-appellant from criminal liability for the first count of rape pursuant to the first paragraph of Section 6 of Republic Act No. 9344. The accused-appellant, nevertheless, remains civilly liable therefor.

12. ID.; ID.; ID.; PROPER PENALTY FOR RAPE COMMITTED WITH DISCERNMENT BY ONE WHO WAS AT THE TIME ABOVE 15 BUT BELOW 18 YEARS OLD. — For the second and third counts of rape that were committed in the year 1999, the accused-appellant was already 17 years old. We likewise find that in the said instances, the accused-appellant acted with discernment. In *Madali v. People*, the Court had the occasion to reiterate that "[d]iscernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by

the records in each case." In this case, the fact that the accused-appellant acted with discernment was satisfactorily established by the testimony of AAA, which we had already found to be credible. Verily, AAA testified that she at first did not tell anybody about the sexual assault she suffered at the hands of the accused-appellant because the latter told her that he would kill her mother if she did so. That the accused-appellant had to threaten AAA in an effort to conceal his dastardly acts only proved that he knew full well that what he did was wrong and that he was aware of the consequences thereof. Accordant with the second paragraph of Article 68 of the Revised Penal Code, as amended, and in conformity with our ruling in *Sarcia*, when the offender is a minor under eighteen (18) years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with." Thus, for the second and third counts of rape, the proper penalty imposable upon the accused-appellant is *reclusion perpetua* for each count. Had the trial court correctly appreciated in favor of the accused-appellant the circumstance of his minority, the latter would have been entitled to a suspension of sentence for the second and third counts of rape under Section 38 of Republic Act No. 9344, which reads: x x x Be that as it may, the suspension of sentence may no longer be applied in the instant case given that the accused-appellant is now about 29 years of age and Section 40 of Republic Act No. 9344 puts a limit to the application of a suspended sentence, namely, when the child reaches a maximum age of 21. The said provision states: x x x Nonetheless, the disposition set forth under Section 51 of Republic Act No. 9344 is warranted in the instant case, to wit: SEC. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities*. — A child in conflict with the law may after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the [Bureau of Corrections], in coordination with the [Department of Social Welfare and Development]. Additionally, the civil liability of the accused-appellant for the second and third incidents of rape shall not be affected by the above

disposition and the same shall be enforced in accordance with law and the pronouncements in the prevailing jurisprudence.

13. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY. — The Court recently ruled in *People v. Masagca, Jr.* that "[c]ivil indemnity is mandatory when rape is found to have been committed. Based on prevailing jurisprudence, we affirm the award of ₱75,000.00 to the rape victim as civil indemnity for each count." We also explained in *Sarcia* that "[t]he litmus test x x x in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua*." The trial court's award of civil indemnity of ₱50,000.00 for each count of rape is therefore increased to ₱75,000.00 for each of the three (3) counts of rape committed in the instant case.

14. ID.; ID.; ID.; MORAL DAMAGES. — Anent the award of moral damages, the same is justified "without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries [from the experience she underwent]." We also increase the trial court's award of ₱50,000.00 to ₱75,000.00 for each of the three (3) counts of rape herein established in keeping with the recent case law.

15. ID.; ID.; ID.; EXEMPLARY DAMAGES.— Lastly, we affirm the Court of Appeals' award of exemplary damages. As held in *People v. Llanas, Jr.*, "[t]he award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial." The appellate court's award of ₱25,000.00 as exemplary damages is raised to ₱30,000.00 for each of the three (3) counts of rape in keeping with the current jurisprudence on the matter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed before Us is the Decision[1] of the Court of Appeals dated February 8, 2008 in CA-G.R. CR.-H.C. No. 00560, which affirmed with modification the Decision[2] dated September 9, 2002 of the Regional Trial Court (RTC) of Tacloban City, Branch 7, in Criminal Case Nos. 2001-01-46 to 2001-01-53, finding the accused-appellant Henry Arpon *y* Juntilla guilty beyond reasonable doubt of one (1) count of statutory rape and seven (7) counts of rape against the private complainant AAA.[3]

On December 29, 1999, the accused-appellant was charged[4] with eight (8) counts of rape in separate informations, the accusatory portions of which state:

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[1] *Rollo*, pp. 4-28; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring.

[2] CA *rollo*, pp. 74-89; penned by Judge Crisostomo L. Garrido.

[3] The real name or any other information tending to establish the identity of the private complainant and those of her immediate family or household members shall be withheld in accordance with Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; 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 "Rule on Violence Against Women and Their Children" effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Thus, the private offended party shall be referred to as **AAA**. The initials **BBB** shall refer to the stepfather of the private offended party. **CCC** shall stand for her mother, while **DDD** shall indicate her younger sister. **XXX** shall denote the place where the crime was allegedly committed.

[4] From the records of the case, *i.e.*, the Sworn Statement executed by AAA before the police on October 25, 1999 (Records, Vol. VIII, p. 7) and the transcript of the preliminary investigation conducted by the Municipal Trial Court (Records, Vol. VIII, pp. 11-14), it appears that AAA initially

Criminal Case No. 2000-01-46

That sometime in the year **1995** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, succeed in having carnal knowledge of the said [AAA], who was then only **eight (8) years old**, without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[5]

Criminal Case No. 2000-01-47

That sometime in the month of **July, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[6]

Criminal Case No. 2000-01-48

That sometime in the month **July 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and

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incriminated two individuals for the incidents of rape allegedly committed against her, namely the accused-appellant and his brother Henrile Arpon. Subsequently, it was mentioned during the trial of the cases before the RTC that Henrile Arpon was already dead. (See TSN, July 10, 2002, p. 3.)

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

[6] *Id.*, Vol. II, p. 1.

violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[7]

Criminal Case No. 2000-01-49

That sometime in the month of **July, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[8]

Criminal Case No. 2000-01-50

That sometime in the month of **July, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[9]

Criminal Case No. 2000-01-51

That sometime in the month of **July, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA],

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[7] *Id.*, Vol. III, p. 1.

[8] *Id.*, Vol. IV, p. 1.

[9] *Id.*, Vol. V, p. 1.

the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[10]

Criminal Case No. 2000-01-52

That sometime in the month of **August, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[11]

Criminal Case No. 2000-01-47

That sometime in the month of **August, 1999** in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the **twelve-year-old** offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[12] (Emphases ours.)

During the arraignment of the accused-appellant on November 28, 2000, he entered a plea of not guilty.[13] On March 13, 2001, the

[10] *Id.*, Vol. VI, p. 1.
[11] *Id.*, Vol. VII, p. 1.
[12] *Id.*, Vol. VIII, p. 1.
[13] *Id.* at 28.

pre-trial conference of the cases was conducted and the parties stipulated on the identity of the accused-appellant in all the cases, the minority of the victim and the fact that the accused appellant is the uncle of the victim.[14]

The pre-trial order containing the foregoing stipulations was signed by the accused and his counsel. The cases were then heard on consolidated trial.

The prosecution presented the lone testimony of AAA to prove the charges against the accused-appellant. AAA testified that she was born on November 1, 1987.[15] In one afternoon when she was only eight years old, she stated that the accused-appellant raped her inside their house. She could not remember, though, the exact month and date of the incident. The accused-appellant stripped off her shorts, panties and shirt and went on top of her. He had his clothes on and only pulled down his zipper. He then pulled out his organ, put it in her vagina and did the pumping motion. AAA felt pain but she did not know if his organ penetrated her vagina. When he pulled out his organ, she did not see any blood. She did so only when she urinated.[16]

AAA also testified that the accused-appellant raped her again in July 1999 for five times on different nights. The accused-appellant was then drinking alcohol with BBB, the stepfather of AAA, in the house of AAA's neighbor. He came to AAA's house, took off her panty and went on top of her. She could not see what he was wearing as it was nighttime. He made her hold his penis then he left. When asked again how the accused-appellant raped her for five nights in July of the said year, AAA narrated that he pulled down her panty, went on top of her and pumped. She felt pain as he put his penis into her vagina. Every time she urinated, thereafter, she felt pain. AAA said that she recognized the accused-appellant as her assailant since it was a moonlit night and their window was only covered by

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[14] *Id.* at 30.

[15] TSN, May 21, 2002, p. 4.

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

cloth. He entered through the kitchen as the door therein was detached.[17]

AAA further related that the accused-appellant raped her again twice in August 1999 at nighttime. He kissed her and then he took off his shirt, went on top of her and pumped. She felt pain in her vagina and in her chest because he was heavy. She did not know if his penis penetrated her vagina. She related that the accused-appellant was her uncle as he was the brother of her mother. AAA said that she did not tell anybody about the rapes because the accused-appellant threatened to kill her mother if she did. She only filed a complaint when he proceeded to also rape her younger sister, DDD.[18]

After the testimony of AAA, the prosecution formally offered its documentary evidence, consisting of: (1) Exhibit A — the Medico-Legal Report,[19] which contained the results of the medical examination conducted on AAA by Dr. Rommel Capungcol and Dr. Melissa Adel Gagala on October 26, 1999; and (2) Exhibit B — the Social Case Study Report[20] pertaining to AAA's case, which was issued by the Municipal Social Welfare and Development Office of the Province of Leyte.

The Medico-Legal Report stated the following findings:

P. E. Findings:

Surg. Findings:
- (-) Physical injuries.

OB- NOTES:
- Patient came in with history of rape since 8 year old for so many times. last act was March 1999.

O: Pelvic Exam:
Ext. Genetalia – grossly normal.

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

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

[19] Records, Vol. VIII, p. 8.

[20] *Id.* at 9.

Introitus: Old, healed incomplete laceration at 3 & 9 o'clock position
Speculum Exam: not done due to resistance.
Internal Exam:

Vaginal smear for presence of spermatozoa: NEGATIVE[21]

Upon the other hand, the defense called the accused-appellant to the witness stand to deny the informations filed against him and to refute the testimony of AAA. He testified that when the first incident of rape allegedly happened in 1995, he was only 13 years old as he was born on February 23, 1982. In 1995, he worked in Sagkahan, Tacloban City as a houseboy for a certain Gloria Salazar and he stayed there up to 1996. He stated that he was working in Tacloban City when the alleged rapes happened in the municipality of XXX. When he would go home from Tacloban, he would stay at the house of a certain Fred Antoni. He did not go to the house of AAA as the latter's parents were his enemies. He said that he had a quarrel with AAA's parents because he did not work with them in the ricefields. He further recounted that in July 1999, he was also living in Tacloban City and worked there as a dishwasher at a restaurant. He worked there from 1998 up to September 1999. The accused-appellant likewise stated that in August 1999, he was still working at the same restaurant in Tacloban City. While working there, he did not go home to XXX as he was busy with work. He denied that he would have drinking sprees with AAA's stepfather, BBB, because they were enemies.[22]

On cross-examination, the accused-appellant admitted that the mother of AAA was his sister and they were close to each other. He said that his parents were still alive in 1995 up to October 1999 and the latter then resided at Calaasan, Alangalang,

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[21] *Id.* at 8.

[22] TSN, August 1, 2002, pp. 3-6.

Leyte. He indicated that his parents' house was about two kilometers away from the house of AAA. While he was working at the restaurant in Tacloban City, he would visit his parents once every month, mainly on Sundays.[23]

The Judgment of the RTC

On September 9, 2002, the RTC of Tacloban City, Branch 7, rendered a Decision convicting the accused-appellant as follows:

> WHEREFORE, premises considered, pursuant to Art. 266-A and 266-B of the Revised Penal Code as amended, and further amended by R.A. 8353 (Rape Law of 1997) and R.A. 7659 (Death Penalty Law) the Court found accused **HENRY ARPON**, **GUILTY** beyond reasonable doubt of **ONE COUNT OF STATUTORY RAPE** and **SEVEN COUNTS OF RAPE** charged under the informations and sentenced to suffer the maximum penalty of **DEATH**, and to indemnify the victim, [AAA] the amount of **Fifty** Thousand (₱50,000.00) Pesos for each count of Rape and pay moral damages in the amount of **Fifty** Thousand (₱50,000.00) Pesos and **pay the cost**.[24] (Emphases in the original.)

The court *a quo* found more credible the testimony of AAA. The fact that AAA was in tears when she testified convinced the trial court of the truthfulness of her rape charges against the accused-appellant. If there were inconsistencies in AAA's testimony, the trial court deemed the same understandable considering that AAA was pitted against a learned opposing counsel. The delay in the reporting of the rape incidents was not also an indication that the charges were fabricated. Moreover, the trial court ruled that the findings of the medico-legal officer confirmed that she was indeed raped. The accused-appellant's defense of alibi was likewise disregarded by the trial court, declaring that it was not physically impossible for him to be present in XXX at any time of the day after working hours while he was working in Tacloban City. The trial court stated that the accused-appellant was positively identified by AAA

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[23] *Id.* at 7-8.

[24] Records, Vol. VIII, pp. 77-78.

as the person who sexually abused her and she held no grudge against him. The trial court imposed the penalty of death as it found that AAA was less than 18 years old at the time of the commission of the rape incidents and the accused-appellant was her uncle, a relative by consanguinity within the third civil degree. The trial court also appreciated against the accused-appellant the aggravating circumstances of abuse of confidence and nighttime.

The accused-appellant filed a Motion for Reconsideration[25] of the RTC Decision, asserting that the trial court failed to consider his minority as a privileged mitigating circumstance. As stated in his direct examination, the accused-appellant claimed that he was born on February 23, 1982, such that he was only 13 and 17 years old when the incidents of rape allegedly occurred in 1995 and 1999, respectively. In a Resolution[26] dated November 6, 2002, the trial court denied the accused-appellant's motion, holding that the latter failed to substantiate with clear and convincing evidence his allegation of minority.

The cases were elevated to the Court on automatic review and were docketed as G.R. Nos. 165201-08.[27] The parties then filed their respective briefs.[28] On February 7, 2006, we resolved[29] to transfer the cases to the Court of Appeals pursuant to our ruling in *People v. Mateo*.[30] The cases were docketed in the appellate court as CA-G.R. CR.-H.C. No. 00560.

The Decision of the Court of Appeals

On February 8, 2008, the Court of Appeals promulgated its assailed decision, decreeing thus:

WHEREFORE, the Decision dated September 9, 2002 of the Regional Trial Court, Branch 7, Tacloban City in Criminal Case Nos. 2001-01-46

[25] *Id.* at 81-82.
[26] *Id.* at 89-90.
[27] CA *rollo*, p. 46.
[28] *Id.* at 56-73, 98A-127.
[29] *Id.* at 160.
[30] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

to 2001-01-53 is **AFFIRMED** with modification awarding exemplary damages to [AAA] in the amount of Twenty[-]Five Thousand (₱25,000.00) Pesos for each count of rape and clarification that the separate award of Fifty Thousand (₱50,000.00) Pesos as moral damages likewise pertains to each count of rape. The death penalty imposed is reduced to *reclusion perpetua* in accord with Rep. Act No. 9346.[31]

The Court of Appeals adjudged that the inconsistencies pointed out by the accused-appellant in the testimony of AAA were not sufficient to discredit her. The appellate court held that the exact age of AAA when the incidents of rape occurred no longer mattered, as she was still a minor at the time. More significant was her "straightforward, categorical and candid testimony" that she was raped eight times by the accused-appellant. The Court of Appeals also agreed with the ruling of the RTC that AAA's charges of rape conformed with the physical evidence and the accused-appellant's uncorroborated defense of alibi could not stand against the positive identification made by AAA.

As regards the attendant circumstances, the Court of Appeals ruled that the relationship of the accused-appellant to AAA was both alleged in the informations and admitted by the accused-appellant. The appellate court, however, differed in appreciating against the accused-appellant the qualifying circumstance of AAA's minority. The lone testimony of AAA on the said circumstance was held to be an insufficient proof therefor. The aggravating circumstance of nighttime was also ruled to be inapplicable as it was not shown that the same was purposely sought by the accused-appellant or that it facilitated the commission of the crimes of rape. In view of the presence of the qualifying circumstance of relationship, the Court of Appeals awarded exemplary damages in favor of AAA.

The accused-appellant filed a Notice of Appeal[32] of the above decision and the same was given due course by the Court of Appeals in a Resolution[33] dated May 27, 2008.

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[31] *Rollo*, pp. 27-28.

[32] *Id.* at 29-31.

[33] *Id.* at 32.

On November 17, 2008, the Court resolved to accept the appeal and required the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice.[34] Thereafter, in a Manifestation and Motion[35] filed on December 24, 2008, the plaintiff-appellee, through the Office of the Solicitor General, prayed that it be excused from filing a supplemental brief. On February 3, 2009, the accused-appellant submitted a Supplemental Brief.[36]

The Issues

In the accused-appellant's brief, the following issues were invoked:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

III

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH.[37]

The accused-appellant insists that it was error on the part of the RTC to give weight to the incredible testimony of AAA. He alleges that AAA could not state with consistency the exact date when she was first supposedly raped, as well as her age at that time. The accused-appellant also avers that AAA could

[34] *Id.* at 38.

[35] *Id.* at 39-41.

[36] *Id.* at 43-48.

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

not remember the dates of the other incidents of rape charged, all of which were allegedly described in a uniform manner. Contrary to the judgment of the Court of Appeals, the accused-appellant posits that the above inconsistencies cannot merely be discounted as insignificant. He further insists that the qualifying circumstances of AAA's minority and her relationship to the accused-appellant were not duly proven by the prosecution. The accused-appellant, thus, prays for a judgment of acquittal.

The Ruling of the Court

After a careful examination of the records of this case, the Court resolves to deny the appeal, but with a modification of the penalties and the amount of indemnities awarded.

To recall, the RTC and the Court of Appeals found the accused-appellant guilty of one (1) count of statutory rape and seven (7) counts of qualified rape.

Under the information in Criminal Case No. 2000-01-46, the first incident of rape was alleged to have occurred in 1995 when AAA was only eight years old. However, the accused-appellant points out that the prosecution failed to substantiate the said fact as AAA's testimony thereon was too inconsistent and incredible to be worthy of any belief. He explains that AAA initially claimed that she was raped for the first time when she was eight years old. Nonetheless, during her testimony regarding the incidents of rape that occurred in July 1999, she said that the accused did the same thing that he did to her when she was only seven years old. On her redirect examination, AAA then stated that she was first raped in 1998 when she was eleven (11) years old.

Presently, Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

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.

In particular, "Article 266-A(1)(d) spells out the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve (12) years of age or is demented."[38]

The above provision came into existence by virtue of Republic Act No. 8353,[39] or the Anti-Rape Law of 1997, which took effect on October 22, 1997.[40] Prior to this date, the crime of rape was penalized under Article 335 of the Revised Penal Code,[41] which provides:

ART. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

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[38] *People v. Padilla*, G.R. No. 182917, June 8, 2011.

[39] An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as amended, Otherwise Known as the Revised Penal Code and for Other Purposes.

[40] *People v. Lindo*, G.R. No. 189818, August 9, 2010, 627 SCRA 519, 526.

[41] As amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. The said law took effect on December 31, 1993.

3. When the woman is under twelve years of age or is demented.

In *People v. Macafe*,[42] we explained the concept of statutory rape under Article 335 of the Revised Penal Code in this wise:

> Rape under paragraph 3 of [Article 335] is termed statutory rape as it departs from the usual modes of committing rape. **What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place**. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[43] (Emphasis ours.)

Manifestly, the elements of statutory rape in the above-mentioned provisions of law are essentially the same. Thus, whether the first incident of rape charged in this case did occur in 1995, *i.e.*, before the amendment of Article 335 of the Revised Penal Code, or in 1998, after the effectivity of the Anti-Rape Law of 1997, the prosecution has the burden to establish the fact of carnal knowledge and the age of AAA at the time of the commission of the rape.

Contrary to the posturing of the accused-appellant, "the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman."[44] "Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal."[45]

As regards the first incident of rape, the RTC credited with veracity the substance of AAA's testimony. On this matter, we reiterate our ruling in *People v. Condes*[46] that:

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[42] G.R. No. 185616, November 24, 2010, 636 SCRA 221.

[43] *Id.* at 228-229.

[44] *People v. Mercado*, G.R. No. 189847, May 30, 2011.

[45] *People v. Maglente*, G.R. No. 179712, June 27, 2008, 556 SCRA 447, 464-465.

[46] G.R. No. 187077, February 23, 2011, 644 SCRA 312.

Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals].[47]

In the instant case, we have thoroughly scrutinized the testimony of AAA and we found no cogent reason to disturb the finding of the RTC that the accused-appellant indeed committed the first incident of rape charged. AAA positively identified the accused-appellant as the perpetrator of the dastardly crimes. With tears in her eyes, she clearly and straightforwardly narrated the said incident of rape as follows:

[PROSECUTOR EDGAR SABARRE]

Q: Do you recall of any unusual incident that happened when you were still 8 years old?

[AAA]

A: There was but I cannot anymore remember the exact month and date.

Q: Just tell what happened to you when you were still 8 years old?
A: I was raped by Tiyo Henry.

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[47] *Id.* at 322-323.

Q: How did he rape you?
A: He stripped me of my panty, shorts and shirts.

Q: Do you remember what place did he rape you?
A: Yes, sir in our house.

Q: Who were the persons present then at that time?
A: My younger brother and I.

Q: About your mother and step father where were they?
A: In the ricefield.

PROS. SABARRE:

May we make it of record that the witness is crying.

COURT:

Have it on record.

PROS. SABARRE:

Q: Do you still recall was it in the morning, in the afternoon or evening?
A: In the afternoon.

xxx xxx xxx

Q: After your clothes and [panty] were taken off by accused what did he do to you next if any?
A: He went on top of me.

Q: Was he still with his clothes on or already naked?
A: He has still clothes on, he did not take off his pants, he only pulled down the zipper.

Q: And when he pulled down the zipper and went on top of you what did he do next if any?
A: He was pumping on me.

Q: Did he pull out his organ?
A: Yes, sir.

Q: And where did he place his organ?
A: In my vagina.

Q: When he kept on pumping what did you feel?
A: Pain.[48]

The above testimony of AAA was also corroborated by the Medico-Legal Report of Dr. Capungcol and Dr. Gagala, who found "old, healed, incomplete" hymenal lacerations on the private part of AAA. "[W]hen the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge."[49]

Anent the five incidents of rape that were alleged to have been committed in July 1999, the Court disagrees with the ruling of the trial court that all five counts were proven with moral certainty. The testimony of AAA on the said incidents is as follows:

Q: How many times did [the accused-appellant] rape you in July 1999?
A: Five times.

Q: Was it in the daytime or night time?
A: Night time.

Q: Was it in different nights or on the same night?
A: Different nights.

Q: Who were present then at that time when he raped you five times?
A: My Kuya and other siblings.

Q: You have companions why were you raped?
A: Because they were sleeping.

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[48] TSN, May 21, 2002, pp. 5-6.

[49] *People v. Mercado, supra* note 44.

Q: How did he rape you on that July night for five times, will you please narrate to the court?
A: Because they have been drinking, he came to our house, pulled out my panty and went on top of me.

Q: With whom was he drinking?
A: With my step father.

Q: Where did they drink?
A: In our neighbor.

Q: When he took off your shorts and panty what was the accused wearing at that time?
A: I do not know because I could not see since it was night time.

Q: When he was on top of [you] was he still wearing something?
A: No, sir.

Q: What did he do with his penis?
A: He made me hold it.

Q: Then after he made you hold it what did he do with it?
A: He left.

xxx xxx xxx

ATTY. SABARRE:

Q: You said you were raped on that July evening for five nights how did he rape you?
A: (witness did not answer)

PROS. SABARRE:

Make it of record that the witness is crying again.

Q: Why are you crying?
A: I am angry and hurt.

PROS. SABARRE:

Your honor please may I be allowed to suspend the proceeding considering that the witness is psychologically incapable of further proceeding.

xxx xxx xxx

Q: I have asked you how did the accused rape you will you please narrate the whole incident to this honorable court?
A: The same that he did when I was 8 years old, he went on top of me.

Q: What was the same thing you are talking about?
A: He pulled down my panty and went on top of me and pump.

Q: When he pump what did you feel?
A: Pain.

COURT:

Why did you feel pain?

A: He placed his penis inside my vagina, everytime I urinate I feel pain.

ATTY. SABARRE;

How did you recognize that it was Henry Arpon when it was night time?

A: It was a moonlight night and our window was only covered by cloth as cover.[50]

From the above testimony, AAA merely described a single incident of rape. She made no reference whatsoever to the other four instances of rape that were likewise supposedly committed in the month of July 1999.

[50] TSN, May 21, 2002, pp. 7-9.

The same is also true for the two (2) counts of rape allegedly committed in August 1999. AAA narrated only one incident of rape in this manner:

Q: How many times did [the accused-appellant] rape you in the month of August 1999?
A: Two times.

Q: Was it during day time or night time?
A: Nighttime.

Q: How did he rape you again that August 1999?
A: He kissed me.

Q: After kissing you what did he do next?
A: He took off his shirts.

Q: After he took off his shirts what happened?
A: He went on top of me and pump.

Q: When he made a pumping motion on top of you what did you feel?
A: My vagina was painful and also my chest because he was heavy.

Q: Why did you feel pain in your vagina?
A: Because he was raping me.

Q: Did his penis penetrate your vagina?
A: I do not know.

Q: If this Henry Arpon is present now in court could you recognize him?
A: Yes, sir.

Q: Where is he?
A: That man (witness pointing a detention prisoner when asked his name answered Henry Arpon).[51]

[51] *Id.* at 10.

"It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence."[52] Thus, including the first incident of rape, the testimony of AAA was only able to establish three instances when the accused-appellant had carnal knowledge of her.

The allegation of the accused-appellant that the testimony of AAA described the incidents of rape in a uniform manner does not convince this Court. To our mind, AAA's narration of the sexual abuses committed by the accused-appellant contained an adequate recital of the evidentiary facts constituting the crime of rape, *i.e.*, that he placed his organ in her private part.[53] "Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience — a verity born[e] out of human nature and experience."[54]

We uphold the ruling of the RTC that the accused-appellant's defense of alibi deserves scant consideration. "Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed."[55] "[S]ince alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime."[56]

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[52] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 318.

[53] *Id*.

[54] *People v. Del Rosario,* 398 Phil. 292, 301 (2000).

[55] *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 166.

[56] *People v. Baroquillo*, G.R. No. 184960, August 24, 2011.

In the instant case, we quote with approval the findings of fact of the trial court that:

> The distance of [XXX] to Tacloban City is just a few kilometers and can be negotiated by passenger bus in less than one (1) hour, hence, it is not impossible for the accused to be present in [XXX] at any time of the day after working hours while working in Tacloban. Besides, the accused has his day off every Sunday, which according to him he spent in [XXX], Leyte.
>
> The accused was positively identified by the victim as the person who sexually molested her beginning that afternoon of 1995, and subsequently thereafter in the coming years up to August 1999. She can not be mistaken on the identity of the accused, because the first sexual molestation happened during the daytime, besides, she is familiar with him being her uncle, the brother of her mother.[57]

Furthermore, the Court rejects the contention of the accused-appellant that AAA may have been prompted to falsely testify against him (accused-appellant) in view of the latter's quarrel with AAA's parents when he refused to work with them in the rice fields.[58] Aside from being uncorroborated, we find the same specious and implausible. "Where the charges against the appellant involve a heinous offense, a minor disagreement, even if true, does not amount to a sufficient justification for dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake."[59]

As to the accused-appellant's objection that there was no proof of the age of the victim, we affirm the trial court's finding that the prosecution sufficiently established the age of AAA when the incidents of rape were committed. The testimony of AAA that she was born on November 1, 1987,[60] the voluntary stipulation of the accused, with assistance of counsel, regarding

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[57] Records, Vol. VIII, p. 76.

[58] *Rollo*, p. 44.

[59] *People v. Maglente*, *supra* note 45 at 465-466.

[60] TSN, May 21, 2002, p. 4.

the minority of the victim during pre-trial and his testimony regarding his recollection of the age of the victim,[61] his own niece, all militate against accused-appellant's theory. In *People v. Pruna*,[62] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. **In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused**.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him**.** (Emphases ours.)

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[61] TSN, August 1, 2002, p. 8.

[62] 439 Phil. 440, 470-471 (2002).

Notably, in its Decision, the trial court observed that at the time she took the witness stand (when she was 14 years old), the victim, as to her body and facial features, was indeed a minor.[63]

That the carnal knowledge in this case was committed through force, threat or intimidation need no longer be belabored upon. "[I]n rape committed by close kin, such as the victim's father, step-father, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation."[64]

Penalties

On the penalties imposable in the instant case, the former Article 335 of the Revised Penal Code, as amended, punishes the crime of rape with ***reclusion perpetua***. The sixth paragraph thereof also provides that:

> The **death penalty** shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. when the victim is **under eighteen (18) years of age** and the offender is a parent, ascendant, step-parent, guardian, **relative by consanguinity or affinity within the third civil degree**, or the common law-spouse of the parent of the victim. (Emphases ours.)

Similarly, the present Article 266-B of the Revised Penal Code relevantly recites:

> ART. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by ***reclusion perpetua***.
>
> xxx xxx xxx
>
> The **death penalty** shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

[63] Records, Vol. VIII, p. 71.

[64] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.

1. When the victim is **under eighteen (18) years of age** and the offender is a parent, ascendant, step-parent, guardian, **relative by consanguinity or affinity within the third civil degree**, or the common law spouse of the parent of the victim. (Emphases ours.)

The Court finds that the circumstances of minority and relationship qualify the three (3) counts of rape committed by the accused-appellant. "As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt."[65] In the instant case, the informations alleged that AAA was less than eighteen (18) years of age when the incidents of rape occurred and the accused-appellant is her uncle, a relative by consanguinity within the third civil degree. The said circumstances were also admitted by the accused-appellant during the pre-trial conference of the case and again admitted by him during his testimony.[66]

In *People v. Pepito*,[67] the Court explained that "[t]he purpose of entering into a stipulation or admission of facts is to expedite trial and to relieve the parties and the court, as well, of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. These admissions during the pre-trial conference are worthy of credit. Being mandatory in nature, the admissions made by appellant therein must be given weight." Consequently, for the first incident of rape, regardless of whether the same occurred in 1995 or in 1998, the imposition of the death penalty is warranted. For the second and third counts of rape, the imposable penalty is also death.

Nonetheless, a reduction of the above penalty is in order.

The RTC and the Court of Appeals failed to consider in favor of the accused-appellant the privileged mitigating circumstance of minority. Although this matter was not among

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[65] *People v. Ramos*, 442 Phil. 710, 732 (2002).

[66] TSN, August 1, 2002, pp. 7-8.

[67] 459 Phil. 1023, 1039 (2003).

the issues raised before the Court, we still take cognizance of the same in accordance with the settled rule that "[i]n a criminal case, an appeal throws open the entire case wide open for review, and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment."[68]

Pertinently, the first paragraph of Section 7 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," provides for the rule on how to determine the age of a child in conflict with the law,[69] *viz*:

> SEC. 7. *Determination of Age*. — The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years of age or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Furthermore, in *Sierra v. People*,[70] we clarified that, in the past, the Court deemed sufficient the testimonial evidence regarding the minority and age of the accused provided the following conditions concur, namely: "(1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the

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[68] *People v. Feliciano*, 418 Phil. 88, 106 (2001).

[69] Section 4(e) of Republic Act No. 9344 reads:

> SEC. 4. *Definition of Terms*. — The following terms as used in this Act shall be defined as follows:
>
> x x x x x x x x x
>
> (e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

[70] G.R. No. 182941, July 3, 2009, 591 SCRA 666.

time of the complained incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue."[71]

In the instant case, the accused-appellant testified that he was born on February 23, 1982 and that he was only 13 years old when the first incident of rape allegedly happened in 1995.[72] Other than his testimony, no other evidence was presented to prove the date of his birth. However, the records of this case show neither any objection to the said testimony on the part of the prosecution, nor any contrary evidence to dispute the same. Thus, the RTC and the Court of Appeals should have appreciated the accused-appellant's minority in ascertaining the appropriate penalty.

Although the acts of rape in this case were committed before Republic Act No. 9344 took effect on May 20, 2006, the said law is still applicable given that Section 68 thereof expressly states:

> SEC. 68. *Children Who Have Been Convicted and are Serving Sentences*. — Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

People v. Sarcia[73] further stressed that "[w]ith more reason, the Act should apply to [a] case wherein the conviction by the lower court is still under review."

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[71] *Id.* at 686.

[72] TSN, August 1, 2002, p. 3.

[73] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 48.

Thus, in the matter of assigning criminal responsibility, Section 6 of Republic Act No. 9344 is explicit in providing that:

SEC. 6. *Minimum Age of Criminal Responsibility*. — A child **fifteen (15) years of age or under** at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of the Act.

A child **above fifteen (15) years but below eighteen (18) years of age** shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws. (Emphases ours.)

As held in *Sierra*, the above provision effectively modified the minimum age limit of criminal irresponsibility in paragraphs 2 and 3 of the Revised Penal Code, as amended,[74] "*i.e.*, from 'under nine years of age' and 'above nine years of age and under fifteen' (who acted without discernment) — to 'fifteen years old or under' and 'above fifteen but below 18' (who

[74] Paragraphs 2 and 3 of Article 12 of the Revised Penal Code, as amended, read:

ART. 12. *Circumstances which exempt from criminal liability*. — The following are exempt from criminal liability:

x x x x x x x x x

2. A person under nine years of age.

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said Article 80.

acted without discernment) in determining exemption from criminal liability."[75]

Accordingly, for the first count of rape, which in the information in Criminal Case No. 2000-01-46 was allegedly committed in 1995, the testimony of the accused-appellant sufficiently established that he was only 13 years old at that time. In view of the failure of the prosecution to prove the exact date and year of the first incident of rape, *i.e.*, whether the same occurred in 1995 or in 1998 as previously discussed, any doubt therein "should be resolved in favor of the accused, it being more beneficial to the latter."[76] The Court, thus, exempts the accused-appellant from criminal liability for the first count of rape pursuant to the first paragraph of Section 6 of Republic Act No. 9344. The accused-appellant, nevertheless, remains civilly liable therefor.

For the second and third counts of rape that were committed in the year 1999, the accused-appellant was already 17 years old. We likewise find that in the said instances, the accused-appellant acted with discernment. In *Madali v. People*,[77] the Court had the occasion to reiterate that "[d]iscernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case." In this case, the fact that the accused-appellant acted with discernment was satisfactorily established by the testimony of AAA, which we had already found to be credible. Verily, AAA testified that she at first did not tell anybody about the sexual assault she suffered at the hands of the accused-appellant because the latter told her that he would kill her mother if she did so. That the accused-appellant had to threaten AAA in an effort to conceal his dastardly acts only proved that he knew full well

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[75] *Sierra v. People*, *supra* note 70 at 681-682.

[76] *People v. Sarcia*, *supra* note 73.

[77] G.R. No. 180380, August 4, 2009, 595 SCRA 274, 296-297.

that what he did was wrong and that he was aware of the consequences thereof.

Accordant with the second paragraph of Article 68 of the Revised Penal Code, as amended, and in conformity with our ruling in *Sarcia*, when the offender is a minor under eighteen (18) years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with." Thus, for the second and third counts of rape, the proper penalty imposable upon the accused-appellant is *reclusion perpetua* for each count.

Had the trial court correctly appreciated in favor of the accused-appellant the circumstance of his minority, the latter would have been entitled to a suspension of sentence for the second and third counts of rape under Section 38 of Republic Act No. 9344, which reads:

> SEC. 38. *Automatic Suspension of Sentence*. — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application. *Provided, however*, That suspension of sentence shall still be supplied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juvenile in Conflict with the Law.

Be that as it may, the suspension of sentence may no longer be applied in the instant case given that the accused-appellant is now about 29 years of age and Section 40 of Republic Act No. 9344 puts a limit to the application of a suspended sentence,

namely, when the child reaches a maximum age of 21. The said provision states:

> SEC. 40. *Return of the Child in Conflict with the Law to Court.* — If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, **or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years**. (Emphasis ours.)

