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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 173648. January 16, 2012]

ABDULJUAHID R. PIGCAULAN,* *petitioner, vs.* **SECURITY and CREDIT INVESTIGATION, INC. and/or RENE AMBY REYES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SINCE NO APPEAL FROM THE COURT OF APPEALS DECISION WAS BROUGHT BY COMPLAINANT CANOY, SAME HAS ALREADY BECOME FINAL AND EXECUTORY AS TO HIM.— We have examined the petition and find that same was filed by Pigcaulan solely on his own behalf. This is very clear from the petition's prefatory which is phrased as follows: COMES NOW **Petitioner Abduljuahid R. Pigcaulan**, by counsel, unto this Honorable Court x x x. Also, under the heading "Parties", only Pigcaulan is mentioned as petitioner and consistent with this, the body of the petition refers only to a "petitioner" and never in its plural form "petitioners". Aside from the fact that the Verification and Certification of Non-Forum Shopping attached to the petition

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* Originally captioned as *Oliver Canoy and Abduljuahid Pigcaulan*, petitioners *vs. Security and Credit Investigation Inc. and/or Rene Amby Reyes*, respondents. The Court, however, drops Oliver Canoy from the caption consistent with the Court's ruling herein.

was executed by Pigcaulan alone, it was plainly and particularly indicated under the name of the lawyer who prepared the same, Atty. Josefel P. Grageda, that he is the *"Counsel for Petitioner Adbuljuahid Pigcaulan"* only. In view of these, there is therefore, no doubt, that the petition was brought only on behalf of Pigcaulan. Since no appeal from the CA Decision was brought by Canoy, same has already become final and executory as to him.

2. ID.; ID.; ID.; COMPLAINANT CANOY CANNOT SIMPLY INCORPORATE IN HIS AFFIDAVIT A VERIFICATION OF THE CONTENTS OF THE PETITION AS HE IS NOT ONE OF THE PETITIONERS THEREIN.— Canoy cannot now simply incorporate in his affidavit a verification of the contents and allegations of the petition as he is not one of the petitioners therein. Suffice it to state that it would have been different had the said petition been filed in behalf of both Canoy and Pigcaulan. In such a case, subsequent submission of a verification may be allowed as non-compliance therewith or a defect therein does not necessarily render the pleading, or the petition as in this case, 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. Further, a 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."

3. ID.; ID.; ID.; CERTIFICATE OF NON-FORUM SHOPPING; NOT COMPLIED WITH.— [W]e note that Canoy still failed to submit or at least incorporate in his affidavit a certificate of non-forum shopping. The filing of a certificate of non-forum shopping is mandatory so much so that non-compliance could only be tolerated by special circumstances and compelling reasons. This Court has held that when there are several petitioners, all of them must execute and sign the certification against forum shopping; otherwise, those who did not sign will be dropped as parties to the case. True, we held that in some cases, execution by only one of the petitioners on behalf of the other petitioners constitutes substantial compliance with the rule on the filing of a certificate of non-forum shopping on the ground

of common interest or common cause of action or defense. We, however, find that common interest is not present in the instant petition. To recall, Canoy's and Pigcaulan's complaints were consolidated because they both sought the same reliefs against the same respondents. This does not, however, mean that they share a common interest or defense. The evidence required to substantiate their claims may not be the same. A particular evidence which could sustain Canoy's action may not effectively serve as sufficient to support Pigcaulan's claim.

4. ID.; ID.; ID.; PROCEDURAL RULES SHOULD NOT BE IGNORED SIMPLY BECAUSE THEIR NON-OBSERVANCE MAY RESULT IN PREJUDICE TO A PARTY'S SUBSTANTIAL RIGHTS.— [A]ssuming that the petition is also filed on his behalf, Canoy failed to show any reasonable cause for his failure to join Pigcaulan to personally sign the Certification of Non-Forum Shopping. It is his duty, as a litigant, to be prudent in pursuing his claims against SCII, especially so, if he was indeed suffering from financial distress. However, Canoy failed to advance any justifiable reason why he did not inform anyone of his whereabouts when he knows that he has a pending case against his former employer. Sadly, his lack of prudence and diligence cannot merit the court's consideration or sympathy. It must be emphasized at this point that procedural rules should not be ignored simply because their non-observance may result in prejudice to a party's substantial rights. The Rules of Court should be followed except only for the most persuasive of reasons. Having declared the present petition as solely filed by Pigcaulan, this Court shall consider the subsequent pleadings, although apparently filed under his and Canoy's name, as solely filed by the former.

5. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NO SUBSTANTIAL EVIDENCE TO SUPPORT THE GRANT OF OVERTIME PAY.— The Labor Arbiter ordered reimbursement of overtime pay, holiday pay, service incentive leave pay and 13th month pay for the year 2000 in favor of Canoy and Pigcaulan. The Labor Arbiter relied heavily on the itemized computations they submitted which he considered as representative daily time records to substantiate the award of salary differentials. The NLRC then sustained the award on the ground that there was substantial evidence of underpayment of salaries and benefits. We find that both the Labor Arbiter

and the NLRC erred in this regard. The handwritten itemized computations are self-serving, unreliable and unsubstantial evidence to sustain the grant of salary differentials, particularly overtime pay. Unsigned and unauthenticated as they are, there is no way of verifying the truth of the handwritten entries stated therein. Written only in pieces of paper and solely prepared by Canoy and Pigcaulan, these representative daily time records, as termed by the Labor Arbiter, can hardly be considered as competent evidence to be used as basis to prove that the two were underpaid of their salaries. We find nothing in the records which could substantially support Pigcaulan's contention that he had rendered service beyond eight hours to entitle him to overtime pay and during Sundays to entitle him to restday pay. Hence, in the absence of any concrete proof that additional service beyond the normal working hours and days had indeed been rendered, we cannot affirm the grant of overtime pay to Pigcaulan.

6. ID.; ID.; PETITIONER IS ENTITLED TO HOLIDAY PAY, SERVICE INCENTIVE LEAVE PAY AND PROPORTIONATE 13TH MONTH PAY FOR YEAR 2000.— However, with respect to the award for holiday pay, service incentive leave pay and 13th month pay, we affirm and rule that Pigcaulan is entitled to these benefits. Article 94 of the Labor Code provides that: ART. 94. ***RIGHT TO HOLIDAY PAY***. – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers; x x x While Article 95 of the Labor Code provides: ART. 95. ***RIGHT TO SERVICE INCENTIVE LEAVE.*** – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive of five days with pay. x x x Under the Labor Code, Pigcaulan is entitled to his regular rate on holidays even if he does not work. Likewise, express provision of the law entitles him to service incentive leave benefit for he rendered service for more than a year already. Furthermore, under Presidential Decree No. 851, he should be paid his 13th month pay. As employer, SCII has the burden of proving that it has paid these benefits to its employees. SCII presented payroll listings and transmittal letters to the bank to show that Canoy and Pigcaulan received their salaries as well as benefits which it claimed are already integrated in the employees' monthly salaries. However, the documents presented do not prove SCII's allegation. SCII failed to show any other concrete proof by

means of records, pertinent files or similar documents reflecting that the specific claims have been paid. With respect to 13th month pay, SCII presented proof that this benefit was paid but only for the years 1998 and 1999. To repeat, the burden of proving payment of these monetary claims rests on SCII, being the employer. It is a rule that one who pleads payment has the burden of proving it. "Even when the plaintiff alleges non-payment, still the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment." Since SCII failed to provide convincing proof that it has already settled the claims, Pigcaulan should be paid his holiday pay, service incentive leave benefits and proportionate 13th month pay for the year 2000.

7. ID.; ID.; ID.; THE COURT OF APPEALS ERRED IN DISMISSING THE CLAIMS INSTEAD OF REMANDING THE CASE TO THE LABOR ARBITER FOR A DETAILED COMPUTATION OF THE JUDGMENT AWARD.— Indeed, the Labor Arbiter failed to provide sufficient basis for the monetary awards granted. Such failure, however, should not result in prejudice to the substantial rights of the party. While we disallow the grant of overtime pay and restday pay in favor of Pigcaulan, he is nevertheless entitled, as a matter of right, to his holiday pay, service incentive leave pay and 13th month pay for year 2000. Hence, the CA is not correct in dismissing Pigcaulan's claims in its entirety. Consistent with the rule that all money claims arising from an employer-employee relationship shall be filed within three years from the time the cause of action accrued, Pigcaulan can only demand the amounts due him for the period within three years preceding the filing of the complaint in 2000. Furthermore, since the records are insufficient to use as bases to properly compute Pigcaulan's claims, the case should be remanded to the Labor Arbiter for a detailed computation of the monetary benefits due to him.

APPEARANCES OF COUNSEL

Josefel P. Grageda for petitioner.
King Capuchino Tan and Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

It is not for an employee to prove non-payment of benefits to which he is entitled by law. Rather, it is on the employer that the burden of proving payment of these claims rests.

This Petition for Review on *Certiorari*[1] assails the February 24, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 85515, which granted the petition for *certiorari* filed therewith, set aside the March 23, 2004[3] and June 14, 2004[4] Resolutions of the National Labor Relations Commission (NLRC), and dismissed the complaint filed by Oliver R. Canoy (Canoy) and petitioner Abduljuahid R. Pigcaulan (Pigcaulan) against respondent Security and Credit Investigation, Inc. (SCII) and its General Manager, respondent Rene Amby Reyes. Likewise assailed is the June 28, 2006 Resolution[5] denying Canoy's and Pigcaulan's Motion for Reconsideration.[6]

Factual Antecedents

Canoy and Pigcaulan were both employed by SCII as security guards and were assigned to SCII's different clients. Subsequently, however, Canoy and Pigcaulan filed with the Labor Arbiter separate complaints[7] for underpayment of salaries

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[1] *Rollo*, pp. 10-26.

[2] CA *rollo*, pp. 219-225; penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Roberto A. Barrios and Mario L. Guariña III.

[3] *Id.* at 18-25; penned by Commissioner Tito F. Genilo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Ernesto C. Verceles.

[4] *Id.* at 27-28.

[5] *Id.* at 250.

[6] *Id.* at 229-234.

[7] Canoy's complaint was docketed as NLRC-NCR Case No. 00-03-01409-2000 while Pigcaulan's complaint was docketed as NLRC-NCR Case No. 00-03-01782-2000.

and non-payment of overtime, holiday, rest day, service incentive leave and 13th month pays. These complaints were later on consolidated as they involved the same causes of action.

Canoy and Pigcaulan, in support of their claim, submitted their respective daily time records reflecting the number of hours served and their wages for the same. They likewise presented itemized lists of their claims for the corresponding periods served.

Respondents, however, maintained that Canoy and Pigcaulan were paid their just salaries and other benefits under the law; that the salaries they received were above the statutory minimum wage and the rates provided by the Philippine Association of Detective and Protective Agency Operators (PADPAO) for security guards; that their holiday pay were already included in the computation of their monthly salaries; that they were paid additional premium of 30% in addition to their basic salary whenever they were required to work on Sundays and 200% of their salary for work done on holidays; and, that Canoy and Pigcaulan were paid the corresponding 13th month pay for the years 1998 and 1999. In support thereof, copies of payroll listings[8] and lists of employees who received their 13th month pay for the periods December 1997 to November 1998 and December 1998 to November 1999[9] were presented. In addition, respondents contended that Canoy's and Pigcaulan's monetary claims should only be limited to the past three years of employment pursuant to the rule on prescription of claims.

Ruling of the Labor Arbiter

Giving credence to the itemized computations and representative daily time records submitted by Canoy and Pigcaulan, Labor Arbiter Manuel P. Asuncion awarded them their monetary claims in his Decision[10] dated June 6, 2002.

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[8] Annex "1" of SCII's Position Paper, CA *rollo*, pp. 59-63 and 70-76.

[9] Annex "2" of SCII's Position Paper, *id.* at 64-65 and 77-78.

[10] *Id.* at 83-87.

The Labor Arbiter held that the payroll listings presented by the respondents did not prove that Canoy and Pigcaulan were duly paid as same were not signed by the latter or by any SCII officer. The 13th month payroll was, however, acknowledged as sufficient proof of payment, for it bears Canoy's and Pigcaulan's signatures. Thus, without indicating any detailed computation of the judgment award, the Labor Arbiter ordered the payment of overtime pay, holiday pay, service incentive leave pay and proportionate 13th month pay for the year 2000 in favor of Canoy and Pigcaulan, *viz*:

> WHEREFORE, the respondents are hereby ordered to pay the complainants: 1) their salary differentials in the amount of ₱166,849.60 for Oliver Canoy and ₱121,765.44 for Abduljuahid Pigcaulan; 2) the sum of ₱3,075.20 for Canoy and ₱2,449.71 for Pigcaulan for service incentive leave pay and; [3]) the sum of ₱1,481.85 for Canoy and ₱1,065.35 for Pigcaulan as proportionate 13th month pay for the year 2000. The rest of the claims are dismissed for lack of sufficient basis to make an award.
>
> SO ORDERED.[11]

Ruling of the National Labor Relations Commission

Respondents appealed to the NLRC. They alleged that there was no basis for the awards made because aside from the self-serving itemized computations, no representative daily time record was presented by Canoy and Pigcaulan. On the contrary, respondents asserted that the payroll listings they submitted should have been given more probative value. To strengthen their cause, they attached to their Memorandum on Appeal payrolls[12] bearing the individual signatures of Canoy and Pigcaulan to show that the latter have received their salaries, as well as copies of transmittal letters[13] to the bank to show

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[11] *Id.* at 87.

[12] Annex "2"-"2-OO" of SCII's Memorandum on Appeal, *id.* at 101-142.

[13] Annex "4"-"31" of SCII's Memorandum on Appeal, *id.* at 150-205.

that the salaries reflected in the payrolls were directly deposited to the ATM accounts of SCII's employees.

The NLRC, however, in a Resolution[14] dated March 23, 2004, dismissed the appeal and held that the evidence show underpayment of salaries as well as non-payment of service incentive leave benefit. Accordingly, the Labor Arbiter's Decision was sustained. The motion for reconsideration thereto was likewise dismissed by the NLRC in a Resolution[15] dated June 14, 2004.

Ruling of the Court of Appeals

In respondents' petition for *certiorari* with prayer for the issuance of a temporary restraining order and preliminary injunction[16] before the CA, they attributed grave abuse of discretion on the part of the NLRC in finding that Canoy and Pigcaulan are entitled to salary differentials, service incentive leave pay and proportionate 13th month pay and in arriving at amounts without providing sufficient bases therefor.

The CA, in its Decision[17] dated February 24, 2006, set aside the rulings of both the Labor Arbiter and the NLRC after noting that there were no factual and legal bases mentioned in the questioned rulings to support the conclusions made. Consequently, it dismissed all the monetary claims of Canoy and Pigcaulan on the following rationale:

First. The Labor Arbiter disregarded the NLRC rule that, in cases involving money awards and at all events, as far as practicable, the decision shall embody the detailed and full amount awarded.

Second. The Labor Arbiter found that the payrolls submitted by SCII have no probative value for being unsigned by Canoy, when, in fact, said payrolls, particularly the payrolls from 1998 to 1999 indicate the individual signatures of Canoy.

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[14] *Id.* at 18-25.

[15] *Id.* at 27-28.

[16] *Id.* at 2-16.

[17] *Id.* at 219-225.

Third. The Labor Arbiter did not state in his decision the substance of the evidence adduced by Pigcaulan and Canoy as well as the laws or jurisprudence that would show that the two are indeed entitled to the salary differential and incentive leave pays.

Fourth. The Labor Arbiter held Reyes liable together with SCII for the payment of the claimed salaries and benefits despite the absence of proof that Reyes deliberately or maliciously designed to evade SCII's alleged financial obligation; hence the Labor Arbiter ignored that SCII has a corporate personality separate and distinct from Reyes. To justify solidary liability, there must be an allegation and showing that the officers of the corporation deliberately or maliciously designed to evade the financial obligation of the corporation.[18]

Canoy and Pigcaulan filed a Motion for Reconsideration, but same was denied by the CA in a Resolution[19] dated June 28, 2006.

Hence, the present Petition for Review on *Certiorari*.

Issues

The petition ascribes upon the CA the following errors:

I. The Honorable Court of Appeals erred when it dismissed the complaint on mere alleged failure of the Labor Arbiter and the NLRC to observe the prescribed form of decision, instead of remanding the case for reformation of the decision to include the desired detailed computation.

II. The Honorable Court of Appeals erred when it [made] complainants suffer the consequences of the alleged non-observance by the Labor Arbiter and NLRC of the prescribed forms of decisions considering that they have complied with all needful acts required to support their claims.

III. The Honorable Court of Appeals erred when it dismissed the complaint allegedly due to absence of legal and factual [bases] despite attendance of substantial evidence in the records.[20]

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[18] *Id.* at 223-224.

[19] *Id.* at 250.

[20] *Rollo,* p. 18.

It is well to note that while the caption of the petition reflects both the names of Canoy and Pigcaulan as petitioners, it appears from its body that it is being filed solely by Pigcaulan. In fact, the Verification and Certification of Non-Forum Shopping was executed by Pigcaulan alone.

In his Petition, Pigcaulan submits that the Labor Arbiter and the NLRC are not strictly bound by the rules. And even so, the rules do not mandate that a detailed computation of how the amount awarded was arrived at should be embodied in the decision. Instead, a statement of the nature or a description of the amount awarded and the specific figure of the same will suffice. Besides, his and Canoy's claims were supported by substantial evidence in the form of the handwritten detailed computations which the Labor Arbiter termed as "representative daily time records," showing that they were not properly compensated for work rendered. Thus, the CA should have remanded the case instead of outrightly dismissing it.

In their Comment,[21] respondents point out that since it was only Pigcaulan who filed the petition, the CA Decision has already become final and binding upon Canoy. As to Pigcaulan's arguments, respondents submit that they were able to present sufficient evidence to prove payment of just salaries and benefits, which bits of evidence were unfortunately ignored by the Labor Arbiter and the NLRC. Fittingly, the CA reconsidered these pieces of evidence and properly appreciated them. Hence, it was correct in dismissing the claims for failure of Canoy and Pigcaulan to discharge their burden to disprove payment.

Pigcaulan, this time joined by Canoy, asserts in his Reply[22] that his filing of the present petition redounds likewise to Canoy's benefit since their complaints were consolidated below. As such, they maintain that any kind of disposition made in favor or against either of them would inevitably apply to the other. Hence, the institution of the petition solely by Pigcaulan does

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[21] *Id.* at 46-52.

[22] *Id.* at 57-61.

not render the assailed Decision final as to Canoy. Nonetheless, in said reply they appended Canoy's affidavit[23] where he verified under oath the contents and allegations of the petition filed by Pigcaulan and also attested to the authenticity of its annexes. Canoy, however, failed to certify that he had not filed any action or claim in another court or tribunal involving the same issues. He likewise explains in said affidavit that his absence during the preparation and filing of the petition was caused by severe financial distress and his failure to inform anyone of his whereabouts.

Our Ruling

The assailed CA Decision is considered final as to Canoy.

We have examined the petition and find that same was filed by Pigcaulan solely on his own behalf. This is very clear from the petition's prefatory which is phrased as follows:

> COMES NOW **Petitioner Abduljuahid R. Pigcaulan**, by counsel, unto this Honorable Court x x x. (Emphasis supplied.)

Also, under the heading "Parties", only Pigcaulan is mentioned as petitioner and consistent with this, the body of the petition refers only to a "petitioner" and never in its plural form "petitioners". Aside from the fact that the Verification and Certification of Non-Forum Shopping attached to the petition was executed by Pigcaulan alone, it was plainly and particularly indicated under the name of the lawyer who prepared the same, Atty. Josefel P. Grageda, that he is the *"Counsel for Petitioner Adbuljuahid Pigcaulan"* only. In view of these, there is therefore, no doubt, that the petition was brought only on behalf of Pigcaulan. Since no appeal from the CA Decision was brought by Canoy, same has already become final and executory as to him.

Canoy cannot now simply incorporate in his affidavit a verification of the contents and allegations of the petition as

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[23] Annex "A" of the petitioner's Reply, *id.* at 62-63.

he is not one of the petitioners therein. Suffice it to state that it would have been different had the said petition been filed in behalf of both Canoy and Pigcaulan. In such a case, subsequent submission of a verification may be allowed as non-compliance therewith or a defect therein does not necessarily render the pleading, or the petition as in this case, fatally defective.[24] "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. Further, a 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."[25] However, even if it were so, we note that Canoy still failed to submit or at least incorporate in his affidavit a certificate of non-forum shopping.

The filing of a certificate of non-forum shopping is mandatory so much so that non-compliance could only be tolerated by special circumstances and compelling reasons.[26] This Court has held that when there are several petitioners, all of them must execute and sign the certification against forum shopping; otherwise, those who did not sign will be dropped as parties to the case.[27] True, we held that in some cases, execution by only one of the petitioners on behalf of the other petitioners constitutes substantial compliance with the rule on the filing of a certificate

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[24] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, G.R. No. 186045, February 2, 2011, 641 SCRA 520, 528 citing *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

[25] *Id.*

[26] *Mandaue Galleon Trade, Inc. v. Isidto*, G.R. No. 181051, July 5, 2010, 623 SCRA 414, 421.

[27] *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*, G.R. No. 164205, September 3, 2009, 598 SCRA 27, 36 citing *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

of non-forum shopping on the ground of common interest or common cause of action or defense.[28] We, however, find that common interest is not present in the instant petition. To recall, Canoy and Pigcaulan's complaints were consolidated because they both sought the same reliefs against the same respondents. This does not, however, mean that they share a common interest or defense. The evidence required to substantiate their claims may not be the same. A particular evidence which could sustain Canoy's action may not effectively serve as sufficient to support Pigcaulan's claim.

Besides, assuming that the petition is also filed on his behalf, Canoy failed to show any reasonable cause for his failure to join Pigcaulan to personally sign the Certification of Non-Forum Shopping. It is his duty, as a litigant, to be prudent in pursuing his claims against SCII, especially so, if he was indeed suffering from financial distress. However, Canoy failed to advance any justifiable reason why he did not inform anyone of his whereabouts when he knows that he has a pending case against his former employer. Sadly, his lack of prudence and diligence cannot merit the court's consideration or sympathy. It must be emphasized at this point that procedural rules should not be ignored simply because their non-observance may result in prejudice to a party's substantial rights. The Rules of Court should be followed except only for the most persuasive of reasons.[29]

Having declared the present petition as solely filed by Pigcaulan, this Court shall consider the subsequent pleadings, although apparently filed under his and Canoy's name, as solely filed by the former.

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[28] *Northeastern College Teachers and Employees Association v. Northeastern College, Inc.*, G.R. No. 152923, January 19, 2009, 576 SCRA 149, 179; *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394, 406-407.

[29] *Pyro Copper Mining Corporation v. Mines Adjudication Board-Department of Environment and Natural Resources*, G.R. No. 179674, July 28, 2009, 594 SCRA 195, 211-212.

There was no substantial evidence to support the grant of overtime pay.

The Labor Arbiter ordered reimbursement of overtime pay, holiday pay, service incentive leave pay and 13th month pay for the year 2000 in favor of Canoy and Pigcaulan. The Labor Arbiter relied heavily on the itemized computations they submitted which he considered as representative daily time records to substantiate the award of salary differentials. The NLRC then sustained the award on the ground that there was substantial evidence of underpayment of salaries and benefits.

We find that both the Labor Arbiter and the NLRC erred in this regard. The handwritten itemized computations are self-serving, unreliable and unsubstantial evidence to sustain the grant of salary differentials, particularly overtime pay. Unsigned and unauthenticated as they are, there is no way of verifying the truth of the handwritten entries stated therein. Written only in pieces of paper and solely prepared by Canoy and Pigcaulan, these representative daily time records, as termed by the Labor Arbiter, can hardly be considered as competent evidence to be used as basis to prove that the two were underpaid of their salaries. We find nothing in the records which could substantially support Pigcaulan's contention that he had rendered service beyond eight hours to entitle him to overtime pay and during Sundays to entitle him to restday pay. Hence, in the absence of any concrete proof that additional service beyond the normal working hours and days had indeed been rendered, we cannot affirm the grant of overtime pay to Pigcaulan.

Pigcaulan is entitled to holiday pay, service incentive leave pay and proportionate 13th month pay for year 2000.

However, with respect to the award for holiday pay, service incentive leave pay and 13th month pay, we affirm and rule that Pigcaulan is entitled to these benefits.

Article 94 of the Labor Code provides that:

ART. 94. ***RIGHT TO HOLIDAY PAY.*** – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

x x x x x x x x x

While Article 95 of the Labor Code provides:

ART. 95. ***RIGHT TO SERVICE INCENTIVE LEAVE.*** – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive of five days with pay.

x x x x x x x x x

Under the Labor Code, Pigcaulan is entitled to his regular rate on holidays even if he does not work.[30] Likewise, express provision of the law entitles him to service incentive leave benefit for he rendered service for more than a year already. Furthermore, under Presidential Decree No. 851,[31] he should be paid his 13th month pay. As employer, SCII has the burden of proving that it has paid these benefits to its employees.[32]

SCII presented payroll listings and transmittal letters to the bank to show that Canoy and Pigcaulan received their salaries as well as benefits which it claimed are already integrated in the employees' monthly salaries. However, the documents presented do not prove SCII's allegation. SCII failed to show any other concrete proof by means of records, pertinent files or similar documents reflecting that the specific claims have been paid. With respect to 13th month pay, SCII presented proof that this benefit was paid but only for the years 1998 and 1999. To repeat, the burden of proving payment of these monetary

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[30] *Labadan v. Forest Hills Academy*, G.R. No. 172295, December 23, 2008, 575 SCRA 262, 268.

[31] Requiring All Employers To Pay Their Employees A 13th Month Pay.

[32] *Saberola v. Suarez*, G.R. No. 151227, July 14, 2008, 558 SCRA 135, 146-147.

claims rests on SCII, being the employer. It is a rule that one who pleads payment has the burden of proving it. "Even when the plaintiff alleges non-payment, still the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment."[33] Since SCII failed to provide convincing proof that it has already settled the claims, Pigcaulan should be paid his holiday pay, service incentive leave benefits and proportionate 13th month pay for the year 2000.

The CA erred in dismissing the claims instead of remanding the case to the Labor Arbiter for a detailed computation of the judgment award.

Indeed, the Labor Arbiter failed to provide sufficient basis for the monetary awards granted. Such failure, however, should not result in prejudice to the substantial rights of the party. While we disallow the grant of overtime pay and restday pay in favor of Pigcaulan, he is nevertheless entitled, as a matter of right, to his holiday pay, service incentive leave pay and 13th month pay for year 2000. Hence, the CA is not correct in dismissing Pigcaulan's claims in its entirety.

Consistent with the rule that all money claims arising from an employer-employee relationship shall be filed within three years from the time the cause of action accrued,[34] Pigcaulan can only demand the amounts due him for the period within three years preceding the filing of the complaint in 2000. Furthermore, since the records are insufficient to use as bases to properly compute Pigcaulan's claims, the case should be remanded to the Labor Arbiter for a detailed computation of the monetary benefits due to him.

WHEREFORE, the petition is **GRANTED.** The Decision dated February 24, 2006 and Resolution dated June 28, 2006

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[33] *Id.*

[34] LABOR CODE, Article 291.

of the Court of Appeals in CA-G.R. SP No. 85515 are **REVERSED and SET ASIDE.** Petitioner Abduljuahid R. Pigcaulan is hereby declared **ENTITLED** to holiday pay and service incentive leave pay for the years 1997-2000 and proportionate 13th month pay for the year 2000.

The case is **REMANDED** to the Labor Arbiter for further proceedings to determine the exact amount and to make a detailed computation of the monetary benefits due Abduljuahid R. Pigcaulan which Security and Credit Investigation Inc. should pay without delay.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174082. January 16, 2012]

GEORGIA T. ESTEL, *petitioner, vs.* **HEIRS OF RECAREDO P. DIEGO, SR., namely, RECAREDO JR., ROLINE, RAMEL, RHOEL, and RUBY, all surnamed DIEGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; JURISDICTION; SINCE PETITIONER DID NOT RAISE THE ISSUE OF JURISDICTION OR VENUE IN HER ANSWER WITH THE TRIAL COURT, SHE IS ALREADY ESTOPPED FROM RAISING THE SAID ISSUE

[**] Per raffle dated January 10, 2012.

IN THE COURT OF APPEALS OR BEFORE THE SUPREME COURT.— A review of the records shows that petitioner did not raise the issue of jurisdiction or venue in her Answer filed with the MTCC. The CA correctly held that even if the geographical location of the subject property was not alleged in the Complaint, petitioner failed to seasonably object to the same in her Affirmative Defense, and even actively participated in the proceedings before the MTCC. In fact, petitioner did not even raise this issue in her appeal filed with the RTC. Thus, she is already estopped from raising the said issue in the CA or before this Court. Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate the lower court's decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.

2. ID.; ID.; ID.; ID.; RESPONDENTS SUFFICIENTLY ALLEGED IN THEIR COMPLAINT MATERIAL FACTS CONSTITUTING FORCIBLE ENTRY.— As to respondents' supposed failure to allege facts constitutive of forcible entry, it is settled that in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction. *First*, the plaintiff must allege his prior physical possession of the property. *Second*, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Revised Rules of Court, namely, force, intimidation, threats, strategy, and stealth. In the present case, it is clear that respondents sufficiently alleged in their Complaint the material facts constituting forcible entry, as they explicitly claimed that they had prior physical possession of the subject property since its purchase from petitioner, who voluntarily delivered the same to them. They also particularly described in their complaint how petitioner, together with her two sons and five other persons, encroached upon the subject property and dispossessed them of the same. Respondents' complaint contains the allegations that petitioner, abetting and conspiring with other persons, without respondents' knowledge and consent and through

the use of force and intimidation, entered a portion of their land and, thereafter, uprooted and destroyed the fence surrounding the subject lot, as well as cut the trees and nipa palms planted thereon. Unlawfully entering the subject property and excluding therefrom the prior possessor would necessarily imply the use of force and this is all that is necessary. In order to constitute force, the trespasser does not have to institute a state of war. No other proof is necessary. In the instant case, it is, thus, irrefutable that respondents sufficiently alleged that the possession of the subject property was wrested from them through violence and force.

3. ID.; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— Anent respondents' alleged defective verification, the Court again notes that this issue was not raised before the MTCC. Even granting that this matter was properly raised before the court *a quo*, the Court finds that there is no procedural defect that would have warranted the outright dismissal of respondents' complaint as there is compliance with the requirement regarding verification. x x x A reading of respondents' verification reveals that they complied with the abovequoted procedural rule. Respondents confirmed that they had read the allegations in the Complaint which were true and correct based on their personal knowledge. The addition of the words "to the best" before the phrase "of our own personal knowledge" did not violate the requirement under Section 4, Rule 7, it being sufficient that the respondents declared that the allegations in the complaint are true and correct based on their personal knowledge. Verification is deemed substantially complied with when, as in the instant case, 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.

4. ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; WITH RESPECT TO THE CONTENTS OF THE CERTIFICATION, THE RULE OF SUBSTANTIAL COMPLIANCE MAY BE AVAILED OF.— As to respondents' certification on non-forum shopping, a reading of respondents' Verification/Certification reveals that they, in fact, certified therein that they have not commenced any

similar action before any other court or tribunal and to the best of their knowledge no such other action is pending therein. The only missing statement is respondents' undertaking that if they should thereafter learn that the same or similar action has been filed or is pending, they shall report such fact to the court. This, notwithstanding, the Court finds that there has been substantial compliance on the part of respondents. It is settled that with respect to the contents of the certification against forum shopping, the rule of substantial compliance may be availed of. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as the Court finds in the instant case.

APPEARANCES OF COUNSEL

M, Padilla Paderanga & Paderanga for petitioner.
Felicidad A. Sia for repondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] promulgated on September 30, 2005 and Resolution[2] dated August 10, 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 77197. The assailed Decision affirmed the Decision dated October 7, 2002 of the Regional Trial Court (RTC) of Gingoog City, Branch 27,

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[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr., concurring; Annex "A" to Petition, *rollo*, pp. 16-26.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Romulo V. Borja and Edgardo A. Camello, concurring; Annex "A-2" to Petition, *rollo*, pp. 33-34.

Misamis Oriental, while the questioned Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

The present petition originated from a Complaint for Forcible Entry, Damages and Injunction with Application for Temporary Restraining Order filed by herein respondents Recaredo P. Diego, Sr., and Recaredo R. Diego, Jr. with the Municipal Trial Court in Cities (MTCC) of Gingoog City, Misamis Oriental. Respondents alleged that on April 16, 1991, they entered into a contract of sale of a 306 –square-meter parcel of land, denominated as Lot 19, with petitioner; after receiving the amount of ₱17,000.00 as downpayment, petitioner voluntarily delivered the physical and material possession of the subject property to respondents; respondents had been in actual, adverse and uninterrupted possession of the subject lot since then and that petitioner never disturbed, molested, annoyed nor vexed respondents with respect to their possession of the said property; around 8:30 in the morning of July 20, 1995, petitioner, together with her two grown-up sons and five other persons, uprooted the fence surrounding the disputed lot, after which they entered its premises and then cut and destroyed the trees and plants found therein; respondent Recaredo R. Diego, Jr. witnessed the incident but found himself helpless at that time. Respondents prayed for the restoration of their possession, for the issuance of a permanent injunction against petitioner as well as payment of damages, attorney's fees and costs of suit.[3]

On July 26, 1995, the MTCC issued a Temporary Restraining Order[4] against petitioner and any person acting in her behalf.

In her Answer with Special/Affirmative Defenses and Counterclaims, petitioner denied the material allegations in the Complaint contending that respondents were never in physical, actual, public, adverse and uninterrupted possession of the subject

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[3] Records, pp. 1-5.

[4] *Id*. at. 27.

lot; full possession and absolute ownership of the disputed parcel of land, with all improvements thereon, had always been that of petitioner and her daughter; the agreement she entered into with the wife of respondent Recaredo P. Diego, Sr. for the sale of the subject lot had been abrogated; she even offered to return the amount she received from respondents, but the latter refused to accept the same and instead offered an additional amount of ₱12,000.00 as part of the purchase price but she also refused to accept their offer; the subject of the deed of sale between petitioner and respondents and what has been delivered to respondents was actually Lot 16 which is adjacent to the disputed Lot 19; that they did not destroy the improvements found on the subject lot and, in fact, any improvements therein were planted by petitioner's parents.[5]

On February 16, 2002, the MTCC rendered a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, viewed in the light of the foregoing, judgment is hereby rendered in favor of the plaintiffs [herein respondents], dismissing defendant's [herein petitioner's] counterclaim and ordering the defendant, her agents and representatives:
>
> 1. To vacate the premises of the land in question and return the same to the plaintiffs;
>
> 2. To pay plaintiffs, the following, to wit:
>
> a) ₱100.00 a month as rentals for the use of the litigated property reckoned from the filing of the complaint until the defendant vacates the property;
>
> b) ₱5,000.00 representing the value of the fence and plants damaged by the defendants as actual damages;
>
> c) ₱20,000.00 as and for attorney's fees;
>
> d) ₱2,000.00 for litigation expenses;
>
> 3. Ordering the defendant to pay the cost of suit;

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[5] *Id*. at 57-63.

Execution shall immediately issue upon motion unless an appeal has been perfected and the defendant to stay execution files a *supersedeas* bond which is hereby fixed at ₱10,000.00 approved by this Court and executed in favor of the plaintiffs, to pay the rents, damages and costs accruing down to the time of the judgment appealed from and unless, during the pendency of the appeal, defendant deposits with the appellate court the amount of ₱100.00 as monthly rental due from time to time on or before the 10th day of each succeeding month or period.

SO ORDERED.[6]

Aggrieved, petitioner appealed to the RTC of Gingoog City.[7]

On October 7, 2002, the RTC rendered its Decision[8] affirming the assailed Decision of the MTCC.

Petitioner then filed a petition for review with the CA.

On September 30, 2005, the CA promulgated its Decision which affirmed the Decision of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated August 10, 2006.

Hence, the instant petition based on the following arguments:

[THE] COURT OF APPEALS, 23rd DIVISION, ERRED IN FAILING TO CONSIDER THAT THE RTC BRANCH 27 OF GINGOOG CITY ERRONEOUSLY CONCLUDED THAT THE MTCC OF GINGOOG CITY HAS JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION.

[THE] COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT THE RTC BRANCH 27 OF GINGOOG CITY FAILED TO MAKE A FINDING OF FACT THAT THE COMPLAINT STATES NO CAUSE OF ACTION.

THE COURT OF APPEALS ERRED LIKEWISE IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT BRANCH

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[6] *Id.* at 299-300.

[7] See Notice of Appeal, *id*. at 307.

[8] Records, pp. 373-384.

27 OF GINGOOG CITY OVERLOOKING THE FACT THAT ITS FINDING OF FACTS AND CONCLUSIONS ARE AGAINST OR NOT SUPPORTED BY COMPETENT MATERIAL EVIDENCE.[9]

Petitioner contends that since respondents failed to allege the location of the disputed parcel of land in their complaint, the MTCC did not acquire jurisdiction over the subject matter of the said complaint. Petitioner also avers that the MTCC did not acquire jurisdiction over the case for failure of respondents to specifically allege facts constitutive of forcible entry. On the bases of these two grounds, petitioner argues that the MTCC should have dismissed the complaint *motu proprio*.

Petitioner also avers that the complaint states no cause of action because the verification and certificate of non-forum shopping accompanying the complaint are defective and, as such, the complaint should be treated as an unsigned pleading. As to the verification, petitioner contends that it should be based on respondent's personal knowledge or on authentic record and not simply upon "knowledge, information and belief." With respect to the certificate of non-forum shopping, petitioner claims that its defect consists in respondents' failure to make an undertaking therein that if they should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, they shall report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification have been filed.

The Court does not agree.

A review of the records shows that petitioner did not raise the issue of jurisdiction or venue in her Answer filed with the MTCC. The CA correctly held that even if the geographical location of the subject property was not alleged in the Complaint, petitioner failed to seasonably object to the same in her Affirmative Defense, and even actively participated in the proceedings before the MTCC. In fact, petitioner did not even

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[9] *Rollo*, pp. 8, 10 and 11.

raise this issue in her appeal filed with the RTC. Thus, she is already estopped from raising the said issue in the CA or before this Court. Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court.[10] One cannot belatedly reject or repudiate the lower court's decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief.[11] The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[12]

In any case, since the Complaint is clearly and admittedly one for forcible entry, the jurisdiction over the subject matter of the case is, thus, upon the MTCC of Gingoog City. Section 33 of Batas Pambansa Bilang 129, as amended by Section 3 of Republic Act (R.A.) No. 7691, as well as Section 1, Rule 70 of the Rules of Court, clearly provides that forcible entry and unlawful detainer cases fall within the exclusive original jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. Hence, as the MTCC has jurisdiction over the action, the question whether or not the suit was brought in the place where the land in dispute is located was no more than a matter of venue and the court, in the exercise of its jurisdiction over the case, could determine whether venue was properly or improperly laid.[13] There having been no objection on the part of petitioner and it having been shown by evidence presented by both parties that the subject lot was indeed located in Gingoog City, and that it was only through mere inadvertence or oversight that such information was omitted in the Complaint, petitioner's objection became a pure technicality.

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[10] *Bernardo v. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010, 615 SCRA 466, 475.

[11] *Id*.

[12] *Id*.

[13] *De Leon v. Aragon*, 113 Phil. 323, 325 (1961).

As to respondents' supposed failure to allege facts constitutive of forcible entry, it is settled that in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction.[14] *First*, the plaintiff must allege his prior physical possession of the property.[15] *Second*, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Revised Rules of Court, namely, force, intimidation, threats, strategy, and stealth.[16]

In the present case, it is clear that respondents sufficiently alleged in their Complaint the material facts constituting forcible entry, as they explicitly claimed that they had prior physical possession of the subject property since its purchase from petitioner, who voluntarily delivered the same to them. They also particularly described in their complaint how petitioner, together with her two sons and five other persons, encroached upon the subject property and dispossessed them of the same. Respondents' complaint contains the allegations that petitioner, abetting and conspiring with other persons, without respondents' knowledge and consent and through the use of force and intimidation, entered a portion of their land and, thereafter, uprooted and destroyed the fence surrounding the subject lot, as well as cut the trees and nipa palms planted thereon. Unlawfully entering the subject property and excluding therefrom the prior possessor would necessarily imply the use of force and this is all that is necessary.[17] In order to constitute force, the trespasser does not have to institute a state of war.[18] No other proof is necessary.[19] In the instant case, it is, thus,

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[14] *Lee v. Dela Paz*, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 535.

[15] *Id*.

[16] *Id*.

[17] *Spouses Manuel and Florentina del Rosario v. Gerry Roxas Foundation, Inc.*, G.R. No. 170575, June 8, 2011.

[18] *Antazo v. Doblada*, G.R. No. 178908, February 4, 2010, 611 SCRA 586, 594.

[19] *Id*.

irrefutable that respondents sufficiently alleged that the possession of the subject property was wrested from them through violence and force.

Anent respondents' alleged defective verification, the Court again notes that this issue was not raised before the MTCC. Even granting that this matter was properly raised before the court *a quo*, the Court finds that there is no procedural defect that would have warranted the outright dismissal of respondents' complaint as there is compliance with the requirement regarding verification.

Section 4, Rule 7 of the Rules of Court, as amended by A.M. No. 00-2-10-SC provides:

> 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.

A reading of respondents' verification reveals that they complied with the abovequoted procedural rule. Respondents confirmed that they had read the allegations in the Complaint which were true and correct based on their personal knowledge. The addition of the words "to the best" before the phrase "of our own personal knowledge" did not violate the requirement under Section 4, Rule 7, it being sufficient that the respondents declared that the allegations in the complaint are true and correct based on their personal knowledge.[20]

Verification is deemed substantially complied with when, as in the instant case, one who has ample knowledge to swear

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[20] *National Housing Authority v. Basa, Jr.*, G.R. No. 149121, April 20, 2010, 618 SCRA 461, 477.

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.[21]

As to respondents' certification on non-forum shopping, a reading of respondents' Verification/Certification reveals that they, in fact, certified therein that they have not commenced any similar action before any other court or tribunal and to the best of their knowledge no such other action is pending therein. The only missing statement is respondents' undertaking that if they should thereafter learn that the same or similar action has been filed or is pending, they shall report such fact to the court. This, notwithstanding, the Court finds that there has been substantial compliance on the part of respondents.

It is settled that with respect to the contents of the certification against forum shopping, the rule of substantial compliance may be availed of.[22] This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[23] It does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as the Court finds in the instant case.[24]

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[21] *Nellie Vda. de Formoso, et al. v. Philippine National Bank, et al.*, G.R. No. 154704, June 1, 2011.

[22] *Ligaya B. Santos v. Litton Mills Inc. and/or Atty. Rodolfo Mariño*, G.R. No. 170646, June 22, 2011; *Mediserv, Inc. v. Court of Appeals (Special Former 13th Division)*, G.R. No. 161368, April 5, 2010, 617 SCRA 284, 295, citing *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[23] *Heirs of Juan Valdez v. Court of Appeals*, G.R. No. 163208, August 13, 2008, 562 SCRA 89, 97; *Donato v. Court of Appeals*, G.R. No. 129638, December 8, 2003, 417 SCRA 216, 224-225.

[24] *Benedicto v. Lacson*, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 99; *Valmonte v. Alcala*, G.R. No. 168667, July 23, 2008, 559 SCRA 536, 549; *MC Engineering, Inc. v. National Labor Relations Commission*, G.R. No. 142314, June 28, 2001, 360 SCRA 183, 190.

WHEREFORE, the instant petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181962. January 16, 2012]

CEFERINO S. CABREZA, JR., BJD HOLDINGS CORP., represented by ATTY. BRIGIDO DULAY, *petitioners, vs.* **AMPARO ROBLES CABREZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; *LITIS PENDENTIA*; REQUISITES.— The following requisites must be present for the proper invocation of *litis pendentia* as a ground for dismissing an action: 1. Identity of parties or representation in both cases; 2. Identity of rights asserted and relief prayed for, the relief being founded on the same facts and the same basis; and 3. Identity of the two preceding particulars, such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; ID.; ID.; THERE IS SUBSTANTIAL IDENTITY OF RIGHTS ASSERTED AND RELIEFS PRAYED FOR BETWEEN THE TWO CASES IN CASE AT BAR.— Regarding the first requisite, there is no dispute that the two cases have substantially the same parties. Anent the second requisite, the CA correctly noted that to determine whether there is identity of the rights asserted and reliefs prayed for grounded

on the same facts and bases, the following tests may be utilized: (1) whether the same evidence would support and sustain both the first and the second causes of action; or (2) whether the defenses in one case may be used to substantiate the complaint in the other. However, we do not agree with the CA's conclusion that there is no identity of rights asserted and reliefs prayed for in the two cases following the application of these tests. Instead, we find that there is substantial identity of rights asserted and reliefs prayed for between the two cases. The CA held that *using the first test*, the evidence in the Complaint for Declaration of Nullity of the Deed of Sale would be the Deed of Sale itself; while in the case impugning the Writ of Possession, it would be the trial court's Order applying Article 129 of the Family Code. We disagree. The CA failed to consider that RTC Br. 70 issued an Order dated 2 October 2003, which granted authority to Ceferino to sign the Deed of Sale on Amparo's behalf. This same Order also contained, in its dispositive portion, a directive that "(a)fter the sale of the subject property shall have been consummated, all the occupants thereof shall vacate and clear the same to enable the buyer to take complete possession and control of the property." Thus, *using the first test*, the same evidence – the 2 October 2003 Order of RTC Br. 70 – would defeat both Amparo's Complaint for Declaration of Nullity of the Deed of Sale and her Petition impugning the Writ of Possession. Notably, Amparo failed to timely question RTC Br. 70's Order dated 2 October 2003.

3. ID.; ID.; ID.; ID.; ID.; USING THE SECOND TEST, THE SAME DEFENSE WILL DEFEAT BOTH THE COMPLAINT TO NULLIFY THE DEED OF SALE AND THE PETITION TO IMPUGN THE WRIT OF POSSESSION.— The CA also held that, *using the second test*, the defenses raised in one case will not necessarily be used in the other. It reasoned that although the grant of the Petition impugning the Writ of Possession would result in the nullification of the Deed of Sale, the denial of the Petition would not bar a ruling on the Complaint for nullification of the Deed of Sale, which was based on Amparo's lack of consent thereto. Again, we do not agree. Amparo seeks to prevent the sale and thereby maintain ownership of the conjugal dwelling, both in her Petition to nullify the Writ of Possession and in her Complaint for declaration of nullity of the Deed of Sale. In both cases, she theorized that (1) since the 3 January 2001 Decision of RTC

Br. 70 merely directed the dissolution and liquidation of the conjugal partnership in accordance with Article 129 of the Family Code, its subsequent Orders directing the sale of the conjugal dwelling improperly modified its own final Decision; and (2) because she was the spouse with whom a majority of the common children chose to remain, the conjugal dwelling should be adjudicated to her in accordance with the mandate of Article 129 (9) of the Family Code. Accordingly, *using the second test*, the same defense (*i.e.*, the 2 October 2003 Order of RTC Br. 70) will defeat both the Complaint to nullify the Deed of Sale and the Petition to impugn the Writ of Possession. In fact, the subsequent Writ of Possession issued by RTC Br. 70 was the logical consequence of, and merely gave effect to, the Deed of Sale which it had previously approved. Basically, the two cases belatedly impugn the 2 October 2003 Order of RTC Br. 70 implementing its 23 May 2003 Order, which had long become final, following the earlier failed attempts of Amparo to impugn the latter Order.

4. ID.; ID.; ID.; ID.; ID.; A FINAL JUDGMENT ON THE MERITS BY A COURT THAT HAS JURISDICTION OVER THE PARTIES AND OVER THE SUBJECT MATTER IN THE PETITION TO NULLIFY THE WRIT OF POSSESSION WOULD HAVE BARRED SUBSEQUENT JUDGMENT ON THE COMPLAINT FOR DECLARATION OF NULLITY OF THE DEED OF SALE BASED ON THE PRINCIPLE OF *RES JUDICATA*.— As to the last requisite, a final judgment on the merits by a court that has jurisdiction over the parties and over the subject matter in the Petition to nullify the Writ of Possession *would have* barred subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale based on the principle of *res judicata.* At the time Amparo filed her Complaint for Declaration of Nullity of the Deed of Sale with RTC Br. 67, her Petition impugning the Writ of Possession was already pending with the CA. Thus, from the point of view of RTC Br. 67, the CA's final judgment on the merits of the case before it would have barred a subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale. When the CA eventually upheld the propriety of the Writ of Possession, it necessarily upheld the validity of the Deed of Sale, which the Writ of Possession sought to implement. On the other hand, had the CA declared null and void the Writ of Possession based on the grounds cited by Amparo, the

Complaint to annul the Deed of Sale would have been barred. This is because upholding her position would necessarily include a ruling that the RTC Br. 70 Order directing the sale itself of the conjugal dwelling was improper. Such impropriety would then extend to subsequent orders merely implementing the sale of the conjugal dwelling, including RTC Br. 70's grant of authority to Ceferino to sign the Deed of Sale on behalf of Amparo. In fine, the CA erred in reversing the dismissal by RTC Br. 67 of the Complaint for Declaration of Nullity of Deed of Sale on the ground of the pendency of the Petition impugning the Writ of Possession before another Division of the CA. Having ruled that *litis pendentia* was properly invoked below, Amparo was necessarily also guilty of forum-shopping, as correctly ruled by RTC Br. 67. As we held in *Buan v. Lopez*, "forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other."

5. ID.; ID.; ID.; ID.; ID.; *LITIS PENDENTIA* SHOULD NOT BE CONFUSED WITH *RES JUDICATA* IN CASE AT BAR.— We take time to stress a point to avoid doctrinal confusion on *litis pendentia* and *res judicata* in this case. Despite our pronouncement on the propriety of the dismissal of the Complaint for nullification of the Deed of Absolute Sale on the ground of *litis pendencia* by RTC Br. 67, and the finality of the dismissal of G.R. No. 171260, we clarify that *res judicata* cannot be said to apply herein, simply because we dismissed Amparo's Petition in G.R. No. 171260. While the dismissal of G.R. No. 171260 is now final, having been rendered by this Court which had jurisdiction over the subject matter and the parties thereto, it was not a judgment "on the merits" of the case. A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point." In American jurisdiction, it is recognized that "(i)nstances in which dismissals are not considered to be on the merits for purposes of the application of the doctrine of *res judicata* include … dismissal based on court's procedural inability to consider a case." A reading of our Decision in G.R. No. 171260 shows that the Petition was dismissed upon a procedural inability

to consider the case, based on the principle of finality of judgments. The Court's reason for denying Amparo's G.R. No. 171260 Petition seeking to nullify the Writ of Possession was that the said writ was merely a subsequent Order implementing that which was issued on 26 May 2003 by RTC Br. 70 authorizing the sale of the family home. Meanwhile, the latter Order can no longer be modified, as it has long become final.

6. ID.; ID.; ID.; ID.; ID.; TRIAL COURT'S FINAL ORDER MAY NOT BE MODIFIED BY THE COMPLAINT FOR DECLARATION OF NULLITY OF THE DEED OF SALE OR THE PETITION TO NULLIFY THE WRIT OF POSSESSION; CASE AT BAR.— We also take time to stress that the Complaint for Declaration of Nullity of the Deed of Sale cannot prosper, because, like the Petition to nullify the Writ of Possession, it effectively seeks the modification of an already final Order of RTC Br. 70. In view of this Court's consistent ruling that Amparo cannot be allowed to impugn the already final Order of RTC Br. 70 directing the sale of the conjugal dwelling, we deny the prayer for preliminary injunction to hold in abeyance the implementation of the Notice to Vacate.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioners.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition seeking to annul the Court of Appeals' Decision that reversed a lower court's dismissal of a Complaint for declaration of nullity of the Deed of Sale of a conjugal dwelling on the ground of *litis pendentia*.

On 3 January 2001, the Regional Trial Court of Pasig Branch 70 (RTC Br. 70) in JDRC Case No. 3705 declared void *ab initio* the marriage between Ceferino Cabreza, Jr. (Ceferino) and Amparo Cabreza (Amparo) and ordered the dissolution and liquidation of the conjugal partnership in accordance with

Article 129 of the Family Code.[1] When this Decision became final, Ceferino moved that their only conjugal property, the conjugal home, be sold and the proceeds distributed as mandated by law. RTC Br. 70 granted his Motion in a 26 May 2003 Order which became final when the Supreme Court (SC) dismissed, on technicalities,[2] Amparo's Petition questioning the said Order.

Ceferino thereafter filed an Omnibus Motion (1) to approve the Deed of Absolute Sale (Deed of Sale); (2) to authorize petitioner-movant to sign the Deed of Sale for and on behalf of Amparo; and (3) to order the occupants of the premises to vacate the property. Despite notice to Amparo, only Ceferino and his counsel appeared during the scheduled hearing on the Motion. The Omnibus Motion of Ceferino was granted by RTC Br. 70 on 2 October 2003.[3] Hence, for himself and on behalf

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[1] The dispositive portion of the Decision read:

WHEREFORE, the Court hereby grants the instant petition and declared the marriage of petitioner and respondent a nullity pursuant to Art. 36 of the Family Code.

Further, the conjugal partnership is hereby dissolved and must be liquidated in accordance with Art. 129 of the Family Code, without prejudice to the prior rights of known and unknown creditors of the conjugal partnership.

Let copies of this decision be furnished the Local Civil Registrars of Cainta, Rizal and Pasig City and the Registry of Deeds of Pasig City for record purposes.

SO ORDERED.

[2] The Supreme Court's 24 May 2004 dismissal of Amparo's petition, docketed as G.R. No. 162745, became final and executory on 23 July 2004.

[3] *Rollo,* pp. 93-94.The dispositive portion of the said Order reads:

In view of the previous Order of this Court dated 26 May 2003 relative to the liquidation of the conjugal partnership property that the same which consists in the property covered by TCT No. 17460 be sold and the proceeds thereof be distributed as therein indicated, the Deed of Absolute Sale attached as Annex "A" to the Omnibus Motion which is in accordance with the aforestated Order is hereby APPROVED. For the purpose of selling or conveying ownership over the property to the buyer, the herein petitioner Ceferino S. Cabreza, Jr., is hereby authorized and empowered to sign and execute the Deed of Absolute Sale for and in his own behalf and in behalf of the respondent, Amparo R. Cabreza who has failed and refused and continues

of Amparo, he executed the Deed of Sale in favor of BJD Holdings Corporation. He then filed a Motion for Writ of Possession and to Divide the Purchase Price, which RTC Pasig Branch 70 granted in its 12 May 2004 Order.

In response to RTC Br. 70's issuance of a Writ of Possession, followed by a 30 June 2004 Notice to Vacate, Amparo filed a Motion to Hold in Abeyance the Writ of Possession and Notice to Vacate, arguing that (1) the parties had another conjugal lot apart from the conjugal dwelling; and (2) under Article 129 of the Family Code,[4] the conjugal dwelling should be adjudicated to her as the spouse, with whom four of the five Cabreza children were staying. RTC Br. 70 denied her Motion and the Court of Appeals (CA) upheld the denial, prompting her to **file with the SC a Petition for Review of this CA Decision, docketed as G.R. No. 171260.**

On 11 September 2009, the SC in G.R. No. 171260 denied Amparo's Petition[5] on the ground that granting it would modify the already final 26 May 2003 Order of RTC Br. 70 authorizing the sale of the family home. As the facts upon which Amparo

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to fail and refuse to comply with the aforestated Order of 26 May 2003. After the sale of the subject property shall have been consummated, all the occupants thereof shall vacate and clear the same to enable the buyer to take complete possession and control of the property. (Underscoring supplied)

[4] Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

. . . . . .

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. (Underscoring supplied)

[5] The Decision of the Supreme Court Third Division in G.R. No. 171260 was penned by Justice Diosdado Peralta and concurred in by Justices Consuelo Ynares-Santiago, Minita Chico-Nazario, Presbiterio Velasco, Jr. and Antonio Eduardo Nachura.

based her argument against RTC Br. 70's issuances (Order of Possession, Writ of Possession and Notice to Vacate) were already operative when she questioned the 26 May 2003 Order, she should have raised her argument then. It would be unfair to allow her to raise the said argument now in the guise of questioning the subsequent implementing Orders of RTC Br. 70. Meanwhile, her allegation that there is another conjugal property other than the subject property is a question of fact not proper for a Rule 45 petition. Also, the factual finding of both RTC Br. 70 and the CA that there was only one conjugal property was conclusive upon the parties. The SC Decision in G.R. No. 171260 became final and executory on 5 January 2010.

On 26 January 2005 or during the pendency of the CA Petition, which culminated in G.R. No. 171260, **Amparo filed with the Pasig RTC, Branch 67 (RTC Br. 67) a Complaint** (docketed as Civil Case No. 70269) **to annul the Deed of Absolute Sale** for being void due to lack of her consent thereto.[6] RTC Br. 67 dismissed the Complaint with prejudice, on the basis of *litis pendentia* and forum shopping.[7]

Amparo appealed to the CA, which reversed the Resolution of RTC Br. 67. Holding that there was no *litis pendentia* and therefore no forum shopping, the appellate court directed that the case be remanded for trial on the merits.[8]

Ceferino moved for reconsideration of the CA ruling. When his Motion was denied, he filed **the present Petition for Review under Rule 45, docketed as G.R. No. 181962**, arguing that the CA erred in reversing RTC Br. 67's dismissal of the Complaint for Declaration of Nullity of the Deed of Absolute Sale filed by Amparo during the pendency of her Petition for

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[6] *Rollo,* pp. 210-215.