Nonetheless, the disposition set forth under Section 51 of Republic Act No. 9344 is warranted in the instant case, to wit:

> SEC. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities.* — A child in conflict with the law may after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the [Bureau of Corrections], in coordination with the [Department of Social Welfare and Development].

Additionally, the civil liability of the accused-appellant for the second and third incidents of rape shall not be affected by the above disposition and the same shall be enforced in accordance with law and the pronouncements in the prevailing jurisprudence.

Civil Liability

The Court recently ruled in *People v. Masagca, Jr.*[78] that "[c]ivil indemnity is mandatory when rape is found to have been committed. Based on prevailing jurisprudence, we affirm the award of ₱75,000.00 to the rape victim as civil indemnity

[78] G.R. No. 184922, February 23, 2011, 644 SCRA 278, 286.

for each count." We also explained in *Sarcia* that "[t]he litmus test x x x in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua*."[79] The trial court's award of civil indemnity of ₱50,000.00 for each count of rape is therefore increased to ₱75,000.00 for each of the three (3) counts of rape committed in the instant case.

Anent the award of moral damages, the same is justified "without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries [from the experience she underwent]."[80] We also increase the trial court's award of ₱50,000.00 to ₱75,000.00 for each of the three (3) counts of rape herein established in keeping with the recent case law.[81]

Lastly, we affirm the Court of Appeals' award of exemplary damages. As held in *People v. Llanas, Jr.*,[82] "[t]he award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial." The appellate court's award of ₱25,000.00 as exemplary damages is raised to ₱30,000.00 for each of the three (3) counts of rape in keeping with the current jurisprudence on the matter.[83]

WHEREFORE, in light of the foregoing, the appeal is *DENIED*. The Decision dated February 8, 2008 of the Court

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[79] *People v. Sarcia, supra* note 73 at 45.

[80] *People v. Sambrano,* 446 Phil. 145, 161 (2003).

[81] *People v. Masagca, Jr., supra* note 78 at 286-287.

[82] G.R. No. 190616, June 29, 2010, 622 SCRA 602, 615.

[83] *People v. Padilla,* G.R. No. 182917, June 8, 2011.

of Appeals in CA-G.R. CR.-H.C. No. 00560 is hereby *AFFIRMED with the following MODIFICATIONS*:

(1) For the first count of rape herein established, the accused-appellant Henry Arpon *y* Juntilla is hereby *EXEMPTED* from criminal liability.

(2) For the second and third counts of rape, the accused-appellant is found *GUILTY* beyond reasonable doubt of two (2) counts of *QUALIFIED RAPE* and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count.

(3) As to the civil liability, the accused-appellant is *ORDERED* to pay AAA for each of the three (3) counts of rape ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision.

(4) The case is hereby *REMANDED* to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183915. December 14, 2011]

MA. JOY TERESA O. BILBAO, *petitioner, vs.* **SAUDI ARABIAN AIRLINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ALLOWED; EXCEPTIONS; INCONSISTENT FINDINGS OF THE TRIBUNALS BELOW. — [T]he jurisdiction of this Court in a petition for review under Rule 45 of the Rules of Court, as amended, is generally confined only to errors of law. It does not extend to questions of fact. This rule, however, admits of exceptions, such as in the instant case, where the findings of fact and the conclusions of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RESIGNATION; ELUCIDATED. — Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.

3. ID.; ID.; ID.; INTIMIDATION TO VITIATE CONSENT; REQUISITES. — [Petitioner] Bilbao did not adduce any competent evidence to prove that she was forced or threatened by Saudia [to resign]. It must be remembered that for intimidation to vitiate consent, the following requisites must be present: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between

the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. In the instant case, Bilbao did not prove the existence of any one of these essential elements. Bare and self-serving allegations of coercion or intimidation, unsubstantiated by evidence, do not constitute proof to sufficiently support a finding of forced resignation. It would be utterly unfair and unjust to hold that Saudia illegally dismissed Bilbao and to impose upon it the burden of accepting back Bilbao who unequivocally and voluntarily manifested her intent and willingness to sever her employment ties.

4. ID.; ID.; ID.; QUITCLAIM; VALID WHEN VOLUNTARY AND REASONABLE. — Anent the Undertaking signed by Bilbao, this Court is of the opinion that the same was validly and voluntarily executed. Indeed, not all waivers and quitclaims are invalid as against public policy. There are legitimate waivers and quitclaims that represent a voluntary and reasonable settlement of workers' claims which should be respected by the courts as the law between the parties. And if such agreement was voluntarily entered into and represented a reasonable settlement, it is binding on the parties and should not later be disowned. x x x Bilbao's claims for reinstatement, payment of backwages without loss of seniority rights and with interest, moral and exemplary damages, and attorney's fees must inevitably fail. This Court has always reminded that: Although the Supreme Court has, more often than not, been inclined towards the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine. An employee who resigns and executes a quitclaim in favor of the employer is generally stopped from filing any further money claims against the employer arising from the employment.

APPEARANCES OF COUNSEL

Rodolfo T. Gascon for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal of the May 30, 2008 Decision[1] of the Court of Appeals in CA-G.R. No. 102319 and its July 22, 2008 Resolution[2] denying petitioner Ma. Joy Teresa O. Bilbao's (Bilbao) motion for reconsideration. The assailed decision affirmed the ruling of the National Labor Relations Commission (NLRC) which held that Bilbao was not illegally dismissed and had voluntarily resigned. The NLRC reversed and set aside the decision of the Labor Arbiter which ruled that Bilbao, together with two other complainants, was illegally dismissed by respondent Saudi Arabian Airlines (Saudia) and ordered the payment of full backwages, separation pay, and attorney's fees.

The facts are as follows:

Bilbao was a former employee of respondent Saudia, having been hired as a Flight Attendant on May 13, 1986 until her separation from Saudia in September 2004. During the course of her employment, Bilbao was assigned to work at the Manila Office, although the nature of her work as a flight attendant entailed regular flights from Manila to Jeddah, Saudi Arabia, and back.

On August 25, 2004, the In-Flight Service Senior Manager of Saudia assigned in Manila received an inter-office Memorandum dated August 17, 2004 from its Jeddah Office regarding the transfer of 10 flight attendants from Manila to Jeddah effective September 1, 2004. The said memorandum explained that such transfer was made "due to operational requirements."[3] Bilbao was among the 10 flight attendants to be transferred.

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[1] *Rollo*, pp. 31-45; penned by Associate Justice Mariano C. del Castillo (now a member of this Court) with Associate Justices Arcangelita Romilla-Lontok and Ricardo R. Rosario, concurring.

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

[3] *Id.* at 137.

Bilbao initially complied with the transfer order and proceeded to Jeddah for her new assignment. However, on September 7, 2004, she opted to resign and relinquish her post by tendering a resignation letter, which reads:

Jeddah IFS Base Manager (F)
F/A Maria Joy Teresa O. Bilbao
PRN: 3006078
22 / 07 / 1425 H 7 / 09 / 2004

RESIGNATION

I am tendering my resignation with one (1) month notice effective 18 October 2004. Thank you for the support you have given me during my 18 years of service.

(signed)
_____
F/A's SIGNATURE
3006078
September 7, 2004

(signed)
_____
AMIN GHABRA
SNR. MGR. IFS JED (F)

(signed)
ABDULLAH BALKHOYOUR
GM IFS CABIN CREW
8/8/1425
21/9/04

ADMIN ACKNOWLEDGEMENT/DATE[4]

On October 28, 2004, Bilbao executed and signed an Undertaking[5] similar to that of a Receipt, Release and Quitclaim wherein she acknowledged receipt of a sum of money as "full and complete end-of-service award with final settlement and have no further claims whatsoever against Saudi Arabian Airlines."[6]

In spite of this signed Undertaking, however, on July 20, 2005, Bilbao filed with the NLRC a complaint for reinstatement and payment of full backwages; moral, exemplary and actual

[4] *Id.* at 143.

[5] *Id.* at 145.

[6] *Id.* at 143.

damages; and attorney's fees. Two of the other flight attendants who were included in the list for transfer to Jeddah, Shalimar Centi-Mandanas and Maria Lourdes Castells, also filed their respective complaints against Saudia. These complaints were eventually consolidated into NLRC-NCR Case Nos. 00-07-06315-05 and 00-08-06745-05, and assigned to Labor Arbiter Ramon Valentin C. Reyes.

For her part, Bilbao maintained that her resignation from Saudia was not voluntary. She narrated that she was made to sign a pre-typed resignation letter and was even reminded that the same was a better option than termination which would tarnish her record of service with Saudia. Bilbao and her co-complainants shared a common theory that their transfer to Jeddah was a prelude to their termination since they were all allegedly between 39 and 40 years of age.

Upon the other hand, Saudia averred that the resignation letters from Bilbao and her co-complainants were voluntarily made since they were actually hand-written and duly signed. Saudia asserted that Bilbao and her co-complainants were not subjected to any force, intimidation, or coercion when they wrote said resignation letters and even their undertakings, after receiving without protest a generous separation package despite the fact that employees who voluntarily resign are not entitled to any separation pay. Saudia also added that the transfer of flight attendants from their Manila Office to the Jeddah Office was a valid exercise of its management prerogative.

On August 31, 2006, Labor Arbiter Reyes rendered a Decision[7] declaring that Bilbao, together with co-complainants Centi-Mandanas and Castells, was illegally dismissed, and ordering Saudia to pay each of the complainants full backwages from the time of the illegal dismissal until the finality of the decision, separation pay of one month for every year of service less the amount already received, plus ten percent (10%) attorney's

[7] *Id.* at 150-164.

fees on the amounts actually determined to be due the complainants.

Saudia filed an appeal before the NLRC alleging that Bilbao and her co-complainants voluntarily executed their resignation letters and undertakings; thus, they were not illegally dismissed. Moreover, Saudia opined that Bilbao and her co-complainants' claim of illegal dismissal was a mere afterthought as they waited for almost one year from the date of their alleged dismissal to file their respective complaints.

Bilbao followed suit and also appealed before the NLRC, arguing that she was entitled to the payment of moral and exemplary damages since her termination was allegedly attended by bad faith, fraud and deceit.

On June 25, 2007, the NLRC granted Saudia's appeal, and reversed and set aside the decision of the Labor Arbiter. The decretal portion of the NLRC decision reads:

> WHEREFORE, the foregoing premises considered, the respondents' appeal is hereby **GRANTED**. The decision appealed from is **REVERSED** and **SET ASIDE** and a new one is issued finding the respondent not guilty of illegal dismissal.
>
> For lack of merit, the complainant Bilbao's appeal is **DISMISSED**.
>
> Accordingly, the complaint is **DISMISSED**.[8]

In a Resolution[9] dated October 26, 2007, the NLRC amended its earlier Resolution dated June 25, 2007, to state that Castells and Centi-Mandanas were also not entitled to moral and exemplary damages. Moreover, the NLRC failed to find any compelling justification or valid reason to modify, alter or reverse its earlier resolution, thus:

> WHEREFORE, the foregoing premises considered, the Appeals and Motions for Reconsideration of complainants Maria Lourdes

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[8] *Id.* at 176-177.

[9] *Id.* at 179-181.

Castells and Shalimar Centi-Mandanas are hereby **DISMISSED** for lack of merit.

Likewise, the Motion for Reconsideration of Maria Joy Teresa Bilbao is **DENIED**.

No further motion of similar nature shall be entertained.[10]

Bilbao went to the Court of Appeals *via* a petition for *certiorari* alleging grave abuse of discretion on the part of the NLRC in ruling that she was not illegally dismissed and not entitled to the payment of moral and exemplary damages.

On May 30, 2008, the Court of Appeals affirmed the Resolutions of the NLRC dated June 25, 2007 and October 26, 2007, and held that the resignation of Bilbao was "of her own free will and intelligent act."[11]

Dissatisfied, Bilbao filed a motion for reconsideration which was denied by the Court of Appeals in the Resolution dated July 22, 2008.

Hence, the instant petition for review filed by Bilbao on the following grounds:

6. GROUND FOR THIS PETITION/ISSUES

6.1. The Court of Appeals committed reversible error in upholding the erroneous Decision of the NLRC, Third Division which Decision reversed the Labor Arbiter's findings. The Court of Appeals decided the case in a way probably not in accord with law or with applicable decisions of the Supreme Court.

6.2. The Court of Appeals committed palpable error in ruling that petitioner was not forced to resign; the Court of Appeals decided the case in a way probably not in accord with law and contrary to applicable decisions of the Supreme Court.

6.3. The Court of Appeals committed patent mistake in ruling that the petitioners' *(sic)* termination was valid because respondent had

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[10] *Id.* at 181.

[11] *Id.* at 44.

the right to terminate the petitioner even without just cause; this is an outright violation of the Labor Code and applicable laws and jurisprudence; The Court of Appeals likewise erred in validating the resignation because it was accompanied with words of gratitude and payment of separation benefits.[12]

In her Petition[13] dated September 15, 2008, Bilbao asserts that the initial step of Saudia in transferring her to Jeddah was, by itself, constructive dismissal since the transfer order was unreasonable, discriminatory, attended by bad faith, and would result to demotion in rank or diminution in pay. Moreover, Bilbao maintains that her resignation letter was not voluntarily made as it was in a pre-typed form supplied by Saudia, and was accomplished when she was under pressure and had no choice but to resign. Lastly, Bilbao insists that the undertaking or waiver and quitclaim that she signed in favor of Saudia was invalid as she particularly puts in issue the voluntariness of its execution.

In its Comment[14] dated November 14, 2008, Saudia preliminarily asserts that the petition raises the factual issue of whether or not Bilbao voluntarily resigned from her employment with Saudia, which is not proper for a petition for review under Rule 45 of the Rules of Court, thus warranting its outright dismissal. Nonetheless, Saudia presents its arguments and contends that it validly exercised its management prerogative in transferring Bilbao to another work station. Saudia then enumerates the following factual circumstances which allegedly reveal the voluntariness of Bilbao's resignation, to wit:

a) [Bilbao's] resignation letter was penned in her own handwriting and duly signed by her;

b) [Bilbao] tendered her letter of resignation in Jeddah, KSA on 07 September 2004;

c) [Bilbao] is of sufficient age and discretion, could read, write, and understand English and a college graduate;

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[12] *Id.* at 15.

[13] *Id.* at 9-29.

[14] *Id.* at 201-246.

d) There is no proof that any material or physical force was applied on her person or her family;

e) [Bilbao] then voluntarily executed an Undertaking acknowledging receipt of various sums of money and irrevocably and unconditionally releasing Saudia, its directors, stockholders, officers and employees from any claim or demand whatsoever in law or equity which they may have in connection with her employment with respondent;

f) [Bilbao] received generous financial benefits without protest;

g) It took [Bilbao] at least one (1) year from the date of the alleged dismissal to file her Complaint against [Saudia]; and

h) The intimidation, force or coercion allegedly employed by [Saudia] surfaced, for the first time, when the Complaint were *(sic)* filed on 20 July 2005, which was then amended on 01 September 2005.[15]

Lastly, Saudia claims that Bilbao is not entitled to any award of moral and exemplary damages since there is no dismissal, much less illegal dismissal committed by Saudia, as Bilbao voluntarily resigned from her employment.

This Court finds no merit in the petition.

At the outset, it bears stressing that the jurisdiction of this Court in a petition for review under Rule 45 of the Rules of Court, as amended, is generally confined only to errors of law. It does not extend to questions of fact. This rule, however, admits of exceptions, such as in the instant case, where the findings of fact and the conclusions of the Labor Arbiter are inconsistent with those of the NLRC and the Court of Appeals.[16] To recall, the Labor Arbiter found that Saudia illegally dismissed Bilbao, while the NLRC and the Court of Appeals are in agreement that Bilbao voluntarily tendered her resignation.

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[15] *Id.* at 217-218.

[16] *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, G.R. No. 146225, November 25, 2004, 444 SCRA 158, 170.

After a review of the case, we uphold the findings of the Court of Appeals that Bilbao voluntarily resigned from her employment with Saudia. Her resignation letter and undertaking that evidenced her receipt of separation pay, when taken together with her educational attainment and the circumstances surrounding the filing of the complaint for illegal dismissal, comprise substantial proof of Bilbao's voluntary resignation.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.[17]

In the instant case, Bilbao tendered her resignation letter a week after her transfer to the Jeddah office. In the said letter, Bilbao expressed her gratitude for the support which Saudia had given her for her eighteen years of service. Clearly, her use of words of appreciation and gratitude negates the notion that she was forced and coerced to resign. Besides, the resignation letter was hand-written by Bilbao on a Saudia form and was in English, a language she is conversant in.

Additionally, instead of immediately filing a complaint for illegal dismissal after she was allegedly forced to resign, Bilbao executed an Undertaking in favor of Saudia, wherein she declared that she received her full and complete end-of-service award with final settlement, to wit:

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[17] *BMG Records (Phils.), Inc. v. Aparecio*, G.R. No. 153290, September 5, 2007, 532 SCRA 300, 313-314.

I, the undersigned employee
Name/ MARIA JOY TERESA O. BILBAO
PRN/ 3006078
hereby declare that I have received my full and complete end-of-service award with final settlement and have no further claims whatsoever against Saudi Arabian Airlines.

By signing this undertaking, I also fully Understand that any other future claims filed by me shall not be considered, accepted, or entertained.

Name: MARIA JOY TERESA O. BILBAO
PRN: 3006078
Signature: (SGD.)
Date: October 25, 2004[18]

What is more, Bilbao waited for more than 10 months after her separation from Saudia to file a complaint for illegal dismissal.

Despite the foregoing circumstances, Bilbao maintains that she was forced and coerced into writing the said resignation letter in the form prepared by Saudia, and that she was left with no other option but to resign. Saudia, on the other hand, claims that Bilbao's resignation was voluntary, thus, there could be no illegal dismissal.

Even assuming that Saudia prepared the form in which Bilbao wrote her resignation letter as claimed, this Court is not convinced that she was coerced and intimidated into signing it. Bilbao is no ordinary employee who may not be able to completely comprehend and realize the consequences of her acts. She is an educated individual. It is highly improbable that with her long years in the profession and her educational attainment, she could be tricked and forced into doing something she does not intend to do. Under these circumstances, it can hardly be said that Bilbao was coerced into resigning from Saudia.

Besides, Bilbao did not adduce any competent evidence to prove that she was forced or threatened by Saudia. It must

[18] *Rollo,* p. 145.

be remembered that for intimidation to vitiate consent, the following requisites must be present: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property.[19] In the instant case, Bilbao did not prove the existence of any one of these essential elements. Bare and self-serving allegations of coercion or intimidation, unsubstantiated by evidence, do not constitute proof to sufficiently support a finding of forced resignation. It would be utterly unfair and unjust to hold that Saudia illegally dismissed Bilbao and to impose upon it the burden of accepting back Bilbao who unequivocally and voluntarily manifested her intent and willingness to sever her employment ties.

Anent the Undertaking signed by Bilbao, this Court is of the opinion that the same was validly and voluntarily executed. Indeed, not all waivers and quitclaims are invalid as against public policy. There are legitimate waivers and quitclaims that represent a voluntary and reasonable settlement of workers' claims which should be respected by the courts as the law between the parties.[20] And if such agreement was voluntarily entered into and represented a reasonable settlement, it is binding on the parties and should not later be disowned.

Periquet v. National Labor Relations Commission,[21] held that:

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[19] *Guatson International Travel and Tours, Inc. v. National Labor Relations Commission*, G.R. No. 100322, March 9, 1994, 230 SCRA 815, 822.

[20] *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 263 (2003).

[21] 264 Phil. 1115 (1990).

> Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. x x x.[22]

This Court quotes with approval the finding of the NLRC, to wit:

> Having signed the waiver, it is hard to conclude that [Bilbao was] merely forced by the necessity to execute the "undertaking." [Bilbao is] not [a] gullible nor unsuspecting [person] who can easily be tricked or inveigled and, thus, need the extra protection of law. [She is a] well-educated and highly experienced flight [attendant]. The "undertaking" executed by [Bilbao is] therefore considered valid and binding on [her] and [Saudia].
>
> Due to [her] voluntary resignation, [Bilbao is] actually not entitled to any separation pay benefits. Thus, the financial package given to [her] is more than sufficient consideration for [her] execution of the "undertaking."[23]

Clearly then, Bilbao's claim that she was illegally dismissed cannot be sustained. There is no showing that the Undertaking and resignation letter were executed by Bilbao under force or intimidation. Bilbao's claims for reinstatement, payment of backwages without loss of seniority rights and with interest, moral and exemplary damages, and attorney's fees must inevitably fail.

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[22] *Id.* at 1122.

[23] *Rollo*, p. 174.

This Court has always reminded that:

> Although the Supreme Court has, more often than not, been inclined towards the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine. An employee who resigns and executes a quitclaim in favor of the employer is generally stopped from filing any further money claims against the employer arising from the employment.[24]

WHEREFORE, the petition is *DENIED*. The Decision dated May 30, 2008 and the Resolution dated July 22, 2008 of the Court of Appeals in CA-G.R. No. 102319 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185620. December 14, 2011]

RUBEN C. REYES, *petitioner, vs.* **TANG SOAT ING (JOANNA TANG) and ANDO G. SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE BURDEN OF EVIDENCE TO PROVE LACK OF COMPLIANCE WTH THE POSTING AND PUBLICATION REQUIREMENTS OF THE AUCTION SALE IN ACCORDANCE WITH THE RULES RESTS ON THE PARTY CLAIMING LACK THEREOF.— Contrary to the

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[24] *Alfaro v. Court of Appeals,* 416 Phil. 310, 321 (2001).

[*] Per Raffle dated November 28, 2011.

Court of Appeal's holding, the burden of evidence to prove lack of compliance with Section 15, Rule 39 of the Rules of Court rests on the party claiming lack thereof *i.e.*, respondents. In *Venzon v. Spouses Juan*, we declared that the judgment debtor, as herein respondents, alleging lack of compliance with the posting and publication requirements of the auction sale in accordance with the rules, is behooved to prove such allegation. We held, thus: x x x. **Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by a preponderance of the evidence. This must be the rule, or it must follow that rights, of which a negative forms an essential element, may be enforced without proof. Thus, whenever the [party's] right depends upon the truth of a negative, upon him is cast the *onus probandi*, except in cases where the matter is peculiarly within the knowledge of the adverse party.** x x x. Respondents made no attempt to meet this burden of evidence, simply maintaining lack of notice of the entire proceedings (execution and issuance of a new title over the subject property) before the trial court.

2. ID.; ID.; PRESUMPTIONS; OFFICIAL DUTY IS PRESUMED TO HAVE BEEN REGULARLY PERFORMED.— The disputable presumption that official duty has been regularly performed was not overcome by respondents. The documents on record lead us to the inevitable conclusion that respondents had constructive, if not actual, notice of the execution proceedings from the issuance of the Writ of Execution, the levy on the subject property, its subjection to execution sale, up to and until the proceedings in the RTC relating to the issuance of a new certificate of title over the subject property. Certainly, respondents are precluded from feigning ignorance of MFR (substituted by Reyes) staking a claim thereon.

3. ID.; JUDGMENTS; SALE OF PROPERTY ON EXECUTION; POSTING AND PUBLICATION REQUIREMENTS OF THE AUCTION SALE SUBSTANTIALLY COMPLIED WITH.— There was substantial compliance with Section 15, Rule 39 of the Rules of Court: the documents in support thereof, *i.e.*, the Certificate of Posting issued by Sheriff Legaspi and the Affidavit of Publication executed by the publisher of The Times Newsweekly, appear to be in order. In this case, the purpose of giving notice through posting and publication under Section 15(c) of the same rule—to let the public know of the

sale to the end that the best price or a better bid may be made possible to minimize prejudice to the judgment debtor—was realized.

4. CIVIL LAW; LAND REGISTRATION; LAND REGISTRATION ACT (PD 496. AS AMENDED); REGISTRATION IN A PUBLIC REGISTRY WORKS AS CONSTRUCTIVE NOTICE TO THE WHOLE WORLD.— Another thing militates against respondents' claim of lack of knowledge of the encumbrance on their property—the separate registrations of: (1) the Notice of Levy on TCT No. T-198753; (2) the Certificate of Sale. In this jurisdiction, we adhere to the doctrine that registration in a public registry works as constructive notice to the whole world. Section 51 of Act No. 496, as amended by Section 52 of Presidential Decree No. 1529, provides: SECTION 52. *Constructive notice upon registration.*—Every conveyance, mortgage, lease, **lien**, attachment, order, **judgment**, instrument or entry affecting registered land shall, if registered, filed or **entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.** And, quite undeniably, respondents had constructive notice that their property is subject of execution proceedings arising from their judgment debt and **in danger of forfeiture** to their judgment creditor.

5. ID.; LACHES; EXPLAINED; ATTACK ON THE VALIDITY OF THE EXECUTION PROCEEDINGS, CULMINATING IN THE EXECUTION SALE OF THE SUBJECT PROPERTY, IS BARRED BY LACHES IN CASE AT BAR.— Respondents consistently flouted the judgment in Civil Case No. 1245-M, as amended by the Decision of the Court of Appeals in CA G.R. CV No. 37808, which became final and executory on December 1, 1997, by their utter failure to respond to the processes of the RTC in the execution proceedings despite their receipt of notice at each stage thereof. At the very least, respondents' attack on the validity of the execution proceedings, culminating in the execution sale of the subject property, is barred by laches. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled

to assert it either has abandoned it or declined to assert it. Laches thus operates as a bar in equity. We hearken to the time-honored rule anchored on public policy: [R]elief will be denied to a litigant whose claim or demand has become "stale," or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention. In other words, public policy requires, for peace of society, **the discouragement of claims grown stale for non-assertion**; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit.

6. REMEDIAL LAW; JUDGMENTS; EXECUTION; BARE-FACED CLAIM OF IGNORANCE OF THE EXECUTION PROCEEDINGS CANNOT TRUMP THE DISPUTABLE PRESUMPTION THAT A PERSON TAKES ORDINARY CARE OF HIS CONCERNS; RESPONDENTS ARE BARRED FROM ASSAILING THE EXECUTION PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT.— We find obvious respondents' brazen ploy to forestall and thwart the execution of a final and executory judgment against them. The death of their counsel, Atty. Sumawang, and their engagement of a new one, does not minimize the hard fact that respondents had notice of, not only the execution proceedings, but also, the proceedings on the issuance of a new title over the subject property. Yet, respondents did not act on any of these notices which were duly received by Atty. Sumawang. Respondents' Motion to nullify the execution proceedings, from the levy on the subject property and sale thereof, is an afterthought, a last-ditch effort to evade payment of their judgment debt. Their claim of ignorance of the execution proceedings flies in the face of the documents on record. This bare-faced claim cannot trump the disputable presumption that a person takes ordinary care of his concerns. Consequently, respondents are estopped and barred from assailing the execution proceedings before the RTC.

7. ID.; ID.; FINAL AND EXECUTORY; ONCE A JUDGMENT BECOMES FINAL AND EXECUTORY, THE PREVAILING PARTY SHOULD NOT BE DENIED THE FRUITS OF HIS VICTORY BY SOME SUBTERFUGE DEVISED BY THE LOSING PARTY.— Time and again, we have held that once a judgment becomes final and executory,

the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. We completely agree with the RTC's disquisition, x x x. Respondents are clearly estopped from assailing the proceedings in question by their failure or refusal to participate therein despite their or their counsel's knowledge thereof, and it would be unjust for the plaintiff to allow respondents to put in issue the validity of said proceedings at this late stage, thru another counsel, as they are bound by the action or inaction of their former counsel.

8. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD NO. 1529), SECTION 107 THEREOF; CONTEMPLATES THE FILING OF A SEPARATE AND ORIGINAL ACTION BEFORE THE REGIONAL TRIAL COURT, ACTING AS A LAND REGISTRATION COURT.— Notwithstanding the validity of the execution sale and Reyes' consolidation of ownership over the subject property upon the lapse of the redemption period, we hold that Section 107 of Presidential Decree No. 1529 contemplates the filing of a separate and original action before the RTC, acting as a land registration court.

9. ID.; ID.; ID.; THE FILING OF A SEPARATE AND ORIGINAL ACTION FOR THE TITLING OF PROPERTY NO LONGER INVOLVES THE EXECUTION OF JUDGMENT.— Reyes argues that to require him to "file his petition in another court would unduly divest the RTC of its jurisdiction to enforce its final and executory decision." Reyes invokes our ruling in *Natalia Realty, Inc. v. Court of Appeals* where we declared that "jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment." Reyes' reasoning is off tangent. *Natalia* is inapplicable because the execution proceedings in this case have been completed and was terminated upon the execution sale of the subject property. Reyes already consolidated ownership over the subject property; as owner, he has a right to have the same registered in his name. This transfer of title to the subject property in Reyes' name is no longer part of the execution proceedings: the fact of levy and sale constitutes execution, **not** so is the action for the issuance of a new title. Indeed, the subsequent filing of a separate and original action for the titling of the subject property in Reyes'

name, no longer involves the execution of the judgment in Civil Case No. 1245-M.

10. ID.; ID.; A SUCCEEDING REGISTRATION OF PROPERTY IN ANOTHER'S NAME, AFTER ITS ORIGINAL REGISTRATION, CONTEMPLATES A SEPARATE CADASTRAL ACTION INITIATED VIA PETITION.— That a succeeding registration of property in another's name, after its original registration, contemplates a *separate original action* is reinforced by our ruling in *Padilla v. Philippine Producers' Cooperative Marketing Association, Inc.* Answering the question: "In implementing the involuntary transfer of title of real property levied and sold on execution, is it enough for the executing party to file a motion with the court which rendered judgment, or does he need to file a separate action with the Regional Trial Court," we unequivocally declared, thus: Petitioner is correct in assailing as improper respondent's filing of a mere motion for the cancellation of the old TCTs and the issuance of new ones as a result of petitioner's refusal to surrender his owner's duplicate TCTs. **Indeed, this called for a separate cadastral action initiated via petition.** x x x. Plainly, Reyes must institute a separate cadastral action initiated via petition.

APPEARANCES OF COUNSEL

Diaz Del Rosario and Associates for petitioner.
Fortun Narvasa and Associates for respondents.

D E C I S I O N

PEREZ, *J.*:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 96913 annulling and setting aside

[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Edgardo F. Sundiam (now deceased) and Rosalinda Asuncion-Vicente, concurring. *Rollo* pp. 45-63.

the Orders[2] of the Regional Trial Court (RTC), Branch 7, Malolos, Bulacan which denied respondents Tang Soat Ing's (Joanna Tang's) and Ando Sy's Opposition (To MFR Farm, Inc.'s Motion dated 25 April 2006) and Motion (To declare void the sale of the property covered by TCT No. 198753) dated May 23, 2006.

The controversy arose from a complaint for Enforcement of Easement and Damages with Prayer for Preliminary Injunction and Restraining Order filed by MFR Farms, Inc. (MFR) against respondents docketed as Civil Case No. 1245-M. MFR complained of respondents' commercial and industrial use of their property covered by Transfer Certificate of Title (TCT) No. T-198753, and sought the enforcement of the encumbrance contained in their title. MFR likewise asked for the payment of damages suffered by its piggery farm resulting from respondents' illegal use of their property.

After trial, the RTC granted MFR's complaint and specifically held that:

> x x x [Respondents] have defied the clear undertaking stated in the title to the subject property to limit the use thereof to purposes not commercial or industrial in character. x x x [U]sing the land as a chemical processing site and as a storage facility for chemicals is devoting it to industrial purposes, which is not allowed under the subsisting encumbrance on the property.
>
> x x x [R]elief is owing to [MFR], but the grant thereof is rendered all the more imperative in light of the manifestly injurious effects which the business of [respondents] is causing to the neighboring estate, if not to the entire locality. x x x By more than mere preponderance of evidence has it been established that the gaseous by-products of the chemical manufacturing process are outright pollutants which cause direct and manifest harm to humans and animals alike, not to mention other living things.
>
> x x x x x x x x x

[2] Penned by Judge Danilo A. Manalastas dated July 17, 2006 and October 20, 2006, respectively; *id.* at 348-351.

WHEREFORE, judgment is hereby rendered: (a) ordering [respondents] to desist from the further conduct of industrial or commercial activities on the parcel of land covered by TCT No. T-198753 of the Registry of Deeds of Bulacan, particularly the manufacture and storage of chemicals thereat, including the construction of buildings intended for purposes prohibited by the title to the property; (b) making permanent the injunctions issued by this Court's orders of May 3, 1982 and December 7, 1983; (c) ordering [respondents] to pay [MFR] actual damages in the amount of Six hundred Thirty-Nine Thousand Six hundred Fifty (₱639,650.00) Pesos, with legal rate of Twelve (12%) percent interest from the filing of the complaint on January 15, 1982, until the same is fully paid; (d) ordering [respondents] to pay [MFR] exemplary damages in the amount One Hundred Thousand (₱100,000.00) Pesos by way of example of correction for the public good; (e) ordering [respondents] to pay MFR attorney's fees in the amount of One Hundred Thousand (₱100,000.00) Pesos and to pay the costs of suit.[3]

On appeal by respondents docketed as CA G.R. CV No. 37808, the Court of Appeals affirmed with modification the ruling of the RTC: the Court of Appeals reduced the rate of interest to six percent (6%) and deleted the award of exemplary damages and attorney's fees.[4]

MFR and respondents filed separate appeals by *certiorari*[5] to this Court questioning the appellate court's ruling. Unfortunately for the parties, we dismissed both appeals for "late payment of legal fees and late filing of the petition."[6] By December 1, 1997, the decision of the Court of Appeals in CA G.R. CV No. 37808 became final and executory, and was recorded in the Book of Entries of Judgment.[7]

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[3] CA *rollo,* pp. 61-67.

[4] *Rollo,* p. 136.

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

[6] CA *rollo,* p. 85.

[7] *Id.* at 87.

On September 28, 1998, upon motion of MFR, the RTC issued a Writ of Execution.[8] Pursuant thereto, the Branch Clerk of Court commanded the Sheriff of RTC, Branch 7, Malolos, Bulacan, Mr. Leovino Legaspi (Sheriff Legaspi), to execute the Decision dated September 12, 1991 as modified by the Court of Appeals.[9] Sheriff Legaspi was likewise ordered to accomplish a return of the proceedings taken thereon in accordance with Section 14, Rule 39 of the Rules of Court.

On January 4, 1999, Sheriff Legaspi submitted a Sheriff's Report manifesting:

> That on October 2, 1998[,] the undersigned was in receipt of the Writ of Execution issued by Hon. Danilo A. Manalastas for service thereof;
>
> That on October 9, 1998[,] the undersigned served copy of the Writ of Execution and copy of the Notice dated October 9, 1998 to [respondent] Tang Soat Ing giving him five (5) days to comply [with] his obligations under the Writ of Execution, thru Rodolfo Mendez, caretaker of the [respondents], at Tungkong Mangga, San Jose del Monte, Bulacan. The undersigned inquired from the said caretaker about the personal properties of Tang Soat Ing but he was told that Tang Soat Ing has no more properties and the factory located in the compound is being leased to other people;
>
> That on December 10, 1998[,] the undersigned went back to Tang Soat Ing at Tungkong Mangga, Sa Jose del Monte, Bulacan but said person was not there and also Rodolfo Mendez was not around because he was in Manila;
>
> That on December 28, 1998[,] the undersigned went back to Tungkong Mangga, San Jose del Monte, Bulacan and talked to the caretaker[,] Rodolfo Mendez[,] and asked him what happened to the papers he gave to [respondent] Tang Soat Ing. The caretaker said that [respondent Tang Soat Ing] called his lawyer and informed [the latter] about the papers he received. The caretaker also told the undersigned that he [did] not know what the lawyer said.[10]

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[8] *Id.* at 90-93.

[9] *Id.* at 90-93.

[10] *Id*. at 94.

A few days thereafter, on January 7, 1999, Sheriff Legaspi presented the Writ of Execution and the Notice of Levy on Execution of Real Property[11] covering TCT No. T-198753 to the Register of Deeds of Bulacan Province.