[7] *Rollo,* pp. 147-149.

[8] The CA Thirteenth Division Decision in CA-G.R. CV No. 86511 was penned by Justice Marlene Gonzales-Sison and concurred in by Justices Juan Enriquez, Jr. and Vicente Veloso.

Certiorari to nullify the Writ of Possession on the grounds of *litis pendentia* and forum shopping.

We find merit in the Petition.

The following requisites must be present for the proper invocation of *litis pendentia* as a ground for dismissing an action:

1. Identity of parties or representation in both cases;
2. Identity of rights asserted and relief prayed for, the relief being founded on the same facts and the same basis; and
3. Identity of the two preceding particulars, such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[9]

Regarding the first requisite, there is no dispute that the two cases have substantially the same parties.

Anent the second requisite, the CA correctly noted that to determine whether there is identity of the rights asserted and reliefs prayed for grounded on the same facts and bases, the following tests may be utilized: (1) whether the same evidence would support and sustain both the first and the second causes of action; or (2) whether the defenses in one case may be used to substantiate the complaint in the other.[10]

However, we do not agree with the CA's conclusion that there is no identity of rights asserted and reliefs prayed for in the two cases following the application of these tests. Instead, we find that there is substantial identity of rights asserted and reliefs prayed for between the two cases.

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[9] *Sherwill Development Corporation v. Sitio Sto. Nino Residents Association,* G.R. No. 158455, 28 June 2005, 461 SCRA 517.

[10] *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority and Innove Comunications, Inc.,* G.R. No. 185159, 12 October 2009, 603 SCRA 470.

The CA held that *using the first test*, the evidence in the Complaint for Declaration of Nullity of the Deed of Sale would be the Deed of Sale itself; while in the case impugning the Writ of Possession, it would be the trial court's Order applying Article 129 of the Family Code.

We disagree. The CA failed to consider that RTC Br. 70 issued an Order dated 2 October 2003, which granted authority to Ceferino to sign the Deed of Sale on Amparo's behalf. This same Order also contained, in its dispositive portion, a directive that "(a)fter the sale of the subject property shall have been consummated, all the occupants thereof shall vacate and clear the same to enable the buyer to take complete possession and control of the property." Thus, *using the first test*, the same evidence – the 2 October 2003 Order of RTC Br. 70 – would defeat both Amparo's Complaint for Declaration of Nullity of the Deed of Sale and her Petition impugning the Writ of Possession. Notably, Amparo failed to timely question RTC Br. 70's Order dated 2 October 2003.

The CA also held that, *using the second test*, the defenses raised in one case will not necessarily be used in the other. It reasoned that although the grant of the Petition impugning the Writ of Possession would result in the nullification of the Deed of Sale, the denial of the Petition would not bar a ruling on the Complaint for nullification of the Deed of Sale, which was based on Amparo's lack of consent thereto.

Again, we do not agree. Amparo seeks to prevent the sale and thereby maintain ownership of the conjugal dwelling, both in her Petition to nullify the Writ of Possession and in her Complaint for declaration of nullity of the Deed of Sale. In both cases, she theorized that (1) since the 3 January 2001 Decision of RTC Br. 70 merely directed the dissolution and liquidation of the conjugal partnership in accordance with Article 129 of the Family Code, its subsequent Orders directing the sale of the conjugal dwelling improperly modified its own final Decision; and (2) because she was the spouse with whom a majority of the common children chose to remain, the conjugal

dwelling should be adjudicated to her in accordance with the mandate of Article 129 (9) of the Family Code.

Accordingly, *using the second test*, the same defense (*i.e.*, the 2 October 2003 Order of RTC Br. 70) will defeat both the Complaint to nullify the Deed of Sale and the Petition to impugn the Writ of Possession. In fact, the subsequent Writ of Possession issued by RTC Br. 70 was the logical consequence of, and merely gave effect to, the Deed of Sale which it had previously approved. Basically, the two cases belatedly impugn the 2 October 2003 Order of RTC Br. 70 implementing its 23 May 2003 Order, which had long become final, following the earlier failed attempts of Amparo to impugn the latter Order.

As to the last requisite, a final judgment on the merits by a court that has jurisdiction over the parties and over the subject matter in the Petition to nullify the Writ of Possession *would have* barred subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale based on the principle of *res judicata*.[11]

At the time Amparo filed her Complaint for Declaration of Nullity of the Deed of Sale with RTC Br. 67, her Petition impugning the Writ of Possession was already pending with the CA. Thus, from the point of view of RTC Br. 67, the CA's final judgment on the merits of the case before it would have barred a subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale.

When the CA eventually upheld the propriety of the Writ of Possession, it necessarily upheld the validity of the Deed of Sale, which the Writ of Possession sought to implement. On the other hand, had the CA declared null and void the Writ of Possession based on the grounds cited by Amparo, the Complaint to annul the Deed of Sale would have been barred. This is because upholding her position would necessarily include a ruling that the RTC Br. 70 Order directing the sale itself of the

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

conjugal dwelling was improper. Such impropriety would then extend to subsequent orders merely implementing the sale of the conjugal dwelling, including RTC Br. 70's grant of authority to Ceferino to sign the Deed of Sale on behalf of Amparo.

In fine, the CA erred in reversing the dismissal by RTC Br. 67 of the Complaint for Declaration of Nullity of Deed of Sale on the ground of the pendency of the Petition impugning the Writ of Possession before another Division of the CA.

Having ruled that *litis pendentia* was properly invoked below, Amparo was necessarily also guilty of forum-shopping, as correctly ruled by RTC Br. 67. As we held in *Buan v. Lopez*,[12] "forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other."

Nevertheless, we take time to stress a point to avoid doctrinal confusion on *litis pendentia* and *res judicata* in this case.

Despite our pronouncement on the propriety of the dismissal of the Complaint for nullification of the Deed of Absolute Sale on the ground of *litis pendencia* by RTC Br. 67, and the finality of the dismissal of G.R. No. 171260, we clarify that *res judicata* cannot be said to apply herein, simply because we dismissed Amparo's Petition in G.R. No. 171260. While the dismissal of G.R. No. 171260 is now final, having been rendered by this Court which had jurisdiction over the subject matter and the parties thereto, it was not a judgment "on the merits" of the case.

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections";[13] or when the judgment is rendered "after a determination of which party is right, as distinguished from a

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[12] G.R. No. 75349, 13 October 1986, 145 SCRA 34.

[13] *Mirpuri v. Court of Appeals,* G.R. No. 114508, 19 November 1999, 318 SCRA 516.

judgment rendered upon some preliminary or formal or merely technical point."[14] In American jurisdiction, it is recognized that "(i)nstances in which dismissals are not considered to be on the merits for purposes of the application of the doctrine of *res judicata* include … dismissal based on court's procedural inability to consider a case."[15]

A reading of our Decision in G.R. No. 171260 shows that the Petition was dismissed upon a procedural inability to consider the case, based on the principle of finality of judgments. The Court's reason for denying Amparo's G.R. No. 171260 Petition seeking to nullify the Writ of Possession was that the said writ was merely a subsequent Order implementing that which was issued on 26 May 2003 by RTC Br. 70 authorizing the sale of the family home. Meanwhile, the latter Order can no longer be modified, as it has long become final.

We also take time to stress that the Complaint for Declaration of Nullity of the Deed of Sale cannot prosper, because, like the Petition to nullify the Writ of Possession, it effectively seeks the modification of an already final Order of RTC Br. 70. In view of this Court's consistent ruling that Amparo cannot be allowed to impugn the already final Order of RTC Br. 70 directing the sale of the conjugal dwelling, we deny the prayer for preliminary injunction to hold in abeyance the implementation of the Notice to Vacate.

WHEREFORE, premises considered, the Petition is **GRANTED.** The Decision dated 25 October 2007 and Resolution dated 27 February 2008 of the Court of Appeals in CA-G.R. CV No. 86511 are **REVERSED.** The 5 May 2005 Resolution of the Regional Trial Court Branch 67, Pasig City in Civil Case No. 70269, which dismissed the Complaint for Declaration of Nullity of Deed of Sale on the ground of the *litis pendencia* and forum shopping, is **REINSTATED.**

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[14] *Santos v. Intermediate Appellate Court*, G.R. No. 66671, 28 October 1986, 145 SCRA 238.

[15] 46 Am Jur 2d, §607, p. 882.

SO ORDERED.

Carpio (Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 185064. January 16, 2012]

SPOUSES ARACELI OLIVA-DE MESA and ERNESTO S. DE MESA, *petitioners, vs.* **SPOUSES CLAUDIO D. ACERO, JR. and MA. RUFINA D. ACERO, SHERIFF FELIXBERTO L. SAMONTE and REGISTRAR ALFREDO SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; EXISTS WHERE THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT, AND WHERE A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN THE OTHER; ELEMENTS.— We find that the petitioners are not guilty of forum-shopping. There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum-shopping are: (a) identity

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[*] Designated as acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; ID.; ID.; THERE IS NO IDENTITY OF ISSUES AND RELIEFS PRAYED FOR IN THE EJECTMENT CASE AND IN THE ACTION TO CANCEL TCT NO. T-221755(M).— There is no identity of issues and reliefs prayed for in the ejectment case and in the action to cancel TCT No. T-221755 (M). Verily, the primordial issue in the ejectment case is who among the contending parties has a better right of possession over the subject property while ownership is the core issue in an action to cancel a Torrens title. It is true that the petitioners raised the issue of ownership over the subject property in the ejectment case. However, the resolution thereof is only provisional as the same is solely for the purpose of determining who among the parties therein has a better right of possession over the subject property. Accordingly, a judgment rendered in an ejectment case is not a bar to action between the same parties respecting title to the land or building. Neither shall it be conclusive as to the facts therein. This issue is far from being novel and there is no reason to depart from this Court's previous pronouncements. In *Malabanan v. Rural Bank of Cabuyao, Inc.*, this Court had previously clarified that a decision in an ejectment case is not *res judicata* in an annulment of title case and vice-versa given the provisional and inconclusive nature of the determination of the issue of ownership in the former.

3. CIVIL LAW; CIVIL CODE; THE FAMILY HOME; RULES ON CONSTITUTION OF FAMILY HOMES FOR PURPOSES OF EXEMPTION FROM EXECUTION.— The x x x rules on constitution of family homes, for purposes of exemption from execution, could be summarized as follows: **First**, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution; **Second**, family residences constructed after the effectivity of the Family Code on August 3, 1988 are

automatically deemed to be family homes and thus exempt from execution from the time it was constituted and lasts as long as any of its beneficiaries actually resides therein; **Third**, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

4. ID.; ID.; ID.; THE SUBJECT PROPERTY BECAME A FAMILY HOME BY OPERATION OF LAW WHEN THE FAMILY CODE TOOK EFFECT ON AUGUST 03, 1988 AND WAS THUS PROSPECTIVELY EXEMPT FROM EXECUTION.— The subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

5. ID.; ID.; ID.; THE FAMILY HOME'S EXEMPTION FROM EXECUTION MUST BE SET UP AND PROVED TO THE SHERIFF BEFORE THE SALE OF THE PROPERTY AT PUBLIC AUCTION.— Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter. As the CA aptly pointed out: In the light of the facts above summarized, it is evident that appellants did not assert their claim of exemption within a reasonable time. Certainly, reasonable time, for purposes of the law on exemption, does not mean a time after the expiration of the one-year period provided for in Section 30 of Rule 39 of the Rules of Court for judgment debtors to redeem the property sold on execution, otherwise it would render nugatory final bills of sale on execution and defeat the very purpose of execution – to put an end to litigation. x x x. The foregoing disposition

is in accord with the Court's November 25, 2005 Decision in *Honrado v. Court of Appeals*, where it was categorically stated that at no other time can the status of a residential house as a family home can be set up and proved and its exemption from execution be claimed but before the sale thereof at public auction:

6. ID.; ID.; ID.; HAVING FAILED TO SET UP AND PROVE TO THE SHERIFF THE SUPPOSED EXEMPTION OF THE SUBJECT PROPERTY BEFORE THE SALE THEREOF AT PUBLIC AUCTION, PETITIONERS ARE NOW BARRED FROM RAISING THE SAME; FAILURE TO DO SO ESTOP THEM FROM LATER CLAIMING THE EXEMPTION.— Having failed to set up and prove to the sheriff the supposed exemption of the subject property before the sale thereof at public auction, the petitioners now are barred from raising the same. Failure to do so estop them from later claiming the said exemption. Indeed, the family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime. It is likewise without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment. The family home is a real right, which is gratuitous, inalienable and free from attachment. It cannot be seized by creditors except in certain special cases. However, this right can be waived or be barred by *laches* by the failure to set up and prove the status of the property as a family home at the time of the levy or a reasonable time thereafter.

7. ID.; ID.; ID.; PETITIONER'S NEGLIGENCE OR OMISSION TO ASSERT THEIR RIGHT WITHIN A REASONABLE TIME GIVES RISE TO THE PRESUMPTION THAT THEY HAVE ABANDONED, WAIVED OR DECLINED TO ASSERT IT.— For all intents and purposes, the petitioners' negligence or omission to assert their right within a reasonable time gives rise to the presumption that they have abandoned, waived or declined to assert it. Since the exemption under Article 153 of the Family Code is a personal right, it is incumbent upon the petitioners to invoke and prove the same within the prescribed period and it is not the sheriff's duty to presume or raise the status of the subject property as a family home. The petitioners' negligence or omission renders their present assertion doubtful; it appears that it is a mere afterthought and artifice that cannot

be countenanced without doing the respondents injustice and depriving the fruits of the judgment award in their favor. Simple justice and fairness and equitable considerations demand that Claudio's title to the property be respected. Equity dictates that the petitioners are made to suffer the consequences of their unexplained negligence.

APPEARANCES OF COUNSEL

Rexie Efren A. Bugaring and Associates Law Offices for petitioners.

Vicente D. Bordador for respondents.

D E C I S I O N

REYES, *J.*:

Nature of the Petition

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Spouses Araceli Oliva-De Mesa (Araceli) and Ernesto S. De Mesa (Ernesto), assailing the Court of Appeals' (CA) Decision[1] dated June 6, 2008 and Resolution[2] dated October 23, 2008 in CA-G.R. CV No. 79391 entitled *"Spouses Araceli Oliva-De Mesa and Ernesto De Mesa v. Spouses Claudio Acero, Jr., et al."*

The Antecedent Facts

This involves a parcel of land situated at No. 3 Forbes Street, Mount Carmel Homes Subdivision, Iba, Meycauayan, Bulacan, which was formerly covered by Transfer Certificate of Title (TCT) No. T-76.725 (M) issued by the Register of Deeds of Meycauayan, Bulacan and registered under Araceli's name. The petitioners jointly purchased the subject property on April

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[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Celia C. Librea-Leagogo and Agustin S. Dizon, concurring; *rollo*, pp. 28-41.

[2] *Id.* at 42-43.

17, 1984 while they were still merely cohabiting before their marriage. A house was later constructed on the subject property, which the petitioners thereafter occupied as their family home after they got married sometime in January 1987.

Sometime in September 1988, Araceli obtained a loan from Claudio D. Acero, Jr. (Claudio) in the amount of ₱100,000.00, which was secured by a mortgage over the subject property. As payment, Araceli issued a check drawn against China Banking Corporation payable to Claudio.

When the check was presented for payment, it was dishonored as the account from which it was drawn had already been closed. The petitioners failed to heed Claudio's subsequent demand for payment.

Thus, on April 26, 1990, Claudio filed with the Prosecutor's Office of Malolos, Bulacan a complaint for violation of Batas Pambansa Blg. 22 (B.P. 22) against the petitioners. After preliminary investigation, an information for violation of B.P. 22 was filed against the petitioners with the Regional Trial Court (RTC) of Malolos, Bulacan.

On October 21, 1992, the RTC rendered a Decision[3] acquitting the petitioners but ordering them to pay Claudio the amount of ₱100,000.00 with legal interest from date of demand until fully paid.

On March 15, 1993, a writ of execution was issued and Sheriff Felixberto L. Samonte (Sheriff Samonte) levied upon the subject property. On March 9, 1994, the subject property was sold on public auction; Claudio was the highest bidder and the corresponding certificate of sale was issued to him.

Sometime in February 1995, Claudio leased the subject property to the petitioners and a certain Juanito Oliva (Juanito) for a monthly rent of ₱5,500.00. However, the petitioners and Juanito defaulted in the payment of the rent and as of October

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[3] *Id.* at 65-68.

3, 1998, their total accountabilities to Claudio amounted to ₱170,500.00.

Meanwhile, on March 24, 1995, a Final Deed of Sale[4] over the subject property was issued to Claudio and on April 4, 1995, the Register of Deeds of Meycauayan, Bulacan cancelled TCT No. T-76.725 (M) and issued TCT No. T-221755 (M)[5] in his favor.

Unable to collect the aforementioned rentals due, Claudio and his wife Ma. Rufina Acero (Rufina) (collectively referred to as Spouses Acero) filed a complaint for ejectment with the Municipal Trial Court (MTC) of Meycauayan, Bulacan against the petitioners and Juanito. In their defense, the petitioners claimed that Spouses Acero have no right over the subject property. The petitioners deny that they are mere lessors; on the contrary, they are the lawful owners of the subject property and, thus cannot be evicted therefrom.

On July 22, 1999, the MTC rendered a Decision,[6] giving due course to Spouses Acero's complaint and ordering the petitioners and Juanito to vacate the subject property. Finding merit in Spouses Acero's claims, the MTC dismissed the petitioners' claim of ownership over the subject property. According to the MTC, title to the subject property belongs to Claudio as shown by TCT No. T-221755 (M).

The MTC also stated that from the time a Torrens title over the subject property was issued in Claudio's name up to the time the complaint for ejectment was filed, the petitioners never assailed the validity of the levy made by Sheriff Samonte, the regularity of the public sale that was conducted thereafter and the legitimacy of Claudio's Torrens title that was resultantly issued.

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

[5] *Id.* at 76.

[6] *Id.* at 77-80.

The petitioners appealed the MTC's July 22, 1999 Decision to the RTC. This appeal was, however, dismissed in a Decision dated November 22, 1999 due to the petitioners' failure to submit their Memorandum. The petitioners sought reconsideration of the said decision but the same was denied in an Order dated January 31, 2000.

Consequently, the petitioners filed a petition for review[7] with the CA assailing the RTC's November 22, 1999 Decision and January 31, 2000 Order. In a December 21, 2006 Decision,[8] the CA denied the petitioner's petition for review. This became final on July 25, 2007.[9]

In the interregnum, on October 29, 1999, the petitioners filed against the respondents a complaint[10] to nullify TCT No. T-221755 (M) and other documents with damages with the RTC of Malolos, Bulacan. Therein, the petitioners asserted that the subject property is a family home, which is exempt from execution under the Family Code and, thus, could not have been validly levied upon for purposes of satisfying the March 15, 1993 writ of execution.

On September 3, 2002, the RTC rendered a Decision,[11] which dismissed the petitioners' complaint. Citing Article 155(3) of the Family Code, the RTC ruled that even assuming that the subject property is a family home, the exemption from execution does not apply. A mortgage was constituted over the subject property to secure the loan Araceli obtained from Claudio and it was levied upon as payment therefor.

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[7] *Id.* at 293-313.

[8] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon, concurring; *id.* at 279-287.

[9] *Id.* at 288.

[10] *Id.* at 44-55.

[11] *Id.* at 156-163.

The petitioners sought reconsideration of the RTC's September 3, 2002 Decision but this was denied in a Resolution[12] dated January 14, 2003.

On appeal, the CA affirmed the RTC's disposition in its Decision[13] dated June 6, 2008. The CA ratiocinated that the exemption of a family home from execution, attachment or forced sale under Article 153 of the Family Code is not automatic and should accordingly be raised and proved to the Sheriff prior to the execution, forced sale or attachment. The appellate court noted that at no time did the petitioners raise the supposed exemption of the subject property from execution on account of the same being a family home.

The petitioners then sought reconsideration of the said June 6, 2008 Decision but the same was denied by the CA in its Resolution[14] dated October 23, 2008.

Aggrieved, the petitioners filed the instant petition for review, praying for the cancellation of TCT No. T-221755 (M). They insist that the execution sale that was conducted is a nullity considering that the subject property is a family home. The petitioners assert that, contrary to the disposition of the CA, a prior demonstration that the subject property is a family home is not required before it can be exempted from execution.

In their Comment,[15] Spouses Acero claimed that this petition ought to be denied on the ground of forum-shopping as the issues raised had already been determined by the MTC in its July 22, 1999 Decision on the complaint for ejectment filed by them, which had already become final and executory following the petitioner's failure to appeal the CA's December 21, 2006 Decision affirming it.

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[12] *Id.* at 170-172.

[13] *Supra* note 1.

[14] *Supra* note 2.

[15] *Rollo*, pp. 253-278.

Issues

The threshold issues for resolution are the following: (a) whether the petitioners are guilty of forum-shopping; and (b) whether the lower courts erred in refusing to cancel Claudio's Torrens title TCT No. T-221755 (M) over the subject property.

The Court's Ruling

First Issue: Forum-Shopping

On the first issue, we find that the petitioners are not guilty of forum-shopping.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues.[16]

Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum-shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[17]

There is no identity of issues and reliefs prayed for in the ejectment case and in the action to cancel TCT No. T-221755 (M). Verily, the primordial issue in the ejectment case is who

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[16] *Making Enterprises, Inc. v. Marfori*, G.R. No. 152239, August 17, 2011.

[17] *Cruz v. Caraos*, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 522.

among the contending parties has a better right of possession over the subject property while ownership is the core issue in an action to cancel a Torrens title.

It is true that the petitioners raised the issue of ownership over the subject property in the ejectment case. However, the resolution thereof is only provisional as the same is solely for the purpose of determining who among the parties therein has a better right of possession over the subject property.

Accordingly, a judgment rendered in an ejectment case is not a bar to action between the same parties respecting title to the land or building. Neither shall it be conclusive as to the facts therein. This issue is far from being novel and there is no reason to depart from this Court's previous pronouncements. In *Malabanan v. Rural Bank of Cabuyao, Inc.*,[18] this Court had previously clarified that a decision in an ejectment case is not *res judicata* in an annulment of title case and vice-versa given the provisional and inconclusive nature of the determination of the issue of ownership in the former.

Forum-shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties or at least such as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to *res judicata* in the other.

Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it cannot be inferred that a judgment in the ejectment case would amount to *res judicata* in the annulment case, and *vice-versa*.

This issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title

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[18] G.R. No. 163495, May 8, 2009, 587 SCRA 442.

to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.

It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*. Therefore, the provisional determination of ownership in the ejectment case cannot be clothed with finality.

Corollarily, the incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative.

A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[19] (citations omitted)

Second Issue: Nullification of TCT No. T-221755 (M)

Anent the second issue, this Court finds that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M).

The subject property is a family home.

The petitioners maintain that the subject property is a family home and, accordingly, the sale thereof on execution was a nullity. In *Ramos v. Pangilinan*,[20] this Court laid down the rules relative to exemption of family homes from execution:

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[19] *Id.* at 446-448.

[20] G.R. No. 185920, July 20, 2010, 625 SCRA 181.

For the family home to be exempt from execution, distinction must be made as to what law applies based on **when** it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed *before* the effectivity of the Family Code or before August 3, 1988, **then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code**. Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242 of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.

On the other hand, for family homes constructed *after* the effectivity of the Family Code on August 3, 1988, there is **no need to constitute extrajudicially or judicially**, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155 for which the family home is made answerable must have been incurred after August 3, 1988.[21] (citations omitted)

In the earlier case of *Kelley, Jr. v. Planters Products, Inc.*,[22] we stressed that:

Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted

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[21] *Id.* at 186-189.

[22] G.R. No. 172263, July 9, 2008, 557 SCRA 499.

as such by operation of law. **All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code.**[23] (emphasis supplied and citation omitted)

The foregoing rules on constitution of family homes, for purposes of exemption from execution, could be summarized as follows:

First, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution;

Second, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time it was constituted and lasts as long as any of its beneficiaries actually resides therein;

Third, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

Here, the subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

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[23] *Id.* at 502.

The family home's exemption from execution must be set up and proved to the Sheriff before the sale of the property at public auction.

Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter. As the CA aptly pointed out:

> In the light of the facts above summarized, it is evident that appellants did not assert their claim of exemption within a reasonable time. Certainly, reasonable time, for purposes of the law on exemption, does not mean a time after the expiration of the one-year period provided for in Section 30 of Rule 39 of the Rules of Court for judgment debtors to redeem the property sold on execution, otherwise it would render nugatory final bills of sale on execution and defeat the very purpose of execution – to put an end to litigation. x x x.[24]

The foregoing disposition is in accord with the Court's November 25, 2005 Decision in *Honrado v. Court of Appeals*,[25] where it was categorically stated that at no other time can the status of a residential house as a family home can be set up and proved and its exemption from execution be claimed but before the sale thereof at public auction:

> While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption. As this Court ruled in *Gomez v. Gealone*:

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[24] *Rollo*, pp. 38-39.

[25] 512 Phil. 657 (2005).

Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself at the time of the levy or within a reasonable period thereafter;

> "In the absence of express provision it has variously held that claim (for exemption) must be made at the time of the levy if the debtor is present, that it must be made within a reasonable time, or promptly, or before the creditor has taken any step involving further costs, or before advertisement of sale, or at any time before sale, or within a reasonable time before the sale, or before the sale has commenced, but as to the last there is contrary authority."

In the light of the facts above summarized, it is self-evident that appellants did not assert their claim of exemption within a reasonable time. Certainly, reasonable time, for purposes of the law on exemption, does not mean a time after the expiration of the one-year period provided for in Section 30 of Rule 39 of the Rules of Court for judgment debtors to redeem the property sold on execution, otherwise it would render nugatory final bills of sale on execution and defeat the very purpose of execution—to put an end to litigation. We said before, and We repeat it now, that litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. We now rule that *claims for exemption from execution of properties under Section 12 of Rule 39 of the Rules of Court must be presented before its sale on execution by the sheriff.*[26] (citations omitted)

Reiterating the foregoing in *Spouses Versola v. Court of Appeals*,[27] this Court stated that:

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[26] *Id.* at 666-667.

[27] 529 Phil 377 (2006).

Under the cited provision, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence; there is no need to constitute the same judicially or extrajudicially.

The settled rule is that the right to exemption or forced sale under Article 153 of the Family Code is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself before the sale of the property at public auction. It is not sufficient that the person claiming exemption merely alleges that such property is a family home. **This claim for exemption must be set up and proved to the Sheriff.** x x x.[28] (emphasis supplied and citations omitted)

Having failed to set up and prove to the sheriff the supposed exemption of the subject property before the sale thereof at public auction, the petitioners now are barred from raising the same. Failure to do so estop them from later claiming the said exemption.

Indeed, the family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.[29] It is likewise without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment.[30]

The family home is a real right, which is gratuitous, inalienable and free from attachment. It cannot be seized by creditors except in certain special cases.[31] However, this right can be waived or be barred by *laches* by the failure to set up and prove the status of the property as a family home at the time of the levy or a reasonable time thereafter.

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[28] *Id.* at 386.

[29] *Cabang v. Basay*, G.R. No. 180587, March 20, 2009, 582 SCRA 172, 184, citing A. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. 1 (1990 ed.), p. 508.

[30] Family Code, Article 153.

[31] *Josef v. Santos*, G.R. No. 165060, November 27, 2008, 572 SCRA 57, 63.

In this case, it is undisputed that the petitioners allowed a considerable time to lapse before claiming that the subject property is a family home and its exemption from execution and forced sale under the Family Code. The petitioners allowed the subject property to be levied upon and the public sale to proceed. One (1) year lapsed from the time the subject property was sold until a Final Deed of Sale was issued to Claudio and, later, Araceli's Torrens title was cancelled and a new one issued under Claudio's name, still, the petitioner remained silent. In fact, it was only after the respondents filed a complaint for unlawful detainer, or approximately four (4) years from the time of the auction sale, that the petitioners claimed that the subject property is a family home, thus, exempt from execution.

For all intents and purposes, the petitioners' negligence or omission to assert their right within a reasonable time gives rise to the presumption that they have abandoned, waived or declined to assert it. Since the exemption under Article 153 of the Family Code is a personal right, it is incumbent upon the petitioners to invoke and prove the same within the prescribed period and it is not the sheriff's duty to presume or raise the status of the subject property as a family home.

The petitioners' negligence or omission renders their present assertion doubtful; it appears that it is a mere afterthought and artifice that cannot be countenanced without doing the respondents injustice and depriving the fruits of the judgment award in their favor. Simple justice and fairness and equitable considerations demand that Claudio's title to the property be respected. Equity dictates that the petitioners are made to suffer the consequences of their unexplained negligence.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The assailed Decision dated June 6, 2008 of the Court of Appeals in CA-G.R. CV No. 79391, which affirmed the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 22, in Civil Case No. 1058-M-99 and dismissed the complaint for declaration of nullity of TCT No. 221755 (M) and other documents, and the October 23, 2008 Resolution denying reconsideration, are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 188288. January 16, 2012]

SPOUSES FERNANDO and LOURDES VILORIA, *petitioners, vs.* **CONTINENTAL AIRLINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; CONTRACTS; AGENCY; A PRINCIPAL-AGENT RELATIONSHIP EXISTS BETWEEN RESPONDENT AIRLINE AND THE TRAVEL AGENCY.— The CA failed to consider undisputed facts, discrediting CAI's denial that Holiday Travel is one of its agents. Furthermore, in erroneously characterizing the contractual relationship between CAI and Holiday Travel as a contract of sale, the CA failed to apply the fundamental civil law principles governing agency and differentiating it from sale. x x x Contrary to the findings of the CA, all the elements of an agency exist in this case. The first and second elements are present as CAI does not deny that it concluded an agreement with Holiday Travel, whereby Holiday Travel would enter into contracts of carriage with third persons on CAI's behalf. The third element is also present as it is undisputed that Holiday Travel merely acted in a representative capacity and it is CAI and not Holiday Travel who is bound by the contracts of carriage entered into by Holiday Travel on its

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

behalf. The fourth element is also present considering that CAI has not made any allegation that Holiday Travel exceeded the authority that was granted to it. In fact, CAI consistently maintains the validity of the contracts of carriage that Holiday Travel executed with Spouses Viloria and that Mager was not guilty of any fraudulent misrepresentation. That CAI admits the authority of Holiday Travel to enter into contracts of carriage on its behalf is easily discernible from its February 24, 1998 and March 24, 1998 letters, where it impliedly recognized the validity of the contracts entered into by Holiday Travel with Spouses Viloria. When Fernando informed CAI that it was Holiday Travel who issued to them the subject tickets, CAI did not deny that Holiday Travel is its authorized agent.

2. ID.; ID.; ID.; ID.; ESTOPPEL BARS RESPONDENT AIRLINES FROM DENYING THE EXISTENCE OF AN AGENCY.— Prior to Spouses Viloria's filing of a complaint against it, CAI never refuted that it gave Holiday Travel the power and authority to conclude contracts of carriage on its behalf. As clearly extant from the records, CAI recognized the validity of the contracts of carriage that Holiday Travel entered into with Spouses Viloria and considered itself bound with Spouses Viloria by the terms and conditions thereof; and this constitutes an unequivocal testament to Holiday Travel's authority to act as its agent. This Court cannot therefore allow CAI to take an altogether different position and deny that Holiday Travel is its agent without condoning or giving imprimatur to whatever damage or prejudice that may result from such denial or retraction to Spouses Viloria, who relied on good faith on CAI's acts in recognition of Holiday Travel's authority. Estoppel is primarily based on the doctrine of good faith and the avoidance of harm that will befall an innocent party due to its injurious reliance, the failure to apply it in this case would result in gross travesty of justice, Estoppel bars CAI from making such denial. As categorically provided under Article 1869 of the Civil Code, "[a]gency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority."

3. ID.; ID.; ID.; SALE DISTINGUISHED FROM AGENCY; FACT THAT RESPONDENT AIRLINE IS BOUND BY THE CONTRACT OF CARRIAGE EXECUTED BY THE

TRAVEL AGENCY WITH THIRD PERSONS WHO DESIRE TO TRAVEL VIA THEIR AIRLINE CONCLUSIVELY INDICATES THE EXISTENCE OF A PRINCIPAL-AGENT RELATIONSHIP.— Considering that the fundamental hallmarks of an agency are present, this Court finds it rather peculiar that the CA had branded the contractual relationship between CAI and Holiday Travel as one of sale. The distinctions between a sale and an agency are not difficult to discern and this Court, as early as 1970, had already formulated the guidelines that would aid in differentiating the two (2) contracts. In *Commissioner of Internal Revenue v. Constantino,* this Court extrapolated that the primordial differentiating consideration between the two (2) contracts is the transfer of ownership or title over the property subject of the contract. In an agency, the principal retains ownership and control over the property and the agent merely acts on the principal's behalf and under his instructions in furtherance of the objectives for which the agency was established. On the other hand, the contract is clearly a sale if the parties intended that the delivery of the property will effect a relinquishment of title, control and ownership in such a way that the recipient may do with the property as he pleases. x x x As to how the CA have arrived at the conclusion that the contract between CAI and Holiday Travel is a sale is certainly confounding, considering that CAI is the one bound by the contracts of carriage embodied by the tickets being sold by Holiday Travel on its behalf. It is undisputed that CAI and not Holiday Travel who is the party to the contracts of carriage executed by Holiday Travel with third persons who desire to travel via Continental Airlines, and this conclusively indicates the existence of a principal-agent relationship. That the principal is bound by all the obligations contracted by the agent within the scope of the authority granted to him is clearly provided under Article 1910 of the Civil Code and this constitutes the very notion of agency.

4. ID.; ID.; ID.; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; A PRINCIPAL CAN ONLY BE HELD LIABLE FOR THE TORT COMMITTED BY ITS AGENT'S EMPLOYEES IF IT HAS BEEN ESTABLISHED BY PREPONDERANCE OF EVIDENCE THAT THE PRINCIPAL WAS ALSO AT FAULT OR NEGLIGENT OR THAT THE PRINCIPAL EXERCISED CONTROL AND SUPERVISION OVER THEM.— Spouses Viloria's

cause of action on the basis of Mager's alleged fraudulent misrepresentation is clearly one of tort or quasi-delict, there being no pre-existing contractual relationship between them. Therefore, it was incumbent upon Spouses Viloria to prove that CAI was equally at fault. However, the records are devoid of any evidence by which CAI's alleged liability can be substantiated. Apart from their claim that CAI must be held liable for Mager's supposed fraud because Holiday Travel is CAI's agent, Spouses Viloria did not present evidence that CAI was a party or had contributed to Mager's complained act either by instructing or authorizing Holiday Travel and Mager to issue the said misrepresentation. It may seem unjust at first glance that CAI would consider Spouses Viloria bound by the terms and conditions of the subject contracts, which Mager entered into with them on CAI's behalf, in order to deny Spouses Viloria's request for a refund or Fernando's use of Lourdes' ticket for the re-issuance of a new one, and simultaneously claim that they are not bound by Mager's supposed misrepresentation for purposes of avoiding Spouses Viloria's claim for damages and maintaining the validity of the subject contracts. It may likewise be argued that CAI cannot deny liability as it benefited from Mager's acts, which were performed in compliance with Holiday Travel's obligations as CAI's agent. However, a person's vicarious liability is anchored on his possession of control, whether absolute or limited, on the tortfeasor. Without such control, there is nothing which could justify extending the liability to a person other than the one who committed the tort. x x x It is incumbent upon Spouses Viloria to prove that CAI exercised control or supervision over Mager by preponderant evidence. The existence of control or supervision cannot be presumed and CAI is under no obligation to prove its denial or nugatory assertion. x x x Therefore, without a modicum of evidence that CAI exercised control over Holiday Travel's employees or that CAI was equally at fault, no liability can be imposed on CAI for Mager's supposed misrepresentation.

5. ID.; ID.; ID.; VOIDABLE CONTRACTS; FRAUD; MUST BE SERIOUS AND ITS EXISTENCE MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.— Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate

consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract.

6. ID.; ID.; ID.; ID.; NO CAUSAL FRAUD THAT WOULD JUSTIFY THE ANNULMENT OF THE SUBJECT CONTRACTS IN CASE AT BAR; FRAUD CANNOT BE PROVED BY MERE SPECULATIONS AND CONJECTURES.— After meticulously poring over the records, this Court finds that the fraud alleged by Spouses Viloria has not been satisfactorily established as causal in nature to warrant the annulment of the subject contracts. In fact, Spouses Viloria failed to prove by clear and convincing evidence that Mager's statement was fraudulent. Specifically, Spouses Viloria failed to prove that (a) there were indeed available seats at Amtrak for a trip to New Jersey on August 13, 1997 at the time they spoke with Mager on July 21, 1997; (b) Mager knew about this; and (c) that she purposely informed them otherwise. This Court finds the only proof of Mager's alleged fraud, which is Fernando's testimony that an Amtrak had assured him of the perennial availability of seats at Amtrak, to be wanting. As CAI correctly pointed out and as Fernando admitted, it was possible that during the intervening period of three (3) weeks from the time Fernando purchased the subject tickets to the time he talked to said Amtrak employee, other passengers may have cancelled their bookings and reservations with Amtrak, making it possible for Amtrak to accommodate them. Indeed, the existence of fraud cannot be proved by mere speculations and conjectures. Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that "a person is innocent of crime or wrong" and that "private transactions have been fair and regular." Spouses Viloria failed to overcome this presumption.

7. ID.; ID.; ID.; ID.; THE SUBJECT CONTRACTS HAVE BEEN IMPLIEDLY RATIFIED WHEN PETITIONERS DECIDED TO EXERCISE THEIR RIGHT TO USE THE SUBJECT TICKETS FOR THE PURCHASE OF NEW ONES.— Even assuming that Mager's representation is causal fraud, the subject contracts have been impliedly ratified when Spouses Viloria decided to exercise their right to use the subject tickets for the purchase of new ones. Under Article 1392 of the Civil Code, "ratification extinguishes the action to annul a voidable contract." Ratification of a voidable contract is defined under Article 1393

of the Civil Code as follows: Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right. Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.

8. ID.; ID.; ID.; ID.; ANNULMENT UNDER ARTICLE 1390 OF THE CIVIL CODE AND RESCISSION UNDER ARTICLE 1191 ARE TWO (2) INCONSISTENT REMEDIES.— Simultaneous with their demand for a refund on the ground of Fernando's vitiated consent, Spouses Viloria likewise asked for a refund based on CAI's supposed bad faith in reneging on its undertaking to replace the subject tickets with a round trip ticket from Manila to Los Angeles. In doing so, Spouses Viloria are actually asking for a rescission of the subject contracts based on contractual breach. Resolution, the action referred to in Article 1191, is based on the defendant's breach of faith, a violation of the reciprocity between the parties and in *Solar Harvest, Inc. v. Davao Corrugated Carton Corporation*, this Court ruled that a claim for a reimbursement in view of the other party's failure to comply with his obligations under the contract is one for rescission or resolution. However, annulment under Article 1390 of the Civil Code and rescission under Article 1191 are two (2) inconsistent remedies. In resolution, all the elements to make the contract valid are present; in annulment, one of the essential elements to a formation of a contract, which is consent, is absent. In resolution, the defect is in the consummation stage of the contract when the parties are in the process of performing their respective obligations; in annulment, the defect is already present at the time of the negotiation and perfection stages of the contract. Accordingly, by pursuing the remedy of rescission under Article 1191, the Vilorias had impliedly admitted the validity of the subject contracts, forfeiting their right to demand their annulment. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions.

9. ID.; ID.; ID.; ID.; SINCE THE PROHIBITION ON TRANSFERABILITY IS NOT WRITTEN ON THE FACE OF THE SUBJECT TICKETS AND RESPONDENT AIRLINE FAILED TO INFORM PETITIONERS, THE FORMER CANNOT REFUSE TO APPLY THE VALUE OF ONE OF THE TWO TICKETS AS PAYMENT FOR THE PURCHASE OF A NEW TICKET.— Contrary to CAI's claim, that the subject tickets are non-transferable cannot be implied from a plain reading of the provision printed on the subject tickets stating that "[t]o the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (a) provisions contained in this ticket, x x x (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier) x x x." As a common carrier whose business is imbued with public interest, the exercise of extraordinary diligence requires CAI to inform Spouses Viloria, or all of its passengers for that matter, of all the terms and conditions governing their contract of carriage. CAI is proscribed from taking advantage of any ambiguity in the contract of carriage to impute knowledge on its passengers of and demand compliance with a certain condition or undertaking that is not clearly stipulated. Since the prohibition on transferability is not written on the face of the subject tickets and CAI failed to inform Spouses Viloria thereof, CAI cannot refuse to apply the value of Lourdes' ticket as payment for Fernando's purchase of a new ticket.

10. ID.; ID.; ID.; ID.; CONTRACTS CANNOT BE RESCINDED FOR A SLIGHT OR CASUAL BREACH.— The right to rescind a contract for non-performance of its stipulations is not absolute. The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. Whether a breach is substantial is largely determined by the attendant circumstances. While CAI's refusal to allow Fernando to use the value of Lourdes' ticket as payment for the purchase of a new ticket is unjustified as the non-transferability of the subject tickets was not clearly stipulated, it cannot, however be considered substantial.

11. ID.; ID.; ID.; ID.; RESPONDENT AIRLINE HAS THE RIGHT AND EXCLUSIVE PREROGATIVE TO FIX THE PRICES

FOR ITS SERVICES AND MAY NOT BE COMPELLED TO OBSERVE AND MAINTAIN THE PRICES OF OTHER AIRLINE COMPANIES.— Spouses Viloria's demand for rescission cannot prosper as CAI cannot be solely faulted for the fact that their agreement failed to consummate and no new ticket was issued to Fernando. Spouses Viloria have no right to insist that a single round trip ticket between Manila and Los Angeles should be priced at around $856.00 and refuse to pay the difference between the price of the subject tickets and the amount fixed by CAI. The petitioners failed to allege, much less prove, that CAI had obliged itself to issue to them tickets for any flight anywhere in the world upon their surrender of the subject tickets. In its March 24, 1998 letter, it was clearly stated that "[n]on-refundable tickets may be used as a form of payment toward the purchase of another Continental ticket" and there is nothing in it suggesting that CAI had obliged itself to protect Spouses Viloria from any fluctuation in the prices of tickets or that the surrender of the subject tickets will be considered as full payment for any ticket that the petitioners intend to buy regardless of actual price and destination. The CA was correct in holding that it is CAI's right and exclusive prerogative to fix the prices for its services and it may not be compelled to observe and maintain the prices of other airline companies.

12. **ID.; ID.; ID.; ID.; RESPONDENT AIRLINE'S LIABILITY FOR DAMAGES FOR ITS REFUSAL TO ACCEPT THE OTHER TICKET FOR THE PURCHASE OF A NEW ROUND TRIP TICKET IS OFFSET BY THE PETITIONERS' LIABILITY FOR THEIR REFUSAL TO PAY THE AMOUNT WHICH IS NOT COVERED BY THE SUBJECT TICKETS.—** The records of this case demonstrate that both parties were equally in default; hence, none of them can seek judicial redress for the cancellation or resolution of the subject contracts and they are therefore bound to their respective obligations thereunder. As the 1st sentence of Article 1192 provides: Art. 1192. **In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts**. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. Therefore, CAI's liability for damages for its refusal to accept Lourdes' ticket for the purchase of Fernando's round trip ticket is offset by Spouses Viloria's liability for their refusal

to pay the amount, which is not covered by the subject tickets. Moreover, the contract between them remains, hence, CAI is duty bound to issue new tickets for a destination chosen by Spouses Viloria upon their surrender of the subject tickets and Spouses Viloria are obliged to pay whatever amount is not covered by the value of the subject tickets.

13. ID.; ID.; DAMAGES; MORAL DAMAGES AND EXEMPLARY DAMAGES; NOT WARRANTED UNLESS BAD FAITH HAD BEEN PROVEN.— Another consideration that militates against the propriety of holding CAI liable for moral damages is the absence of a showing that the latter acted fraudulently and in bad faith. Article 2220 of the Civil Code requires evidence of bad faith and fraud and moral damages are generally not recoverable in *culpa contractual* except when bad faith had been proven. The award of exemplary damages is likewise not warranted. Apart from the requirement that the defendant acted in a wanton, oppressive and malevolent manner, the claimant must prove his entitlement to moral damages.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioners.
Quisumbing Torres for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review under Rule 45 of the Rules of Court from the January 30, 2009 Decision[1] of the Special Thirteenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 88586 entitled *"Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.,"* the dispositive portion of which states:

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring; *rollo*, pp. 42-54.

WHEREFORE, the Decision of the Regional Trial Court, Branch 74, dated 03 April 2006, awarding US$800.00 or its peso equivalent at the time of payment, plus legal rate of interest from 21 July 1997 until fully paid, [₱]100,000.00 as moral damages, [₱]50,000.00 as exemplary damages, [₱]40,000.00 as attorney's fees and costs of suit to plaintiffs-appellees is hereby **REVERSED** and **SET ASIDE.**

Defendant-appellant's counterclaim is **DENIED.**

Costs against plaintiffs-appellees.

SO ORDERED.[2]

On April 3, 2006, the Regional Trial Court of Antipolo City, Branch 74 (RTC) rendered a Decision, giving due course to the complaint for sum of money and damages filed by petitioners Fernando Viloria (Fernando) and Lourdes Viloria (Lourdes), collectively called Spouses Viloria, against respondent Continental Airlines, Inc. (CAI). As culled from the records, below are the facts giving rise to such complaint.

On or about July 21, 1997 and while in the United States, Fernando purchased for himself and his wife, Lourdes, two (2) round trip airline tickets from San Diego, California to Newark, New Jersey on board Continental Airlines. Fernando purchased the tickets at US$400.00 each from a travel agency called "Holiday Travel" and was attended to by a certain Margaret Mager (Mager). According to Spouses Viloria, Fernando agreed to buy the said tickets after Mager informed them that there were no available seats at Amtrak, an intercity passenger train service provider in the United States. Per the tickets, Spouses Viloria were scheduled to leave for Newark on August 13, 1997 and return to San Diego on August 21, 1997.

Subsequently, Fernando requested Mager to reschedule their flight to Newark to an earlier date or August 6, 1997. Mager informed him that flights to Newark via Continental Airlines were already fully booked and offered the alternative of a round

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[2] *Id.* at 53.

trip flight via Frontier Air. Since flying with Frontier Air called for a higher fare of US$526.00 per passenger and would mean traveling by night, Fernando opted to request for a refund. Mager, however, denied his request as the subject tickets are non-refundable and the only option that Continental Airlines can offer is the re-issuance of new tickets within one (1) year from the date the subject tickets were issued. Fernando decided to reserve two (2) seats with Frontier Air.

As he was having second thoughts on traveling via Frontier Air, Fernando went to the Greyhound Station where he saw an Amtrak station nearby. Fernando made inquiries and was told that there are seats available and he can travel on Amtrak anytime and any day he pleased. Fernando then purchased two (2) tickets for Washington, D.C.

From Amtrak, Fernando went to Holiday Travel and confronted Mager with the Amtrak tickets, telling her that she had misled them into buying the Continental Airlines tickets by misrepresenting that Amtrak was already fully booked. Fernando reiterated his demand for a refund but Mager was firm in her position that the subject tickets are non-refundable.

Upon returning to the Philippines, Fernando sent a letter to CAI on February 11, 1998, demanding a refund and alleging that Mager had deluded them into purchasing the subject tickets.[3]

In a letter dated February 24, 1998, Continental Micronesia informed Fernando that his complaint had been referred to the Customer Refund Services of Continental Airlines at Houston, Texas.[4]

In a letter dated March 24, 1998, Continental Micronesia denied Fernando's request for a refund and advised him that he may take the subject tickets to any Continental ticketing location for the re-issuance of new tickets within two (2) years from the date they were issued. Continental Micronesia informed

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[3] *Id.* at 64.

[4] *Id.* at 65.

Fernando that the subject tickets may be used as a form of payment for the purchase of another Continental ticket, albeit with a re-issuance fee.[5]

On June 17, 1999, Fernando went to Continental's ticketing office at Ayala Avenue, Makati City to have the subject tickets replaced by a single round trip ticket to Los Angeles, California under his name. Therein, Fernando was informed that Lourdes' ticket was non-transferable, thus, cannot be used for the purchase of a ticket in his favor. He was also informed that a round trip ticket to Los Angeles was US$1,867.40 so he would have to pay what will not be covered by the value of his San Diego to Newark round trip ticket.

In a letter dated June 21, 1999, Fernando demanded for the refund of the subject tickets as he no longer wished to have them replaced. In addition to the dubious circumstances under which the subject tickets were issued, Fernando claimed that CAI's act of charging him with US$1,867.40 for a round trip ticket to Los Angeles, which other airlines priced at US$856.00, and refusal to allow him to use Lourdes' ticket, breached its undertaking under its March 24, 1998 letter.[6]

On September 8, 2000, Spouses Viloria filed a complaint against CAI, praying that CAI be ordered to refund the money they used in the purchase of the subject tickets with legal interest from July 21, 1997 and to pay ₱1,000,000.00 as moral damages, ₱500,000.00 as exemplary damages and ₱250,000.00 as attorney's fees.[7]

CAI interposed the following defenses: (a) Spouses Viloria have no right to ask for a refund as the subject tickets are non-refundable; (b) Fernando cannot insist on using the ticket in Lourdes' name for the purchase of a round trip ticket to Los Angeles since the same is non-transferable; (c) as Mager is

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[5] *Id.* at 67.

[6] *Id.* at 68.

[7] *Id.* at 69-76.

not a CAI employee, CAI is not liable for any of her acts; (d) CAI, its employees and agents did not act in bad faith as to entitle Spouses Viloria to moral and exemplary damages and attorney's fees. CAI also invoked the following clause printed on the subject tickets:

> 3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.[8]

According to CAI, one of the conditions attached to their contract of carriage is the non-transferability and non-refundability of the subject tickets.

The RTC's Ruling

Following a full-blown trial, the RTC rendered its April 3, 2006 Decision, holding that Spouses Viloria are entitled to a refund in view of Mager's misrepresentation in obtaining their consent in the purchase of the subject tickets.[9] The relevant portion of the April 3, 2006 Decision states:

> Continental Airlines agent Ms. Mager was in bad faith when she was less candid and diligent in presenting to plaintiffs spouses their booking options. Plaintiff Fernando clearly wanted to travel via AMTRAK, but defendant's agent misled him into purchasing Continental Airlines tickets instead on the fraudulent misrepresentation that Amtrak was fully booked. In fact, defendant Airline did not specifically denied (sic) this allegation.
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> Plainly, plaintiffs spouses, particularly plaintiff Fernando, were tricked into buying Continental Airline tickets on Ms. Mager's misleading misrepresentations. Continental Airlines agent Ms. Mager

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[8] *Id.* at 80.

[9] *Id.* at 77-85.

further relied on and exploited plaintiff Fernando's need and told him that they must book a flight immediately or risk not being able to travel at all on the couple's preferred date. Unfortunately, plaintiffs spouses fell prey to the airline's and its agent's unethical tactics for baiting trusting customers."[10]

Citing Articles 1868 and 1869 of the Civil Code, the RTC ruled that Mager is CAI's agent, hence, bound by her bad faith and misrepresentation. As far as the RTC is concerned, there is no issue as to whether Mager was CAI's agent in view of CAI's implied recognition of her status as such in its March 24, 1998 letter.

The act of a travel agent or agency being involved here, the following are the pertinent New Civil Code provisions on agency:

> Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.
>
> Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.
>
> Agency may be oral, unless the law requires a specific form.

As its very name implies, a travel agency binds itself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. This court takes judicial notice of the common services rendered by travel agencies that represent themselves as such, specifically the reservation and booking of local and foreign tours as well as the issuance of airline tickets for a commission or fee.

The services rendered by Ms. Mager of Holiday Travel agency to the plaintiff spouses on July 21, 1997 were no different from those offered in any other travel agency. Defendant airline impliedly if not expressly acknowledged its principal-agent relationship with Ms. Mager

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[10] *Id.* at 84.

by its offer in the letter dated March 24, 1998 – an obvious attempt to assuage plaintiffs spouses' hurt feelings.[11]

Furthermore, the RTC ruled that CAI acted in bad faith in reneging on its undertaking to replace the subject tickets within two (2) years from their date of issue when it charged Fernando with the amount of US$1,867.40 for a round trip ticket to Los Angeles and when it refused to allow Fernando to use Lourdes' ticket. Specifically:

> Tickets may be reissued for up to two years from the original date of issue. When defendant airline still charged plaintiffs spouses US$1,867.40 or more than double the then going rate of US$856.00 for the unused tickets when the same were presented within two (2) years from date of issue, defendant airline exhibited callous treatment of passengers.[12]

The Appellate Court's Ruling

On appeal, the CA reversed the RTC's April 3, 2006 Decision, holding that CAI cannot be held liable for Mager's act in the absence of any proof that a principal-agent relationship existed between CAI and Holiday Travel. According to the CA, Spouses Viloria, who have the burden of proof to establish the fact of agency, failed to present evidence demonstrating that Holiday Travel is CAI's agent. Furthermore, contrary to Spouses Viloria's claim, the contractual relationship between Holiday Travel and CAI is not an agency but that of a sale.

> Plaintiffs-appellees assert that Mager was a sub-agent of Holiday Travel who was in turn a ticketing agent of Holiday Travel who was in turn a ticketing agent of Continental Airlines. Proceeding from this premise, they contend that Continental Airlines should be held liable for the acts of Mager. The trial court held the same view.
>
> We do not agree. By the contract of agency, a person binds him/herself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

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[11] *Id.* at 83.

[12] *Id.* at 84.

The elements 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 him/herself; and (4) the agent acts within the scope of his/her authority. As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. Agency is never presumed, neither is it created by the mere use of the word in a trade or business name. We have perused the evidence and documents so far presented. We find nothing except bare allegations of plaintiffs-appellees that Mager/Holiday Travel was acting in behalf of Continental Airlines. From all sides of legal prism, the transaction in issue was simply a contract of sale, wherein Holiday Travel buys airline tickets from Continental Airlines and then, through its employees, Mager included, sells it at a premium to clients.[13]

The CA also ruled that refund is not available to Spouses Viloria as the word "non-refundable" was clearly printed on the face of the subject tickets, which constitute their contract with CAI. Therefore, the grant of their prayer for a refund would violate the proscription against impairment of contracts.

Finally, the CA held that CAI did not act in bad faith when they charged Spouses Viloria with the higher amount of US$1,867.40 for a round trip ticket to Los Angeles. According to the CA, there is no compulsion for CAI to charge the lower amount of US$856.00, which Spouses Viloria claim to be the fee charged by other airlines. The matter of fixing the prices for its services is CAI's prerogative, which Spouses Viloria cannot intervene. In particular:

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[13] *Id.* at 50-51.

It is within the respective rights of persons owning and/or operating business entities to peg the premium of the services and items which they provide at a price which they deem fit, no matter how expensive or exhorbitant said price may seem *vis-à-vis* those of the competing companies. The Spouses Viloria may not intervene with the business judgment of Continental Airlines.[14]

The Petitioners' Case

In this Petition, this Court is being asked to review the findings and conclusions of the CA, as the latter's reversal of the RTC's April 3, 2006 Decision allegedly lacks factual and legal bases. Spouses Viloria claim that CAI acted in bad faith when it required them to pay a higher amount for a round trip ticket to Los Angeles considering CAI's undertaking to re-issue new tickets to them within the period stated in their March 24, 1998 letter. CAI likewise acted in bad faith when it disallowed Fernando to use Lourdes' ticket to purchase a round trip to Los Angeles given that there is nothing in Lourdes' ticket indicating that it is non-transferable. As a common carrier, it is CAI's duty to inform its passengers of the terms and conditions of their contract and passengers cannot be bound by such terms and conditions which they are not made aware of. Also, the subject contract of carriage is a contract of adhesion; therefore, any ambiguities should be construed against CAI. Notably, the petitioners are no longer questioning the validity of the subject contracts and limited its claim for a refund on CAI's alleged breach of its undertaking in its March 24, 1998 letter.

The Respondent's Case

In its Comment, CAI claimed that Spouses Viloria's allegation of bad faith is negated by its willingness to issue new tickets to them and to credit the value of the subject tickets against the value of the new ticket Fernando requested. CAI argued that Spouses Viloria's sole basis to claim that the price at which CAI was willing to issue the new tickets is unconscionable is a piece of hearsay evidence – an advertisement appearing on

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[14] *Id.* at 52.

a newspaper stating that airfares from Manila to Los Angeles or San Francisco cost US$818.00.[15] Also, the advertisement pertains to airfares in September 2000 and not to airfares prevailing in June 1999, the time when Fernando asked CAI to apply the value of the subject tickets for the purchase of a new one.[16] CAI likewise argued that it did not undertake to protect Spouses Viloria from any changes or fluctuations in the prices of airline tickets and its only obligation was to apply the value of the subject tickets to the purchase of the newly issued tickets.

With respect to Spouses Viloria's claim that they are not aware of CAI's restrictions on the subject tickets and that the terms and conditions that are printed on them are ambiguous, CAI denies any ambiguity and alleged that its representative informed Fernando that the subject tickets are non-transferable when he applied for the issuance of a new ticket. On the other hand, the word "non-refundable" clearly appears on the face of the subject tickets.

CAI also denies that it is bound by the acts of Holiday Travel and Mager and that no principal-agency relationship exists between them. As an independent contractor, Holiday Travel was without capacity to bind CAI.

Issues

To determine the propriety of disturbing the CA's January 30, 2009 Decision and whether Spouses Viloria have the right to the reliefs they prayed for, this Court deems it necessary to resolve the following issues:

a. Does a principal-agent relationship exist between CAI and Holiday Travel?

b. Assuming that an agency relationship exists between CAI and Holiday Travel, is CAI bound by the acts of Holiday Travel's agents and employees such as Mager?

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[15] *Id.* at 214.

[16] *Id.* at 215.

c. Assuming that CAI is bound by the acts of Holiday Travel's agents and employees, can the representation of Mager as to unavailability of seats at Amtrak be considered fraudulent as to vitiate the consent of Spouse Viloria in the purchase of the subject tickets?

d. Is CAI justified in insisting that the subject tickets are non-transferable and non-refundable?

e. Is CAI justified in pegging a different price for the round trip ticket to Los Angeles requested by Fernando?

f. Alternatively, did CAI act in bad faith or renege its obligation to Spouses Viloria to apply the value of the subject tickets in the purchase of new ones when it refused to allow Fernando to use Lourdes' ticket and in charging a higher price for a round trip ticket to Los Angeles?

This Court's Ruling

I. A principal-agent relationship exists between CAI and Holiday Travel.

With respect to the first issue, which is a question of fact that would require this Court to review and re-examine the evidence presented by the parties below, this Court takes exception to the general rule that the CA's findings of fact are conclusive upon Us and our jurisdiction is limited to the review of questions of law. It is well-settled to the point of being axiomatic that this Court is authorized to resolve questions of fact if confronted with contrasting factual findings of the trial court and appellate court and if the findings of the CA are contradicted by the evidence on record.[17]

According to the CA, agency is never presumed and that he who alleges that it exists has the burden of proof. Spouses Viloria, on whose shoulders such burden rests, presented evidence that

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[17] See *Heirs of Jose Lim v. Lim*, G.R. No. 172690, March 3, 2010, 614 SCRA 141, 147; *Ontimare, Jr. v. Spouses Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

fell short of indubitably demonstrating the existence of such agency.

We disagree. The CA failed to consider undisputed facts, discrediting CAI's denial that Holiday Travel is one of its agents. Furthermore, in erroneously characterizing the contractual relationship between CAI and Holiday Travel as a contract of sale, the CA failed to apply the fundamental civil law principles governing agency and differentiating it from sale.

In *Rallos v. Felix Go Chan & Sons Realty Corporation*,[18] this Court explained the nature of an agency and spelled out the essential elements thereof:

> Out of the above given principles, sprung the creation and acceptance of the *relationship of agency* whereby one party, called the principal (*mandante*), authorizes another, called the agent (*mandatario*), to act for and in his behalf in transactions with third persons. The essential elements of agency are: (1) there is 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, and (4) the agent acts within the scope of his authority.
>
> Agency is basically *personal*, *representative*, and *derivative* in nature. The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit se.* "He who acts through another acts himself."[19]

Contrary to the findings of the CA, all the elements of an agency exist in this case. The first and second elements are

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[18] 171 Phil. 222 (1978).

[19] *Id.* at 226-227, citing Articles 1868 and 1881, New Civil Code; 11 Manresa 422-423; 4 Sanchez Roman 478, 2nd Ed.; 25 Scaevola, 243, 262; Tolentino, *Comments, Civil Code of the Philippines*, p. 340, vol. 5, 1959 Ed., *Columbia University Club v. Higgins*, D.C.N.Y., 23 f. Supp. 572, 574; *Valentine Oil Co. v. Young*, 109 P. 2d 180, 185; 74 C.J.S. 4; *Valentine Oil Co. v. Powers*, 59 N.W. 2d 160, 163, 157 Neb. 87; *Purnell v. City of Florence*, 175 So. 417, 27 Ala. App. 516; *Stroman Motor Co. v. Brown*; 243 P. 133, 126 Ok. 36.

present as CAI does not deny that it concluded an agreement with Holiday Travel, whereby Holiday Travel would enter into contracts of carriage with third persons on CAI's behalf. The third element is also present as it is undisputed that Holiday Travel merely acted in a representative capacity and it is CAI and not Holiday Travel who is bound by the contracts of carriage entered into by Holiday Travel on its behalf. The fourth element is also present considering that CAI has not made any allegation that Holiday Travel exceeded the authority that was granted to it. In fact, CAI consistently maintains the validity of the contracts of carriage that Holiday Travel executed with Spouses Viloria and that Mager was not guilty of any fraudulent misrepresentation. That CAI admits the authority of Holiday Travel to enter into contracts of carriage on its behalf is easily discernible from its February 24, 1998 and March 24, 1998 letters, where it impliedly recognized the validity of the contracts entered into by Holiday Travel with Spouses Viloria. When Fernando informed CAI that it was Holiday Travel who issued to them the subject tickets, CAI did not deny that Holiday Travel is its authorized agent.

Prior to Spouses Viloria's filing of a complaint against it, CAI never refuted that it gave Holiday Travel the power and authority to conclude contracts of carriage on its behalf. As clearly extant from the records, CAI recognized the validity of the contracts of carriage that Holiday Travel entered into with Spouses Viloria and considered itself bound with Spouses Viloria by the terms and conditions thereof; and this constitutes an unequivocal testament to Holiday Travel's authority to act as its agent. This Court cannot therefore allow CAI to take an altogether different position and deny that Holiday Travel is its agent without condoning or giving imprimatur to whatever damage or prejudice that may result from such denial or retraction to Spouses Viloria, who relied on good faith on CAI's acts in recognition of Holiday Travel's authority. Estoppel is primarily based on the doctrine of good faith and the avoidance of harm that will befall an innocent party due to its injurious reliance, the failure to apply it in this case

would result in gross travesty of justice.[20] Estoppel bars CAI from making such denial.

As categorically provided under Article 1869 of the Civil Code, "[a]gency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority."

Considering that the fundamental hallmarks of an agency are present, this Court finds it rather peculiar that the CA had branded the contractual relationship between CAI and Holiday Travel as one of sale. The distinctions between a sale and an agency are not difficult to discern and this Court, as early as 1970, had already formulated the guidelines that would aid in differentiating the two (2) contracts. In *Commissioner of Internal Revenue v. Constantino,*[21] this Court extrapolated that the primordial differentiating consideration between the two (2) contracts is the transfer of ownership or title over the property subject of the contract. In an agency, the principal retains ownership and control over the property and the agent merely acts on the principal's behalf and under his instructions in furtherance of the objectives for which the agency was established. On the other hand, the contract is clearly a sale if the parties intended that the delivery of the property will effect a relinquishment of title, control and ownership in such a way that the recipient may do with the property as he pleases.

Since the company retained ownership of the goods, even as it delivered possession unto the dealer for resale to customers, the price and terms of which were subject to the company's control, the relationship between the company and the dealer is one of agency, tested under the following criterion:

"The difficulty in distinguishing between contracts of sale and the creation of an agency to sell has led to the establishment of rules by the application of which this difficulty may be solved. The decisions

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[20] *Philippine Airlines, Inc. v. CA,* 325 Phil 303, 323 (1996).

[21] G.R. No. L-25926, February 27, 1970, 31 SCRA 779.

say the transfer of title or agreement to transfer it for a price paid or promised is the essence of sale. If such transfer puts the transferee in the attitude or position of an owner and makes him liable to the transferor as a debtor for the agreed price, and not merely as an agent who must account for the proceeds of a resale, the transaction is a sale; while the essence of an agency to sell is the delivery to an agent, not as his property, but as the property of the principal, who remains the owner and has the right to control sales, fix the price, and terms, demand and receive the proceeds less the agent's commission upon sales made. 1 Mechem on Sales, Sec. 43; 1 Mechem on Agency, Sec. 48; Williston on Sales, 1; Tiedeman on Sales, 1." (*Salisbury v. Brooks*, 94 SE 117, 118-119)[22]

As to how the CA have arrived at the conclusion that the contract between CAI and Holiday Travel is a sale is certainly confounding, considering that CAI is the one bound by the contracts of carriage embodied by the tickets being sold by Holiday Travel on its behalf. It is undisputed that CAI and not Holiday Travel who is the party to the contracts of carriage executed by Holiday Travel with third persons who desire to travel via Continental Airlines, and this conclusively indicates the existence of a principal-agent relationship. That the principal is bound by all the obligations contracted by the agent within the scope of the authority granted to him is clearly provided under Article 1910 of the Civil Code and this constitutes the very notion of agency.

II. In actions based on quasi-delict, a principal can only be held liable for the tort committed by its agent's employees if it has been established by preponderance of evidence that the principal was also at fault or negligent or that the principal exercise control and supervision over them.

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[22] *Id.* at 785.

Considering that Holiday Travel is CAI's agent, does it necessarily follow that CAI is liable for the fault or negligence of Holiday Travel's employees? Citing *China Air Lines, Ltd. v. Court of Appeals, et al.*,[23] CAI argues that it cannot be held liable for the actions of the employee of its ticketing agent in the absence of an employer-employee relationship.

An examination of this Court's pronouncements in *China Air Lines* will reveal that an airline company is not completely exonerated from any liability for the tort committed by its agent's employees. A prior determination of the nature of the passenger's cause of action is necessary. If the passenger's cause of action against the airline company is premised on *culpa aquiliana* or quasi-delict for a tort committed by the employee of the airline company's agent, there must be an independent showing that the airline company was at fault or negligent or has contributed to the negligence or tortuous conduct committed by the employee of its agent. The mere fact that the employee of the airline company's agent has committed a tort is not sufficient to hold the airline company liable. There is no *vinculum juris* between the airline company and its agent's employees and the contractual relationship between the airline company and its agent does not operate to create a juridical tie between the airline company and its agent's employees. Article 2180 of the Civil Code does not make the principal vicariously liable for the tort committed by its agent's employees and the principal-agency relationship *per se* does not make the principal a party to such tort; hence, the need to prove the principal's own fault or negligence.

On the other hand, if the passenger's cause of action for damages against the airline company is based on contractual breach or *culpa contractual*, it is not necessary that there be evidence of the airline company's fault or negligence. As this Court previously stated in *China Air Lines* and reiterated in *Air France vs. Gillego*,[24] "in an action based on a breach of

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[23] 264 Phil. 15 (1990).

[24] G.R. No. 165266, December 15, 2010, 638 SCRA 472.

contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier."

Spouses Viloria's cause of action on the basis of Mager's alleged fraudulent misrepresentation is clearly one of tort or quasi-delict, there being no pre-existing contractual relationship between them. Therefore, it was incumbent upon Spouses Viloria to prove that CAI was equally at fault.

However, the records are devoid of any evidence by which CAI's alleged liability can be substantiated. Apart from their claim that CAI must be held liable for Mager's supposed fraud because Holiday Travel is CAI's agent, Spouses Viloria did not present evidence that CAI was a party or had contributed to Mager's complained act either by instructing or authorizing Holiday Travel and Mager to issue the said misrepresentation.

It may seem unjust at first glance that CAI would consider Spouses Viloria bound by the terms and conditions of the subject contracts, which Mager entered into with them on CAI's behalf, in order to deny Spouses Viloria's request for a refund or Fernando's use of Lourdes' ticket for the re-issuance of a new one, and simultaneously claim that they are not bound by Mager's supposed misrepresentation for purposes of avoiding Spouses Viloria's claim for damages and maintaining the validity of the subject contracts. It may likewise be argued that CAI cannot deny liability as it benefited from Mager's acts, which were performed in compliance with Holiday Travel's obligations as CAI's agent.

However, a person's vicarious liability is anchored on his possession of control, whether absolute or limited, on the tortfeasor. Without such control, there is nothing which could justify extending the liability to a person other than the one who committed the tort. As this Court explained in *Cangco v. Manila Railroad Co.*:[25]

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[25] 38 Phil. 768 (1918).

With respect to extra-contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect — and our Legislature has so elected — to limit such liability to cases in which the person upon whom such an obligation is imposed is morally culpable or, on the contrary, **for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them.** The legislature which adopted our Civil Code has elected to limit extra-contractual liability — with certain well-defined exceptions — to cases in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agent or servants, or in the control of persons who, by reasons of their status, occupy a position of dependency with respect to the person made liable for their conduct.[26] (emphasis supplied)

It is incumbent upon Spouses Viloria to prove that CAI exercised control or supervision over Mager by preponderant evidence. The existence of control or supervision cannot be presumed and CAI is under no obligation to prove its denial or nugatory assertion. Citing *Belen v. Belen*,[27] this Court ruled in *Jayme v. Apostol*,[28] that:

In *Belen v. Belen*, this Court ruled that it was enough for defendant to deny an alleged employment relationship. The defendant is under no obligation to prove the negative averment. This Court said:

> "It is an old and well-settled rule of the courts that the burden of proving the action is upon the plaintiff, and that if he fails satisfactorily to show the facts upon which he bases his claim, the defendant is under no obligation to prove his exceptions. This [rule] is in harmony with the provisions of Section 297 of

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[26] *Id.* at 775-776.

[27] 13 Phil. 202 (1909).

[28] G.R. No. 163609, November 27, 2008, 572 SCRA 41.

the Code of Civil Procedure holding that each party must prove his own affirmative allegations, *etc.*"[29] (citations omitted)

Therefore, without a modicum of evidence that CAI exercised control over Holiday Travel's employees or that CAI was equally at fault, no liability can be imposed on CAI for Mager's supposed misrepresentation.

III. Even on the assumption that CAI may be held liable for the acts of Mager, still, Spouses Viloria are not entitled to a refund. Mager's statement cannot be considered a causal fraud that would justify the annulment of the subject contracts that would oblige CAI to indemnify Spouses Viloria and return the money they paid for the subject tickets.

Article 1390, in relation to Article 1391 of the Civil Code, provides that if the consent of the contracting parties was obtained through fraud, the contract is considered voidable and may be annulled within four (4) years from the time of the discovery of the fraud. Once a contract is annulled, the parties are obliged under Article 1398 of the same Code to restore to each other the things subject matter of the contract, including their fruits and interest.

On the basis of the foregoing and given the allegation of Spouses Viloria that Fernando's consent to the subject contracts was supposedly secured by Mager through fraudulent means, it is plainly apparent that their demand for a refund is tantamount to seeking for an annulment of the subject contracts on the ground of vitiated consent.

Whether the subject contracts are annullable, this Court is required to determine whether Mager's alleged misrepresentation

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

constitutes causal fraud. Similar to the dispute on the existence of an agency, whether fraud attended the execution of a contract is factual in nature and this Court, as discussed above, may scrutinize the records if the findings of the CA are contrary to those of the RTC.

Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract.[30] In *Samson v. Court of Appeals*,[31] causal fraud was defined as "a deception employed by one party prior to or simultaneous to the contract in order to secure the consent of the other."[32]

Also, fraud must be serious and its existence must be established by clear and convincing evidence. As ruled by this Court in *Sierra v. Hon. Court of Appeals, et al.*,[33] mere preponderance of evidence is not adequate:

> Fraud must also be discounted, for according to the Civil Code:
>
> > Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them, he would not have agreed to.
> >
> > Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

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[30] See *Tongson v. Emergency Pawnshop Bula, Inc.*, G.R. No. 167874, 15 January 2010, 610 SCRA 150, 159, citing *Woodhouse v. Halili*, 93 Phil. 526, 537 (1953).

[31] G.R. No. 108245, November 25, 1994, 238 SCRA 397.

[32] *Id.* at 404.

[33] G.R. No. 90270, July 24, 1992, 211 SCRA 785.

To quote Tolentino again, the "misrepresentation constituting the fraud must be established by full, clear, and convincing evidence, and not merely by a preponderance thereof. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity. The circumstances of each case should be considered, taking into account the personal conditions of the victim."[34]

After meticulously poring over the records, this Court finds that the fraud alleged by Spouses Viloria has not been satisfactorily established as causal in nature to warrant the annulment of the subject contracts. In fact, Spouses Viloria failed to prove by clear and convincing evidence that Mager's statement was fraudulent. Specifically, Spouses Viloria failed to prove that (a) there were indeed available seats at Amtrak for a trip to New Jersey on August 13, 1997 at the time they spoke with Mager on July 21, 1997; (b) Mager knew about this; and (c) that she purposely informed them otherwise.

This Court finds the only proof of Mager's alleged fraud, which is Fernando's testimony that an Amtrak had assured him of the perennial availability of seats at Amtrak, to be wanting. As CAI correctly pointed out and as Fernando admitted, it was possible that during the intervening period of three (3) weeks from the time Fernando purchased the subject tickets to the time he talked to said Amtrak employee, other passengers may have cancelled their bookings and reservations with Amtrak, making it possible for Amtrak to accommodate them. Indeed, the existence of fraud cannot be proved by mere speculations and conjectures. Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that "a person is innocent of crime or wrong" and that "private transactions have been fair and regular."[35] Spouses Viloria failed to overcome this presumption.

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[34] *Id.* at 793, citing Tolentino, *Commentaries on the Civil Code*, Vol. 4, pp. 508, 514.

[35] *Trinidad v. Intermediate Appellate Court*, G.R. No. 65922, December 3, 1991, 204 SCRA 524, 530, citing Rule 131, Sections 5(a) and 5(p).

IV. Assuming the contrary, Spouses Viloria are nevertheless deemed to have ratified the subject contracts.

Even assuming that Mager's representation is causal fraud, the subject contracts have been impliedly ratified when Spouses Viloria decided to exercise their right to use the subject tickets for the purchase of new ones. Under Article 1392 of the Civil Code, "ratification extinguishes the action to annul a voidable contract."

Ratification of a voidable contract is defined under Article 1393 of the Civil Code as follows:

> Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[36]

Simultaneous with their demand for a refund on the ground of Fernando's vitiated consent, Spouses Viloria likewise asked for a refund based on CAI's supposed bad faith in reneging on its undertaking to replace the subject tickets with a round trip ticket from Manila to Los Angeles.

In doing so, Spouses Viloria are actually asking for a rescission of the subject contracts based on contractual breach. Resolution, the action referred to in Article 1191, is based on the defendant's breach of faith, a violation of the reciprocity between the parties[37] and in *Solar Harvest, Inc. v. Davao Corrugated Carton*

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[36] *Acuña v. Batac Producers Coop. Mktg. Ass.*, 126 Phil. 896, 902 (1967).

[37] *Heirs of Sofia Quirong v. Development Bank of the Philippines*, G.R. No. 173441, December 3, 2009, 606 SCRA 543, 550.

Corporation,[38] this Court ruled that a claim for a reimbursement in view of the other party's failure to comply with his obligations under the contract is one for rescission or resolution.

However, annulment under Article 1390 of the Civil Code and rescission under Article 1191 are two (2) inconsistent remedies. In resolution, all the elements to make the contract valid are present; in annulment, one of the essential elements to a formation of a contract, which is consent, is absent. In resolution, the defect is in the consummation stage of the contract when the parties are in the process of performing their respective obligations; in annulment, the defect is already present at the time of the negotiation and perfection stages of the contract. Accordingly, by pursuing the remedy of rescission under Article 1191, the Vilorias had impliedly admitted the validity of the subject contracts, forfeiting their right to demand their annulment. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions.[39]

V. Contracts cannot be rescinded for a slight or casual breach.

CAI cannot insist on the non-transferability of the subject tickets.

Considering that the subject contracts are not annullable on the ground of vitiated consent, the next question is: "Do Spouses Viloria have the right to rescind the contract on the ground of CAI's supposed breach of its undertaking to issue new tickets upon surrender of the subject tickets?"

Article 1191, as presently worded, states:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

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[38] G.R. No. 176868, July 26, 2010, 625 SCRA 448.

[39] *Gonzales v. Climax Mining Ltd.*, 492 Phil. 682, 697 (2005).

The injured party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

According to Spouses Viloria, CAI acted in bad faith and breached the subject contracts when it refused to apply the value of Lourdes' ticket for Fernando's purchase of a round trip ticket to Los Angeles and in requiring him to pay an amount higher than the price fixed by other airline companies.

In its March 24, 1998 letter, CAI stated that "non-refundable tickets may be used as a form of payment toward the purchase of another Continental ticket for $75.00, per ticket, reissue fee ($50.00, per ticket, for tickets purchased prior to October 30, 1997)."

Clearly, there is nothing in the above-quoted section of CAI's letter from which the restriction on the non-transferability of the subject tickets can be inferred. In fact, the words used by CAI in its letter supports the position of Spouses Viloria, that each of them can use the ticket under their name for the purchase of new tickets whether for themselves or for some other person.

Moreover, as CAI admitted, it was only when Fernando had expressed his interest to use the subject tickets for the purchase of a round trip ticket between Manila and Los Angeles that he was informed that he cannot use the ticket in Lourdes' name as payment.

Contrary to CAI's claim, that the subject tickets are non-transferable cannot be implied from a plain reading of the provision printed on the subject tickets stating that "[t]o the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (a) provisions contained in this ticket, x x x (iii) carrier's conditions of carriage

and related regulations which are made part hereof (and are available on application at the offices of carrier) x x x." As a common carrier whose business is imbued with public interest, the exercise of extraordinary diligence requires CAI to inform Spouses Viloria, or all of its passengers for that matter, of all the terms and conditions governing their contract of carriage. CAI is proscribed from taking advantage of any ambiguity in the contract of carriage to impute knowledge on its passengers of and demand compliance with a certain condition or undertaking that is not clearly stipulated. Since the prohibition on transferability is not written on the face of the subject tickets and CAI failed to inform Spouses Viloria thereof, CAI cannot refuse to apply the value of Lourdes' ticket as payment for Fernando's purchase of a new ticket.

CAI's refusal to accept Lourdes' ticket for the purchase of a new ticket for Fernando is only a casual breach.

Nonetheless, the right to rescind a contract for non-performance of its stipulations is not absolute. The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.[40] Whether a breach is substantial is largely determined by the attendant circumstances.[41]

While CAI's refusal to allow Fernando to use the value of Lourdes' ticket as payment for the purchase of a new ticket is unjustified as the non-transferability of the subject tickets was not clearly stipulated, it cannot, however be considered substantial. The endorsability of the subject tickets is not an

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[40] See *Barredo v. Leaño*, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 115.

[41] See *Central Bank of the Philippines v. Spouses Bichara*, 385 Phil. 553, 565 (2000), citing *Vermen Realty Development Corporation v. Court of Appeals, et al.*, 224 SCRA 549, 555.

essential part of the underlying contracts and CAI's failure to comply is not essential to its fulfillment of its undertaking to issue new tickets upon Spouses Viloria's surrender of the subject tickets. This Court takes note of CAI's willingness to perform its principal obligation and this is to apply the price of the ticket in Fernando's name to the price of the round trip ticket between Manila and Los Angeles. CAI was likewise willing to accept the ticket in Lourdes' name as full or partial payment as the case may be for the purchase of any ticket, albeit under her name and for her exclusive use. In other words, CAI's willingness to comply with its undertaking under its March 24, 1998 cannot be doubted, albeit tainted with its erroneous insistence that Lourdes' ticket is non-transferable.

Moreover, Spouses Viloria's demand for rescission cannot prosper as CAI cannot be solely faulted for the fact that their agreement failed to consummate and no new ticket was issued to Fernando. Spouses Viloria have no right to insist that a single round trip ticket between Manila and Los Angeles should be priced at around $856.00 and refuse to pay the difference between the price of the subject tickets and the amount fixed by CAI. The petitioners failed to allege, much less prove, that CAI had obliged itself to issue to them tickets for any flight anywhere in the world upon their surrender of the subject tickets. In its March 24, 1998 letter, it was clearly stated that "[n]on-refundable tickets may be used as a form of payment toward the purchase of another Continental ticket"[42] and there is nothing in it suggesting that CAI had obliged itself to protect Spouses Viloria from any fluctuation in the prices of tickets or that the surrender of the subject tickets will be considered as full payment for any ticket that the petitioners intend to buy regardless of actual price and destination. The CA was correct in holding that it is CAI's right and exclusive prerogative to fix the prices for its services and it may not be compelled to observe and maintain the prices of other airline companies.[43]

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[42] *Rollo*, p. 67.

[43] *Id.* at 52.

The conflict as to the endorsability of the subject tickets is an altogether different matter, which does not preclude CAI from fixing the price of a round trip ticket between Manila and Los Angeles in an amount it deems proper and which does not provide Spouses Viloria an excuse not to pay such price, albeit subject to a reduction coming from the value of the subject tickets. It cannot be denied that Spouses Viloria had the concomitant obligation to pay whatever is not covered by the value of the subject tickets whether or not the subject tickets are transferable or not.

There is also no showing that Spouses Viloria were discriminated against in bad faith by being charged with a higher rate. The only evidence the petitioners presented to prove that the price of a round trip ticket between Manila and Los Angeles at that time was only $856.00 is a newspaper advertisement for another airline company, which is inadmissible for being "hearsay evidence, twice removed." Newspaper clippings are hearsay if they were offered for the purpose of proving the truth of the matter alleged. As ruled in *Feria v. Court of Appeals*,:[44]

> [N]ewspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted. In this case, the news article is admissible only as evidence that such publication does exist with the tenor of the news therein stated.[45] (citations omitted)

The records of this case demonstrate that both parties were equally in default; hence, none of them can seek judicial redress for the cancellation or resolution of the subject contracts and they are therefore bound to their respective obligations thereunder. As the 1st sentence of Article 1192 provides:

> Art. 1192. **In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably**

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[44] 382 Phil. 412 (2000).

[45] *Id.* at 423.

tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (emphasis supplied)

Therefore, CAI's liability for damages for its refusal to accept Lourdes' ticket for the purchase of Fernando's round trip ticket is offset by Spouses Viloria's liability for their refusal to pay the amount, which is not covered by the subject tickets. Moreover, the contract between them remains, hence, CAI is duty bound to issue new tickets for a destination chosen by Spouses Viloria upon their surrender of the subject tickets and Spouses Viloria are obliged to pay whatever amount is not covered by the value of the subject tickets.

This Court made a similar ruling in *Central Bank of the Philippines v. Court of Appeals*.[46] Thus:

Since both parties were in default in the performance of their respective reciprocal obligations, that is, Island Savings Bank failed to comply with its obligation to furnish the entire loan and Sulpicio M. Tolentino failed to comply with his obligation to pay his ₱17,000.00 debt within 3 years as stipulated, they are both liable for damages.

Article 1192 of the Civil Code provides that in case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equitably tempered by the courts. WE rule that the liability of Island Savings Bank for damages in not furnishing the entire loan is offset by the liability of Sulpicio M. Tolentino for damages, in the form of penalties and surcharges, for not paying his overdue ₱17,000.00 debt. x x x.[47]

Another consideration that militates against the propriety of holding CAI liable for moral damages is the absence of a showing that the latter acted fraudulently and in bad faith. Article 2220 of the Civil Code requires evidence of bad faith and fraud and moral damages are generally not recoverable in *culpa contractual* except when bad faith had been proven.[48] The award

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[46] 223 Phil. 266 (1985).

[47] *Id.* at 276-277.

[48] *See Yobido v. Court of Appeals,* 346 Phil. 1, 13 (1997).

of exemplary damages is likewise not warranted. Apart from the requirement that the defendant acted in a wanton, oppressive and malevolent manner, the claimant must prove his entitlement to moral damages.[49]

WHEREFORE, premises considered, the instant Petition is **DENIED.**

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 190436. January 16, 2012]

NORMAN YABUT, *petitioner, vs.* **MANILA ELECTRIC COMPANY and MANUEL M. LOPEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES; THE DISMISSAL OF PETITIONER WAS FOUNDED ON JUST CAUSES UNDER ARTICLE 282 OF THE LABOR CODE.— Article 279 of the Labor Code of the Philippines provides that "(i)n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. x x x" The just causes are enumerated in Article 282, which provides: Article 282. **Termination by employer**. - An

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[49] *Mahinay v. Atty. Velasquez, Jr.*, 464 Phil 146, 150 (2004).

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing. The requirement for a just cause was satisfied in this case. We note that the petitioner's employment was terminated by the herein respondents for violation of Section 7, par. 3 of Meralco's Company Code on Employee Discipline, and for the existence of just cause under Article 282 (a), (c), (d) and (e) of the Labor Code.

2. ID.; ID.; ID.; ID.; PETITIONER'S VIOLATION OF COMPANY RULES WAS EVIDENT.— The petitioner's violation of the company rules was evident. While he denies any involvement in the installation of the shunting wires which Meralco discovered, it is significant that said SIN 708668501 is registered under his name, and its meter base is situated within the premises of his property. Said meter registered electric consumption during the time his electric service was officially disconnected by Meralco. It was the petitioner and his family who could have benefited from the illegal connection, being the residents of the area covered by the service. His claim that he failed to know or even notice the shunted wires fails to persuade as we consider the meter located in the front of his house, the nature of his work as branch field representative, his long-time employment with Meralco and his familiarity with illegal connections of this kind. The logical conclusion that may be deduced from these attending circumstances is that the petitioner was a party, or at the very least, one who agreed to the installation of the shunted wires, and who also benefited from the illegal connection at the expense of his employer-company. In sustaining the CA's findings, we consider the rule that in administrative and quasi-judicial proceedings, as in proceedings before the NLRC which had original jurisdiction over the complaint for illegal dismissal, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Significantly,

"(t)ampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company" is classified as an act of dishonesty from Meralco employees, expressly prohibited under company rules. It is reasonable that its commission is classified as a severe act of dishonesty, punishable by dismissal even on its first commission, given the nature and gravity of the offense and the fact that it is a grave wrong directed against their employer.

3. **ID.; ID.; ID.; ID.; SERIOUS MISCONDUCT, AS A GROUND; MISCONDUCT; DEFINED.—** To reiterate, Article 282 (a) provides that an employer may terminate an employment because of an employee's serious misconduct, a cause that was present in this case in view of the petitioner's violation of his employer's code of conduct. Misconduct is defined as the "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For serious misconduct to justify dismissal, the following requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

4. **ID.; ID.; ID.; ID.; AS SUPERVISOR WITH DUTY AND POWER THAT INCLUDED TESTING OF SERVICE METERS AND INVESTIGATION OF VIOLATIONS OF CONTRACT OF CUSTOMERS, RESPONDENT'S POSITION CAN BE TREATED AS ONE OF TRUST AND CONFIDENCE, REQUIRING HIGH DEGREE OF HONESTY AS COMPARED WITH ORDINARY RANK-AND-FILE EMPLOYEES.—** The dismissal is also justified as the act imputed upon the petitioner qualifies as "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative" under Article 282 (c) of the Labor Code. While the petitioner contests this ground by denying that his position is one of trust and confidence, it is undisputed that at the time of his dismissal, he was holding a supervisory position after he rose from the ranks since commencement of his employment with Meralco. As a supervisor with duty and power that included testing of service meters and investigation of violations of contract of customers, his position can be treated as one of trust and confidence, requiring a high

degree of honesty as compared with ordinary rank-and-file employees.

5. ID.; ID.; ID.; ID.; PETITIONER'S DISHONESTY, INVOLVEMENT IN THEFT AND TAMPERING OF ELECTRIC METERS CLEARLY PREJUDICE RESPONDENT COMPANY; DISMISSAL OF A DISHONEST EMPLOYEE IS TO THE BEST INTEREST NOT ONLY OF THE MANAGEMENT BUT ALSO OF LABOR.— In this case, the acts complained of were clearly work-related because they related to matters the petitioner handled as branch field representative. Taking into account the results of its investigations, Meralco cannot be expected to trust Yabut to properly perform his functions and to meet the demands of his job. His dishonesty, involvement in theft and tampering of electric meters clearly prejudice respondent Meralco, since he failed to perform the duties which he was expected to perform. Considering the foregoing, this Court agrees that there were just causes for the petitioner's dismissal. We emphasize that dismissal of a dishonest employee is to the best interest not only of the management but also of labor. As a measure of self-protection against acts inimical to its interest, a company has the right to dismiss its erring employees. An employer cannot be compelled to continue employing an employee guilty of acts inimical to the employer's interest, justifying loss of confidence in him.

6. ID.; ID.; REQUIREMENTS OF PROCEDURAL DUE PROCESS IN TERMINATION CASES; SATISFIED IN CASE AT BAR.— On the matter of procedural due process, it is well-settled that notice and hearing constitute the essential elements of due process in the dismissal of employees. The employer must furnish the employee with two written notices before termination of employment can be legally effected.

APPEARANCES OF COUNSEL

Miralles and Associates Law Office for petitioner.
Angelo G. Medina, Jr. for respondents.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure which assails the Decision[1] dated August 10, 2009 and Resolution[2] dated November 26, 2009 of the Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 96789, entitled "*Manila Electric Company (Meralco) and Manuel M. Lopez v. Norman Yabut and National Labor Relations Commission.*"

The Facts

This case stems from a complaint for illegal dismissal and monetary claims filed by herein petitioner Norman Yabut (Yabut) against respondents Manila Electric Company (Meralco) and Meralco officer Manuel M. Lopez (Lopez).

The petitioner had worked with Meralco from February 1989 until his dismissal from employment on February 5, 2004. At the time of said dismissal, he was assigned at the Meralco Malabon Branch Office as a Branch Field Representative tasked, among other things, to conduct surveys on service applications, test electric meters, investigate consumer-applicants' records of Violations of Contract (VOC) and perform such other duties and functions as may be required by his superior.

The circumstances antecedent to his dismissal are as follows:

On October 4, 2003, Meralco's Inspection Office issued a memorandum[3] addressed to Meralco's Investigation-Legal Office, informing it of an illegal service connection at the petitioner's residence, particularly at No. 17 Earth Street,

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[1] Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Magdangal M. De Leon and Japar B. Dimaampao, concurring; *rollo*, pp. 25-42.

[2] *Id.* at 44.

[3] *Id.* at 137.

Meralco Village 8, Batia, Bocaue, Bulacan. The Inspection Office claimed discovering shunting wires installed on the meter base for Service Identification Number (SIN) 708668501, registered under petitioner Yabut's name. These wires allegedly allowed power transmission to the petitioner's residence despite the fact that Meralco had earlier disconnected his electrical service due to his failure to pay his electric bills.

Given this report, Meralco's Head of Investigation-Litigation Office issued to the petitioner a notice[4] dated November 3, 2003, received by the petitioner's wife on the same day and with pertinent portions that read:

> Please report to our Mr. Rodolfo C. Serra of the Investigation-Litigation at 8th Floor, Lopez Building, Meralco Center, Ortigas Avenue, Pasig City on **November 11, 2003, at 9:00 a.m.** as the Inspection had found your disconnected electric service with SIN No. 708668501 directly connected by a shunting wire to energize your empty meter base. If proven true, such act constitutes dishonesty in violation of Section 7 (3) of the Company Code on Employee Discipline and/or serious misconduct or an act analogous to fraud or commission of a crime under Article 282 (a) and (e) of the Labor Code of the Philippines.
>
> In this investigation, you are entitled to be assisted by a counsel or an authorized union representative. You are also allowed to present evidence and material witnesses to testify in your favor.
>
> Should you fail to appear on the aforementioned date, we shall take it to mean that you are waiving your right to present your side and refute the aforesaid charge and evidence against you. If you appear alone, we shall take it to mean that you are waiving your right to be represented by such counsel or union representative.[5]

The offense under Section 7 (3) of Meralco's Company Code on Employee Discipline referred to in the aforequoted notice is with penalty of dismissal on the first offense and is defined as follows:

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[4] *Id.* at 138.

[5] *Id.*

SECTION 7. Dishonesty.

The following acts shall constitute violation of this Section:

x x x x x x x x x

3) Directly or indirectly tampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company.

x x x x x x x x x[6]

In the course of the company's investigations, the petitioner presented his sworn statement[7] which was executed with the assistance of Jose Tullo, the Chief Steward and Vice President of Meralco's supervisory union First Line Association of Meralco Supervisory Employees (FLAMES). Yabut admitted being the registered customer of Meralco at No. 17 Earth Street, Meralco Village 8, Batia, Bocaue, Bulacan. The petitioner claimed that his electrical service was disconnected sometime in July 2003 for unpaid electric bills. On October 3, 2003, between 10:00 o'clock and 10:30 o'clock in the morning, he was informed by his wife that Meralco discovered shunting wires on their meter base during an inspection. The petitioner nonetheless claimed that at about 8:00 o'clock in the morning of the same day, prior to his wife's notice upon him of the inspection, he had already given to an officemate the amount of ₱8,432.35 and requested that the same be paid to Meralco to cover his outstanding electric bills. The amount of ₱8,432.35 plus ₱1,540 as service deposit was then paid for the petitioner's account on October 3, 2003 at about 9:30 o'clock in the morning.

Yabut denied knowing the person who installed the discovered shunting wires. While he did not always go home to their house in Bulacan as there were times when he stayed in his sister's residence in Malabon, the petitioner confirmed that he was regularly in his Bulacan house. His residence had electricity

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[6] *Id.* at 154.

[7] *Id.* at 140-144.

even prior to the full settlement of his outstanding bills through a connection made to the line of his neighbor Jojo Clemente.

Photographs taken during Meralco's inspection of Yabut's residence were also presented to and identified by Yabut. He confirmed that the inspected meter base was installed within his lot's premises. Claiming that he had been obtaining electricity from a neighbor, he argued that shunting wires in his meter base could have caused an electrical malfunction. As to Meralco's allegation that Yabut's wife had admitted the petitioner's authorship of the illegal connection, Yabut denied knowing of such admission.

Meralco's Litigation – Investigation Office summarized the results of Meralco's findings in a memorandum[8] dated December 30, 2003. It indicated that Yabut's electric service was disconnected on April 3, 2003 for account delinquency. Notwithstanding the disconnection and the fact that Meralco's service had not been reconnected, Yabut's meter registered electric consumption. The memorandum included the following findings:

> While Yabut denied responsibility about the illegal connection, the pictures taken specifically showing the shunted wires on the meter base and his wife's admission that he was the one responsible are sufficient proofs of his guilt. We give credit to the admission of his wife as she did it with spontaneity without force or intimidation in our part. His alibi that he seldom stayed in his house is controverted by his admission that within the period in question from July to October 3, 2003, he stayed home for 24 times. It is surprising that, being a field representative who has knowledge about illegal connection, it escaped from his attention the said illegal connection when it could easily be detected since his metering point is installed in front of his house.
>
> We are not inclined to believe that he resorted to flying connection as it is apparent that at the time his electric service was disconnected in April, 2003, the Balagtas Branch found his service to have registered KWHR consumption from 1555 to 2194 for a total of 639 KWHR

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

indicating that although his electric service was disconnected, it continued to register electricity. Moreover, the burden of proof is upon him to present to us the one responsible but he failed to do so. In the absence of such proof, it is concluded that he, being the registered customer and a resident, was the one who installed the illegal connection purposely to alleviate the sickly condition of his wife and two children.[9]

In view of these findings, respondent Meralco, through its Senior Assistant Vice President for Human Resources Administration R. A. Sapitula, issued on February 4, 2004 a notice of dismissal[10] addressed to the petitioner. The notice cites violation of Section 7, paragraph 3 of Meralco's Company Code on Employee Discipline and Article 282 (a), (c), (d) and (e) of the Labor Code of the Philippines as bases for the dismissal. The pertinent portions of the notice read:

Administrative investigation duly conducted by Legal established that on October 3, 2003, acting on a tip that you are resorting to illegal service connection, the Company's Inspection Squad 7 team found two (2) shunting wires in an energized empty meter base installed at your residence at #17 Earth Street, Meralco Village, Batia, Bocaue, Bulacan. Your wife admitted that you were the one who installed the shunted wires on your meter base to have power because she and your two children were sick. The illegal connection enabled you to defraud the company by consuming unregistered electricity which makes you liable for violation of Section 7, par. 3 of the Company Code on Employee Discipline, defined as "(d)irectly or indirectly tampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company," penalized therein with dismissal from the service.

Under Article 282 of the Labor Code of the Philippines, the termination of your employment in Meralco is justified on the following grounds: "(a) Serious misconduct x x x by the employee x x x in connection with his work; "(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or representative; "(d) Commission of a crime or offense by the employee against x x x his employer; and "(e) Other causes analogous to the foregoing."

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[9] *Id.* at 164-165.

[10] *Id.* at 166.

Based on the foregoing, Management is constrained to dismiss you for cause from the service and employ of the Company, as you are hereby so dismissed effective February 5, 2004, with forfeiture of all rights and privileges.

Aggrieved by the decision of the management, Yabut filed with the National Labor Relations Commission (NLRC) a complaint[11] for illegal dismissal and money claims against Meralco and Lopez.

The Ruling of the Labor Arbiter

On December 28, 2004, Labor Arbiter Antonio R. Macam rendered his Decision,[12] declaring the petitioner illegally dismissed from the service and hence, entitled to reinstatement plus backwages and attorney's fees. The dispositive portion of his decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered, as follows:

1. Declaring the dismissal of complainant as illegal;
2. Ordering respondents to reinstate complainant to his former position without loss of seniority rights and privileges, immediately upon receipt of this decision, either physically or in the payroll, at the option of the respondent;
3. Ordering the respondents to pay complainant his full backwages from date of dismissal up to actual reinstatement, partially computed as follows:

Backwages	=	[₱]240,420.00
13th Mo. Pay	=	24,042.00
Total		**[₱]264,462.00**

4. Ordering respondents to pay complainant attorney's fees equivalent to 10% of his monetary award.

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[11] *Id.* at 100-111.

[12] *Id.* at 85-98.

All other claims are dismissed for lack of merit.

SO ORDERED.[13]

The labor arbiter observed that there was no clear and direct evidence to prove that Yabut performed the shunting of his metering installation. Furthermore, the act imputed upon Yabut was not related to the performance of his duties as a Meralco employee, but as a customer of the company's electric business. Finally, it was ruled that Meralco failed to observe the twin requirements of due process in termination cases. The records are bereft of any evidence showing that the petitioner was apprised of the particular acts or omissions for which his dismissal was then sought.

Unsatisfied, the respondents appealed from the decision of the labor arbiter to the NLRC.[14]

The Ruling of the NLRC

On March 31, 2006, the NLRC rendered its Resolution[15] dismissing the herein respondents' appeal for lack of merit. Subsequently, the NLRC denied for lack of merit the respondents' motion for reconsideration *via* a Resolution[16] dated August 28, 2006. This prompted the respondents to file a petition for *certiorari* with the CA.

The Ruling of the CA

On August 10, 2009, the CA rendered the now assailed Decision[17] reversing the rulings of the NLRC. In finding the petitioner's dismissal lawful, the appellate court attributed unto Yabut authorship of the meter tampering and illegal use of electricity – acts which it regarded as serious misconduct. The Court observed:

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[13] *Id.* at 98.

[14] *Id.* at 208-213.

[15] *Id.* at 68-82.

[16] *Id.* at 83-84.

[17] *Supra* note 1.

The Court notes that the meter base is located inside respondent Yabut's premises. *Manila Electric Company vs. Court of Appeals* said –

> "x x x Metro Concast should bear the responsibility for the tampering of the facilities within its compound, which was totally under its supervision and control. Being within its control, any resultant breach in the integrity of the equipment is indeed attributable to it."[18] (citation omitted)

The court also ruled that the petitioner's right to due process was not violated, as he was served the required notices and given sufficient opportunity to be heard. In view of these, the CA annulled and set aside the NLRC's resolutions *via* its decision, the dispositive portion of which reads:

WHEREFORE, the petition is granted. The resolutions dated March 31, 2006 and August 28, 2006 are annulled and set aside.

SO ORDERED.[19]

Yabut's motion for reconsideration was denied by the CA *via* a Resolution dated November 26, 2009.[20] Hence, the present petition.

The Issue

The issue for this Court's determination is: Whether or not the CA committed an error of law in annulling and setting aside the resolutions of the NLRC that declared the herein petitioner illegally dismissed by the respondents.

The petitioner asserts that he was dismissed from employment without a valid cause, and that due process prior to his termination was not observed by the respondents.

This Court's Ruling

After study, this Court finds the petition devoid of merit.

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[18] *Id.* at 35.

[19] *Id.* at 41.

[20] *Supra* note 2.

The dismissal of the petitioner was founded on just causes under Article 282 of the Labor Code of the Philippines.

Article 279 of the Labor Code of the Philippines provides that "(i)n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. x x x" The just causes are enumerated in Article 282, which provides:

Article 282. **Termination by employer**. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

The requirement for a just cause was satisfied in this case. We note that the petitioner's employment was terminated by the herein respondents for violation of Section 7, par. 3 of Meralco's Company Code on Employee Discipline, and for the existence of just cause under Article 282 (a), (c), (d) and (e) of the Labor Code.

The petitioner's violation of the company rules was evident. While he denies any involvement in the installation of the shunting wires which Meralco discovered, it is significant that said SIN 708668501 is registered under his name, and its meter base is situated within the premises of his property. Said meter registered electric consumption during the time his electric service was officially disconnected by Meralco. It was the

petitioner and his family who could have benefited from the illegal connection, being the residents of the area covered by the service. His claim that he failed to know or even notice the shunted wires fails to persuade as we consider the meter located in the front of his house, the nature of his work as branch field representative, his long-time employment with Meralco and his familiarity with illegal connections of this kind.

The logical conclusion that may be deduced from these attending circumstances is that the petitioner was a party, or at the very least, one who agreed to the installation of the shunted wires, and who also benefited from the illegal connection at the expense of his employer-company. In sustaining the CA's findings, we consider the rule that in administrative and quasi-judicial proceedings, as in proceedings before the NLRC which had original jurisdiction over the complaint for illegal dismissal, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[21]

Significantly, "(t)ampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company" is classified as an act of dishonesty from Meralco employees, expressly prohibited under company rules. It is reasonable that its commission is classified as a severe act of dishonesty, punishable by dismissal even on its first commission, given the nature and gravity of the offense and the fact that it is a grave wrong directed against their employer.

To reiterate, Article 282 (a) provides that an employer may terminate an employment because of an employee's serious misconduct, a cause that was present in this case in view of the petitioner's violation of his employer's code of conduct. Misconduct is defined as the "transgression of some established and definite rule of action, a forbidden act, a dereliction of

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[21] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011.

duty, willful in character, and implies wrongful intent and not mere error in judgment." For serious misconduct to justify dismissal, the following requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[22]

In reviewing the CA's Decision, we again consider the petitioner's duties and powers as a Meralco employee. And we conclude that he committed a serious misconduct. Installation of shunting wires is without doubt a serious wrong as it demonstrates an act that is willful or deliberate, pursued solely to wrongfully obtain electric power through unlawful means. The act clearly relates to the petitioner's performance of his duties given his position as branch field representative who is equipped with knowledge on meter operations, and who has the duty to test electric meters and handle customers' violations of contract. Instead of protecting the company's interest, the petitioner himself used his knowledge to illegally obtain electric power from Meralco. His involvement in this incident deems him no longer fit to continue performing his functions for respondent-company.

While the installation of the shunted wires benefited the herein petitioner as a customer of Meralco, his act cannot be fully severed from his status as the respondent's employee. As correctly observed by the CA, "(i)t is an offense against the Company Code of Employee Discipline. As a field representative, he is knowledgeable on the mechanics of meter and metering installation."[23]

The dismissal is also justified as the act imputed upon the petitioner qualifies as "fraud or willful breach by the employee

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[22] *Nagkakaisang Lakas ng Manggagawa sa Keihin v. Keihin Philippines Corporation*, G.R. No. 171115, August 9, 2010, 627 SCRA 179, 188, citing *Austria v. NLRC*, 371 Phil. 340, 360 (1999). See also *Philippine Aeolus Automotive United Corporation v. NLRC*, 387 Phil. 250, 261 (2000).

[23] *Rollo*, p. 37.

of the trust reposed in him by his employer or duly authorized representative" under Article 282 (c) of the Labor Code. While the petitioner contests this ground by denying that his position is one of trust and confidence, it is undisputed that at the time of his dismissal, he was holding a supervisory position after he rose from the ranks since commencement of his employment with Meralco. As a supervisor with duty and power that included testing of service meters and investigation of violations of contract of customers, his position can be treated as one of trust and confidence, requiring a high degree of honesty as compared with ordinary rank-and-file employees. This Court declared in *The Coca-Cola Export Corporation v. Gacayan:*[24]

> Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[25] (citations omitted)

In this case, the acts complained of were clearly work-related because they related to matters the petitioner handled as branch field representative. Taking into account the results of its investigations, Meralco cannot be expected to trust Yabut to properly perform his functions and to meet the demands of his job. His dishonesty, involvement in theft and tampering of electric meters clearly prejudice respondent Meralco, since he failed to perform the duties which he was expected to perform.

Considering the foregoing, this Court agrees that there were just causes for the petitioner's dismissal. We emphasize that

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[24] G.R. No. 149433, June 22, 2011.

[25] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 496 (2005).

dismissal of a dishonest employee is to the best interest not only of the management but also of labor. As a measure of self-protection against acts inimical to its interest, a company has the right to dismiss its erring employees. An employer cannot be compelled to continue employing an employee guilty of acts inimical to the employer's interest, justifying loss of confidence in him.[26]

The requirements of procedural due process were satisfied.

On the matter of procedural due process, it is well-settled that notice and hearing constitute the essential elements of due process in the dismissal of employees. The employer must furnish the employee with two written notices before termination of employment can be legally effected. The first apprises the employee of the particular acts or omissions for which dismissal is sought. The second informs the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[27]

These requirements were satisfied in this case. The first required notice was dated November 3, 2003, sufficiently notifying the petitioner of the particular acts being imputed against him, as well as the applicable law and the company rules considered to have been violated. Notably, in his sworn statement dated November 17, 2003, the petitioner admitted receiving Meralco's notice of investigation dated November 3, 2003, to wit:

37.T. *Natanggap mo ba yong notice ng investigation na may petsang November 3, 2003 na personally na ipinadala namin sa iyo sa bahay*

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[26] *Ocean Terminal Services, Inc., et al. v. NLRC, et al.*, 274 Phil. 779, 784 (1991). (citations omitted)

[27] *Asian Terminals, Inc. v. Sallao*, G.R. No. 166211, July 14, 2008, 558 SCRA 251, 259, citing *Metropolitan Bank and Trust Company v. Barrientos*, 516 Phil 655 (2006).

mo na may numerong 17 Earth St., Meralco Village 8, Batia, Bocaue, Bulacan?

S. *Opo*.

38.T. *Ipinapakita ko sa iyo ang isang notice ng investigation na may petsang November 3, 2003 na naka-addressed (sic) sa isang Mr. Norman C. Yabut ng 17 Earth Street, Meralco Village 8, Batia, Bocaue, Bulacan at ang may lagda ay si Atty. J.R.T. Albarico, head ng Investigation-Litigation ng Meralco. Dito sa nasabing notice ay may nakalagay sa ibaba na received by Salvacio (sic) M. Yabut na may kanyang pirma, at nakalagay din ang date na 11/03/03 at ang nakalagay sa relationship ay wife. Ano ang masasabi mo tungkol sa bagay na ito.*

S. *Ito po yong notice ng investigation na aking natanggap at ang nakatanggap nito ay ang aking misis na si Maria Salvacion Yabut.*[28]

On November 17, 2003, Meralco conducted a hearing on the charges against the petitioner. During said time, the petitioner was accorded the right to air his side and present his defenses on the charges against him. Significantly, a high-ranking officer of the supervisory union of Meralco assisted him during the said investigation. His sworn statement[29] that forms part of the case records even listed the matters that were raised during the investigation.

Finally, Meralco served a notice of dismissal dated February 4, 2004 upon the petitioner. Such notice notified the latter of the company's decision to dismiss him from employment on the grounds clearly discussed therein.

WHEREFORE, in view of the foregoing, the petition for review on *certiorari* is hereby **DENIED.** The assailed Decision dated August 10, 2009 and Resolution dated November 26, 2009 of the CA in CA-G.R. SP No. 96789 are hereby **AFFIRMED.**

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[28] *Rollo*, p. 143.

[29] *Id.*

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 193943. January 16, 2012]

REYNALDO POSIQUIT @ "Chew", *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; TIME FOR FILING; EXTENSION; A MOTION FOR EXTENSION OF TIME TO FILE A PLEADING MUST BE FILED BEFORE THE EXPIRATION OF THE PERIOD SOUGHT TO BE EXTENDED.— It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend. Also, the said motion for extension was not accompanied by a proof of service thereof to the adverse party. In view of the foregoing, the instant petition indubitably warrants outright denial. Nonetheless, even if we are to disregard the said procedural lapses, the instant petition would still be denied.

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

2. ID.; ID.; ID.; ISSUES THAT ARE FACTUAL IN NATURE ARE NOT PROPER SUBJECTS OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.— A perusal of the arguments set forth by the petitioner in support of the instant petition would clearly show that the same only raised questions of fact. The petition failed to show extraordinary circumstance justifying a departure from the established doctrine that findings of fact of the CA are conclusive on the Court and will not be disturbed on appeal. The issue on whether the prosecution was able to establish the elements of illegal possession of dangerous drugs and whether the prosecution was able to show an unbroken chain of custody of the seized dangerous drugs are factual in nature and, hence, not proper subjects of a petition for review on *certiorari* under Rule 45.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; POSSESSION OF DANGEROUS DRUGS; CONSPIRACY IS NOT APPRECIATED.— Anent the petitioner's contention that the CA erred in convicting him for violation of Section 11, Article II of R.A. 9165 in conspiracy with Saunar, this Court finds the same utterly specious. **First**, an astute perusal of the April 29, 2009 Decision of the CA and the September 25, 2007 Joint Judgment of the RTC of Ligao City would show that the circumstance of conspiracy was not, in any manner, appreciated by the said courts against the petitioner. What the said courts held was that both the petitioner and Saunar were separately found in possession of dangerous drugs making them each liable under R.A. 9165. **Second**, contrary to the tenor of the petitioner's argument, the crime of conspiracy to commit possession of dangerous drugs does not exist. Simply put, the circumstance of conspiracy is not appreciated in the crime of possession of dangerous drugs under Section 11, Article II of R.A. 9165. The fact that the Information for violation of Section 11, Article II of R.A. 9165 that was filed against the petitioner and Saunar alleged that they "conspired and helped each other" is immaterial. In any case, the said Information sufficiently alleged that the petitioner and Saunar were caught in possession of dangerous drugs, contrary to Section 11, Article II of R.A. 9165.

APPEARANCES OF COUNSEL

Zamora Romano & Villanueva Law Offices for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Reynaldo Posiquit @ "Chew" (petitioner) assailing the Decision[1] dated April 29, 2009 and Resolution[2] dated April 14, 2010 issued by the Court of Appeals (CA) in CA-G.R. CR No. 31214 which, *inter alia*, affirmed the conviction of the petitioner and Jesus Saunar (Saunar) for violation of Section 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

This Court notes that Saunar did not join the petitioner in filing the instant petition. Thus, our discussion would be limited to the petitioner's case.

On the strength of a Search Warrant issued by Executive Judge Romulo Villanueva of the Regional Trial Court (RTC) of Ligao City, the combined forces of Albay Police Provincial Office, Liban Police Station, Polangui Police Station and the Philippine Drug Enforcement Agency (PDEA) conducted a search on the house of Saunar in Barangay Kinale, Polangui, Albay on September 18, 2002.

Before the search team arrived, the petitioner, Saunar, Ricardo Morada and Myla Dela Cruz (Dela Cruz) were inside Saunar's house engaged in an activity which seemed like a pot session. Upon the arrival of the search team's vehicles in front of Saunar's

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Remedios Salazar-Fernando and Ramon R. Garcia, concurring; *rollo*, pp. 38-53.

[2] *Id*. at 55-56.

house, the group of the petitioner scampered towards the back of the adjacent house. While attempting to escape, the petitioner threw his wallet away. However, members of the search team caught up with the petitioner and, thereupon, recovered his wallet which contained three small plastic sachets containing white crystalline substances.

Meanwhile, the other members of the search team, after showing the search warrant to Saunar and his wife, proceeded to conduct the search. The search yielded, among others, three small plastic sachets and one big plastic bag containing white crystalline substances and a stick of dried *marijuana* leaves. After the search was completed, the search team prepared a receipt of the items seized which was signed by the members of the search team and Saunar. Pictures of the seized items were thereafter taken. The petitioner and Saunar were then brought to the police station.

The following day, SPO4 Herminigildo Caritos brought the seized items to the Philippine National Police – Regional Crime Laboratory at Camp Simeon Ola, Legaspi City where it was examined by Forensic Chemist P/Insp. Josephine Clemen. Laboratory tests on the seized items confirmed that the plastic sachets contained a total of 3.548 grams of methamphetamine hydrochloride or *shabu* and that the confiscated stick was indeed dried *marijuana* leaves weighing 0.2869 grams.

Thus, in an Information docketed as Criminal Case No. 4650, the petitioner and Saunar were charged with violation of Section 11, Article II of R.A. 9165 before the RTC of Ligao City.

The petitioner denied the allegations against him and claimed that, at the time of the search in Saunar's house, he and the group of Saunar were just having a drinking spree. When he and Dela Cruz were about to go home, the search team immediately arrived at the said house and pointed their guns at them. He insisted that he ran away because he was surprised. When the armed men caught up with him, the former boxed him on the nape and had him handcuffed. The petitioner admitted ownership of the wallet that was seized by the search team but denied that it contained plastic sachets containing *shabu*.

After due proceedings, the RTC of Ligao City, on September 25, 2007, rendered a Joint Judgment[3] finding the petitioner and Saunar guilty beyond reasonable doubt of the crime charged. They were then sentenced to suffer the indeterminate penalty of imprisonment ranging from thirteen years as minimum to fifteen years as maximum and to each pay a fine in the amount of ₱300,000.00. In convicting the petitioner, the RTC of Ligao City intimated that his flight can only be interpreted as a deliberate intention of a guilty person to prevent apprehension.