On February 4, 1999, the Notice of Levy was inscribed on TCT No. T-198753.[12]

On May 7, 1999, Sheriff Legaspi issued a Notice of Sale on Execution of Real Property[13] which he likewise posted on the following places:

(a) The Bulletin Board of Municipal Hall of San Jose del Monte, Bulacan;

(b) The Bulletin Board of the Church of San Jose del Monte, Bulacan;

(c) The Bulletin Board of the Chapel of Gaya-gaya, San Jose del Monte, Bulacan;

(d) The Bulletin Board of the main entrance of the Provincial Capitol Building of Malolos, Bulacan; and

(e) The Posting Board of the Office of the *Ex-Officio* Sheriff located at the back of the Bulwagan ng Katarungan Building, Malolos, Bulacan.[14]

On June 12, 19 & 26, 1999, the Notice of Sale on Execution of Real Property was published in The Times Newsweekly.[15]

On July 19, 1999, at the public auction of the subject property covered by TCT No. T-198753, MFR was declared as the highest bidder. On even date, Sheriff Legaspi issued a Certificate of Sale[16] which was registered with the Register of Deeds of Bulacan Province.

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[11] *Rollo*, pp. 137-138.

[12] *Id*. at 139-140.

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

[14] *Id*. at 144.

[15] *Id*. at 147.

[16] *Id*. at 148-149.

After more than five (5) years, on September 17, 2004, with respondents failing to exercise their right of redemption, MFR filed a Motion[17] asking the RTC to issue an order directing the Register of Deeds of Bulacan Province to cancel TCT No. T-198753 in the name of respondents, and issue a new certificate of title in the name of MFR.

On September 28, 2004, the RTC denied the Motion holding that a mere motion is not sufficient for the cancellation of a certificate of title. The RTC ruled that under Section 107[18] of Presidential Decree No. 1529, the Property Registration Decree, a petition and a hearing are required for the issuance of a new certificate of title.

On December 1, 2004, MFR filed a Petition[19] in the same case, under the same docket number, Civil Case No. 1245-M, before the same execution court. In this new petition, MFR impleaded the Register of Deeds as additional defendant and prayed for the same reliefs as those prayed for in their previous motion with an additional prayer for the issuance of an order directing respondents to immediately surrender the Owner's Duplicate Copy of TCT No. T-198753.

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[17] *Id.* at 150-153.

[18] **SECTION 107.** Surrender of withhold duplicate certificates. – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[19] *Rollo*, pp. 162-168.

On three separate occasions, December 9, 2004 and February 8 and 17, 2005, respondents, through their counsel of record, Atty. T. J. Sumawang (Atty. Sumawang), received a copy of the Petition.[20]

Respondents failed to file an Answer or any responsive pleading to MFR's Petition. Consequently, MFR moved to declare respondents in default. The Motion to Declare Respondents in Default was served on Atty. Sumawang on June 11, 2005.

The RTC granted MFR's Motion to Declare Respondents in Default: thereafter, MFR presented evidence *ex-parte*.

During presentation of evidence *ex-parte*, MFR filed a Motion for Substitution of Party Petitioner attaching thereto a Deed of Transfer of Interest declaring petitioner Ruben C. Reyes' (Reyes) acquisition of MFR's rights over the subject property. On January 2, 2006, the RTC issued an Order granting this latest motion: MFR was substituted by Reyes as party-petitioner.

In an Order dated January 10, 2006, the RTC granted the Petition, thus:

> WHEREFORE, finding merit in the instant petition, the same is hereby granted. Accordingly, defendant/private respondent Tang Soat Ing (Joanna Tang) is hereby directed to surrender to the Court her duplicate owner's copy of TCT No. T-198753 within thirty (30) days from receipt of this Order. In [the event said] defendant/private respondent fails to surrender such owner's duplicate copy as directed hereinabove, the Register of Deeds of Bulacan is hereby directed to cancel TCT No. T-198753 and issue in lieu thereof a new owner's duplicate certificate of title in the name of Ruben C. Reyes, who has substituted [MFR] by virtue of a Deed of Transfer of Interest and pursuant to the order of this court dated January 02, 2006.[21]

Copies of the Order were separately served on Atty. Sumawang, Atty. Anacleto Diaz (Reyes' counsel) and the

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[20] *Id.* at 177-179.

[21] *Id.* at 205.

Register of Deeds of Bulacan Province on January 20 and February 2, 2006, respectively.[22] However, service thereof to respondents' counsel was returned and rendered impossible. Apparently, Atty. Sumawang had already died in December 2005.[23]

On April 27, 2006, Reyes filed another Motion praying that the Register of Deeds of Bulacan Province be directed to cancel TCT No. T-198753 in the name of respondents and to issue a new one in his (Reyes') name.

On May 19, 2006, new counsel for respondents entered its appearance. Forthwith, on May 23, 2006, respondents, through their new counsel, filed the previously adverted to Opposition and Motion,[24] opposing Reyes' April 27, 2006 Motion and moving to declare void the sale of the subject property.

After an exchange of pleadings from the parties, the RTC issued the Order denying respondents' Opposition and Motion for lack of merit. The RTC ruled that, "Section 107 of PD 1529 does not categorically state that the petition x x x should be in the form of a separate, distinct and original action to be filed in another court, as otherwise it will create a situation in which the final judgment of a court, and its enforcement, may be subject to a review of, or even reversal by another court of co-equal jurisdiction."[25] As regards the motion to declare void the execution sale of the subject property covered by TCT No. T-198753, the RTC noted that "there was substantial compliance with the requirements of [Section 15, Rule 39 of the Rules of Court evidenced] in the Sheriff's Report dated January 4, 1999, as well as the publication and posting requirements, extant in the records of this case."[26] In conclusion, the RTC ruled that

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[22] *Id*. at 206.

[23] *Id*.

[24] *Id*. at 213-230.

[25] *Id*. at 350.

[26] *Id.* at 351.

respondents are estopped from questioning the proceedings, after keeping silent thereon for a long time, despite notice thereof.

Respondents filed a Motion for Reconsideration which the RTC denied in its Order dated October 20, 2006.

Gaining no reprieve from the RTC, respondents filed a petition for *certiorari* before the Court of Appeals seeking to: (1) nullify the trial court's twin Orders dated July 17, 2006 and October 20, 2006, respectively; and (2) declare void the execution proceedings relating to the sale of the subject property and the cancellation of TCT No. T-198753.

In yet another turn of events, the appellate court annulled and set aside the July 17, 2006 and October 20, 2006 Orders of the RTC:

> WHEREFORE, the Petition is **GRANTED** and the Orders issued on July 17 and October 20, 2006 are **ANNULLED and SET ASIDE.** The public auction sale of the property held on July 19, 1999 is declared invalid and the Certificate of Sale issued by Sheriff Leovino G. Legaspi on July 19, 1999 in favor of [petitioner Reyes, substituting MFR] covering the parcel of land embraced in Transfer Certificate of Title No. T-198753 is likewise declared null and void.[27]

Aggrieved, Reyes filed a Motion for Reconsideration which resulted in another exchange of pleadings between the parties. On December 9, 2008, the Court of Appeals denied the motion.

Hence, this impasse with the following issues for our resolution:

1. Whether the execution sale of the subject property covered by TCT No. T-198753 is void;

2. Proceeding from the validity of the execution sale and the consolidation of Reyes' ownership over the subject property, whether Section 107 of Presidential Decree No. 1529 contemplates the filing of a separate cadastral case before the RTC acting as a land registration court.

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

The petition is partially impressed with merit.

In declaring void the execution sale, the appellate court noted that petitioner did not strictly comply with the requirements of Section 15, Rule 39 of the Rules of Court. The Court of Appeals relied on our holding in *Villaceran v. Beltejar*,[28] an administrative case finding therein respondent Sheriff guilty of simple neglect of duty for failure to *strictly* comply with the rules on execution sale. The Court of Appeals ruled that the deficiencies in the notice of execution sale were substantial and of such nature as to prevent the court from applying the presumption of regularity in the performance of official functions by Sheriff Legaspi at the time of the execution sale. On this score, the Court of Appeals pointed out that it was incumbent upon Reyes' part to prove that the requirements of the law on execution sale have been fully complied with.

We disagree.

Contrary to the Court of Appeal's holding, the burden of evidence to prove lack of compliance with Section 15, Rule 39 of the Rules of Court rests on the party claiming lack thereof *i.e.*, respondents.

In *Venzon v. Spouses Juan*,[29] we declared that the judgment debtor, as herein respondents, alleging lack of compliance with the posting and publication requirements of the auction sale in accordance with the rules, is behooved to prove such allegation. We held, thus:

x x x. **Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by a preponderance of the evidence. This must be the rule, or it must follow that rights, of which a negative forms an essential element, may be enforced without proof. Thus, whenever the [party's] right depends upon the truth of a negative, upon him is cast the *onus probandi*, except in cases where the matter is peculiarly within the knowledge of the adverse party.**

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[28] 495 Phil. 177 (2005).

[29] 471 Phil. 152 (2004).

It was error, therefore, for the trial court to hold that:

> Defendants did not present evidence to rebut the "no notice" allegation of the plaintiff. Although in the defendant spouses' pre-trial brief, there is that general allegation that the auction sale was made in accordance with law, however, there is no showing in the record that the requirements with respect to publication/posting of notices were complied with by the defendants.
>
> Deliberating on the absence of notice, the fact that the plaintiff did not come to know that Lot 12 was being subjected to an auction sale proves two things: one, that no notice was posted in the place where the property is located [and, two, that] there was no auction sale that took place on March 30, 1992. . . .
>
> Further, the defendants, particularly defendant sheriff, who is the most competent person to testify that a written notice of sale was made and posted in accordance with law, was not presented to the witness stand. Neither was a document presented like Sheriff's Certificate of Posting to attest to the fact that a written notice of sale was posted before the property was allegedly sold at public auction. In fact, the record is silent as (to) where the auction sale was conducted.

By ruling in the foregoing manner, the trial court incorrectly shifted the plaintiff's burden of proof to the defendants. It is true that the fact of posting and publication of the notices is a matter "peculiarly within the knowledge" of the Deputy Sheriff. However, the trial court did not acquire jurisdiction over him, as he was not served with summons. At the time of the filing of the complaint, he was "no longer connected" with the Caloocan RTC, Branch 126, which issued the writ of execution. Hence, he could not testify in his own behalf.

x x x [**T]he duty imposed by Section [18] (c) is reposed upon the sheriff, who is charged with the enforcement of the writ. Respondent spouses had a right to presume that he had regularly performed his duty. It was not incumbent upon them to present him as a witness for, in the absence of the sheriff, the burden to prove lack of posting and publication remained with petitioner.**[30] (Emphasis supplied)

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

Respondents made no attempt to meet this burden of evidence, simply maintaining lack of notice of the entire proceedings (execution and issuance of a new title over the subject property) before the trial court.

We cannot subscribe to respondents' belated posturing. The disputable presumption that official duty has been regularly performed was not overcome by respondents.[31] The documents on record lead us to the inevitable conclusion that respondents had constructive, if not actual, notice of the execution proceedings from the issuance of the Writ of Execution, the levy on the subject property,[32] its subjection to execution sale, up to and until the proceedings in the RTC relating to the issuance of a new certificate of title over the subject property. Certainly, respondents are precluded from feigning ignorance of MFR (substituted by Reyes) staking a claim thereon.

There was substantial compliance with Section 15, Rule 39 of the Rules of Court: the documents in support thereof, *i.e.*, the Certificate of Posting issued by Sheriff Legaspi and the Affidavit of Publication executed by the publisher of The Times Newsweekly, appear to be in order.[33] In this case, the purpose of giving notice through posting and publication under Section 15(c) of the same rule—to let the public know of the sale to the end that the best price or a better bid may be made possible to minimize prejudice to the judgment debtor—was realized.

Another thing militates against respondents' claim of lack of knowledge of the encumbrance on their property—the separate registrations of: (1) the Notice of Levy on TCT No. T-198753; (2) the Certificate of Sale.

In this jurisdiction, we adhere to the doctrine that registration in a public registry works as constructive notice to the whole

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[31] Section 3(m), Rule 131 of the Rules of Court.

[32] *Rollo*, pp. 154-159.

[33] *Id.* at 144 and 147.

world.[34] Section 51 of Act No. 496, as amended by Section 52 of Presidential Decree No. 1529, provides:

SECTION 52. *Constructive notice upon registration.*—Every conveyance, mortgage, lease, **lien**, attachment, order, **judgment**, instrument or entry affecting registered land shall, if registered, filed or **entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.**

And, quite undeniably, respondents had constructive notice that their property is subject of execution proceedings arising from their judgment debt and **in danger of forfeiture** to their judgment creditor.

Respondents consistently flouted the judgment in Civil Case No. 1245-M, as amended by the Decision of the Court of Appeals in CA G.R. CV No. 37808, which became final and executory on December 1, 1997, by their utter failure to respond to the processes of the RTC in the execution proceedings despite their receipt of notice at each stage thereof. At the very least, respondents' attack on the validity of the execution proceedings, culminating in the execution sale of the subject property, is barred by laches.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[35] Laches thus operates as a bar in equity.[36]

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[34] *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU)*, G.R. No. 160236, October 16, 2009, 604 SCRA 73, 101.

[35] *San Roque Realty and Development Corporation v. Republic of the Philippines (through the Armed Forces of the Philippines)*, G.R. No. 163130, September 7, 2007, 532 SCRA 493, 509.

[36] *Isabela Colleges, Inc. v. The Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000).

We hearken to the time-honored rule anchored on public policy:

> [R]elief will be denied to a litigant whose claim or demand has become "stale," or who has acquiesced for an unreasonable length of time, or who has not been vigilant or who has slept on his rights either by negligence, folly or inattention. In other words, public policy requires, for peace of society, **the discouragement of claims grown stale for non-assertion**; thus laches is an impediment to the assertion or enforcement of a right which has become, under the circumstances, inequitable or unfair to permit.[37] (Emphasis supplied)

The records bear out that as of October 9, 1998, and on two occasions thereafter, December 10 & 28, 1998, Sheriff Legaspi served a copy of the Writ of Execution on respondents, and followed up thereon. With no action forthcoming from respondents, who are ostensibly evading payment of their judgment debt, the Sheriff correctly levied on the subject property. For more than five (5) years from the execution sale thereof, with respondents not exercising their right of redemption, up to the filing of a Motion, and subsequently, a Petition for the issuance of a new certificate of title over the property in Reyes' name, respondents made no effort to settle their judgment debt, much less, to ascertain the status of the execution proceedings against them and the levy on, and consequent sale of, their property. Truly significant is the fact that eight (8) years had lapsed, from the time respondents received a copy of the Writ of Execution in October 1998 until they, through their new counsel, filed the Opposition and Motion in May 2006, before respondents were prodded into action.

We find obvious respondents' brazen ploy to forestall and thwart the execution of a final and executory judgment against them. The death of their counsel, Atty. Sumawang, and their engagement of a new one, does not minimize the hard fact that respondents had notice of, not only the execution proceedings, but also, the proceedings on the issuance of a new title over

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[37] *Id.* at 970.

the subject property. Yet, respondents did not act on any of these notices which were duly received by Atty. Sumawang. Respondents' Motion to nullify the execution proceedings, from the levy on the subject property and sale thereof, is an afterthought, a last-ditch effort to evade payment of their judgment debt. Their claim of ignorance of the execution proceedings flies in the face of the documents on record. This bare-faced claim cannot trump the disputable presumption that a person takes ordinary care of his concerns.[38] Consequently, respondents are estopped and barred from assailing the execution proceedings before the RTC.

Time and again, we have held that once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[39] We completely agree with the RTC's disquisition, thus:

> Finally, after [MFR] had filed the petition in question pursuant to and in compliance with the order of this court dated September 28, 2004, to which no answer or any responsive pleading was filed by respondents or thru their lawyer, as the latter was certainly notified of the proceedings in said petition, respondents cannot now assail said proceedings after keeping silent thereon for a long time, and if indeed there was neglect on the part of their lawyer in informing them of or in taking part in said proceedings, such negligence of their counsel binds them as client. There is likewise an evident lack of prudence and due diligence on the part of the respondents by their failure to inform this court of the withdrawal of their former counsel for a long period of time, and they cannot now, by feigning ignorance of the proceedings had in the petition in question, assail the same thru a new counsel. In other words, respondents cannot be allowed to keep silent on or refuse to participate in proceedings that they know were taking place in connection with a final judgment rendered against them and then suddenly, after said proceedings were long terminated, come to court to question the same through a new counsel. The respondents are clearly in estoppel. Also, the court finds no practical purpose and benefit in sustaining the theory posited by respondents

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[38] Section 3(d), Rule 131 of the Rules of Court.

[39] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 28 (2002).

which, aside from the reasons advanced earlier, will have no other effect than to further unduly delay the execution of a judgment that had long acquired finality.[40]

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Respondents are clearly estopped from assailing the proceedings in question by their failure or refusal to participate therein despite their or their counsel's knowledge thereof, and it would be unjust for the plaintiff to allow respondents to put in issue the validity of said proceedings at this late stage, thru another counsel, as they are bound by the action or inaction of their former counsel.[41]

The Court of Appeal's reliance on *Villaceran v. Beltejar*[42] is misplaced. *Villaceran* is an administrative case finding the Sheriff guilty of simple neglect of duty for failure to strictly comply with the rules on execution sale. We held therein that there was no substantial compliance **by the Sheriff** with Section 15(c), Rule 39 of the Rules of Court. Our declaration that "[n]o reason exists not to apply the principle in the extrajudicial foreclosure sales of real property (statutory requirements of posting and publication must be strictly complied with since non-compliance could constitute a jurisdictional defect that would invalidate the sale) to execution sales of real property under Rule 39 of the Rules of Court"[43] is an *obiter* which should not be definitive of the facts obtaining herein.

The facts of this case demonstrate respondents' stubborn refusal to comply with the judgment against them by claiming lack of notice of the execution proceedings. We reiterate that this claim is belied by the evidence on record and cannot invalidate the enforcement and execution of a final and executory judgment of this Court. On the whole, respondents' silence and inaction for eight (8) years from the time the subject property

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[40] Order dated July 17, 2006. *Rollo*, p. 351.

[41] Order dated October 20, 2006. *Id*. at 419.

[42] *Supra* note 28.

[43] *Villaceran v. Beltejar, supra* note 28 at 183-184.

was validly levied upon by the RTC, bars them from claiming invalidity of the execution proceedings.

Notwithstanding the validity of the execution sale and Reyes' consolidation of ownership over the subject property upon the lapse of the redemption period, we hold that Section 107 of Presidential Decree No. 1529 contemplates the filing of a separate and original action before the RTC, acting as a land registration court.

Reyes argues that to require him to "file his petition in another court would unduly divest the RTC of its jurisdiction to enforce its final and executory decision." Reyes invokes our ruling in *Natalia Realty, Inc. v. Court of Appeals*[44] where we declared that "jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment."[45]

Reyes' reasoning is off tangent. *Natalia* is inapplicable because the execution proceedings in this case have been completed and was terminated upon the execution sale of the subject property. Reyes already consolidated ownership over the subject property; as owner, he has a right to have the same registered in his name. This transfer of title to the subject property in Reyes' name is no longer part of the execution proceedings: the fact of levy and sale constitutes execution, **not** so is the action for the issuance of a new title.[46]

Indeed, the subsequent filing of a separate and original action for the titling of the subject property in Reyes' name, no longer involves the execution of the judgment in Civil Case No. 1245-M.

Section 107 of the Property Registration Decree falls under PETITIONS AND ACTIONS AFTER ORIGINAL REGISTRATION, Chapter X thereof. The provision reads:

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[44] *Supra* note 39.

[45] *Natalia Realty, Inc. v. Court of Appeals, supra* note 39 at 22.

[46] *Padilla, Jr. v. Philippine Producers' Cooperative Marketing Association, Inc.*, 502 Phil. 49, 56 (2005).

SECTION 107. Surrender of withhold duplicate certificates. – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

That a succeeding registration of property in another's name, after its original registration, contemplates a *separate original action* is reinforced by our ruling in *Padilla v. Philippine Producers' Cooperative Marketing Association, Inc.*[47] Answering the question: "In implementing the involuntary transfer of title of real property levied and sold on execution, is it enough for the executing party to file a motion with the court which rendered judgment, or does he need to file a separate action with the Regional Trial Court," we unequivocally declared, thus:

> Petitioner is correct in assailing as improper respondent's filing of a mere motion for the cancellation of the old TCTs and the issuance of new ones as a result of petitioner's refusal to surrender his owner's duplicate TCTs.
>
> **Indeed, this called for a separate cadastral action initiated via petition.**
>
> Section 107 of PD 1529, formerly Section 111 of Act 496, provides:
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> x x x x x x x x x

[47] *Id*.

Respondent alleges that it resorted to filing the contested motion because it could not obtain new certificates of title, considering that petitioner refused to surrender his owner's duplicate TCTs. This contention is incorrect. The proper course of action was to file a petition in court, rather than merely move, for the issuance of new titles. This was the procedure followed in Blancaflor by Sarmiento Trading which was in more or less the same situation as the respondent in this case:

> Petitioners reliance on prescription and laches is unavailing in this instance. **It was proper for Sarmiento Trading Corporation to file a petition with the Court of First Instance of Iloilo, acting as a cadastral court,** for the cancellation of TCT No. 14749 in the name of Gaudencio Blancaflor and the issuance of another in its name. This is a procedure provided for under Section 78 of Act No. 496 and Section 75 of PD No. 1529. . . .
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> Section 78 of Act 496 reads:
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> Sec. 78. Upon the expiration of the time, if any allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of the proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: *Provided, however*, That every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based: *Provided, further*, That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under execution or to enforce liens of any description.
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> Section 75 of PD 1529 provides:
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> Sec. 75. *Application for new certificate upon expiration of redemption period.* — Upon the expiration of the time, if any, allowed by law for redemption after the registered land has been sold on execution, or taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate to him.

> Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

It is clear that PD 1529 provides the solution to respondent's quandary. The reasons behind the law make a lot of sense; it provides due process to a registered landowner (in this case the petitioner) and prevents the fraudulent or mistaken conveyance of land, the value of which may exceed the judgment obligation. x x x.

While we certainly will not condone any attempt by petitioner to frustrate the ends of justice — the only way to describe his refusal to surrender his owner's duplicates of the certificates of title despite the final and executory judgment against him — **respondent, on the other hand, cannot simply disregard proper procedure for the issuance to it of new certificates of title. There was a law on the matter and respondent should have followed it.**

In any event, respondent can still file the proper petition with the cadastral court for the issuance of new titles in its name.[48] (Emphasis supplied).

Plainly, Reyes must institute a separate cadastral action initiated via petition.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals in CA G.R. SP No. 96913 annulling and setting aside the Orders dated July 17, 2006 and October 20, 2006 issued by the Regional Trial Court, Branch 7, Malolos, Bulacan in Civil Case No. 1245-M is *MODIFIED*:

1. The public auction sale of the subject property covered by TCT No. T-198753 on July 19, 1999 is declared *VALID*;

2. The Certificate of Sale issued by Sheriff Leovino Legaspi on July 19, 1999 in favor of MFR Farms, Inc. (substituted by petitioner Ruben C. Reyes) covering the parcel of land embraced in Transfer Certificate of Title No. T-198753 is likewise declared *VALID*; and

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[48] *Id*. at 56-59.

3. The Petition[49] dated October 29, 2004 filed by MFR Farms, Inc. (substituted by Ruben C. Reyes) is *DISMISSED* without prejudice to re-filing as a separate original action pursuant to Section 107 of Presidential Decree No. 1529.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 186131. December 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN AMANSEC *y* DONA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PRESENTATION OF INFORMANT IS NOT ESSENTIAL FOR THE CONVICTION NOR IS IT INDISPENSABLE FOR A SUCCESSFUL PROSECUTION BECAUSE HIS TESTIMONY WOULD BE MERELY CORROBORATIVE AND CUMULATIVE.— This point need not be belabored as this Court, has time and again, held that "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative." If Amansec felt that the prosecution did not present the informant because he would testify against it, then Amansec himself should have called him to the stand to testify for the defense. The

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[49] *MFR Farms Inc.*, petitioner, *v. Tang Soat Ing, Andro G. Sy, and THE REGISTER OF DEEDS FOR BULACAN,* respondents. CA *rollo,* pp. 104-107.

informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution. In *People v. Ho Chua*, we said: The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that "[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret." In any event, the testimony of the informant would be merely corroborative.

2. ID.; ID.; ID.; PRIOR SURVEILLANCE IS NOT REQUIRED FOR A VALID BUY-BUST OPERATION, ESPECIALLY IF THE BUY-BUST TEAM IS ACCOMPANIED TO THE TARGET AREA BY THEIR INFORMANT.— This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant. In *People v. Eugenio*, we held: There is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken especially when, as in this case, the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. We have held that when time is of [the] essence, the police may dispense with the need for prior surveillance.

3. ID.; ID.; ID.; THE FAILURE OF THE POLICE OFFICERS TO USE ULTRAVIOLET POWDER ON THE BUY-BUST MONEY IS NOT AN INDICATION THAT THE BUY-BUST OPERATION WAS A SHAM.— The failure of the police officers to use ultraviolet powder on the buy-bust money is not an indication that the buy-bust operation was a sham. "The use of initials to mark the money used in [a] buy-bust operation has been accepted by this Court." In *People v. Rivera*, we declared: It was x x x the prerogative of the prosecution to choose the manner of marking the money to be used in the buy-bust operation, and the fact that it was not dusted with fluorescent powder did not render the exhibit inadmissible. Indeed, the use of initials

to mark the money used in the buy-bust operation has been accepted by this Court in numerous cases.

4. ID.; ID.; ID.; CHAIN OF CUSTODY; FAILURE OF THE PROSECUTION TO SUBMIT IN EVIDENCE THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS AS REQUIRED BY THE LAW WILL NOT RENDER THE ACCUSED'S ARREST ILLEGAL AND THE ITEMS SEIZED FROM HIM AS INADMISSIBLE IN EVIDENCE.— Ideally, the procedure on the chain of custody should be perfect and unbroken. However "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain." Thus, even though the prosecution failed to submit in evidence the physical inventory and photograph of the seized drugs as required under Section 21 of Republic Act No. 9165, this will not render Amansec's arrest illegal or the items seized from him as inadmissible in evidence. This Court has consistently held that "what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused."

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; THE PRESUMPTION THAT THE INTEGRITY OF THE EVIDENCE HAS BEEN PRESERVED WILL REMAIN UNLESS IT CAN BE SHOWN THAT THERE WAS BAD FAITH, ILL WILL OR TAMPERING OF THE EVIDENCE.— The prosecution was able to demonstrate that the integrity and evidentiary value of the evidence seized had been preserved. Both the prosecution witnesses were categorical and consistent that Amansec offered three plastic sachets containing *shabu* to Mabutol and Pintis. These were later recovered from Amansec, Pintis, and Mabutol himself. As soon as the police officers, together with Amansec and Pintis, reached the La Loma Police Station, the seized sachets were marked with the initials of the police officers, with each officer marking the sachet he personally retrieved from the suspects. This was done **before** the specimens were turned over to the station investigator for the preparation of the request for laboratory examination. Thereafter, the specimens were forwarded to the crime lab by the police officers themselves. The Chemistry Report prepared by the forensic chemist listed the same

specimens, which bore the initials of the police officers, and which were later identified by Mabutol and Pascua in open court as the plastic sachets they marked with their initials. Besides, the presumption that the integrity of the evidence has been preserved will remain unless it can be shown that there was bad faith, ill will, or tampering of the evidence. Amansec bears the burden of showing the foregoing to overcome the presumption that the police officers handled the seized drugs with regularity, and that they properly discharged their duties. This, Amansec failed to do.

6. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; AS LONG AS THE CHAIN OF CUSTODY OF THE SEIZED DRUG WAS CLEARLY ESTABLISHED TO HAVE NOT BEEN BROKEN AND THE PROSECUTION DID NOT FAIL TO IDENTIFY PROPERLY THE DRUGS SEIZED, IT IS NOT INDISPENSABLE THAT EACH AND EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TAKE THE WITNESS STAND.— [T]here is nothing in Republic Act No. 9165 or in its implementing rules, which requires each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand." This Court, in *People v. Hernandez,* citing *People v. Zeng Hua Dian,* ruled: After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

7. REMEDIAL LAW; EVIDENCE; WHEN A PARTY DESIRES THE COURT TO REJECT THE EVIDENCE OFFERED, HE MUST SO STATE IN THE FORM OF OBJECTION;

WITHOUT SUCH OBJECTION, HE CANNOT RAISE THE QUESTION FOR THE FIRST TIME ON APPEAL.— It is worthy to note, and we agree with the Court of Appeals' observation, that Amansec questioned the chain of custody of the evidence only when he appealed his conviction. Not once did he raise this defense or mention these procedural gaps before the trial court. Thus, whatever justifiable ground the prosecution has will remain a mystery in light of Amansec's failure to raise this issue before the trial court, *viz*: The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

8. **ID.; ID.; DEFENSES OF DENIAL AND FRAME-UP; VIEWED WITH DISFAVOR FOR IT CAN EASILY BE CONCOCTED AND IS COMMON AND STANDARD DEFENSE PLOY IN PROSECUTIONS FOR VIOLATION OF DANGEROUS DRUGS ACT.—** Amansec's theory, from the very beginning, were that he did not do it, and that he was being framed for his failure to give the police officers either money or some big-time pusher to take his place. In other words, his defense tactic was one of denial and frame-up. However, those defenses have always been frowned upon by the Court, to wit: The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. In the cases before us, appellant failed to present sufficient evidence in support of his claims. Aside from his self-serving assertions, no plausible proof was presented to bolster his allegations.

9. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENT CLEAR AND CONVINCING EVIDENCE THAT THE MEMBERS OF THE ENTRAPMENT OPERATION TEAM WERE STIRRED BY ILLICIT MOTIVE OR FAILED TO PERFORM THEIR DUTIES, THEIR TESTIMONIES DESERVE FULL FAITH AND CREDIT.— Equally important is the fact that Amansec has not ascribed any improper motive on the part of the police officers as to why they would hand-pick him, and falsely incriminate him in such a serious crime. No evidence has been offered to show that Mabutol and Pascua, were motivated by reasons other than their duty to curb the sale of prohibited drugs. Amansec himself admitted that he only came to know his arresting officers after his arrest. He also testified that he knew of no grudge that they might have against him. Hence, until Amansec can show clear and convincing evidence that the members of the entrapment operation team were stirred by illicit motive or failed to properly perform their duties, their testimonies deserve full faith and credit.

10. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); PROSECUTIONS FOR ILLEGAL SALE OF DANGEROUS DRUGS, ELEMENTS; ESTABLISHED.— The successful prosecution of the sale of dangerous drugs case depends on the satisfaction of the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. To elucidate on the foregoing elements, this Court has said that "[i]n prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." It is evident in the case at bar that the prosecution was able to establish the said elements.

11. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION MADE BY THE PROSECUTION WITNESSES MUST PREVAIL OVER THE ACCUSED'S UNCORROBORATED AND WEAK DEFENSE OF DENIAL, AND UNSUBSTANTIATED DEFENSE OF FRAME-UP.— Amansec was positively identified by the prosecution witnesses, as the person who sold to the poseur-buyer a heat-sealed plastic sachet containing white crystalline substance. He had been caught red-handed in the

entrapment operation conducted by the SDEU of the La Loma Police. Such positive identification must prevail over Amansec's uncorroborated and weak defense of denial, and unsubstantiated defense of frame-up.

12. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE DELIVERY OF THE CONTRABAND TO THE POSEUR-BUYER AND THE RECEIPT BY THE SELLER OF THE MARKED MONEY SUCCESSFULLY CONSUMMATED THE BUY-BUST TRANSACTION BETWEEN THE ENTRAPPING OFFICERS AND THE ACCUSED.— The *corpus delicti* of the crime was also established with certainty and conclusiveness. Amansec gave one of the two remaining plastic sachets to Mabutol after receiving the ₱100.00 buy-bust money. In *People v. Legaspi*, we said: The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and Legaspi. This Court therefore finds no error on the part of both the RTC and the Court of Appeals in convicting Amansec for violation of Section 5, Article II of Republic Act No. 9165.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the April 15, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02557, which affirmed the Regional Trial Court's (RTC) August 30, 2006 Decision[2] in

[1] *Rollo*, pp. 2-14; penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Remedios A. Salazar-Fernando and Sesinando E.Villon, concurring.

[2] CA *rollo*, pp. 71-78; penned by Judge Henri Jean-Paul B. Inting.

Criminal Case No. Q-03-118187,[3] wherein accused-appellant Benjamin Amansec *y* Dona (Amansec) was found guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

On June 18, 2003, Amansec was charged before the Quezon City RTC, Branch 95 of violation of Sections 11 and 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portions of the Informations[4] are as follows:

Crim. Case No. Q-03-118186

The undersigned accuses **BENJAMIN AMANSEC *Y* DONA of** violation of Section 11, Art. II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the **15th day of June, 2003** in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did and there willfully, unlawfully and knowingly have in his/her possession and control **zero point zero nine (0.09) gram of white crystalline substance containing Methylamphetamine Hydroc[h]loride otherwise known as *"SHABU"*** a dangerous drug.[5]

Crim. Case No. Q-03-118187

The undersigned accuses **BENJAMIN AMANSEC *Y* DONA *a.k.a.* "Benjie"** for violation of Section 5, Article II, R.A. 9165, Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That on or about the **15th day of June, 2003** in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, **zero point zero nine (0.09) gram of white crystalline substance containing**

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[3] This case was consolidated with Criminal Case No. Q-03-118186. However, this was no longer appealed by Benjamin Amansec as he was acquitted therein by the RTC.

[4] Records, pp. 2-3, 3-4.

[5] *Id*. at 2.

Methylamphetamine Hydroc[h]loride otherwise known as "*SHABU*" a dangerous drug.[6]

Amansec pleaded not guilty to both charges upon his arraignment[7] on August 7, 2003. After the termination of the pre-trial conference[8] held on October 2, 2003, trial on the merits followed.

The prosecution's first witness was Engineer Bernardino M. Banac, Jr., a forensic chemist from the Philippine National Police (PNP) Crime Laboratory. However, upon agreement by the prosecution and the defense, his testimony was dispensed with, and in lieu thereof, the following stipulations and admissions were made by the parties:

1. That on June 16, 2003, a request for laboratory examination was prepared and sent by La Loma Police Station 1 to the Central Police District Crime Laboratory together with the specimens which were received by the said office on June 16, 2003, as shown in the stamp marked received attached to the said request for laboratory examination;

2. That upon receipt of the said request, a qualitative examination was conducted by the Central Police District Crime Laboratory Office, examined by Engr. Bernardino M. Banac, Jr. and that the specimens were found to be positive to the test for Methylamphetamine Hydrochloride, a dangerous drug which findings conducted contained in Chemistry Report No. D-472-03 dated June 16, 2003;

3. That attached to said Chemistry Report is a small brown envelope which when opened by the Court Interpreter yielded three heat-sealed transparent plastic sachets containing white crystalline substance with markings : A (JR-BA)= 0.09 gram; B (RP-BA)= 0.09 gram; C (RV-JM)= 0.09 gram; [and]

4. That the forensic chemical officer has no personal knowledge leading to the arrest of the accused as well as the source of specimens.[9]

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[6] *Id*. at 4.

[7] *Id*. at 20.

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

[9] *Id*. at 34-35.

On July 15, 2004, the RTC granted the prosecution's motion[10] to try the two cases jointly.