Feeling aggrieved, the petitioner and Saunar appealed from the said disposition to the CA. The petitioner and Saunar asserted that the confiscation, inventory and taking of pictures of the seized items were not conducted in the presence of a representative from the media, the Department of Justice (DOJ) and an elected public official, contrary to Section 21 (a) of R.A. 9165. They likewise asserted that the chain of custody of the seized items was not clearly established by the prosecution.

On April 29, 2009, the CA rendered the herein assailed Decision[4] affirming *in toto* the September 25, 2007 Joint Judgment of the RTC of Ligao City. The CA held that the evidence adduced by the prosecution adequately showed that the substance confiscated was the same specimen submitted for laboratory tests.

On the absence of a representative from the media, the DOJ and an elected public official during the confiscation, inventory and taking of pictures of the seized items, the CA held that the presence of the said persons becomes mandatory only in the absence of the persons from whom the confiscated items are taken or their representative. In any case, the CA pointed out that the integrity and identity of the seized items still stand as the prosecution was able to show an unbroken chain of custody over the same. The petitioner and Saunar sought to reconsider

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[3] *Id*. at 58-79.

[4] *Supra* note 1.

the April 29, 2009 Decision but the same was denied by the CA in its April 14, 2010 Resolution.[5]

Undaunted, the petitioner instituted the instant petition for review on *certiorari* asserting the following arguments: (1) the CA erred in convicting the petitioner for violation of Section 11, Article II of R.A. 9165 in conspiracy with Saunar; (2) the elements of illegal possession of dangerous drugs were not proven beyond reasonable doubt; and (3) the chain of custody of the seized items was not clearly established by the prosecution.

The petition is denied.

At the outset, this Court notes that the filing of the instant petition is accompanied by glaring lapses on the part of the petitioner which would warrant its outright denial.

A copy of the April 14, 2010 Resolution of the CA denying the petitioner's motion for reconsideration was received by the latter on May 5, 2010. The petitioner had, following the reglementary 15-day period from receipt of the denial of his motion for reconsideration by the CA,[6] until May 20, 2010 within which to file a petition for review on *certiorari* under Rule 45 with this Court.

The petitioner, by himself, filed instead with this Court a Motion for Extension of Time to Appeal/ For Review.[7] The said Motion was sent by the petitioner through JRS, a private courier, on May 20, 2010 and was actually received by this Court on May 21, 2010. Thus, the said Motion for Extension was filed a day late.

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's

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[5] *Supra* note 2.

[6] RULES OF COURT, Rule 45, Section 2.

[7] *Rollo*, p. 2.

timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.[8]

Also, the said motion for extension was not accompanied by a proof of service thereof to the adverse party. In view of the foregoing, the instant petition indubitably warrants outright denial. Nonetheless, even if we are to disregard the said procedural lapses, the instant petition would still be denied.

A perusal of the arguments set forth by the petitioner in support of the instant petition would clearly show that the same only raised questions of fact. The petition failed to show extraordinary circumstance justifying a departure from the established doctrine that findings of fact of the CA are conclusive on the Court and will not be disturbed on appeal. The issue on whether the prosecution was able to establish the elements of illegal possession of dangerous drugs and whether the prosecution was able to show an unbroken chain of custody of the seized dangerous drugs are factual in nature and, hence, not proper subjects of a petition for review on *certiorari* under Rule 45.

Anent the petitioner's contention that the CA erred in convicting him for violation of Section 11, Article II of R.A. 9165 in conspiracy with Saunar, this Court finds the same utterly specious. **First**, an astute perusal of the April 29, 2009 Decision of the CA and the September 25, 2007 Joint Judgment of the RTC of Ligao City would show that the circumstance of conspiracy was not, in any manner, appreciated by the said courts against the petitioner. What the said courts held was that both the petitioner and Saunar were separately found in possession of dangerous drugs making them each liable under R.A. 9165.

Second, contrary to the tenor of the petitioner's argument, the crime of conspiracy to commit possession of dangerous

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[8] *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008, 573 SCRA 312, 316.

drugs does not exist. Simply put, the circumstance of conspiracy is not appreciated in the crime of possession of dangerous drugs under Section 11, Article II of R.A. 9165. The fact that the Information for violation of Section 11, Article II of R.A. 9165 that was filed against the petitioner and Saunar alleged that they "conspired and helped each other" is immaterial. In any case, the said Information sufficiently alleged that the petitioner and Saunar were caught in possession of dangerous drugs, contrary to Section 11, Article II of R.A. 9165.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.**

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

EN BANC

[A.M. No. P-11-2950. January 17, 2012]
(Formerly A.M. No. 11-6-62-MCTC)

RE*:* REPORT ON FINANCIAL AUDIT CONDUCTED AT MCTC, SANTIAGO-SAN ESTEBAN, ILOCOS SUR

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WILLFUL DISOBEDIENCE AND DISREGARD OF COURT DIRECTIVES CONSTITUTE GRAVE AND SERIOUS MISCONDUCT.— The Court

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

required Hufana and Ancheta to submit their explanation on the administrative charges against them. However, up until the resolution of the instant administrative matter, Hufana and Ancheta have still not complied with said directive. The Court has already given Hufana and Ancheta more than enough opportunity to explain their side. With their obstinate defiance and incessant refusal to submit their compliance to this Court, despite the latter's repeated directives and stern admonitions, Hufana and Ancheta displayed their insolence and disrespect for the lawful orders of the Court. "A resolution of the Supreme Court should not be construed as a mere request, [and] should be complied with promptly and completely." Such "failure to comply betrays not only a recalcitrant streak in character, but also a disrespect for the Court's lawful order and directive." Furthermore, this contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. Hufana and Ancheta's transgression is highlighted even more by the fact that they are employees of the Judiciary, who, more than an ordinary citizen, should be aware of their duty to obey the orders and processes of the Supreme Court without delay. Their willful disobedience to and disregard for the directive of this Court constitute grave and serious misconduct, which cannot be tolerated. The Court shall no longer wait for Ancheta and Hufana, who have clearly forfeited their chance to be heard on the charges against them. It now proceeds to resolve this administrative matter based on the present contents of the record, the most significant of which are the report and recommendations of the CMO-OCA Audit Team and their annexes, as adopted by the OCA.

2. ID.; ID.; ID.; CLERKS OF COURT; IMPORTANT ROLE IN OUR JUDICIAL SYSTEM.— The Court has recognized that "Clerk[s] of Court [are] important officer[s] in our judicial system. [Their] office is the nucleus of all court activities, adjudicative and administrative. [Their] administrative functions are as vital to the prompt and proper administration of justice as their judicial duties." The Court has further declared that the "Clerk of Court performs a very delicate function [as] the custodians of the funds and revenues, records, property, and premises of the court[,]" and as such, "they are liable for any loss, shortage, destruction, or impairment of said funds and property."

3. ID.; ID.; ID.; ID.; THEIR SILENCE AND NON-PARTICIPATION IN THE PRESENT PROCEEDINGS, DESPITE DUE NOTICE AND DIRECTIVES OF THE COURT FOR THEM TO SUBMIT DOCUMENTS IN THEIR DEFENSE, STRONGLY INDICATE THEIR GUILT.— Ancheta and Hufana's refusal to face head-on the charges against them is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time. Ancheta and Hufana's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for them to submit documents in their defense, *i.e.*, a written explanation, an accounting, and missing receipts, strongly indicate their guilt. Moreover, the "[f]ailure of a public officer to remit funds upon demand by an authorized officer [shall be] *prima facie* evidence that the public officer has put such missing funds or property to personal use." In the total absence of rebutting or contrary evidence, then the Court can only conclude that Ancheta and Hufana have misappropriated the unaccounted/unremitted court funds in their care and custody.

4. ID.; ID.; ID.; ID.; FAILURE TO REMIT COLLECTIONS CONSTITUTES GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT.— Ancheta and Hufana's failure to remit their collections, amounting to ₱390,048.00 and ₱33,603.80, constitutes gross neglect of duty, dishonesty, and grave misconduct. They have transgressed the trust reposed in them as cashiers and disbursement officers of the Court. x x x However, since Ancheta and Hufana had already retired from the service, dismissal is no longer feasible as a penalty for the present charges.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The administrative case at bar arose from the judicial audit of the Municipal Circuit Trial Court (MCTC) of Santiago-San Esteban, Ilocos Sur.

The Court Management Office (CMO) of the Office of the Court Administrator (OCA) conducted a judicial audit and physical inventory of cases in said MCTC, in view of (1) the compulsory retirement of Angeles J. Ancheta (Ancheta), MCTC Clerk of Court II, on August 2, 2006; (2) the request made on August 6, 2008 by Febella J. Guillermo, Officer-in-Charge, Accounting Division, Finance Management Office, OCA, for an immediate audit of Virginia D. Hufana (Hufana), MCTC Officer-in-Charge (OIC) Clerk of Court II, from August 1, 2006 to June 30, 2008, for her failure to submit monthly reports;[1] and (3) the Memorandum dated July 9, 2009 of then MCTC Acting Presiding Judge Juvencio S. Gascon and letter dated July 16, 2009 of then Executive Judge Isidro T. Pobre of the Regional Trial Court (RTC), Narvacan, Ilocos Sur, requesting a comprehensive audit of the financial records of the MCTC considering the assumption to duty of Estella E. Imperial (Imperial) as MCTC Clerk of Court II on July 1, 2008.

On August 31, 2007, then Court Administrator Christopher O. Lock requested[2] authority from the Court to withhold Hufana's salaries given her continuous failure to submit the required monthly report of collections, deposits, and withdrawals for the Special Allowance for the Judiciary (SAJ), Judiciary Development Fund (JDF), Fiduciary Fund, and Sheriff's Trust Fund of the MCTC from August 2006 up to the time the request was made. The request was approved on September 18, 2007.

After the examination of the books of accounts of the MCTC Clerks of Court II, namely, Ancheta (March 1985 to July 31, 2006), Hufana (August 1, 2006 to June 30, 2008) and Imperial (July 1, 2008 to May 31, 2010), the CMO-OCA Audit Team submitted its Memorandum[3] on October 11, 2010, with the following recommendations:

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[1] *Rollo,* p. 22.

[2] *Id.* at 23.

[3] *Id.* at 9-18.

A. Ms. Angeles J. Ancheta be DIRECTED, within FIFTEEN (15) DAYS from RECEIPT of NOTICE, to:

1. DEPOSIT:

   1-a. ₱389,700.00 to the court's Fiduciary Fund Savings Account No. 1281-0814-50 with the Landbank of the Philippines [LBP], Candon City, Ilocos Sur Branch on account of the following:

Undeposited collections of December 1995 - July 31, 2006	₱ 335,700.00
Withdrawals with lacking supporting documents (against decided cases)	24,000.00
Withdrawals with lacking supporting documents (against active cases)	30,000.00

   1-b. ₱348.00 to the Bureau of Treasurey Account with the LBP to settle the unremitted interest of ₱400.00 (withdrawn on 1 February 1999 from the court's Fiduciary Fund Savings Account No. 188 with the Rural Bank of Cabugao, Inc., San Esteban, Ilocos Sur Branch) less the General Fund overremittance (in the years 2000-2002) totaling ₱52.00;

2. SUBMIT to the Chief of the Fiscal Monitoring Division, Court Management Office, OCA the:

   2-a. Original copies of machine-validated deposit slips in connection with the directives set forth in Items A(1-a) and A(1-b);

   2-b. Original copy of the passbook issued by the Rural Bank of Santiago, Inc., Santiago, Ilocos Sur Branch for the court's Fiduciary Fund Savings Account No. 2297;

   2-c. Supreme Court official receipt booklet consisting of fifty (50) sheets numbered 8279151 to 8279200; and

   2-d. Missing supporting documents of certain withdrawals totaling ₱24,000.00; and

3. EXPLAIN, IN WRITING, WHY NO ADMINISTRATIVE SANCTION SHALL BE IMPOSED UPON HER for the:

3-a. Undeposited and unrefunded Fiduciary collections totaling ₱335,700.00;

3-b. Unremitted cashbond collections of ₱293,000.00 which were refunded to bondsmen (from cash on hand) upon rendition of judgment by the court on certain criminal cases;

3-c. WITHDRAWAL of a total of ₱47,000.00 against the court's Fiduciary Fund Savings Account (with the LBP) although the cashbonds of the six (6) decided cases involved were not deposited to the aforementioned Account;

3-d. ISSUANCE (for Fiduciary collections totaling ₱150,000.00 that went unreported) of, at the very least, six (6) receipts belonging to an official receipt booklet (consisting of fifty (50) sheets numbered 8279151 to 8279200) which she failed to present to the audit team and reported as "mutilated," "not used" and "not assigned to any fund";

3-e. ISSUANCE of ORIGINAL copies of official receipts for Fiduciary collections totaling ₱277,000.00 (that were not reported to the court) and ISSUANCE of the corresponding TRIPLICATE copies for JDF collections totaling ₱200.00 (that were reported); and

3-f. ISSUANCE of the ORIGINAL and TRIPLICATE copies of OR No. 8279432 for cashbond collections with different collection dates, payors, litigants and amounts (₱20,000.00 and ₱1,000.00, respectively) of which only the latter amount was reported to the court;

B. Ms. Virginia T. Hufana be DIRECTED within FIFTEEN (15) DAYS from RECEIPT of NOTICE, to:

1. DEPOSIT:

1-a. ₱24,000.00 to LBP Fiduciary Fund Savings Account No. 1281-0814-50, Candon City, Ilocos Sur Branch to cover withdrawals which were reverted to unwithdrawn pending the submission of the required supporting documents; and

1-b. ₱9,603.80 to Special Allowance for the Judiciary Fund Account No. 0591-1744-28 to settle unremitted collections of August 2006 to July 2008; and

2. SUBMIT to the Chief of the Fiscal Monitoring Division, Court Management Office, OCA the:

2-a. Original copies of machine-validated deposit slips in connection with the directives set forth in Items B(1-a) and B(1-b); and

2-b. Missing supporting documents of certain withdrawals totaling ₱24,000.00.[4] (Citations omitted.)

Thereafter, Court Administrator Jose Midas P. Marquez submitted to the Court a Report[5] dated May 27, 2011 recommending that:

A. This Report be DOCKETED as a regular administrative complaint against Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA for dishonesty and grave misconduct in the handling of judiciary funds;

B. Hold Departure Orders be ISSUED against Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA to prevent them from leaving the country;

C. The OFFICE OF ADMINISTRATIVE SERVICES, OCA be DIRECTED to:

C-1. COMPUTE the balance of the earned leave credits of Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA and FORWARD the same to the Finance Division, Financial Management Office (FMO), OCA; and

C-2. FURNISH the Finance Division, FMO, OCA with certified true copies of their computerized service records and Notices of Salary Adjustment (NOSA);

D. The FINANCIAL MANAGEMENT OFFICE, OCA be DIRECTED to:

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[4] *Id.* at 15-17.

[5] *Id.* at 1-8.

D-1. COMPUTE and PROCESS the money value of leave credits and other retirement benefits (net of deductions) due to Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA, including the withheld salaries and allowances of Ms. Hufana, and APPLY the same to their accountabilities, to wit:

D-1(a). ANGELES J. ANCHETA:

₱389,700.00	–	Landbank of the Philippines (LBP) Fiduciary Fund Savings Account No. 1281-0814-50, Candon City, Ilocos Sur Branch
₱348.00	–	Bureau of Treasury Account with the LBP

D-1(b). VIRGINIA T. HUFANA

₱24,000.00	–	LBP Fiduciary Fund Savings Account No. 1281-0814-50, Candon City, Ilocos Sur Branch
₱9,603.80	–	Special Allowance for the Judiciary Fund Account No. 0591-1744-28

D-2. COORDINATE with the Fiscal Monitoring Division (FMD), Court Management Office, OCA on the release to the incumbent Clerk of Court of the checks to be applied to the shortages in order for the FMD to PROPERLY MONITOR the respondents' settlement of their accountabilities;

E. Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA be DIRECTED to DEPOSIT, WITHIN a NON-EXTENDIBLE PERIOD of ONE (1) MONTH from RECEIPT of NOTICE, any remaining balance of the indicated shortages to the corresponding fund accounts, after the money value of their leave credits and the total withheld salaries and allowances (net of deductions) had been applied to their accountabilities; and FURNISH the Chief, Fiscal Monitoring

Division, Court Management Office, OCA with copies of the corresponding machine-validated deposit slips;

F. The retirement benefits (after applying the same to their accountabilities), except accrued leave credits, of Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA be FORFEITED for dishonesty and grave misconduct, with prejudice to reemployment in the government service, including government-owned and controlled corporations;

G. The LEGAL OFFICE, OCA be DIRECTED to IMMEDIATELY FILE criminal and civil proceedings against Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA upon receipt of a Report from the Fiscal Monitoring Division, Court Management Office that they failed to restitute the portion of their shortages not covered by the money value of their leave credits and the withheld salaries and allowances (net of deductions);

H. Ms. ESTELLA E. IMPERIAL, incumbent Clerk of Court, be DIRECTED to:

H-1. DEPOSIT to the respective fund accounts (as instructed by the Fiscal Monitoring Division [FMD], Court Management Office [CMO], OCA the checks to be sent to her by the Financial Management Office, OCA, to partially/fully settle the accountabilities of Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA; and FURNISH the Respondents and the Chief, FMD, CMO with copies of the machine-validated deposit slips; and

H-2. HOLD IN ESCROW, upon settlement by Mesdames ANGELES J. ANCHETA and VIRGINIA T. HUFANA of their respective Fiduciary Fund shortages of ₱389,700.00 and ₱24,000.00, respectively, the amounts of ₱54,000.00 (representing the total withdrawals of Ms. Ancheta with lacking supporting documents) and ₱24,000.00 (representing the total withdrawals of Ms. Hufana with lacking supporting documents), which shall be REFUNDED to them partially (on a per case basis) or in its entirety upon their presentation of some or all of the missing documents to the court's Clerk

of Court and the Chief, Fiscal Monitoring Division, Court Management Office, OCA; and

I. Acting Presiding Judge HOMER JAY D. RAGONJAN be DIRECTED to:

I-1. CLOSELY MONITOR the financial transactions of the court, otherwise, he shall be held equally liable for the infractions committed by the employees under his supervision; and

I-2. STUDY and IMPLEMENT procedures that shall strengthen the internal control over financial transactions.[6]

The Court issued a Resolution dated July 6, 2011 which noted the foregoing Report, re-docketed the case as a regular administrative matter, and issued a hold departure order against Ancheta and Hufana to prevent them from leaving the country.

The Court required Hufana and Ancheta to submit their explanation on the administrative charges against them. However, up until the resolution of the instant administrative matter, Hufana and Ancheta have still not complied with said directive.

The Court has already given Hufana and Ancheta more than enough opportunity to explain their side. With their obstinate defiance and incessant refusal to submit their compliance to this Court, despite the latter's repeated directives and stern admonitions, Hufana and Ancheta displayed their insolence and disrespect for the lawful orders of the Court. "A resolution of the Supreme Court should not be construed as a mere request, [and] should be complied with promptly and completely." Such "failure to comply betrays not only a recalcitrant streak in character, but also a disrespect for the Court's lawful order and directive."[7] Furthermore, this contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain

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[6] *Id.* at 5-8.

[7] *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

with, if not contempt of, the system.[8] Hufana and Ancheta's transgression is highlighted even more by the fact that they are employees of the Judiciary, who, more than an ordinary citizen, should be aware of their duty to obey the orders and processes of the Supreme Court without delay.[9] Their willful disobedience to and disregard for the directive of this Court constitute grave and serious misconduct,[10] which cannot be tolerated.

The Court shall no longer wait for Ancheta and Hufana, who have clearly forfeited their chance to be heard on the charges against them. It now proceeds to resolve this administrative matter based on the present contents of the record, the most significant of which are the report and recommendations of the CMO-OCA Audit Team and their annexes, as adopted by the OCA.

The Court has recognized that "Clerk[s] of Court [are] important officer[s] in our judicial system. [Their] office is the nucleus of all court activities, adjudicative and administrative. [Their] administrative functions are as vital to the prompt and proper administration of justice as their judicial duties."[11]

The Court has further declared that the "Clerk of Court performs a very delicate function [as] the custodians of the funds and revenues, records, property, and premises of the court[,]" and as such, "they are liable for any loss, shortage, destruction, or impairment of said funds and property."[12]

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[8] *Parane v. Reloza*, A.M. No. MTJ-92-718, November 7, 1994, 238 SCRA 1, 4.

[9] *Tan v. Sermonia, Clerk IV, MTCC, Iloilo City*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 13.

[10] *Longboan v. Polig*, 264 Phil. 897, 901 (1990).

[11] *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union*, 480 Phil. 484, 492 (2004), citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

[12] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408, 411.

Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. Supreme Court Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In Supreme Court Circular No. 5-93, the Land Bank of the Philippines was designated as the authorized government depository.

In *Office of the Court Administrator v. Fortaleza*,[13] the Court expounded on the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus:

> Clerks of Court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds.[14]

The Court, in *Office of the Court Administrator v. Galo*,[15] pointed out that it had always reminded Clerks of Court that, as custodians of court funds and revenues, they have the "duty to immediately deposit the various funds received by them to the authorized government depositories for [Clerks of Court] are not supposed to keep funds in their custody."[16]

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[13] *Id.*

[14] *Id.* at 522.

[15] 373 Phil. 483, 491 (1999).

[16] *Id.* at 491.

Ancheta and Hufana's refusal to face head-on the charges against them is contrary to the principle that the first impulse of an innocent person, when accused of wrongdoing, is to express his/her innocence at the first opportune time.[17] Ancheta and Hufana's silence and non-participation in the present administrative proceedings, despite due notice and directives of this Court for them to submit documents in their defense, *i.e.*, a written explanation, an accounting, and missing receipts, strongly indicate their guilt. Moreover, the "[f]ailure of a public officer to remit funds upon demand by an authorized officer [shall be] *prima facie* evidence that the public officer has put such missing funds or property to personal use."[18] In the total absence of rebutting or contrary evidence, then the Court can only conclude that Ancheta and Hufana have misappropriated the unaccounted/unremitted court funds in their care and custody.

Ancheta and Hufana's failure to remit their collections, amounting to ₱390,048.00 and ₱33,603.80, constitutes gross neglect of duty, dishonesty, and grave misconduct.[19] They have transgressed the trust reposed in them as cashiers and disbursement officers of the Court.[20]

We emphasized in *Office of the Court Administrator v. Ganzan*[21] that:

> The conduct or behavior of all court personnel is circumscribed with the heavy burden of responsibility. Time and again, the High Court affirms the practical reality that the image of the court as a true temple of justice is mirrored by the conduct of everyone who

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[17] *Re: Report on the Financial Audit Conducted in the Regional Trial Court, Branch 34, Balaoan, La Union, supra* note 11; *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 531 (2005).

[18] *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380-381 (2002).

[19] *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao del Norte*, 351 Phil. 1, 20 (1998).

[20] *Office of the Court Administrator v. Bernardino, supra* note 17.

[21] A.M. No. P-05-2046, September 17, 2009, 600 SCRA 17.

works therein, from the judge to the lowest clerk. It is therefore imperative that those involved in the administration of justice must live up to the highest standard of honesty and integrity in the public service.

On court employees who have fallen short of their accountabilities, particularly, Clerks of Court who are the custodians of court funds and properties, the Court has not hesitated to impose the ultimate penalty. This Court has never tolerated or condoned any conduct that would violate the norms of public accountability and diminish, or even tend to diminish, the faith of the people in the justice system.[22]

However, since Ancheta and Hufana had already retired from the service, dismissal is no longer feasible as a penalty for the present charges.

WHEREFORE, the Court finds respondent Angeles J. Ancheta, former Clerk of Court II, and Virginia T. Hufana, former OIC-Clerk of Court II, of the Municipal Circuit Trial Court of Santiago-San Esteban, Ilocos Sur, **GUILTY** of gross neglect of duty, dishonesty, and grave misconduct, and since they had already compulsorily retired, judgment is hereby rendered as follows:

A. The Office of Administrative Services (OAS)-OCA is DIRECTED to:

   A-1. Compute the balance of the earned leave credits of Angeles J. Ancheta and Virginia T. Hufana and FORWARD the same to the Finance Division, Financial Management Office (FMO)-OCA; and

   A-2. Furnish the Finance Division, FMO-OCA, with certified true copies of their computerized service records and Notices of Salary Adjustment;

B. The FMO-OCA is DIRECTED to:

   B-1. Compute and process the monetary value of leave credits and other retirement benefits (net of deductions) due to Angeles J. Ancheta and Virginia T. Hufana,

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[22] *Id.* at 29-30.

including the latter's withheld salaries and allowances, and apply the same to their accountabilities, to wit:

B-1(a). Angeles J. Ancheta:

₱389,700.00 – Landbank of the Philippines (LBP) Fiduciary Fund Savings Account No. 1281-0814-50, Candon City, Ilocos Sur Branch

₱348.00 – Bureau of Treasury Account with the LBP

B-1(b). Virginia T. Hufana

₱24,000.00 – LBP Fiduciary Fund Savings Account No. 1281-0814-50, Candon City, Ilocos Sur Branch

₱9,603.80 – Special Allowance for the Judiciary Fund Account No. 0591-1744-28

B-2. Coordinate with the Fiscal Monitoring Division (FMD), CMO-OCA on the release to the incumbent Clerk of Court of the checks to be applied to the shortages in order for the FMD to properly monitor the settlement by Angeles J. Ancheta and Virginia T. Hufana of their accountabilities;

C. Angeles J. Ancheta and Virginia T. Hufana are DIRECTED to deposit, within a non-extendible period of one (1) month from receipt of notice, any remaining balance of the indicated shortages to the corresponding fund accounts, after the money value of their leave credits and the total withheld salaries and allowances (net of deductions) had been applied to their accountabilities; and furnish the Chief, FMD, CMO-OCA with copies of the corresponding machine-validated deposit slips;

D. The retirement benefits (after applying the same to their accountabilities), except accrued leave credits, of Angeles J. Ancheta and Virginia T. Hufana are FORFEITED for their gross neglect of duty, dishonesty, and grave misconduct, with prejudice to reemployment in the government service, including government-owned and controlled corporations;

E. The Legal Office, OCA is DIRECTED to immediately file criminal and civil proceedings against Angeles J. Ancheta and Virginia T. Hufana upon receipt of a Report from the FMD, CMO-OCA that they failed to restitute the portion of their shortages not covered by the money value of their leave credits and the withheld salaries and allowances (net of deductions);

F. Estella E. Imperial, incumbent Clerk of Court, is DIRECTED to:

F-1. Deposit to the respective fund accounts (as instructed by the FMD, CMO-OCA, the checks to be sent to her by the FMO-OCA, to partially/fully settle the accountabilities of Angeles J. Ancheta and Virginia T. Hufana; and furnish Angeles J. Ancheta and Virginia T. Hufana and the Chief, FMD, CMO-OCA with copies of the machine-validated deposit slips; and

F-2. Hold in escrow, upon settlement by Angeles J. Ancheta and Virginia T. Hufana of their respective Fiduciary Fund shortages of ₱389,700.00 and ₱24,000.00, respectively, the amounts of ₱54,000.00 (representing the total withdrawals of Angeles J. Ancheta with lacking supporting documents) and ₱24,000.00 (representing the total withdrawals of Virginia T. Hufana with lacking supporting documents), which shall be refunded to Angeles J. Ancheta and Virginia T. Hufana partially (on a per case basis) or in its entirety upon their presentation of some or all of the missing documents to the Clerk of Court of the Municipal Circuit Trial Court of Santiago-San Esteban and the Chief, FMD, CMO-OCA; and

G. Acting Presiding Judge Homer Jay D. Ragonjan of the Municipal Circuit Trial Court of Santiago-San Esteban, Ilocos Sur, is DIRECTED to:

G-1. Closely monitor the financial transactions of the court, otherwise, he shall be held equally liable for the infractions committed by the employees under his supervision; and

G-2. Study and implement procedures that shall strengthen the internal control over financial transactions.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., is on leave.

EN BANC

[G.R. No. 180236. January 17, 2012]

GEMMA P. CABALIT, *petitioner, vs.* **COMMISSION ON AUDIT-REGION VII,** *respondent.*

[G.R. No. 180341. January 17, 2012]

FILADELFO S. APIT, *petitioner, vs.* **COMMISSION ON AUDIT (COA) Legal and Adjudication, Region VII,** *respondent.*

[G.R. No. 180342. January 17, 2012]

LEONARDO G. OLAIVAR, in his capacity as Transportation Regulation Officer and Officer-In-Charge of Land Transportation Office, Jagna, Province of Bohol, *petitioner, vs.* **HON. PRIMO C. MIRO, in his official capacity as Deputy Ombudsman for Visayas, EDGARDO G. CANTON, in his capacity as Graft Investigator Officer, ATTY. ROY L. URSAL, in his capacity as Regional Cluster Director, Commission on Audit, Cebu City,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; PETITIONERS WERE NOT DENIED DUE PROCESS OF LAW WHEN THE INVESTIGATING LAWYER PROCEEDED TO RESOLVE THE CASE BASED ON THE AFFIDAVITS AND OTHER EVIDENCE ON RECORD.—** Petitioners were not denied due process of law when the investigating lawyer proceeded to resolve the case based on the affidavits and other evidence on record. Section 5(b)(1) Rule 3, of the Rules of Procedure of the Office of the Ombudsman, as amended by A.O. No. 17, plainly provides that the hearing officer may issue an order directing the parties to file, within ten days from receipt of the order, their respective verified position papers on the basis of which, along with the attachments thereto, the hearing officer may consider the case submitted for decision. It is only when the hearing officer determines that based on the evidence, there is a need to conduct clarificatory hearings or formal investigations under Section 5(b)(2) and Section 5(b)(3) that such further proceedings will be conducted. But the determination of the necessity for further proceedings rests on the sound discretion of the hearing officer. As the petitioners have utterly failed to show any cogent reason why the hearing officer's determination should be overturned, the determination will not be disturbed by this Court.

2. **ID.; ID.; ID.; ID.; ONE DOES NOT HAVE A VESTED RIGHT IN THE RULES OF PROCEDURE.—** We likewise find no merit in their contention that the new procedures under A.O. No. 17, which took effect while the case was already undergoing trial before the hearing officer, should not have been applied. The rule in this jurisdiction is that one does not have a vested right in procedural rules. xx x While the rule admits of certain exceptions, such as when the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it would impair vested rights, petitioners failed to show that application of A.O. No. 17 to their case would cause injustice to them. Indeed, in this case, the Office of the Ombudsman afforded petitioners every opportunity to defend themselves by allowing them to submit

counter-affidavits, position papers, memoranda and other evidence in their defense. Since petitioners have been afforded the right to be heard and to defend themselves, they cannot rightfully complain that they were denied due process of law. Well to remember, due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses. But as long as a party is given the opportunity to defend his or her interests in due course, said party is not denied due process.

3. ID.; ID.; ID.; ID.; IN THE EXERCISE OF HIS DUTIES, THE OMBUDSMAN IS GIVEN FULL ADMINISTRATIVE DISCIPLINARY AUTHORITY WHICH INCLUDES THE POWER TO CONDUCT INVESTIGATIONS, HOLD HEARINGS AND DIRECTLY IMPOSE ADMINISTRATIVE SANCTIONS.— In the exercise of his duties, the Ombudsman is given full administrative disciplinary authority. His power is not limited merely to receiving, processing complaints, or recommending penalties. He is to conduct investigations, hold hearings, summon witnesses and require production of evidence and place respondents under preventive suspension. This includes the power to impose the penalty of removal, suspension, demotion, fine, or censure of a public officer or employee. The provisions in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose

the said penalty. Thus, it is settled that the Office of the Ombudsman can directly impose administrative sanctions.

4. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY AND NOT MERE NEGLECT OF DUTY WAS COMMITTED IN CASE AT BAR.— Neglect of duty implies only the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference. However, the facts of this case show more than a failure to mind one's task. Rather, they manifest that Olaivar committed acts of dishonesty, which is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle. Hence, the CA should have found Olaivar liable for dishonesty. But be that as it may, still, the CA correctly imposed the proper penalty upon Olaivar. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, like gross neglect of duty, is classified as a grave offense punishable by dismissal even if committed for the first time. Under Section 58, such penalty likewise carries with it the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and disqualification from re-employment in the government service.

5. ID.; ID.; ID.; PUBLIC SERVICE REQUIRES INTEGRITY AND DISCIPLINE, FOR SAID REASON, PUBLIC SERVANTS MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND DEDICATION TO DUTY.— We find it worthy to state at this point that public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the constitutional principle that a public office is a public trust; and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A RE-

EXAMINATION OF FACTUAL FINDINGS CANNOT BE DONE THROUGH A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; THE SUPREME COURT IS NOT A TRIER OF FACTS AND REVIEWS ONLY QUESTIONS OF LAW.— We note that both Cabalit and Apit raise essentially factual issues which are not proper in petitions filed under Rule 45. Settled jurisprudence dictates that subject to a few exceptions, only questions of law may be brought before the Court *via* a petition for review on *certiorari*. In *Diokno v. Cacdac*, the Court held: x x x [T]he scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law, and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said: Thus, **only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence** upon which the proper x x x tribunal has based its determination. It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.

7. ID.; EVIDENCE; WHEN THE FINDINGS OF FACT OF THE OMBUDSMAN ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, IT SHOULD BE CONSIDERED AS CONCLUSIVE.— The CA affirmed the findings of fact of the Office of the Ombudsman-Visayas which are supported by substantial evidence such as affidavits of witnesses and copies of the tampered official receipts. The CA found that a perusal of the questioned receipts would easily reveal the discrepancies between the date, name and vehicle in the Owner's or Plate Release copies and the File, Auditor, and Regional Office copies. It upheld the factual findings of the Ombudsman that petitioners Cabalit and Apit tampered with the duplicates of the official receipts to make it appear that they collected a lesser amount. Their participation was found to have been indispensable as the irregularities could not have been committed without their participation. They also concealed the

misappropriation of public funds by falsifying the receipts. Now, superior courts are not triers of facts. When the findings of fact of the Ombudsman are supported by substantial evidence, it should be considered as conclusive. This Court recognizes the expertise and independence of the Ombudsman and will avoid interfering with its findings absent a finding of grave abuse of discretion. Hence, being supported by substantial evidence, we find no reason to disturb the factual findings of the Ombudsman which are affirmed by the CA.

8. ID.; ID.; FINDINGS OF THE CA ARE GENERALLY NOT REVIEWABLE BY THE SUPREME COURT; CASE AT BAR AN EXCEPTION.— As for Olaivar, he insists that the CA erred in holding him administratively liable for gross negligence when he relied to a reasonable extent and in good faith on the actions of his subordinates in the preparation of the applications for registration. He questions the appellate court's finding that he failed to exercise the required diligence in the performance of his duties. While as stated above, the general rule is that factual findings of the CA are not reviewable by this Court, we find that Olaivar's case falls in one of the recognized exceptions laid down in jurisprudence since the CA's findings regarding his liability are premised on the supposed absence of evidence but contradicted by the evidence on record.

APPEARANCES OF COUNSEL

Nilo G. Ahat for Gemma P. Cabalit.
Hilario L. Ayuban for Filadelfo S. Apit.
Alexander H. Lim for Leonardo G. Olaivar.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Three employees from the Land Transportation Office (LTO) in Jagna, Bohol were found by the Ombudsman to have perpetrated a scheme to defraud the government of proper motor vehicle registration fees. They now seek in the present consolidated

petitions a judgment from this Court annulling the January 18, 2006 Decision[1] and September 21, 2007 Resolution[2] of the Court of Appeals (CA) which affirmed with modification the Decision[3] of the Office of the Ombudsman-Visayas dismissing them from government service.

The facts follow:

On September 4, 2001, the Philippine Star News, a local newspaper in Cebu City, reported that employees of the LTO in Jagna, Bohol, are shortchanging the government by tampering with their income reports.[4] Accordingly, Regional Director Ildefonso T. Deloria of the Commission on Audit (COA) directed State Auditors Teodocio D. Cabalit and Emmanuel L. Coloma of the Provincial Revenue Audit Group to conduct a fact-finding investigation. A widespread tampering of official receipts of Motor Vehicle Registration during the years 1998, 1999, 2000 and 2001 was then discovered by the investigators.

According to the investigators, a total of 106 receipts were tampered. The scheme was done by detaching the Plate Release and Owner's copy from the set of official receipts then typing thereon the correct details corresponding to the vehicle registered, the owner's name and address, and the correct amount of registration fees. The other copies, consisting of the copies for the Collector, EDP, Record, Auditor, and Regional Office, meanwhile, were typed on to make it appear that the receipts were issued mostly for the registration of motorcycles with much lower registration charges. Incorrect names and/or addresses were also used on said file copies. The difference between the

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[1] *Rollo* (G.R. No. 180236), pp. 41-56. Penned by Associate Justice Vicente L. Yap with Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr., concurring.

[2] *Rollo* (G.R. No. 180342), pp. 46-48. Penned by Associate Justice Antonio L. Villamor with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring.

[3] Dated May 3, 2004; records, Folder 3, pp. 546-556.

[4] CA *rollo* (CA-G.R. SP. No. 00047), p. 73.

amounts paid by the vehicle owners and the amounts appearing on the file copies were then pocketed by the perpetrators, and only the lower amounts appearing on the retained duplicate file copies were reported in the Report of Collections.[5] According to State Auditors Cabalit and Coloma in their Joint-Affidavit, the scheme was perpetrated by LTO employees Leonardo G. Olaivar, Gemma P. Cabalit, Filadelfo S. Apit and Samuel T. Alabat, and resulted in an unreported income totaling ₱169,642.50.[6]

On August 8, 2002, COA Regional Cluster Director Atty. Roy L. Ursal reported the tampering of official receipts to Deputy Ombudsman Primo C. Miro.[7] According to Atty. Ursal, the irregularity is penalized under Article 217, in relation to Article 171 of the Revised Penal Code;[8] Section 3(e)[9] of the Anti-Graft

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[5] Narrative Report, records, Folder 1, pp. 6-151.

[6] Records, Folder 1, pp. 3-4.

[7] *Id.* at 2.

[8] Art. 217. *Malversation of public funds or property. - Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, x x x

x x x x x x x x x

Art. 171. *Falsification by public officer, employee or notary or ecclesiastical minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

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[9] R.A. No. 3019, Section 3. *Corrupt Practices of Public Officers.*- x x x

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference

and Corrupt Practices Act, and likewise violates Republic Act (R.A.) No. 6713.[10]

In a Joint Evaluation Report, Graft Investigators Pio R. Dargantes and Virginia Palanca-Santiago found grounds to conduct a preliminary investigation.[11] Hence, a formal charge for dishonesty was filed against Olaivar, Cabalit, Apit and Alabat before the Office of the Ombudsman-Visayas, and the parties were required to submit their counter-affidavits.

In compliance, Olaivar, Cabalit, Apit and Alabat submitted separate counter-affidavits, all essentially denying knowledge and responsibility for the anomalies. As to Olaivar, he maintained that the receipts were typed outside his office by regular and casual employees. He claimed that the receipts were presented to him only for signature and he does not receive the payment when he signs the receipts.[12] Cabalit, for her part, claimed that her duty as cashier was to receive collections turned over to her and to deposit them in the Land Bank of the Philippines in Tagbilaran City. She claimed that she was not even aware of any anomaly in the collection of fees prior to the investigation.[13] As to Apit, he admitted that he countersigned the official receipts, but he too denied being aware of any illegal activity in their office. He claimed that upon being informed of the charge, he verified the photocopies of the tampered receipts and was surprised to find that the signatures above his name were falsified.[14] Alabat, meanwhile, claimed he did not tamper, alter or falsify any public

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in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[10] Code of Conduct and Ethical Standards for Public Officials and Employees.

[11] Records, Folder 1, pp. 153-154.

[12] *Id.* at 185-186.

[13] *Id.* at 169-170.

[14] *Id.* at 171-173.

document in the performance of his duties. He insisted that the initial above his name on Official Receipt No. 64056082 was Apit's, while the initial on Official Receipt No. 64056813 was that of Olaivar.[15]

During the hearing before Graft Investigator Pio R. Dargantes, State Auditor Cabalit testified on the investigation he conducted in the LTO in Jagna, Bohol. He testified that he was furnished with the owner's and duplicate copies of the tampered receipts. Upon comparison of the Owner's copy with the Collector or Record's copy, he noticed that the amounts shown in the original copies were much bigger than those appearing in the file copies. State Auditor Cabalit also declared that the basis for implicating Olaivar is the fact that his signature appears in all the 106 tampered official receipts and he signed as verified correct the Report of Collections, which included the tampered receipts. As to Apit and Cabalit, they are the other signatories of the official receipts.[16] In some official receipts, the Owner's copy is signed by F.S. Apit as Computer Evaluator, G.P. Cabalit as Cashier, and Leonardo Olaivar as District Head, but their signatures do not appear on the file copies.[17]

On February 12, 2004, the Office of the Ombudsman-Visayas directed[18] the parties to submit their position papers pursuant to Administrative Order (A.O.) No. 17, dated September 7, 2003, amending the Rules of Procedure of the Office of the Ombudsman.[19] No cross-examination of State Auditor Cabalit was therefore conducted.

Complying with the above Order, the COA submitted its position paper on March 18, 2004. Olaivar, Cabalit and Apit,

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[15] *Id.* at 159-161.

[16] TSN, February 5, 2003, pp. 6-19, records, Folder 2, pp. 265-278.

[17] TSN, February 10, 2003, pp. 41-55, *id.* at 300-314.

[18] Records, Folder 2, p. 455.

[19] Administrative Order No. 07.

for their part, respectively submitted their position papers on April 29, 2004, March 18, 2004 and March 15, 2004.

In its position paper,[20] the COA pointed out that the signatures of Cabalit, Apit and Olaivar were indispensable to the issuance of the receipts. As to Olaivar, the original receipts bear his signature, thereby showing that he approved of the amounts collected for the registration charges. However, when the receipts were reported in the Report of Collections, the data therein were already tampered reflecting a much lesser amount. By affixing his signature on the Report of Collections and thereby attesting that the entries therein were verified by him as correct, he allowed the scheme to be perpetrated. As to Cabalit, the COA pointed out that as cashier, Cabalit's signature on the receipts signified that she received the registration fees. The correct amounts should have therefore appeared in the Report of Collections, but as already stated, lesser amounts appeared on the Report of Collections, which she prepares. In the same manner, Apit, as computer evaluator, also signed the subject receipts allowing the irregularities to be perpetuated.

In his position paper,[21] Olaivar meanwhile insisted that he had no participation in the anomalies. He stressed that his only role in the issuance of the official receipts was to review and approve the applications, and that he was the last one to sign the official receipts. He argued that based on the standard procedure for the processing of applications for registration of motor vehicles, it could be deduced that there was a concerted effort or conspiracy among the evaluator, typist and cashier, while he was kept blind of their *modus operandi.*

Cabalit, for her part, questioned the findings of the investigators. She stressed in her position paper[22] that had there been a thorough investigation of the questioned official receipts, the auditors would have discovered that the signatures appearing

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[20] Records, Folder 3, pp. 476-487.

[21] *Id.* at 534-540.

[22] *Id.* at 510-517.

above her name were actually that of Olaivar. She outlined the standard paper flow of a regular transaction at the LTO. It begins when the registrant goes to the computer evaluator for the computation of applicable fees and proceeds to the cashier for payment. After paying, the typist will prepare the official receipts consisting of seven (7) copies, which will be routed to the computer evaluator, to the district head, and to the cashier for signature. The cashier retains the copies for the EDP, Regional Office, Collector and Auditor, while the remaining copies (Owner, Plate Release and Record's copy) will be forwarded to the Releasing Section for distribution and release.

Cabalit insisted that on several occasions Olaivar disregarded the standard procedure and directly accommodated some registrants who were either his friends or referred to him by friends. For such transactions, Olaivar assumes the functions of computer evaluator, typist and cashier, as he is the one who computes the fees, receives the payment and prepares the official receipts. Olaivar would then remit the payment to her. As the cashier, she has to accept the payment as a matter of ministerial duty.

Apit, meanwhile, stressed in his position paper[23] that the strokes of the signatures appearing above his typewritten name on the official receipts are different, indicating that the same are falsified. He also explained that considering that the LTO in Jagna issues around 20 to 25 receipts a day, he signed the receipts relying on the faith that his co-employees had properly accomplished the forms. He also pointed out that Engr. Dano admitted signing accomplished official receipts when the regular computer encoder is out, which just shows that other personnel could have signed above the name of F.S. Apit.

On May 3, 2004, the Office of the Ombudsman-Visayas rendered judgment finding petitioners liable for dishonesty for tampering the official receipts to make it appear that they collected lesser amounts than they actually collected. The OMB-Visayas ruled:

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[23] *Id.* at 500-503.

WHEREFORE, premises considered, it is hereby resolved that the following respondents be found guilty of the administrative infraction of DISHONESTY and accordingly be meted out the penalty of DISMISSAL FROM THE SERVICE with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and disqualification from re-employment in the government service:

1. Leonardo G. Olaivar -	Transportation Regulation Officer II/ Office[r]-In-Charge LTO Jagna District Office Jagna, Bohol;
2. Gemma P. Cabalit -	Cashier II, LTO Jagna District Office Jagna, Bohol;
3. Filadelpo S. Apit -	Clerk II, LTO Jagna District Office Jagna, Bohol;

The complaint against respondent Samuel T. Alabat, presently the Head of Apprehension Unit of the Tagbilaran City LTO, is hereby DISMISSED for insufficiency of evidence.

The complaint regarding the LTO official receipts/MVRRs issued by the LTO Jagna District Office, which are not covered by original copies are hereby DISMISSED without prejudice to the filing of the appropriate charges upon the recovery of the original copies thereof.

SO DECIDED.[24]

Petitioners sought reconsideration of the decision, but their motions were denied by the Ombudsman.[25] Thus, they separately sought recourse from the CA.

On January 18, 2006, the CA promulgated the assailed Decision in CA-G.R. SP. Nos. 86256, 86394 and 00047. The dispositive portion of the CA decision reads,

WHEREFORE, premises considered, judgment is hereby rendered by US DISMISSING the instant consolidated petitions. The assailed

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[24] *Supra* note 3 at 555-556.

[25] Records, Folder 3, pp. 634-638.

decision of the Office of the Ombudsman-Visayas dated May 3, 2004 in OMB-V-A-02-0415-H is hereby AFFIRMED with a modification that petitioner Olaivar be held administratively liable for gross neglect of duty which carries the same penalty as provided for dishonesty. No pronouncement as to costs.

SO ORDERED.[26]

According to the CA, it was unbelievable that from 1998 to 2001, Cabalit and Apit performed vital functions by routinely signing LTO official receipts but did not have any knowledge of the irregularity in their office. With regard to Olaivar, the CA believed that the tampering of the receipts could have been avoided had he exercised the required diligence in the performance of his duties. Thus, the CA held him liable merely for gross neglect of duty.

Petitioners sought reconsideration of the CA decision, but the CA denied their motions.[27] Hence, they filed the instant petitions before the Court.

In her petition, petitioner Cabalit argues that

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE OMBUDSMAN'S DECISION WHICH GAVE RETROACTIVE EFFECT TO THE NEW ADMINISTRATIVE ORDER NO. 17 IN THE PROCEEDINGS BELOW THAT WAS ALREADY ON TRIAL IN ACCORDANCE WITH ADMINISTRATIVE ORDER NO. 07.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT ALTHOUGH THE TRIAL TYPE HEARING UNDER ADMINISTRATIVE ORDER NO. 07 DID NOT PUSH THRU, PETITIONER WAS STILL ACCORDED HER RIGHT TO DUE PROCESS UNDER THE SUMMARY PROCEEDINGS PURSUANT TO ADMINISTRATIVE ORDER NO. 17.

III. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF

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[26] *Supra* note 1 at 55-56.

[27] *Supra* note 2.

RESPONDENT OMBUDSMAN DESPITE HAVING FAILED TO MAKE A CATEGORICAL RULING ON THE ISSUE OF WHETHER THE QUESTIONED AND/OR FORGED SIGNATURES BELONG TO PETITIONER GEMMA CABALIT.

IV. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT FAILED TO RULE ON THE DOCTRINAL VALUE AND/OR APPLICABILITY OF THE *TAPIADOR VS. OFFICE OF THE OMBUDSMAN* (G.R. [129124], MARCH 15, 2002) RULING HERE IN THE INSTANT CASE.[28]

Meanwhile, Apit interposes the following arguments in his petition:

I. THE COURT OF APPEALS ERRED IN LIMITING ADMINISTRATIVE DUE PROCESS AS AN OPPORTUNITY TO BE HEARD ONLY.

II. THE COURT OF APPEALS ERRED IN CONCLUDING THE DEFENSE OF PETITIONER APIT AS MERE DENIAL.

III. THE COURT OF APPEALS ERRED IN ITS FAILURE TO RECONSIDER THE EVIDENCE THAT CLEARLY PROVED THAT THE SIGNATURES ABOVE THE NAME OF PETITIONER APIT IN THE QUESTIONED RECEIPTS ARE ALL FORGED AND FALSIFIED.[29]

As for Olaivar, he assails the CA Decision raising the following issues:

I. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER LEONARDO G. OLAIVAR IS ADMINISTRATIVELY LIABLE FOR GROSS NEGLIGENCE.

II. WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PETITIONER LEONARDO G. OLAIVAR WAS NOT DENIED DUE PROCESS WHEN THE OFFICE OF THE OMBUDSMAN VISAYAS FOUND HIM GUILTY FOR

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[28] *Rollo* (G.R. No. 180236), p. 18.

[29] *Rollo* (G.R. No. 180341), pp. 17-18.

DISHONESTY AND METED OUT THE PENALTY OF DISMISSAL FROM SERVICE.[30]

On January 15, 2008, said petitions were consolidated.[31]

Essentially, the issues for our resolution are: (1) whether there was a violation of the right to due process when the hearing officer at the Office of the Ombudsman-Visayas adopted the procedure under A.O. No. 17 notwithstanding the fact that the said amendatory order took effect after the hearings had started; and (2) whether Cabalit, Apit and Olaivar are administratively liable.

As regards the first issue, petitioners claim that they were denied due process of law when the investigating lawyer proceeded to resolve the case based only on the affidavits and other evidence on record without conducting a formal hearing. They lament that the case was submitted for decision without giving them opportunity to present witnesses and cross-examine the witnesses against them. Petitioner Cabalit also argues that the Office of the Ombudsman erred in applying the amendments under A.O. No. 17 to the trial of the case, which was already in progress under the old procedures under A.O. No. 07. She stressed that under A.O. No. 07, she had the right to choose whether to avail of a formal investigation or to submit the case for resolution on the basis of the evidence on record. Here, she was not given such option and was merely required to submit her position paper.

Petitioners' arguments deserve scant consideration.

Suffice to say, petitioners were not denied due process of law when the investigating lawyer proceeded to resolve the case based on the affidavits and other evidence on record. Section 5(b)(1)[32] Rule 3, of the Rules of Procedure of the Office of the

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[30] *Rollo* (G.R. No. 180342), p. 21.

[31] *Rollo* (G.R. No. 180236), pp. 202-203.

[32] Section 5. *Administrative adjudication; How conducted.* –

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Ombudsman, as amended by A.O. No. 17, plainly provides that the hearing officer may issue an order directing the parties to file, within ten days from receipt of the order, their respective verified position papers on the basis of which, along with the attachments thereto, the hearing officer may consider the case submitted for decision. It is only when the hearing officer determines that based on the evidence, there is a need to conduct clarificatory hearings or formal investigations under Section 5(b)(2) and Section 5(b)(3) that such further proceedings will be conducted. But the determination of the necessity for further proceedings rests on the sound discretion of the hearing officer. As the petitioners have utterly failed to show any cogent reason why the hearing officer's determination should be overturned, the determination will not be disturbed by this Court. We likewise find no merit in their contention that the new procedures under A.O. No. 17, which took effect while the case was already undergoing trial before the hearing officer, should not have been applied.

The rule in this jurisdiction is that one does not have a vested right in procedural rules. In *Tan, Jr. v. Court of Appeals*,[33] the Court elucidated:

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of

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b) If the hearing officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall issue an Order (or Orders) for any of the following purposes:

1. To direct the parties to file, within ten (10) days from receipt of the Order, their respective verified position papers. The position papers shall contain only those charges, defenses and other claims contained in the affidavits and pleadings filed by the parties. Any additional relevant affidavits and/or documentary evidence may be attached by the parties to their position papers. On the basis of the position papers, affidavits and other pleadings filed, the Hearing Officer may consider the case submitted for resolution.

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[33] G.R. No. 136368, January 16, 2002, 373 SCRA 524, 536, citing Agpalo, *Statutory Construction*, 1986 ed., pp. 269-272.

their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. **It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure. (**Emphasis supplied.)

While the rule admits of certain exceptions, such as when the statute itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it would impair vested rights, petitioners failed to show that application of A.O. No. 17 to their case would cause injustice to them. Indeed, in this case, the Office of the Ombudsman afforded petitioners every opportunity to defend themselves by allowing them to submit counter-affidavits, position papers, memoranda and other evidence in their defense. Since petitioners have been afforded the right to be heard and to defend themselves, they cannot rightfully complain that they were denied due process of law. Well to remember, due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses.[34] But as long as a party is given the opportunity

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[34] *Office of the Ombudsman v. Galicia,* G.R. No. 167711, October 10, 2008, 568 SCRA 327, 344.

to defend his or her interests in due course, said party is not denied due process.[35]

Neither is there merit to Cabalit's assertion that she should have been investigated under the "old rules of procedure" of the Office of the Ombudsman, and not under the "new rules." In *Marohomsalic v. Cole*,[36] we clarified that the Office of the Ombudsman has only one set of rules of procedure and that is A.O. No. 07, series of 1990, as amended. There have been various amendments made thereto but it has remained, to date, the **only** set of rules of procedure governing cases filed in the Office of the Ombudsman. Hence, the phrase "as amended" is correctly appended to A.O. No. 7 every time it is invoked. A.O. No. 17 is just one example of these amendments.

But did the CA correctly rule that petitioners Cabalit and Apit are liable for dishonesty while petitioner Olaivar is liable for gross neglect of duty?

Cabalit argues that the CA erred in affirming the decision of the Ombudsman finding her liable for dishonesty. She asserts that it was not established by substantial evidence that the forged signatures belong to her. Meanwhile, Apit contends that the CA erred in not considering evidence which proves that the signatures appearing above his name are falsified. However, we note that both Cabalit and Apit raise essentially factual issues which are not proper in petitions filed under Rule 45. Settled jurisprudence dictates that subject to a few exceptions, only questions of law may be brought before the Court via a petition for review on *certiorari*. In *Diokno v. Cacdac*,[37] the Court held:

x x x [T]he scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law,

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[35] *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 44-45.

[36] G.R. No. 169918, February 27, 2008, 547 SCRA 98, 112.

[37] G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460.

and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said:

> Thus, **only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence** upon which the proper x x x tribunal has based its determination. (Emphasis supplied.)

It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because this Court is not a trier of facts; it reviews only questions of law. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.[38]

Here, the CA affirmed the findings of fact of the Office of the Ombudsman-Visayas which are supported by substantial evidence such as affidavits of witnesses and copies of the tampered official receipts.[39] The CA found that a perusal of the questioned receipts would easily reveal the discrepancies between the date, name and vehicle in the Owner's or Plate Release copies and the File, Auditor, and Regional Office copies. It upheld the factual findings of the Ombudsman that petitioners Cabalit and Apit tampered with the duplicates of the official receipts to make it appear that they collected a lesser amount. Their participation was found to have been indispensable as the irregularities could not have been committed without their participation. They also concealed the misappropriation of public funds by falsifying the receipts.

Now, superior courts are not triers of facts. When the findings of fact of the Ombudsman are supported by substantial evidence, it should be considered as conclusive.[40] This Court recognizes

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[38] *Id.* at 460-461.

[39] See Narrative Report, *supra* note 5.

[40] *Olivarez v. Sandiganbayan,* G.R. No. 118533, October 4, 1995, 248 SCRA 700, 715.

the expertise and independence of the Ombudsman and will avoid interfering with its findings absent a finding of grave abuse of discretion.[41] Hence, being supported by substantial evidence, we find no reason to disturb the factual findings of the Ombudsman which are affirmed by the CA.

As for Olaivar, he insists that the CA erred in holding him administratively liable for gross negligence when he relied to a reasonable extent and in good faith on the actions of his subordinates in the preparation of the applications for registration. He questions the appellate court's finding that he failed to exercise the required diligence in the performance of his duties.

While as stated above, the general rule is that factual findings of the CA are not reviewable by this Court, we find that Olaivar's case falls in one of the recognized exceptions laid down in jurisprudence since the CA's findings regarding his liability are premised on the supposed absence of evidence but contradicted by the evidence on record.[42]

The Office of the Ombudsman-Visayas found Olaivar administratively liable for dishonesty while the CA ruled that he may not be held liable for dishonesty supposedly for lack of sufficient evidence. The CA ruled that there was no substantial evidence to show that Olaivar participated in the scheme, but the tampering of the official receipts could have been avoided had he exercised the required diligence in the performance of his duties as officer-in-charge of the Jagna District Office. Thus, the CA found him liable only for gross neglect of duty. This, however, is clear error on the part of the CA.

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[41] See *Jao v. Court of Appeals*, G.R. Nos. 104604 & 111223, October 6, 1995, 249 SCRA 35, 42 and *Yabut v. Office of the Ombudsman*, G.R. No. 111304, June 17, 1994, 233 SCRA 310, 314.

[42] See *Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010, 636 SCRA 401, 405-406.