The prosecution's version, which was primarily lifted from the testimonies of two of the operatives involved in the buy-bust operation, is summarized below:

Police Officer (PO) 1 Alfredo Mabutol, Jr. and PO2 Ronald Pascua, members of the PNP assigned at Station Drug Enforcement Unit (SDEU) of the La Loma Police Station, testified that on June 15, 2003, at around 11:00 p.m., while they, along with PO1 Roderick Valencia and their Officer-in Charge (OIC), Police Inspector Oliver Villanueva were on duty, an informant, whose identity remained confidential, arrived at the station to talk to Villanueva. After talking to the informant, Villanueva formed a team for a buy-bust operation against Amansec, at Santos St., Barangay Damayan, San Francisco Del Monte, Quezon City. The team consisted of Mabutol as the poseur-buyer and Pascua and Valencia as his back-up members. Villanueva then gave Mabutol a one hundred peso (₱100.00) bill to be used as his buy-bust money. Mabutol marked this with his initials "JR" on the lower left side portion and listed its serial number in his dispatch book. The team, with their informant, then proceeded to the target area using a white marked vehicle with red plate. As soon as they reached the place, Mabutol and the informant moved ahead to the house of Amansec at Santos St., corner Caragay St., while the rest of the team positioned themselves at a strategic location, keeping Amansec within viewing distance. The informant then introduced Mabutol to Amansec as a drug addict, in dire need of drugs. Mabutol had just told Amansec that he was going to purchase one hundred pesos worth of *shabu* when another buyer, later identified as Jerome Pintis, came up to Amansec to also buy *shabu*. Amansec then showed both Pintis and Mabutol three plastic sachets containing crystalline substance. Pintis gave a one hundred peso bill to Amansec who in return, let him pick one of the

[10] TSN, July 15, 2004, p. 2.

three plastic sachets. After Pintis left, Amansec continued his transaction with Mabutol, and gave Mabutol another of the remaining two plastic sachets after receiving the buy-bust money. Mabutol thereafter examined the plastic sachet he obtained from Amansec, and suspecting it to be *shabu*, scratched the right side of his head with his right hand to signal his team to approach the target. Valencia immediately arrested Pintis and recovered from the latter one plastic sachet, while Pascua went after Amansec, who, upon seeing Pintis' arrest, tried to run away. Pascua thereafter frisked Amansec and retrieved the buy-bust money that Mabutol had given Amansec, and another plastic sachet. The team then brought Pintis and Amansec to the Station Investigator. The team also marked with their initials the plastic sachets that they had recovered and turned them over to their Investigator. They later brought the plastic sachets to the Crime Laboratory to have their contents examined for the presence of *shabu*.[11]

The examination made by Engr. Banac on June 16, 2003, yielded the following results, as stated in his Chemistry Report No. D-472-03[12]:

TIME AND DATE RECEIVED: 1200H 16 JUNE 2003

REQUESTING PARTY/UNIT: OIC, SDEU
PS-1 CPD
Laloma QC

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets containing white crystalline substance having the following markings and recorded net weights:

A(JR-BA) = 0.09 gram C(RV-JM) = 0.09 gram
B(RP-BA) = 0.09 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

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[11] *Id.* at 3-15; TSN, August 12, 2005, pp. 4-16.

[12] Folder of Evidence for the Prosecution; records, p. 114.

To determine the presence of dangerous drugs. xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE results to the tests for Methylamphetamine hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimens A, B, and C contain Methylamphetamine hydrochloride, a dangerous drug. x x x.

TIME AND DATE COMPLETED: 1400H 16 JUNE 2003

This report, along with the three plastic sachets with white crystalline substance, and the ₱100.00 bill[13] recovered from Amansec, were presented in court, and, except for the plastic sachets, were submitted to the court as evidence.

The defense presented Amansec who vehemently denied, on the witness stand, the charges against him. He testified that on June 15, 2003, he was in his residence when two police officers, whom he later came to know as Mabutol and a certain PO1 Lozada, entered his room and thoroughly searched it. He was then brought to the precinct where he was instructed to call somebody who could help him settle his case. As he knew no one who could help him, Mabutol asked him to give a name of a big-time drug seller/pusher who could take his place, or "*pamalit-ulo*."[14] Since Amansec did not know any big-time drug pusher, reasoning that he had been in his residence for only six months then, the police officers proceeded with the case and he was brought to the Inquest Prosecutor. Amansec averred that he did not file a case against the police officers because he did not know how to go about it.[15] On cross-examination, he said that he was denying the allegations as the police officers

[13] *Id.* at 117.

[14] TSN, July 5, 2005, p. 12.

[15] *Id.* at 5-14.

had "no proof [of] what they [were] saying."[16] Amansec also stated that the first time he saw Mabutol and Pascua was when he was arrested, and he did not know of any grudge or ill motive that they might have against him.[17]

On August 30, 2006, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused BENJAMIN AMANSEC *Y* DONA **GUILTY** beyond reasonable doubt as charged in Criminal Case No. Q-03-118187 for violation of Section 5 of Article II of R.A. 9165, (selling of dangerous drugs) and he is hereby sentenced him (sic) to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos.
>
> However, in Criminal Case No. Q-03-118186 for violation of Section 11, Article II of R.A. 9165 (illegal possession of dangerous drugs), the Court finds the accused NOT GUILTY because the prosecution failed to prove his guilt beyond reasonable doubt.
>
> The pieces of evidence [that is the] subject matter of these cases are hereby forfeited in favor of the government and to be disposed of as provided by law.[18]

In convicting Amansec of violating Section 5, Article II of Republic Act No. 9165, the RTC held that the prosecution was able to establish and satisfy the elements in the sale of illegal drugs. The RTC averred that Amansec failed to prove any ill motive on the part of the police officers whom he admitted to have met only after his arrest. Moreover, the RTC found the testimonies of Mabutol and Pascua to be consistent, clear, direct, positive, and corroborative of the material and significant aspects of what actually transpired.[19]

However, the RTC acquitted Amansec of the illegal possession of dangerous drugs charge, ratiocinating in this wise:

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[16] TSN, September 27, 2005, p. 2.

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

[18] CA *rollo*, p. 78.

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

Anent the second offense, the public prosecutor was able to prove that indeed the accused was caught in possession of illegal drugs known as "*shabu*" after the entrapment. After the arrest of the accused for selling illegal drugs, PO2 Ronald Pascua was able to recover another plastic sachet containing *shabu* from the accused. However, the Court is convinced that the second plastic sachet containing *shabu* (Exhibit "E-2") was intended by the accused to be sold to the buyer at the time of the buy-bust operation. In *People vs. Hindoy* [357 SCRA 692], *possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.* In the case at bar, it is clear from the testimonies of the prosecution witnesses that the second plastic sachet of *shabu* was shown and offered by the accused during the transaction in the buy-bust operation.[20]

On September 11, 2006, Amansec filed his Notice of Appeal with the RTC. In his Brief,[21] Amansec cited irregularities, which allegedly create a reasonable doubt that a buy-bust operation was conducted. He also questioned the admissibility of the evidence against him.

However, the Court of Appeals was not convinced by Amansec's arguments. The Court of Appeals found the prosecution's evidence to be sufficient to uphold the conviction of Amansec.[22] The Court of Appeals held that "[n]on-compliance by the apprehending officer with Section 21 of [Republic Act] No. 9165 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated items, are properly preserved by the apprehending officers. x x x."[23]

On April 15, 2008, the Court of Appeals rendered its Decision, with the following *fallo*:

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[20] *Id.* at 77.

[21] *Id.* at 51-70.

[22] *Rollo,* p. 9.

[23] *Id.* at 10.

WHEREFORE, in view of the foregoing, the assailed decision dated August 30, 2006 of the Regional Trial Court (RTC) of Quezon City, Branch 95, in Criminal Case No. Q-03-118187 convicting accused-appellant BENJAMIN AMANSEC *Y* DONA for violation of Section 5, Article II of R.A. No. 9165, sentencing him to suffer the penalty of Life Imprisonment, and ordering him to pay a fine of Five Hundred Thousand Pesos (Php500,000.00), is hereby **AFFIRMED**.[24]

Aggrieved, Amansec appealed[25] the above ruling to this Court, assigning the same errors he assigned before the Court of Appeals, to wit:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE ITS APPARENT UNREALITY AS TO HOW THE ALLEGED BUY-BUST OPERATION WAS CONDUCTED.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF SELLING ILLEGAL DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR HAVING BEEN OBTAINED IN VIOLATION OF SECTION 21 OF REPUBLIC ACT NO. 9165.

III

THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE SPECIMENS.[26]

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[24] *Id*. at 13.

[25] CA *rollo*, pp. 131-132.

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

The Ruling of this Court

Amansec was charged and convicted for selling methylamphetamine hydrochloride, more popularly known as *shabu*, in violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, which provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be

the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

Credibility of the Prosecution Witnesses and conduct of the buy-bust operation

Amansec argues that the trial court erred in giving credence to the testimonies of the prosecution witnesses as they failed to pass the test in determining the value of a witness's testimony that such must be "in conformity with knowledge and consistent with the experience of mankind."[27]

Amasec claims that the charges against him were merely planted and enumerates the following as evidence, which supposedly "creates reasonable doubt as to the allegation of the prosecution that a buy-bust operation was conducted":[28]

1. Only Amansec was charged with violating Republic Act No. 9165, and not Pintis, whom the police officers alleged to have bought *shabu* from him, while the buy-bust operation was being conducted.
2. The prosecution failed to produce and present in court the ₱100.00 bill Pintis allegedly used to buy *shabu* from Amansec.
3. The informant was not presented in court, and no explanation was given by the prosecution for their failure to do so.

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[27] *Id*. at 58.

[28] *Id*. at 63.

4. There was no surveillance prior to the buy-bust operation conducted by the police officers.

5. The buy-bust money used by Mabutol was not dusted with ultraviolet powder.

Amansec's arguments are untenable. As we have held before, "[i]t is for the party to plan its own strategy and to choose which witnesses to call and what evidence to submit to support its own cause."[29]

Non-inclusion of Pintis in this case and Non-presentation of Pintis' ₱100.00 bill Recovered from Amansec

It is not within the province of this Court to speculate or make presumptions as to what happened to Pintis after he was arrested. Suffice it to say that he was apprehended for not only a different, but also, a separate illegal act. He was caught *in flagrante delicto* of purchasing *shabu* from Amansec, and when he was caught, a plastic sachet, similar to the ones sold to Mabutol and recovered from Amansec, was found in his possession. Since this had nothing to do with Amansec's own acts, this Court sees no reason why they should have been tried jointly.

Anent the ₱100.00 bill Pintis used to buy *shabu* from Amansec, this Court also sees no need for its presentation before the RTC because Amansec was charged with violation of Section 5, or the illegal sale of dangerous drugs, for selling *shabu* to Mabutol, and not to Pintis. Thus, even if Pintis' ₱100.00 peso bill were presented in court, it would serve very little purpose for the prosecution, and even for the RTC, as, to reiterate, Amansec was on trial for his act of selling dangerous drugs to Mabutol, who was then a poseur-buyer, and not to Pintis, who just happened to buy from him while the buy-bust operation was being conducted.

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[29] *People v. Rivera*, G.R. No. 98123, October 1, 1993, 227 SCRA 35, 40.

Non-Presentation of Informant

This point need not be belabored as this Court, has time and again, held that "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative."[30] If Amansec felt that the prosecution did not present the informant because he would testify against it, then Amansec himself should have called him to the stand to testify for the defense.[31] The informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution.[32] In *People v. Ho Chua*,[33] we said:

> The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that "[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret." In any event, the testimony of the informant would be merely corroborative.[34]

No prior surveillance conducted

This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant.[35] In *People v. Eugenio,* we held:

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[30] *People v. Khor*, 366 Phil. 762, 792 (1999).

[31] *People v. Rivera, supra* note 29 at 40.

[32] *People v. Cercado,* 434 Phil. 492, 500 (2002).

[33] 364 Phil. 497 (1999).

[34] *Id.* at 513-514.

[35] *People v. Lacbanes,* 336 Phil. 933, 941 (1997).

[36] 443 Phil. 411 (2003).

There is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken especially when, as in this case, the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. We have held that when time is of [the] essence, the police may dispense with the need for prior surveillance.[37]

Buy-bust money was not dusted with ultraviolet powder

The failure of the police officers to use ultraviolet powder on the buy-bust money is not an indication that the buy-bust operation was a sham. "The use of initials to mark the money used in [a] buy-bust operation has been accepted by this Court."[38] In *People v. Rivera*,[39] we declared:

It was x x x the prerogative of the prosecution to choose the manner of marking the money to be used in the buy-bust operation, and the fact that it was not dusted with fluorescent powder did not render the exhibit inadmissible. Indeed, the use of initials to mark the money used in the buy-bust operation has been accepted by this Court in numerous cases.[40]

Inventory and Chain of Custody of Evidence

Amansec asserts that his conviction was incorrect because the evidence against him was obtained in violation of the procedure outlined in Republic Act No. 9165. He claims that Section 21 of the aforesaid act was violated when the police officers who arrested him did not take his picture with the *shabu* they confiscated from him, and when they made no physical inventory of the *shabu* in his presence, or in the presence of his representative, the media, the department of justice, or any elected public official. Amansec avers that his presumption

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[37] *Id*. at 422-423.

[38] *People v. Zheng Bai Hui,* 393 Phil. 68, 135 (2000).

[39] *Supra* note 29.

[40] *Id*. at 40.

of innocence prevails over the presumption that the police officers performed their duty in a regular manner.[41]

He also avers that the prosecution failed to prove the chain of custody of the evidence obtained from him as the station investigator, to whom the specimens were turned over, was not presented in court. Moreover, Amansec claims, there was no evidence to show that the forensic chemist examined the same articles allegedly confiscated from him. Amansec says that the stipulations made as regards the testimony of the forensic chemist mentioned nothing about the chemist's actual receipt of the specimens from the Investigator or from any other person. Amansec argues that the prosecution's failure to establish the evidence's chain of custody is fatal and leads to the unavoidable suspicion on its integrity.[42]

Section 21 of Republic Act No. 9165, provide as follows:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled

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[41] CA *rollo*, pp. 64-66.

[42] *Id*. at 67-68.

precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case

the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/ and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/ surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

Its Implementing Rules and Regulations state:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory

and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;**

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(d) After the filing of the criminal case, the court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall, within twenty-four (24) hours thereafter, proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, that those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for

legitimate purposes: Provided, further, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In cases of seizures where no person is apprehended and no criminal case is filed, the PDEA may order the immediate destruction or burning of seized dangerous drugs and controlled precursors and essential chemicals under guidelines set by the Board. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(h) Transitory Provision:

h.1) Within twenty-four (24) hours from the effectivity of the Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel; and

h.2) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

In the meantime that the PDEA has no forensic laboratories and/or evidence rooms, as well as the necessary personnel of its own in any area of its jurisdiction, the existing National Bureau of Investigation (NBI) and Philippine National Police (PNP) forensic laboratories shall continue to examine or conduct screening and confirmatory test on the seized/surrendered evidence whether these be dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and/or laboratory equipment; and the NBI and the PNP shall continue to have custody of such evidence for use in court and until disposed of, burned or destroyed in accordance with the foregoing rules: Provided, that pending appointment/designation of the full complement of the representatives from the media, DOJ, or elected public official, the inventory of the said evidence shall continue to be conducted by the arresting NBI and PNP operatives under their existing procedures unless otherwise directed in writing by the DOH or PDEA, as the case may be. (Emphasis supplied)

Ideally, the procedure on the chain of custody should be perfect and unbroken. However "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain."[43] Thus, even though the prosecution failed to submit in evidence the physical inventory and photograph of the seized drugs as required under Section 21 of Republic Act No. 9165, this will not render Amansec's arrest illegal or the items seized from him as inadmissible in evidence.[44] This Court has consistently held that "what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused."[45]

The prosecution was able to demonstrate that the integrity and evidentiary value of the evidence seized had been preserved.

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[43] *Asiatico v. People*, G.R No. 195005, September 12, 2011.

[44] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 436.

[45] *People v. Campomanes*, G.R. No. 187741, August 9, 2010, 627 SCRA 494, 507.

Both the prosecution witnesses were categorical and consistent that Amansec offered three plastic sachets containing *shabu* to Mabutol and Pintis. These were later recovered from Amansec, Pintis, and Mabutol himself. As soon as the police officers, together with Amansec and Pintis, reached the La Loma Police Station, the seized sachets were marked with the initials of the police officers, with each officer marking the sachet he personally retrieved from the suspects. This was done **before** the specimens were turned over to the station investigator for the preparation of the request for laboratory examination. Thereafter, the specimens were forwarded to the crime lab by the police officers themselves.[46] The Chemistry Report prepared by the forensic chemist listed the same specimens, which bore the initials of the police officers, and which were later identified by Mabutol and Pascua in open court as the plastic sachets they marked with their initials.

Besides, the presumption that the integrity of the evidence has been preserved will remain unless it can be shown that there was bad faith, ill will, or tampering of the evidence. Amansec bears the burden of showing the foregoing to overcome the presumption that the police officers handled the seized drugs with regularity, and that they properly discharged their duties.[47] This, Amansec failed to do.

Furthermore, there is nothing in Republic Act No. 9165 or in its implementing rules, which requires each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."[48] This

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[46] TSN, July 15, 2004, p. 13.

[47] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647.

[48] *Id*.

Court, in *People v. Hernandez,*[49] citing *People v. Zeng Hua Dian,*[50] ruled:

> After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[51]

It is worthy to note, and we agree with the Court of Appeals' observation, that Amansec questioned the chain of custody of the evidence only when he appealed his conviction. Not once did he raise this defense or mention these procedural gaps before the trial court. Thus, whatever justifiable ground the prosecution has will remain a mystery in light of Amansec's failure to raise this issue before the trial court, *viz*:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[52]

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[49] *Id*.

[50] G.R. No. 145348, June 14, 2004, 432 SCRA 25.

[51] *People v. Hernandez, supra* note 47 at 647-648.

[52] *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

Amansec's theory, from the very beginning, were that he did not do it, and that he was being framed for his failure to give the police officers either money or some big-time pusher to take his place. In other words, his defense tactic was one of denial and frame-up. However, those defenses have always been frowned upon by the Court, to wit:

> The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. In the cases before us, appellant failed to present sufficient evidence in support of his claims. Aside from his self-serving assertions, no plausible proof was presented to bolster his allegations.[53]

Equally important is the fact that Amansec has not ascribed any improper motive on the part of the police officers as to why they would hand-pick him, and falsely incriminate him in such a serious crime. No evidence has been offered to show that Mabutol and Pascua, were motivated by reasons other than their duty to curb the sale of prohibited drugs.[54] Amansec himself admitted that he only came to know his arresting officers after his arrest. He also testified that he knew of no grudge that they might have against him. Hence, until Amansec can show clear and convincing evidence that the members of the entrapment operation team were stirred by illicit motive or failed to properly perform their duties, their testimonies deserve full faith and credit.[55]

Elements of illegal sale of dangerous drugs established

The successful prosecution of the sale of dangerous drugs case depends on the satisfaction of the following elements:

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[53] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[54] *People v. Lee*, 407 Phil. 250, 260 (2001).

[55] *People v. Valencia*, 439 Phil. 561, 568 (2002).

(1) the identity of the buyer and the seller, the object, and the consideration; and

(2) the delivery of the thing sold and the payment therefor.[56]

To elucidate on the foregoing elements, this Court has said that "[i]n prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."[57]

It is evident in the case at bar that the prosecution was able to establish the said elements.[58]

Amansec was positively identified by the prosecution witnesses, as the person who sold to the poseur-buyer a heat-sealed plastic sachet containing white crystalline substance. He had been caught red-handed in the entrapment operation conducted by the SDEU of the La Loma Police. Such positive identification must prevail over Amansec's uncorroborated and weak defense of denial, and unsubstantiated defense of frame-up.[59]

The *corpus delicti* of the crime was also established with certainty and conclusiveness. Amansec gave one of the two remaining plastic sachets to Mabutol after receiving the ₱100.00 buy-bust money.[60] In *People v. Legaspi*,[61] we said:

The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and Legaspi.

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[56] *People v. Tiu*, 469 Phil. 163, 173 (2004).

[57] *People v. Lazaro, Jr.*, *supra* note 53 at 264.

[58] *Id*.

[59] *People v. Legaspi*, G.R. No. 173485, November 23, 2011.

[60] *Id*.

[61] *Id*.

This Court therefore finds no error on the part of both the RTC and the Court of Appeals in convicting Amansec for violation of Section 5, Article II of Republic Act No. 9165.

WHEREFORE, premises considered, the Court hereby *AFFIRMS* the April 15, 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02557.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186530. December 14, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELLY ULAMA *y* ARRISMA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; PRESENT.— It is settled in jurisprudence that: The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. A thorough review of the records would indicate that the foregoing requisites are present in the case at bar.

2. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENTS; MINOR DEVIATIONS IN THE PRESCRIBED PROCEDURES IN THE INVENTORY AND PHOTOGRAPHING OF THE CONFISCATED ITEMS

WOULD NOT NECESSARILY RESULT IN AN ACQUITTAL.— The Court is aware of the stringent requirements laid down in Section 21, paragraph 1 of Republic Act No. 9165 which states that: 1) The apprehending team having initial custody and control of the drugs shall, immediately, after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. However, minor deviations from the foregoing procedure would not necessarily result in an acquittal. In the past, we have also declared that "the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under the said provision of law x x x cannot be used as a ground for appellant's exoneration from the charge against him/her." Similarly, in another case, we ruled that: On the issue of non-compliance with the prescribed procedures in the inventory of seized drugs, the rule is that it does not render an accused's arrest illegal or the items seized/confiscated from him/[her] inadmissible. The requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

3. **ID.; ID.; ID.; FAILURE OF THE PROSECUTION TO PRESENT THE CHIEF INVESTIGATOR IN COURT IS NOT FATAL.—** [W]e have also ruled that "[t]he prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses." Thus, appellant's argument that the prosecution's failure to present the chief investigator in court is fatal to its case cannot prosper.

4. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL OR FRAME-UP; VIEWED WITH DISFAVOR FOR IT CAN EASILY BE CONCOCTED AND IS A COMMON DEFENSE PLOY IN MOST PROSECUTIONS FOR VIOLATION OF THE DANGEROUS DRUGS ACT.—** This Court has repeatedly held that "the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted

and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act." Indeed, the Court has observed that: Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. In the instant case, no clear and convincing evidence to support the defense of frame-up was presented by appellant. Neither did she put forward in her pleadings or testimony any imputation or proof of ill motive on the part of the arresting police officers.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] dated June 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01228 entitled, *People of the Philippines v. Nelly Ulama y Arrisma*, which affirmed the Decision[2] dated June 10, 2005 of the Regional Trial Court (RTC) of Makati, Branch 135, in Criminal Case No. 03-1308. The trial court found appellant Nelly Ulama *y* Arrisma guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive

[1] *Rollo*, pp. 2-11; penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa, concurring.

[2] CA *rollo*, pp. 18-25.

Dangerous Drugs Act of 2002 and imposed upon her the penalty of life imprisonment as well as a fine of five hundred thousand pesos (₱500,000.00).

The prosecution's version of the events leading to appellant's arrest and detention follows:

Having received confidential information from an informant about the drug trafficking activities of appellant, Barangay Chairman Rodolfo Doromal convened a group of Makati Drug Abuse Council (MADAC) operatives to plan and carry out a buy-bust operation. In coordination with the Makati Police Station, Drug Enforcement Unit and the Philippine Drug Enforcement Agency (PDEA), the team composed of PO2 Rodrigo Igno, MADAC operatives Edison Bill, Leo Sese, Antonio Banzon proceeded to the corner of Dapitan and San Nicholas Streets, Barangay Guadalupe Nuevo, Makati City where according to the informant, appellant was conducting her illegal trade. MADAC operative Edison Bill was designated as poseur-buyer who kept the marked buy bust money (Exhibit A; p. 12, Record).

The team sighted appellant also known as "Kakay," who was at that time transacting with two (2) persons later identified as Jerrylyn Bernal (*alias* "Jane") and Robert Mercado (*alias* "Robert"). After Edison Bill was introduced, appellant asked him how much *shabu* he needed. The latter replied, "*Katorse lang, panggamit lang naman*" and handed to appellant two (2) one hundred peso bills, which were the previously marked buy-bust money. After having received the money, appellant asked the poseur-buyer to wait while she left to fetch the illegal drug. While waiting, the poseur-buyer was offered by Jane some sachets, containing what later proved to be *shabu*, with the words "*sa susunod sa akin ka na lang kumuha, eto laging panalo*." Soon after, appellant returned and handed to Edison Bill a plastic sachet containing some white crystalline substance. Appellant was also observed to have handed to Robert Mercado more of the same sachets (Exhibit A; p. 12, Record).

After receiving the sachet, the poseur-buyer signaled the members of the team that the deal was consummated. PO2 Rodrigo Igno with MADAC operatives Leo Se[s]e and Antonio Banzon who were just nearby immediately rushed to the scene. They disclosed their identity as police officer and MADAC operatives and effected the arrest of appellant, Jerrylyn Bernal *y* Ingco @ Jane and Robert Mercado *y* Taylo @ Robert (pp. 7-9, TSN, September 24, 2004).

PO2 Rodrigo Igno recovered from the left pocket of the short pants of appellant the bills previously marked with C4 above the serial numbers "GS371956 and BJ383104". MADAC operative Antonio Banzon seized from the right hand of Robert Mercado, three (3) small transparent plastic sachets containing suspected *shabu*. Likewise, MADAC operative Leo Sese seized three (3) sachets containing suspected *shabu* from Jane's right hand when the latter tried to throw it away.

Upon arrest, appellant and the two other accused were informed of the nature of their arrest as well as their constitutional rights. MADAC operative Edison Bill marked the seven (7) small plastic sachets confiscated from the suspects with initials "NAU" (subject of sale from appellant Nelly A. Ulama), "JIB, JIB-1 and JIB-2" (subject of possession from Jerrylyn I. Bernal) and "RTM, RTM-1 and RTM-2" (subject of possession from Robert T. Mercado) in the presence of appellant and accused and at the place where they were arrested. The drug was later submitted to the PNP Crime Laboratory Office for appropriate examination. The suspects were also made to undergo drug test (Exhibit A; p. 12, Record).

The items seized from [her] were brought to the crime laboratory where they were weighed and examined. (Exhibit B) Qualitative examination conducted on the seized articles by the PNP Crime Laboratory Field Office yielded positive results for the presence of methylamphetamine hydrochloride, a dangerous drug. (Exhibit C.)[3]

In her defense, appellant narrated a different version of the story, to wit:

On April 10, 2003, NELLY ULAMA was washing clothes inside their house when somebody kicked the gate made of GI sheets and four (4) male persons came in. The four (4) were looking for a male person who according to them, entered the compound. They also started to search the house and asked the owner of the room if there was somebody inside. No search warrant was presented to her.

She asked the four (4) who they were, but she was told to keep quiet and remain seated. She started to cry and she also felt angry. Afterwards, a man who was carrying a gun went outside and told her

[3] *Id*. at 73-75.

to come with him as she was to be asked some questions. They are forcing her to go with them but she told the four (4) that she was innocent. But they still insisted for her to go with them. She denied all the allegations against her.

Thereafter, she was made to board a tricycle and she was taken to the Pinagkaisahan Barangay Hall where she waited for one (1) hour. They were then taken to the DEU and while there, a female officer took her to the comfort room and frisked her. Nothing illegal was found in her possession. They were taken to Fort Bonifacio for drug test but she was not able to give them her urine sample as she failed to urinate at that time. (pp. 2-9, TSN dated May 11, 2005.)[4]

Appellant was prosecuted for violation of Sections 5 and 15, Article II of Republic Act No. 9165. These cases were tried jointly with those of Jerrylyn Bernal (Bernal) and Robert Mercado (Mercado), each of whom were prosecuted for violation of Section 11, Article II of the same law.

The Information[5] dated April 11, 2003 charging appellant with violation of Section 5, Article II of Republic Act No. 9165 reads:

That on or about the 10th day of April, 2003, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero three (0.03) gram of Methylamphetamine Hydrochloride (*shabu*), which is a dangerous drug, in violation of the above-cited law.

On the other hand, the Information[6] dated May 14, 2003 charging appellant with violation of Section 15, Article II of Republic Act No. 9165 reads:

That on or about the 10th day of April, 2003, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this

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

[5] Records, p. 2.

[6] *Id*. at 114.

Honorable Court, the above-named accused, not being authorized by law to use dangerous drug and having been arrested and found positive for use of Methylamphetamine after a confirmatory test, did then and there, willfully, unlawfully and feloniously use Methylamphetamine, a dangerous drug, in violation of the said law.

Appellant pleaded "not guilty" to the charges leveled against her in Criminal Case Nos. 03-1308 and 03-2066 when arraigned on May 14, 2003[7] and August 7, 2003,[8] respectively. Thereafter, joint trial with Bernal's and Mercado's cases commenced.

In its Decision dated June 10, 2005, the trial court convicted appellant of violation of Section 5, Article II of Republic Act No. 9165 but, at the same time, acquitted her of the charge of violation of Section 15, Article II of the same statute. The dispositive portion of which reads:

WHEREFORE, it appearing that the guilt of the accused NELLY ULAMA *y* ARRISMA, and accused JERRYLYN BERNAL *y* INGCO and accused ROBERT MERCADO *y* TAYLO, was proven beyond reasonable doubt for violation of Section 5 and Section 11, respectively, of Republic Act No. 9165, as principals, with no mitigating or aggravating circumstances:

1. In Criminal Case No. 03-1308, accused NELLY ULAMA *y* ARRISMA is hereby sentenced to suffer life imprisonment and to pay a fine of ₱500,000.00;

2. In Criminal Case No. 03-1309 accused ROBERT MERCADO *y* TAYLO is hereby sentenced to suffer imprisonment for an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years and eight [8] months, as maximum and to pay a fine ₱300,000.00;

3. In Criminal Case No. 03-1310 accused JERRYLYN BERNAL *y* INGCO is hereby sentenced to suffer imprisonment for an indeterminate term of twelve [12] years and one [1] day, as

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[7] *Id.* at 69.

[8] *Id.* at 128.

minimum, to fourteen [14] years and eight [8] months, as maximum and to pay a fine of ₱300,000.00;

4. In Criminal Case No. 03-2066, accused NELLY ULAMA *y* ARRISMA is hereby ACQUITTED, and

5. All accused to pay the costs.[9]

On appeal by appellant, the Court of Appeals, in its Decision dated June 30, 2008, affirmed the ruling of the trial court and disposed of the case in this manner:

WHEREFORE, the appeal is dismissed and the Decision on appeal is affirmed *in toto*.[10]

Hence, the present appeal where appellant submits a lone assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF ARTICLE II, SECTION 5, REPUBLIC ACT 9165.[11]

In the instant petition, appellant argues that the prosecution failed to establish the chain of custody of the confiscated items because it was not made clear if the plastic sachet of *shabu* allegedly confiscated from her was the same specimen examined at the crime laboratory. In support of this argument, appellant points to the fact that the chief investigator who allegedly brought the seized item to the crime laboratory was not presented to testify before the proceedings in the trial court.

The argument is without merit.

It is settled in jurisprudence that:

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[9] CA *rollo,* pp. 24-25.

[10] *Rollo,* p. 10.

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

The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[12]

A thorough review of the records would indicate that the foregoing requisites are present in the case at bar. The proof of the drug transaction was established by prosecution witness Edison Bill (Bill), the poseur-buyer, who made a positive identification of the appellant as the one who gave him the plastic sachet which contained *shabu* and to whom he gave the marked money during the buy-bust operation. The following are the pertinent portions of Bill's testimony before the trial court:

Q: Now do you recall if you have participated in a buy bust operation sometime on April 10, 2003 1:00 p.m. along Dapitan St. and San Nicolas St., Brgy. Guadalupe Nuevo, Makati City?

A: Yes, sir.

Q: Against whom does that buy bust operation was conducted?

A: Against Kakay, sir.

Q: Did you come to know the full name of this Kakay?

A: Yes, sir.

Q: Tell us.

A: Nelly Ulama, sir.

Q: Now who were your companions in this buy bust operation?

A: Capt. Doromal, our team leader PO2 Igno and MADAC Cluster 4.

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[12] *People v. Morales*, G.R. No. 188608, February 9, 2011, 642 SCRA 612, 619.

Q: And what was your participation in this buy bust operation?

A: I acted as the poseur buyer, sir.

Q: Tell us what does a poseur buyer do in a buy bust operation?

A: Being accompanied by an informant to buy drugs, sir.

Q: To buy drugs?

A: Yes, sir.

Q: What does the poseur buyer use usually to buy drugs?

A: Money with markings, sir.

x x x x x x x x x

Q: Who provided you with the marked money?

A: PO2 Igno, sir.

Q: How much is that buy bust money or marked money?

A: Two pieces of ₱100.00 bill.

x x x x x x x x x

Q: What markings can you recall was put in that marked money?

A: C-4, sir.

Q: Now tell us briefly how you were able to buy *shabu* from this Nelly Ulama?

A: I was accompanied by an informant, sir.

x x x x x x x x x

Q: Now what happened after you found Nelly Ulama and noticed her talking to two persons?

A: I was introduced by the informant, sir.

Q: How were you introduced?

A: I was introduced [as] a person in need of *shabu*.

Q: What was the response of Nelly Ulama?

A: She asked me how much, sir.

Q: What was your answer?

A: *Katorse lang, panggamit lang.*

Q: When you said *katorse lang panggamit lang,* what do you mean by that ₱14.00 only?

A: No, sir.

Q: What do you mean by *katorse lang*?

A: ₱200.00, sir.

Q: And after you said *katorse lang panggamit lang*, what did the accused, Nelly Ulama, do if any?

A: She got the ₱200.00, sir.

Q: What did she give you in exchange of the ₱200.00?

A: One plastic sheet containing suspected *shabu*, sir.

Q: In exchange of ₱200.00?

A: Yes, sir.

Q: Now what about the two persons whom you said you observed talking to Nelly Ulama, where were they when the two of you were transacting?

A: They were near the accused, sir.

Q: After she handed to you a plastic sachet containing suspected *shabu* in exchange of ₱200.00, what happened?

A: After confirming that plastic sachet contained suspected *shabu*, I executed the pre-arranged signal.

Q: What was that pre-arranged signal?

A: By removing a cap, sir.

Q: And what happened after that?

A: I introduced myself as a member of the MADAC.

Q: And what happened next?

A: Immediately my back-up rushed to my place, sir.

Q: And what happened after that?

A: I searched them, sir.

Q: Who did you search?

A: I was not the one who searched, it was my back-up, sir.

Q: Now after the search, what happened?

A: We brought them at the DEU, sir.

Q: Now can you still identify the plastic sachet [which] you said you bought for ₱200.00 from Nelly Ulama?

A: Yes, sir.

Q: Why do you say you can still identify it Mr. Witness?

A: By means of markings, sir.

x x x x x x x x x

Q: I am handing to you seven plastic sachets Mr. Witness with markings. I want you to identify from these plastic sachet[s] the one [which] you said [was] sold to you by Nelly Ulama?

A: This one, sir.

Q: The witness identified a plastic sachet with markings NAU, is this the one?

A: Yes, sir.

x x x x x x x x x

Q: Who put the markings?

A: I was the one, sir.[13]

If we compare the foregoing testimony with the *Pinagsanib na Salaysay ng Pag-aresto* or Joint Affidavit of Arrest[14] executed a day after appellant's arrest by Police Officer (PO) 2 Rodrigo Igno and MADAC operatives Bill, Antonio Banzon and Leo Sese, it would appear that both aver the same narrative with regard to the arrest of appellant. The pertinent portions of the said affidavit read as follows:

Na, noong humigit kumulang 1:00 ng tanghali petsa-10 ng April 2003, sa kanto ng Dapitan at San Nicolas Street, Barangay Guadalupe Nuevo, Makati City, ay aming naaresto sina ***NELLY ULAMA y Arrisma @ Kakay****, 41 taong gulang, dalaga, walang hanap-buhay at nakatira [sa] no. 8305 Dapitan St., Brgy., Guadalupe Nuevo, Makati City, sa kasong paglabag nya [ng] Sec. 5, Art II ng RA 9165 (Sale of Dangerous Drugs), x x x.*

Na, bago naaresto ang mga nabanggit na tao ay nakatanggap ang opisina ng MADAC Cluster 4 ng impormasyon mula sa isang impormante at inireport ang pagkakasangkot nitong si ***@ Kakay*** *sa pagbebenta ng droga, partikular na ang shabu, sa kanilang lugar.*

x x x x x x x x x

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[13] TSN, September 24, 2004, pp. 4-7, 9.