For one, there is clear evidence that Olaivar was involved in the anomalies. Witness Joselito Taladua categorically declared in his affidavit[43] that he personally paid Olaivar the sum of ₱2,675 for the renewal of registration of a jeep for which he was issued Official Receipt No. 47699853. Much to his dismay, Taladua later found out that his payment was not reflected correctly in the Report of Collections, and that the vehicle was deemed unregistered for the year 2000.

More, Cabalit pointed to Olaivar as the person behind the anomaly in the LTO-Jagna District Office. She narrated in her position paper that on several times, Olaivar directly accommodated some registrants and assumed the functions of computer evaluator, typist and cashier, and computed the fees, received payment and prepared the official receipts for those transactions. She also revealed that Olaivar would ask her for unused official receipts and would later return the duplicate copies to her with the cash collections. Later, he would verify the Report of Collections as correct.[44]

Likewise, Motor Vehicle Inspector Engr. Lowell A. Dano confirmed that in several instances, he witnessed Olaivar type the data himself in the official receipts even if they have a typist in the office to do the job. Engr. Dano added that after typing, Olaivar personally brought the accomplished official receipts for him (Engr. Dano) to sign.[45]

Moreover, Jacinto Jalop, the records officer of the LTO in Jagna, Bohol, illustrated how the official receipts were tampered. He disclosed that the correct charges were typed in the Owner's copy and the Plate Release copy of the official receipts, but a much lower charge and an incorrect address were indicated in the other copies. He asserted that Olaivar was responsible for tampering the official receipts.[46]

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[43] Records, Folder 1, p. 146.

[44] *Id.* at 11.

[45] *Id.* at 10.

[46] *Id.* at 9.

Neglect of duty implies only the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference.[47] However, the facts of this case show more than a failure to mind one's task. Rather, they manifest that Olaivar committed acts of dishonesty, which is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle.[48] Hence, the CA should have found Olaivar liable for dishonesty.

But be that as it may, still, the CA correctly imposed the proper penalty upon Olaivar. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, like gross neglect of duty, is classified as a grave offense punishable by dismissal even if committed for the first time.[49] Under Section 58,[50] such penalty likewise carries with it the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and disqualification from re-employment in the government service.

One final note. Cabalit contends that pursuant to the obiter in *Tapiador v. Office of the Ombudsman*,[51] the Office of the

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[47] *Añonuevo v. Rubio*, A.M. No. P-04-1782, July 30, 2004, 435 SCRA 430, 435.

[48] *Japson v. Civil Service Commission*, G.R. No. 189479, April 12, 2011, 648 SCRA 532, 543-544.

[49] See *Anonymous v. Curamen*, A.M. No. P-08-2549, June 18, 2010, 621 SCRA 212, 219.

[50] SEC. 58. *Administrative Disabilities Inherent in Certain Penalties.* –

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

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[51] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

Ombudsman can only recommend administrative sanctions and not directly impose them. However, in *Office of the Ombudsman v. Masing*,[52] this Court has already settled the issue when we ruled that the power of the Ombudsman to determine and impose administrative liability is not merely recommendatory but actually mandatory. We held,

> We reiterated this ruling in *Office of the Ombudsman v. Laja*, where we emphasized that "the Ombudsman's order to remove, suspend, demote, fine, censure, or prosecute an officer or employee is not merely advisory or recommendatory but is actually mandatory." Implementation of the order imposing the penalty is, however, to be coursed through the proper officer. Recently, in *Office of the Ombudsman v. Court of Appeals*, we also held—
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> > 'While Section 15(3) of RA 6770 states that the Ombudsman has the power to "recommend x x x removal, suspension, demotion x x x" of government officials and employees, the same Section 15(3) also states that the Ombudsman in the alternative may "**enforce its disciplinary authority as provided in Section 21**" of RA 6770.' (*emphasis supplied*.)[53]

Subsequently, in *Ledesma v. Court of Appeals*,[54] and *Office of the Ombudsman v. Court of Appeals*,[55] the Court upheld the Ombudsman's power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault in the exercise of its administrative disciplinary authority. In *Office of the Ombudsman v. Court of Appeals*, we held that the exercise of such power is well founded in the Constitution and R.A. No. 6770, otherwise known as The Ombudsman Act of 1989, thus:

> The Court further explained in *Ledesma* that the mandatory character of the Ombudsman's order imposing a sanction should

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[52] G.R. Nos. 165416, 165584 and 165731, January 22, 2008, 542 SCRA 253.

[53] *Id.* at 272.

[54] G.R. No. 161629, July 29, 2005, 465 SCRA 437, 449.

[55] G.R. No. 160675, June 16, 2006, 491 SCRA 92, 108.

not be interpreted as usurpation of the authority of the head of office or any officer concerned. This is because the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in Republic Act No. 6770 intended that the implementation of the order be coursed through the proper officer.

Consequently in *Ledesma*, the Court affirmed the appellate court's decision which had, in turn, affirmed an order of the Office of the Ombudsman imposing the penalty of suspension on the erring public official.[56]

The duty and privilege of the Ombudsman to act as protector of the people against the illegal and unjust acts of those who are in the public service emanate from no less than the 1987 Constitution. Section 12 of Article XI thereof states:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

In addition, Section 15 (3) of R.A. No. 6770, provides:

SEC. 15. *Powers, Functions and Duties*. – The Office of the Ombudsman shall have the following powers, functions and duties:

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(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided

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[56] *Id.*

in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.

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Section 19 of R.A. No. 6770 grants to the Ombudsman the authority to act on all administrative complaints:

SEC. 19. *Administrative Complaints.* – The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;

(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.

In the exercise of his duties, the Ombudsman is given full administrative disciplinary authority. His power is not limited merely to receiving, processing complaints, or recommending penalties. He is to conduct investigations, hold hearings, summon witnesses and require production of evidence and place respondents under preventive suspension. This includes the power to impose the penalty of removal, suspension, demotion, fine, or censure of a public officer or employee.[57]

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[57] *Office of the Ombudsman v. Lucero*, G.R. No. 168718, November 24, 2006, 508 SCRA 106, 112-113.

The provisions in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[58] Thus, it is settled that the Office of the Ombudsman can directly impose administrative sanctions.

We find it worthy to state at this point that public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the constitutional principle that a public office is a public trust; and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[59]

WHEREFORE, the petitions for review on *certiorari* are **DENIED.** The assailed Decision dated January 18, 2006 and Resolution dated September 21, 2007 of the Court of Appeals in CA-G.R. SP. Nos. 86256, 86394 and 00047 are **AFFIRMED** with **MODIFICATION.** Petitioner Leonardo G. Olaivar is held administratively liable for **DISHONESTY** and meted the penalty of dismissal from the service as well as the accessory penalties inherent to said penalty.

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[58] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 168079, July 17, 2007, 527 SCRA 798, 806-807; *Office of the Ombudsman v. Court of Appeals*, G.R. No. 167844, November 22, 2006, 507 SCRA 593, 610.

[59] *Salumbides, Jr. v. Office of the Ombudsman*, G.R. No. 180917, April 23, 2010, 619 SCRA 313, 332.

With costs against petitioners.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., is on official leave.

EN BANC

[G.R. No. 191412. January 17, 2012]

LETICIA A. CADENA, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE PRESENT PETITION DOES NOT COMPLY WITH THE REQUIREMENTS OF RULE 45 OF THE RULES OF COURT.— At the outset, it should be stressed that the petition is dismissible for non-compliance with substantial requirements under Rule 45 of the Rules of Court. First, we cite that on March 16, 2010, this Court issued a resolution in relation to the petitioner's failure to include a statement of material dates in her petition as required under Rule 45, Sections 4 (b) and 5. x x x Given the foregoing, this Court's resolution of March 16, 2010 required compliance from the petitioner. x x x A perusal of the case records, however, reveals that despite due notice of said resolution by the counsel for the petitioner on March 24, 2010, no compliance therewith has been filed with this Court. We reiterate that Rule 45, Section 5 provides that the failure of the petitioner to comply with any of the contents of and the documents which should accompany a petition shall

be sufficient ground for the dismissal thereof. Notably, the material dates appear crucial in this case, given that this petition was filed more than two months after the promulgation by the CA of its resolution denying the petitioner's motion for reconsideration in CA-G.R. SP No. 103646. It has to be sufficiently established that the petition was timely filed within 15 days from the petitioner's notice of the CA's denial of her motion for reconsideration. This Court, instead of dismissing the petition outright, granted the petitioner a reasonable opportunity to correct the deficiency on the material dates by issuing the March 16, 2010 resolution. Regrettably, the petitioner continued to defy this lawful order of the Court, thereby giving us all the more reason to deny the present petition.

2. ID.; ID.; ID.; THE MATTERS PERTAINED TO IN THE PRESENT PETITION ARE NOT PROPER SUBJECTS OF A PETITION FOR REVIEW ON *CERTIORARI*; PETITIONER ASSAILS THE RULING MADE BY THE CIVIL SERVICE COMMISSION INSTEAD OF THE COURT OF APPEALS.— In addition x x x, the matters pertained to in the present petition are not proper subjects of a petition for review on *certiorari* under Rule 45. As earlier mentioned, the petitioner assails rulings made by the CSC instead of the CA. The issues brought before us pertain to matters that were neither ruled upon nor discussed by the CA in its June 30, 2009 decision and January 4, 2010 resolution. The appellate court only discussed the timeliness of the appeal to the CSC. After ruling that the CSC made no error in dismissing the appeal from the CSC-NCR, the CA held that it was no longer necessary for it to resolve the other issues brought before it. Further, the CA ruling on the validity of the appeal's dismissal was not even made an issue in this case. In fact, the issues in this petition are exactly the same issues raised before the CA. This petition and the inclusion of issues on matters that were solely decided upon by the CSC then appear to be a scheme resorted to by the petitioner, merely to avert the adverse effects of the petitioner's and/or counsel's previous errors or lapses. We emphasize that under Rule 45, Section 1 of the Rules of Court, a petition for review on *certiorari* is the remedy that may be resorted to by a party to appeal only a judgment or final order or resolution of the CA, the Sandiganbayan, the Regional Trial Court and other courts whenever authorized by law.

3. ID.; ID.; ID.; THE RIGHT TO APPEAL IS NOT A NATURAL RIGHT OR A PART OF DUE PROCESS, BUT MERELY A STATUTORY PRIVILEGE THAT MAY BE EXERCISED ONLY IN THE MANNER PRESCRIBED BY LAW; THE RIGHT IS UNAVOIDABLY FORFEITED BY THE LITIGANT WHO DOES NOT COMPLY WITH THE MANNER PRESCRIBED.— With the infirmities, this Court has sufficient grounds to deny the present petition, barring the need to further rule on the issues now brought before us. In any case, we rule that both the CSC and the CA have correctly held that the rulings of the CSC-NCR had become final and executory when the petitioner failed to make a timely appeal before the CSC. x x x Settled is the rule that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.

4. ID.; ID.; ID.; THE LIBERAL APPLICATION OF THE RULES OF PROCEDURE FOR PERFECTING APPEALS IS STILL THE EXCEPTION AND NOT THE RULE AND IS ONLY ALLOWED IN EXCEPTIONAL CIRCUMSTANCES TO BETTER SERVE THE INTEREST OF JUSTICE.— This Court has, on several occasions, ruled that the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the determination and just determination of his cause free from the constraints of technicalities. However, failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional, and failure to perfect an appeal renders the judgment final and executory. In addition, the liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice. This exceptional situation does not obtain in this case as in fact, both the rulings of the CSC and CA are supported by evidence on record. While the petitioner argues that she was denied the opportunity to fully present her defenses, she was able to give her answer to the charges, and even moved for a reconsideration of the decision of the CSC-NCR. Her arguments and defenses were already reviewed and considered by the agency when it discussed its rulings. As held by this Court in the case of *Autencio v. Manara*, the essence of due process in administrative proceedings is simply the opportunity

to explain one's side or to seek a reconsideration of the action or ruling complained of. Furthermore, the counsel's actions and mistakes on procedural matters bind the client. Where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured.

APPEARANCES OF COUNSEL

Egargo Puertollano Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before us is a Petition for Review filed by petitioner Leticia A. Cadena (Cadena) following the issuance by the Court of Appeals (CA) of its Decision[1] dated June 30, 2009 and Resolution[2] dated January 4, 2010 in the case docketed as CA-G.R. SP No. 103646, entitled "*Leticia A. Cadena v. Civil Service Commission.*"

The Factual Antecedents

Cadena, then a State Auditing Examiner II, Commission on Audit, assigned at the National Power Corporation, was charged with grave misconduct by the Civil Service Commission-National Capital Region (CSC-NCR) following an incident that occurred during the Career Service Professional Examination held on June 29, 1997. Records indicate that while all examinees were instructed at the start of the examination to clear their desks of things other than their examination booklets, scratch papers and answer sheets, Cadena kept her Notice of Assignment. In

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[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., concurring; *rollo*, pp. 52-63.

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

the course of the examination, the examiner caught Cadena with the said notice of assignment where some questions from the examination were reproduced.

In her answer to the formal charge, Cadena averred that she failed to fully comprehend the instructions to examinees because she arrived late for the examinations. She did not know that she was prohibited from keeping her notice of assignment while the examinations were ongoing. She further alleged that what she copied from the examination booklet and wrote on the notice of assignment were terms she encountered for the first time, and that she only intended to look up in the dictionary the meaning of those words once she arrived home.

While Cadena manifested her desire to file a position paper during the investigations, no such pleading was filed by her counsel. A decision was then rendered by the CSC-NCR based on available records.

The Ruling of the CSC-NCR

The CSC-NCR found Cadena guilty of grave misconduct and dishonesty. The CSC-NCR rejected her defense that she was not aware of the instructions given to examinees considering that the test booklets already contained a prohibition from making copies of the examination questions. Further, she failed to satisfactorily explain her reason for writing her answer sheet number and the venue of her examination on her notice of assignment. The CSC-NCR ruled that her act "does not only amount to Grave Misconduct but also connotes untrustworthiness and lack of integrity, a disposition to lie, cheat, deceive, betray which is tantamount to dishonesty."[3] It further declared:

Further, **Item no. 1 of Civil Service Commission Memorandum Circular No. 8, s. 1990** states that:

> *"Any act which includes the fraudulent procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the*

[3] *Id.* at 21.

same, or any other act which amounts to violation of the integrity of the Civil Service examinations, possession of fake Civil Service eligibility and other similar acts shall be categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service, as the case may be, and shall be penalized in accordance with the approved schedule of penalties."[4]

The dispositive portion of CSC-NCR's Decision[5] dated June 14, 2005 then reads:

WHEREFORE, in view of the foregoing, this Office finds Leticia A. Cadena guilty of Grave Misconduct and Dishonesty. Cadena is hereby meted out the penalty of DISMISSAL from the service with the accessory penalties of forfeiture of retirement benefits, disqualification from re-employment in the government service and bar from taking any civil service examination in the future.

SO ORDERED.[6]

The petitioner's motion for reconsideration was denied by the CSC-NCR *via* a decision[7] dated September 1, 2006, prompting the filing of an appeal with the CSC.

The Ruling of the CSC

On March 24, 2008, the CSC, through Commissioner Mary Ann Z. Fernandez-Mendoza, issued Resolution No. 080430[8] dismissing the petitioner's appeal for having been filed out of time. It emphasized that the "perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal as legally required has the effect of rendering final and executory

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

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

[6] *Id.* at 22.

[7] *Id.* at 31-33.

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

[the] judgment of the court below and deprives the appellate court [of] jurisdiction to entertain the appeal."[9]

Dissatisfied with the CSC's ruling, the petitioner filed with the CA a petition for review raising the following issues:

1. Whether or not the Commission-NCR erred in denying the Appeal on its Resolution of March 24, 2008 filed by Petitioner for being arbitrary and not supported by the evidence on record and therefore errors of law or irregularities have been committed prejudicial to the interest of the Petitioner; and

2. Whether or not the failure of her counsel to submit the position paper could be considered as fraud, accident, mistake or excusable negligence which would warrant the reinvestigation of the case to afford Petitioner the chance to explain her side in the first instance.[10]

The Ruling of the CA

On June 30, 2009, the CA rendered its decision,[11] declaring that the CSC properly dismissed the appeal from the CSC-NCR's decision since the same had already become final and executory. On the other matters raised in the petition, the CA ruled as follows:

Having resolved in the affirmative the issue of the propriety of the dismissal of petitioner's appeal to the CSC, we no longer find it necessary to resolve the other issue.[12]

A motion for reconsideration filed by the petitioner was denied by the CA *via* a resolution[13] dated January 4, 2010. Hence, this petition.

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[9] *Id.* at 36.

[10] *Id.* at 41.

[11] *Supra* note 1.

[12] *Rollo*, p. 62.

[13] *Supra* note 2.

The Present Petition

The present petition includes a statement that it is appealing from the resolution of the CA. However, this Court observes that the issues being raised by the petitioner pertain to the rulings of the CSC-NCR and CSC rather than of the CA, to wit:

> 1. Whether or not the Commission-NCR erred in denying the Appeal on its Resolution of March 24, 2008 filed by Petitioner for being arbitrary and not supported by the evidence on record and therefore errors of law or irregularities have been committed prejudicial to the interest of the Petitioner; and
>
> 2. Whether or not the failure of her counsel to submit the position paper could be considered as fraud, accident, mistake or excusable negligence which would warrant the reinvestigation of the case to afford Petitioner the chance to explain her side in the first instance.[14]

Further, the petitioner's prayer seeks a reversal or setting aside of the rulings of the CSC instead of the CA, as it reads:

> WHEREFORE, it is respectfully prayed that this Honorable Court shall set aside and/or reverse the Resolution dated March 24, 2008 by Commissioner MARY ANN Z. FERNANDEZ[-]MENDOZA and a new one entered dismissing the above-mentioned Administrative Case for utter lack of merit or in the alternative, remand the case to the Civil Service Commission-National Capital Region for further proceedings where the Petitioner shall be afforded the chance to adduce evidence in her behalf, in the interest of substantial justice.[15]

We have earlier denied this petition *via* a Resolution[16] dated October 5, 2010, in view of the petitioner's failure to comply with a lawful order of the Court when her counsel failed to file a reply as required under this Court's Resolution[17] dated June 29, 2010. The petition's reinstatement was only allowed following the counsel for the petitioner's explanation in a motion for

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[14] *Rollo*, p. 7.

[15] *Id.* at 14.

[16] *Id.* at 111.

[17] *Id.* at 109.

reconsideration dated November 17, 2010 that the belated filing of the reply occurred due to the fault of their office personnel who inadvertently misplaced a copy of this Court's resolution requiring the filing of a reply.

This Court's Ruling

We deny the petition.

The present petition does not comply with the requirements of Rule 45 of the 1997 Rules of Civil Procedure.

At the outset, it should be stressed that the petition is dismissible for non-compliance with substantial requirements under Rule 45 of the Rules of Court.

First, we cite that on March 16, 2010, this Court issued a resolution in relation to the petitioner's failure to include a statement of material dates in her petition as required under Rule 45, Sections 4 (b) and 5, the pertinent portions of which read:

Section 4. *Contents of the petition.* – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall 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.

Section 5. *Dismissal or denial of petition.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, 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.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

Given the foregoing, this Court's resolution of March 16, 2010 required compliance from the petitioner and thus reads in part:

> Acting on the Petition for Review on *Certiorari*, the Court Resolved, without giving due course to the petition, to
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> x x x x x x x x x
>
> (b) **REQUIRE** the petitioner to **COMPLY**, within five (5) days from notice hereof, with Rule 45, Sections 4 (b) and 5, 1997 Rules of Civil Procedure, as amended, which provides that the petition shall 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.[18]

A perusal of the case records, however, reveals that despite due notice of said resolution by the counsel for the petitioner on March 24, 2010,[19] no compliance therewith has been filed with this Court. We reiterate that Rule 45, Section 5 provides that the failure of the petitioner to comply with any of the contents of and the documents which should accompany a petition shall be sufficient ground for the dismissal thereof. Notably, the material dates appear crucial in this case, given that this petition was filed more than two months after the promulgation by the CA of its resolution denying the petitioner's motion for reconsideration in CA-G.R. SP No. 103646. It has to be sufficiently established that the petition was timely filed within 15 days from the petitioner's notice of the CA's denial of her motion for reconsideration.

This Court, instead of dismissing the petition outright, granted the petitioner a reasonable opportunity to correct the deficiency on the material dates by issuing the March 16, 2010 resolution. Regrettably, the petitioner continued to defy this lawful order of the Court, thereby giving us all the more reason to deny the present petition.

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[18] *Id.* at 71.

[19] *Id.* at 73.

In addition to the foregoing, the matters pertained to in the present petition are not proper subjects of a petition for review on *certiorari* under Rule 45. As earlier mentioned, the petitioner assails rulings made by the CSC instead of the CA. The issues brought before us pertain to matters that were neither ruled upon nor discussed by the CA in its June 30, 2009 decision and January 4, 2010 resolution. The appellate court only discussed the timeliness of the appeal to the CSC. After ruling that the CSC made no error in dismissing the appeal from the CSC-NCR, the CA held that it was no longer necessary for it to resolve the other issues brought before it.

Further, the CA ruling on the validity of the appeal's dismissal was not even made an issue in this case. In fact, the issues in this petition are exactly the same issues raised before the CA. This petition and the inclusion of issues on matters that were solely decided upon by the CSC then appear to be a scheme resorted to by the petitioner, merely to avert the adverse effects of the petitioner's and/or counsel's previous errors or lapses. We emphasize that under Rule 45, Section 1[20] of the Rules of Court, a petition for review on *certiorari* is the remedy that may be resorted to by a party to appeal only a judgment or final order or resolution of the CA, the Sandiganbayan, the Regional Trial Court and other courts whenever authorized by law.

With the foregoing infirmities, this Court has sufficient grounds to deny the present petition, barring the need to further rule on the issues now brought before us. In any case, we rule that both the CSC and the CA have correctly held that the rulings of the CSC-NCR had become final and executory when the

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[20] RULES OF COURT, Rule 45 Section 1.

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.

petitioner failed to make a timely appeal before the CSC. As held by the CSC in its decision denying the appeal:

> For her failure to perfect an appeal within the reglementary period of fifteen (15) days from receipt of the adverse decision, herein appellant lost her right to appeal. Technically, there is nothing more to appeal as the decision sought to be appealed had already attained finality. It is well settled that judgments or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of judgment becomes an established fact upon the lapse of the reglementary period of appeal, if no appeal is perfected or motion for reconsideration or new trial is filed. This jurisprudential rule must be read together with **Section 72 Rule V (B) of the Uniform Rules on Administrative Cases in the Civil Service (URACCS)**, which provides that the prescriptive period to appeal the decision of the Regional Offices of the Commission is fifteen (15) days from receipt thereof by the party adversely affected.[21] (citation omitted)

Settled is the rule that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.[22]

This Court has, on several occasions, ruled that the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the determination and just determination of his cause free from the constraints of technicalities.[23] However, failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional, and failure to perfect an appeal renders the judgment final and executory.[24] In addition,

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[21] *Rollo,* p. 36.

[22] *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 332.

[23] *Pacific Union Insurance Company v. Concepts & Systems Development, Inc.*, G.R. No. 183528, February 23, 2011.

[24] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 43.

the liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice.[25] This exceptional situation does not obtain in this case as in fact, both the rulings of the CSC and CA are supported by evidence on record. While the petitioner argues that she was denied the opportunity to fully present her defenses, she was able to give her answer to the charges, and even moved for a reconsideration of the decision of the CSC-NCR. Her arguments and defenses were already reviewed and considered by the agency when it discussed its rulings. As held by this Court in the case of *Autencio v. Manara*,[26] the essence of due process in administrative proceedings is simply the opportunity to explain one's side or to seek a reconsideration of the action or ruling complained of. Furthermore, the counsel's actions and mistakes on procedural matters bind the client.[27] Where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured.[28]

WHEREFORE, considering the foregoing, the instant petition for review on *certiorari* is hereby **DENIED.**

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., is on official leave per Special Order No. 1174 dated January 9, 2012.

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[25] *Id.* at 45.

[26] 489 Phil. 752 (2005).

[27] *Id.* at 754.

[28] *Id.* at 760-761.

SECOND DIVISION

[G.R. No. 151038. January 18, 2012]

PETRON CORPORATION, *petitioner, vs.* **SPOUSES CESAR JOVERO and ERMA F. CUDILLA, SPOUSES LONITO TAN and LUZVILLA SAMSON, and SPOUSES ROGELIO LIMPOCO and LUCIA JOSUE, being represented by PIO JOSUE,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; DEALERSHIP CONTRACT; OBLIGATION AND LIABILITY OF AN IMPORTER AND DISTRIBUTER OF GASOLINE AND OTHER PETROLEUM PRODUCT UNDER A DEALERSHIP AGREEMENT, EXPLAINED.— Petitioner, as an importer and a distributer of gasoline and other petroleum product, executed with a dealer of these products an exclusive dealership agreement for mutual benefit and gain. On one hand, petitioner benefits from the sale of its products, as well as the advertisement it gains when it broadens its geographical coverage in contracting with independent dealers in different areas. The products sold and the services rendered by the dealer also contribute to its goodwill. Thus, despite the transfer of ownership upon the sale and delivery of its products, petitioner still imposes the obligation on the dealer to exclusively carry its products. The dealer also benefits from the dealership agreement, not only from the resale of the products of petitioner, but also from the latter's goodwill. However, with the use of its trade name and trademark, petitioner and the dealer inform and guarantee to the public that the products and services are of a particular standard or quality. More importantly, the public, which is not privy to the dealership contract, assumes that the gasoline station is owned or operated by petitioner. Thus, respondents, who suffered damages from the act or omission that occurred in the gasoline station and that caused the fire, may file an action against petitioner based on the representations it made to the public. As far as the public is concerned, it is enough that the establishment carries exclusively the name

and products of petitioner to assume that the latter is liable for acts done within the premises.

2. ID.; ID.; ID.; ID.; EXPIRATION OF THE DEALERSHIP CONTRACT DOES NOT AUTOMATICALLY TRANSFORM THE RELATIONSHIP OF THE PARTIES THEREIN INTO ONE OF AGENCY.— [T]he expiration or nonexistence of a dealership contract did not *ipso facto* transform the relationship of the dealer and petitioner into one of agency. As far as the parties to the dealership contract were concerned, the rights and obligations as to them still subsisted, since they continued to mutually benefit from the agreement. Thus, neither party can claim that it is no longer bound by the terms of the contract and the expiration thereof.

3. ID.; ID.; ID.; ID.; WHERE THE PARTIES WERE EQUALLY NEGLIGENT, THEY CANNOT PURSUE A CLAIM AGAINST EACH OTHER BUT THEY ARE BOTH SOLIDARILY LIABLE FOR DAMAGES CAUSED TO THIRD PERSONS.— While both parties to the contract have the right to provide a clause for non-liability, petitioner admits that they both share the maintenance of its equipment. Petitioner states that its responsibility extended to "the operating condition of the gasoline station, *e.g.* whether the fuel pumps were functioning properly." Moreover, it cannot be denied that petitioner likewise obligated itself to deliver the products to the dealer. When the incident occurred, petitioner, through Gale Freight Services, was still in the process of fulfilling its obligation to the dealer. We disagree with its contention that delivery was perfected upon payment of the goods at its depot. There was yet no complete delivery of the goods as evidenced by the aforementioned hauling contract petitioner executed with Villaruz. That contract made it clear that delivery would only be perfected upon the complete unloading of the gasoline. Thus, with regard to the delivery of the petroleum, Villaruz was acting as the agent of petitioner Petron. For a fee, he delivered the petroleum products on its behalf. Notably, petitioner even imposed a penalty clause in instances when there was a violation of the hauling contract, wherein it may impose a penalty ranging from a written warning to the termination of the contract. Therefore, as far as the dealer was concerned with regard to the terms of the dealership contract, acts of Villaruz and his employees are also acts of

petitioner. Both the RTC and the CA held that Villaruz failed to rebut the presumption that the employer was negligent in the supervision of an employee who caused damages to another; and, thus, petitioner should likewise be held accountable for the negligence of Villaruz and Igdanis. To reiterate, petitioner, the dealer Rubin Uy – acting through his agent, Dortina Uy – shared the responsibility for the maintenance of the equipment used in the gasoline station and for making sure that the unloading and the storage of highly flammable products were without incident. As both were equally negligent in those aspects, petitioner cannot pursue a claim against the dealer for the incident. Therefore, both are solidarily liable to respondents for damages caused by the fire.

4. ID.; ID.; ID.; ID.; LIABILITY OF THE PARTIES UNDER THE DEALERSHIP CONTRACT AND THE HAULING CONTRACT, EXPLAINED.— Petitioner maintains that by virtue of the hauling contract, Villaruz must be held responsible for the acts of Igdanis, the driver of the tank truck. In this aspect, petitioner is correct. While it may be vicariously liable to third persons for damages caused by Villaruz, the latter is nevertheless liable to petitioner by virtue of the non-liability clause in the hauling contract. Under this provision, he saved petitioner from any and all claims of third persons arising out of, but not necessarily limited to, his performance of the terms and conditions of this agreement. Petitioner even obligated him to maintain an acceptable Merchandise Floater Policy to provide insurance coverage for the products entrusted to him; and a Comprehensive General Liability Insurance to cover any and all claims for damages for personal injury, including death or damages to property, which may arise from operations under the contract. Thus, Villaruz is also liable to petitioner based on the hauling contract. Under Rule 6, Sec. 8 of the Rules of Court, petitioner may enforce the terms of the hauling contract against him.

5. ID.; ID.; SOLIDARY LIABILITY, EXPLAINED.— To put it simply, based on the ruling of the lower courts, there are four (4) persons who are liable to pay damages to respondents. The latter may proceed against any one of the solidary debtors or some or all of them simultaneously, pursuant to Article 1216 of the Civil Code. These solidary debtors are petitioner Petron, the hauler Villaruz, the operator Dortina Uy and the

dealer Rubin Uy. To determine the liability of each defendant to one another, the amount of damages shall be divided by four, representing the share of each defendant. Supposedly, under the hauling contract, petitioner may require Villaruz to indemnify it for its share. However, because it was not able to maintain the cross-claim filed against him, it shall be liable for its own share under Article 1208 and can no longer seek indemnification or subrogation from him under its dismissed cross-claim. Petitioner may not pursue its cross-claim against Rubin Uy and Dortina Uy, because the cross-claims against them were also dismissed; moreover, they were all equally liable for the conflagration as discussed herein.

6. **REMEDIAL LAW; CIVIL PROCEDURE; FAILURE TO IMPLEAD OR MAINTAIN CROSS-CLAIM; EFFECT.—** [C]onsidering that it did not implead Villaruz in the present case, nor did it assail the Decision of the CA in dismissing the cross-claim, petitioner can no longer go after him based on that cross-claim.

7. **ID; ID; FAILURE TO APPEAL; EFFECT.—** As the employer of Igdanis, Villaruz was impleaded by herein respondents in the lower court and was found to be solidarily liable with his other co-defendants. Absent an appeal before this Court assailing the ruling of the lower court and the CA, Villaruz remains to be solidarily liable with petitioner and co-defendants Rubin Uy and Dortina Uy. Thus, petitioner may only claim contribution from him in accordance with Article 1217 of the Civil Code, and not by virtue of its hauling contract, in the event that respondents decide to proceed against petitioner alone for the satisfaction of judgment.

APPEARANCES OF COUNSEL

Agrava Martinez & Reyes for petitioner.
Reyes Cabrera & Associates for respondents.

D E C I S I O N

SERENO, *J.*:

The present case is a Petition for Review[1] under Rule 45 filed by petitioner Petron Corporation. Petitioner assails the Decision[2] of the Court of Appeals (CA), which affirmed the Decision of the Regional Trial Court (RTC) of Iloilo City in consolidated Civil Case Nos. 19633, 19684, 20122, respectively filed by herein respondents.

The facts of the case are as follows:

On 25 April 1984, Rubin Uy entered into a Contract of Lease with Cesar J. Jovero over a property located at E. Reyes Ave., Estancia, Iloilo for the purpose of operating a gasoline station for a period of five (5) years.

On 30 April 1984, petitioner, a domestic corporation engaged in the importation and distribution of gasoline and other petroleum products, entered into a Retail Dealer Contract[3] with Rubin Uy for the period 1 May 1984 to 30 April 1989. Under the dealership contract, petitioner sold its products in quantities as ordered by the dealer. It likewise obligated itself to deliver the products to the dealer at the places agreed upon by the parties. The dealer, meanwhile, obligated himself to exclusively maintain petitioner's trademarks and brand names in his gasoline station. The parties also agreed that the dealer shall make good, settle and pay, and hold petitioner harmless against all losses and claims including those of the parties, their agents and employees – for death, personal injury or property damage arising out of any use or condition of the dealer's premises or the equipment and facilities thereon, regardless of any defects therein; the dealer's non-

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[1] *Rollo*, pp. 10-29.

[2] *Id.* at 34-47. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring.

[3] Records, pp. 351-353.

performance of the contract; or the storage and handling of products on the premises.

In order to comply with its obligation to deliver the petroleum products to the dealer, petitioner contracted the hauling services of Jose Villaruz, who did business under the name Gale Freight Services. The hauling contract[4] was executed in March 1988 for a period of three years, renewable for another three upon agreement of the parties.

Under the hauling contract, Villaruz specifically assigned three (3) units of tank trucks exclusively for the hauling requirements of petitioner for the delivery of the latter's products, namely tank trucks with the plate numbers FVG 605, FVG 581 and FVG 583. Delivery "includes not only transportation but also proper loading and unloading and delivery."[5] The parties also agreed that Villaruz shall save petitioner from any and all claims of third persons arising out of, but not necessarily limited to, his performance of the terms and conditions of the contract. Furthermore, Villaruz obligated himself to be answerable to petitioner for damage to its plant, equipment and facilities, including those of its employees, dealers and customers, resulting from his negligence and/or lack of diligence.

Meanwhile, on 27 October 1988, Rubin Uy executed a Special Power of Attorney (SPA) in favor of Chiong Uy authorizing the latter to manage and administer the gasoline station. Chiong Uy and his wife, Dortina M. Uy, operated the gasoline station as agents of Rubin Uy. However, on 27 November 1990, Chiong Uy left for Hong Kong, leaving Dortina Uy to manage the gasoline station.

On 3 January 1991, around ten o'clock in the morning, Ronnie Allanaraiz, an employee of the gasoline station, ordered from petitioner various petroleum products. Petitioner then requested the services of Villaruz for the delivery of the products to the gasoline station in Estancia, Iloilo. He, however, used a tank

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[4] *Id.* at 361-375.

[5] *Id.* at 361.

truck different from the trucks specifically enumerated in the hauling contract executed with petitioner. Petitioner nevertheless allowed the transport and delivery of its products to Estancia in the tank truck driven by Pepito Igdanis.

During the unloading of the petroleum from the tank truck into the fill pipe that led to the gasoline station's underground tank, for reasons unknown, a fire started in the fill pipe and spread to the rubber hose connected to the tank truck. During this time, driver Pepito Igdanis was nowhere to be found. Bystanders then tried to put out the flames. It was then that Igdanis returned to the gasoline station with a bag of dried fish in hand. Seeing the fire, he got into the truck without detaching the rubber hose from the fill pipe and drove in reverse, dragging the burning fuel hose along the way. As a result, a conflagration started and consumed the nearby properties of herein defendants, spouses Cesar J. Jovero and Erma Cudilla-Jovero, amounting to ₱1,500,000; of spouses Leonito Tan and Luzvilla Samson, amounting to ₱800,000; and of spouses Rogelio Limpoco and Lucia Josue Limpoco, amounting to ₱4,112,000.

Herein respondents thereafter filed separate actions for damages against petitioner, Villaruz, Rubin Uy, and Dortina Uy, docketed as Civil Case Nos. 19633, 19684 and 20122 at the Regional Trial Court (RTC) of Iloilo City. The cases, having arisen from the same set of facts, were subsequently consolidated. Respondents alleged that the negligence of petitioner and its co-defendants in the conduct of their businesses caused the fire that destroyed the former's properties.

In its separate Answer, petitioner Petron alleged that the petroleum products were already paid for and owned by Rubin Uy and Dortina Uy. Moreover, it alleged that Villaruz was responsible for the safe delivery of the products by virtue of the hauling contract. Thus, petitioner asserted, liability for the damages caused by the fire rested on Rubin Uy and Villaruz. Petitioner likewise filed a cross-claim against its co-defendants for contribution, indemnity, subrogation, or other reliefs for all expenses and damages that it may have suffered by virtue

of the incident. It also filed a counterclaim against respondents herein.

On 27 April 1998, after trial on the merits, the RTC rendered its Decision in favor of respondents and found petitioner and its co-defendants solidarily liable for damages. The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, DECISION is hereby rendered:
>
> 1. Declaring defendants Petron Corporation, Jose Villaruz, Pepito Igdanis, Rubin Uy and Dortina Uy as being negligent in the conduct of their business activities, which led to the conflagration of January 3, 1991 at E. Reyes Avenue, Estancia, Iloilo, which resulted to (sic) the damages suffered by all the plaintiffs;
> 2. Ordering all the aforenamed defendants to pay solidarily all the plaintiffs as follows:
>
> a.) In Civil Case No. 19633, plaintiffs-spouses Cesar J. Jovero and Erma Cudilla-Jovero the amount of ₱1,500,00.00 as actual damages; ₱2,000.00 as litigation expenses; ₱4,000.00 as attorney's fees, and to pay the costs;
>
> b.) In Civil Case No. 19684, to pay plaintiffs-spouses Leonito Tan and Luzvilla Samson the sum of ₱800,000.00 as actual damages, ₱2,000.00 as litigation expenses; ₱4,000.00 as attorney's fees and to pay the costs;
>
> c.) In Civil Case No. 20122, to pay the plaintiffs-spouses Rogelio C. Limpoco and Lucia Josue Limpoco the amount of ₱4,112,000.00 as actual damages; ₱2,000.00 as litigation expenses; ₱5,000.00 as attorney's fees, and to pay the costs.
>
> The counter-claims of the defendants against all the plaintiffs are hereby dismissed.
>
> The cross-claims of the defendants against each other are likewise dismissed as they are all in "*pari delicto*".
>
> SO ORDERED.[6]

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[6] *Rollo*, pp. 87-88. Penned by Judge Edgar D. Gustilo.

The RTC held that Igdanis, as the driver of the tank truck, was negligent in the performance of his work when he left the tank truck while it was in the process of unloading the petroleum. He was also negligent when he drove the truck in reverse without detaching the burning fuel hose. The trial court stated that defendant Villaruz failed to convince the court that he had exercised due diligence in the hiring and supervision of his employees.

The RTC likewise held that petitioner was negligent in allowing Villaruz to use a tank truck that was not included among the trucks specifically enumerated under the hauling contract.

Finally, the court ruled that the gasoline station was owned and operated by Rubin Uy and Dortina Uy at the time of the incident.

Petitioner and co-defendants Dortina Uy and Rubin Uy thereafter filed their separate Notices of Appeal.

Petitioner, in its appeal, insisted that it had already sold and transferred ownership of its petroleum products to the dealer, Rubin Uy, upon payment and receipt of these products at its depot. Thus, it asserted, it ceased to own the products even during transit and while being unloaded at the gasoline station. It also stated that the transportation, delivery, receipt and storage of the petroleum products were solely the responsibility of hauler Villaruz, who was neither an employee nor an agent of petitioner. It reiterated that liability rested on Rubin Uy and Villaruz pursuant to the respective contracts it had executed with them.

Petitioner also alleged that the RTC erred in ruling that the former was negligent in allowing the use of a tank truck not specified in the hauling contract. Petitioner thus insisted that it had examined the tank truck and found it to be in good condition. It added that, since the fire did not originate from the tank truck, the proximate cause of the fire was not attributable to any defect in the truck.

Finally, petitioner alleged that respondents failed to prove that the damages they suffered were the direct result of any culpable act or omission on its part.

Meanwhile, defendant Villaruz allegedly proved during trial that he had exercised diligence in the selection and supervision of his employees and, thus, he was not responsible for the damages caused by the fire. In addition, he alleged that Igdanis, whom respondents failed to implead as a defendant in the lower court, did not have a chance to defend himself. Since there was no showing that any act or omission of Igdanis was the proximate cause of the fire, Villaruz insisted that the latter himself could not be held liable for the acts of his employee, who was not even impleaded or proven to be negligent.

Dortina Uy, in her appeal, alleged that she had no direct participation in the management or administration of the gasoline station. She also alleged that she was not the employer of Igdanis, the driver of the tank truck who had caused the fire to spread in the vicinity.

Since defendant Rubin Uy failed to file his Appellant's Brief within the reglementary period, the CA dismissed his appeal.[7]

Respondents, meanwhile, maintained that petitioner Petron was negligent in selling and storing its products in a gasoline station without an existing dealer's contract from May 1989 up to the time of the incident on 3 January 1991. They contended that petitioner, in effect, was itself operating the gasoline station, with the dealer as mere agent of the former. Respondents also insisted that petitioner had the obligation to ensure that the gasoline station was safe and properly maintained, considering the products stored and sold there. Likewise, they asserted that petitioner was responsible for the safe delivery and proper storage of its goods in the gasoline station, and that this responsibility would cease only when the goods had been sold to the end consumer.

Additionally, respondents contended that petitioner Petron was also negligent when the latter allowed the use of an unaccredited truck in violation of its hauling contract with Villaruz.

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[7] CA *rollo*, p. 201.

On 12 December 2001, the CA promulgated its Decision affirming that of the trial court, to wit:

> WHEREFORE, premises considered, the instant appeals are ***DISMISSED*** and the assailed consolidated Decision of the court ***a quo*** dated 27 April 1998 in Civil Case Nos. 19633, 19684 and 20122 is ***AFFIRMED*** in all respects. Costs against appellants.
>
> SO ORDERED.[8]

The appellate court upheld the findings of the RTC that petitioner Petron was negligent for having allowed the operation of the gasoline station absent a valid dealership contract. Thus, the CA considered the gasoline station as one run by petitioner itself, and the persons managing the gasoline station as petitioner's mere agents. Even if a valid dealership contract existed, petitioner was still liable for damages, because there was as yet no complete delivery of its products. The fire had broken out while petroleum was being unloaded from the tank truck to the storage tank.

The CA further held that petitioner was also negligent in allowing Villaruz to use an unaccredited tank truck for the transport and delivery of the petroleum at the time of the incident.

With regard to the liability of Villaruz, the appellate court found him to be negligent in the conduct of his business. Thus, he was made liable for the damages caused by his employee in accordance with Article 2180 in relation to Article 2176 of the Civil Code.

Finally, with regard to Dortina Uy, the CA held that, as one of the operators of the gasoline station, she failed to submit evidence that she had exercised due diligence in the operation thereof.

Dissatisfied with the CA's ruling, petitioner is now before us with the present Petition for Review.

Petitioner presents the following issues for the resolution of this Court:

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[8] *Rollo,* pp. 46-47.

1. Whether or not Petron may be considered at fault for continuing to do business with Rubin Uy, an independent petroleum dealer, without renewing or extending their expired dealership agreement;

2. Whether or not a causal connection exists between Petron's failure to renew or extend its dealership contract with Rubin Uy and the fire that inflicted damages on the buildings surrounding the latter's gas station;

3. Whether or not Petron is liable for the fire that occurred during the unloading by an independent hauler of the fuel it sold to an equally independent dealer at the latter's gas station; and

4. Whether or not a supplier of fuel can be held liable for the neglect of others in distributing and storing such fuel.[9]

In the present case, petitioner does not implead its co-defendants Villaruz, Rubin Uy and Dortina Uy. Neither does it assail the dismissal by the lower courts of the cross-claim or counterclaim it filed against its co-defendants and herein respondents, respectively. Nor is there any question on respondents' right to claim damages. Petitioner merely prays for absolution from liability resulting from the fire by claiming that it had no direct participation in the incident.

In support of the issues raised above, petitioner contends that, first, there was an implied renewal of the dealership contract – Rubin Uy remained as the operator of the gasoline station. It further contends that there is no law supporting the conclusion of the CA that, upon expiration of the contract, the dealer automatically became the supplier's agent.

Second, petitioner asserts that there was no rational link between its alleged neglect in renewing the dealership agreement and the act that caused the fire.

Third, petitioner insists that ownership of the petroleum products was transferred when the dealer's representative, Ronnie

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[9] *Rollo,* p. 7.

Allanaraiz, went to petitioner's oil depot, bought and paid for the gasoline, and had Villaruz's tank truck receive the products for delivery.

Moreover, petitioner points out, neither Igdanis nor Villaruz was its employee and, thus, it cannot be held vicariously liable for the damages to respondents caused by Igdanis. Furthermore, it asserted that the tank truck transporting the petroleum – though not included in the enumeration in the hauling contract – had complied with the standards required of Villaruz.

Petitioner also alleges that there was no evidence that the fire was attributable to its distribution and storage safety measures.

Finally, petitioner states that both hauler and dealer must bear the costs of their acts and those of their employees, considering that this was an explicit provision in their respective contracts with it.

The Petition has some merit.

We first discuss the liability of petitioner in relation to the dealership contract.

Petitioner, as an importer and a distributer of gasoline and other petroleum product, executed with a dealer of these products an exclusive dealership agreement for mutual benefit and gain. On one hand, petitioner benefits from the sale of its products, as well as the advertisement it gains when it broadens its geographical coverage in contracting with independent dealers in different areas. The products sold and the services rendered by the dealer also contribute to its goodwill. Thus, despite the transfer of ownership upon the sale and delivery of its products, petitioner still imposes the obligation on the dealer to exclusively carry its products.

The dealer also benefits from the dealership agreement, not only from the resale of the products of petitioner, but also from the latter's goodwill.

However, with the use of its trade name and trademark, petitioner and the dealer inform and guarantee to the public

that the products and services are of a particular standard or quality. More importantly, the public, which is not privy to the dealership contract, assumes that the gasoline station is owned or operated by petitioner. Thus, respondents, who suffered damages from the act or omission that occurred in the gasoline station and that caused the fire, may file an action against petitioner based on the representations it made to the public. As far as the public is concerned, it is enough that the establishment carries exclusively the name and products of petitioner to assume that the latter is liable for acts done within the premises.

Second, respondents have a claim against petitioner based on the dealership agreement.

The RTC and the CA ruled that, by virtue of the expiration of the dealership contract, the dealer was relegated to being petitioner's agent. On this point, we agree with petitioner that the expiration or nonexistence of a dealership contract did not *ipso facto* transform the relationship of the dealer and petitioner into one of agency. As far as the parties to the dealership contract were concerned, the rights and obligations as to them still subsisted, since they continued to mutually benefit from the agreement. Thus, neither party can claim that it is no longer bound by the terms of the contract and the expiration thereof.

We then judiciously reviewed the terms of the contract and found that petitioner is liable to respondents for the damages caused by the fire.

As petitioner itself points out, it owns the equipment relevant to the handling and storage of gasoline, including the gasoline pumps and the underground tank.[10] It is also responsible for the delivery of the petroleum to the dealer. The incident occurred at the time the petroleum was being unloaded to the underground tank petitioner owned. Aside from failing to show the actual cause of the fire, it also failed to rebut the presumption that it

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[10] TSN, 28 July 1995, p. 30.

was negligent in the maintenance of its properties and in the conduct of its business.

Petitioner contends that under paragraph 8 of the dealership contract, the dealer's liability is as follows:

> ***LOSSES AND CLAIMS.*** BUYER shall make good, settle and pay, and hold SELLER harmless against all losses and claims (including those of the parties, their agents and employees) for death, personal injury or property arising out of (1) any use or condition of BUYER's premises or the equipment and facilities thereon, regardless of any defects therein (2) BUYER's non-performance of this contract, or (3) the storage and handling of products on the premises.

While both parties to the contract have the right to provide a clause for non-liability, petitioner admits that they both share the maintenance of its equipment. Petitioner states that its responsibility extended to "the operating condition of the gasoline station, *e.g.* whether the fuel pumps were functioning properly."[11]

Moreover, it cannot be denied that petitioner likewise obligated itself to deliver the products to the dealer. When the incident occurred, petitioner, through Gale Freight Services, was still in the process of fulfilling its obligation to the dealer. We disagree with its contention that delivery was perfected upon payment of the goods at its depot. There was yet no complete delivery of the goods as evidenced by the aforementioned hauling contract petitioner executed with Villaruz. That contract made it clear that delivery would only be perfected upon the complete unloading of the gasoline.

Thus, with regard to the delivery of the petroleum, Villaruz was acting as the agent of petitioner Petron. For a fee, he delivered the petroleum products on its behalf. Notably, petitioner even imposed a penalty clause in instances when there was a violation of the hauling contract, wherein it may impose a penalty ranging from a written warning to the termination of the contract.

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[11] *Rollo*, p. 108.

Therefore, as far as the dealer was concerned with regard to the terms of the dealership contract, acts of Villaruz and his employees are also acts of petitioner. Both the RTC and the CA held that Villaruz failed to rebut the presumption that the employer was negligent in the supervision of an employee who caused damages to another; and, thus, petitioner should likewise be held accountable for the negligence of Villaruz and Igdanis.

To reiterate, petitioner, the dealer Rubin Uy – acting through his agent, Dortina Uy – shared the responsibility for the maintenance of the equipment used in the gasoline station and for making sure that the unloading and the storage of highly flammable products were without incident. As both were equally negligent in those aspects, petitioner cannot pursue a claim against the dealer for the incident. Therefore, both are solidarily liable to respondents for damages caused by the fire.

Petitioner was likewise negligent in allowing a tank truck different from that specifically provided under its hauling contract with Villaruz. The enumeration and specification of particular tank trucks in the contract serve a purpose – to ensure the safe transportation, storage and delivery of highly flammable products. Under the hauling contract, these requirements are as follows:[12]

> 4.3.1 Duly registered under the hired truck (TH) classification and subject to the rules and regulations of Land Transportation Commission (LTC) and Board of Transportation (BOT).
>
> 4.3.2 Properly sealed and calibrated in accordance with the requirements of NSTA.
>
> 4.3.3 Equipped with safety and other auxiliary equipment as specified by PETROPHIL (Petron) as per attached Annex "8".[13]

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[12] Records, p. 363.

[13] Note that the only attached annexes to the hauling contract are designated as Annex "A", "B", and "C". It appears that Annex "8" may be a typographical error that in fact refers to Annex "B".

4.3.4 Provided with fire permits and other permits required by the government authorities.

4.3.5 In good working condition and in good appearance at all times.

4.3.6 Fully complying with the tank truck color scheme, standard truck number, bumper stripes, hauler's name on cab door, and such other similar requirements for good appearance as may be required by PETROPHIL.

Annex "B" attached to the contract, which refers to the tank truck safety and accessories equipment, likewise provides that the following are the specified safety equipment and other accessories for tank truck operations:[14]

1. Fire extinguisher, Type B & C
2. Manhole covers
3. Manhole cover gasket
4. Product level markers
5. Manhole cover pins
6. NIST Calibration and scale
7. Discharge valves (quick closing)
8. Front Fenders
9. Door glasses
10. _____ (illegible) glasses
11. Windshield
12. Wipers
13. Horn
14. Floor matting
15. Ceiling
16. Seats
17. (Illegible)
18. Air hose connector

With respect to the claims of third persons, it is not enough for petitioner to allege that the tank truck met the same

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[14] Records, p. 369.

requirements provided under the contract; it must duly prove its allegations. This, petitioner failed to do. To reiterate, it was not able to prove the proximate cause of the fire, only the involvement of the tank truck and the underground storage tank. Notably, both pieces of equipment were under its responsibility. Absent any positive determination of the cause of the fire, a presumption exists that there was something wrong with the truck or the underground storage tank, or both. Petitioner, which had the obligation to ensure that the truck was safe, is likewise liable for the operation of that truck.

Petitioner maintains that by virtue of the hauling contract, Villaruz must be held responsible for the acts of Igdanis, the driver of the tank truck. In this aspect, petitioner is correct. While it may be vicariously liable to third persons for damages caused by Villaruz, the latter is nevertheless liable to petitioner by virtue of the non-liability clause in the hauling contract. Under this provision, he saved petitioner from any and all claims of third persons arising out of, but not necessarily limited to, his performance of the terms and conditions of this agreement. Petitioner even obligated him to maintain an acceptable Merchandise Floater Policy to provide insurance coverage for the products entrusted to him; and a Comprehensive General Liability Insurance to cover any and all claims for damages for personal injury, including death or damages to property, which may arise from operations under the contract.[15]

Thus, Villaruz is also liable to petitioner based on the hauling contract. Under Rule 6, Sec. 8 of the Rules of Court, petitioner may enforce the terms of the hauling contract against him. However, considering that it did not implead Villaruz in the present case, nor did it assail the Decision of the CA in dismissing the cross-claim, petitioner can no longer go after him based on that cross-claim.

Nonetheless, this is not the same as saying that Villaruz is no longer solidarily liable to respondents.

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[15] Records, p. 365.

As the employer of Igdanis, Villaruz was impleaded by herein respondents in the lower court and was found to be solidarily liable with his other co-defendants. Absent an appeal before this Court assailing the ruling of the lower court and the CA, Villaruz remains to be solidarily liable with petitioner and co-defendants Rubin Uy and Dortina Uy. Thus, petitioner may only claim contribution from him in accordance with Article 1217 of the Civil Code, and not by virtue of its hauling contract, in the event that respondents decide to proceed against petitioner alone for the satisfaction of judgment. Art. 1217 states:

> Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.
>
> **He who made the payment may claim from his co-debtors only the share which corresponds to each**, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded. (Emphasis supplied)

The share, meanwhile, of solidary debtors is contained in Art. 1208, to wit:

> If from the law, or the nature of the wording of the obligations to which the preceding article refers the contrary does not appear, **the credit of debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.** (Emphasis supplied)

To put it simply, based on the ruling of the lower courts, there are four (4) persons who are liable to pay damages to respondents. The latter may proceed against any one of the solidary debtors or some or all of them simultaneously, pursuant to Article 1216 of the Civil Code. These solidary debtors are petitioner Petron, the hauler Villaruz, the operator Dortina Uy and the dealer Rubin Uy. To determine the liability of each defendant to one another, the amount of damages shall be divided by four, representing the share of each defendant. Supposedly, under the hauling contract, petitioner may require Villaruz to

indemnify it for its share. However, because it was not able to maintain the cross-claim filed against him, it shall be liable for its own share under Article 1208 and can no longer seek indemnification or subrogation from him under its dismissed cross-claim. Petitioner may not pursue its cross-claim against Rubin Uy and Dortina Uy, because the cross-claims against them were also dismissed; moreover, they were all equally liable for the conflagration as discussed herein.

Finally, the incident occurred in 1992. Almost 20 years have passed; yet, respondents, who were innocent bystanders, have not been compensated for the loss of their homes, properties and livelihood. Notably, neither the RTC nor the CA imposed legal interest on the actual damages that it awarded respondents. In *Eastern Shipping Lines v. Court of Appeals*,[16] enunciated in *PCI Leasing & Finance Inc. v. Trojan Metal Industries, Inc.*,[17] we laid down the rules for the imposition of legal interest as follows:

> I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
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> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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[16] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[17] G.R. No. 176381, 15 December 2010, 638 SCRA 615.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

In the interest of substantial justice, we deem it necessary to impose legal interest on the awarded actual damages at the rate of 6% per annum from the time the cases were filed with the lower court; and 12% from the time the judgment herein becomes final and executory up to the satisfaction of such judgment.

WHEREFORE, in view of the foregoing, we **AFFIRM** the Decision of the Court of Appeals in Civil Case No. 60845 insofar as herein petitioner has been held solidarily liable to pay damages to respondents. The CA Decision is, however, **MODIFIED** and the actual damages awarded to respondents shall be subject to the rate of legal interest of 6% per annum from the time of filing of Civil Case Nos. 19633, 19684 and 20122 with the Regional Trial Court of Iloilo City up to the time this judgment becomes final and executory. Henceforth, the rate of legal interest shall be 12% until the satisfaction of judgment.

Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 162100. January 18, 2012]

PENTA CAPITAL FINANCE CORPORATION, *petitioner, vs.* **The Honorable TEODORO BAY, Presiding Judge of the Regional Trial Court, Quezon City, Branch 86; ANGELITO ACOSTA, Deputy Sheriff of RTC QC Branch 86; BIBIANO REYNOSO IV, and Commercial Credit Corporation of Quezon City,** *respondents.*

[G.R. No. 162395. January 18, 2012]

BIBIANO REYNOSO IV, *petitioner, vs.* **PENTA CAPITAL FINANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; LAW OF THE CASE PRINCIPLE, APPLIED.— In *Reynoso v. Court of Appeals*, CCC/GCC/Penta assailed the validity of the execution proceedings in the RTC QC on various grounds, mainly the fact that the latter had allowed the levy and sale of the Valle Verde property. Allegedly, this property was not owned by judgment debtor CCC-QC, but by CCC/GCC/Penta itself – an entity separate and distinct from the former. We held in the

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[*] Designated as acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

said case, though, that since the circumstances warranted piercing the corporate veil, judgment in favor of Reynoso may be executed against GCC (now Penta), an alter ego of CCC-QC. CCC/GCC/Penta presented the same arguments in *Reynoso,* as it has done now. Even assuming that any of its present arguments is novel, it would be unavailing if it is based on the same factual milieu under which the *Reynoso* ruling was made. The orderly administration of justice and basic considerations of fair play abhor a piecemeal presentation of points of law, theories, issues, and arguments. At any rate, CCC/GCC/Penta fails to identify any change in the facts upon which *Reynoso* was predicated as to warrant a different conclusion in the present case. Thus, the Court's ruling in *Reynoso* may be considered "the law of the case" in respect of the validity of the execution proceedings against CCC/Penta. The principle of the law of the case is embodied in Section 47(b) and (c), Rule 39 of the Rules of Court. As we explained in *Litton Mills, Inc. v. Galleon Trader, Inc.*, this principle holds that "(w)hatever has been irrevocably established as the controlling legal rule between the parties in a 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 facts of the case before the Court. Once a judgment has become final, the issues therein should be laid to rest." As *Reynoso* has long become final and can no longer be modified, the continued insistence of CCC/GCC/Penta that the execution proceedings were invalid, cannot be entertained.

2. CIVIL LAW; LOANS; INTEREST; 12% INTEREST PER ANNUM APPLIES ONLY IN THE ABSENCE OF WRITTEN STIPULATION; ANNUAL INTEREST RATE OF 14% BASED ON THE PROMISSORY NOTE, UPHELD.— *Eastern Shipping* merely provides that in the absence of a written stipulation, the applicable interest rate to be imposed in judgments involving a forbearance of credit shall be 12% per annum in accordance with Central Bank (CB) Circular No. 416. On the other hand, if the judgment refers to payment of indemnities in the concept of damages arising from a breach or a delay in the performance of obligations in general, the applicable interest rate shall be 6% per annum, in accordance with Article 2206 of the Civil Code. Both interest rates apply from the time of judicial or extrajudicial demand until the finality of the judgment. However, from the time the

judgment of the court awarding a sum of money becomes final until it is satisfied, the award it granted shall be considered a forbearance of credit, whether or not the judgment award actually pertained to one. Accordingly, during this interim period, the interest rate of 12% per annum for forbearance of money shall apply. In the present case, the parties agreed in writing to apply an annual interest rate of 14% to the amounts covered by the Promissory Notes. The trial court ruled that after the finality of judgment, as long as the subject amounts remain unpaid, they shall bear 14% annual interest in lieu of the default interest rate for forbearance of credit, which is 12% per annum. The RTC QC's application of 14% interest rate from the finality of the judgment until its full satisfaction is permitted to remain herein, **only because** the judgment has become final – as it was not impugned at all before the CA – and therefore, can no longer be modified. It is not meant to overturn the Court's consistent application of the 12% interest rate in court judgments awarding a sum of money from the time it becomes final until it is satisfied.

3. ID.; ID.; ID.; A MONEY MARKET TRANSACTION DOES NOT NECESSARILY INCLUDE AUTOMATIC ROLLOVER OF THE PLACEMENT.— The mere fact that RTC QC's subsequent computation applied rollovers is an insufficient basis to rule that these were proper. We stress that "execution must conform to that ordained or decreed in the dispositive part of the decision; consequently, where the order of execution is not in harmony with and exceeds the judgment which gives it life, the order has *pro tanto* no validity." In the present case, we observe that nowhere in the RTC QC judgment is there a provision calling for the "roll over" of the ₱185,000.00 and ₱ 3,639,470.82 awards. Also, while it is true that the said judgment awards correspond to the amounts Reynoso invested as money market placements, he himself points out in his Petition that each placement is a separate and distinct transaction. He explains that a rollover is a "new and independent transaction where the amount of money market placement is considered as a fresh infusion of a principal amount regardless of the fact that part of the amount 'rolled over' was in reality the interest earned from the original placement or the immediately preceding 'roll-over' transaction." Thus, a money market transaction does not necessarily include a rollover, which would take place only if the parties agree to the

reinvestment of the proceeds of the earlier money market transaction. The parties' agreement to a rollover is a separate transaction whereby the new placement, consisting of the original placement plus the earned interest, becomes the new placement that shall earn interest at the end of the agreed period. In the present case, it does not appear that there was an agreement between CCC-QC and Reynoso for the automatic rollover of all of his placements.

4. ID.; ID.; ID.; THE JUDGMENT AWARD OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES ARE SUBJECT TO 12% INTEREST RATE PER ANNUM.— Reynoso is entitled to interest on the moral and exemplary damages, as well as the attorney's fees awarded him. As stressed in our above discussion of *Eastern Shipping*, an award of a sum of money shall be considered as a forbearance of credit once it becomes final, whether or not the award actually pertained to one. Hence, from its finality until its satisfaction, the judgment award to Reynoso of moral and exemplary damages, as well as attorney's fees, shall be subject to the interest rate of 12% per annum.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles, Loreto U. Navarro and *DB Law Partnership* for Penta Capital Finance Corp.

Eduardo J. Mariño, Jr. for Bibiano Reynoso IV.

D E C I S I O N

SERENO, *J.*:

Before us is a consolidated Petition for Review on *Certiorari* under Rule 45 impugning the Decision dated 30 July 2003 and Resolution dated 9 February 2004 of the Court of Appeals,[1] which modified the interests applied by the trial court in computing

[1] The Court of Appeals Special Fifteenth Division Decision and Resolution in CA-GR. SP No. 73207 was penned by Justice Marina Buzon and concurred in by Justices Rebecca de Guia-Salvador and Jose Mendoza.

the judgment awards; but affirmed the Orders dated 3 and 19 April, 23 May, 2 August, and 3 October 2002 issued by the trial court in the course of execution proceedings.

Penta Capital Finance Corporation (Penta) was originally known as Commercial Credit Corporation (CCC), a financing and investment firm, which established in different parts of the country certain franchise companies, including Commercial Credit Corporation of Quezon City (CCC-QC). CCC designated its own employees as resident managers of its franchise companies, with Bibiano Reynoso IV (Reynoso) as resident manager of CCC-QC.

CCC-QC accepts funds from depositors to whom it issues interest-bearing promissory notes. In view of the exclusive management contract between CCC and CCC-QC, the latter would sell/discount and/or assign its receivables to the former, which loans them out to various borrowers as money market placements.[2]

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[2] In *Perez v. Court of Appeals*, G.R. No. 56101, 20 February 1984, 127 SCRA 636, the Court quoted the definition of "money market" as follows:

> As defined by Lawrence Smith 'the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market.' It involves 'commercial papers' which are instruments 'evidencing indebtedness of any person or entity . . ., which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse'. The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the 'fund users' and the 'fund suppliers.' The money market is an 'impersonal market', free from personal considerations.' The market mechanism is intended to provide quick mobility of money and securities.
>
> The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor.

In view of the Central Bank's promulgation of the DOSRI Rule,[3] CCC subsequently created CCC Equity Corporation (CCC Equity), a wholly owned subsidiary, to which it had transferred its 30% equity and two seats in the franchise corporations' board of directors. In February 1976, CCC allegedly transferred to its stockholders all its shares in CCC Equity as property dividends.

Under the new setup, CCC Equity substituted CCC in the management contract with the franchise companies. Several CCC-QC officials, like Reynoso, became employees of CCC Equity and received salaries and allowances from the latter. Still, all employees of CCC-QC remained qualified members of the Commercial Credit Corporation Employees Pension Plan, even when CCC-QC was already partly owned by CCC Equity and technically had nothing to do with CCC.

Reynoso deposited personal funds to CCC-QC, which in return issued to him interest-bearing Promissory Notes.[4]

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[3] Section 1326 of the Central Bank's "Manual of Regulations for Banks and other Financial Intermediaries" provides:

Dealings of a bank with any of its directors, officers or stockholders and their related interests should be in the regular course of business and upon terms not less favorable to the bank than those offered to others.

[4] RTC *records*, Vol. 1, at 205-208. The Promissory Notes issued by CCC-QC in favor of Reynoso on various dates from 6 July 1979 to 8 August 1979 totaling ₱185,000 contain the following terms and conditions:

> 1. This loan shall be payable one (1) month from demand, provided that, if the aggregate amount demanded within one (1) month shall exceed the sum of FIFTY THOUSAND (₱50,000.00) Pesos, the same shall be payable in monthly amortizations not exceeding FIFTY THOUSAND (₱50,000.00) Pesos each, the first amortization to start one (1) month from demand.
>
> 2. This loan shall be payable with interest at the rate of fourteen (14%) per cent per annum on the outstanding balance until fully paid, computed and paid at the time of payment of each amortization; but if the Payee shall not make demand for payment within one (1) year from the date of this note, the interest shall be _____ per cent per annum, on the outstanding balance computed and to be paid at the time of payment for each amortization.

In a separate transaction, Reynoso mortgaged to CCC his house and lot in Valle Verde, Pasig City.[5] The latter later foreclosed the property, and the title thereto was later consolidated in its name when no redemption was made.

On 15 August 1980, CCC-QC instituted with the Regional Trial Court of Quezon City, Branch 86[6] (RTC QC), a Complaint[7] against Reynoso for a sum of money with preliminary attachment, on the allegation that he had embezzled company funds amounting to ₱1,300,593.11. Reynoso filed a Counterclaim[8] based on his money placements with CCC-QC, as shown by 23 checks he had issued in its favor.

During the pendency of the case, or on 2 September 1983, CCC changed its name to General Credit Corporation (GCC).

On 14 January 1985, the RTC QC – then presided by Judge Antonio Solano – rendered a Decision[9] dismissing CCC-QC's Complaint, but granting Reynoso's Counterclaim. The dispositive portion of the Decision reads:

Premises considered, the court finds the complaint without merit. Accordingly, said complaint is hereby DISMISSED.

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3. The COMMERCIAL CREDIT CORPORATION OF QUEZON CITY may, at any time at its option pay any portion or the entire amount of this note, even without demand from the Payee and before it falls due; and, from the time tender of payment is made to the Payee or his order in person or at his last known address, the interest provided for in the preceding paragraph corresponding to the portion or amount so tendered, shall cease to be in effect.

[5] No. 12 Macopa Street, Valle Verde I, Pasig City, under TCT No. 29940.

[6] The Complaint was initially filed with the Court of First Instance and docketed as Civil Case No. Q-30583. It was transferred to the RTC QC after the reorganization of the judiciary.

[7] RTC *records*, Vol. 1, pp. 1-8.

[8] *Id.* at 20-25.

[9] *Id.* at 463-466.

By reason of said complaint, defendant Bibiano Reynoso IV suffered degradation, humiliation and mental anguish.

On the counterclaim, which the Court finds to be meritorious, plaintiff corporation is hereby ordered:

a) to pay defendant the sum of ₱185,000.00 plus 14% interest per annum from October 2, 1980 until fully paid;

b) to pay defendant ₱3,639,470.82 plus interest thereon at the rate of 14% per annum from June 24, 1981, the date of filing of Amended Answer, until fully paid; from this amount may be deducted the remaining obligation of defendant under the promissory note of October 24, 1977, in the sum of ₱9,738.00 plus penalty at the rate of 1% per month from December 24, 1977 until fully paid;

c) to pay defendants ₱200,000.00 as moral damages;

d) to pay defendants ₱100,000.00 as exemplary damages;

e) to pay defendants ₱25,000.00 as and for attorney's fees; plus costs of the suit.

SO ORDERED.

This Decision became final and executory on 27 May 1989.[10]

On 24 July 1989, the RTC QC issued a Writ of Execution on the "goods and chattels of plaintiff COMMERCIAL CREDIT CORPORATION."[11] When the writ was returned unsatisfied on 11 December 1989, Reynoso filed a Motion for Issuance of *Alias* Writ of Execution and, thereafter, a Motion for examination of the financial records of CCC-QC. In the course of opposing his Motion, CCC-QC President Dr. Concepcion *vda. de* Blaylock (Blaylock) alleged that the company had not been operating for about 10 years, and that "the Commercial Credit Corporation of the Philippines took possession of the

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[10] *Id.* at 495. The Entry of Judgment indicates that Reynoso initially filed, but subsequently withdrew his appeal.

[11] RTC *records,* Vol. 1, pp. 503-505.

premises of the office of CCC-QC, together with all its records and documents. ..."[12]

On 16 August 1991, the RTC QC again ordered the issuance of the *alias* writ against "the goods and chattels of plaintiff COMMERCIAL CREDIT CORPORATION."

There being no leviable properties of CCC-QC, Sheriff Edgardo Tanangco reported that on 23 August 1991, he "levied whatever rights, interests, titles, participation said plaintiff may have" over the Valle Verde property, which was registered in the name of "Commercial Credit Corporation." The said property was sold on execution on 20 September 1991 by Deputy Sheriff Edgardo Tanangco at public auction, with Reynoso as the highest and sole bidder in the amount of ₱650,151.50. This amount was credited as partial satisfaction of the judgment obligation.[13] Meanwhile, the Notice of Sheriff's Sale was sent to "General Credit Corporation (Formerly Commercial Credit Corporation, ACE Bldg., RADA corner dela Rosa Sts., Makati, Metro Manila" on 2 October 1991, but this notice was returned with the notation "RTS UNKNOWN AT GIVEN ADDRESS 10-9."

On 29 October 1991, Deputy Sheriff Tanangco issued a Sheriff's Certification of Sale of the levied property.

On 11 November 1991, Reynoso filed a second *Alias* Writ of Execution, arguing that CCC-QC and CCC were one and the same, and praying that the sheriff be directed to levy upon CCC's personal and real properties. Attached to the Motion was the 23 February 1990 Decision of Hearing Officer Antonio Esteves in Securities and Exchange Commission (SEC) Case No. 2581, entitled "*Avelina G. Ramoso, et al. v. General Credit Corporation et al*.," which held that CCC (then known as GCC) and CCC-QC, together with others, were one and the same corporation.[14]

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[12] *Rollo* (G.R. No. 162395), p. 452.

[13] Sheriff's Return dated 4 November 1991. RTC *rollo*, Vol. 2, p. 545.

[14] *Id*. at 555-566. In this SEC case, Ramoso, *et al*. were individual investors in CCC/GCC who executed an "exclusive management contract

On 22 November 1991, CCC's counsel appeared before the RTC QC and was granted time to file a comment on the *Alias* Writ of Execution.[15] In its Special Appearance and Opposition,[16] CCC alleged that it was not a party to the case, and that the cited Decision in SEC Case No. 2581 was still pending resolution of the SEC *en banc.* CCC also moved that further levies on its other properties be stopped. On 9 December 1991, the RTC QC ordered the issuance of the second *alias* writ.[17] On 18 December 1991, CCC filed an Omnibus Motion 1) to reconsider the Order of 9 December 1991; 2) to quash the *alias* writ of 21 August 1991; and 3) to nullify the sale of its Valle Verde property.[18] Attached to this Motion was a copy of a SEC Certification that SEC Case No. 2581 was still pending. This Omnibus Motion was denied by the RTC QC in its 13 February 1992 Order due to the admission by CCC in the latter's pleading that it was an alter ego of CCC-QC.[19]

To recover its Valle Verde property, CCC filed with the Regional Trial Court of Pasig City, Branch 167 (RTC Pasig),[20] on 21 February 1992, an action for *terceria* (third-party claim) against Reynoso and Quezon City Deputy Sheriff Edgardo Tanangco. CCC prayed that (1) the levy on the Valle Verde

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with the latter. They gave the franchised companies of CCC/GCC full control and management of the franchised companies' business and affairs" through its designation of each franchised company's resident who was empowered to be a signatory of checks of the franchised companies. Petitioners Ramoso *et al*., applied for receivership, allegedly because, as a result of the mismanagement of GCC/CCC, the franchised companies became bankrupt, petitioners lost their investments, and they were subjected to liabilities in their personal capacities.

[15] RTC *records,* Vol. 2, p. 569.

[16] *Id.* at 570-573.

[17] RTC *records,* Vol. 2, pp. 583-585.

[18] *Id.* at 590-644.

[19] *Id.* at 704-705.

[20] The case was docketed as Civil Case No. 61777 and raffled to the *sala* presided by Judge Alfredo Flores.

property be declared void; (2) respondents be enjoined from consolidating ownership over the property pending resolution of the suit; and (3) respondents be enjoined from making further levies on petitioner's properties to answer for any liability under the Decision in Civil Case No. Q-30583.

The RTC Pasig denied the prayer for injunction of CCC, prompting the latter to file on 13 March 1992 a Petition for *Certiorari* with prayer for preliminary injunction and/or temporary restraining order. Docketed in the Court of Appeals (CA) as CA-G.R. SP No. 27518, the Petition was filed against Reynoso, Deputy Sheriff Tanangco, and Judge Flores of RTC Pasig (and also, subsequently, against Judge Solano of RTC QC).

Meanwhile, noting that the records failed to show that CCC had taken a legal step to suspend the implementation of its Order dated 9 December 1991, the RTC QC issued another *Alias* Writ of Execution against the goods and chattels of petitioner GCC on 6 March 1992.[21]

On 6 April 1992, the RTC QC's issuance of the second Alias Writ of Execution was impugned by the CCC in the CA via a Petition for *Certiorari* with prayer for preliminary injunction and/or temporary restraining order, docketed as CA-G.R. SP No. 27683. RTC QC Judge Solano, Reynoso and Deputy Sheriff Tanangco were named respondents therein.

Meanwhile, CCC/GCC changed its name to Penta Capital Finance Corporation (Penta) on 1 December 1993.

The CA consolidated CA-G.R. SP Nos. 27683 and 27518. On 7 July 1994, it granted the Petition, nullified the *Alias* Writ of Execution, and declared that the proper remedy for the Valle Verde property was the *terceria* filed with the Pasig court.[22]

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[21] RTC *records*, Vol. 2, pp. 716-718.

[22] *Rollo* (G.R. No. 162100), pp. 113-117. The dispositive portion of the Decision reads as follows:

> Wherefore, in SP No. 27518 we declare the issue of the respondent court's refusal to issue a restraining order as having been rendered

Reynoso questioned this CA Decision via a Petition for Review before the Supreme Court (SC), docketed as G.R. No. 116124-25 and entitled "*Reynoso v. Court of Appeals*." On 22 November 2000, this Court issued a Decision[23] overturning that of the CA. CCC filed a Motion for Reconsideration, but it was denied by this Court on 6 August 2001.

On 21 December 2001, CCC registered with the Sheriff of Quezon City a third-party claim (with an Affidavit of Third-Party Claim executed by petitioner's president, Jovencio Cinco) on its Valle Verde property; two condominium units under Condominium Certificates of Title Nos. 5462 and 5463; bank deposits; and various office equipment, all subjects of the Notice of Garnishment and Notice of Levy upon personal properties. CCC stated that it was exercising its right of redemption *ad cautelam* over the Valle Verde property. It remitted to the sheriff

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moot by our Resolution of 7 April 1992 which, by way of injunctive relief, provided that the 'respondents and their representatives are hereby enjoined from conducting an auction sale (on execution) of petitioner's properties as well as initiating similar acts of levying (upon) and selling on execution other properties of said petitioner'. The injunction in force until Civil Case No. 61777 shall have been finally terminated.

In SP No. 27683, we grant the petition on *certiorari* and accordingly NULLIFY and SET ASIDE, for having been issued in excess of jurisdiction, the Order of 13 February 1992 in Civil Case No. Q-30583 as well as any other order or process through which the petitioner is made liable under the judgment in said Civil Case No. Q-30583.

No damages and no costs.

SO ORDERED. (Underscoring supplied)

[23] *Reynoso v. Court of Appeals*, G.R. Nos. 116124-25, 22 November 2000, 345 SCRA 335. The dispositive portion of the Decision reads as follows:

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The injunction of an auction sale for the execution of the decision in Civil Case No. Q-30583 of properties of General Credit Corporation, and the levying upon and selling on execution of other properties of General Credit Corporation is LIFTED.

SO ORDERED.

Metrobank Cashier's Check No. 2610004069 in the amount of ₱703,987.36, inclusive of interest amounting to ₱53,095.71.

On 12 March 2002, CCC filed with the RTC QC a Motion to Quash the *Alias* Writ of Execution on its Valle Verde property and the *Alias* Writ of Execution dated 6 March 1992 pertaining to its two condominium units on the 10th floor of the ACT Tower Condominium.

Judge Teodoro Bay, who took over from Judge Solano upon the latter's retirement as presiding judge of the RTC QC, denied the Motion to Quash the Writ of Execution in the **Order dated 3 April 2002**. Judge Bay reasoned that, as finally decided by the SC in *Reynoso v. Court of Appeals,* CCC-QC, CCC, and GCC were one and the same corporation.

In an **Order dated 19 April 2002**, the RTC QC directed the issuance of another *Alias* Writ of Execution to implement its 1985 Decision in response to Reynoso's *Ex Parte* Motion to Issue an *Alias* Writ of Execution on the ground that while the ruling in CA-G.R. SP No. 27518 had previously enjoined the sheriff from levying on the properties of CCC and selling them on execution, the SC had already overturned the said CA ruling.

The *Alias* Writ of Execution was then issued, commanding Sheriff Angelito Acosta (who had taken the place of deceased Deputy Sheriff Edgardo Tanangco) to execute on the "goods and chattels of Commercial Credit Corporation of Quezon City/ General Credit Corporation/Penta Capital Finance Corporation."

On 29 April 2002, CCC filed an Urgent Consolidated Motion praying that 1) the execution be quashed; 2) the sheriff be required to file a monthly report in accordance with Section 14, Rule 39 of the Rules of Court; and 3) the RTC QC declare itself without jurisdiction to resolve with finality the issue of piercing the corporate veil, since the issue was within the jurisdiction of the RTC Pasig City in Civil Case No. 61777 (92).

In an **Order dated 23 May 2002**, the RTC QC denied CCC's Consolidated Motion and required the parties to submit their own computation of the amount of execution. Reynoso filed his Compliance; CCC filed a Compliance *Ad Cautelam* and,

the next day, a Motion to resolve/clarify in the interest of substantial justice. The Motion of CCC sought to reopen discussions on the matter of piercing its corporate veil of fiction.

In its **Order dated 2 August 2002**, the RTC QC denied CCC's Motion to resolve/clarify, reiterating that the issue had already been resolved with finality by the SC.

In its **Order dated 9 August 2002**, the RTC QC issued an Order determining that the sum of ₱71,768,227.35[24] minus the outstanding obligation of Reynoso to CCC was the proper computation of the award in his favor. In its **Order dated 3 October 2002**, the RTC QC reiterated its 9 August 2002 Order.

On 8 October 2002, CCC filed with the CA another Petition for *Certiorari* and Prohibition, docketed as CA-G.R. SP No. 73207 and entitled "*Penta Capital Finance Corporation v. Judge Teodoro Bay, et al.*," to nullify the RTC QC Orders dated 3 and 19 April, 23 May, 2 and 9 August and 3 October 2002 as well as the *Alias* Writ of Execution dated 23 April 2002 and Notice of Sheriff's Sale dated 17 May 2002.

In its **Decision dated 30 July 2003**,[25] the CA declared as excessive the interests fixed by the RTC QC. It held that Reynoso was entitled to recover from CCC only the amount of ₱13,947,240.04, based on the computation[26] made in the presence of the parties by the CA's chief accountant, Carmencita Angelo. The appellate court, however, affirmed the RTC QC Orders dated 3 and 19 April, 23 May, 2 and August, and 3 October 2002.

Both parties filed their respective Motions for Reconsideration of the Decision of the CA, which subsequently denied both motions.

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[24] The principal claim was computed at ₱4,952,220.43, with interest amounting to ₱66,816,006.92 as of 31 March 2002.

[25] *Rollo* (G.R. No. 162100), pp. 80-110.

[26] CA *rollo*, p. 722. This amount was computed to be the total amount due Reynoso as of 30 November 2002.

CCC then filed an appeal by *certiorari* with this Court, docketed as G.R. No. 162100, wherein it raises the following issues: (1) the interest computation made by the RTC QC was grossly excessive; (2) the execution is tainted with irregularities; and (3) the RTC QC judge should have suspended execution of the properties of petitioner and allowed it to pursue its third-party claim to its logical conclusion.

Respondent Reynoso also filed a Petition for Review with this Court, docketed as G.R. No. 162395, questioning the CA's reduction of the the sum due him under the RTC QC Decision. Reynoso argues that the CA failed to consider that the two judgment amounts were money market placements that were "rolled over." Thus, the principal (original placement) earns interest (in this case, 14% per annum) after the lapse of the agreed period. The earned interest plus the principal becomes the new principal/placement, which again earns interest when the placement is rolled over. Under the terms of the money market placement, the outstanding balance earns 14% interest per annum, until both principal and interest are paid. Aside from these interest earnings, a 12% interest per annum on the entire judgment award is applied also, as the awards partook of the nature of forbearance of credit when it remained unsatisfied after the finality of the judgment.

In its Resolution dated 27 April 2004, this Court ordered the consolidation of the two cases.

Consolidated Issues

1. Whether the CA seriously erred in not holding that execution proceedings before the RTC QC was tainted with irregularities
2. Whether the CA seriously erred in not finding that the RTC QC should have suspended execution of the properties of CCC/Penta and allowed the latter to pursue its third party claim to its logical conclusion
3. Whether the CA seriously erred in holding that Penta's right of redemption had prescribed
4. Whether the CA seriously erred in its computation of interest

Our Ruling

We affirm the CA Decision *in toto*.

On the first issue

In *Reynoso v. Court of Appeals*,[27] CCC/GCC/Penta assailed the validity of the execution proceedings in the RTC QC on various grounds, mainly the fact that the latter had allowed the levy and sale of the Valle Verde property. Allegedly, this property was not owned by judgment debtor CCC-QC, but by CCC/GCC/Penta itself – an entity separate and distinct from the former. We held in the said case, though, that since the circumstances warranted piercing the corporate veil, judgment in favor of Reynoso may be executed against GCC (now Penta), an alter ego of CCC-QC.

CCC/GCC/Penta presented the same arguments in *Reynoso,* as it has done now. Even assuming that any of its present arguments is novel, it would be unavailing if it is based on the same factual milieu under which the *Reynoso* ruling was made. The orderly administration of justice and basic considerations of fair play abhor a piecemeal presentation of points of law, theories, issues, and arguments.[28] At any rate, CCC/GCC/Penta fails to identify any change in the facts upon which *Reynoso* was predicated as to warrant a different conclusion in the present case.

Thus, the Court's ruling in *Reynoso* may be considered "the law of the case" in respect of the validity of the execution proceedings against CCC/Penta. The principle of the law of the case is embodied in Section 47(b) and (c), Rule 39 of the Rules of Court.[29] As we explained in *Litton Mills, Inc. v. Galleon*

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[27] G.R. Nos. 116124-25, 22 November 2000, 345 SCRA 335.

[28] *Roque v. Comelec,* G.R. No. 188456, 10 February 2010, 612 SCRA 178.

[29] SEC. 47. *Effect of judgments or final orders* .—The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

Trader, Inc.,[30] this principle holds that "(w)hatever has been irrevocably established as the controlling legal rule between the parties in a 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 facts of the case before the Court. Once a judgment has become final, the issues therein should be laid to rest."

As *Reynoso* has long become final and can no longer be modified, the continued insistence of CCC/GCC/Penta that the execution proceedings were invalid cannot be entertained.

On the second issue

CCC insists that the RTC QC should have suspended execution insofar as the properties of CCC/Penta were concerned, and that the trial court should have allowed petitioner to pursue its third-party claim to its logical conclusion.

We disagree. As discussed in the first section, CCC and CCC-QC are one and the same entity in the context of the subject execution of the judgment in favor of Reynoso. Meanwhile, the remedy of *terceria* is available only to a third person other than the judgment obligor or the latter's agent who claims a property levied on.[31] Hence, not being a third party to the execution proceedings, the remedy of *terceria* is not available to CCC/Penta.

On the third issue

Again, we find no error in the Decision of the CA, holding that Penta's right of redemption has prescribed. We quote with approval the pertinent portion of its assailed Decision in this regard:

. . . . . .

In any other litigation between the same parties of their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[30] G.R. No. L-40867, 26 July 1988, 163 SCRA 489.

[31] RULES OF COURT, Rule 39, Sec. 16.

Penta's right of redemption over the Valle Verde property was recognized by respondent Judge in the Order dated April 3, 2002, considering that CCC-QC, CCC and GCC, which was later renamed Penta Capital, are one and the same corporation as ruled with finality by the Supreme Court. Nonetheless, we agree with Reynoso that Penta Capital can no longer exercise its right to redeem the Valle Verde property.

Record shows that the Valle Verde property, which was registered in the name of CCC under TCT No. 29940, was levied upon and sold at public auction on October 29, 1991 with Reynoso as the highest bidder. The certificate of sale in favor of Reynoso was registered on TCT No. 29940 on November 7, 1991. Section 28, Rule 39 of the Rules of Civil Procedure provides that the judgment obligor or redemptioner may redeem the property from the purchaser at any time within one (1) year from the date of the registration of the certificate of sale. Inasmuch as one year is composed of 365 days, CCC or its successors-in-interest had only until November 6, 1992 within which to redeem the Valle Verde property. However, it was only on December 21, 2002 that Penta Capital sent a notice to the Sheriff that it was redeeming *ad cautelam* the Valle Verde property, together with a cashier's check for ₱ 703,897.36, inclusive of interest. On February 20, 1992, Penta Capital filed with the Regional Trial Court of Pasig City a third-party claim with respect to the Valle Verde property and other properties that may be levied upon by Deputy Sheriff Edgardo C. Tanangco of respondent court.

Penta Capital's argument that it could not redeem the Valle Verde property within the one year period, which expired on November 6, 1992, in view of the temporary restraining order issued by this Court on March 13, 1992, the writ of preliminary injunction issued on April 7, 1994 and the decision dated July 7, 1994 of this Court in CA-G.R. SP No. 27518, does not persuade us.

As correctly pointed out by Reynoso, the injunction issued by this Court in CA-G.R. SP No. 27518 did not cover the Valle Verde property. The temporary restraining order and injunction issued by this Court in said case merely enjoined the respondents therein from conducting an auction sale on execution of the properties of GCC, as well as from initiating similar acts of levying upon and selling on execution other properties of the latter until Civil Case No. 61777 before the Regional Trial Court of Pasig City shall have been finally terminated. On the other hand, the levy and sale of the Valle Verde property had already been consummated when the temporary

restraining order and injunction were issued by this Court. Settled is the rule that consummated acts can no longer be restrained by injunction. Injunction would not lie where the acts sought to have been enjoined had already become a *fait accompli* or an accomplished or consummated act.

The right of redemption should be exercised within the period prescribed by law. The right to redeem becomes *functus officio* on the date of its expiry and its exercise after the period is not really one of redemption but a repurchase.[32]

On the fourth issue

The RTC QC ruled that CCC/GCC/Penta should pay Reynoso the following amounts:

a) to pay defendant the sum of ₱185,000.00 plus 14% interest per annum from October 2, 1980 until fully paid;

b) to pay defendant ₱3,639,470.82 plus interest thereon at the rate of 14% per annum from June 24, 1981, the date of filing of Amended Answer, until fully paid; from this amount may be deducted the remaining obligation of defendant under the promissory note of October 24, 1977, in the sum of ₱9,738.00 plus penalty at the rate of 1% per month from December 24, 1977 until fully paid;

c) to pay defendants ₱200,000.00 as moral damages;

d) to pay defendants ₱100,000.00 as exemplary damages;

e) to pay defendants ₱25,000.00 as and for attorney's fees; plus costs of the suit.

Based on the above figures, the RTC QC eventually computed the award to Reynoso as ₱71,768,227.35. When this matter reached the CA, its chief accountant computed the judgment award at ₱13,947,240.04, after both parties had agreed to deduct from the total judgment award the sum of ₱650,150.50 paid by

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[32] Court of Appeals Special Fifteenth Division Decision in CA-GR SP No. 73207 dated 30 July 2003, penned by Justice Marina L. Buzon, with the concurrence of Justices Rebecca de Guia-Salvador and Jose C. Mendoza. *Rollo* (G.R. No. 162100), pp. 80-119.

Reynoso for the Valle Verde property. The CA's computation is as follows:

A. Principal Amount		₱ 185,000.00
Interest therein @ 14% per annum from October 2, 1980 up to November 30, 2002		573,986.57
Total		₱ 758,986.57
B. Principal Amount		₱ 3,639,470.82
Interest therein @ 14 per annum from June 24 to November 30, 2002		9,912,788.77
		₱ 13,552,259.59
Less: The sum of	₱9,738.00	
Penalty @ 1% per mo. from December 24, 1977 up to November 24, 2002	29,116.62	₱ 38,854.62
Sub-total		₱ 13,513,404.97
Less: Bid Price of Auctioned Property bought by defendant		650,151.50
Total		₱ 12,863,253.47
C. Moral Damages		₱ 200,000.00
D. Exemplary Damages		₱ 100,000.00
E. Attorney's Fees		₱ 25,000.00
TOTAL AMOUNT DUE as of November 30, 2002		₱13,947.240.04

* Note 1 Penalty of 1% per month on ₱9,738 loan is computed from December 24, 1997 up to November 24, 2002 only.

** Note 2 Amount of Bid Price on Auctioned sale in the amount of ₱650,151.50 was already deducted from the total amount due."[33]

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[33] CA *rollo*, p. 722.

Two things must be priorly explained regarding the above computation of the CA. First, the principal amounts in items A and B (₱185,000.00 and ₱3,639,470.82, respectively) were subjected to a 14% per annum interest only until 30 November 2002, because the CA's chief accountant who prepared the computation on 21 November 2002 had anticipated that the parties would be settling the matter by the end of November 2002. Second, the interest on the sum of ₱9,738 (which was deducted from the principal amount in item B) was subjected to a penalty until 24 November 2002, only because the RTC QC judgment pegged the interest rate thereon at 1% per month, commencing on 24 December 1977. Accordingly, the interest was computed on a month-to-month basis.

Both parties impugn the computation by the CA of interest on the judgment awards. On the one hand, Reynoso claims that its computation was deficient, because two items in the judgment pertain to money market placements. These placements were subject to "roll overs" – in this case, pertaining to the reinvestment of the principal together with its earned interest of 14% per annum, which shall earn another 14% per annum, and so forth. Reynoso further alleges that the resulting amount should be subjected to the 12% per annum legal interest on the judgment awards after finality of the judgment, pursuant to the rule laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*[34] and *Crismina Garments, Inc. v. Court of Appeals*.[35] On the other hand, CCC claims that the CA's computation was excessive, because the judgment award should be subject to a 12% interest rate only.

We uphold the CA ruling on the computation of interest on the judgment awards pertaining to the principal amounts ₱185,000.00 and ₱3,639,470.82.

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[34] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[35] G.R. No. 128721, 9 March 1999, 304 SCRA 356.

Referring to *Eastern Shipping Lines* and *Crismina Garments,* which Reynoso claimed to be supportive of his position, the CA elucidated as follows:

> The above-mentioned cases state that the imposition of interest at the rate of 12% per annum from finality of judgment applies only where the rate of interest decreed in the judgment of the court is only 6% per annum, in accordance with Article 2209 of the Civil Code. Thus, the dispositive portions of the decisions in the above-mentioned cases provided for payment of interest at 6% per annum from the date of the filing of the complaint until the finality of the judgment and a 12% interest per annum, in lieu of 6% interest per annum, upon finality of the judgment until it is fully satisfied. In the case at bench, the decision in Civil Case No. Q-30583 ordered the payment of interest at the rate of 14% per annum from October 2, 1980, with respect to the amount of ₱ 185,000.00, and from June 24, 1981, with respect to the amount of ₱ 3,639,470.82, until the same shall have been fully paid. Inasmuch as the rate of interest imposed in Civil Case No. Q-30583 is even higher than 12% per annum, Reynoso is no longer entitled to the payment of 12% interest upon finality of the judgment.[36]

In fine, *Eastern Shipping* merely provides that in the absence of a written stipulation, the applicable interest rate to be imposed in judgments involving a forbearance of credit shall be 12% per annum in accordance with Central Bank (CB) Circular No. 416. On the other hand, if the judgment refers to payment of indemnities in the concept of damages arising from a breach or a delay in the performance of obligations in general, the applicable interest rate shall be 6% per annum, in accordance with Article 2206 of the Civil Code. Both interest rates apply from the time of judicial or extrajudicial demand until the finality of the judgment. However, from the time the judgment of the court awarding a sum of money becomes final until it is satisfied, the award it granted shall be considered a forbearance of credit, whether or not the judgment award actually pertained to one.

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[36] *Rollo* (G.R. No. 162395), pp. 90-91.

Accordingly, during this interim period, the interest rate of 12% per annum for forbearance of money shall apply.[37]

In the present case, the parties agreed in writing to apply an annual interest rate of 14% to the amounts covered by the Promissory Notes. The trial court ruled that after the finality of judgment, as long as the subject amounts remain unpaid, they shall bear 14% annual interest in lieu of the default interest rate for forbearance of credit, which is 12% per annum. The RTC QC's application of 14% interest rate from the finality of the judgment until its full satisfaction is permitted to remain herein, **only because** the judgment has become final – as it was not impugned at all before the CA – and therefore, can no longer be modified. It is not meant to overturn the Court's consistent application of the 12% interest rate in court judgments awarding a sum of money from the time it becomes final until it is satisfied.

We further uphold the CA's rejection of Reynoso's computation, which incorporates "roll overs" of the said two items in the judgment awards.

Reynoso argues that the "roll over" could be implied from the trial court Decision, considering that the two items in the judgment (₱185,000.00 and ₱3,639,470.82) pertained to his money market placements, and considering further that the trial court applied such rollovers to its subsequent computation.

We are not convinced. The mere fact that RTC QC's subsequent computation applied rollovers is an insufficient basis to rule that these were proper. We stress that "execution must conform to that ordained or decreed in the dispositive part of the decision; consequently, where the order of execution is not in harmony with and exceeds the judgment which gives it life, the order has *pro tanto* no validity."[38] In the present case, we

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[37] See *Sunga-Chan v. Court of Appeals,* G.R. No. 164401, 25 June 2008, 555 SCRA 275.

[38] *Florentino v. Rivera,* G.R. No. 167968, 23 January 2006, 479 SCRA 522.

observe that nowhere in the RTC QC judgment is there a provision calling for the "roll over" of the ₱185,000.00 and ₱3,639,470.82 awards.

Also, while it is true that the said judgment awards correspond to the amounts Reynoso invested as money market placements, he himself points out in his Petition that each placement is a separate and distinct transaction. He explains that a rollover is a "new and independent transaction where the amount of money market placement is considered as a fresh infusion of a principal amount regardless of the fact that part of the amount 'rolled over' was in reality the interest earned from the original placement or the immediately preceding 'roll-over' transaction."[39] Thus, a money market transaction does not necessarily include a rollover, which would take place only if the parties agree to the reinvestment of the proceeds of the earlier money market transaction. The parties' agreement to a rollover is a separate transaction whereby the new placement, consisting of the original placement plus the earned interest, becomes the new placement that shall earn interest at the end of the agreed period. In the present case, it does not appear that there was an agreement between CCC-QC and Reynoso for the automatic rollover of all of his placements.

Finally, Reynoso is entitled to interest on the moral and exemplary damages, as well as the attorney's fees awarded him. As stressed in our above discussion of *Eastern Shipping*, an award of a sum of money shall be considered as a forbearance of credit once it becomes final, whether or not the award actually pertained to one. Hence, from its finality until its satisfaction, the judgment award to Reynoso of moral and exemplary damages, as well as attorney's fees, shall be subject to the interest rate of 12% per annum.

WHEREFORE, premises considered, the consolidated Petitions are hereby **DENIED.** The Court of Appeals assailed Decision and Resolution are **AFFIRMED with MODIFICATION**

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[39] *Rollo* (G.R. No. 162395), p. 43.

in that an interest rate of 12% per annum is to be applied to the awards of moral and exemplary damages and attorney's fees from the finality until the satisfaction of the 14 January 1985 Decision of the Regional Trial Court of Quezon City, Branch 86 in Civil Case No. Q-30583.

SO ORDERED.

Carpio (Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 166858. January 18, 2012]

SOLEDAD TUCKER, joined by her husband DELMER TUCKER, *petitioners, vs.* **SPOUSES MANUEL P. OPPUS and MARIA PAZ M. OPPUS, and CARLOS OPPUS,** *respondents.*

SYLLABUS

REMEDIAL LAW APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES ESPECIALLY SO WHEN THE SAID COURT AFFIRMS THE FACTUAL FINDINGS OF THE TRIAL COURT.— It is an oft-repeated principle that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the Court of Appeals, if supported by evidence, are conclusive

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[*] Designated as acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

> and binding upon this Court. x x x [T]he Court of Appeals clearly considered the evidence on record. Based on the testimonies of the parties and the documentary evidence submitted, the Court of Appeals found that the subject lot sold by Philip Gamboa to Carlos M. Oppus, a professor at the Ateneo de Manila University, was not made in fraud of petitioners, as Carlos had the means of buying the lot. The preponderance of evidence was with respondents. It should be pointed out that the judgment debtors in this case are the spouses Manuel and Maria Paz Oppus. The property covered by TCT No. 241862 which is sought by petitioners to be held answerable for the judgment debt of respondent spouses Manuel and Maria Paz Oppus, is registered in the name of respondents' son, Carlos Oppus. Thus, the Court of Appeals affirmed the decision of the trial court to dismiss the case against Carlos M. Oppus. Factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court. The Court has carefully reviewed the records of this case and finds no substantial reason to overturn the findings of the Court of Appeals.

APPEARANCES OF COUNSEL

R.P. Nograles Law Office for petitioners.
Cecilio V. Suarez, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals' Decision[1] in CA-G.R. CV No. 74853, dated July 28, 2004, and its Resolution[2] dated January 26, 2005, denying petitioner's motion for reconsideration.

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[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; *rollo*, pp. 34-42.

[2] *Id*. at 44-45.

The facts, as stated by the Court of Appeals, are as follows:

Petitioner spouses Soledad and Delmer Tucker (Spouses Tucker) filed an action for a *Sum of Money with Damages and Preliminary Attachment* against respondent spouses Manuel P. Oppus and Maria Paz M. Oppus (Spouses Oppus), and their son, Carlos.

Petitioners alleged that sometime in the first week of January 1987, Maria Paz Oppus, accompanied by Acela Peralta, went to Soledad Tucker to procure a loan of ₱400,000.00, which she proposed to secure with a mortgage on a lot covered by TCT No. N-120581 and the house built thereon. Maria Paz Oppus represented that her family was living on the said lot; that she has a Special Power of Attorney from her husband, Manuel Oppus; and that they were willing to execute the required instruments, including a Deed of Absolute Sale of the house and lot. Egged on by Peralta, with whom Soledad Tucker had previous dealings, Soledad gave to the Spouses Oppus a loan of ₱400,000.00 payable in six (6) months with compounded interest of four percent (4%) per month. The Spouses Oppus delivered the Agreement[3] evidencing the transaction, the Deed of Absolute Sale[4] dated January 13, 1988, and the original duplicate owner's copy of TCT No. N-120581.

The Spouses Oppus paid the monthly interest intermittently, and the principal loan was renewed twice for six months and then for ten months. However, after the second renewal, the Spouses Oppus failed to pay the interest for July, August and September of 1989. Thus, petitioner Soledad Tucker went to see them and discovered that the Spouses Oppus were no longer residing in the house and lot covered by TCT No. N-120581, which secured the loan granted by the Spouses Tucker to the Spouses Oppus. The said house and lot was already being occupied by the spouses Diomedes and Melinda Liganor. The Spouses Oppus and the Spouses Liganor executed a Contract

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[3] Folder of Exhibits, p. 4.

[4] *Id*. at 6.

to Sell dated March 25, 1988 and a Deed of Absolute Sale[5] dated April 7, 1989 over the said house and lot.

Petitioner Soledad Tucker tried to register the Deed of Absolute Sale dated January 13, 1988, but could not do so because of an annotation dated May 31, 1989 of the Affidavit of Loss of TCT No. N-120581 by the owners. Consequently, the Tuckers filed before the Regional Trial Court (RTC) of Pasig City[6] a suit for the cancellation of the said annotation. After the annotation was cancelled, Soledad Tucker caused the annotation of the Deed of Absolute Sale in her favor, and TCT No. 172138 was issued in her name.

Thereafter, petitioners filed before the RTC of Pasig City a suit for *Reconveyance and/or Quieting of Title and/or Removal of Cloud on Title to Real Property and Damages*[7] against the Spouses Liganor. The Spouses Liganor, in turn, filed an action[8] to annul TCT No. 172138 in the name of petitioner Soledad Tucker. These cases were consolidated and assigned to Branch 159. In the Decision[9] dated April 21, 1995, the RTC of Pasig City, Branch 159 declared the Deed of Absolute Sale executed by the Spouses Oppus in favor of the Spouses Tucker as null and void and ordered the reconveyance of the property to the Spouses Liganor. The RTC held that the real intention of Maria Paz Oppus was to borrow money from the Spouses Tucker, and not to transfer ownership of the property, and that the agreement had the badges of *pactum commisorium*, and was, therefore, null and void.

As the Spouses Oppus failed to pay their loan obligation and interest thereon, petitioners filed this suit on November 9, 1995, praying for the payment of the loan principal and interest

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[5] *Id*. at 9-12.

[6] Docketed as Civil Case No. R-4310.

[7] Docketed as SCA No. 328.

[8] Civil Case No. 63101.

[9] Exhibit "H", folder of exhibits, pp. 15-20.

accrued; actual expenses in the amount of ₱150,000.00; moral and exemplary damages; attorney's fees and litigation expenses. Petitioners also alleged that sometime between 1989 and 1993, the Spouses Oppus bought a house and lot from their nephew Philip Gamboa, but, in fraud of creditors, they had the property registered in the name of their son Carlos, who was issued TCT No. 241862.[10]

On February 7, 1996, petitioners filed an Amended Complaint,[11] which described the property covered by TCT No. 241862, registered in the name of Carlos Oppus. Petitioners prayed that the sale of the said property by Philip Gamboa to Carlos Oppus be declared null and void, and in case of insolvency of the judgment debtors, the said property be held answerable for the judgment debt of the Spouses Oppus.

The Spouses Oppus and Carlos Oppus filed a motion to dismiss on the ground that plaintiffs (petitioners) had no cause of action against Carlos, and that plaintiffs are guilty of splitting a single cause of action, which is a ground for a motion to dismiss under Section 1 (e), Rule 16 of the Rules of Court.

In an Order[12] dated July 24, 1996, the trial court deferred its resolution on the motion to dismiss until the completion of the presentation of evidence by the parties.

On August 6, 2001, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiffs and against the herein defendants Spouses Manuel and Maria Paz Oppus ordering them as follows:
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> 1. to pay the plaintiffs the principal amount of FOUR HUNDRED THOUSAND PESOS (Php400,000.00), representing unpaid obligations plus 12% legal interest per

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[10] *Id*. at 42.

[11] Records, pp. 54-67.

[12] *Id*. at 98.

annum from the time of the filing of the Complaint on November 9, 1995 until fully paid;

2. to pay plaintiffs the amount of Php16,264.18 as actual damages representing the expenses incurred by the plaintiffs in paying for the real estate taxes due on the subject property;

3. to pay the plaintiffs Php10,000.00 as moral and exemplary damages;

4. to pay plaintiffs the amount of THIRTY THOUSAND PESOS (Php30,000.00) as attorney's fees; and

5. to pay the cost of suit.

The case against defendant Carlos M. Oppus is ordered dismissed for lack of merit.[13]

Respondents' motion for reconsideration was denied by the trial court for lack of merit in an Order[14] dated October 23, 2001.

The decision of the trial court was appealed by the Spouses Tucker and the Spouses Oppus to the Court of Appeals. However, the Spouses Oppus failed to file the required Appellant's Brief; hence, their appeal was dismissed in the Resolution[15] dated April 10, 2003, so that the judgment is final in their case.

In their appeal, the Spouses Tucker assigned to the trial court the following errors:

2.1 The trial court erred in ordering the case against defendant Carlos M. Oppus dismissed for lack of merit without clearly and distinctly stating the facts and the law on which it is based in violation of Section 14, Article VII of the 1987 Constitution [*Macario Tayamura, et al. vs. Intermediate Appellate Court, et al.* (G.R. No. 76355, 21 May 1987].

2.2 The trial court erred in not ruling that the sale of Lot No. 45, Block 9, TCT No. 26271, entered into by and between Philip

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[13] *Id.* at 363.

[14] *Id.* at 378.

[15] CA *rollo*, p. 58.

Gamboa and Carlos M. Oppus was merely documented in the latter's name, with the intention of defrauding Tucker as creditor of the spouses Manuel and M. Paz Oppus. (p. 20, *rollo*)[16]

On July 28, 2004, the Court of Appeals rendered a Decision,[17] the dispositive portion of which reads:

WHEREFORE, the appeal of the Tuckers is DENIED and DISMISSED.[18]

The Court of Appeals stated that the constitutional provision that "[n]o decision shall be rendered by the trial court without expressing therein clearly and distinctly the facts and the law on which it is based" requires that the decision should state the essential ultimate facts upon which the court's conclusion is drawn. It held that a trial judge enjoys a wider latitude of determining the material facts based on the conflicting asseverations of both parties which would be the basis of his decision. The Court of Appeals noted that the trial court mentioned in its decision the testimony of petitioner Soledad Tucker and the countervailing testimonies of respondents Maria Paz and Carlos Oppus, and it gave credence to the testimonies of the Oppuses.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution[19] dated January 26, 2005.

Before this Court, petitioners raise the following issues:

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WHETHER OR NOT THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE;

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[16] *Id*. at 20.

[17] *Rollo*, pp. 34-43.

[18] *Id*. at 42.

[19] *Id*. at 44-45.

II

WHETHER OR NOT THE COURT OF APPEALS IN RENDERING ITS DECISION ABANDONED ITS DUTY TO LOOK INTO, CONSIDER AND EVALUATE THE HARD AND DOCUMENTED EVIDENCE OF FRAUD COMMITTED BY PRIVATE RESPONDENTS, PRESENTED BY PETITIONERS, AND IGNORED BY THE TRIAL COURT; AND

III

WHETHER OR NOT BASED ON SAID EVIDENCE, THE DECISION OF THE COURT OF APPEALS IS CONTRARY TO LAW AND JURISPRUDENCE.[20]

The main issues are: (1) whether or not the Court of Appeals considered the evidence submitted by petitioners in affirming the decision of the trial court; and (2) whether or not the evidence on record supports the decision of the Court of Appeals.

Petitioners contend that the trial court awarded to them their claim for payment of debt by the Spouses Oppus; but the Spouses Oppus defeated their bid for attachment of a lot covered by TCT No. N-120581 by fraudulently having the lot titled in the name of their son, Carlos Oppus. They contend that the trial court and the Court of Appeals did not consider the evidence submitted showing that the transfer of the lot in the name of Carlos Oppus was in fraud of creditors.

Petitioners contend that the Spouses Oppus bought the property from Philip Gamboa and made arrangements that the sale be documented in the name of their son Carlos, who lacked the financial capacity to pay for the property, and the fact that the husband of Maria Paz Oppus had the money at that time to pay for the balance of the property.

The petition is without merit.

It is an oft-repeated principle that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and

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[20] *Id*. at 20.

does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the Court of Appeals, if supported by evidence, are conclusive and binding upon this Court.[21]

As found by the Court of Appeals, the trial court considered the evidence submitted by the parties, and summarized in its decision the testimonial evidence given by witnesses Soledad Tucker, Maria Paz Oppus and Carlos M. Oppus. The Court of Appeals stated:

> On this particular point, the Decision [of the trial court] in fact mentioned the testimony of Soledad and her Exhibits "M", "M-1", "M-2" and "M-3", as well as the countervailing testimonies of Maria Paz and Carlos. It cannot be said at all that the Decision failed to comply with the said requirement.
>
> Soledad said that she found out from the *Barangay* that it was the Oppus spouses who bought the house and lot of Philip Gamboa. This was because he was poised to sue them for the balance of the purchase price, and in connection with this there was before the *Barangay* a demand letter to the Oppus spouses dated September 26, 1990 (Exh. "M"); the affidavit of Philip Gamboa (Exh. "M-1"); Certification To File Action (Exh. "M-2"); and the affidavit of *Barangay* Chairman Vicente Basa (Exh. "M-3"). On the other hand, Maria Paz explained that Philip Gamboa had intended to sell to them his house and lot and for which an amount owed to her by Philip Gamboa was imputed as part payment. But later Maria Paz could not pay the balance and Philip Gamboa could not return the [partial] payment, and so each filed a suit against the other. This ended in an amicable settlement where the sale was rescinded and Philip Gamboa was to return the money of the Oppus spouses with the payments from his new buyer. That was when Carlos came into the picture as the new buyer to whom the property was transferred and he assumed the obligation to pay on installment the Oppus spouses. Carlos explained his financial ways and means.

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[21] *Regalado v. Go,* G.R. No. 167988, February 6, 2007, 514 SCRA 616, 626-627.

The trial court gave credence to and upheld the version of Maria Paz and Carlos. *Case law has it that the findings* of *the trial court and its assessment and probative weight* of *the testimonies* of *witnesses are accorded by the Court high respect* (*Rugas vs. People*, G.R. No. 147789, Jan. 1, 2004). In the absence of any justifiable reason to deviate from the said findings, and of which We have found none, there is no reason to change or modify the trial court's findings.

The burden of proof is on the party who will be defeated if no evidence is presented on either side. He must establish his case *by* a *preponderance of evidence which* means *that the evidence*, as a *whole, adduced by one side is superior to that of the other* (*Premiere Development Bank vs. Court of Appeals*, G.R. No. 159352, April 14, 2004). The testimonies of Maria Paz and Carlos and the documents in the latter's name preponder over the simplistic assumptions of the Tuckers.[22]

From the foregoing, the Court of Appeals clearly considered the evidence on record. Based on the testimonies of the parties and the documentary evidence submitted, the Court of Appeals found that the subject lot sold by Philip Gamboa to Carlos M. Oppus, a professor at the Ateneo de Manila University, was not made in fraud of petitioners, as Carlos had the means of buying the lot. The preponderance of evidence was with respondents. It should be pointed out that the judgment debtors in this case are the spouses Manuel and Maria Paz Oppus. The property covered by TCT No. 241862,[23] which is sought by petitioners to be held answerable for the judgment debt of respondent spouses Manuel and Maria Paz Oppus, is registered in the name of respondents' son, Carlos Oppus. Thus, the Court of Appeals affirmed the decision of the trial court to dismiss the case against Carlos M. Oppus.

Factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court

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[22] *Rollo*, pp. 41-42. (Italics supplied.)

[23] Exhibit "O", folder of exhibits, p. 42.

affirms the factual findings of the trial court.[24] The Court has carefully reviewed the records of this case and finds no substantial reason to overturn the findings of the Court of Appeals.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 74853, dated July 28, 2004, and its Resolution dated January 26, 2005, are **AFFIRMED.**

No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169084. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELANIO DEL CASTILLO *y* VARGAS, HERMOGENES DEL CASTILLO *y* VARGAS, ARNOLD AVENGOZA *y* DOGOS, FELIX AVENGOZA *y* DOGOS, RICO DEL CASTILLO *y* RAMOS, and JOVEN DEL CASTILLO *y* ABESOLA,** *accused-appellants.*

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[24] *Marquez v. Court of Appeals,* G.R. No. 116689, April 3, 2000, 329 SCRA 567, 577.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS, ACCORDED RESPECT.— We reiterate that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of the trial judge's unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not. Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case. The accused did not present any fact or circumstance of weight that the RTC or the CA overlooked, misapprehended, or misinterpreted that, if considered, would alter the result herein. Accordingly, we have no reason to disregard their having accorded total credence to Perfinian's eyewitness account of the killings.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF DEFENSE AND DEFENSE OF STRANGERS; ELEMENTS.— In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (*a*) unlawful aggression on the part of the victim; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself. On the other hand, the requisites of defense of strangers are, namely: (*a*) unlawful aggression by the victim; (*b*) reasonable necessity of the means to prevent or repel it; and (*c*) the person defending be not induced by revenge, resentment, or other evil motive. In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing, because there would be nothing to repel.

3. ID.; ID.; ID.; EFFECTS OF INVOKING SELF-DEFENSE AND DEFENSE OF STRANGERS.— By invoking self-defense and defense of strangers, Arnold and Joven in effect admitted their parts in killing the victims. The rule consistently

adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court. The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof. He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, considering that the Prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing.

4. ID.; ID.; ID.; ELEMENT OF UNLAWFUL AGGRESSION, ABSENT IN CASE AT BAR.— [E]ven if we were to believe Arnold and Joven's version of the incident, the element of unlawful aggression by the victims would still be lacking. The allegation that one of the victims had held Winifreda's hand did not indicate that the act had gravely endangered Winifreda's life. Similarly, the victims' supposed motion to draw something from their waists did not put Arnold and Joven's lives in any actual or imminent danger. What the records inform us is that Arnold and Joven did not actually see if the victims had any weapons to draw from their waists. That no weapons belonging to the victims were recovered from the crime scene confirmed their being unarmed. Lastly, had they been only defending themselves, Arnold and Joven did not tell the trial court why they had repeatedly hacked their victims with their bolos; or why they did not themselves even sustain any physical injury. Thus, the CA and the RTC rightly rejected their plea of self-defense and defense of stranger, for the nature and the number of wounds sustained by the victims were important *indicia* to disprove self-defense.

5. REMEDIAL LAW; EVIDENCE; CONSPIRACY, DULY ESTABLISHED.— The accused, armed with bolos, surrounded and attacked the victims, and pursued whoever of the latter attempted to escape from their assault. Thereafter, the accused,

except Hermogenes, fled their homes and together hastily proceeded to Antipolo, Rizal. Their individual and collective acts prior to, during and following the attack on the victims reflected a common objective of killing the latter. Thereby, all the accused, without exception, were co-conspirators. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is either express or implied. Thus, the State does not always have to prove the actual agreement to commit the crime in order to establish conspiracy, for it is enough to show that the accused acted in concert to achieve a common purpose. Conspiracy may be deduced from the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals. Once a conspiracy is established, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH, PRESENT.— Abuse of superior strength is an aggravating circumstance that qualifies the killing of a person to murder. It is present if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength. Superiority in strength may refer to the number of aggressors and weapons used. A gross disparity of forces existed between the accused and the victims. Not only did the six accused outnumber the three victims but the former were armed with bolos while the latter were unarmed. The accused clearly used their superiority in number and arms to ensure the killing of the victims. Abuse of superior strength is attendant if the accused took advantage of their superiority in number and their being armed with bolos. Accordingly, the crimes committed were three counts of murder.

7. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES TO BE APPRECIATED; APPLICATION.— In order that voluntary surrender is appreciated as a mitigating circumstance, the following requisites must concur: (*a*) the accused has not been actually arrested; (*b*) the accused surrenders himself to a person in authority or the latter's agent; and (*c*) surrender is voluntary. The third requisite requires the surrender to be spontaneous, indicating the intent of the accused to unconditionally submit himself to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expenses necessary for his search and capture. Although Hermogenes went to Barangay Chairman Aloria of Bulihan after the killings, he did so to seek protection against the retaliation of the victims' relatives, not to admit his participation in the killing of the victims. Even then, Hermogenes denied any involvement in the killings when the police went to take him from Chairman Aloria's house. As such, Hermogenes did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killings or in order to save the authorities the trouble and expense for his arrest.

8. ID.; MURDER; PENALTY; EFFECT OF THE PRESENCE OR ABSENCE OF MITIGATING OR AGGRAVATING CIRCUMSTANCES.— [A]ny determination of whether or not Hermogenes was entitled to the mitigating circumstance of voluntary surrender was vain in light of the penalty for murder being *reclusion perpetua* to death under Article 248 of the *Revised Penal Code,* as amended by Republic Act No. 7659. Due to both such penalties being indivisible, the attendance of mitigating or aggravating circumstances would not affect the penalties except to aid the trial court in pegging the penalty to *reclusion perpetua* if the only modifying circumstance was mitigating, or the mitigating circumstances outnumbered the aggravating circumstances; or to prescribe the death penalty (prior to its prohibition under Republic Act No. 9346) should there be at least one aggravating circumstance and there was no mitigating circumstance, or the aggravating circumstances outnumbered the mitigating circumstances. This effect would conform to Article 63, (2), of the *Revised Penal Code*, to wit: Article 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any

mitigating or aggravating circumstances that may have attended the commission of the deed. **In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:** x x x **2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.** x x x

9. ID.; ID.; CIVIL LIABILITY.— The awards of civil indemnity and moral damages are also proper, but their corresponding amounts should be increased to ₱75,000.00 in line with prevailing jurisprudence. The actual damages of ₱15,000.00 and ₱8,000.00 granted to the heirs of Sabino and Graciano, respectively, were also warranted due to their being proven by receipts. However, the Court has held that when actual damages proven by receipts amount to less than ₱25,000.00, as in the case of Sabino and Graciano, the award of temperate damages amounting to ₱25,000.00 is justified in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 only would be put in a worse situation than others who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages. Hence, instead of only ₱15,000.00 and ₱8,000.00, the amount of ₱25,000.00 as temperate damages should be awarded each to the heirs of Sabino and Graciano. The heirs of Victor did not present receipts proving the expenses they incurred by virtue of Victor's death. Nonetheless, it was naturally expected that the heirs had spent for the wake and burial of Victor. Article 2224 of the *Civil Code* provides that temperate damages may be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. Hence, in lieu of nominal damages of ₱10,000.00 awarded by the CA, temperate damages of ₱25,000.00 are awarded to the heirs of Victor. Exemplary damages of ₱30,000.00 should be further awarded to the heirs of the victims because of the attendant circumstance of abuse of superior strength. Under Article 2230 of the *Civil Code*, exemplary damages may be granted when the crime was committed with one or more aggravating circumstance. It was immaterial that such aggravating circumstance was necessary to qualify the killing of each victim as murder.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

This case illustrates yet again why denial and *alibi* are not the best defenses when there is positive identification of the accused for their complicity in the commission of a crime.

Antecedents

All the accused are related to one another either by consanguinity or by affinity. Melanio del Castillo and Hermogenes del Castillo are brothers. Rico del Castillo and Joven del Castillo are, respectively, Melanio's son and nephew. Felix Avengoza is the son-in-law of Melanio and the brother of Arnold Avengoza. Both Felix and Arnold lived in the house of Melanio.

On March 28, 2000, the City Prosecutor's Office of Batangas City charged all the accused in the Regional Trial Court (RTC), Branch 4, Batangas City with three counts of murder, alleging as follows:

Criminal Case No. 10839

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Sabino Guinhawa *y* Delgado @ "Benny," thereby hitting him on the different parts of his body, which directly caused the victim's death.[1]

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[1] Records, pp. 1-2.

Criminal Case No. 10840

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Graciano Delgado *y* Aguda @ "Nonoy," thereby hitting him on the different parts of his body, which directly caused the victim's death.[2]

Criminal Case No. 10841

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Victor Noriega *y* Blanco, thereby hitting him on the different parts of his body, which directly caused the victim's death. (emphases and italics supplied).[3]

The cases were consolidated for arraignment and trial. On April 7, 2000, the accused pleaded *not guilty* to the informations.[4]

Version of the Prosecution

The witnesses for the State were Froilan R. Perfinian, PO3 Pablo Aguda Jr., Dr. Luz M. Tiuseco, Rosalia Delgado, Domingo Guinhawa, Abella Perez Noriega, SPO3 Felizardo Panaligan, Sr. Insp. Marcos Barte and SPO3 Danilo Magtibay.

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[2] *Id.,* pp. 260-261.

[3] *Id.,* pp. 271-272.

[4] *Id.,* p. 25.

The eyewitness version of Perfinian follows. On March 20, 2000, at about 9:00 pm, he had just left the house of one Lemuel located in Sitio Bulihan, Barangay Balete, Batangas City (Bulihan) to walk to his own home located also in Bulihan when he heard someone pleading: *Huwag po, huwag po!* He followed the direction of the voice, and saw the assault by all the accused against Sabino D. Guinhawa (Sabino), Graciano A. Delgado (Graciano), and Victor B. Noriega (Victor). He recognized each of the accused because he saw them from only six meters away and the moon was very bright. Besides, he was a godfather of Hermogenes' son, and the other accused usually passed by his house.

Perfinian recalled that the accused surrounded their victims during the assault; that Arnold stabbed Graciano on the stomach with a bolo, causing Graciano to fall to the ground; that Rico hacked Graciano with a bolo; that when Victor tried to escape by running away, Hermogenes and Felix pursued and caught up with him; that Felix hacked Victor; and that when Sabino ran away, Melanio and Joven pursued him.

Perfinian rushed home as soon as all the accused had left. He narrated to his wife everything he had just witnessed. On the following day, he learned that the police authorities found the dead bodies of Sabino, Graciano and Victor. Afraid of being implicated and fearing for his own safety, he left for his father's house in Marinduque. He did not return to Bulihan until after he learned from the TV newscast that all the accused had been arrested. Once returning home, he relayed to the victims' families everything he knew about the killings. Also, he gave a statement to the Batangas City Police.[5]

PO3 Aguda was on duty as the desk officer of the Batangas City Police Station in the morning of March 22, 2000 when he received the report about the dead bodies found in Bulihan. He and other police officers went to Bulihan, and found the dead bodies of Sabino, Graciano, and Victor sprawled on the road about 20 meters from each other. The bodies were all bloodied

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[5] TSN, June 20, 2000, pp. 1-6.

and full of hack wounds. During his investigation, he came upon one Rene Imbig (Rene) who mentioned seeing the six accused wielding bolos and running on the night of March 21, 2000. From the site of the crime, he and his fellow officers went to the houses of Melanio and Rico, which were about 20 meters from where the bodies were found. The houses were abandoned, but he recovered a blood-stained knife with a curved end in Melanio's house. Returning to the station, he saw Hermogenes there, who informed him that the other suspects had fled to Sitio Tangisan, Barangay Mayamot, Antipolo, Rizal (Sitio Tangisan), where Melanio's mother-in-law resided. Accompanied by Rene and other police officers, he travelled to Sitio Tangisan that afternoon. Upon arriving in Sitio Tangisan, Rene pointed to Melanio who was just stepping out of his mother-in-law's house. Melanio ran upon seeing their approach, but they caught up with him and subdued him. They recovered a bolo from Melanio. They found and arrested the other suspects in the house of Melanio's mother-in-law, and brought all the arrested suspects back to Batangas City for investigation. There, the suspects admitted disposing some of their clothes by throwing them into the Pasig River, and said that their other clothes were in the house of Melanio. They mentioned that the bolo used by Hermogenes was still in his house.

On the morning of March 23, 2000, PO3 Aguda and his fellow officers recovered two shorts, a shirt, and a knife - all blood-stained from Melanio's house in Bulihan. Going next to the house of Hermogenes, Winifreda del Castillo, the latter's wife, turned over the bolo of Hermogenes. They learned that prior to the killings, Melanio had been fuming at being cheated in a cockfight, and had uttered threats to kill at least three persons in Bulihan.[6]

Sr. Insp. Barte, SPO3 Panaligan and SPO3 Magtibay corroborated PO3 Aguda's recollections.[7]

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[6] TSN, August 29, 2000, pp. 1-19.

[7] TSN, September 29, 2000, pp. 1-8; October 6, 2000, pp. 23-30; November 14, 2000, pp. 1-14.

Dr. Luz M. Tiuseco (Dr. Tiuseco), a Medical Officer of Batangas City Health Office, conducted the post-mortem examinations on the remains of Sabino, Graciano, and Victor on March 22, 2001. She found that Sabino sustained 11 hack wounds and 12 stab wounds; that Graciano suffered four stab wounds and a hack wound; and that Victor had three hack wounds. She certified that the victims had died from hypovolemic shock secondary to multiple stab and hack wounds.[8]

Domingo Guinhawa, the elder brother of Sabino, declared that his family spent ₱50,000.00 for Sabino's funeral and burial expenses.[9] Rosalia Delgado, a sister of Graciano, attested that the expenses incurred for Graciano's burial amounted to ₱51,510.00.[10] Abella Perez Noriega, the wife of Victor, claimed that her family spent ₱53,395.00 for Victor's wake and interment.[11]

Version of the Accused

The Defense offered the testimonies of the accused and Winifreda. The accused admitted being in Bulihan at the time of the incident, but denied liability. Arnold and Joven invoked self-defense and defense of strangers, while Melanio, Hermogenes, Rico and Felix interposed denial. Winifreda corroborated the testimonies of Arnold and Joven.

The evidence of the accused was rehashed in the *appellee's brief* submitted by the Public Attorney's Office, as follows:

Arnold Avengoza testified that on March 21, 2001, he had a drinking spree with Rico del Castillo in their house. After about an hour, he was requested by Winifreda del Castillo, wife of Hermogenes del Castillo, to accompany them to their house. Together with Joven del Castillo, they brought Winifreda and her son to their house. Before they were able to reach Winifreda's house, three (3) men

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[8] TSN, October 6, 2000, pp. 5, 13 and 16.

[9] TSN, November 14, 2000, pp. 15-20.

[10] TSN, September 29, 2000, pp. 13-18.

[11] TSN, December 12, 2000, pp. 1-8.

appeared. One of them held Winifreda and when he tried to help her, the other persons attempted to draw something from their waists prompting him to hacked one of them. He told the man to stop, but the latter refused. When the other man got mad, he hacked him twice. Then, they brought Winnie and her son to the house of Melanio del Castillo. He did not inform Melanio del Castillo about what transpired, but told him to take his family away, because he saw dead persons near his place. He threw his bolo into the Pasig River.

Joven del Castillo, corroborated Rico's testimony and admitted that he was the one who stabbed the other man, who attempted to draw something from his waist while Arnold hacked the other man. He was no longer aware how many times he stabbed the said man. Victor Noriega was one of the three (3) men who blocked their way. They left Sitio Bulihan at about 11:00 o'clock in the evening, together with Felix Avengoza, Arnold Avengoza, Rico del Castillo, Melanio del Castillo and his family. They went to Antipolo, Rizal, where they were arrested by the police authorities.

Hermogenes del Castillo slept the whole night of March 21, 2000 and came to know that the three (3) persons were killed during the night near the house of his brother Melanio only from his wife Winifreda. Fearing retaliation from the relatives of the persons who were killed, because the bodies were found near his brother's house, he went to the house of Barangay Captain Aloria, who in turn told him to go to the police station. He came to know that he was being implicated in the killing when he was incarcerated.

Rico del Castillo testified that on the night of March 21, 2001 at about 7:00 o'clock in the evening, he fetched Winifreda del Castillo to treat the sprain of his daughter. At about 9:00 o'clock in the evening, since his daughter was still crying, he requested Joven and Arnold to accompany Winifreda and her son in going home. Arnold and Joven returned at around 10:00'clock (sic) in the evening. He was told that they saw dead people and was asked to leave the place together with his family.

Felix Avengoza said that on the night of March 21, 2001, he was informed by Joven and Arnold that they saw two (2) dead persons near their house. For fear of becoming a suspect, he was told to leave his house together with his family.

Melanio del Castillo affirmed the testimony of Felix and added that he was at first hesitant to leave his house because of his personal

belongings and animals, but due to insistence of Arnold and Joven, he also left with them for Manila.

Winifreda del Castillo confirmed that she was fetched by Rico del Castillo to treat his daughter. When Rico was unable to bring her back home, Joven and Arnold accompanied her. While they were on their way, three (3) persons suddenly blocked them. One of them held her hand and tried to drag her away. When Arnold tried to pacify them, they got angry and attempted to pull something from their waists so Arnold hacked him.[12]

Decision of the RTC

On October 23, 2001, the RTC convicted the accused of murder, but appreciated voluntary surrender as a mitigating circumstance in favor of Hermogenes, *viz*:

In the light of all the foregoing considerations, accused Arnold Avengoza, Felix Avengoza, *alias* Alex, Rico del Castillo, Joven del Castillo, Hermogenes del Castillo, *alias* Menes and Melanio del Castillo are all hereby found Guilty beyond reasonable doubt of the crime of Murder as defined and punished under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 charged in these three cases namely: Criminal Case No. 10839, Criminal Case No. 10840 and Criminal Case No. 10841.

Wherefore, accused Arnold Avengoza, Felix Avengoza, Rico del Castillo, Joven del Castillo and Melanio del Castillo are sentenced in each of the above mentioned criminal cases to suffer the imprisonment of *reclusion perpetua* together with all the accessory penalties inherent therewith and to pay the costs. With respect to accused Hermogenes del Castillo, considering the presence of mitigating circumstance of voluntary surrender in his favor and further applying the provisions of the Indeterminate Sentence Law, in each of the aforesaid criminal cases, he is hereby sentenced to imprisonment of Fourteen (14) Years, Eight (8) Months and One (1) Day as minimum to Twenty (20) Years of *reclusion temporal* as maximum together with its inherent accessory penalties.

As to the civil aspects of these cases, in Criminal Case No. 10839, all the herein accused are directed to jointly and severally indemnify

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[12] *Rollo,* pp. 47-49.

the heirs of Sabino Guinhawa the amount of ₱58,510,00 as actual funeral expenses and the sum of ₱75,000.00 as moral damages. In Criminal Case No. 10840, all the herein accused are directed to indemnify jointly and severally the heirs of Graciano Delgado with the sum of ₱51,510.00 as actual funeral expenses and ₱75,000.00 as moral damages. And in Criminal Case No. 10841, all the above-named accused are further directed to indemnify the heirs of Victor Noriega with the sum of ₱53,395.00 as actual funeral expenses and the amount of ₱75,000.00 as moral damages.

Finally, let accused Hermogenes del Castillo be credited with his preventive imprisonment if he is entitled to any.

SO ORDERED.[13]

Decision of the CA

The accused appealed to the Court of Appeals (CA) upon the following assigned errors, to wit:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ALL THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FACT THAT TWO OF THE ACCUSED-APPELLANTS HAVE ALREADY ADMITTED KILLING THE THREE VICTIMS IN DEFENSE OF WINIFREDA DEL CASTILLO.

II.

THE COURT *A QUO* GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCES OF SELF-DEFENSE AND DEFENSE OF STRANGERS IN FAVOR OF ACCUSED-APPELLANTS ARNOLD AVENGOZA AND JOVEN DEL CASTILLO.

III.

THE COURT *A QUO* GRAVELY ERRED IN AWARDING ACTUAL AND MORAL DAMAGES DESPITE THE LACK OF EVIDENCE TO SUPPORT THE SAME.

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[13] CA *rollo,* pp. 39-40.

On April 28, 2005, the CA affirmed the convictions, correcting only the awards of damages and the penalty imposed on Hermogenes,[14] to wit:

> WHEREFORE, the decision of the trial court is *AFFIRMED* with *MODIFICATIONS* that appellant Hermogenes Del Castillo is sentenced to suffer the penalty of *reclusion perpetua* and all the accused are ordered to pay jointly and severally the sum of ₱50,000.00 as civil indemnity, the sum of ₱50,000.00 as moral damages to the heirs of each victim; the sum of ₱15,000.00 and ₱8,000.00 as actual damages to the heirs of Sabino Guinhawa and Graciano Delgado, respectively, and ₱10,000.00 as nominal damages to the heirs of Victor Noriega.
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> SO ORDERED.

Issues

Hence, the accused have come to us in a final appeal, submitting that because Arnold and Joven had already admitted killing the victims, the rest of them should be exculpated; that Arnold and Joven should be absolved of criminal liability because they acted in self-defense and defense of strangers; and that conspiracy among them was not proven.[15]

Ruling

The conviction of appellants is affirmed, but the damages awarded and their corresponding amounts are modified in conformity with prevailing jurisprudence.

I.

Factual findings of the RTC and CA are accorded respect

Both the RTC and the CA considered Perfinian's eyewitness testimony credible.

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[14] *Rollo*, pp. 3-27; penned by Associate Justice Mariano C. Del Castillo (now a Member of the Court), with Associate Justice Regalado E. Maambong (deceased) and Associate Justice Magdangal M. De Leon, concurring.

[15] *Id.*, pp. 49-57.

We concur with both lower courts.

We reiterate that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of the trial judge's unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not.[16] Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[17]

The accused did not present any fact or circumstance of weight that the RTC or the CA overlooked, misapprehended, or misinterpreted that, if considered, would alter the result herein. Accordingly, we have no reason to disregard their having accorded total credence to Perfinian's eyewitness account of the killings. In contrast, we have the bare denials of Melanio, Hermogenes, Felix, and Rico, but such denials were weak for being self-serving and unnatural. Their own actuations and conduct following the attack even confirmed their guilt, for had Melanio, Felix, and Rico been innocent, it was puzzling that they had to suddenly abandon their homes to go to Antipolo City in Rizal. Their explanation for the hasty departure - that Arnold and Joven warned them to leave because dead bodies had been found near Melanio's house, and they might be implicated - was unnatural and contrary to human nature. The normal reaction of innocent persons was not to run away, or instead to report to the police whatever they knew about the dead bodies. In any case, they did not need to be apprehensive about being implicated if they had no participation in the crimes.

The lower courts correctly evaluated the evidence. To us, Perfinian's identification of all the accused as the perpetrators

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[16] *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 392.

[17] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 293; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

was positive and reliable for being based on his recognition of each of them during the incident. His being familiar with each of them eliminated any possibility of mistaken identification. He spotted them from a distance of only six meters away under a good condition of visibility (*i.e.*, the moon then being "very bright"). Consequently, their denials and *alibi* were properly rejected.

Likewise, Perfinian detailed the distinct acts done by each of the accused during their assault. Such recollection of the fatal events was categorical and strong, and there was no better indicator of the reliability and accuracy of his recollection than its congruence with the physical evidence adduced at the trial. For one, the results of the post-mortem examinations showing that the victims had sustained multiple stab and hack wounds (*i.e.*, Sabino sustained 11 hack wounds and 12 stab wounds; Graciano suffered four stab wounds and a hack wound; and Victor had three hack wounds) confirmed his testimonial declarations about the victims having been repeatedly stabbed and hacked.[18] Also, the blood-stained bolos and blood-stained clothing recovered from the possession of the accused confirmed his declarations that the accused had used bolos in inflicting deadly blows on their victims.

It is notable, on the other hand, that the Defense did not challenge the sincerity of Perfinian's eyewitness identification. The accused did not show if Perfinian had harbored any ill-feeling towards any or all of them that he was moved to testify falsely against them. Any such ill-feeling was even improbable in light of the revelation that he and Hermogenes had spiritual bonds as *compadres*. Without such showing by the Defense, therefore, Perfinian was presumed not to have been improperly actuated, entitling his incriminating testimony to full faith and credence.[19]

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[18] Records, pp. 186-187, 190, and 193.

[19] *Ardonio v. People*, G.R. No. 134596, September 21, 2001, 365 SCRA 579, 583-584.

II.

Arnold and Joven did not act in self-defense and in defense of strangers

In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (*a*) unlawful aggression on the part of the victim; (*b*) reasonable necessity of the means employed to prevent or repel it; and (*c*) lack of sufficient provocation on the part of the person defending himself.[20] On the other hand, the requisites of defense of strangers are, namely: (*a*) unlawful aggression by the victim; (*b*) reasonable necessity of the means to prevent or repel it; and (*c*) the person defending be not induced by revenge, resentment, or other evil motive.[21]

In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing, because there would be nothing to repel.[22] The character of the element of unlawful aggression has been aptly described in *People v. Nugas*,[23] as follows:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (*a*) there must be a physical or material

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[20] Article 11 (1), *Revised Penal Code*.

[21] Article 11 (2), *Revised Penal Code*.

[22] *Calim v. Court of Appeals*, G.R. No. 140065, February 13, 2001, 351 SCRA 559, 571.

[23] G.R. No. 172606, November 23, 2011.

attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

By invoking self-defense and defense of strangers, Arnold and Joven in effect admitted their parts in killing the victims. The rule consistently adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.[24] The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the *onus probandi* shifts to the accused, for self-defense is an

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[24] *People v. Capisonda,* 1 Phil. 575 (1902); *People v. Baguio,* 43 Phil. 683 (1922); *People v. Silang Cruz,* 53 Phil. 625 (1929); *People v. Gutierrez,* 53 Phil. 609 (1929); *People v. Embalido,* 58 Phil. 152 (1933); *People v. Dorico,* No. L-31568, November 29, 1973, 54 SCRA 172, 183; *People v. Boholst-Caballero,* G.R. No. L-23249, November 25, 1974, 61 SCRA 180, 186. *People v. Quiño,* G.R. No. 105580, May 17, 1994, 232 SCRA 400, 403; *People v. Camacho,* G.R. No. 138629, June 20, 2001, 359 SCRA 200, 207; *People v. Galvez,* G.R. No. 130397, January 17, 2002, 374 SCRA 10, 16; *People v. Mayingque,* G.R. No. 179709, July 6, 2010, 624 SCRA 123.

affirmative allegation that must be established with certainty by sufficient and satisfactory proof.[25] He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, considering that the Prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing.[26]

Arnold and Joven did not discharge their burden.

Arnold and Joven did not adequately prove unlawful aggression; hence, neither self-defense nor defense of stranger was a viable defense for them. We note that in addition to the eyewitness account of Perfinian directly incriminating them, their own actuations immediately after the incident confirmed their guilt beyond reasonable doubt. As the CA cogently noted,[27] their flight from the neighborhood where the crimes were committed, their concealing of the weapons used in the commission of the crimes, their non-reporting of the crimes to the police, and their failure to surrender themselves to the police authorities fully warranted the RTC's rejection of their claim of self-defense and defense of stranger.

Winifreda's testimonial claim that the victims were the aggressors deserves no consideration. Her story was that one of the victims had tried to attack her with a *balisong*.[28] Yet, her story would not stand scrutiny because of the fact that no such weapon had been recovered from the crime scene; and because of the fact that none of the accused had substantiated her thereon.

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[25] *People v. Gelera,* G.R. No. 121377, August 15, 1997, 277 SCRA 450, 461.

[26] *People v. Molina,* G.R. No. 59436, August 28, 1992, 213 SCRA 52, 65; *People v. Alapide,* G.R. No. 104276, September 20, 1994, 236 SCRA 555, 560; *People v. Albarico,* G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211; *People v. Camahalan,* G.R. No. 114032, February 22, 1995, 241 SCRA 558, 569.

[27] *Rollo,* p. 21.

[28] TSN, April 24, 2001 pp. 10-11.

Neither Arnold nor Joven attested in court seeing any of the victims holding any weapon.[29]

Nonetheless, even if we were to believe Arnold and Joven's version of the incident, the element of unlawful aggression by the victims would still be lacking. The allegation that one of the victims had held Winifreda's hand did not indicate that the act had gravely endangered Winifreda's life. Similarly, the victims' supposed motion to draw something from their waists did not put Arnold and Joven's lives in any actual or imminent danger. What the records inform us is that Arnold and Joven did not actually see if the victims had any weapons to draw from their waists. That no weapons belonging to the victims were recovered from the crime scene confirmed their being unarmed. Lastly, had they been only defending themselves, Arnold and Joven did not tell the trial court why they had repeatedly hacked their victims with their bolos; or why they did not themselves even sustain any physical injury. Thus, the CA and the RTC rightly rejected their plea of self-defense and defense of stranger, for the nature and the number of wounds sustained by the victims were important *indicia* to disprove self-defense.[30]

III.

The State duly established conspiracy and abuse of superior strength

The CA upheld the RTC's finding that conspiracy and abuse of superior strength were duly established.

We affirm the CA.

The accused, armed with bolos, surrounded and attacked the victims, and pursued whoever of the latter attempted to escape from their assault. Thereafter, the accused, except Hermogenes, fled their homes and together hastily proceeded to Antipolo,

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[29] TSN, March 9, 2001 p. 12.

[30] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 552.

Rizal. Their individual and collective acts prior to, during and following the attack on the victims reflected a common objective of killing the latter. Thereby, all the accused, without exception, were co-conspirators.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[31] Conspiracy is either express or implied. Thus, the State does not always have to prove the actual agreement to commit the crime in order to establish conspiracy, for it is enough to show that the accused acted in concert to achieve a common purpose. Conspiracy may be deduced from the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[32] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[33] Once a conspiracy is established, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[34]

In view of the foregoing, the Court rejects the pleas for exculpation of the other accused grounded on their respective *alibis* considering that Arnold and Joven's admission of sole

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[31] Article 8, second paragraph, *Revised Penal Code*.

[32] *Angeles, Jr. v. Court of Appeals,* G.R. No. 101442, March 28, 2001, 355 SCRA 509, 518.

[33] *People v. Estorco,* G.R. No. 111941, April 27, 2000, 331 SCRA 38, 50.

[34] *People v. De Jesus,* G.R. No. 134815, May 27, 2004, 429 SCRA 384, 404; *People v. Masagnay,* G.R. No. 137264, June 10, 2004, 431 SCRA 572, 580.

responsibility for the killings did not eliminate their liability as co-conspirators.

Abuse of superior strength is an aggravating circumstance that qualifies the killing of a person to murder.[35] It is present if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength. Superiority in strength may refer to the number of aggressors and weapons used.[36]

A gross disparity of forces existed between the accused and the victims. Not only did the six accused outnumber the three victims but the former were armed with bolos while the latter were unarmed. The accused clearly used their superiority in number and arms to ensure the killing of the victims. Abuse of superior strength is attendant if the accused took advantage of their superiority in number and their being armed with bolos.[37] Accordingly, the crimes committed were three counts of murder.

The CA concluded that the mitigating circumstance of voluntary surrender should not be appreciated in favor of Hermogenes.

In order that voluntary surrender is appreciated as a mitigating circumstance, the following requisites must concur: (*a*) the accused has not been actually arrested; (*b*) the accused surrenders himself to a person in authority or the latter's agent; and (*c*) surrender is voluntary.[38] The third requisite requires the surrender to be spontaneous, indicating the intent of the accused to

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[35] Article 248 (1), *Revised Penal Code*.

[36] *People v. Carpio*, G.R. Nos. 82815-16, October 31, 1990, 191 SCRA 108, 119.

[37] *People v. Ballabare*, G.R. No. 108871, November 19, 1996, 264 SCRA 350, 370.

[38] *People v. Ignacio*, G.R. No. 134568, February 10, 2000, 325 SCRA 375, 384.

unconditionally submit himself to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expenses necessary for his search and capture.[39]

Although Hermogenes went to Barangay Chairman Aloria of Bulihan after the killings, he did so to seek protection against the retaliation of the victims' relatives, not to admit his participation in the killing of the victims.[40] Even then, Hermogenes denied any involvement in the killings when the police went to take him from Chairman Aloria's house.[41] As such, Hermogenes did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killings or in order to save the authorities the trouble and expense for his arrest.[42]

Nonetheless, any determination of whether or not Hermogenes was entitled to the mitigating circumstance of voluntary surrender was vain in light of the penalty for murder being *reclusion perpetua* to death under Article 248 of the *Revised Penal Code*, as amended by Republic Act No. 7659. Due to both such penalties being indivisible, the attendance of mitigating or aggravating circumstances would not affect the penalties except to aid the trial court in pegging the penalty to *reclusion perpetua* if the only modifying circumstance was mitigating, or the mitigating circumstances outnumbered the aggravating circumstances; or to prescribe the death penalty (prior to its prohibition under Republic Act No. 9346[43]) should there be at least one aggravating

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[39] *Id.;* see also *People v. Lagrana*, No. 68790, January 23, 1987, 147 SCRA 281, 285.

[40] TSN, March 9, 2001, p. 20.

[41] *Id.*, p. 17.

[42] *Dela Cruz v. Court of Appeals*, G.R. No. 139150, July 20, 2001, 361 SCRA 636, 650.

[43] *An Act Prohibiting The Imposition of Death Penalty in The Philippines, repealing Republic Act 8177 otherwise known as the Act Designating Death By Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees* (The law was signed on June 24, 2006).

circumstance and there was no mitigating circumstance, or the aggravating circumstances outnumbered the mitigating circumstances. This effect would conform to Article 63, (2), of the *Revised Penal Code*, to wit:

> Article 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.
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> **In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:**
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> x x x x x x x x x
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> **2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.**
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> x x x x x x x x x

IV.

Civil liability

The awards of civil indemnity and moral damages are also proper, but their corresponding amounts should be increased to ₱75,000.00 in line with prevailing jurisprudence.[44] The actual damages of ₱15,000.00 and ₱8,000.00 granted to the heirs of Sabino and Graciano, respectively, were also warranted due to their being proven by receipts.[45] However, the Court has held that when actual damages proven by receipts amount to less than ₱25,000.00, as in the case of Sabino and Graciano, the award of temperate damages amounting to ₱25,000.00 is justified

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[44] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255; *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769.

[45] *People v. De Castro*, G.R. No. 142467, June 10, 2003, 403 SCRA 543, 557.

in lieu of actual damages for a lesser amount.[46] This is based on the sound reasoning that it would be anomalous and unfair that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 only would be put in a worse situation than others who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages.[47] Hence, instead of only ₱15,000.00 and ₱8,000.00, the amount of ₱25,000.00 as temperate damages should be awarded each to the heirs of Sabino and Graciano.

The heirs of Victor did not present receipts proving the expenses they incurred by virtue of Victor's death. Nonetheless, it was naturally expected that the heirs had spent for the wake and burial of Victor. Article 2224 of the *Civil Code* provides that temperate damages may be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. Hence, in lieu of nominal damages of ₱10,000.00 awarded by the CA, temperate damages of ₱25,000.00 are awarded to the heirs of Victor.

Exemplary damages of ₱30,000.00 should be further awarded to the heirs of the victims because of the attendant circumstance of abuse of superior strength. Under Article 2230 of the *Civil Code,* exemplary damages may be granted when the crime was committed with one or more aggravating circumstance. It was immaterial that such aggravating circumstance was necessary to qualify the killing of each victim as murder.[48]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 28, 2005, with the following **MODIFICATIONS,** to wit: (*a*) the civil indemnity and moral damages are each increased to ₱75,000.00; (*b*) temperate damages of ₱25,000.00 is granted, respectively, to the heirs of Sabino

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[46] *Mahawan v. People*, G.R. No. 176609, December 6, 2008, 574 SCRA 737, 756.

[47] *Id*.

[48] See *People v. Catubig,* G.R. No. 137842, August 23, 2001, 363 SCRA 621, 631.

and Graciano in lieu of actual damages; (*c*) instead of nominal damages, temperate damages of ₱25,000.00 is awarded to the heirs of Victor; and (*d*) ₱30,000.00 as exemplary damages is given, respectively, to the heirs of Sabino, Graciano and Victor.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 170839. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERON DE LOS SANTOS *y* MARISTELA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; WHERE TESTIMONIES OF WITNESSES CONSTITUTED STRONG EVIDENCE OF THE POSSESSION OF *SHABU*.— To begin with, Delos Santos waived the objection by not raising it during the trial. Equally significant in this regard is that he expressly admitted during the trial his actual possession of the box containing the *shabu*. His admission thereby rendered the testimony of the security guard unnecessary and superfluous. Moreover, it is erroneous for him to treat the testimonies of NBI agent Esmeralda and building security supervisor Zabat as hearsay as to his possession

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[*] Vice Justice Mariano C. Del Castillo, who penned the decision of the Court of Appeals, per raffle of January 16, 2012.

of the *shabu*. They were actually eyewitnesses as far as the physical turn-over of the *shabu* seized from Delos Santos was concerned. That physical turn-over directly linked Delos Santos to the *shabu* presented and admitted as evidence at the trial. As such, the turn-over constituted strong evidence of the possession of the *shabu* by Delos Santos.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972 (R.A. 6425); PROOF OF *ANIMUS POSSIDENDI* IS INDISPENSABLE IN A PROSECUTION FOR POSSESSION OF ILLEGAL SUBSTANCES.— In a prosecution for possession of illegal substances, proof of *animus possidendi* on the part of the accused is indispensable. But *animus possidendi* is a state of mind, and is thus to be determined on a case-to-case basis by taking into consideration the prior and contemporaneous acts of the accused, as well as the surrounding circumstances. It may and must be inferred usually from the attendant events in each particular case. Upon the State's presenting to the trial court of the facts and circumstances from which to infer the existence of *animus possidendi*, it becomes incumbent upon the Defense to rebut the inference with evidence that the accused did not exercise power and control of the illicit thing in question, and did not intend to do so. For that purpose, a mere unfounded assertion of the accused that he did not know that he had possession of the illegal drug is insufficient, and *animus possidendi* is then presumed to exist on his part because he was thereby shown to have performed an act that the law prohibited and punished.

3. ID.; ID.; ID.; *ANIMUS POSSIDENDI*, DULY ESTABLISHED.— It cannot be disputed that Delos Santos had *animus possidendi*. His conduct prior to and following his apprehension evinced his guilty knowledge of the contents of the gift-wrapped box as *shabu*. His uncorroborated story of having been summoned to help in the cleaning of Unit 706 was a sham excuse that he peddled to explain his presence in the Somerset Condominium. His explanation was useless, however, because he was no longer employed as a janitor of the Somerset Condominium at the time of his arrest after being already terminated from employment. Correlatively, his willingness to run for Wilson the errand of delivering the gift-wrapped box to the unnamed person near the Jollibee Vito Cruz extension branch proved that he was serving as a courier

of *shabu*. Besides, his guilty knowledge was confirmed by his unreasonable refusal to exit from Unit 706 despite the demand of the NBI agents to do so, and by his stealthy transfer to the adjoining Unit 705. Had he been truly innocent, he would have voluntarily cooperated with the NBI agents instead of attempting to escape from them.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The mere denial of knowledge that a substance is a regulated drug is insufficient to exculpate the person found in possession of it, for he must have to satisfactorily explain how the drug came to his possession. Without his satisfactory explanation, he will be presumed to have *animus possidendi*, or the intent to possess. His guilt will then be established beyond reasonable doubt.

An alert security guard halted Geron Delos Santos *y* Maristela as he was about to bring a gift-wrapped box out of the Somerset Condominium in Leveriza Street, Pasay City. When Delos Santos opened the box for inspection upon demand of the security guard, the box contained plastic bags with 6.2 kilograms of suspected *shabu*. The security guard forthwith apprehended Delos Santos and impounded the box and its contents. The National Bureau of Investigation (NBI) was immediately notified of the incident, and it dispatched its agents to the place.

Subsequently, Delos Santos was charged with a violation of Section 16 of Republic Act No. 6425 (*Dangerous Drugs Act of 1972*), the information averring as follows:

That on or about the 26th day of December 2000, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of

law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control 6.02 kilograms of Metamphetamine Hydrochloride (*shabu*), a regulated drug, without the corresponding prescription.

CONTRARY TO LAW.[1]

Delos Santos pleaded *not guilty* to the crime charged.[2]

The State presented Atty. Reynaldo Esmeralda (Esmeralda), then of the NBI Special Task Force. Esmeralda testified that he received on December 26, 2000 a call from a confidential informant telling him that the security guard of Somerset Condominium had apprehended a certain Geron Delos Santos for transporting approximately seven kilograms of suspected *shabu*;[3] that he and his fellow NBI agents proceeded to Somerset Condominium in Leveriza Street, Pasay City, where they met with the security officer, the building manager and Delos Santos;[4] that the NBI agents took custody of the carton-box containing seven plastic cellophane bags of alleged *shabu*,[5] and forwarded the bags and the contents to the NBI Forensic Chemistry Division for testing purposes;[6] that they next proceeded to Unit 706 because of the information from Delos Santos that he had gotten the carton-box of *shabu* from someone in that unit;[7] that they let Delos Santos enter Unit 706 through a small window, but once inside Delos Santos refused to come out despite warnings, compelling the NBI agents to summon the maintenance man of the building in order to forcibly open the door of the unit; that Delos Santos was not inside Unit 706, and they eventually found and seized him in the nearby Unit 705 that he had entered through

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[1] Records, p. 2.

[2] *Id.*, pp. 21-22.

[3] TSN, August 28, 2001, p. 4.

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

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

[6] *Id.*

[7] *Id.*, pp. 7-8.

another window;[8] and that they recovered approximately 250 kilos of *shabu* inside Unit 706, an inventory of which they duly conducted.[9]

Richard Zabat (Zabat), the security supervisor of Somerset Condominium, stated that at around 12:45 in the afternoon of December 26, 2000, the security guard on duty called his attention regarding Delos Santos and the suspicious-looking package Delos Santos was carrying;[10] that going to the lobby of the Somerset Condominium he saw Delos Santos and the package containing the suspected *shabu*; that he reported the matter to the general manager of the condominium who in turn informed the NBI;[11] that after a while, the NBI agents arrived and looked for the source of the *shabu* in Unit 706 as mentioned by Delos Santos;[12] that the NBI agents let Delos Santos enter Unit 706 through a small window in the washing area; that because Delos Santos refused to come out afterwards, the NBI agents summoned the maintenance man to force the door open; that he and the NBI agents then entered Unit 706 along with the manager;[13] and that several kilos of suspected *shabu* were recovered inside Unit 706, which the NBI agents forthwith seized.[14]

NBI forensic chemist Mary-Ann T. Aranas conducted the laboratory examination of the confiscated substances, and issued Dangerous Drugs Report No. DD-00-1404[15] confirming that the substances were positive for the presence of methamphetamine hydrochloride, a regulated drug.

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[8] *Id.,* pp. 8-9.

[9] *Id.,* pp. 9-10.

[10] TSN, October 4, 2001, p. 5.

[11] *Id.,* pp. 5-6.

[12] *Id.,* pp. 7-8.

[13] *Id.,* pp. 9-10.

[14] *Id.,* pp. 10-11.

[15] Exhibit K.

On his part, Delos Santos denied the accusation, claiming that while he was cleaning at the ground floor of the condominium the occupant of Unit 706 called the guard on duty to ask for help in cleaning the unit;[16] that he was summoned to do the chore, and while he was waiting outside Unit 706, a non-tenant known to him only as Wilson requested him to bring the gift-wrapped box to someone near the Jollibee Vito Cruz extension branch;[17] that when he was already downstairs, the security guard on duty wanted to check the gift-wrapped box; that he voluntarily handed the box for inspection; that the security guard opened the box in his presence and discovered the *shabu*; that he told the security guard on duty that he had no knowledge of the contents of the box and was only instructed by Wilson to deliver it;[18] that upon the arrival of the NBI agents, he told them that the box had come from Unit 706; that the NBI agents proceeded to Unit 706 and found more *shabu* contained in four large suitcases, four small suitcases, and small bags;[19] and that the NBI agents demanded the keys of the unit from him but he replied that he did not have any key because he was a mere janitor of the building.[20]

On June 25, 2004, the Regional Trial Court, Branch 119, in Pasay City (RTC) convicted Delos Santos as charged, *viz*:

> WHEREFORE, finding the accused, Geron Delos Santos *y* Maristela, guilty beyond reasonable doubt of the crime of violation of Section 16, Article III, Republic Act 6425, as amended by Republic Act 7659, the Court sentences him to suffer a prison term of *reclusion perpetua* and to pay the fine of ₱500,000.00.
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> SO ORDERED.[21]

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[16] TSN, July 28, 2003, pp. 3-4.

[17] *Id.*, pp. 4-6.

[18] *Id.*, pp. 7-8.

[19] *Id.*, pp. 10-12.

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

[21] Records, p. 246.

Delos Santos appealed, contending that:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE EVIDENCE AGAINST THE ACCUSED-APPELLANT AS HEARSAY;

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE EVIDENT FACT THAT HE DID NOT KNOWINGLY POSSESS THE PROHIBITED DRUGS.

On October 28, 2005, however, the Court of Appeals (CA) affirmed the RTC by finding that Delos Santos' admission of possession of the gift-wrapped box containing the *shabu* was a solid basis for his conviction; that the testimony of the apprehending security guard who had found the gift-wrapped box containing the *shabu* was not necessary for his conviction; that the objection to the testimonies of NBI agent Esmeralda and security supervisor Zabat on the ground of being hearsay was waived and could not be made for the first time on appeal; and that Delos Santos' acts prior to and following his arrest indicated that he had *animus possidendi*.[22]

Delos Santos is now before the Court insisting that the CA erred in affirming the decision of the RTC.

Ruling

The appeal lacks merit.

Firstly, Delos Santos objects to the testimonies of NBI agent Esmeralda and building security supervisor Zabat on the discovery of the *shabu* as hearsay. He asserts that the State consequently had no evidence with which to establish his guilt beyond

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[22] *Rollo,* pp. 3-19; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and Member of the Court, since retired), with the concurrence of Associate Justice Hakim S. Abdulwahid and Associate Justice Aurora Santiago-Lagman (retired).

reasonable doubt in view of the failure to present the apprehending security guard as a witness against him.

The objection deserves no consideration. To begin with, Delos Santos waived the objection by not raising it during the trial. Equally significant in this regard is that he expressly admitted during the trial his actual possession of the box containing the *shabu*. His admission thereby rendered the testimony of the security guard unnecessary and superfluous. Moreover, it is erroneous for him to treat the testimonies of NBI agent Esmeralda and building security supervisor Zabat as hearsay as to his possession of the *shabu*. They were actually eyewitnesses as far as the physical turn-over of the *shabu* seized from Delos Santos was concerned. That physical turn-over directly linked Delos Santos to the *shabu* presented and admitted as evidence at the trial. As such, the turn-over constituted strong evidence of the possession of the *shabu* by Delos Santos.

And, secondly, Delos Santos contends that the State did not establish that he had *animus possidendi*, or the intent to possess the regulated substances in question.

The contention is not correct.

In a prosecution for possession of illegal substances, proof of *animus possidendi* on the part of the accused is indispensable. But *animus possidendi* is a state of mind, and is thus to be determined on a case-to-case basis by taking into consideration the prior and contemporaneous acts of the accused, as well as the surrounding circumstances. It may and must be inferred usually from the attendant events in each particular case.[23] Upon the State's presenting to the trial court of the facts and circumstances from which to infer the existence of *animus possidendi*, it becomes incumbent upon the Defense to rebut the inference with evidence that the accused did not exercise power and control of the illicit thing in question, and did not intend to do so. For that purpose, a mere unfounded assertion of the accused that he did not know that he had possession of

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[23] *People v. Burton*, G.R. No. 114396, February 19, 1997, 268 SCRA 531, 550-551.

the illegal drug is insufficient,[24] and *animus possidendi* is then presumed to exist on his part because he was thereby shown to have performed an act that the law prohibited and punished.[25]

It cannot be disputed that Delos Santos had *animus possidendi*. His conduct prior to and following his apprehension evinced his guilty knowledge of the contents of the gift-wrapped box as *shabu*. His uncorroborated story of having been summoned to help in the cleaning of Unit 706 was a sham excuse that he peddled to explain his presence in the Somerset Condominium. His explanation was useless, however, because he was no longer employed as a janitor of the Somerset Condominium at the time of his arrest after being already terminated from employment.[26] Correlatively, his willingness to run for Wilson the errand of delivering the gift-wrapped box to the unnamed person near the Jollibee Vito Cruz extension branch proved that he was serving as a courier of *shabu*. Besides, his guilty knowledge was confirmed by his unreasonable refusal to exit from Unit 706 despite the demand of the NBI agents to do so, and by his stealthy transfer to the adjoining Unit 705. Had he been truly innocent, he would have voluntarily cooperated with the NBI agents instead of attempting to escape from them.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on October 28, 2005 finding **GERON DELOS SANTOS *y* MARISTELA** guilty beyond reasonable doubt of the violation of Section 16 of Republic Act 6425, as amended by Republic Act No. 7659.

The accused shall pay the costs of suit.

SO ORDERED.

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

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[24] *Id*.

[25] *Garcia v. Court of Appeals,* G.R. No. 157171, March 14, 2006, 484 SCRA 617, 623; citing *United States v. Apostol,* 14 Phil 92, 93 (1909).

[26] TSN, August 28, 2001, p. 12.

FIRST DIVISION

[G.R. No. 173794. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARWIN RELATO *y* AJERO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); PROCEDURE TO BE FOLLOWED IN THE SEIZURE AND CONFISCATION OF PROHIBITED DRUGS, NOT COMPLIED WITH.— A review of the records establishes that the aforestated procedure laid down by Republic Act No. 9165 and its IRR was not followed. Several lapses on the part of the buy-bust team are readily apparent. To start with, no photograph of the seized *shabu* was taken. Secondly, the buy-bust team did not immediately mark the seized *shabu* at the scene of the crime and in the presence of Relato and witnesses. Thirdly, although there was testimony about the marking of the seized items being made at the police station, the records do not show that the marking was done in the presence of Relato or his chosen representative. And, fourthly, no representative of the media and the Department of Justice, or any elected official attended the taking of the physical inventory and to sign the inventory. Under the foregoing rules, the marking immediately after seizure is the starting point in the custodial link, because succeeding handlers of the prohibited drugs or related items will use the markings as reference. It further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence. It is crucial in ensuring the integrity of the chain of custody[.]

2. ID.; ID.; ID.; FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY IS FATAL; ACCUSED DESERVES EXCULPATION.— While the last paragraph of Section 21(*a*) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence, it is significant

to note that the application of the saving mechanism to a situation is expressly conditioned upon the State rendering an explanation of the lapse or lapses in the compliance with the procedures. Here, however, the Prosecution tendered no explanation why the buy-bust team had failed to mark the seized *shabu* immediately after the arrest. Nevertheless, even assuming that marking the *shabu* at the scene of the crime by the buy-bust team had not been practical or possible for the buy-bust team to do, the saving mechanism would still not be applicable due to the lack of a credible showing of any effort undertaken by the buy-bust team to keep the *shabu* intact while in transit to the police station. The procedural lapses committed by the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused. They highlighted the failure of the Prosecution to establish the chain of custody, by which the incriminating evidence would have been authenticated. An unavoidable consequence of the non-establishment of the chain of custody was the serious doubt on whether the *shabu* presented as evidence was really the *shabu* supposedly seized from Relato. In a prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165 the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. Thus, Relato deserves exculpation, especially as we recall that his defense of frame-up became plausible in the face of the weakness of the Prosecution's evidence of guilt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of prohibited drugs.

Darwin Relato *y* Ajero is now before the Court in a final plea for exoneration from his conviction for violating Section 5 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*). Policemen had arrested him on August 29, 2002 during a buy-bust operation and the Office of the Provincial Prosecutor of Sorsogon had forthwith charged him with the offense on August 30, 2002 in the Regional Trial Court (RTC), Branch 65, in Bulan, Sorsogon as follows:

> That on or about the 29th day of August, 2002 at about 11:00 o'clock in the evening, in Barangay Aquino, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously, sell, dispense and deliver to a PNP asset disguised as poseur-buyer, two (2) plastic sachets of methamphetamine hydrochloride "*shabu*" weighing 0.0991 gram, for and in consideration of the sum of FIVE HUNDRED PESOS (₱500.00), the serial number of which was previously noted, without having been previously authorized by law to sell or deliver the same.
>
> CONTRARY TO LAW.[1]

Upon pleading *not guilty* to the information on November 19, 2002,[2] Relato was tried.

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[1] Records, p. 1.

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

Version of the Prosecution

At 6:00 pm of August 29, 2002, PO3 Sonny Evasco of the Bulan Police Station received a tip from his asset to the effect that Relato would be peddling illegal drugs around midnight in Barangay Aquino, Zone 7, Bulan, Sorsogon. PO3 Evasco immediately reported the tip to SPO1 Elmer Masujer, the chief of the Intelligence Department of the police station. In turn, SPO1 Masujer formed a team to conduct a buy-bust operation against Relato consisting of himself, PO3 Evasco, PO1 Wilfredo Lobrin and SPO2 Adolfo Villaroza. SPO1 Masujer prepared a ₱500.00 bill to be the buy-bust money by marking the bill with his initials.[3]

The team waited for the informant to call again. At 10:00 pm, PO3 Evasco finally received the call from his asset, who confirmed that the proposed transaction would take place beside the lamp post near the ice plant in Barangay Aquino. With that, the team hastened to the site. PO3 Evasco and SPO2 Villaroya concealed themselves about seven to 10 meters from the lamp post, while SPO1 Masujer and PO1 Lobrin provided area security from about 10 to 15 meters away from where PO3 Evasco and SPO2 Villaroya were.

A few minutes later, Relato and a companion (later identified as Pido Paredes) arrived together on board a motorcycle. Relato alighted to confer with the asset who was the poseur buyer. After the transaction was completed, PO3 Evasco signaled to the rest of the team, who drew near and apprehended Relato. Seized from Relato was the marked ₱500.00 buy-bust bill. The poseur buyer turned over to PO3 Evasco the two transparent sachets containing crystalline substances that Relato sold to the poseur buyer. Paredes escaped.[4]

SPO1 Masujer marked the two transparent sachets with his own initials "EM" upon returning to the police station.[5]

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[3] CA *rollo,* pp. 88-89.

[4] *Id.,* pp. 89-90.

[5] *Id.,* p. 91.

Forensic Chemical Officer Josephine Clemen of the PNP Crime Laboratory in Region V conducted the laboratory examination on the contents of the two transparent sachets and found the contents to have a total weight of 0.991 gram. She certified that the contents were positive for the presence of methamphetamine hydrochloride.[6]

Version of the Accused

Relato denied the accusation, and claimed that he had been framed up. His version follows.

At about 11:00 pm of August 29, 2002, Relato and Paredes were proceeding to his grandfather's wake in Magallanes, Sorsogon on board his motorcycle, with Paredes driving. They stopped upon reaching Barangay Aquino to allow Relato to adjust the fuel cock of the motorcycle. SPO1 Masujer suddenly appeared and put handcuffs on Relato, who resisted. The three other officers came to SPO1 Masujer's assistance and subdued Relato. SPO1 Masujer then seized Relato's 3310 Nokia cellphone, its charger, and his personal money of ₱3,500.00 in ₱500.00 bills. Relato claimed that the cellphone belonged to Paredes while the cash was a gift from an in-law. The officers boarded Relato in their jeep and haled him to the police station of Bulan.

In the station, SPO1 Masujer and PO2 Villaroya required him to remove his pants. He complied. They then searched his person but did not find anything on him. He then saw SPO1 Masujer take two sachets from his own wallet and placed them on top of a table. SPO1 Masujer then told Relato to point to the sachets, and a picture was then taken of him in that pose. In the meanwhile, Paredes notified his family about his arrest.[7]

Ruling of the RTC

On August 9, 2004, the RTC convicted Relato,[8] *viz*:

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[6] *Id.,* p. 86.

[7] CA *rollo,* pp. 48-49.

[8] *Id.,* pp. 98-99.

Prosecution having established by the required quantum of proof and with moral certainty the CULPABALITY of the herein accused to the crime as charged- HIS CONVICTION HAS BECOME INEVITABLE.

WHEREFORE, premises considered, accused Darwin Ajero *y* Relato (sic) having been found guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. No. 9165 (Repealing R.A. No. 6425 and amending R.A. 7659), is hereby sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT, absent any mitigating or aggravating circumstance (Art. 63(2), R.P.C.), with all the accessory penalties provided by law, and to pay the fine of ₱500,000.00.

All the proceeds of the crime shall be confiscated and forfeited in favor of the government to be disposed of in accordance with the provisions of Sec. 21 of R.A. 9165.

The period of the preventive imprisonment already served by the herein accused shall be credited in the service of his sentence pursuant to the provision of Art. 29 of the Revised Penal Code.

SO ORDERED.[9]

Ruling of the CA

Relato appealed to the Court of Appeals (CA), submitting that:

I

THE COURT *A QUO* ERRED IN GIVING FULL CREDENCE TO THE CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES

II

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

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

On May 24, 2006, however, the CA affirmed the conviction,[10] stating:

> In closing, there being no misappreciation of facts, distortion of evidence, and speculative, arbitrary and unsupported conclusions drawn by the court *a quo* in support of its judgment of conviction, We defer to such findings and conclusion. Thus, well- settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts (*Lim, Jr. vs. San*, 438 SCRA 102).
>
> WHEREFORE, in consideration of the foregoing disquisitions, the court *a quo's* assailed decision dated 09 August is perforce *affirmed in toto*.
>
> SO ORDERED.

Issues

Relato argues that the CA should have reversed his conviction for being contrary to the established facts, and to the pertinent law and jurisprudence.

Ruling

The appeal is meritorious.

Section 21 of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of prohibited drugs, to wit:

> 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,

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[10] *Rollo*, pp. 2-13; penned by Associate Justice Bienvenido L. Reyes (now a Member of the Court), with Associate Justice Amelita G. Tolentino and Associate Justice Mariflor Punzalan Castillo, concurring.

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;

x x x x x x x x x

The provisions of Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 provide:

x x x x x x x x x

(a) The apprehending office/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;

x x x x x x x x x

A review of the records establishes that the aforestated procedure laid down by Republic Act No. 9165 and its IRR was not followed. Several lapses on the part of the buy-bust team are readily apparent. To start with, no photograph of the seized *shabu* was taken. Secondly, the buy-bust team did not

immediately mark the seized *shabu* at the scene of the crime and in the presence of Relato and witnesses. Thirdly, although there was testimony about the marking of the seized items being made at the police station, the records do not show that the marking was done in the presence of Relato or his chosen representative. And, fourthly, no representative of the media and the Department of Justice, or any elected official attended the taking of the physical inventory and to sign the inventory.

Under the foregoing rules, the marking immediately after seizure is the starting point in the custodial link, because succeeding handlers of the prohibited drugs or related items will use the markings as reference. It further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence.[11] It is crucial in ensuring the integrity of the chain of custody, which is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[12] thus:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

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[11] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 276.

[12] *Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.*

While the last paragraph of Section 21(*a*) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence, it is significant to note that the application of the saving mechanism to a situation is expressly conditioned upon the State rendering an explanation of the lapse or lapses in the compliance with the procedures.[13] Here, however, the Prosecution tendered no explanation why the buy-bust team had failed to mark the seized *shabu* immediately after the arrest. Nevertheless, even assuming that marking the *shabu* at the scene of the crime by the buy-bust team had not been practical or possible for the buy-bust team to do, the saving mechanism would still not be applicable due to the lack of a credible showing of any effort undertaken by the buy-bust team to keep the *shabu* intact while in transit to the police station.

The procedural lapses committed by the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused.[14] They highlighted the failure of the Prosecution to establish the chain of custody, by which the incriminating evidence would have been authenticated. An unavoidable consequence of the non-establishment of the chain of custody was the serious doubt on whether the *shabu* presented as evidence was really the *shabu* supposedly seized from Relato.

In a prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165,[15] the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable

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[13] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194.

[14] *Id.;* citing *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[15] *Comprehensive Dangerous Drugs Act of 2002.*

doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.[16] Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[17] Thus, Relato deserves exculpation, especially as we recall that his defense of frame-up became plausible in the face of the weakness of the Prosecution's evidence of guilt.

WHEREFORE, we **REVERSE** the decision promulgated on May 24, 2006 affirming the decision of the Regional Trial Court of Bulan, Sorsogon, Branch 65; and **ACQUIT** accused **DARWIN RELATO *y* AJERO** due to the failure of the State to establish his guilt beyond reasonable doubt.

ACCORDINGLY, we **DIRECT** the immediate release from detention of **DARWIN RELATO *y* AJERO,** unless he is detained for some other lawful cause.

The Director of the Bureau of Corrections is ordered to implement this Decision, and to report his action hereon to this Court within 10 days from receipt hereof.

SO ORDERED.

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

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[16] *People v. Coreche,* G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[17] *People v. Sanchez,* G. R. No. 175832, October 15, 2008, 569 SCRA 194, 221.