[14] Records, pp. 12-13.

Na, matapos mabuo ang plano ay nagtungo kami at ang aming impormante sa lugar na tinutukoy, habang ang ibang mga kasapi ng grupo ay pumuwesto sa di kalayuan kung saan ay tanaw ang mangyayaring transaksyon. Sa limitadong oras nang pagmamanman naming ng impormante ay natukoy ang kinaroroonan ni ***@ Kakay*** *na nang mga oras na iyon ay katransaksyon ang isang lalaki na nakilala nang huli na si* ***Robert Mercado @ Robert*** *at isang babae na nakilalang si* ***Jerrylyn Bernal @ Jane*** *sa kanto ng Dapitan at San Nicolas Sts., Brgy. Guadalupe Nuevo, Makati City kaya naman agad nilapitan naming sila. Na pagkalapit namin ng impormante ay agad akong ipinakilala kay* ***@ Kakay*** *at matapos na malaman niya (* ***@ Kakay*** *) na ako rin ay nangangailangan ng shabu ay agad akong tinanong ni* ***@ Kakay*** *kung magkano naman ang kailangan ko na agad naman akong tumugon ng* ***"KATORSE LANG, PANGGAMIT LNG NAMAN"****, na ang ibig sabihin ay dalawang daang piso (Php 200), kasunod ng pag-abot ko ng markadong pera na agad tinanggap nitong si* ***@ Kakay*** *at isinilid sa kaliwang bulsa ng suot niyang short pants. Sa puntong ito ay nagpaalam siya (****Kakay****) at umalis. Pagkaalis ni* ***@ Kakay*** *ay nagsalita itong* ***@ Jane*** *nang* ***"SA SUSUNOD SA AKIN KA NA LANG KUMUHA, ETO, LAGING PANALO"****, sabay nang pagpapakita sa kin ng ilang piraso ng plastic sachets na pawing naglalaman ng pinaghihinalaang shabu. Ilang saglit lamang ay bumalik si* ***@ Kakay*** *at inabutan ako ng isang sachet na may lamang pinaghihinalaang shabu kasunod nito personal ko ring naobserbahan at nakita na itong lalaki na naghihintay na nakilalang si* ***@ Robert*** *ay inabutan din ng ilang piraso ng plastic sachets na pawang may laman ding pinahihinalaang shabu.*

*Na, matapos kong matanggap ang pinaghihinalaang shabu ay agad kong (****poseur buyer****) ibinigay ang napagkasunduang hudyat para sa aking mga kasamahang operatiba sa pamamagitan ng pag-alis ng suot kong sombrero, hudyat na tapos na ang transaksyon at sa ganoong pagkakataon ay agad akong nagpakilala kina* ***@ Kakay****,* ***@ Jane*** *at* ***@ Robert*** *bilang kasapi ng MADAC at sa tulong ng aking kasamang operatiba na sina* ***PO2 RODRIGO IGNO*** *at* ***MADAC*** *operatives* ***LEO SESE*** *at* ***ANTONIO BANZON*** *na di kalayuan sa naging transaksyon at personal na naka-obserba sa buong pangyayari ay agad naming inaresto ang mga nasabing tao.*

Na, ako si ***PO3 RODRIGO IGNO*** *ang siyang umaresto kay* ***@ Kakay*** *at nang utusan ko siya na ilabas ang laman ng kanyan bulsa ay nabawi ko mu[l]a sa kaliwang bulsa ng suot niyang short pants ang buy bust money na dalawang piraso ng isang daang piso na*

*pawang may markang **C4** sa ibaba ng serial numbers nito, samantalang akong MADAC operatives na si **LEO SESE** siyang nakakumpiska sa kanang kamay ni **Jerrylyn Bernal @ Jane** ng tatlong (3) piraso ng maliliit na plastic sachets na pawang naglalaman ng pinaghihinalaang shabu na tinangka niya itong itapon at ako naman si MADAC operative **ANTONIO BANZON** ang siyang nakumpiska sa kanang kamay ni **ROBERT MERCADO @ Robert** nang tatlong (3) piraso ng plastic sachet na naglalaman din ng pinaghihinalaang shabu.*

*Na, ang mga nakumpiskang pingahihinalaang shabu ay minarkahan ko [MADAC **Edison Bill**] sa mismong presensiya ng akusado sa lugar ng pinangyarihan ng inisyal na **"NAU"** (subject of sale from @ **Kakay**), **"JIB, JIB-1 at JIB-2"** (subject of possession from @ **Jane**) at **"RTM, RTM-1 AT RTM-2"** (subject of possession from @ **Robert**).*

*Na, matapos na maaresto ang mga nabanggit na tao ay agad kong [**PO2 Rodrigo Igno**] ipinabatid sa kanila ang kanilang mga karapatan at ang dahilan ng kanilang pagkaaresto bago namin sila dinala sa aming opisina at pagkatapos ay dinala namin agad sila sa Drug Enforcement Unit ng Makati City Police Station para sa pagsasampa ng kaukulang reklamo.* (Emphasis in the original.)

Moreover, the appellant's allegation that the chain of custody of the illegal drugs taken from her was not firmly established cannot be countenanced. On the contrary, there is enough evidence which can account for the crucial links in the chain of custody of the confiscated plastic sachet of *shabu* starting from its seizure from appellant up to its examination by the forensic chemist.

The records would indicate that, immediately after appellant's arrest and in her presence, poseur-buyer Bill marked the plastic sachet with the markings "NAU."[15] This piece of evidence was turned over directly to the Drug Enforcement Unit (DEU) under the Office of the Criminal Investigation Division of the Makati City Police Station where it was included in the items subject to laboratory examination by the PNP Crime Laboratory of the Southern Police District Office as indicated in the Request

[15] *Id*. at 13; TSN, September 24, 2004, p. 9.

for Laboratory Examination[16] dated April 10, 2003 which was signed by Police Senior Inspector (PSINSP) Leandro Mendoza Abel, the chief of the DEU. An examination of the lower left portion of the said document would bear out a mark stamp of the PNP Crime Laboratory showing that the request letter along with the accompanying evidence specimens was delivered by poseur-buyer Bill at 4:45 p.m. on April 10, 2003. Furthermore, Physical Science Report No. D-443-03[17] which was signed and prepared by PINSP Maria Ana Rivera-Dagasdas (Rivera-Dagasdas) indicates that the plastic sachet with the markings "NAU," which was recovered from appellant and listed as item "D" in the said document, yielded 0.3 grams of Methylamphetamine Hydrochloride, commonly known as *shabu*. The same report likewise indicates that the evidence specimen was received at 4:45 p.m. on April 10, 2003 and that the laboratory examination conducted by PINSP Rivera-Dagasdas was completed at 6:45 p.m. on the same date.

The Court is aware of the stringent requirements laid down in Section 21, paragraph 1 of Republic Act No. 9165 which states that:

> 1) The apprehending team having initial custody and control of the drugs shall, immediately, after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

However, minor deviations from the foregoing procedure would not necessarily result in an acquittal. In the past, we have also declared that "the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed

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[16] *Id.* at 211.

[17] *Id.* at 212.

under the said provision of law x x x cannot be used as a ground for appellant's exoneration from the charge against him/her."[18]

Similarly, in another case, we ruled that:

> On the issue of non-compliance with the prescribed procedures in the inventory of seized drugs, the rule is that it does not render an accused's arrest illegal or the items seized/confiscated from him/[her] inadmissible. The requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[19]

Likewise, we have also ruled that "[t]he prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses."[20] Thus, appellant's argument that the prosecution's failure to present the chief investigator in court is fatal to its case cannot prosper.

In her defense, appellant merely denied the occurrence of the buy-bust operation. Instead, appellant insists that she was forcibly taken from her house by four men who suddenly entered her dwelling on the pretext of searching for a man who entered the compound where her house was located. She claimed that she and three other persons were later made to board a vehicle which took them to the Pinagkaisahan Barangay Hall. From there, they were taken to the DEU where she maintains that she was frisked but nothing illegal was found in her possession. Afterwards, they were taken to Fort Bonifacio for a drug test but she claims that she failed to urinate. In short, appellant insists that she was merely framed-up and that she is innocent of the charge against her.

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[18] *People v. Gratil*, G.R. No. 182236, June 22, 2011.

[19] *People v. Soriaga*, G.R. No. 191392, March 14, 2011.

[20] *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

This Court has repeatedly held that "the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act."[21] Indeed, the Court has observed that:

> Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.[22]

In the instant case, no clear and convincing evidence to support the defense of frame-up was presented by appellant. Neither did she put forward in her pleadings or testimony any imputation or proof of ill motive on the part of the arresting police officers.

With the foregoing, the Court believes that appellant failed to show any reversible error on the part of the RTC and the Court of Appeals in the resolution of this case. Thus, the conviction of appellant must be sustained.

WHEREFORE, premises considered, the Decision dated June 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01228 is *AFFIRMED*.

SO ORDERED.

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

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[21] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390.

[22] *People v. Capalad*, G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

FIRST DIVISION

[G.R. No. 188376. December 14, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **FEDERICO SUNTAY, as represented by his Assignee, JOSEFINA LUBRICA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; MOOT AND ACADEMIC PRINCIPLE; AN ISSUE IS SAID TO BECOME MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT JUSTICIABLE CONTROVERSY SO THAT A DECLARATION ON THE ISSUE WOULD BE OF NO PRACTICAL USE OR VALUE; EXCEPTIONS. — An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value. However, the application of the moot-and-academic principle is subject to several exceptions already recognized in this jurisdiction. In *David v. Macapagal-Arroyo,* the Court has declared that the moot-and-academic principle is not a magical formula that automatically dissuades courts from resolving cases, because they will decide cases, otherwise moot and academic, if they find that: (*a*) There is a grave violation of the Constitution; (*b*) The situation is of exceptional character, and paramount public interest is involved; *(a)* The constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; or *(b)* A case is capable of repetition yet evading review. In addition, in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),* the Court has come to consider a voluntary cessation by the defendant or the doer of the activity complained of as another exception to the moot-and-academic principle, the explanation for the exception being that: xxx once a suit is filed and the doer voluntarily ceases the challenged conduct, it does not automatically deprive the tribunal of power to hear and determine the case and does not render the case moot especially when the plaintiff seeks damages or prays for injunctive relief against the possible recurrence of the violation.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENT; ELUCIDATED; PRESENT IN CASE AT BAR. — The finality of the judgment in *Land Bank v. Suntay* (G.R. No. 157903) meant that the decrees thereof could no longer be altered, modified, or reversed even by the Court *en banc*. Nothing is more settled in law than that a judgment, once it attains finality, becomes immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. This rule rests on the principle that all litigation must come to an end, however unjust the result of error may appear; otherwise, litigation will become even more intolerable than the wrong or injustice it is designed to correct.

3. ID.; ID.; ID.; LAW OF THE CASE IS DEFINED AS THE OPINION DELIVERED ON A FORMER APPEAL; APPLICATION IN CASE AT BAR. — The Court ruled in favor of Land Bank. For both Land Bank and Suntay (including his assignee Lubrica), the holding in *Land Bank v. Suntay* (G.R. No. 157903) became the law of the case that now controlled the course of subsequent proceedings in the RTC as a Special Agrarian Court. In *Cucueco v. Court of Appeals*, the Court defined *law of the case* as "the opinion delivered on a former appeal." *Law of the case* is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. With the pronouncement in G.R. No. 157903 having undeniably become the law of the case between the parties, we cannot pass upon and rule again on the same legal issue between the same parties.

4. ID.; ID.; ID.; A JUDICIAL INTERPRETATION THAT VARIES FROM OR REVERSES ANOTHER IS APPLIED PROSPECTIVELY AND SHOULD NOT APPLY TO PARTIES

WHO RELIED ON THE OLD DOCTRINE AND ACTED IN GOOD FAITH; RATIONALE. —The rule followed in this jurisdiction is that a judicial interpretation that varies from or reverses another is applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise is to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication. Accordingly, if posterior changes in doctrines of the Court cannot retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, we have stronger reasons to hold that such changes could not apply to a different proceeding with a different set of parties and facts.

5. ID.; ID.; ID.; *OBITER DICTUM*, DEFINED. — An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.

6. POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; THE ACTIONS TAKEN AND RENDERED BY ANY OF THE DIVISIONS ARE THOSE OF THE SUPREME COURT ITSELF; CLARIFIED. — Although Article VIII, Section 4 (1) of the Constitution gives the Court the discretion to sit either *en banc* or in divisions of three, five, or seven Members, the divisions are not considered separate and distinct courts. Nor is a hierarchy of courts thereby established within the Supreme Court, which remains a unit notwithstanding that it also works in divisions. The actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court. Lastly, the only thing that the Constitution allows the *banc* to do in this regard

is to reverse a doctrine or principle of law laid down by the Court *en banc* or in division.

7. ID.; ADMINISTRATIVE LAW; LAND BANK OF THE PHILIPPINES; LAND BANK'S ASSETS AND PROPERTIES MUST NECESSARILY COME UNDER SEGREGATION, EXPLAINED; WHEN VIOLATION THEREOF MAY BE COMMITTED; CASE AT BAR. — The prior determination of whether the asset of Land Bank sought to be levied to respond to a judgment liability under the CARP in favor of the landowner was demanded by its being a banking institution created by law, possessed with universal or expanded commercial banking powers by virtue of Presidential Decree No. 251. As a regular bank, Land Bank is under the supervision and regulation of the Bangko Sentral ng Pilipinas. Being the official depository of Government funds, Land Bank is also invested with duties and responsibilities related to the implementation of the CARP, mainly as the administrator of the ARF. Given its discrete functions and capacities under the laws, Land Bank's assets and properties must necessarily come under segregation, namely: (*a*) those arising from its proprietary functions as a regular banking or financial institution; and (*b*) those arising from its being the administrator of the ARF. Indeed, Executive Order No. 267 has required Land Bank *to segregate* accounts, to wit: (*a*) corporate funds, which are derived from its banking operations and are essentially moneys held in trust for its depositors as a financial banking institution; and (*b*) ARF, which comprise funds and assets expressly earmarked for or appropriated under the CARL to pay final awards of just compensation under the CARP.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.

Verona Feliciano & Aquino and *Sanidad Viterbo Enriquez & Tan Law Firm* for respondent.

D E C I S I O N

BERSAMIN, *J.*:

In *Land Bank v. Suntay*,[1] the Court has declared that the original and exclusive jurisdiction to determine just compensation under Republic Act No. 6657 (*Comprehensive Agrarian Reform Law*, or CARL) pertains to the Regional Trial Court (RTC) as a Special Agrarian Court; that any effort to transfer such jurisdiction to the adjudicators of the Department of Agrarian Reform Adjudication Board (DARAB) and to convert the original jurisdiction of the RTC into appellate jurisdiction is void for being contrary to the CARL; and that what DARAB adjudicators are empowered to do is only to determine *in a preliminary manner* the reasonable compensation to be paid to the landowners, leaving to the courts the ultimate power to decide this question.

Bearing this pronouncement in mind, we grant the petition for review on *certiorari* and reverse the decision promulgated on June 5, 2009 by the Court of Appeals (CA) in CA-G.R. SP No. 106104 entitled *Land Bank of the Philippines v. Hon. Conchita C. Miñas, Regional Agrarian Adjudicator of Region IV, and Federico Suntay, as represented by his Assignee, Josefina Lubrica*, dismissing the petition for *certiorari* of Land Bank of the Philippines (Land Bank) on the ground of its being moot and academic.

ANTECEDENTS

Respondent Federico Suntay (Suntay) owned land situated in Sta. Lucia, Sablayan, Occidental Mindoro with a total area of 3,682.0285 hectares. In 1972, the Department of Agrarian Reform (DAR) expropriated 948.1911 hectares of Suntay's land pursuant to Presidential Decree No. 27.[2] Petitioner Land Bank and DAR fixed the value of the expropriated portion at

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[1] G.R. No. 157903, October 11, 2007, 535 SCRA 605.

[2] *Id.*, pp. 607-609.

₱4,497.50/hectare, for a total valuation of ₱4,251,141.68.[3] Rejecting the valuation, however, Suntay filed a petition for determination of just compensation in the Office of the Regional Agrarian Reform Adjudicator (RARAD) of Region IV, DARAB, docketed as DARAB Case No. V-0405-0001-00; his petition was assigned to RARAD Conchita Miñas (RARAD Miñas).[4]

On January 24, 2001, after summary administrative proceeding in DARAB Case No. V-0405-0001-00, RARAD Miñas rendered a decision fixing the total just compensation for the expropriated portion at ₱157,541,951.30. Land Bank moved for a reconsideration, but RARAD Miñas denied its motion on March 14, 2001. It received the denial on March 26, 2001.[5]

On April 20, 2001, Land Bank brought a petition for the judicial determination of just compensation in the RTC (Branch 46) in San Jose, Occidental Mindoro as a Special Agrarian Court, impleading Suntay and RARAD Miñas. The petition, docketed as Agrarian Case No. R-1241, essentially prayed that the total just compensation for the expropriated portion be fixed at only ₱4,251,141.67.[6]

G.R. No. 159145
DARAB v. Lubrica

On May 22, 2001, despite the pendency of Agrarian Case No. R-1241 in the RTC, RARAD Miñas issued an order in DARAB Case No. V-0405-0001-00, declaring that her decision of January 24, 2001 had become final and executory. Land Bank contested the order through a motion for reconsideration, but RARAD Miñas denied the motion for reconsideration on July 10, 2001.

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[3] *Id*.

[4] *Department of Agrarian Reform Adjudication Board v. Lubrica*, G.R. No. 159145, April 29, 2005, 457 SCRA 800, 805.

[5] *Id*.

[6] *Supra* at note 1, pp. 608-609.

On July 18, 2001, RARAD Miñas issued a writ of execution directing the Regional Sheriff of DARAB Region IV to implement the decision of January 24, 2001.[7]

On September 12, 2001, Land Bank filed in DARAB a petition for *certiorari* (with prayer for the issuance of temporary restraining order (TRO)/preliminary injunction), docketed as DSCA No. 0252, seeking to nullify the following issuances of RARAD Miñas, to wit:

(*a*) The decision of January 24, 2001 directing Land Bank to pay Suntay just compensation of ₱147,541,951.30;

(*b*) The order dated May 22, 2001 declaring the decision of January 24, 2001 as final and executory;

(*c*) The order dated July 10, 2001 denying Land Bank's motion for reconsideration; and

(*d*) The writ of execution dated July 18, 2001 directing the sheriff to enforce the decision of January 24, 2001.

On September 12, 2001, DARAB enjoined RARAD Miñas from proceeding with the implementation of the decision of January 24, 2001, and directed the parties to attend the hearing to determine the propriety of issuing a preliminary or permanent injunction.[8]

On September 20, 2001, Josefina Lubrica (Lubrica), the assignee of Suntay, filed a petition for prohibition in the CA (CA-G.R. SP No. 66710) to prevent DARAB from proceeding in DSCA No. 0252 by mainly contending that the CARL did not grant to DARAB jurisdiction over special civil actions for *certiorari*. On the same day, the CA granted the prayer for TRO.

On October 3, 2001, DARAB issued a writ of preliminary injunction enjoining RARAD Miñas from implementing the January 24, 2001 decision and the orders incidental to said decision.[9]

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[7] *Supra* at note 4, pp. 806-807.

[8] *Id.*, p. 807.

[9] *Id.*, pp. 807-808.

DARAB submitted its own comment to the CA, arguing that it had issued the writ of injunction under its power of supervision over its subordinates, like the PARADs and the RARADs.

Land Bank also submitted its own comment, citing the prematurity of the petition for prohibition.[10]

On August 22, 2002, the CA promulgated its decision in CA-G.R. SP No. 66710, holding that DARAB, being a mere formal party, had no personality to file a comment *vis-à-vis* the petition for prohibition; and that DARAB had no jurisdiction to take cognizance of DSCA No. 1252, considering that its exercise of jurisdiction over a special civil action for *certiorari* had no constitutional or statutory basis. Accordingly, the CA granted the petition for prohibition and perpetually enjoined DARAB from proceeding in DSCA No. 1252, which the CA ordered dismissed.[11]

Thence, DARAB appealed the adverse CA decision to this Court *via* petition for review on *certiorari*, docketed as G.R. No. 159145 entitled *Department of Agrarian Reform Adjudication Board of the Department of Agrarian Reform, Represented by DAR Secretary Roberto M. Pagdanganan v. Josefina S. Lubrica, in her capacity as Assignee of the rights and interest of Federico Suntay* (*DARAB v. Lubrica*), insisting that the CA erred in declaring that DARAB had no personality to file a comment; in holding that DARAB had no jurisdiction over DSCA No. 0252; and in nullifying the writ of preliminary injunction issued by DARAB in DSCA No. 0252 for having been issued in violation of the CA's TRO.

On April 29, 2005, the Court promulgated its decision in *DARAB v. Lubrica* (G.R. No. 159145),[12] denying the petition for review. The Court opined that DARAB's limited jurisdiction as a quasi-judicial body did not include the authority to take cognizance of petitions for *certiorari*, in the absence of an express grant

[10] *Id.*, p. 808.

[11] *Id.*, pp. 808-809.

[12] *Id.*, p. 814.

in R.A. No. 6657, Executive Order (E.O.) No. 229, and E.O. No. 129-A.

G.R. No. 157903
Land Bank v. Suntay

In the meanwhile, in Agrarian Case No. R-1241, Suntay filed a motion to dismiss, claiming that Land Bank's petition for judicial determination of just compensation had been filed beyond the 15-day reglementary period prescribed in Section 11, Rule XIII of the *New Rules of Procedure of DARAB*; and that, by virtue of such tardiness, RARAD Miñas' decision had become final and executory.[13]

The RTC granted Suntay's motion to dismiss on August 6, 2001 on that ground.

Land Bank sought reconsideration, maintaining that its petition for judicial determination of just compensation was a separate action that did not emanate from the case in the RARAD.

Nonetheless, the RTC denied Land Bank's motion for reconsideration on August 31, 2001.[14]

On September 10, 2001, Land Bank filed a notice of appeal in Agrarian Case No. R-1241, but the RTC denied due course to the notice of appeal on January 18, 2002, pointing out that the proper mode of appeal was by petition for review pursuant to Section 60 of the CARL.

The RTC denied Land Bank's motion for reconsideration on March 8, 2002.[15]

Thereupon, Land Bank assailed in the CA the RTC's orders dated January 18, 2002 and March 8, 2002 *via* a special civil action *certiorari* (CA-G.R. SP No. 70015), alleging that the RTC thereby committed grave abuse of discretion amounting to lack or

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[13] *Supra* at note 1, p. 609.

[14] *Id.*, pp. 609-610.

[15] *Id.*, p. 610.

excess of jurisdiction in denying due course to its notice of appeal; and contending that decisions or final orders of the RTCs, acting as Special Agrarian Courts, were not appealable to the CA through a petition for review but through a notice of appeal.

On July 19, 2002, the CA promulgated its decision in CA-G.R. SP No. 70015, granting Land Bank's petition for *certiorari*; nullifying the RTC's orders dated January 18, 2002 and March 8, 2002; allowing due course to Land Bank's notice of appeal; and permanently enjoining the RTC from enforcing the nullified orders, and the RARAD from enforcing the writ of execution issued in DARAB Case No. V-0405-0001-00.[16]

Thereafter, upon Suntay's motion for reconsideration, the CA reversed itself through the amended decision dated February 5, 2003,[17] and dismissed Land Bank's petition for *certiorari*, thuswise:

> WHEREFORE, premises considered, the present Motion for Reconsideration is hereby GRANTED. Consequently, the present petition is hereby DISMISSED.
>
> The injunction issued by this Court enjoining (a) respondent Executive Judge from enforcing his Orders dated January 18, 2002 and March 8, 2002 in Agrarian Case No. R-1241; and (b) respondent Regional Agrarian Reform Adjudicator Conchita S. Miñas from enforcing the Writ of Execution dated July 18, 2001 issued in DARAB Case No. V-0405-0001-00, are hereby REVOKED and SET ASIDE.
>
> SO ORDERED.

On April 10, 2003, the CA denied the Land Bank's motion for reconsideration.[18]

On May 6, 2003, Land Bank appealed to the Court, docketed as G.R. No. 157903, entitled *Land Bank of the Philippines v. Federico Suntay, Represented by his Assignee, Josefina Lubrica* (*Land Bank v. Suntay*).[19]

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[16] *Id.*, pp. 610-611.
[17] *Id.*
[18] *Id.*, p. 611.
[19] *Rollo*, pp. 284-305.

On October 12, 2005, the Court issued a TRO upon Land Bank's urgent motion to stop the implementation of RARAD Miñas' decision dated January 24, 2001 pending the final resolution of G.R. No. 157903.[20]

On October 11, 2007, this Court promulgated its decision in *Land Bank v. Suntay* (G.R. No. 157903),[21] *viz*:

> The **crucial issue** for our resolution is whether the RTC erred in dismissing the Land Bank's petition for the determination of just compensation.
>
> It is clear that the RTC treated the petition for the determination of just compensation as an **appeal** from the RARAD Decision in DARAB Case No. V-0405-0001-00. In dismissing the petition for being filed out of time, the RTC relied on Section 11, Rule XIII of the DARAB New Rules of Procedure which provides:
>
> > Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. – The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board [Department of Agrarian Reform Adjudication Board (DARAB)] but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.
>
> The RTC erred in dismissing the Land Bank's petition. It bears stressing that the petition is **not** an **appeal** from the RARAD final Decision but an **original action** for the determination of the just compensation for respondent's expropriated property, over which the RTC has **original** and **exclusive** jurisdiction. This is clear from Section 57 of R.A. No. 6657 which provides:
>
> > Section 57. *Special Jurisdiction*. – The Special Agrarian Courts [the designated Regional Trial Courts] shall have **original** and **exclusive** jurisdiction over **all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall

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[20] *Supra*, note 1, p. 612.

[21] *Supra*, note 1, pp. 612-617.

> apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Underscoring supplied)

Parenthetically, the above provision is not in conflict with Section 50 of the same R.A. No. 6657 which states:

> Section 50. *Quasi-judicial Powers of the DAR.* – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x.

In *Republic of the Philippines v. Court of Appeals,* we held that Section 50 must be construed in harmony with Section 57 by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as **excepted** from the plenitude of power conferred upon the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (such as taking of land under R.A. No. 6657) and over criminal cases. Thus, in *Land Bank of the Philippines v. Celada, Export Processing Zone Authority v. Dulay* and *Sumulong v. Guerrero,* we held that the valuation of property in eminent domain is essentially a **judicial function** which cannot be vested in administrative agencies. Also, in *Scoty's Department Store, et al. v. Micaller,* we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act.

The procedure for the determination of just compensation cases under R.A. No. 6657, as summarized in *Landbank of the Philippines v. Banal*, is that **initially**, the Land Bank is charged with the responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking under the voluntary offer to sell or compulsory acquisition arrangement. The DAR, relying on the Land Bank's determination of the land valuation and compensation, then makes an offer through a notice sent to the landowner. If the landowner accepts the offer, the Land Bank shall pay him the purchase price of the land after he executes and delivers

a deed of transfer and surrenders the certificate of title in favor of the government. In case the landowner rejects the offer or fails to reply thereto, the DAR adjudicator conducts summary administrative proceedings to determine the compensation for the land by requiring the landowner, the Land Bank and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the Decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for the determination of just compensation. In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. No. 6657. These factors have been translated into a basic formula in DAR Administrative Order (A.O.) No. 6, Series of 1992, as amended by DAR A.O. No. 11, Series of 1994, issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. No. 6657.

x x x x x x x x x

> Obviously, these factors involve **factual** matters which can be established only during a hearing wherein the contending parties present their respective evidence. In fact, to underscore the intricate nature of determining the valuation of the land, Section 58 of the same law even authorizes the Special Agrarian Courts to appoint commissioners for such purpose.

In the instant case, the Land Bank properly instituted its petition for the determination of just compensation before the RTC in accordance with R.A. No. 6657. The RTC erred in dismissing the petition. To repeat, Section 57 of R.A. No. 6657 is explicit in vesting the RTC, acting as a Special Agrarian Court, "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." As we held in *Republic of the Philippines v. Court of Appeals*:

> xxx. It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.
>
> Consequently, although the new rules [Section 11, Rule XIII of the DARAB New Rules of Procedure] speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Section 57 that the **original** and **exclusive** jurisdiction to determine such cases is in the RTCs. **Any effort to**

> **transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Section 57 and therefore would be void.** What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question. (Underscoring supplied)

WHEREFORE, we **GRANT** the instant Petition for Review on *Certiorari*. The assailed Amended Decision dated February 5, 2003 and Resolution dated April 10, 2003 of the Court of Appeals in CA-G.R. SP No. 70015 are **REVERSED**. The Orders dated January 18, 2002 and March 8, 2002 issued by the RTC in Agrarian Case No. R-1241 are **NULLIFIED**. The RTC is **ORDERED** to conduct further proceedings to determine the just compensation of respondent's expropriated property in accordance with the guidelines set by this Court in *Landbank of the Philippines v. Banal.*

No pronouncement as to costs.

SO ORDERED.[22]

Suntay sought reconsideration, invoking the pronouncement in *DARAB v. Lubrica* (G.R. No. 159145) to the effect that "the RARAD Decision had already attained finality in accordance with the above-quoted rule, notwithstanding Land Bank's recourse to the special agrarian court."[23]

On January 30, 2008, however, the Court denied Suntay's motion for reconsideration.[24] Accordingly, the decision in *Land Bank v. Suntay* became final and executory.

Second Execution in DARAB Case No. V-0405-0001-00

On September 14, 2005, notwithstanding the pendency of *Land Bank v. Suntay* (G.R. No. 157903) in this Court, RARAD Miñas granted Suntay's *ex parte* motion for the issuance of an *alias* writ of execution by citing the pronouncement in *DARAB*

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[22] Emphases are part of the original text.

[23] *Rollo*, pp. 357-374.

[24] *Id.*, p. 112.

v. Lubrica (G.R. No. 159145) to the effect that her decision dated January 24, 2001 had attained finality in accordance with DARAB's rules of procedure.[25]

Acting pursuant to the *alias* writ of execution, the DARAB sheriffs issued and served the following notices on the dates indicated herein, to wit:

(*a*) A notice of demand to Land Bank on September 15, 2005;[26]

(*b*) A notice of levy to Land Bank on September 21, 2005;[27]

(*c*) A notice of levy to Bank of the Philippine Islands[28] and to Hongkong Shanghai Bank Corporation both on September 28, 2005;[29] and

(*d*) An order to deliver "so much of the funds" in its custody "sufficient to satisfy the final judgment" to Land Bank on October 5, 2005.[30]

The moves of the sheriffs compelled Land Bank to file an urgent verified motion for the issuance of a TRO or writ of preliminary injunction in *Land Bank v. Suntay* (G.R. No. 157903).

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[25] In *DARAB v. Lubrica*, cited at note 4, the Court, in addition to declaring that DARAB had no jurisdiction over a petition for *certiorari*, commented that:

"In the instant case, Land Bank received a copy of the RARAD order denying its motion for reconsideration on March 26, 2001. Land Bank filed the petition for just compensation with the special agrarian court only on April 20, 2001, which is doubtlessly beyond the fifteen-day reglementary period. Thus, the RARAD Decision had already attained finality in accordance with the above-quoted rule, notwithstanding Land Bank's recourse to the special agrarian court."

[26] *Rollo*, pp. 311-312.

[27] *Id.*, p. 313.

[28] *Id.*, pp. 314-315.

[29] *Id.*, pp. 316-317.

[30] *Id.*, pp. 318-319.

On October 12, 2005, acting on Land Bank's urgent motion, the Court resolved in *Land Bank v. Suntay* (G.R. No. 157903), *viz*:

> (a) to issue a TEMPORARY RESTRAINING ORDER prayed for, effective immediately, enjoining and restraining Hon. Conchita C. Miñas or the Regional Agrarian Reform Adjudicator (RARAD) concerned, from issuing an *alias* writ of execution implementing the RARAD decision dated January 24, 2000, until further orders from this court; and
>
> (b) to require the petitioner to POST a CASH BOND or a SURETY BOND from a reputable bonding company of indubitable solvency in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), within five (5) days from notice, otherwise, the temporary restraining order herein issued shall AUTOMATICALLY be lifted. Unless and until the Court directs otherwise, the bond shall be effective from its approval by the Court until this case is finally decided, resolved or terminated. [31]

On October 24, 2005, the Court directed the parties in *Land Bank v. Suntay* (G.R. No. 157903) to maintain the *status quo ante*,[32] thus:

> G.R. No. 157903 xxx — Acting on the petitioner's very urgent manifestation and omnibus motion dated October 21, 2005, the Court Resolves to *DIRECT* the parties to maintain the *STATUS QUO* prior to the issuance of the *Alias* Writ of Execution dated September 14, 2005. All actions done in compliance or in connection with the said Writ issued by Hon. Conchita C. Miñas, Regional Agrarian Reform Adjudicator (RARAD), are hereby *DEEMED QUASHED*, and therefore, of no force and effect.

On the same day of October 24, 2005, however, the sheriffs held a public auction of Land Bank's levied shares of stock in the Philippine Long Distance Telephone Company (PLDT) and Manila Electric Company (MERALCO) at the Office of the

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[31] *Id.*, p. 347.

[32] *Id.*, p. 349.

DARAB Regional Clerk in Mandaluyong City. In that public auction, Lubrica, the lone bidder, was declared the highest bidder.[33]

On October 25, 2005, the same sheriffs resumed the public auction of Land Bank's remaining PLDT shares of stock and First Gen Corporation bonds. Lubrica was again declared the highest bidder.[34] The sheriffs then issued two certificates of sale in favor of Lubrica.

On October 25, 2005, RARAD Miñas reversed herself and quashed all acts done pursuant to the writ of execution,[35] *viz*:

> This refers to the Resolution of the Third Division of the Supreme Court dated October 24, 2005 in G.R. No. 157903 (*Land Bank of the Philippines vs. Federico Suntay, Represented by His Assignee, Josefina Lubrica*) directing the parties to maintain the STATUS QUO prior to the issuance of the *Alias* Writ of Execution dated September 14, 2005; and that all actions done in compliance or in connection with said Writ issued by Hon. Conchita C. Miñas, Regional Agrarian Reform Adjudicator (RARAD) are hereby DEEMED QUASHED, and therefore, of no force and effect.
>
> The Sheriffs and all parties in this case are ordered to strictly comply with this Order immediately.
>
> SO ORDERED.

As earlier stated, on October 11, 2007, the Court resolved *Land Bank v. Suntay* (G.R. No. 157903) in favor of Land Bank.[36]

This Case (G.R. No. 188376)

On October 29, 2008, Suntay presented to RARAD Miñas in DARAB Case No. V-0405-0001-00 his urgent *ex parte*

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[33] *Id.*, p. 351.

[34] *Id.*, p. 352.

[35] *Id.*, pp. 355-356.

[36] *Supra* at note 1, p. 617.

manifestation and motion to resume interrupted execution,[37] citing *Land Bank v. Martinez* (G.R. No. 169008, July 31, 2008, 560 SCRA 776).

Immediately, on October 30, 2008, RARAD Miñas granted Suntay's urgent *ex parte* manifestation and motion, and ordered the DARAB sheriffs to resume their implementation of the *alias* writ of execution issued in DARAB Case No. V-0405-0001-00, stating:

> The basis of the motion, the case of *Land Bank vs. Raymunda Martinez* (*supra*) indubitably clarified that "the adjudicator's decision on land valuation attained finality after the lapse of the 15-day period citing the case of *Department of Agrarian Reform Adjudication Board vs. Lubrica* in GR No. 159145 promulgated on April 29, 2005. Movant in this case therefore is correct that the Decision in the *Land Bank case of the Philippines vs. Raymunda Martinez* resolved the conflict by rendering a Decision upholding the rulings of the Second Division of the Supreme Court in GR No. 159145 entitled Department of Agrarian Reform Adjudication Board (DARAB) of the Department of Agrarian Reform (DAR) represented by DAR Secretary, *Roberto M. Pagdanganan vs. Josefina Lubrica* in her capacity as Assignee of rights and interest of Federico Suntay and striking down as erroneous the rulings of the Third Division in GR No. 157903 entitled *Land Bank of the Philippines vs. Federico Suntay, et. al.*
>
> The ruling in the case of *Land Bank of the Philippines vs. Raymunda Martinez* which upheld the Decision in Lubrica having attained finality, the Status Quo Order issued by the Third Division in GR No. 157903 is now rendered ineffective.
>
> WHEREFORE, premises considered, the instant motion is hereby GRANTED.
>
> Sheriffs Maximo Elejerio and Juanita Baylon are hereby ordered to resume the interrupted execution of the *Alias* Writ issued in this case on September 14, 2005.
>
> SO ORDERED.[38]

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[37] *Rollo*, pp. 375-378.

[38] *Id.*, p. 390.

The DARAB sheriffs forthwith served a demand to comply dated October 30, 2008 on the Philippine Depository and Trust Corporation (PDTC) and Securities Transfer Services, Inc. (STSI).[39]

By letter dated October 31, 2008, PDTC notified Land Bank about its being served with the demand to comply and about its action thereon, including an implied request for Land Bank to "uplift" the securities.[40]

Also on October 31, 2008, PDTC filed a manifestation and compliance in the office of the RARAD, Region IV, stating that it had already "issued a written notice" to Land Bank "to uplift the assets involved" and that "it ha(d) caused the subject assets to be outside the disposition" of Land Bank.[41]

In response, Land Bank wrote back on November 3, 2008 to request PDTC to disregard the DARAB sheriffs' demand to comply.[42]

PDTC responded to Land Bank that it was not in the position to determine the legality of the demand to comply, and that it was taking the necessary legal action.[43]

On November 10, 2008, PDTC sent a supplemental letter to Land Bank reiterating its previous letter.[44]

Given the foregoing, Land Bank commenced on November 12, 2008 a special civil action for *certiorari* in the CA (CA-G.R. SP No. 106104), alleging that RARAD Miñas had "committed grave abuse of discretion amounting to lack or in excess of jurisdiction in rendering *ex parte* the assailed Order

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[39] *Id.*, pp. 401-402.

[40] *Id.*, pp. 399-400.

[41] *Id.*, pp. 395-398.

[42] *Id.*, pp. 409-413.

[43] *Id.*, pp. 414-415.

[44] *Id.*, pp. 416-417.

dated October 30, 2008 as it varies, modifies or alters the Supreme Court *Decision* dated October 11, 2007, which had become final and executory;" and that the DARAB sheriffs had "committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing to, and serving on, the Philippine Depository and Trust Corporation, a copy of the *Demand to Comply* dated October 30, 2008 notwithstanding the unquestioned finality of the Supreme Court's decision dated October 11, 2007."[45]

Suntay submitted a comment and opposed the issuance of a TRO.[46]

On November 28, 2008, before the CA could act on Land Bank's application for TRO, MERALCO cancelled Land Bank's 42,002,750 shares of stock and issued new stock certificates in the name of Lubrica. MERALCO recorded the transfer of ownership of the affected stocks in its stock and transfer book. All such acts of MERALCO were done in compliance with the demand to comply by the DARAB sheriffs pursuant to the certificate of sheriff's sale dated October 24, 2005 and the certificate authorizing registration dated November 20, 2008 (respecting Land Bank's MERALCO shares) issued in favor of Lubrica.[47]

Without yet being aware of the transfers, the CA issued a TRO on December 4, 2008 to prevent the implementation of RARAD Miñas' order dated October 30, 2008.[48] Land Bank then sought the approval of its bond for that purpose.[49]

On December 4, 2008, MERALCO communicated to the CA its cancellation of Land Bank's certificates of MERALCO stocks

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[45] *Id.*, pp. 418-474.

[46] *Id.*, pp. 481-496.

[47] *Id.*, pp. 590-591.

[48] *Id.*, pp. 497-498.

[49] *Id.*, pp. 499-506.

on November 28, 2008 and its issuance of new stock certificates in the name of Lubrica.[50]

Learning of the cancellation of its stock certificates and the transfer of its MERALCO shares in the name of Lubrica, Land Bank filed on December 12, 2008 its very urgent manifestation and omnibus motion, praying that the CA's TRO issued on December 4, 2008 be made to cover any and all acts done pursuant to the assailed order dated October 30, 2008 and the demand to comply dated October 30, 2008. Land Bank further prayed that the cancellation of its certificates of MERALCO shares be invalidated and the transfer of the shares in favor of Lubrica be quashed, and that the parties be directed to maintain the *status quo ante*.[51]

On December 17, 2008, Land Bank presented a very urgent motion to resolve and supplemental motion, seeking to expand the scope of the TRO earlier issued; to restrain the Philippine Stock Exchange (PSE) from allowing the trading of its (Land Bank) entire MERALCO shares, and the Corporate Secretary of MERALCO from recording or registering the transfer of ownership of Land Bank's MERALCO shares to other parties in MERALCO's stock and transfer book; to invalidate the cancellation of the certificates of MERALCO shares and to quash the transfer in favor of Lubrica and all subsequent transfers to other parties; to direct the parties and all concerned persons and entities to maintain the *status quo*; and to declare all acts done pursuant to the assailed order and the demand to comply null and void and of no force and effect.[52]

On December 24, 2008, the CA denied Land Bank's very urgent motion to resolve and supplemental motion.[53]

In the meantime, DAR administratively charged and preventively suspended RARAD Miñas for issuing the October

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[50] *Id.*, pp. 590-591.

[51] *Id.*, pp. 548-562.

[52] *Id.*, pp. 563-574.

[53] *Id.*, pp. 585-589.

30, 2008 order, and replaced her with RARAD Marivic Casabar (RARAD Casabar) in RARAD Region IV.[54]

On December 15, 2008, RARAD Casabar recalled RARAD Miñas order dated October 30, 2008.[55]

On December 17, 2008, RARAD Casabar directed:

(a) MERALCO to cancel the stock certificates issued to Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to Land Bank and to record the restoration in MERALCO's stock and transfer book; and

(b) PSE, PDTC, STSI, the Philippine Dealing System Holdings Corporation and Subsidiaries (PDS Group), and any stockbroker, dealer, or agent of MERALCO shares to stop trading or dealing on the shares.[56]

On June 5, 2009, the CA promulgated a resolution in CA-G.R. SP No. 106104, dismissing Land Bank's petition for *certiorari* for being moot and academic,[57] citing the recall by RARAD Casabar of RARAD Miñas's order of October 30, 2008.

On June 23, 2009, Land Bank, through the Office of the Government Corporate Attorney, filed in this Court a motion for extension of time to file petition for review on *certiorari*, seeking additional time of 30 days within which to file its petition for review on *certiorari*.[58]

On July 24, 2009, before the Court could take any action on its motion for extension of time to file petition for review, Land Bank moved to withdraw the motion, allegedly because the CA still retained jurisdiction over CA-G.R. SP No. 106104 due

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[54] *Id.*, p. 120.

[55] *Id.*, pp. 593-597.

[56] *Id.*, pp. 598-601.

[57] *Id.*, pp. 173-188.

[58] *Id.*, pp. 3-7.

to Lubrica's having meanwhile filed the following motions and papers in CA-G.R. SP No. 106104, namely:

(*a*) Motion for reconsideration or for clarificatory ruling dated June 23, 2009, a copy of which Land Bank received on July 2, 2009;

(*b*) Additional arguments in support of the motion for reconsideration and for clarificatory ruling dated July 1, 2009, a copy of which Land Bank received on July 8, 2009;

(*c*) Motion for leave of court to file the attached manifestation dated July 8, 2009, a copy of which Land Bank received on July 13, 2009;

(*d*) Manifestation dated July 8, 2009, a copy of which Land Bank received on July 13, 2009; and

(*e*) Motion to direct RARAD Casabar to explain why she had issued her orders of December 15, 2008 and December 17, 2008, a copy of which Land Bank received on July 20, 2009.[59]

On July 31, 2009, Land Bank filed a very urgent *ex parte* motion for execution dated July 30, 2009 in DARAB, seeking the execution of RARAD Casabar's orders of December 15, 2008 and December 17, 2008.[60]

On August 7, 2009, Land Bank filed in this Court: (*a*) a motion to withdraw its motion to withdraw motion for extension of time to file petition for review on *certiorari*; and (*b*) a motion for leave to file and to admit[61] the attached petition for review on *certiorari*.[62]

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[59] *Id.*, pp. 65-71.

[60] *Id.*, pp. 604-613.

[61] *Id.*, pp. 76-83.

[62] *Id.*, pp. 84-165.

On September 9, 2009, the Court denied Land Bank's motion to withdraw its motion to withdraw motion for extension of time to file petition for review on *certiorari*, but granted Land Bank's motion for leave to file and to admit the attached petition for review on *certiorari*. The Court required Lubrica to comment on the petition for review, and Land Bank to comply with A.M. No. 07-6-5-SC dated July 10, 2007.[63]

On September 30, 2009, the CA denied Lubrica's motion to direct RARAD Casabar to explain why she had issued her orders of December 15, 2008 and December 17, 2008, among others.[64]

On October 14, 2009, Lubrica filed a motion for leave to file motion to dismiss,[65] stating that Land Bank's petition for *certiorari* had been filed out of time and that the assailed order of RARAD Miñas had been affirmed by the final judgment in *DARAB v. Lubrica* (G.R. No. 159145), and had been supported by the ruling in *Land Bank v. Martinez,* G.R. No. 169008, July 31, 2008, 560 SCRA 776.

On May 5, 2010, Land Bank filed an urgent verified motion for the issuance of a TRO or writ of preliminary injunction, seeking thereby to enjoin MERALCO, its Corporate Secretary, and its Assistant Corporate Secretary, pending the proceedings and until the resolution of the case, from releasing on May 11, 2010 and thereafter the cash dividends pertaining to the disputed shares in favor of Lubrica or any person acting on her behalf.[66]

Lubrica opposed Land Bank's motion.[67]

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[63] *Id.,* pp. 614-615.

[64] *Id.,* pp. 649-651 (penned by Associate Justice Mariflor Punzalan-Castillo, and concurred in by Associate Justice Rosmari Carandang and Associate Justice Marlene Gonzales-Sison).

[65] *Id.,* pp. 621-625.

[66] *Rollo,* pp. 808-836.

[67] *Id.,* pp. 889-915.

Todate, the Court has taken no action on Land Bank's urgent verified motion.

ISSUES

Land Bank contends that:

The Court of Appeals acted not in accord with law and with the applicable jurisprudence when it dismissed the petition *a quo* on purely technical grounds.

A.

Contrary to the findings of the Court of Appeals, *DARAB v. Lubrica* is not the law of the case insofar as the issue on the proper procedure to follow in the determination of the just compensation is concerned.

B.

The issue before the Court of Appeals, whether the order dated 30 October 2008 was issued with grave abuse of discretion, has not been rendered moot and academic with the subsequent issuance of the order dated December 15, 2008.

C.

The Court of Appeals erred when in gave its implicit imprimatur to the irregular procedure for execution, which the RARAD and the DARAB sheriffs adopted, in gross violation of Republic Act No. 6657 and the DARAB Rules of Procedure.[68]

On the other hand, Lubrica proposes as issue:

Is the January 24, 2001 Decision of RARAD Conchita Miñas final and executory?[69]

As we see it, then, the Court has to resolve the following, to wit:

1. Whether or not RARAD Casabar's orders dated December 15, 2008 and December 18, 2008 rendered Land Bank's petition for *certiorari* moot and academic;

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[68] *Id.*, pp. 127-128.

[69] *Id.*, p. 687.

2. Whether or not RARAD Miñas' order dated October 30, 2008 was valid; and

3. Whether or not the manner of execution of RARAD Miñas' order dated October 30, 2008 was lawful.

RULING

The appeal has merit.

I.
Whether or not RARAD Casabar's orders dated December 15, 2008 and December 18, 2008 rendered Land Bank's petition for *certiorari* moot and academic

The CA rationalized its dismissal of Land Bank's petition for *certiorari* in the following manner:

> It must be stressed that **this Court is dismissing the instant petition not because it has lost jurisdiction over the case but because the case has already become moot and academic.** In other words, this Court is dismissing the case out of practicality because proceeding with the merit of the case would only be an exercise in futility. This is because **whichever way this Court would later decide the case would only be rendered immaterial and ineffectual by the foregoing new Orders of the RARAD.** To elaborate, a denial of the instant petition would mean that We are sustaining the Miñas' Order dated October 30, 2008 which, as matters stand right now, had been superseded by the two new orders of the RARAD. Will sustaining RARAD Miñas' Order have the effect of nullifying the two new orders of RARAD Casabar? The answer is still in the negative. On the other hand, the ultimate result of granting this petition would be that the two new Orders would still govern, which is already the prevailing situation at this point. Indeed, the dismissal of the case on this ground is in itself an exercise by the Court of its jurisdiction over the case.[70]

We cannot uphold the CA.

To the extent that it nullified and recalled RARAD Miñas' October 30, 2008 order, RARAD Casabar's December 15,

[70] *Id.*, p. 185 (bold emphasis supplied).

2008 order seemingly mooted Land Bank's petition for *certiorari* (whereby Land Bank contended that RARAD Miñas, through her order dated October 30, 2008, could not disregard or invalidate the decision promulgated on October 11, 2007 in G.R. No. 157903, and that the monies, funds, shares of stocks, and accounts of Land Bank, which did not form part of the Agrarian Reform Fund (ARF), could not be levied upon, garnished, or transferred to Lubrica in satisfaction of RARAD Miñas' January 24, 2000 decision).[71]

At first glance, indeed, RARAD Casabar's December 15, 2008 order seemingly rendered the reliefs prayed for by the petition for *certiorari* unnecessary and moot. An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value.[72]

However, the application of the moot-and-academic principle is subject to several exceptions already recognized in this jurisdiction. In *David v. Macapagal-Arroyo*,[73] the Court has declared that the moot-and-academic principle is not a magical formula that automatically dissuades courts from resolving cases, because they will decide cases, otherwise moot and academic, if they find that:

(*a*) There is a grave violation of the Constitution;

(*b*) The situation is of exceptional character, and paramount public interest is involved;

(a) The constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; or

(b) A case is capable of repetition yet evading review.

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[71] *Rollo*, pp. 439-440.

[72] *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132795, March 10, 2004, 425 SCRA 129, 134.

[73] G.R. Nos. 171396, 171400, 171409, 171483, 171485, 171489, and 171424, May 3, 2006, 489 SCRA 160, 214-215.

In addition, in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),*[74] the Court has come to consider a voluntary cessation by the defendant or the doer of the activity complained of as another exception to the moot-and-academic principle, the explanation for the exception being that:

> xxx once a suit is filed and the doer voluntarily ceases the challenged conduct, it does not automatically deprive the tribunal of power to hear and determine the case and does not render the case moot especially when the plaintiff seeks damages or prays for injunctive relief against the possible recurrence of the violation.

The exception of voluntary cessation of the activity without assuring the non-recurrence of the violation squarely covers this case. Hence, the CA's dismissal of CA-G.R. SP No. 106104 on the ground of mootness must be undone.

Yet another reason why the Court should still resolve derives from the fact that the supervening RARAD Casabar's recall order did not at all resolve and terminate the controversy between the parties. The CA itself conceded that Lubrica could still assail the validity of RARAD Casabar's recall order.[75] That possibility underscores the need to definitely resolve the controversy between the parties to avoid further delay. As herein shown, this appeal is the third time that the intervention of the Court has been invoked regarding the controversy, the earlier ones being *DARAB v. Lubrica* (G.R. No. 159145) and *Land Bank v. Suntay* (G.R. No. 157903). The need to put an end to the controversy thus becomes all the more pressing and practical.

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[74] G.R. Nos. 183591, 183752, 183893, 183951 and 183962, October 14, 2008, 568 SCRA 402, 461, citing *US v. W.T. Grant Co.*, 345 U.S. 629 (1953); *US v. Trans-Missouri Freight Assn*, 166 U.S. 290, 308-310 (1897); *Walling v. Helmerich & Payne, Inc*., 323 U.S. 37, 43 (1944); *Gray v. Sanders*, 372 U.S. 368, 376 (1963); *Defunis v. Odegaard*, 416 U.S. 312 (1974).

[75] *Rollo*, p. 186.

We further discern that the parties have heretofore acted to advance their respective interests and claims against each other by relying on seemingly conflicting pronouncements made in *DARAB v. Lubrica* (G.R. No. 159145) and *Land Bank v. Suntay* (G.R. No. 157903). Their reliance has unavoidably spawned and will continue to spawn confusion about their rights and can occasion more delays in the settlement of their claims.

The Court does not surely desire confusion and delay to intervene in any litigation, because the Court only aims to ensure to litigants a just, speedy, and inexpensive administration of justice. Thus, the Court feels bound to undo the CA's deeming Land Bank's petition for *certiorari* mooted by RARAD Casabar's recall order. Verily, RARAD Miñas' assailed order, until and unless its legality is declared and settled by final judgment, may yet be revived, and the judicial dispute between the parties herein may then still resurrect itself.

II.
Whether or not RARAD Miñas' order dated October 30, 2008 was valid

The controversy is traceable to the October 30, 2005 Order of RARAD Miñas directing the DARAB sheriffs to resume the implementation of the *alias* writ of execution she had issued in DARAB Case No. V-0405-0001-00. She predicated her order on the following pronouncement made in *Land Bank v. Martinez,*[76] *viz*:

> To resolve the conflict in the rulings of the Court, we now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, *while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules*; *otherwise, the adjudicator's decision will attain finality*. This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily,

[76] G.R. No. 169008, July 31, 2008, 560 SCRA 776, 783.

a belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[77]

Land Bank contends, however, that *Land Bank v. Martinez* did not vary, alter, or disregard the judgment in *Land Bank v. Suntay* (G.R. No. 157903).

Lubrica counters that instead of *Land Bank v. Suntay* (G.R. No. 157903) being applicable, it was *DARAB v. Lubrica* (G.R. No. 159145) that had become immutable and unalterable.

Lubrica is grossly mistaken.

Through the resolution promulgated on January 30, 2008 in *Land Bank v. Suntay* (G.R. No. 157903), the Court denied with finality Suntay's motion for reconsideration filed against the October 11, 2007 decision. The decrees in *Land Bank v. Suntay* (G.R. No. 157903) were to nullify the order dated January 18, 2002 (denying due course to Land Bank's notice of appeal of the dismissal of its petition for determination of just compensation upon Suntay's motion to dismiss) and the order dated March 8, 2002 (denying Land Bank's motion for reconsideration), both issued by the RTC in Agrarian Case No. R-1241; and to order the RTC to "conduct further proceedings to determine the just compensation of (Suntay)'s expropriated property in accordance with the guidelines set by this Court in *Landbank of the Philippines v. Banal*."

In effect, *Land Bank v. Suntay* (G.R. No. 157903) set aside the decision of RARAD Miñas dated January 24, 2000 fixing the just compensation. The finality of the judgment in *Land Bank v. Suntay* (G.R. No. 157903) meant that the decrees thereof could no longer be altered, modified, or reversed even by the Court *en banc*. Nothing is more settled in law than that a judgment, once it attains finality, becomes immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be

[77] Italicized portions are part of the original decision.

an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[78] This rule rests on the principle that all litigation must come to an end, however unjust the result of error may appear; otherwise, litigation will become even more intolerable than the wrong or injustice it is designed to correct.[79]

Resultantly, Lubrica cannot invoke the pronouncement in *Land Bank v. Martinez* in order to bar the conclusive effects of the judicial result reached in *Land Bank v. Suntay* (G.R. No. 157903).

II.a.
***Land Bank v. Suntay* (G.R. No. 157903) is now the law of the case**

We underscore that *Land Bank v. Suntay* (G.R. No. 157903) was the appropriate case for the determination of the issue of the finality of the assailed RARAD Decision by virtue of its originating from Land Bank's filing on April 20, 2001 of its petition for judicial determination of just compensation against Suntay and RARAD Miñas in the RTC sitting as a Special Agrarian Court. Therein, Suntay filed a motion to dismiss mainly on the ground that the petition had been filed beyond the 15-day reglementary period as required by Section 11, Rule XIII of the *Rules of Procedure of DARAB.* After the RTC granted the motion to dismiss, Land Bank appealed to the CA, which sustained the dismissal. As a result, Land Bank came to the Court (G.R. No. 157903), and the Court then defined the decisive issue to be: "whether the RTC erred in dismissing the Land Bank's petition for the determination of just compensation."[80]

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[78] *Gallardo-Corro v. Gallardo,* G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578.

[79] *Torres v. Sison,* G.R. No. 119811, August 30, 2001, 364 SCRA 37, 43.

[80] *Supra* at note 1, pp. 612-613.

The Court ruled in favor of Land Bank. For both Land Bank and Suntay (including his assignee Lubrica), the holding in *Land Bank v. Suntay* (G.R. No. 157903) became the law of the case that now controlled the course of subsequent proceedings in the RTC as a Special Agrarian Court. In *Cucueco v. Court of Appeals*,[81] the Court defined *law of the case* as "the opinion delivered on a former appeal." *Law of the case* is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[82] With the pronouncement in G.R. No. 157903 having undeniably become the law of the case between the parties, we cannot pass upon and rule again on the same legal issue between the same parties.

II.b.
***Land Bank v. Martinez* is neither applicable nor binding on the parties herein**

Suntay's reliance on *Land Bank v. Martinez* (G.R. No. 169008, July 31, 2008, 560 SCRA 776) is unavailing for the simple reason that the pronouncement was absolutely unrelated to the present controversy.

Land Bank v. Martinez concerned a different set of facts, a different set of parties, and a different subject matter; it was extraneous to the present matter, or to *DARAB v. Lubrica* (G.R. No. 159145) and *Land Bank v. Suntay* (G.R. No. 157903). Land Bank and Suntay (and his assignee Josefina Lubrica) were not parties in *Land Bank v. Martinez*, rendering the pronouncement inapplicable to them now.

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[81] G.R. No. 139278, October 25, 2004, 441 SCRA 290.

[82] *Id.*, pp. 300-301.

At best, *Land Bank v. Martinez* may only guide the resolution of similar controversies, *but only prospectively*. We note that *Land Bank v. Suntay* (G.R. No. 157903) was promulgated in October 11, 2007, while *Land Bank v. Martinez* was promulgated on July 31, 2008. The rule followed in this jurisdiction is that a judicial interpretation that varies from or reverses another is applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise is to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication.[83]

Accordingly, if posterior changes in doctrines of the Court cannot retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had,[84] we have stronger reasons to hold that such changes could not apply to a different proceeding with a different set of parties and facts.

Suntay is also incorrect to insinuate that a modification or reversal of a final and executory decision rendered by a division of the Court would be valid only if done by the Court *en banc*.[85] Such insinuation runs afoul of the well settled doctrine of immutability of judgments. Moreover, although Article VIII, Section 4 (1) of the Constitution gives the Court the discretion

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[83] Bersamin, *Appeal and Review in the Philippines*, 2nd Edition, Central Professional Books, Inc., Quezon City, pp. 223-224.

[84] *Lopez v. Northwest Airlines, Inc.,* G.R. No. 106973, June 17, 1993, 223 SCRA 469, 477.

[85] Paragraph 3.03g. of the respondent's *Comment* on Petition for Review on *Certiorari* (*Rollo*, p. 688) alleges:

> 3.03.g. Having become final and executory, *DARAB v. Lubrica* has become immutable and unalterable. Any subsequent attempt to modify or reverse the said decision would not only be ineffectual but unconstitutional, unless it is by the Supreme Court sitting *en banc*.
>
> "xxx Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

to sit either *en banc* or in divisions of three, five, or seven Members,[86] the divisions are not considered separate and distinct courts. Nor is a hierarchy of courts thereby established within the Supreme Court, which remains a unit notwithstanding that it also works in divisions. The actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court.[87] Lastly, the only thing that the Constitution allows the *banc* to do in this regard is to reverse a doctrine or principle of law laid down by the Court *en banc* or in division.[88]

II.c.
Pronouncement in *DARAB v. Lubrica* (G.R. No. 159145) was a mere *obiter dictum*

In *Department of Agrarian Reform Adjudication Board (DARAB) v. Lubrica* (G.R. No. 159145), the DARAB assigned as erroneous in its petition the following rulings of the CA: (*a*) that DARAB, being a formal party, should not have filed a comment to the petition, for, instead, the comment should have been filed by co-respondent Land Bank as the financial intermediary of CARP; (*b*) that DARAB had no jurisdiction

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[86] Section 4(1), Article VIII of the 1987 Constitution provides:

Section 4 (1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. **It may sit *en banc* or, in its discretion, in divisions of three, five or seven Members.** xxx. (Emphasis supplied)

[87] *United States v. Limsiongco*, 41 Phil. 94 (1920).

[88] Section 4(3), Article VIII of the 1987 Constitution says:

x x x x x x x x x

(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc;* Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*. (Emphasis supplied)

over DSCA 0252, a special civil action for *certiorari*; and (*c*) that the writ of preliminary injunction DARAB had issued in DSCA 0252 was null and void for having been in violation of the TRO of the CA.[89]

It is evident that the only issues considered and resolved in *DARAB v. Lubrica* (G.R. No. 159145) were: (*a*) the personality of DARAB to participate and file comment; (*b*) the jurisdiction of DARAB over petitions for *certiorari*; and (*c*) the validity of the preliminary injunction it issued. It is equally evident that at no time in *DARAB v. Lubrica* (G.R. No. 159145) did the finality of RARAD Miñas' decision become the issue, precisely because the finality of RARAD Miñas' decision had been put in issue instead in *Land Bank v. Suntay* (G.R. No. 157903), a suit filed ahead of *DARAB v. Lubrica* (G.R. No. 159145). In short, the question about the finality of RARAD Miñas' decision was itself the *lis mota* in *Land Bank v. Suntay* (G.R. No. 157903).

In view of the foregoing, Suntay's invocation of the pronouncement in *DARAB v. Lubrica* (G.R. No. 159145), to the effect that RARAD Miñas' decision had attained finality upon the failure of Land Bank to appeal within the 15-day reglementary period, was unfounded and ineffectual because the pronouncement was a mere *obiter dictum*.

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[90] It

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[89] *Supra* at note 3, p. 809.

[90] *Delta Motors Corporation v. C.A.*, G.R. No. 121075, July 24, 1997, 276 SCRA 212, 223.

does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point.[91] It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.[92]

II.d.
Suntay was estopped from denying being aware of existence of the judgment in *Land Bank v. Suntay* (G.R. No. 157903)

Suntay cannot deny or evade the adverse effect and conclusiveness of the adverse decision in *Land Bank v. Suntay* (G.R. No. 157903). He was aware of it due to his having actively participated therein. In the RTC, he had filed the motion to dismiss against Land Bank's petition for determination of just compensation. In the CA, he filed a motion for reconsideration against the adverse decision of the CA, which ultimately favored him by reconsidering the adverse decision. In this Court, he actively defended the CA's self-reversal, including filing an omnibus motion for partial reconsideration/clarification after the Court rendered its decision dated October 11, 2007. In view of his active participation in various stages, he cannot now turn his back on the judgment in *Land Bank v. Suntay* (G.R. No. 157903) simply because it was adverse to him in order to invoke instead the "favorable" ruling in *DARAB v. Lubrica* (G.R. No. 159145).

III.
Whether or not the manner of execution of RARAD Miñas' order dated October 30, 2008 was lawful

The writs of execution issued by RARAD Miñas and the manner of their enforcement by the DARAB sheriffs did not

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[91] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, March 4, 2005, 452 SCRA 714, 733-734.

[92] *City of Manila vs. Entote*, No. L-24776, June 28, 1974, 57 SCRA 497, 508-509.

accord with the applicable law and the rules of DARAB; hence, they were invalid and ineffectual.

III.a.
Order of October 30, 2008 to resume execution was invalid because there was nothing to resume

In *Land Bank v. Suntay* (G.R. No. 157903), the Court directed the parties on October 24, 2005 to maintain the *status quo* prior to the issuance of the *alias* writ of execution, holding that all actions done in compliance or in connection with the *alias* writ of execution were "DEEMED QUASHED, and therefore, of no force and effect."[93]

On October 25, 2005, RARAD Miñas herself quashed the acts done pursuant to her writ of execution, declaring that "all actions done in compliance or in connection with the xxx Writ" issued by her "are DEEMED QUASHED, and therefore, of no force and effect."[94]

As a result, the following acts done in compliance with or pursuant to the writ of execution issued *ex parte* by RARAD Miñas on September 14, 2005 were expressly quashed and rendered of no force and effect, to wit:

1. The DARAB sheriffs' issuance on September 15, 2005 of (*a*) the notice of demand against Land Bank; (*b*) the notice of levy on September 21, 2005 to Land Bank; (*c*) the notice of levy on September 28, 20005 to Bank of the Philippine Islands and to Hongkong Shanghai Bank Corporation; and (*d*) an order to deliver on October 5, 2005, addressed to Land Bank, "so much of the funds" in its custody "sufficient to satisfy the final judgment";
2. The holding by the DARAB sheriffs of the public auction sale on October 24, 2005 involving the levied PLDT and MERALCO shares of stock of Land Bank at the Office

[93] *Id.*, p. 349.
[94] *Id.*, pp. 355-356.

of the Regional Clerk of DARAB in Mandaluyong City, wherein Lubrica was the highest bidder;

3. The resumption on October 25, 2005 by the DARAB sheriffs of the public auction sale of some of Land Bank's remaining PLDT shares and First Gen Corp. bonds, wherein Lubrica was also declared the highest bidder; and

4. The issuance on October 25, 2005 by the DARAB sheriffs of two certificates of sale in favor of Lubrica as the highest bidder.

In view of the foregoing, the order issued on October 30, 2008 by RARAD Miñas directing the DARAB sheriffs to "resume the interrupted executions of the *Alias* Writ issued xxx on September 14, 2005"[95] was not legally effective and valid because there was no longer any existing valid prior acts or proceedings to resume enforcement or execution of.

Consequently, the following acts done by virtue of RARAD Miñas' October 30, 2008 order to resume the implementation of the September 15, 2005 writ of execution were bereft of factual and legal bases, to wit:

1. The DARAB sheriffs' service on PDTC and STSI of a demand to comply dated October 30, 2008;

2. Letter of PDTC dated October 31, 2008 informing Land Bank of the demand to comply and the action it had taken, and requesting Land Bank to "uplift" the securities;

3. PDTC's manifestation and compliance dated October 31, 2008 filed in the office of the RARAD, Region IV, stating, among others, that PDTC had already "issued a written notice" to Land Bank "to uplift the assets involved" and that PDTC "has caused the subject assets to be outside the disposition" of Land Bank; and

[95] *Rollo*, p. 390.

4. MERALCO's cancellation on November 28, 2008 of Land Bank's 42,002,750 shares, its issuance of new stock certificates in the name of Lubrica, and its subsequent recording of the transfer of ownership of the stocks in the company's stock and transfer book.

III.b.
Levy of Land Bank's MERALCO shares was void and ineffectual

A further cause that invalidated the execution effected against Land Bank's MERALCO shares derived from the statutory and reglementary provisions governing the payment of any award for just compensation. At the outset, we hold that Land Bank's liability under the CARP was to be satisfied only from the ARF.

The ARF was first envisioned in Proclamation No. 131 issued on July 22, 1987 by President Aquino to institute the Government's centerpiece Comprehensive Agrarian Reform Program, to wit:

Section 2. *Agrarian Reform Fund.* — There is hereby created a special fund, to be known as the Agrarian Reform fund, an initial amount of FIFTY BILLION PESOS (₱50,000,000,000.00) to cover the estimated cost of the Comprehensive Agrarian Reform Program from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust receipts of ill-gotten wealth received through the Presidential Commission on Good Government and such other sources as government may deem appropriate. The amounts collected and accruing to this special fund shall be considered automatically appropriated for the purpose authorized in this proclamation.

Executive Order No. 229 implemented the creation of the ARF, *viz*:

Section 20. *Agrarian Reform Fund.* — As provided in Proclamation No. 131 dated July 22, 1987, a special fund is created, known as The Agrarian Reform Fund, an initial amount of FIFTY BILLION PESOS (₱50 billion) to cover the estimated cost of the CARP from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust (APT) and receipts of the sale of ill-gotten wealth recovered through the Presidential Commission on

Good Government and such other sources as government may deem appropriate. The amount collected and accruing to this special fund shall be considered automatically appropriated for the purpose authorized in this Order.

In enacting the CARL, Congress adopted and expanded the ARF, providing in its Section 63, as follows:

Section 63. *Funding Source.*— The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229. Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

(a) Proceeds of the sales of the Assets Privatization Trust;

(b) All receipts from assets recovered and from sale of ill-gotten wealth recovered through the Presidential Commission on Good Government;

(c) Proceeds of the disposition of the properties of the Government in foreign countries;

(d) Portion of amounts accruing to the Philippines from all sources or official foreign aid grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

(e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation. (emphases supplied)

Subsequently, Republic Act No. 9700 amended the CARL in order to strengthen and extend the CARP. It is notable that Section 21 of Republic Act No. 9700 expressly provided that "all just compensation payments to landowners, including execution of judgments therefore, shall only be sourced from

the Agrarian Reform Fund;" and that "just compensation payments that cannot be covered within the approved annual budget of the program shall be chargeable against the debt service program of the national government, or any unprogrammed item in the General Appropriations Act."

The enactments of the Legislature decreed that the money to be paid to the landowner as just compensation for the taking of his land is to be taken only from the ARF. As such, the liability is not the personal liability of Land Bank, but its liability only as the administrator of the ARF. In fact, Section 10, Rule 19 of the 2003 *DARAB Rules of Procedure*, reiterates that the satisfaction of a judgment for just compensation by writ of execution should be from the ARF in the custody of Land Bank, to wit:

> Section 10. *Execution of judgments for Just Compensation which have become Final and Executory*. – **The Sheriff shall enforce a writ of execution** of a final judgment for compensation by demanding for the payment of the amount stated in the writ of execution **in cash and bonds against the Agrarian Reform Fund in the custody of LBP** [Land Bank of the Philippines] in accordance with RA 6657 xxx. (Emphases supplied)

Consequently, the immediate and indiscriminate levy by the DARAB sheriffs of Land Bank's MERALCO shares, without first determining whether or not such assets formed part of the ARF, disregarded Land Bank's proprietary rights in its own funds and properties.

The prior determination of whether the asset of Land Bank sought to be levied to respond to a judgment liability under the CARP in favor of the landowner was demanded by its being a banking institution created by law,[96] possessed with universal or expanded commercial banking powers[97] by virtue of Presidential

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[96] Republic Act No. 3844 (*Agricultural Land Reform Code*).

[97] Section 23 of Republic Act No. 8791 (*General Banking Act of 2000*) provides:

Decree No. 251.[98] As a regular bank, Land Bank is under the supervision and regulation of the Bangko Sentral ng Pilipinas.[99] Being the official depository of Government funds, Land Bank is also invested with duties and responsibilities related to the implementation of the CARP, mainly as the administrator of the ARF.[100] Given its discrete functions and capacities under the laws, Land Bank's assets and properties must necessarily come under segregation, namely: (*a*) those arising from its proprietary functions as a regular banking or financial institution; and (*b*) those arising from its being the administrator of the ARF. Indeed, Executive Order No. 267 has required Land Bank

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Section 23. *Powers of a Universal Bank.* — A universal bank shall have the authority to exercise, in addition to the powers authorized for a commercial bank in Section 29, the powers of an investment house as provided in existing laws and the power to invest in non-allied enterprises as provided in this Act. (21-B)

[98] Section 2 of Presidential Decree No. 251 expanded the powers of the Land Bank, thus:

Section 2. Section seventy-five of the same Act is hereby amended to read as follows:

"Sec. 75. Powers in General. The bank shall have the power:

x x x x x x x x x

"8. To underwrite, hold, own, purchase, acquire, sell, mortgage, dispose or otherwise invest or reinvest in stocks, bonds, debentures, securities and other evidences of indebtedness of other corporations and of the government or its instrumentalities which are issued for or in connection with any project or enterprise;"

x x x x x x x x x

12. To exercise the general powers mentioned in the Corporation Law and the General Banking Act, as amended, insofar as they are not inconsistent or incompatible with this Decree.

[99] Section 21 of Presidential Decree No. 251 states:

Section 21. Section ninety-seven of the same Act is hereby amended to read as follows:

"Sec. 97. *Central Bank Supervision*. The Bank shall be under the supervision and regulation of the Central Bank of the Philippines."

[100] Section 64 of Republic Act No. 6657 provides:

to segregate accounts,[101] to wit: (*a*) corporate funds, which are derived from its banking operations and are essentially moneys held in trust for its depositors as a financial banking institution; and (*b*) ARF, which comprise funds and assets expressly earmarked for or appropriated under the CARL to pay final awards of just compensation under the CARP.[102]

Suntay argues that the MERALCO shares of Land Bank were part of the ARF, submitting photocopied documents showing Land Bank to be one of the top stockholders of MERALCO under Land Bank's account number 1100052533.[103]

Land Bank disputes Suntay's argument, positing that its levied MERALCO shares, particularly those covered by Stock Certificate No. 87265, Stock Certificate No. 664638, Stock Certificate No. 0707447 and Stock Certificate No. 0707448

Sec. 64. *Financial Intermediary for the CARP*. — The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[101] Executive Order No. 267 entitled *Providing for the Issuance of National Government Binds to be Known as Agrarian Reform (AR) Bonds* (issued on July 25, 1995) provides:

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

x x x x x x x x x

2. **The segregation of the accounts of CARP-related transactions in the books of account maintained by the Land Bank of the Philippines,** except those specifically shouldered by the Land Bank of the Philippines; and

x x x x x x x x x

In the implementation of this order:

x x x x x x x x x

c) **Separate financial statements and records will be maintained for CARP-related transactions** and the LBP will be responsible for the administration of all the ARF funds entrusted to it or brought under its control. (emphasis supplied)

[102] *Rollo*, pp. 827-828.

[103] *Id.*, p. 904.

that were cancelled and transferred in favor of Lubrica, did not form part of the ARF. It explains that there are three different accounts relative to its MERALCO shares, to wit: (*a*) Trust Account No. 03-141, which was the subject of a Custodianship Agreement it had with the Asset Privatization Trust (APT); (*b*) Account titled "FAO PCGG ITF MFI", which was the subject of a Custodial Safekeeping Agreement between Land Bank and the Three-Man Board for the MERALCO Privatization (c/o PCGG); and (*c*) LBP Proprietary Account with PCD Nominee Corporation involving Stock Certificate No. 87265, Stock Certificate No. 664638, Stock Certificate No. 0707447 and Stock Certificate No. 0707448. It insists that the LBP Proprietary Account was not part of the ARF, and that its shares covered by Stock Certificate No. 87265, Stock Certificate No. 664638, Stock Certificate No. 0707447, and Stock Certificate No. 0707448 had been acquired or obtained in the exercise of its proprietary function as a universal bank.[104]

Land Bank presented copies of the Custodianship Agreement with the APT, the Custodial Safekeeping Agreement with the Three-Man Board for the MERALCO Privatization (c/o PCGG), and the joint affidavit of Land Bank's officers.

In light of the clarifications by Land Bank, the Court concludes that the procedure of execution adopted by the DARAB sheriffs thoroughly disregarded the existence of Land Bank's proprietary account separate and distinct from the ARF. The procedure thereby contravened the various pertinent laws and rules earlier adverted to and which the DARAB sheriffs were presumed to be much aware of, denying to the DARAB sheriffs any presumption in the regularity of their performance of their duties.

Also significant is that Section 20 of Executive Order No. 229 has mandated that the ARF "shall be sourced from the

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[104] *Id.*, pp. 955-959. (this is a provisional pagination only; see pp. 5-9 of Land Bank's Reply (*Re*: Verified Opposition to LNP's Motion/ Application for Issuance of TRO)).

receipts of the sale of the assets of the APT and receipts of the sale of ill-gotten wealth recovered through the PCGG and such other sources as government may deem appropriate;" and that Section 63 of the CARL has authorized that additional amounts be appropriated as and when needed to augment the ARF.

It should not be difficult to see the marked distinction between *proceeds* or *receipts*, on one hand, and *asset* or *wealth derived* from such proceeds or receipts, on the other hand. The term *proceeds* refers to "the amount proceeding or accruing from some possession or transaction,"[105] and is synonymous to product, income, yield, receipts**,** or returns.[106] Clearly, therefore, the ARF was sourced from the money or cash realized either from the sale of or as income from the assets or properties held by the APT or the PCGG. The levied MERALCO shares were neither proceeds nor receipts. Thus, the DARAB sheriffs had no authority to indiscriminately levy such shares because they were clearly not part of the ARF.

Moreover, the DARAB sheriffs did not strictly comply with the rule in force at the time of their execution of the writ of execution and the *alias* writ of execution, which was Section 10, Rule 19 of the *2003 DARAB Rules of Procedure, viz*:

Section 10. *Execution of judgments for Just Compensation Which Have Become Final and Executory*. – The **Sheriff shall enforce a writ of execution** of a final judgment for compensation **by demanding for the payment** of the amount stated in the writ of execution **in cash and bonds against the Agrarian Reform Fund** in the custody of LBP [Land Bank of the Philippines] **in accordance with RA 6657**, and **the LBP shall pay the same in accordance with the final judgment and the writ of execution within five (5) days from the time the landowner accordingly executes and submits to the LBP the**

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[105] *Words and Phrases*, Vol. 34, p. 205, citing *State ex. Rel. Ledwith v. Brian*, 120 N.W. 916, 917, 84 Neb. 30.

[106] *Id.*, p. 210, citing *Furst & Thomas v. Elliott*, 56 P.2d 1064, 1068, 56 Idaho, 491.

corresponding deed/s of transfer in favor of the government and surrenders the muniments of title to the property in accordance with Section 15 (c) of RA 6657. (Emphasis supplied)

As the rule reveals, a condition was imposed before Land Bank could be made to pay the landowner by the sheriff. The condition was for Suntay as the landowner to first submit to Land Bank the corresponding deed of transfer in favor of the Government and to surrender the muniments of the title to his affected property. Yet, by immediately and directly levying on the shares of stocks of Land Bank and forthwith selling them at a public auction to satisfy the amounts stated in the assailed writs without first requiring Suntay to comply with the condition, the DARAB sheriffs unmitigatedly violated the *2003 DARAB Rules of Procedure*.

Relevantly, Section 18 of the CARL, which Section 10 of the 2003 *DARAB Rules* of *Procedure* implements, has expressly listed the modes by which the landowner may choose to be paid his just compensation, thus:

> Section 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP or as may be finally determined by the court as just compensation for the land.
>
> The **compensation shall be paid in one of the following modes** at the option of the landowner:
>
> (1) **Cash payment**, under the following terms and conditions:
>
> (a) *For lands above fifty (50) hectares, insofar as the excess hectarage is concerned* — Twenty-five percent (25%) cash, the balance to be paid in government financial instruments negotiable at any time.
>
> (b) *For lands above twenty-four hectares and up to fifty (50) hectares* — Thirty percent (30%) cash, the balance to be paid in government financial instruments negotiable at any time.
>
> (c) *For lands twenty-four (24) hectares and below* — Thirty-five percent (35%) cash, the balance to be paid in government financial instruments negotiable at any time.

(2) **Shares of stock** in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) **Tax credits** which can be used against any tax liability;

(4) **LBP bonds**, which shall have the following features:

(a) *Market interest rates aligned with 91-day treasury bill rates.* Ten percent (10%) of the face value of the bonds shall mature every year from the date of issuance until the tenth (10th) year: *Provided*, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds;

(b) *Transferability and negotiability*. Such LBP bonds may be used by the landowner, his successors-in-interest or his assigns, up to the amount of their face value for any of the following:

(i) Acquisition of land or other real properties of the government, including assets under the Assets Privatization Program and other assets foreclosed by government financial institution in the same province or region where the lands for which the bonds were paid are situated;

(ii) Acquisition of shares of stock of government-owned or controlled corporations or shares or stock owned by the government in private corporations;

(iii) Substitution for surety or bail bonds for the provisional release of accused persons, or for performance bonds;

(iv) Security for loans with any government financial institution, provided the proceeds of the loans shall be invested in an economic enterprise, preferably in a small and medium-scale industry, in the same province or region as the land for which the bonds are paid;

(v) Payment for various taxes and fees to the government: *Provided*, That the use of these bonds for these purposes will be limited to a certain percentage of the outstanding balance of the financial instrument: *Provided, further*, That the PARC shall determine the percentages mentioned above;

> (vi) Payment for tuition fees of the immediate family of the original bondholder in government universities, colleges, trade schools and other institutions;
>
> (vii) Payment for fees of the immediate family of the original bondholder in government hospitals; and
>
> (viii) Such other uses as the PARC may from time to time allow.

In case of extraordinary inflation, the PARC shall take appropriate measures to protect the economy. (Emphases supplied)

We note that the DARAB sheriffs' method of execution did not adhere to any of the legally-authorized modes, to the extreme detriment of Land Bank.

Still, Suntay proposes that the resort to levying on the MERALCO shares of Land Bank was necessary, considering that it was Land Bank alone that had the control of the ARF.

The proposition is not only incorrect but also dangerous.

To start with, Land Bank could not simply shirk from or evade discharging its obligations under the CARP because the law mandated Land Bank with a positive duty.[107] The performance of its ministerial duty to fully pay a landowner the just compensation could subject its officials responsible for the non-performance to punishment for contempt of court.

And, secondly, tolerating the irregular execution carried out by the DARAB sheriffs would be dangerous to the viability of Land Bank as a regular banking institution as well as the administrator of the ARF. The total claim of Suntay under the assailed RARAD decision was only ₱157.5 million, but the worth of Land Bank's 53,557,257 MERALCO shares, 912,230 PLDT shares and First Gen Corporation bonds auctioned off by the DARAB sheriffs at ₱1.00 /share for the total of only ₱53,557,257.00 was probably about ₱841 million. If that probable

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[107] *Badillo v. Tayag*, G.R. Nos. 143976 and 145846, April 3, 2003, 400 SCRA 494, 502-504.

worth was true, the levy and execution were patently unconscionable and definitely worked against the interest of the Government represented by Land Bank.

Further, Suntay complains of the delay in the payment of just compensation due to him.

The Court finds that Suntay has only himself to blame. As early as in 2005 *Land Bank v. Suntay* (G.R. No. 157903) already opened the way for the RTC to determine the just compensation in Agrarian Case No. R-1241. Had he ensured the speedy disposition of Agrarian Case No. R-1241 in the RTC, he would not now be complaining.

IV.
Land Bank is entitled to all dividends pertaining to the invalidly levied shares of MERALCO

As earlier mentioned, Land Bank filed on May 5, 2010 an urgent verified motion for the issuance of a TRO or writ of preliminary injunction to enjoin MERALCO, its Corporate Secretary, and its Assistant Corporate Secretary, pending the proceedings and until the resolution of the case, from releasing the cash dividends pertaining to the disputed shares in favor of Lubrica or any person acting on her behalf.

Although the Court did not resolve the motion, it is time to look into the matter in light of the foregoing conclusions.

The Court has to declare as a necessary consequence of the foregoing conclusions that Land Bank remained fully entitled to all the cash and other dividends accruing to the MERALCO shares levied and sold by the DARAB sheriffs pursuant to the orders issued on September 14, 2005 and October 30, 2008 by RARAD Miñas, as if no levy and sale of them were made. In this connection, the Court affirms and reiterates the order issued on October 25, 2005 by RARAD Miñas (deeming to be quashed

[108] *Rollo,* pp. 355-356.

and of no force and effect "all actions done in compliance or in connection with" the writ of execution issued by her),[108] and the order issued on December 17, 2008 by RARAD Casabar directing:

> *(c)* MERALCO to cancel the stock certificates issued to Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to Land Bank and to record the restoration in MERALCO's stock and transfer book; and
>
> *(d)* PSE, PDTC, STSI, the Philippine Dealing System Holdings Corporation and Subsidiaries (PDS Group), and any stockbroker, dealer, or agent of MERALCO shares to stop trading or dealing on the shares.[109]

WHEREFORE, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the Decision promulgated June 5, 2009 in CA-G.R. SP No. 106104.

ACCORDINGLY, the Court:

(a) DIRECTS the Regional Trial Court, Branch 46, in San Jose, Occidental Mindoro to continue the proceedings for the determination of the just compensation of Federico Suntay's expropriated property in Agrarian Case No. R-1241;

(b) QUASHES and *NULLIFIES* the orders issued in DARAB Case No. V-0405-0001-00 on September 14, 2005 (granting Suntay's *ex parte* motion for the issuance of an *alias* writ of execution) and October 30, 2008 by RARAD Conchita C. Miñas (directing the DARAB sheriffs "to resume the interrupted execution of the *Alias* Writ in this case on September 14, 2005"), and all acts performed pursuant thereto;

(c) AFFIRMS and *REITERATES* the order issued on October 25, 2005 by RARAD Miñas (deeming to be quashed and of no force and effect "all actions done in compliance or in connection with" the writ of execution issued by her), and the order issued

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[109] *Id.*, pp. 598-601.

on December 17, 2008 by RARAD Marivic Casabar (directing MERALCO to cancel the stock certificates issued to Josefina Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to Land Bank and to record the restoration in MERALCO's stock and transfer book; and the Philippine Stock Exchange, Philippine Depository and Trust Corporation, Securities Transfer Services, Inc., and the Philippine Dealing System Holdings Corporation and Subsidiaries (PDS Group), and any stockbroker, dealer, or agent of MERALCO shares to stop trading or dealing on the shares);

(*d*) *DECLARES* Land Bank fully entitled to all the dividends accruing to its levied MERALCO shares of stocks as if no levy on execution and auction were made involving such shares of stocks;

(*e*) *COMMANDS* the Integrated Bar of the Philippines to investigate the actuations of Atty. Conchita C. Miñas in DARAB Case No. V-0405-0001-00, and to determine if she was administratively liable as a member of the Philippine Bar; and

(*f*) *ORDERS* the Department of Agrarian Reform Adjudication Board to conduct a thorough investigation of the sheriffs who participated in the irregularities noted in this Decision, and to proceed against them if warranted.

Costs against the respondent.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188381. December 14, 2011]

BAGUIO TRINITY DEVELOPERS, INC., herein represented by RICARDO JULIAN, *petitioner, vs.* **THE HEIRS OF JOSE RAMOS and THE HEIRS OF LEOPOLDO and VICTORINA NEPA; and the HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEAL TO THE COURT OF APPEALS; ANNULMENT OF JUDGMENT; REQUIREMENT TO ATTACH A CERTIFIED COPY OF THE CHALLENGED JUDGMENT OR FINAL ORDER, MANDATORY; WHEN MAY AN AGGRIEVED PARTY BE ALLOWED TO SUBMIT APPROPRIATE SECONDARY EVIDENCE; CASE AT BAR. — Evidently, when Section 4, Rule 47 of the Rules of Civil Procedure provided that "a certified copy of the judgment or final order or resolution shall be attached to the original copy of the petition intended for the court and indicated as such by the petitioner," it wanted to ensure that the Court is shown a genuine copy of the challenged judgment or final order before it acts on the petition. The Court is aware of the necessity of mandating strict compliance with procedural rules. Here, however, the 1990 earthquake resulted in the loss or destruction of the RTC records of the case. The administration of justice cannot stop to grind because of such loss and no one should suffer or benefit from it. And who can issue a certified copy of the lost orders? The answer is that it can be issued by the public officer in custody of the original of the document. Here, it is the clerk of court of the RTC that issued the challenged reconstitution orders. But the clerk of court issued a certification, conformably with Section 28 of Rule 132, that the relevant records are no longer available having been lost to an earthquake. That the record custodian could no longer issue a certified copy should not of course prevent an aggrieved party from pursuing his petition. The rules allow such party to submit appropriate secondary evidence. Section 5, Rule 130 of the Rules of Evidence provides that when the original document has been lost and its unavailability has been established, a party "may prove its contents by a copy or by a recital of its contents in some authentic document or by the

testimony of witnesses in the order stated." Copies of the challenged reconstitution orders from the LRA or the Register of Deeds are of course available to petitioner Baguio Trinity. But it could just as validly submit faithful copies of its challenged reconstitution orders, authenticated by a verified statement that these are copies of the original orders. The Baguio Trinity did. Consequently, the CA had no valid reason denying its petition for failure to attach a copy of the assailed reconstitution orders.

2. ID.; ID.; ID.; IT IS NOT RIGHT FOR THE COURT OF APPEALS TO DISMISS AN ACTION BY REASON OF LACHES WHEN NO INACTION IS EVIDENT ON THE PART OF THE PETITIONER; CASE AT BAR. — It is not right for the CA to dismiss such action by reason of *laches* simply because no inaction is evident on Baguio Trinity's part. In fact, it had been an unintentional object of relay between the lower courts which contributed to the delay in the proceedings. The petition for annulment alleged serious charges which if true can invalidate respondents' title. Such title had been subjected to two reconstitution proceedings that could have divested the true owner of title over his property. The conflict between the two sets of titles has to be resolved. The present standoff cannot remain indefinitely under a titling system that assures the existence of only one valid title for every piece of registered land. Evidently, *laches* cannot bar an action sought to relieve such intolerable standoff.

APPEARANCES OF COUNSEL

The Law Firm of Rondez & Partners for petitioner.
Agustin Paneda for respondents.

D E C I S I O N

ABAD, *J.*:

The case is about a) the requirement in a petition for annulment of judgment of the submission of a certified true copy of the assailed judgment or order and b) laches as a bar to a property owner's action to annul a reconstituted version of his title registered in another person's name.

The Facts and the Case

Spouses Meliton Grabiles and Leona Calderon (the Grabiles) were the original registered owners of a 2,933-square-meter lot in Rosario, La Union.[1] After a number of successive transfers the lot was eventually sold to petitioner Baguio Trinity Developers, Inc. on January 3, 1994, resulting in the issuance of Transfer Certificate of Title T-38340 in its name.

It appears, however, that in 1985 Anastacio Laroco and Leona Javier filed a reconstitution proceeding before Branch 31 of the Regional Trial Court (RTC) of Agoo, La Union, covering the Grabiles' original title. But for some reasons, the RTC's order of October 20, 1986 directed the reconstitution of the title in the name of one Maria Bernal. This order was annotated on the Grabiles' Original Certificate of Title (OCT) 1082 issued by the Register of Deeds of La Union.

In 1986, Melicia Silva filed a second petition purportedly on behalf of the Grabiles for the reconstitution of their original title also before Branch 31 of the RTC of Agoo. In its order of October 28, 1986, the RTC ordered the reconstitution of the title in the name of the Grabiles as OCT RO-4717. Entry 89953 of this reconstituted original title stated that the property had been sold in 1939 to a certain Jose Ramos. So, too, in 1944, the southern portion of the lot, covering 1,372 square meters, was sold to Quirini Parrocha who in turn sold it in 1955 to the spouses Leopoldo and Victorina Nepa (the Nepas). Respondents in this case are the heirs of these two buyers, Jose Ramos and the Nepas (the Ramos and Nepa heirs).

On September 14, 1995 petitioner Baguio Trinity filed a complaint for recovery and declaration of nullity of title and damages before the Municipal Trial Court (MTC) of Rosario, La Union, against the Ramos and Nepa heirs who held reconstituted titles over the property. Since Baguio Trinity presented the issue on the validity of the reconstituted titles issued by the RTC, a superior court, the MTC dismissed the complaint for lack of jurisdiction.

[1] Under Original Certificate of Title 1082 issued by the Register of Deeds, La Union.

On December 3, 1997 petitioner Baguio Trinity filed a second complaint for recovery of property, declaration of nullity of title, and damages before the RTC of Agoo, Branch 32. But, by Order of May 31, 2004, the RTC dismissed the complaint for lack of jurisdiction after finding that the assessed value of the subject property was below ₱20,000.00. Moreover, the court said that it could not annul an order issued by a co-equal court. The RTC also denied Baguio Trinity's motion for reconsideration, prompting it to file a petition for *certiorari* with the Court of Appeals (CA) on October 13, 2004. On September 13, 2007[2] the CA dismissed the petition, stating that Baguio Trinity's remedy should have been a petition to annul judgment under Rule 47 of the Rules of Court.

Three years later from the time the RTC dismissed the complaint or on December 20, 2007 petitioner Baguio Trinity filed with the CA a petition for annulment of the reconstitution orders that the RTC of Agoo, Branch 31, issued on October 20, 1986 and October 28, 1986, impleading the Ramos and Nepa heirs. Baguio Trinity claimed that the RTC had no jurisdiction to order reconstitution for the Grabiles' title since this was not lost. Further, the Grabiles could not have authorized anyone to institute the proceedings on their behalf since they had been long dead. Thus, the orders should be annulled for lack of jurisdiction.

On May 8, 2008 the CA[3] dismissed the petition on the grounds that it failed to attach a) a certified copy of the RTC Order dated October 20, 1986, and b) copies of the affidavits of witnesses and the documents, and the pleadings filed during the reconstitution proceedings, the notices of hearing, and the titles issued to petitioner's predecessors-in-interest in support of petitioner's cause of action. Further, petitioner paid insufficient docket fees.

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[2] Penned by Associate Justice Andres B. Reyes, Jr. with the concurrence of Associate Justices Jose C. Mendoza (now a Member of the Court) and Ramon M. Bato, Jr., CA *rollo*, pp. 122-131.

[3] Penned by Associate Justice Rebecca De Guia-Salvador with the concurrence of Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr., *rollo*, pp. 72-73.

Petitioner Baguio Trinity filed a motion for reconsideration and attached a copy of the affidavit of Cresencio Aspiras, their immediate predecessor, together with copies of reconstituted titles issued to previous owners to show the chain of ownership before Baguio Trinity acquired title to the property. It also paid the deficiency in the docket fees and explained that a certified true copy of the assailed Order cannot be obtained because the records were destroyed during the July 16, 1990 earthquake per RTC Certification of November 14, 2007.

But the CA denied petitioner's motion of November 7, 2008, citing Section 4, par. 2 of Rule 47 which provides that a "certified copy of the judgment or final order shall be attached to the original copy of the petition." The mandatory tenor of the requirement, said the CA, precluded Baguio Trinity's submission of some other copy of such judgment or final order.

In any event, the CA held that the petition was barred by *laches* since Baguio Trinity had notice of the reconstitution orders as early as 1995 when it filed an action (the first that it filed) for declaration of nullity of titles and damages before the MTC, a wrong court. Baguio Trinity filed its action to annul the orders of reconstitution with the CA only on December 21, 2007 or 12 years after that court affirmed the RTC order dismissing the complaint (the second action filed) before the RTC of Agoo, Branch 32.

Because the CA denied petitioner Baguio Trinity's motion for reconsideration of its ruling in its resolution of April 24, 2009, petitioner has taken recourse to this Court.

The Issue

The only issue before this Court is whether or not the CA erred in dismissing petitioner Baguio Trinity's action for annulment of judgment a) by reason of its failure to comply with the requirement of submission of certified true copies of the assailed RTC orders; and b) on ground of laches.

The Court's Rulings

One. In denying the petition before it, one of the grounds the CA gave was that petitioner Baguio Trinity failed to attach to its

petition for annulment of judgment a "certified copy of the judgment or final order," which requirement is mandatory. Without it, the court "would have no bases to form a decision." Besides, said the CA, petitioner could have obtained a certified copy of the same from the Land Registration Authority (LRA) which is usually furnished a copy, just as petitioner was able to secure a copy of the October 28, 1986 Order from the LRA. The Register of Deeds is also usually furnished a copy of such order.

Evidently, when Section 4, Rule 47 of the Rules of Civil Procedure provided that "a certified copy of the judgment or final order or resolution shall be attached to the original copy of the petition intended for the court and indicated as such by the petitioner," it wanted to ensure that the Court is shown a genuine copy of the challenged judgment or final order before it acts on the petition.

The Court is aware of the necessity of mandating strict compliance with procedural rules. Here, however, the 1990 earthquake resulted in the loss or destruction of the RTC records of the case. The administration of justice cannot stop to grind because of such loss and no one should suffer or benefit from it.

And who can issue a certified copy of the lost orders? The answer is that it can be issued by the public officer in custody of the original of the document.[4] Here, it is the clerk of court of the RTC that issued the challenged reconstitution orders. But the clerk of court issued a certification, conformably with Section 28 of Rule 132, that the relevant records are no longer available having been lost to an earthquake. That the record custodian could no longer issue a certified copy should not of course prevent an aggrieved party from pursuing his petition. The rules allow such party to submit appropriate secondary evidence.

Section 5, Rule 130 of the Rules of Evidence provides that when the original document has been lost and its unavailability has been established, a party "may prove its contents by a copy or by a recital of its contents in some authentic document or by the testimony of witnesses in the order stated." Copies of the

[4] Rules of Civil Procedure, Rule 130, Sec. 7; also in Rule 132, Sec. 24.

challenged reconstitution orders from the LRA or the Register of Deeds are of course available to petitioner Baguio Trinity. But it could just as validly submit faithful copies of its challenged reconstitution orders, authenticated by a verified statement that these are copies of the original orders. The Baguio Trinity did. Consequently, the CA had no valid reason denying its petition for failure to attach a copy of the assailed reconstitution orders.

Notably, the respondent Ramos and Nepa heirs have not questioned the authenticity of the submitted copies. At any rate, the Court notes that petitioner Baguio Trinity attached certified machine copies of the assailed Orders supplied by the LRA as annexes to the present petition.

As for copies of documents and pleadings filed during the reconstitution proceedings, the notices of hearing, and the titles issued to petitioner's predecessors-in-interest, which the CA wanted petitioner Baguio Trinity to submit, these could very well be adduced during the hearing since their relevance could hardly be discerned until the issues have been joined.

Two. The CA also dismissed petitioner's action for annulment of final orders on the further ground that such action is already barred by *laches*. The CA pointed out that petitioner Baguio Trinity learned of the reconstitution orders as early as 1995. Still, the action for the annulment of those orders was filed only 12 years later on December 21, 2007.

The RTC of Agoo ordered the reconstitution of the Grabiles title when, if Baguio Trinity's allegations were to be believed, the original of such title actually existed and had since been replaced through subsequent sales, terminating their ownership of the property. As things now stand, two sets of titles covering the same property, one based on transactions emanating from the original and another based on the reconstituted titles exist. One has to give way to the other.

Petitioner Baguio Trinity initially brought an action to annul the reconstituted versions of the Grabiles' title before the MTC of Rosario, La Union, on September 14, 1995 but that court dismissed the same for lack of jurisdiction and opined that it should be filed with the RTC.

Baguio Trinity filed a second action on December 3, 1997 for recovery of property, declaration of nullity of the titles, and damages before the RTC of Agoo, Branch 32, against the Ramos and Nepa heirs who held the reconstituted titles. But the RTC dismissed the action on May 31, 2004 saying that it cannot annul the orders issued by a co-equal court. This, the CA Sixth Division affirmed and held that Baguio Trinity should have availed itself of a petition for annulment under Rule 47.

Baguio Trinity finally filed before the CA an action for annulment of the reconstitution orders on the ground that the RTC did not have jurisdiction to issue them. It is not right for the CA to dismiss such action by reason of *laches* simply because no inaction is evident on Baguio Trinity's part. In fact, it had been an unintentional object of relay between the lower courts which contributed to the delay in the proceedings.

The petition for annulment alleged serious charges which if true can invalidate respondents' title. Such title had been subjected to two reconstitution proceedings that could have divested the true owner of title over his property. The conflict between the two sets of titles has to be resolved. The present standoff cannot remain indefinitely under a titling system that assures the existence of only one valid title for every piece of registered land. Evidently, *laches* cannot bar an action sought to relieve such intolerable standoff.

WHEREFORE, the Court *GRANTS* the petition and sets aside the Court of Appeals Resolutions dated May 8, 2008 and November 7, 2008 and directs such court to hear and decide the merits of the petition for annulment of judgment.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Sereno,[*] and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated December 12, 2011.

THIRD DIVISION

[G.R. No. 191491. December 14, 2011]

JEBSENS MARITIME, INC., represented by MS. ARLENE ASUNCION and/or ALLIANCE MARINE SERVICES, LTD., *petitioners, vs.* **ENRIQUE UNDAG,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION; STANDARD EMPLOYMENT CONTRACT; CONDITIONS WHEN CARDIOVASCULAR DISEASE IS CONSIDERED AS OCCUPATIONAL. — Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other. Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. x x x Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract. The 2000 POEA Amended Standard Terms and Conditions defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course

of employment" and "work-related illness" as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." x x x Sec. 32-A(11) of the 2000 POEA Amended Standard Terms and Conditions explicitly considers a cardiovascular disease as an occupational disease if the same was contracted under working conditions that involve any of the following risks – a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work. b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship. c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. Consequently, for cardiovascular disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.

2. **ID.; ID.; ID.; EMPLOYMENT BENEFITS; WHOEVER CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD ESTABLISH HIS OR HER RIGHT THERETO BY SUBSTANTIAL EVIDENCE. —** In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.

3. **ID.; ID.; ID.; ID.; THREE-DAY MEDICAL EXAMINATION DEADLINE, MANDATORY; RATIONALE. —** Respondent failed to comply with the mandatory 3-day medical examination deadline provided in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the

> Employment of Filipino Seafarers on Board Ocean-Going Vessels. x x x While the rule is not absolute, there is no credible explanation from respondent why he failed to comply with the mandatory rule considering his claim that in July, 2003, he was suffering from chest pain, shortness of breath and fatigue. An award of disability benefit to a seaman in this case, despite non-compliance with strict mandatory requirements of the law, cannot be sustained. The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness. To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Reynaldo A. Reyna for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review assails the September 16, 2009 Decision[1] and the March 3, 2010 Resolution[2] of the Court of Appeals *(CA)*, which set aside the October 17, 2005 and January 24, 2006 Resolutions of the National Labor Relations Commission *(NLRC)*, dismissing the complaint of respondent Enrique Undag *(respondent)* for disability benefits.

Records bear out that respondent was hired as Lead Operator on board the vessel FPSO Jamestown owned by Alliance Marine

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[1] *Rollo*, pp. 13-25.

[2] *Id*. at 27.

Services, Ltd. and managed by its local agent, Jebsens Maritime, Inc. *(petitioners)*. Respondent's contract with petitioners was for a period of four (4) months with a basic salary of US$806.00 a month. He was deployed on March 24, 2003 and eventually repatriated to the Philippines on July 18, 2003 after his contract with the petitioners had expired.

On September 24, 2003, about two months after repatriation, he went to see a physician, Dr. Efren Vicaldo *(Dr. Vicaldo)*, for a physical check-up and was diagnosed to have "Hypertensive cardiovascular disease, Atrial Fibrillation, Diabetes Mellitus II, Impediment Grade X (20.15%)." According to Dr. Vicaldo, respondent had a history of hypertension and diabetes and was at risk of developing a stroke, coronary artery disease and congestive heart failure. He likewise stated that respondent's ailment was aggravated by his work as a seaman and that he was no longer fit for work. For said reason, respondent requested for financial assistance from petitioners but the latter denied his request.

Constrained, he filed a complaint for sickness benefits against petitioners before the NLRC, alleging that he had been suffering from chest pains and difficulty of breathing since July 2003 when he was on board petitioners' vessel. Despite knowing his bad physical condition upon repatriation, the petitioners did not give him any financial assistance. Thus, he prayed that petitioners be ordered to reimburse him for his medical expenses and pay him sickness allowance amounting to US$3,224.00, including damages and attorney's fees.

Petitioners countered that respondent was not entitled to disability benefits because his repatriation was not due to medical reasons but due to the expiration of his employment contract. Petitioners basically argued that, under the POEA Standard Employment Contract *(POEA-SEC)*, a seafarer was entitled to disability benefits only if he had suffered a work-related illness during the term of his contract.

On June 30, 2005, after due hearing, the Labor Arbiter *(LA)* rendered a decision ordering petitioners to pay, jointly and

severally, respondent the Philippine peso equivalent of US$60,000.00 representing total permanent disability compensation benefits for US$3,224.00 sickness allowance, and 10% attorney's fees.

On appeal, however, the NLRC *reversed* the LA decision and denied respondent's claim for disability benefits. The NLRC reasoned out that respondent failed to present substantial evidence proving that he had suffered any illness while on board or after disembarking from petitioners' vessel. Respondent's motion for reconsideration was later denied.

Not satisfied with the NLRC decision, respondent appealed before the CA. On September 16, 2009, the CA rendered a decision *setting aside* the ruling of the NLRC. The appellate court stated that respondent was able to prove by substantial evidence that his work as a seafarer caused his hypertensive cardiovascular disease or, at least, was a relevant factor in contracting his illness. The CA explained that as Lead Operator, respondent performed multi-tasking functions which required excessive physical and mental effort. Moreover, he was also exposed to the perils of the sea and was made to endure unpredictable and extreme climate changes in the daily performance of his job. The CA also took judicial notice of the fact that overseas workers suffer a great degree of emotional strain while on duty on board vessels because of their being separated from their families for the duration of their contract. The CA was of the strong view that the inherent difficulties in respondent's job definitely caused his illness. The CA added that because of the nature of his work, the illness suffered by respondent contributed to the aggravation of his injury which was pre-existing at the time of his employment. Finally, the CA ruled that respondent is entitled to claim total and permanent disability benefits because of the undisputed doctor's findings that he "*is now unfit to resume work as a seaman in any capacity*," which clearly constitutes a permanent and total disability as defined by law.

Not in conformity with the CA decision, petitioners filed this petition for review praying for its reversal raising this lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING FULL DISABILITY BENEFITS TO THE PRIVATE RESPONDENT.

In advocacy of their position, petitioners argue that the CA committed a reversible error in awarding respondent disability benefits on the principal ground that there are numerous substantial and competent evidence on record which clearly establish the fact that respondent was guilty of fraudulent misrepresentation, hence, forfeiting his right to any benefits under the POEA contract. For one, respondent intentionally lied when he declared that he was not suffering from a previous medical condition in his pre-employment medical examination *(PEME)*. Specifically, he failed to disclose the fact that he was suffering from diabetes and heart problem, which is a clear case of concealment.

Secondly, respondent's illnesses were not acquired during the term of his contract with petitioners. He had no evidence showing that he acquired the heart problem and hypertension while he was on board the vessel. The fact that respondent passed his PEME does not automatically mean that he suffered his illness on board the vessel or that the same was not pre-existing.

Third, the Labor Code provision on permanent disability is not applicable in a claim for disability benefits under the POEA contract.

Respondent's Position

Respondent counters that petitioners never raised the issue of fraudulent misrepresentation before the labor tribunals despite being given the opportunity to do so. Hence, they are estopped from raising it for the first time on appeal. At any rate, he claims that he did not commit any fraud or misrepresentation because he underwent a stringent PEME, which included a blood and urine examination, conducted by the company-designated physician. His illness, therefore, was not pre-existing. In any

case, the pre-existence of an illness is not a bar for the compensability of a seafarer's illness. His non-compliance with the mandatory 3-day reporting upon sign off is irrelevant because it only applies to a seafarer who has signed off from the vessel for medical reasons.

Moreover, respondent argues that a repatriation due to a finished contract does not preclude a seafarer from recovery of benefits, as the only requirement is that the disease must be a consequence or a result of the work performed. He has shown by substantial evidence that his cardiovascular disease was work-related. The strenuous work conditions that he experienced while on sea duty coupled with his usual encounter with the unfriendly forces of nature increased the risk of contracting his heart ailment.

Lastly, he asserts that his disability is permanent and total because he has been declared to be unfit for sea duty for which he is entitled to recover attorney's fees and litigation costs under Article 2208.

THE COURT'S RULING

No substantial evidence that illness was work-related

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.[3]

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment

[3] *Magsaysay Maritime Corp. and/or Cruise Ships Catering and Services International N.V. v. National Labor Relations Commission and Rommel B. Cedol*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 372-373.

Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

X x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The 2000 POEA Amended Standard Terms and Conditions defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These are:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1) The seafarer's work must involve the risks described herein;

2) The disease was contracted as a result of the seafarer's exposure to the described risks;

3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4) There was no notorious negligence on the part of the seafarer.

Sec. 32-A(11) of the 2000 POEA Amended Standard Terms and Conditions explicitly considers a cardiovascular disease as an occupational disease if the same was contracted under working conditions that involve any of the following risks –

a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.

b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.

c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

Consequently, for cardiovascular disease to constitute an occupational disease for which the seafarer may claim compensation, it is incumbent upon said seafarer to show that he developed the same under any of the three conditions identified above.[4]

In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right

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[4] *Carlos N. Nisda v. Sea Serve Maritime Agency and Khalifa A. Algosaibi Diving and Marine Services*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 695.

thereto by substantial evidence.[5] Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.[6]

In this case, the Court is of the considered view that respondent failed to prove that his ailment was work-related and was acquired during his 4-month sea deployment. Respondent claims that sometime in July 2003, he showed manifestations of a heart disease when he suddenly felt chest pains, shortness of breath and fatigability.[7] He, however, never substantiated such claim. He never showed any written note, request or record about any medical check-up, consultation or treatment. Similarly, he failed to substantiate his allegation that after his arrival in Manila on July 18, 2003, he reported to petitioners' office on July 31, 2003 to seek medical consultation for the discomfort he was experiencing but petitioners ignored him.[8]

He also alleged that on August 4, 2003, more or less sixteen (16) days after arriving in Manila, he underwent a physical and laboratory examination at the Maritime Clinic for International Service, Inc. conducted by petitioners where he was declared to be unfit for sea duty. Again, there is no record of this except his self-serving claim. What is on record is that on September 24, 2003, respondent surfaced demanding payment of disability benefits.

Respondent failed to comply with the mandatory 3-day rule

More importantly, respondent failed to comply with the mandatory 3-day medical examination deadline provided in

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[5] *Alex C. Cootauco v. MMS Phil. Maritime Services, Inc., Ms. Mary C. Maquilan and/or MMS Co. Ltd.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544-545.

[6] *Edgardo M. Panganiban v. Tara Trading Ship Management, Inc. & ShinLine SDN BHD*, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 365.

[7] *Rollo*, p. 130.

[8] *Id.* at 213.

Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. As earlier stated, it was only on September 24, 2003, or more than two (2) months after his arrival in Manila, that he sought a medical opinion from Dr. Vicaldo who declared him unfit to work as a seaman due to "hypertensive cardiovascular disease, atrial fibrillation and diabetes mellitus II."[9] Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, reads:

> Section 20(B), paragraph (3) thereof states:
>
> X x x x x x x x x.
>
> 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one-hundred twenty (120) days.
>
> For this purpose, the seafarer **shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return <u>except</u> when he is physically incapacitated to do so**, in which case a written notice to the agency within the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits**. [Emphases and underscoring supplied]

While the rule is not absolute, there is no credible explanation from respondent why he failed to comply with the mandatory rule considering his claim that in July, 2003, he was suffering from chest pain, shortness of breath and fatigue. An award of disability benefit to a seaman in this case, despite non-compliance with strict mandatory requirements of the law, cannot be sustained. The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier

[9] *Id*. at 213-214.

for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

Respondent claims that the 3-day mandatory rule is not applicable as it is only for those who were repatriated for medical reasons. This could only mean that he had no medical reason then. In his pleadings, he claimed that sometime in July 2003, he showed manifestations of a heart disease as he suddenly felt chest pains, shortness of breath and fatigability.[10] He, however, failed to disclose when exactly in July 2003 that he felt those manifestations whether before or after his repatriation on July 18, 2003. If it was before the said date, he should have submitted himself to a medical examination three days after repatriation.

The Court's ruling is not novel. In the past, the Court repeatedly denied the payment of disability benefits to seamen who failed to comply with the mandatory reporting and examination requirement. Lately, in the recent case of *Alex C. Cootauco v. MMS Phil. Maritime Services, Inc.*,[11] it was written:

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a **company-designated physician within three working days** upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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[10] *Id.* at 130.

[11] G.R. No. 184722, March 15, 2010, 615 SCRA 529, 543-544.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three working days from arrival for diagnosis and treatment.

Applying the above provision of Section 20(B), paragraph (3), petitioner is required to undergo post-employment medical examination by a company-designated physician within three working days from arrival, except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period would suffice.

In *Maunlad Transport, Inc. v. Manigo, Jr.*, this Court explicitly declared that it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits.

The NLRC and the Court of Appeals determined that petitioner did not observe the established procedure as there is no proof at all that he reported to the office of the respondents. We see no reason to depart from their findings. While petitioner remains firm that he reported to the office of the respondents for mandatory reporting, the records are bereft of any proof to fortify his claim. The *onus probandi* falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence. There is absolutely no evidence on record to prove petitioner's claim that he reported to respondents' office for mandatory reportorial requirement. Petitioner therefore failed to adduce substantial evidence as basis for the grant of relief. [Emphasis and underscoring supplied]

The Court reiterated the same ruling in the case of *Coastal Safeway Marine Services, Inc. vs. Elmer T. Esguerra,*[12] where it was written:

For this purpose, the seafarer **shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[12] G.R. No. 185352, August 10, 2011.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

The **foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment**. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC. [Emphases and underscoring supplied]

WHEREFORE, the petition is *GRANTED*. The September 16, 2009 Decision of the Court of Appeals and its March 3, 2010 Resolution are hereby *REVERSED* and *SET ASIDE*, and the October 17, 2005 and January 24, 2006 Resolutions of the National Labor Relations Commission are *REINSTATED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 196063. December 14, 2011]

ORLANDO A. RAYOS, FE A. RAYOS-DELA PAZ, represented by DR. ANTONIO A. RAYOS, and ENGR. MANUEL A. RAYOS, *petitioners, vs.* **THE CITY OF MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REMEDY AVAILABLE IN CASE OF A DENIAL OF AN INTERLOCUTORY ORDER; RATIONALE. — An order denying a motion to dismiss is interlocutory and not appealable. An order denying a motion to dismiss does not finally dispose of the case, and in effect, allows the case to proceed until the final adjudication thereof by the court. As such, it is merely interlocutory in nature and thus, not appealable. x x x Clearly, no appeal, under Rule 45 of the Rules of Court, may be taken from an interlocutory order. In case of denial of an interlocutory order, the immediate remedy available to the aggrieved party is to file a special civil action for *certiorari* under Rule 65 of the Rules of Court.

2. ID.; ID.; ID.; THE PRINCIPLE OF HIERARCHY OF COURTS SHOULD BE FOLLOWED; EXCEPTION; NOT PRESENT IN CASE AT BAR. — Even if the Court treats the present petition as a petition for *certiorari* under Rule 65, which is the proper remedy to challenge the order denying the motion to dismiss, the same must be dismissed for violation of the principle of hierarchy of courts. This well-settled principle dictates that petitioners should file the petition for *certiorari* with the Court of Appeals, and not directly with this Court. Indeed, this Court, the Court of Appeals and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction. However, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum. x x x In short, to warrant a direct recourse to this Court, petitioners must show exceptional and compelling reasons therefor, clearly and specifically set out in the petition. This petitioners failed to do.

3. ID.; ID.; DECLARATORY RELIEF; PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION OR *MANDAMUS* ONLY IN CASES WITH FAR REACHING IMPLICATIONS AND TRANSCENDENTAL ISSUES THAT NEED TO BE RESOLVED; NOT PRESENT IN CASE AT BAR. — While this Court may treat a petition for declaratory relief as one for prohibition or *mandamus*, over which this Court exercises original jurisdiction, it must be stressed that this special treatment is undertaken only in cases with far reaching implications and transcendental issues that need to be resolved. In the present case, there is absolutely nothing which shows that it has far-reaching implications and involves transcendental questions deserving of this Court's treatment of the petition as one for prohibition or *mandamus*.

APPEARANCES OF COUNSEL

Office of the City Legal Officer for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition, captioned as a petition for review on *certiorari* and declaratory relief,[1] assails the Order of 6 January 2011[2] of the Regional Trial Court of Manila, Branch 49, denying reconsideration of the trial court's Order of 11 March 2010[3] which denied the motion to dismiss filed by petitioners Orlando A. Rayos, Fe A. Rayos Dela Paz, and Engr. Manuel A. Rayos.[4]

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[1] *Rollo*, p. 16.

[2] *Id*. at 24. Penned by Pairing Judge William Simon P. Peralta.

[3] *Id*. at 25-26.

[4] Petitioners included Remedios V. De Caronongan, Patria R. Serrano, Paz B. Sison (represented by Engr. Reynaldo B. Sison), Teofila B. Sison, Leticia R. Ventanilla, and Rosalinda R. Barrozo as co-petitioners in the title of the petition; however, only petitioners signed the Verification and Certification against Forum-Shopping (*id*. at 21).

The Facts

The present case originated from a complaint for eminent domain filed by respondent City of Manila against Remedios V. De Caronongan, Patria R. Serrano, Laureano M. Reyes, Paz B. Sison, Teofila B. Sison, Leticia R. Ventanilla, Rosalinda R. Barrozo (defendants), docketed as Civil Case No. 03108154.

In its Complaint,[5] the City of Manila alleged that it passed Ordinance No. 7949 authorizing the City Mayor to acquire "by expropriation, negotiation or by any other legal means" the parcel of land co-owned by defendants, which is covered by TCT No. 227512 and with an area of 1,182.20 square meters. The City of Manila offered to purchase the property at ₱1,000.00 per square meter.

In their Answer,[6] defendants conveyed their willingness to sell the property to the City of Manila, but at the price of ₱50,000.00 per square meter which they claimed was the fair market value of the land at the time.

In the course of the proceedings, Laureano, one of the defendants, died on 1 December 2003 and was substituted by his son petitioner Manuel A. Rayos. Meanwhile, petitioner Orlando A. Rayos intervened while petitioner Fe A. Rayos Dela Paz was added as a defendant.

On 7 December 2009, petitioners Orlando A. Rayos, Fe A. Rayos Dela Paz, and Engr. Manuel A. Rayos filed a Motion to Dismiss on the grounds that (1) Ordinance No. 7949 is unconstitutional and (2) the cases of *Lagcao v. Labra*[7] and *Jesus Is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*[8] apply squarely to the present case.

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[5] *Id*. at 41-45.

[6] *Id*. at 58-62.

[7] 483 Phil. 303 (2004).

[8] 503 Phil. 845 (2005).

On 11 March 2010, the trial court denied the motion to dismiss. The trial court ruled that the motion to dismiss did not show any compelling reason to convince the court that the doctrine of *stare decisis* applies. Petitioners failed to demonstrate how or why the facts in this case are similar with the cited cases in order that the issue in this case be resolved in the same manner. The trial court disposed of the motion to dismiss in this wise:

> In view of the foregoing, and after intense evaluation of the records on hand, the Motion to Dismiss cannot be granted.
>
> In order to prevent further delay to the prejudice of all the proper parties in this case, continue with the trial for the determination of just compensation on July 7, 2010 at one o'clock in the afternoon.
>
> SO ORDERED.[9]

On 6 January 2011, the trial court denied the motion for reconsideration.

Petitioners filed with this Court the present petition reiterating the arguments in their motion to dismiss, namely, (1) Ordinance No. 7949 is unconstitutional, and (2) the cases of *Lacgao v. Labra*[10] and *Jesus Is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*[11] apply squarely to this case.

The Ruling of the Court

We deny the petition.

An order denying a motion to dismiss is interlocutory and not appealable.[12] An order denying a motion to dismiss does not finally dispose of the case, and in effect, allows the case

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[9] *Rollo*, p. 26.

[10] *Supra* note 7.

[11] *Supra* note 8.

[12] *Fil-Estate Golf and Development, Inc. v. Navarro*, G.R. No. 152575, 29 June 2007, 526 SCRA 51, 55, citing *Lu Ym v. Nabua*, G.R. No. 161309, 23 February 2005, 452 SCRA 298.

to proceed until the final adjudication thereof by the court. As such, it is merely interlocutory in nature and thus, not appealable.[13] Section 1(c), Rule 41 of the Rules of Court provides:

> SECTION 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> x x x x x x x x x
>
> (c) An interlocutory order;
>
> x x x x x x x x x
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Clearly, no appeal, under Rule 45 of the Rules of Court, may be taken from an interlocutory order. In case of denial of an interlocutory order, the immediate remedy available to the aggrieved party is to file a special civil action for *certiorari* under Rule 65 of the Rules of Court.

In this case, since the trial court's order denying the motion to dismiss is not appealable, petitioners should have filed a petition for *certiorari* under Rule 65 to assail such order, and not a petition for review on *certiorari* under Rule 45 of the Rules of Court. For being a wrong remedy, the present petition deserves outright dismissal.

Even if the Court treats the present petition as a petition for *certiorari* under Rule 65, which is the proper remedy to challenge the order denying the motion to dismiss, the same must be dismissed for violation of the principle of hierarchy of courts. This well-settled principle dictates that petitioners should file the petition

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[13] *United Overseas Bank v. Ros*, G.R. No. 171532, 7 August 2007, 529 SCRA 334, 344.

for *certiorari* with the Court of Appeals, and not directly with this Court.

Indeed, this Court, the Court of Appeals and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction.[14] However, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum.[15] In *Heirs of Bertuldo Hinog v. Melicor*,[16] citing *People v. Cuaresma*,[17] the Court held:

> **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive**. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts**. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition**. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied.)

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[14] *Chong v. Dela Cruz,* G.R. No. 184948, 21 July 2009, 593 SCRA 311, citing *Talento v. Escalada, Jr.*, G.R. No. 180884, 27 June 2008, 556 SCRA 491.

[15] *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, G.R. No. 183409, 18 June 2010, 621 SCRA 295, 309-310.

[16] 495 Phil. 422, 432 (2005).

[17] 254 Phil. 418, 426-427 (1989).

In short, to warrant a direct recourse to this Court, petitioners must show exceptional and compelling reasons therefor, clearly and specifically set out in the petition. This petitioners failed to do.

Petitioners merely rehashed the arguments in their motion to dismiss, which consist mainly of unsubstantiated allegations. Petitioners invoke the cases of *Lagcao v. Labra*[18] and *Jesus Is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*[19] in challenging the constitutionality of Ordinance No. 7949 without, however, showing clearly the applicability and similarity of those cases to the present controversy. Neither did petitioners explain why Ordinance No. 7949 is repugnant to the Constitution. Nor did petitioners specifically and sufficiently set forth any extraordinary and important reason to justify direct recourse to this Court.[20]

Likewise, assuming the present petition is one for declaratory relief,[21] as can be gleaned from the caption of the petition, this Court has only appellate, not original, jurisdiction over such

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[18] *Supra* note 7.

[19] *Supra* note 8.

[20] See *Chong v. Dela Cruz*, G.R. No. 184948, 21 July 2009, 593 SCRA 311.

[21] Governed by Rule 63 of the Rules of Court. Section 1, Rule 63 of the Rules of Court states:

RULE 63

Declaratory Relief and Similar Remedies

Section 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[22] *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236, citing *De la Llana v. Alba*, No. 57883, 12 March 1982, 112 SCRA 294.

a petition. While this Court may treat a petition for declaratory relief as one for prohibition[22] or *mandamus*, over which this Court exercises original jurisdiction,[23] it must be stressed that this special treatment is undertaken only in cases with far reaching implications and transcendental issues that need to be resolved.[24]

In the present case, there is absolutely nothing which shows that it has far-reaching implications and involves transcendental questions deserving of this Court's treatment of the petition as one for prohibition or *mandamus*.

WHEREFORE, we *DENY* the petition.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

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[23] Section 5, Article VIII of the Constitution expressly provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto,* and *habeas corpus*.

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:**

(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. (Emphasis supplied.)

[24] *Salvacion v. Central Bank of the Philippines,* 343 Phil. 539 (1997); *Alliance of Government Workers v. Minister of Labor,* 209 Phil. 1 (1983), citing *Nacionalista Party v. Bautista,* 85 Phil. 101, and *Aquino, Jr. v. Commission on Elections,* No. L-40004, 31 January 1975, 62 SCRA 275.

SECOND DIVISION

[G.R. No. 196685. December 14, 2011]

GOODLAND COMPANY, INC., *petitioner, vs.* **ABRAHAM CO and CHRISTINE CHAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; A JUDGMENT OF ACQUITTAL CANNOT BE MODIFIED EXCEPT TO ELIMINATE SOMETHING WHICH IS CIVIL OR ADMINISTRATIVE IN NATURE. —** It is settled that a judgment of acquittal cannot be recalled or withdrawn by another order reconsidering the dismissal of the case, nor can it be modified except to eliminate something which is civil or administrative in nature. One exception to the rule is when the prosecution is denied due process of law. Another exception is when the trial court commits grave abuse of discretion in dismissing a criminal case by granting the accused's demurrer to evidence. If there is grave abuse of discretion, granting Goodland's prayer is ***not*** tantamount to putting Co and Chan in double jeopardy.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; DEFINED. —** We have explained "grave abuse of discretion" to mean thus: An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.

APPEARANCES OF COUNSEL

Belo Gozon Parel Asuncion & Lucila for petitioner.

Yorac Arroyo Chua Caedo & Coronel Law Firm for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 196685 is an appeal[1] from the Decision[2] promulgated on 20 December 2010 as well as the Resolution[3] promulgated on 27 April 2011 by the Court of Appeals (CA) in CA-G.R. SP No. 112769. The CA affirmed the 2 September 2009 Resolution[4] of Branch 146 of the Regional Trial Court of Makati City (RTC) in Civil Case No. 09-219. In turn, the RTC denied the petition for annulment of the Orders of Branch 64 of the Metropolitan Trial Court of Makati City (MeTC) in Criminal Case No. 332313.

The 16 October 2008 Order[5] of the MeTC granted the Demurrer to Evidence filed by Abraham Co (Co) and Christine Chan (Chan) (collectively, respondents). The MeTC dismissed Criminal Case No. 332313 for failure of the prosecution to present sufficient and competent evidence to rebut the presumption of innocence in favor of respondents. The 13 January 2009 Order[6] of the MeTC denied for utter lack of merit the Motion for Inhibition and Motion for Reconsideration of the 16 October 2008 Order.

The Facts

The appellate court narrated the facts of the case as follows:

Petitioner-appellant Goodland Company, Inc. ("Goodland"), a corporation duly organized and existing in accordance with Philippine

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 11-34. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios, concurring.

[3] *Id.* at 36-37. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios, concurring.

[4] *Id.* at 57-60. Penned by Judge Encarnacion Jaja G. Moya.

[5] *Id.* at 47-53. Penned by Judge Ronald B. Moreno.

[6] *Id.* at 54-56. Penned by Judge Ronald B. Moreno.

laws, is the registered owner of a parcel of land covered by TCT No. (192674) 114645 located at Pasong Tamo, Makati City containing an area of 5,801 square meters, more or less (hereinafter "Makati property").

Goodland and Smartnet Philippines, Inc. ("Smartnet"), likewise a duly organized and registered corporation, are part of the Guy Group of Companies, owned and controlled by the family of Mr. Gilbert Guy.

Sometime in 2000, Goodland allowed the use of its Makati property, by way of accommodation, as security to the loan facility of Smartnet with Asia United Bank (AUB). Mr. Guy, Goodland's Vice President, was allegedly made to sign a Real Estate Mortgage (REM) document in blank. Upon signing the REM, Mr. Guy delivered the same to AUB together with the original owner's copy of the TCT covering the the Makati property.

Mr. Rafael Galvez, the Executive Officer of Goodland, who had custody of the title to the Makati property, handed over the original of the said title to Mr. Guy, after being reassured that it would be turned over to AUB along with a blank REM, and that it would serve as mere comfort document and could be filled up only if and when AUB gets the conformity of both Smartnet and Goodland.

About two (2) years thereafter, Goodland found out that the REM signed in blank by Mr. Guy has been allegedly filled up or completed and annotated at the back of the title of the Makati property. Goodland thus wrote a letter to the National Bureau of Investigation (NBI) requesting for an investigation of the fraud committed by private respondents. The NBI, thru a Letter-Report dated February 10, 2003, recommended the filing of criminal charges of falsification against private respondents Abraham Co and Christine Chan, and Atty. Joel Pelicano, the notary public who notarized the questioned REM.

After the requisite preliminary investigation, the Makati Prosecutor's Office filed an Information for Falsification of Public Document defined and penalized under Article 172 in relation to Article 171 (2) of the Revised Penal Code against private respondents Co and Chan and Atty. Pelicano. The Information states:

> That on or about the 29th day of February 2000, in the City of Makati, a place within the jurisdiction of this Honorable Court, the above-named accused Abraham Co and Christine Chan who are private individuals and Joel T. Pelicano, a Notary Public,

conspiring and confederating together and mutually helping and aiding with each other, did then and there willfully, unlawfully and feloniously falsify Real Estate Mortgage, a public document, causing it to appear, as it did appear, that Mr. Gilbert Guy, Vice President of Goodland Company, Inc., participated in the preparation and execution of said Real Estate Mortgage whereby complainant corporation mortgaged to Asia United Bank a real property covered by Transfer Certificate of Title No. 11645 and by then and there causing aforesaid Real Estate Mortgage to be notarized by accused Atty. Joel Pelicano, who in fact notarized said document on August 3, 2000 under Document No. 217, Page No. 44, Book No. XVII, Series of 2000 of his Notarial Register, thus making it appear, that Gilbert Guy has acknowledged the said Real Estate [Mortgage] before him, when in truth and in fact Gilbert Guy did not appear nor acknowledge said document before Notary Public Joel T. Pelicano and thereafter herein accused caused the aforesaid Real Estate [Mortgage] document to be registered with the office of the Register of Deeds of Makati City on March 8, 2001."

The case was raffled to the Metropolitan Trial Court, Branch 64, Makati City and docketed as Criminal Case No. 332313. The prosecution presented the testimonies of (1) Rafael Galvez, Executive Officer of Goodland, (2) Leo Alberto Pulido, Systems Manager of Smartnet, (3) NBI Special Agent James Calleja, (4) Atty. Joel Pelicano, and (5) Atty. Alvin Agustin Tan Ignacio, Corporate Secretary of Goodland.

After the prosecution formally offered its evidence and rested its case, herein private respondents filed a Motion for Leave of Court to File Demurrer to Evidence with attached Demurrer to Evidence claiming that the prosecution failed to substantiate its claim that they are guilty of the crime charged. Private respondents alleged that the prosecution failed to establish the second and third elements of the crime as the prosecution was unable to provide any proof that private respondents caused it to appear in a document that Mr. Gilbert Guy participated in an act and that the prosecution failed to establish that Mr. Gilbert Guy did not participate in said act. Thus, private respondents alleged that the prosecution's evidence itself showed that Mr. Gilbert Guy signed the REM, delivered the original transfer certificates of title to AUB and that Mr. Guy was duly authorized by Goodland's Board of Directors to execute the REM. They likewise claimed that the prosecution failed to prove that the REM was submitted as a comfort

document as the testimonies of the witnesses (referring to Galvez, Pulido, Calleja, Pelicano and Ignacio) proving this matter were hearsay and lacked probative value. Also, the prosecution failed to present direct evidence showing the involvement of private respondents in the alleged falsification of document.

The prosecution opposed the Demurrer to Evidence contending that it was able to prove [that] Mr. Guy did not participate in the execution of the REM because Goodland did not consent to the use of its Makati property to secure a loan and it has no outstanding credit for any peso loan. The loan of Smartnet was not secured by any collateral. The REM shows signs of falsification: Mr. Guy signed the REM in blank in the presence of Atty. Ignacio and before the adoption of the board resolution authorizing the use of the subject property to secure Smartnet's credit; the REM filed in Pasig City is different from the one filed in the Makati Register of Deeds; and the CTCs appearing in the REM (particularly of Mr. Gilbert Guy) were issued in 2001 when the REM was executed on 2000. Atty. Pelicano also denies having affixed his signature in the notarization.[7]

The Metropolitan Trial Court's Ruling

In its Order[8] dated 16 October 2008, the MeTC granted the Demurrer to Evidence of respondents. The MeTC enumerated the elements for the crime of Falsification of Public Document by making it appear that a party participated in an act or proceeding when he/she did not:

1. That the offender is a private individual or a public officer or employee who did not take advantage of his official position;

2. That the offender caused it to appear that a person or persons have participated in any act or proceeding;

3. That such person or persons did not in fact so participate in the act or proceeding;

4. The falsification was committed in a public or official document.[9]

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[7] *Id.* at 11-16.

[8] *Id.* at 47-53.

[9] *Id.* at 49, citing Luis B. Reyes, *The Revised Penal Code*: Book II, 16th Edition, 2006, pp. 207 and 219.

The MeTC found that although Goodland established the first and fourth elements, it failed to prove the second and third elements of the crime. Goodland was unable to present competent evidence that the Real Estate Mortgage was indeed falsified. Hence, Goodland erred in relying on the presumption that the person in possession of the falsified document is deemed the falsifier. Assuming that the Real Estate Mortgage is indeed falsified, Goodland presented no competent evidence to show that the Real Estate Mortgage was transmitted to any of the respondents. Guy's affidavit stated that he delivered the Real Estate Mortgage to Chan; however, the affidavit is merely hearsay as Guy never testified, and the affidavit referred to properties in Laguna which are not the subject of the present case.

The MeTC declared that the record shows that other than the fact that Co and Chan are President and Vice President of Asia United Bank, no other evidence was presented by Goodland to show that Co and Chan performed acts which amounted to falsification in the execution of the questioned Real Estate Mortgage.

The MeTC found insufficient the testimonies of Mr. Pulido, Mr. Galvez, NBI Agent Calleja and Atty. Ignacio to prove that Guy merely signed the Real Estate Mortgage as a comfort document. None of the witnesses have any personal knowledge of the circumstances of the discussions between Guy and Asia United Bank. Guy's non-presentation as a witness raised the disputable presumption that his testimony would have been adverse to Goodland.

The dispositive portion of the MeTC's Order states thus:

> WHEREFORE, premises considered, the Demurrer to Evidence of the accused is hereby granted. The case is dismissed for failure of the prosecution to present sufficient and competent evidence to rebut the presumption of innocence of the accused.
>
> SO ORDERED.[10]

[10] *Id.* at 53.

Goodland moved to reconsider the MeTC's 16 October 2008 Order. Goodland stated that the MeTC made an error in concluding that Guy participated in the execution of the Real Estate Mortgage, as well as in disregarding evidence of the spuriousness of the Real Estate Mortgage.

The MeTC issued another Order[11] on 13 January 2009, and resolved the Motion for Inhibition and the Motion for Reconsideration of the 16 October 2008 Order. The MeTC denied the Motion for Inhibition because Goodland failed to show evidence to prove bias or partiality on the part of Judge Ronald B. Moreno. The MeTC likewise denied the Motion for Reconsideration on the following grounds: first, the dismissal of a criminal case due to a granted demurrer to evidence amounts to an acquittal of the accused; second, no motion for reconsideration is allowed to a granted demurrer to evidence; and third, the arguments raised by Goodland in its Motion for Reconsideration have been thoroughly passed upon by the MeTC in its 16 October 2008 Order.

Goodland filed a petition under Rule 65 of the Rules of Civil Procedure assailing the MeTC's 16 October 2008 and 13 January 2009 Orders. The petition raised the following grounds:

A. Respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in readily dismissing Criminal Case No. 332313 after a piecemeal and out-of-context citation of select pieces of prosecution evidence to the blind exclusion of the rest in order to favor the accused with the order granting the Demurrer to Evidence.

B. Contrary to the conclusion of public respondent Judge, the prosecution presented sufficient evidence to warrant the denial of the Demurrer to Evidence by accused-respondents.

C. Respondent Judge's order dismissing Criminal Case No. 332313 for alleged insufficiency of evidence was made in violation of the prosecution's right to due process, hence null and void.[12]

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[11] *Id.* at 54-56.

[12] *Id.* at 522-523.

Co and Chan opposed[13] the Petition and stated that it is highly improper for the RTC to re-examine the evidence on record and substitute its findings of fact to those of the MeTC. They stated that there is no basis for the filing of the Petition.

The Regional Trial Court's Ruling

On 2 September 2009, the RTC issued a Resolution[14] denying the Petition. The RTC found that Judge Moreno did not gravely abuse his discretion. Errors raised by Goodland can be categorized as errors in judgment which cannot be corrected by a Petition for *Certiorari* under Rule 65. The issues involved affect the wisdom of a decision; hence, they are beyond the province of a special civil action for *certiorari*.

Goodland filed an appeal before the CA and assigned one error to the RTC's resolution: The RTC gravely erred in ruling that the grounds for appellant's petition for *certiorari* assailing Judge Ronald B. Moreno's Order dismissing Criminal Case No. 332313 in blind disregard of material prosecution evidence pertained to mere errors of judgment and not errors of jurisdiction correctible by *certiorari*.[15] Co and Chan claimed that Goodland can no longer file an appeal of RTC's 2 September 2009 Resolution as the appeal violates their right against double jeopardy. Moreover, the extraordinary remedy of *certiorari* is limited solely to the correction of defects of jurisdiction and does not include the review of facts and evidence.

The Ruling of the Court of Appeals

On 20 December 2010, the CA affirmed the RTC's resolution. In denying Goodland's appeal, the CA declared that the appeal is bereft of merit. The CA further stated:

> Allowing Us to review the [MeTC's] decision granting the demurrer of evidence as enunciated in the case of *San Vicente vs. People*, and

[13] *Id.* at 540-560.

[14] *Id.* at 57-60.

[15] *Id.* at 577.

after a judicious examination of the records of the case, We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent in granting the private respondents' demurrer to evidence. Hence, there being no grave abuse of discretion committed, the decision of the MeTC granting the demurrer to evidence may not be disturbed. There is nothing whimsical or capricious in the exercise of public respondent's judgment and the granting of the demurrer was not done in an arbitrary and despotic manner, impelled by passion or personal hostility. Assuming that there are errors committed by the public respondent, this may only be error of judgment committed in the exercise of its legitimate jurisdiction. However, this is not the same as "grave abuse of discretion." For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctible through the special civil action of *certiorari*.[16]

The Issue

Goodland cited one ground for its petition against the CA's decision: The CA committed grave abuse of discretion in affirming the dismissal of Criminal Case No. 332313 against respondents on demurrer to evidence in complete disregard of material prosecution evidence which clearly establishes respondents' criminal liability for falsification of public documents.[17]

The Court's Ruling

We see no reason to overturn the ruling of the CA.

As petitioner, Goodland is aware that only questions of law may be raised in a petition for review under Rule 45. However, Goodland insists that the present petition is meritorious and that it may raise questions of fact and law because there is grave abuse of discretion and the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

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[16] *Id.* at 25-26.

[17] *Id.* at 80.

Grave Abuse of Discretion as a Ground for Reversal of an Acquittal

Insisting that the MeTC committed grave abuse of discretion, the prayers in the Petitions in both the RTC and CA asked for the reversal of the respondents' acquittal.

> An order granting an accused's demurrer to evidence is a resolution of the case on the merits, and it amounts to an acquittal. Generally, any further prosecution of the accused after an acquittal would violate the constitutional proscription on double jeopardy.[18]

It is settled that a judgment of acquittal cannot be recalled or withdrawn by another order reconsidering the dismissal of the case,[19] nor can it be modified except to eliminate something which is civil or administrative in nature.[20] One exception to the rule is when the prosecution is denied due process of law.[21] Another exception is when the trial court commits grave abuse of discretion in dismissing a criminal case by granting the accused's demurrer to evidence.[22] If there is grave abuse of discretion, granting Goodland's prayer is ***not*** tantamount to putting Co and Chan in double jeopardy.

However, the present case is replete with evidence to prove that the CA was correct in denying Goodland's *certiorari* on appeal. We emphasize that the Orders of the MeTC were affirmed by the RTC, and affirmed yet again by the CA. We find no grave abuse of discretion in the CA's affirmation of the dismissal of Criminal Case No. 332313.

We have explained "grave abuse of discretion" to mean thus:

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[18] *People v. Laguio, Jr.,* G.R. No. 128587, 16 March 2007, 518 SCRA 393, 403.

[19] *Catilo v. Abaya,* 94 Phil. 1014 (1954).

[20] *People v. Yelo,* 83 Phil. 618 (1949); *People v. Bautista,* 96 Phil. 43 (1954).

[21] *Galman v. Sandiganbayan,* 228 Phil. 42 (1986).

[22] *People v. Uy,* 508 Phil. 637 (2005).

An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.[23]

The CA made its decision after its careful examination of the records of the case. The CA found that Guy signed the subject Real Estate Mortgage and was authorized by the Board of Directors to do so, and none of Goodland's witnesses have personal knowledge of the circumstances of the discussions between Guy and Asia United Bank. Goodland, however, failed to prove that (1) the subject Real Estate Mortgage was in blank at the time it was submitted to Asia United Bank; (2) respondents filled-in the blanks in the Real Estate Mortgage; and (3) Guy did not appear before the notary public. It was with reason, therefore, that the CA declared that the evidence for Goodland failed miserably in meeting the quantum of proof required in criminal cases to overturn the constitutional presumption of innocence. Grave abuse of discretion may not be attributed to a court simply because of its alleged misappreciation of evidence.

WHEREFORE, we *DENY* the petition and *AFFIRM* the Decision of the Court of Appeals in CA-G.R. SP No. 112769.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

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[23] *Litton Mills, Inc. v. Galleon Trader, Inc.,* 246 Phil. 503, 509 (1988).

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MOOT AND ACADEMIC CASES

Concept — An issue is said to become moot and academic when it ceases to represent a justiciable controversy, so that a declaration on the issue would be of no practical use or value; exceptions. (Land Bank of the Phils. *vs*. Suntay, G.R. No. 188376, Dec. 14, 2011) p. 879

— Courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value. (Office of the Deputy Ombudsman for Luzon, Hon. Victor C. Fernandez *vs*. Francisco, Sr., G.R. No. 172553, Dec. 14, 2011) p. 679

— Exceptions to the moot and academic principle are: (1.) if there is a grave violation of the Constitution; (2.) the exceptional character of the situation and the paramount public interest is involved; (3.) when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and (4.) the case is capable of repetition yet evading review. *(Id.)*

MORTGAGES

Blanket clause or dragnet clause — The amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as a security if, from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. (Ramos *vs*. Phil. National Opal Portfolio Investments [SPV-AMC], Inc., G.R. No. 178218, Dec. 14, 2011) p. 727

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Adverse claim — Notice of adverse claim can only be cancelled after a party in interest files a petition for cancellation before the Regional Trial Court wherein the property is located. (Torbela *vs*. Sps. Andres T. Rosario and Lena Duque-Rosario, G.R. No. 140528, Dec. 07, 2011) p. 1

Section 107 of — Contemplates the filing of a separate and original action before the Regional Trial Court, acting as a land registration court. (Reyes *vs*. Tang Soat Ing [Joanna Tang] and Ando G. Sy, G.R. No. 185620, Dec. 14, 2011) p. 806

PUBLIC LAND ACT (C.A. NO. 141)

Section 119 of — Liberally construed in order to carry out its purpose; right to repurchase under Section 119 could be extended by mutual agreement of the parties involved. (Morla *vs*. Nisperos Belmonte, G.R. No. 171146, Dec. 07, 2011) p. 102

PUBLIC OFFICERS AND EMPLOYEES

Preventive suspension — Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the total preventive suspension should not exceed six months. (Office of the Deputy Ombudsman for Luzon, Hon. Victor C. Fernandez *vs*. Francisco, Sr., G.R. No. 172553, Dec. 14, 2011) p. 679

Proper decorum — Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to observe, in view of their exalted position as keepers of the public faith. (Espina&Madarang Co. &Makar Agricultural Commercial &Dev't.Corp. [MAKAR] *vs*. Hon. Indar, A.M. No.RTJ-07-2069, Dec. 14, 2011) p. 609

— The appointing power could appoint successors to the vacated position. *(Id.)*

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