FIRST DIVISION

[G.R. No. 175602. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PO2 EDUARDO VALDEZ and EDWIN VALDEZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED RESPECT.— Considering that the CA thereby affirmed the trial court's findings of fact, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions, the Court accords high respect, if not conclusive effect, to the CA's findings. The justification for this is that trial court was in the best position to assess the credibility of witnesses by virtue of its firsthand observation of the demeanor, conduct and attitude of the witnesses under grilling examination. The only time when a reviewing court was not bound by the trial court's assessment of credibility arises upon a showing of a fact or circumstance of weight and influence that was overlooked and, if considered, could affect the outcome of the case. No such fact or circumstance has been brought to the Court's attention. It is not trite to remind that a truth-telling witness is not always expected to give an error-free testimony because of the lapse of time and the treachery of human memory; and that inaccuracies noted in testimony may even suggest that the witness is telling the truth and has not been rehearsed. To properly appreciate the worth of testimony, therefore, the courts do not resort to the individual words or phrases alone but seek out the whole impression or effect of what has been said and done.

2. ID.; ID.; THE CONGRUENCE BETWEEN THE TESTIMONIAL AND PHYSICAL EVIDENCE RENDERED THE FINDINGS CONCLUSIVE ON THE ACCUSED.— The testimonial accounts of the State's witnesses entirely jibed with the physical evidence. Specifically, the medico-legal evidence showed that Ferdinand had a gunshot wound in the

head; that two gunshot wounds entered Joselito's back and the right side of his neck; and that Moises suffered a gunshot wound in the head and four gunshot wounds in the chest. Also, Dr. Wilfredo Tierra of the NBI Medico-Legal Office opined that the presence of marginal abrasions at the points of entry indicated that the gunshot wounds were inflicted at close range. Given that physical evidence was of the highest order and spoke the truth more eloquently than all witnesses put together, the congruence between the testimonial recollections and the physical evidence rendered the findings adverse to PO2 Valdez and Edwin conclusive.

3. ID.; ID.; CONSPIRACY WAS INFERRED FROM THE ACTS OF THE ACCUSED.— [C]onspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit the felony. Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their acts. Herein, both lower courts deduced the conspiracy between the accused from the mode and manner in which they perpetrated the killings. We are satisfied that their deduction was warranted. Based on the foregoing, PO2 Valdez cannot now avoid criminal responsibility for the fatal shooting by Edwin of Ferdinand and Joselito. Both accused were convincingly shown to have acted in concert to achieve a common purpose of assaulting their unarmed victims with their guns. Their acting in concert was manifest not only from their going together to the betting station on board a single motorcycle, but also from their joint attack that PO2 Valdez commenced by firing successive shots at Moises and immediately followed by Edwin's shooting of Ferdinand and Joselito one after the other. It was also significant that they fled together on board the same motorcycle as soon as they had achieved their common purpose. To be a conspirator, one did not have to participate in every detail of the execution; neither did he have to know the exact part performed by his co-conspirator in the execution of the criminal acts. Accordingly, the existence of the conspiracy between PO2 Valdez and Edwin was properly inferred and proved through their acts that were indicative of their common purpose and community of interest.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; EXPLAINED.— Treachery is the employment of means, methods, or forms in the execution of any of the

crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

5. ID.; ID.; ID.; THE PARTICULAR ACTS AND CIRCUMSTANCES CONSTITUTING TREACHERY MUST BE ALLEGED IN THE INFORMATION.— The averments of the informations to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did x x x assault, attack and employ personal violence upon" the victims "by then and there shooting [them] with a gun, hitting [them]" on various parts of their bodies "which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not *per se* treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term *treachery* constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations. To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare

his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice[.]

6. **ID.; ID.; ID.; EFFECTS OF NON-ALLEGATION OF THE DETAILS CONSTITUTING TREACHERY.—** A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

7. **ID.; HOMICIDE; PENALTY.—** Pursuant to Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal*. There being no circumstances modifying criminal liability, the penalty is applied in its medium period (*i.e.*, 14 years, 8 months and 1 day to 17 years and 4 months). Under the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. Hence, the Court imposes the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum for each count of homicide.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The sufficiency of the allegations of the facts and circumstances constituting the elements of the crime charged is crucial in every criminal prosecution because of the ever-present obligation of the State to duly inform the accused of the nature and cause of the accusation.

The accused were tried for and convicted of three counts of murder on January 20, 2005 by the Regional Trial Court (RTC), Branch 86, in Quezon City. They were penalized with *reclusion perpetua* for each count, and ordered to pay to the heirs of each victim ₱93,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

On appeal, the Court of Appeals (CA) upheld the RTC on July 18, 2006, subject to the modification that each accused pay to the heirs of each victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages, plus costs of suit.[1]

The accused came to the Court to seek acquittal. On May 9, 2007, however, accused Edwin Valdez filed a *motion to withdraw appeal*, which the Court granted on October 10, 2007, thereby deeming Edwin's appeal closed and terminated.[2] Hence, the Court hereby resolves only the appeal of PO2 Eduardo Valdez.

Antecedents

The Office of the City Prosecutor of Quezon City charged the two accused in the RTC with three counts of murder for the killing of Ferdinand Sayson, Moises Sayson, Jr., and Joselito Sayson, alleging:

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Renato C. Dacudao (retired), with Associate Justice Rosmari D. Carandang and Associate Justice Monina Arevalo-Zenarosa (retired), concurring.

[2] *Id.*, p. 57.

Criminal Case No. 00-90718

That on or about the 1st day of March, 2000, in Quezon City, Philippines, the above-named accused conspiring together, confederating with and mutually helping each other, with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did, then and there, willfully, unlawfully and feloniously, assault, attack and employ personal violence upon the person of one FERDINAND SAYSON *Y* DABOCOL by then and there shooting him with a gun, hitting him on his head, thereby inflicting upon him serious and mortal wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said FERDINAND SAYSON *Y* DABOCOL.

CONTRARY TO LAW.[3]

Criminal Case No. 00-90719

That on or about the 1st day of March, 2000, in Quezon City, Philippines, the above-named accused conspiring together, confederating with and mutually helping each other, with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did, then and there, willfully, unlawfully and feloniously, assault, attack and employ personal violence upon the person of one MOISES SAYSON, JR. *Y* DABOCOL by then and there shooting him several times with a gun, hitting him on his face and chest, thereby inflicting upon him serious and mortal wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said MOISES SAYSON, JR. *Y* DABOCOL.

CONTRARY TO LAW.[4]

Criminal Case No. 00-90720

That on or about the 1st day of March, 2000, in Quezon City, Philippines, the above-named accused conspiring together, confederating with and mutually helping each other, with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did, then and there, willfully, unlawfully and feloniously, assault, attack and employ personal violence upon the

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[3] *Id.,* p. 3.

[4] *Id.,* p. 3.

person of one JOSELITO SAYSON *Y* DABOCOL by then and there shooting him with a gun, hitting him on his back, thereby inflicting upon him serious and mortal wound which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said JOSELITO SAYSON *Y* DABOCOL.

CONTRARY TO LAW.[5]

The Office of the Solicitor General (OSG) summarized the State's evidence of guilt as follows:

On March 1, 2000, at around 8:00 o'clock in the evening, Estrella Sayson, (Estrella) was at the canteen (which also includes a *jai alai* betting station) located at 77 Corregidor Street, Bago Bantay, Quezon City. Estrella was preparing for the celebration of the birthday of her second husband, Wilfredo Lladones, which was held later in the evening. Estrella's son, the deceased Moises Sayson, a former policeman, and his wife, Susan Sayson (Susan) owned the said canteen and managed the betting station. At about 9:00 o'clock in the evening, Estrella's other sons Joselito Sayson (Joselito) and Ferdinand Sayson (Ferdinand) arrived at the canteen to greet their stepfather. Estrella's family and other visitors ate and enjoyed themselves at the party (pp. 3-5, TSN, November 29, 2000; pp. 3-6, TSN, February 6, 2001; pp. 3-4, TSN, July 31, 2001).

At about 10:00 o'clock in the evening, the celebration was interrupted with the arrival of Eduardo and Edwin, who alighted from a motorcycle in front of the *jai alai* fronton. Eduardo and Edwin asked the *jai alai* teller, Jonathan Rubio (Jonathan), to come out. Jonathan was then attending to customers who were buying *jai alai* tickets. Moises approached Eduardo and Edwin and tried to reason with them. Estrella saw Eduardo and Edwin armed with guns. She tried to prevent Moises from going near Edwin and Eduardo. Moises did not heed his mother's warning. He went out and advised Eduardo and Edwin not to force Jonathan to go out of the fronton. Estrella then heard one of the accused-appellants threaten Moises with the words "*Gusto mo unahin na kita?*" Moises replied "*huwag*." Successive shots were thereafter heard. Moises fell and was continuously fired upon even after he was sprawled on the ground. Ferdinand immediately approached the scene to help his brother

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[5] *Id.*

Moises. Ferdinand, however was shot on the left temporal portion of his head and fell. Somebody told Joselito to run away, but he was hit at the back while running. Joselito fell on a burger machine (pp. 7-11, TSN, November 29, 2000; pp. 6-10, TSN, February 6, 2001; pp. 5-10, TSN, July 31, 2001; pp. 2-6, September 5, 2001).

After shooting the Sayson brothers, Eduardo and Edwin escaped from the scene of the crime (p. 10, TSN, February 6, 2001).[6]

In turn, the *appellant's brief* filed by the Public Attorney's Office (PAO) rendered the version of the accused, to wit:

xxx [A]t about 10:00 o'clock in the evening, Heidi dela Cruz (a barbecue vendor) and Noel Valad-on (a tricycle driver) saw accused Edwin Valdez alight from a bus. The latter bought ₱100.00 worth of barbecue from Heidi then proceeded towards home. He was walking along Corregidor Street when Heidi saw Jun Sayson (Moises), then holding a gun, block his (Edwin's) way. Jun Sayson poked a gun at accused Edwin, shouting, '*Putang-ina mo, papatayin kita*'. The latter raised both his hands and said '*Wag kuya Jun, maawa ka*.'

Accused Eduardo Valdez (a policeman), then carrying his 6-year old child, was walking when his way was likewise blocked but this time, by the siblings Joselito and Ferdinand as well as their stepfather. Joselito twisted one of his (Eduardo's) hands at his back while his (Joseltio's) stepfather held the other. Ferdinand fired a gun but accused Eduardo was able to evade. Joselito, who was positioned behind Eduardo, was hit. He slumped and bled. He asked Heidi to inform his family that he was hit. Heidi ran away. She saw Jun (Moises) and accused Edwin grappling. Thereafter, she heard gunshots.

Accused Eduardo ducked during the firing. He pretended to be dead. Ferdinand stopped firing. Accused Eduardo's son approached him crying. Accused thereafter, brought his son home, took his service firearm and on his way back to the scene of the incident when he met General Jesus Almadin, his commanding officer (CO). He reported the incident and sought for advice. He was told to take a rest and go back on (sic) the following day. He accompanied his CO to Camp Crame. He surrendered his firearm to Sr./Insp. Rodolfo Araza of the CIU. Accused Edwin Valdez likewise surrendered (TSN dated 05 February 2003; pp. 3-9; 12 March 2003, pp. 2-16; 11 August

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[6] *Id.,* p. 5.

2003, pp. 2-18, 1 September 2003, pp. 3-10; 15 October 2003, pp. 2-8; 03 December 2003, pp. 2-4; 18 February 2004, pp. 2-9; 24 March 2004, pp. 3-9; 10 April 2004, pp. 2-7; 07 June 2004, pp. 2-25).[7]

The RTC convicted the two accused of three counts of murder and sentenced them to suffer *reclusion perpetua* for each count of murder.[8]

On appeal, the CA affirmed the convictions.[9]

Issues

In this appeal, PO2 Valdez assails the credibility of the State's witnesses by pointing to inconsistencies and weaknesses in their testimonies; challenges the finding of conspiracy between the accused; and contends that the State did not establish the qualifying circumstance of treachery.[10]

Ruling

The Court affirms the convictions, but holds PO2 Valdez guilty only of three counts of homicide due to the failure of the informations to allege the facts and circumstances constituting treachery.

First of all, PO2 Valdez insists that the State's witnesses (Susan Sayson, Marites Sayson and Estrella Sayson) did not really see the events as they transpired; and that they wrongly identified the two accused as the persons who had shot and killed the victims; and that the victims were themselves the aggressors.

The CA rejected PO2 Valdez's insistence, holding thus:

In their Brief, the accused-appellants desperately attempted to discredit the testimonies of witnesses Susan, Marites and Estrella. They claimed that a perusal of Estrella's testimony would cast doubt

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

[8] *Id.,* pp. 7-8.

[9] *Id.,* p. 17.

[10] *Id.,* p. 11.

on her statement that she actually witnessed the shooting incident. The accused-appellants claimed that Estrella Sayson did not actually see who allegedly threatened her son Moises with the words "*Gusto mo unahin na kita?*" The accused-appellants also claimed that Estrella also failed to see who shot Moises. They likewise assailed the testimonies of Susan and Marites as being incredible. They said that Susan testified that she was in a state of shock after the incident and that she could not speak; yet she was still able to give her statement on the same day the incident allegedly happened. The accused-appellants also said that Marites testified that she was only about five (5) meters away from them (accused-appellants) when they alighted from their motorcycle; but that, "interestingly," she only learned from her husband Joselito that the accused-appellants were looking for a certain Jonathan.

We are not persuaded. In her testimony, Estrella satisfactorily explained her purported failure to see who between the accused-appellants threatened Moises with the words "*Gusto mo unahin kita?*" and who shot her son Moises, by pointing out that she was then facing Moises because she was preventing him from approaching the accused-appellants, who were armed with short firearms. Estrella categorically stated that she **saw** the accused-appellants alight from their motorcycle on March 1, 2000. She could not have been mistaken about the identity of the accused-appellants for the simple reason that they are her neighbors and that their (the accused-appellants') father is her "*cumpadre*." When the incident happened, the accused-appellants were about eight (8) to ten (10) meters away from where she and her son Moises were standing. She also **saw with her own eyes** how her son Moises fell after she heard successive bursts of gunshots (approximately [9] shots) coming from where the accused-appellants were standing.[11]

Considering that the CA thereby affirmed the trial court's findings of fact, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions, the Court accords high respect, if not conclusive effect, to the CA's findings.[12] The justification for this is that the

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[11] *Rollo,* pp. 13-14 (bold emphases are in the original text).

[12] *People v. Darilay,* G.R. Nos. 139751-752, January 26, 2004, 421 SCRA 45, 54.

trial court was in the best position to assess the credibility of witnesses by virtue of its firsthand observation of the demeanor, conduct and attitude of the witnesses under grilling examination. The only time when a reviewing court was not bound by the trial court's assessment of credibility arises upon a showing of a fact or circumstance of weight and influence that was overlooked and, if considered, could affect the outcome of the case.[13] No such fact or circumstance has been brought to the Court's attention.

It is not trite to remind that a truth-telling witness is not always expected to give an error-free testimony because of the lapse of time and the treachery of human memory; and that inaccuracies noted in testimony may even suggest that the witness is telling the truth and has not been rehearsed.[14] To properly appreciate the worth of testimony, therefore, the courts do not resort to the individual words or phrases alone but seek out the whole impression or effect of what has been said and done.[15]

Secondly, PO2 Valdez argues that the three victims were themselves the aggressors who had attacked to kill him and his brother. He narrated during the trial that he dodged the bullet fired from the gun of Ferdinand (one of the victims), causing the bullet to fatally hit Joselito (another victim); that he played

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[13] *People v. Santiago,* G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248, 256; *People v. Abolidor,* G.R. No. 147231, February 18, 2004, 423 SCRA 260; *People v. Pacheco,* G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174; *People v. Genita, Jr.,* G.R. No. 126171, March 11, 2004, 425 SCRA 343, 349; *People v. Tonog, Jr.,* G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *Perez v. People,* G.R. No. 150433, January 20, 2006, 479 SCRA 209, 219-220; *Bricenio v. People,* G.R. No. 154804, June 20, 2006, 491 SCRA 489, 495; *People v. Taan,* G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *People v. Cabugatan,* G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. De Guzman,* G.R. No. 177569, November 28, 2007, 539 SCRA 306.

[14] *People v. Ebrada,* G.R. No. 122774, September 26, 1998, 296 SCRA 353, 365.

[15] *People v. Gailo,* G.R. No. 116233, October 13, 1999, 316 SCRA 733, 748.

dead to avoid being shot at again, and walked away with his terrified son only after the way was clear for them to leave; and that he heard gunshots while Edwin and Jun (the third victim) grappled for control of a gun, and assumed that the gunshots had hit and killed Jun and Ferdinand.[16]

The argument of PO2 Valdez is bereft of factual merit.

It is fundamental that the question as to who between the accused and the victim was the unlawful aggressor is a question of fact addressed to the trial court for determination based on the evidence on record.[17] The records show that the version of PO2 Valdez was contrary to the established facts and circumstances showing that he and Edwin, then armed with short firearms, had gone to the *jai alai* betting station of Moises to confront Jonathan Rubio, the teller of the betting booth then busily attending to bettors inside the booth; that because the accused were calling to Rubio to come out of the booth, Moises approached to pacify them, but one of them threatened Moises: *Gusto mo unahin na kita*?; that immediately after Moises replied: *Huwag!*, PO2 Valdez fired several shots at Moises, causing him to fall to the ground; that PO2 Valdez continued firing at the fallen Moises; that Ferdinand (another victim) rushed to aid Moises, his brother, but Edwin shot Ferdinand in the head, spilling his brains; that somebody shouted to Joselito (the third victim) to run; that Edwin also shot Joselito twice in the back; and that Joselito fell on a burger machine. The shots fired at the three victims were apparently fired from short distances.

The testimonial accounts of the State's witnesses entirely jibed with the physical evidence. Specifically, the medico-legal evidence showed that Ferdinand had a gunshot wound in the head;[18] that two gunshot wounds entered Joselito's back and

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[16] *Rollo,* pp. 6-7.

[17] *Garcia v. People,* G.R. No. 144699, March 10, 2004, 425 SCRA 221, 228.

[18] Exhibits K and L.

the right side of his neck;[19] and that Moises suffered a gunshot wound in the head and four gunshot wounds in the chest.[20] Also, Dr. Wilfredo Tierra of the NBI Medico-Legal Office opined that the presence of marginal abrasions at the points of entry indicated that the gunshot wounds were inflicted at close range.[21] Given that physical evidence was of the highest order and spoke the truth more eloquently than all witnesses put together,[22] the congruence between the testimonial recollections and the physical evidence rendered the findings adverse to PO2 Valdez and Edwin conclusive.

Thirdly, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit the felony.[23] Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their acts.[24] Herein, both lower courts deduced the conspiracy between the accused from the mode and manner in which they perpetrated the killings. We are satisfied that their deduction was warranted.

Based on the foregoing, PO2 Valdez cannot now avoid criminal responsibility for the fatal shooting by Edwin of Ferdinand and Joselito. Both accused were convincingly shown to have acted in concert to achieve a common purpose of assaulting their unarmed victims with their guns. Their acting in concert was manifest not only from their going together to the betting station

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[19] Exhibit D.

[20] Exhibits Q and R.

[21] TSN, May 23, 2000, pp. 3-13; September 12, 2000, pp. 2-7.

[22] *People v. Bardaje,* No. L-29271, August 29, 1980, 99 SCRA 388, 399; *People v. Nepomuceno, Jr.,* G.R. No. 127818, November 11, 1998, 298 SCRA 450, 463.

[23] Art. 8, 2nd Par., *Revised Penal Code; Aradillos v. Court of Appeals,* G.R. No. 135619, January 15, 2004, 419 SCRA 514, 527; *People v. Ogapay,* No. L-28566, August 21, 1975, 66 SCRA 209, 214.

[24] *People v. Cabrera,* G.R. No. 105992, February 1, 1995, 241 SCRA 28, 34.

on board a single motorcycle, but also from their joint attack that PO2 Valdez commenced by firing successive shots at Moises and immediately followed by Edwin's shooting of Ferdinand and Joselito one after the other. It was also significant that they fled together on board the same motorcycle as soon as they had achieved their common purpose.

To be a conspirator, one did not have to participate in every detail of the execution; neither did he have to know the exact part performed by his co-conspirator in the execution of the criminal acts.[25] Accordingly, the existence of the conspiracy between PO2 Valdez and Edwin was properly inferred and proved through their acts that were indicative of their common purpose and community of interest.[26]

And, fourthly, it is unavoidable for the Court to pronounce PO2 Valdez guilty of three homicides, instead of three murders, on account of the informations not sufficiently alleging the attendance of treachery.

Treachery is the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make.[27] It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically

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[25] *People v. De Jesus,* G.R. No. 134815, May 27, 2004, 429 SCRA 384, 404; *People v. Masagnay,* G.R. No. 137364, June 10, 2004, 431 SCRA 572, 580.

[26] *People v. Natipravat,* No. 69876, November 13, 1986, 145 SCRA 483, 492; *People v. Bausing,* G.R. No. 64965, July 18, 1991, 199 SCRA 355, 364; *People v. Merabueno,* G.R. No. 87179, December 14, 1994, 239 SCRA 197, 203-204.

[27] Article 14 (16), *Revised Penal Code.*

aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.[28] In *People v. Dimaano*,[29] the Court elaborated:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** [emphasis supplied]

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[28] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298, 327.

[29] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667.

The averments of the informations to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did xxx assault, attack and employ personal violence upon" the victims "by then and there shooting [them] with a gun, hitting [them]" on various parts of their bodies "which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not *per se* treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term *treachery* constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*: [30]

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[30] *United States v. Lim San,* 17 Phil. 273 (1910).

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named.** xxx. (emphasis supplied)

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.[31] In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included

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[31] Section 4, Rule 120, *Rules of Court*.

in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.[32]

We now fix the penalty for each count of homicide.

Pursuant to Article 249 of the *Revised Penal Code,* the penalty for homicide is *reclusion temporal*.[33] There being no circumstances modifying criminal liability, the penalty is applied in its medium period (*i.e.*, 14 years, 8 months and 1 day to 17 years and 4 months). Under the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. Hence, the Court imposes the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum for each count of homicide.

WHEREFORE, the decision of the Court of Appeals promulgated on July 18, 2006 is **MODIFIED** by finding PO2 Eduardo Valdez guilty beyond reasonable doubt of three counts of **HOMICIDE**, and sentencing him to suffer for each count the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum; and to pay to the respective heirs of the late Ferdinand Sayson, Moises Sayson, Jr., and Joselito Sayson the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.

The accused shall pay the costs of suit.

SO ORDERED.

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

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[32] Section 4, Rule 120, *Rules of Court*.

[33] Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

SECOND DIVISION

[G.R. No. 177498. January 18, 2012]

STOLT-NIELSEN TRANSPORTATION GROUP, INC. and CHUNG GAI SHIP MANAGEMENT, *petitioners, vs.* **SULPECIO MEDEQUILLO, JR.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; DEFINED.—** Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or, by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.

2. **ID.; ID.; ID.; ID.; REQUISITES.—** In order for novation to take place, the concurrence of the following requisites is indispensable: "1. There must be a previous valid obligation, 2. There must be an agreement of the parties concerned to a new contract, 3. There must be the extinguishment of the old contract, and 4. There must be the validity of the new contract."

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY BY THE COURTS WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.—** [F]actual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. In this case, there was no showing of any arbitrariness on the

part of the lower courts in their findings of facts. Hence, we follow the settled rule.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; NATURE.— A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. 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.

5. ID.; ID.; PRINCIPLE OF CONSENSUALITY OF CONTRACTS; PARTIES ARE BOUND NOT ONLY TO THE FULFILLMENT OF WHAT HAS BEEN EXPRESSLY STIPULATED BUT ALSO TO ALL THE CONSEQUENCES WHICH, ACCORDING TO THEIR NATURE, MAY BE IN KEEPING WITH GOOD FAITH, USAGE AND LAW.— The POEA Standard Employment Contract provides that employment shall commence "upon the actual departure of the seafarer from the airport or seaport in the port of hire." We adhere to the terms and conditions of the contract so as to credit the valid prior stipulations of the parties before the controversy started. Else, the obligatory force of every contract will be useless. Parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Thus, even if by the standard contract employment commences only "upon actual departure of the seafarer", this does not mean that the seafarer has no remedy in case of non-deployment without any valid reason. Parenthetically, the contention of the petitioners of the alleged poor performance of respondent while on board the first ship MV "Stolt Aspiration" cannot be sustained to justify the non-deployment, for no evidence to prove the same was presented.

6. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR STANDARDS; PERFECTION OF EMPLOYMENT CONTRACT AND COMMENCEMENT OF EMPLOYER-EMPLOYEE RELATIONSHIP, DISTINGUISHED IN CASE AT BAR.— [D]istinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the

contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship x x x would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.

7. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); 1991 POEA RULES AND REGULATIONS GOVERNING OVERSEAS EMPLOYMENT; WORKER'S DEPLOYMENT; THE PENALTY FOR NON-DEPLOYMENT OF SEAFARERS WITHOUT VALID REASON IS SUSPENSION OR CANCELLATION OF LICENSE OR FINE.— The POEA Rules and Regulations Governing Overseas Employment dated 31 May 1991 provides for the consequence and penalty against in case of non-deployment of the seafarer without any valid reason. x x x The appellate court correctly ruled that the penalty of reprimand provided under Rule IV, Part VI of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers is not applicable in this case. The breach of contract happened on February 1992 and the law applicable at that time was the 1991 POEA Rules and Regulations Governing Overseas Employment. The penalty for non-deployment x x x is suspension or cancellation of license or fine.

8. ID.; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS ACT); APPLICABLE TO CLAIMS FOR DAMAGES AGAINST EMPLOYERS OR AGENCIES FOR UNREASONABLE NON-DEPLOYMENT OF SEAFARERS.— The POEA Rules Governing the Recruitment and Employment of Seafarers do not provide for the award of damages to be given in favor of the employees. The claim provided by the same law refers to a valid contractual claim for compensation or benefits arising from employer-employee

relationship or for any personal injury, illness or death at levels provided for within the terms and conditions of employment of seafarers. However, the absence of the POEA Rules with regard to the payment of damages to the affected seafarer does not mean that the seafarer is precluded from claiming the same. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or fine and the return of all documents at no cost to the worker. x x x [T]hey do not forfend a seafarer from instituting an action for damages against the employer or agency which has failed to deploy him. We thus decree the application of Section 10 of Republic Act No. 8042 (Migrant Workers Act) which provides for money claims by reason of a contract involving Filipino workers for overseas deployment. x x x Following the law, the claim is still cognizable by the labor arbiters of the NLRC under the second phrase of the provision. Applying the rules on actual damages, Article 2199 of the New Civil Code provides that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Respondent is thus liable to pay petitioner actual damages in the form of the loss of nine (9) months' worth of salary as provided in the contract. This is but proper because of the non-deployment of respondent without just cause.

APPEARANCES OF COUNSEL

Rodello B. Ortiz for petitioners.
Linsangan Linsangan & Linsangan for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] of the Decision[2] of the First Division of the Court of Appeals in

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[1] Rule 45, Rule on Civil Procedure.

[2] Penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court) with Presiding Justice Ruben T. Reyes (former Member of this Court) and Associate Justice Arcangelita Romilla Lontok, concurring. *Rollo*, pp. 38-54.

CA-G.R. SP No. 91632 dated 31 January 2007, denying the petition for *certiorari* filed by Stolt-Nielsen Transportation Group, Inc. and Chung Gai Ship Management (petitioners) and affirming the Resolution of the National Labor Relations Commission (NLRC). The dispositive portion of the assailed decision reads:

> WHEREFORE, the petition is hereby **DENIED**. Accordingly, the assailed Decision promulgated on February 28, 2003 and the Resolution dated July 27, 2005 are **AFFIRMED.**[3]

The facts as gathered by this Court follow:

On 6 March 1995, Sulpecio Madequillo (respondent) filed a complaint before the Adjudication Office of the Philippine Overseas Employment Administration (POEA) against the petitioners for illegal dismissal under a first contract and for failure to deploy under a second contract. In his complaint-affidavit,[4] respondent alleged that:

1. On 6 November 1991(First Contract), he was hired by Stolt-Nielsen Marine Services, Inc on behalf of its principal Chung-Gai Ship Management of Panama as Third Assistant Engineer on board the vessel "Stolt Aspiration" for a period of nine (9) months;
2. He would be paid with a monthly basic salary of $808.00 and a fixed overtime pay of $404.00 or a total of $1,212.00 per month during the employment period commencing on 6 November 1991;
3. On 8 November 1991, he joined the vessel MV "Stolt Aspiration";
4. On February 1992 or for nearly three (3) months of rendering service and while the vessel was at Batangas, he was ordered by the ship's master to disembark the vessel and repatriated back to Manila for no reason or explanation;

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[3] *Id.* at 53.

[4] *Id.* at 134-139.

5. Upon his return to Manila, he immediately proceeded to the petitioner's office where he was transferred employment with another vessel named MV "Stolt Pride" under the same terms and conditions of the First Contract;

6. On 23 April 1992, the Second Contract was noted and approved by the POEA;

7. The POEA, without knowledge that he was not deployed with the vessel, certified the Second Employment Contract on 18 September 1992.

8. Despite the commencement of the Second Contract on 21 April 1992, petitioners failed to deploy him with the vessel MV "Stolt Pride";

9. He made a follow-up with the petitioner but the same refused to comply with the Second Employment Contract.

10. On 22 December 1994, he demanded for his passport, seaman's book and other employment documents. However, he was only allowed to claim the said documents in exchange of his signing a document;

11. He was constrained to sign the document involuntarily because without these documents, he could not seek employment from other agencies.

He prayed for actual, moral and exemplary damages as well as attorney's fees for his illegal dismissal and in view of the Petitioners' bad faith in not complying with the Second Contract.

The case was transferred to the Labor Arbiter of the DOLE upon the effectivity of the Migrant Workers and Overseas Filipinos Act of 1995.

The parties were required to submit their respective position papers before the Labor Arbiter. However, petitioners failed to submit their respective pleadings despite the opportunity given to them.[5]

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[5] *Id.* at 61.

On 21 July 2000, Labor Arbiter Vicente R. Layawen rendered a judgment[6] finding that the respondent was constructively dismissed by the petitioners. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered, declaring the respondents guilty of constructively dismissing the complainant by not honoring the employment contract. Accordingly, respondents are hereby ordered jointly and solidarily to pay complainant the following:
>
> 1. $12,537.00 or its peso equivalent at the time of payment.[7]

The Labor Arbiter found the first contract entered into by and between the complainant and the respondents to have been novated by the execution of the second contract. In other words, respondents cannot be held liable for the first contract but are clearly and definitely liable for the breach of the second contract.[8] However, he ruled that there was no substantial evidence to grant the prayer for moral and exemplary damages.[9]

The petitioners appealed the adverse decision before the National Labor Relations Commission assailing that they were denied due process, that the respondent cannot be considered as dismissed from employment because he was not even deployed yet and the monetary award in favor of the respondent was exorbitant and not in accordance with law.[10]

On 28 February 2003, the NLRC affirmed with modification the Decision of the Labor Arbiter. The dispositive portion reads:

> WHEREFORE, premises considered, the decision under review is hereby, MODIFIED BY DELETING the award of overtime pay in the total amount of Three Thousand Six Hundred Thirty Six US Dollars (US $3,636.00).

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[6] *Id.* at 59-62.

[7] *Id.* at 62.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 64.

In all other respects, the assailed decision so stands as, AFFIRMED.[11]

Before the NLRC, the petitioners assailed that they were not properly notified of the hearings that were conducted before the Labor Arbiter. They further alleged that after the suspension of proceedings before the POEA, the only notice they received was a copy of the decision of the Labor Arbiter.[12]

The NLRC ruled that records showed that attempts to serve the various notices of hearing were made on petitioners' counsel on record but these failed on account of their failure to furnish the Office of the Labor Arbiter a copy of any notice of change of address. There was also no evidence that a service of notice of change of address was served on the POEA.[13]

The NLRC upheld the finding of unjustified termination of contract for failure on the part of the petitioners to present evidence that would justify their non-deployment of the respondent.[14] It denied the claim of the petitioners that the monetary award should be limited only to three (3) months for every year of the unexpired term of the contract. It ruled that the factual incidents material to the case transpired within 1991-1992 or before the effectivity of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 which provides for such limitation.[15]

However, the NLRC upheld the reduction of the monetary award with respect to the deletion of the overtime pay due to the non-deployment of the respondent.[16]

The Partial Motion for Reconsideration filed by the petitioners was denied by the NLRC in its Resolution dated 27 July 2005.[17]

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[11] *Id.* at 68.

[12] *Id.* at 64-65.

[13] *Id.* at 65.

[14] *Id.* at 66.

[15] *Id.* at 67.

[16] *Id.*

[17] *Id.* at 72.

The petitioners filed a Petition for *Certiorari* before the Court of Appeals alleging grave abuse of discretion on the part of NLRC when it affirmed with modification the ruling of the Labor Arbiter. They prayed that the Decision and Resolution promulgated by the NLRC be vacated and another one be issued dismissing the complaint of the respondent.

Finding no grave abuse of discretion, the Court of Appeals AFFIRMED the Decision of the labor tribunal.

The Court's Ruling

The following are the assignment of errors presented before this Court:

I.

THE COURT *A QUO* ERRED IN FINDING THAT THE SECOND CONTRACT NOVATED THE FIRST CONTRACT.

1. THERE WAS NO NOVATION OF THE FIRST CONTRACT BY THE SECOND CONTRACT; THE ALLEGATION OF ILLEGAL DISMISSAL UNDER THE FIRST CONTRACT MUST BE RESOLVED SEPARATELY FROM THE ALLEGATION OF FAILURE TO DEPLOY UNDER THE SECOND CONTRACT.

2. THE ALLEGED ILLEGAL DISMISSAL UNDER THE FIRST CONTRACT TRANSPIRED MORE THAN THREE (3) YEARS AFTER THE CASE WAS FILED AND THEREFORE HIS CASE SHOULD HAVE BEEN DISMISSED FOR BEING BARRED BY PRESCRIPTION.

II.

THE COURT *A QUO* ERRED IN RULING THAT THERE WAS CONSTRUCTIVE DISMISSAL UNDER THE SECOND CONTRACT.

1. IT IS LEGALLY IMPOSSIBLE TO HAVE CONSTRUCTIVE DISMISSAL WHEN THE EMPLOYMENT HAS NOT YET COMMENCED.

2. ASSUMING THERE WAS OMISSION UNDER THE SECOND CONTRACT, PETITIONERS CAN ONLY BE

FOUND AS HAVING FAILED IN DEPLOYING PRIVATE RESPONDENT BUT WITH VALID REASON.

III.

THE COURT *A QUO* ERRED IN FAILING TO FIND THAT EVEN ASSUMING THERE WAS BASIS FOR HOLDING PETITIONER LIABLE FOR "FAILURE TO DEPLOY" RESPONDENT, THE POEA RULES PENALIZES SUCH OMISSION WITH A MERE "REPRIMAND."[18]

The petitioners contend that the first employment contract between them and the private respondent is different from and independent of the second contract subsequently executed upon repatriation of respondent to Manila.

We do not agree.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or, by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. In order for novation to take place, the concurrence of the following requisites is indispensable:

1. There must be a previous valid obligation,
2. There must be an agreement of the parties concerned to a new contract,
3. There must be the extinguishment of the old contract, and
4. There must be the validity of the new contract.[19]

In its ruling, the Labor Arbiter clarified that novation had set in between the first and second contract. To quote:

xxx [T]his office would like to make it clear that the first contract entered into by and between the complainant and the respondents

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[18] *Id.* at 20-21.

[19] *Philippine Savings Bank v. Sps. Mañalac, Jr.*, 496 Phil. 671, 686-687 (2005); *Azolla Farms v. Court of Appeals*, 484 Phil. 745, 754-755.

is deemed to have been novated by the execution of the second contract. In other words, respondents cannot be held liable for the first contract but are clearly and definitely liable for the breach of the second contract.[20]

This ruling was later affirmed by the Court of Appeals in its decision ruling that:

Guided by the foregoing legal precepts, it is evident that novation took place in this particular case. The parties impliedly extinguished the first contract by agreeing to enter into the second contract to placate Medequillo, Jr. who was unexpectedly dismissed and repatriated to Manila. The second contract would not have been necessary if the petitioners abided by the terms and conditions of Madequillo, Jr.'s employment under the first contract. The records also reveal that the 2nd contract extinguished the first contract by changing its object or principal. These contracts were for overseas employment aboard different vessels. The first contract was for employment aboard the MV "Stolt Aspiration" while the second contract involved working in another vessel, the MV "Stolt Pride." Petitioners and Madequillo, Jr. accepted the terms and conditions of the second contract. Contrary to petitioners' assertion, the first contract was a "previous valid contract" since it had not yet been terminated at the time of Medequillo, Jr.'s repatriation to Manila. The legality of his dismissal had not yet been resolved with finality. Undoubtedly, he was still employed under the first contract when he negotiated with petitioners on the second contract. As such, the NLRC correctly ruled that petitioners could only be held liable under the second contract.[21]

We concur with the finding that there was a novation of the first employment contract.

We reiterate once more and emphasize the ruling in *Reyes v. National Labor Relations Commission*,[22] to wit:

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[20] *Rollo,* p. 61.

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

[22] G.R. No. 160233, 8 August 2007, 529 SCRA 487.

x x x [F]indings of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.

x x x x x x x x x

x x x Findings **of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals**. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.(Emphasis supplied)[23]

With the finding that respondent "was still employed under the first contract when he negotiated with petitioners on the second contract,"[24] novation became an unavoidable conclusion.

Equally settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[25] But these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[26] In this case, there was no showing of any arbitrariness on the part of the lower courts in their findings of facts. Hence, we follow the settled rule.

We need not dwell on the issue of prescription. It was settled by the Court of Appeals with its ruling that recovery of damages under the first contract was already time-barred. Thus:

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[23] *Id.* at 494 and 499.

[24] *Rollo,* p. 46.

[25] *Prince Transport, Inc. v. Garcia,* G.R. No. 167291, 12 January 2011, 639 SCRA 312, 324 citing *Philippine Veterans Bank v. National Labor Relations Commission,* G.R. No. 188882, 30 March 2010, 617 SCRA 204.

[26] *Id.* at 324-325 citing *Faeldonia v. Tong Yak Groceries,* G.R. No. 182499, 2 October 2009, 602 SCRA 677, 684.

Accordingly, the prescriptive period of three (3) years within which Medequillo Jr. may initiate money claims under the 1st contract commenced on the date of his repatriation. xxx The start of the three (3) year prescriptive period must therefore be reckoned on February 1992, which by Medequillo Jr.'s own admission was the date of his repatriation to Manila. It was at this point in time that Medequillo Jr.'s cause of action already accrued under the first contract. He had until February 1995 to pursue a case for illegal dismissal and damages arising from the 1st contract. With the filing of his Complaint-Affidavit on March 6, 1995, which was clearly beyond the prescriptive period, the cause of action under the 1st contract was already time-barred.[27]

The issue that proceeds from the fact of novation is the consequence of the non-deployment of respondent.

The petitioners argue that under the POEA Contract, actual deployment of the seafarer is a suspensive condition for the commencement of the employment.[28] We agree with petitioners on such point. However, even without actual deployment, the perfected contract gives rise to obligations on the part of petitioners.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[29] 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.[30]

The POEA Standard Employment Contract provides that employment shall commence "upon the actual departure of the seafarer from the airport or seaport in the port of hire."[31] We

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[27] *Rollo,* pp. 47-48.

[28] *Id.* at 48.

[29] Article 1305, New Civil Code.

[30] Article 1306, New Civil Code.

[31] *Rollo,* p. 48.

adhere to the terms and conditions of the contract so as to credit the valid prior stipulations of the parties before the controversy started. Else, the obligatory force of every contract will be useless. Parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[32]

Thus, even if by the standard contract employment commences only "upon actual departure of the seafarer", this does not mean that the seafarer has no remedy in case of non-deployment without any valid reason. Parenthetically, the contention of the petitioners of the alleged poor performance of respondent while on board the first ship MV "Stolt Aspiration" cannot be sustained to justify the non-deployment, for no evidence to prove the same was presented.[33]

We rule that distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.[34]

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[32] Article 1315, New Civil Code.

[33] *Rollo,* p. 50.

[34] *Santiago v. CF Sharp Crew Management, Inc.,* G.R. No. 162419, 10 July 2007, 527 SCRA 165, 176.

Further, we do not agree with the contention of the petitioners that the penalty is a mere reprimand.

The POEA Rules and Regulations Governing Overseas Employment[35] dated 31 May 1991 provides for the consequence and penalty against in case of non-deployment of the seafarer without any valid reason. It reads:

Section 4. Worker's Deployment. — An agency shall deploy its recruits within the deployment period as indicated below:

x x x x x x x x x

b. Thirty (30) calendar days from the date of processing by the administration of the employment contracts of seafarers.

Failure of the agency to deploy a worker within the prescribed period without valid reasons shall be a cause for suspension or cancellation of license or fine. In addition, the agency shall return all documents at no cost to the worker. (Emphasis and underscoring supplied)

The appellate court correctly ruled that the penalty of reprimand[36] provided under Rule IV, Part VI of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers is not applicable in this case. The breach of contract happened on February 1992 and the law applicable at that time was the 1991 POEA Rules and Regulations Governing Overseas Employment. The penalty for non-deployment as discussed is suspension or cancellation of license or fine.

Now, the question to be dealt with is how will the seafarer be compensated by reason of the unreasonable non-deployment of the petitioners?

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[35] Section 4, par. (b), Rule II, Book III.

[36] Section 1 (C) 4. Failure to deploy a worker within the prescribed period without valid reason:

1st Offense – Reprimand.

The POEA Rules Governing the Recruitment and Employment of Seafarers do not provide for the award of damages to be given in favor of the employees. The claim provided by the same law refers to a valid contractual claim for compensation or benefits arising from employer-employee relationship or for any personal injury, illness or death at levels provided for within the terms and conditions of employment of seafarers. However, the absence of the POEA Rules with regard to the payment of damages to the affected seafarer does not mean that the seafarer is precluded from claiming the same. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or fine and the return of all documents at no cost to the worker. As earlier discussed, they do not forfend a seafarer from instituting an action for damages against the employer or agency which has failed to deploy him.[37]

We thus decree the application of Section 10 of Republic Act No. 8042 (Migrant Workers Act) which provides for money claims by reason of a contract involving Filipino workers for overseas deployment. The law provides:

> Sec. 10. *Money Claims*. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. x x x (Underscoring supplied)

Following the law, the claim is still cognizable by the labor arbiters of the NLRC under the second phrase of the provision.

Applying the rules on actual damages, Article 2199 of the New Civil Code provides that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Respondent is thus liable to pay petitioner

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[37] *Santiago v. CF Sharp Crew Management, Inc., Supra* note 33 at 176-177.

actual damages in the form of the loss of nine (9) months' worth of salary as provided in the contract.[38] This is but proper because of the non-deployment of respondent without just cause.

WHEREFORE, the appeal is **DENIED.** The 31 January 2007 Decision of the Court of Appeals in CA-G.R. SP. No. 91632 is hereby **AFFIRMED.** The Petitioners are hereby ordered to pay Sulpecio Medequillo, Jr., the award of actual damages equivalent to his salary for nine (9) months as provided by the Second Employment Contract.

SO ORDERED.

Carpio (Chairperson), Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 177839. January 18, 2012]

FIRST LEPANTO-TAISHO INSURANCE CORPORATION (now known as FLT PRIME INSURANCE CORPORATION), *petitioner, vs.* **CHEVRON PHILIPPINES, INC. (formerly known as CALTEX [PHILIPPINES], INC.),** *respondent.*

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[38] In *Legahi v. National Labor Relations Commission,* 376 Phil. 557, 566 (1999), we held: Petitioner's dismissal without a valid cause constitute a breach of contract. Consequently, he should only be paid the unexpired portion of his employment contract.

[*] Designated as additional member per Special Order No. 1174 dated 9 January 2012.

SYLLABUS

1. **MERCANTILE LAW; INSURANCE CODE; CONTRACT OF SURETYSHIP; NATURE.—** Section 175 of the Insurance Code defines a suretyship as a contract or agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued under Act 536, as amended. Suretyship arises upon the solidary binding of a person – deemed the surety – with the principal debtor, for the purpose of fulfilling an obligation. Such undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. And notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.

2. **ID.; ID.; ID.; THE EXTENT OF A SURETY'S LIABILITY IS DETERMINED BY THE LANGUAGE OF THE SURETYSHIP CONTRACT OR BOND ITSELF.—** The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. It cannot be extended by implication, beyond the terms of the contract.

3. **ID.; ID.; ID.; SHOULD BE READ AND INTERPRETED TOGETHER WITH THE CONTRACT ENTERED INTO BETWEEN THE CREDITOR AND THE PRINCIPAL.—** The law is clear that a surety contract should be read and interpreted together with the contract entered into between the creditor and the principal. x x x A surety contract is merely a collateral one, its basis is the principal contract or undertaking which it secures. Necessarily, the stipulations in such principal agreement must at least be communicated or made known to the surety particularly in this case where the bond expressly guarantees the payment of respondent's fuel products withdrawn by Fumitechniks in accordance with the terms and conditions of their agreement. The bond specifically makes reference to a *written agreement.* It is basic that if the terms of a contract

are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Moreover, being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor. Having accepted the bond, respondent as creditor must be held bound by the recital in the surety bond that the terms and conditions of its distributorship contract be reduced in writing or at the very least communicated in writing to the surety. Such non-compliance by the creditor (respondent) impacts not on the validity or legality of the surety contract but on the creditor's right to demand performance.

4. ID.; ID.; ID.; THE CREDITOR IS GENERALLY HELD BOUND TO A FAITHFUL OBSERVANCE OF THE RIGHTS OF THE SURETY AND TO THE PERFORMANCE OF EVERY DUTY NECESSARY FOR THE PROTECTION OF THOSE RIGHTS.— [T]he contract of suretyship imports entire good faith and confidence between the parties in regard to the whole transaction, although it has been said that the creditor does not stand as a fiduciary in his relation to the surety. The creditor is generally held bound to a faithful observance of the rights of the surety and to the performance of every duty necessary for the protection of those rights. Moreover, in this jurisdiction, obligations arising from contracts have the force of law between the parties and should be complied with in good faith. Respondent is charged with notice of the specified form of the agreement or at least the disclosure of basic terms and conditions of its distributorship and credit agreements with its client Fumitechniks after its acceptance of the bond delivered by the latter. However, it never made any effort to relay those terms and conditions of its contract with Fumitechniks upon the commencement of its transactions with said client, which obligations are covered by the surety bond issued by petitioner. Contrary to respondent's assertion, there is no indication in the records that petitioner had actual knowledge of its alleged business practice of not having *written* contracts with distributors; and even assuming petitioner was aware of such practice, the bond issued to Fumitechniks and accepted by respondent specifically referred to a "written agreement."

5. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; INTENDED TO CONVINCE THE COURT THAT ITS RULING IS ERRONEOUS AND IMPROPER, CONTRARY TO LAW OR EVIDENCE.— The mere fact that a motion for reconsideration reiterates issues already passed upon by the court does not, by itself, make it a *pro forma* motion. Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; the movant has to dwell of necessity on issues already passed upon.

6. CIVIL LAW; DAMAGES; MORAL DAMAGES; GRANTED WHERE THERE IS PROOF OF THE EXISTENCE OF THE FACTUAL BASIS OF THE DAMAGE AND ITS CAUSAL RELATION TO THE DEFENDANT'S ACTS.— The filing alone of a civil action should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages. Besides, a juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. Although in some recent cases we have held that the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury*** suffered and not to impose a penalty on the wrongdoer.

7. ID.; ID.; ATTORNEY'S FEES; NOT AUTOMATICALLY GRANTED TO EVERY WINNING PARTY.— The settled rule is that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees. In pursuing its claim on the surety bond, respondent was acting on the belief that it can collect on the obligation of Fumitechniks notwithstanding the non-submission of the written principal contract.

APPEARANCES OF COUNSEL

R.A. Quiroz Offices for petitioner.
Platon Martinez Flores San Pedro & Leaño for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a Rule 45 Petition assailing the Decision[1] dated November 20, 2006 and Resolution[2] dated May 8, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86623, which reversed the Decision[3] dated August 5, 2005 of the Regional Trial Court (RTC) of Makati City, Branch 59 in Civil Case No 02-857.

Respondent Chevron Philippines, Inc., formerly Caltex Philippines, Inc., sued petitioner First Lepanto-Taisho Insurance Corporation (now known as FLT Prime Insurance Corporation) for the payment of unpaid oil and petroleum purchases made by its distributor Fumitechniks Corporation (Fumitechniks).

Fumitechniks, represented by Ma. Lourdes Apostol, had applied for and was issued Surety Bond FLTICG (16) No. 01012 by petitioner for the amount of ₱15,700,000.00. As stated in the attached rider, the bond was in compliance with the requirement for the grant of a credit line with the respondent "to guarantee payment/remittance of the cost of fuel products withdrawn within the stipulated time in accordance with the *terms and conditions of the agreement*." The surety bond was executed on October 15, 2001 and will expire on October 15, 2002.[4]

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[1] *Rollo*, pp. 79-101. Penned by Presiding Justice (former Member of this Court) Ruben T. Reyes with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[2] *Id.* at 103-104.

[3] *Id.* at 105-110. Penned by Judge Winlove M. Dumayas.

[4] Records, p. 129.

Fumitechniks defaulted on its obligation. The check dated December 14, 2001 it issued to respondent in the amount of ₱11,461,773.10, when presented for payment, was dishonored for reason of "Account Closed." In a letter dated February 6, 2002, respondent notified petitioner of Fumitechniks' unpaid purchases in the total amount of ₱15,084,030.30. In its letter-reply dated February 13, 2002, petitioner through its counsel, requested that it be furnished copies of the documents such as delivery receipts.[5] Respondent complied by sending copies of invoices showing deliveries of fuel and petroleum products between November 11, 2001 and December 1, 2001.

Simultaneously, a letter[6] was sent to Fumitechniks demanding that the latter submit to petitioner the following: (1) its comment on respondent's February 6, 2002 letter; (2) copy of the *agreement* secured by the Bond, together with copies of documents such as delivery receipts; and (3) information on the particulars, including "the terms and conditions, of any arrangement that [Fumitechniks] might have made or any ongoing negotiation with Caltex in connection with the settlement of the obligations subject of the Caltex letter."

In its letter dated March 1, 2002, Fumitechniks through its counsel wrote petitioner's counsel informing that it cannot submit the requested agreement since no such agreement was executed between Fumitechniks and respondent. Fumitechniks also enclosed a copy of another surety bond issued by CICI General Insurance Corporation in favor of respondent to secure the obligation of Fumitechniks and/or Prime Asia Sales and Services, Inc. in the amount of ₱15,000,000.00.[7] Consequently, petitioner advised respondent of the non-existence of the principal agreement as confirmed by Fumitechniks. Petitioner explained that being an accessory contract, the bond cannot exist without a principal agreement as it is essential that the copy of the basic contract

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[5] *Id.* at 8, 26, 51-53, 131 and 132.

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

[7] *Id.* at 30-34.

be submitted to the proposed surety for the appreciation of the extent of the obligation to be covered by the bond applied for.[8]

On April 9, 2002, respondent formally demanded from petitioner the payment of its claim under the surety bond. However, petitioner reiterated its position that without the basic contract subject of the bond, it cannot act on respondent's claim; petitioner also contested the amount of Fumitechniks' supposed obligation.[9]

Alleging that petitioner unjustifiably refused to heed its demand for payment, respondent prayed for judgment ordering petitioner to pay the sum of ₱15,080,030.30, plus interest, costs and attorney's fees equivalent to ten percent of the total obligation.[10]

Petitioner, in its Answer with Counterclaim,[11] asserted that the Surety Bond was issued for the purpose of securing the performance of the obligations embodied in the Principal Agreement stated therein, which contract should have been attached and made part thereof.

After trial, the RTC rendered judgment dismissing the complaint as well as petitioner's counterclaim. Said court found that the terms and conditions of the oral credit line agreement between respondent and Fumitechniks have not been relayed to petitioner and neither were the same conveyed even during trial. Since the surety bond is a mere accessory contract, the RTC concluded that the bond cannot stand in the absence of the written agreement secured thereby. In holding that petitioner cannot be held liable under the bond it issued to Fumitechniks, the RTC noted the practice of petitioner, as testified on by its witnesses, to attach a copy of the written agreement (principal contract) whenever it issues a surety bond, or to be submitted later if not yet in the possession of the assured, and in case of failure to

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[8] *Id.* at 89.

[9] *Id.* at 90-91.

[10] *Id.* at 3.

[11] *Id.* at 14-25.

submit the said written agreement, the surety contract will not be binding despite payment of the premium.

Respondent filed a motion for reconsideration while petitioner filed a motion for partial reconsideration as to the dismissal of its counterclaim. With the denial of their motions, both parties filed their respective notice of appeal.

The CA ruled in favor of respondent, the dispositive portion of its decision reads:

> WHEREFORE, the appealed Decision is REVERSED and SET ASIDE. A new judgment is hereby entered ORDERING defendant-appellant First Lepanto-Taisho Insurance Corporation to pay plaintiff-appellant Caltex (Philippines) Inc. now Chevron Philippines, Inc. the sum of ₱15,084,030.00.
>
> SO ORDERED.[12]

According to the appellate court, petitioner cannot insist on the submission of a written agreement to be attached to the surety bond considering that respondent was not aware of such requirement and unwritten company policy. It also declared that petitioner is estopped from assailing the oral credit line agreement, having consented to the same upon presentation by Fumitechniks of the surety bond it issued. Considering that such oral contract between Fumitechniks and respondent has been partially executed, the CA ruled that the provisions of the Statute of Frauds do not apply.

With the denial of its motion for reconsideration, petitioner appealed to this Court raising the following issues:

> I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF THE PROVISIONS OF THE SURETY BOND WHEN IT HELD THAT THE SURETY BOND SECURED AN ORAL CREDIT LINE AGREEMENT NOTWITHSTANDING THE STIPULATIONS THEREIN CLEARLY SHOWING BEYOND DOUBT THAT WHAT WAS BEING SECURED WAS A WRITTEN AGREEMENT, PARTICULARLY, THE WRITTEN AGREEMENT A COPY OF

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[12] *Rollo,* p. 100.

WHICH WAS EVEN REQUIRED TO BE ATTACHED TO THE SURETY BOND AND MADE A PART THEREOF.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT STRIKING OUT THE QUESTIONED RESPONDENT'S EVIDENCE FOR BEING CONTRARY TO THE PAROL EVIDENCE RULE, IMMATERIAL AND IRRELEVANT AND CONTRARY TO THE STATUTE OF FRAUDS.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT STRIKING OUT THE RESPONDENT'S MOTION FOR RECONSIDERATION OF THE RTC DECISION FOR BEING A MERE SCRAP OF PAPER AND *PRO FORMA* AND, CONSEQUENTLY, IN NOT DECLARING THE RTC DECISION AS FINAL AND EXECUTORY IN SO FAR AS IT DISMISSED THE COMPLAINT.

IV. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE RTC DECISION AND IN NOT GRANTING PETITIONER'S COUNTERCLAIM.[13]

The main issue to be resolved is one of first impression: whether a surety is liable to the creditor in the absence of a written contract with the principal.

Section 175 of the Insurance Code defines a suretyship as a contract or agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued under Act 536,[14] as amended. Suretyship arises upon the solidary binding of a person – deemed the surety – with the principal debtor, for the purpose of fulfilling an obligation.[15] Such undertaking makes a surety

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[13] *Id.* at 25.

[14] AN ACT RELATIVE TO RECOGNIZANCES, STIPULATIONS, BONDS, AND UNDERTAKINGS, AND TO ALLOW CERTAIN CORPORATIONS TO BE ACCEPTED AS SURETY THEREON.

[15] *Philippine Bank of Communications v. Lim*, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 721, citing Art. 2047 of the Civil Code of the Philippines.

agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. And notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.[16]

The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. It cannot be extended by implication, beyond the terms of the contract.[17] Thus, to determine whether petitioner is liable to respondent under the surety bond, it becomes necessary to examine the terms of the contract itself.

Surety Bond FLTICG (16) No. 01012 is a standard form used by petitioner, which states:

That we, FUMITECHNIKS CORP. OF THE PHILS. of #154 Anahaw St., Project 7, Quezon City as principal and First Lepanto-Taisho Insurance Corporation a corporation duly organized and existing under and by virtue of the laws of the Philippines as Surety, are held firmly bound unto CALTEX PHILIPPINES, INC. of _____ in the sum of FIFTEEN MILLION SEVEN HUNDRED THOUSAND ONLY PESOS (₱15,700,000.00), Philippine Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

The conditions of this obligation are as follows:

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[16] *Asset Builders Corporation v. Stronghold Insurance Company, Incorporated,* G.R. No. 187116, October 18, 2010, 633 SCRA 370, 379-380, citing *Security Pacific Assurance Corporation v. Hon. Tria-Infante,* 505 Phil. 609, 620 (2005) and *Philippine Bank of Communications v. Lim, id.* at 721-722.

[17] *Garon v. Project Movers Realty and Development Corporation,* G.R. No. 166058, April 3, 2007, 520 SCRA 317, 329-330.

WHEREAS, the above-bounden principal, on 15th day of October, 2001 entered into [an] **agreement** with CALTEX PHILIPPINES, INC. of _____ to fully and faithfully

a copy of which is attached hereto and made a part hereof:

WHEREAS, said Obligee requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said agreement.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said agreement then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The liability of First Lepanto-Taisho Insurance Corporation under this bond will expire on October 15, 2002.

x x x x x x x x x[18] (Emphasis supplied.)

The rider attached to the bond sets forth the following:

WHEREAS, the Principal has applied for a Credit Line in the amount of PESOS: Fifteen Million Seven Hundred thousand only (₱15,700,000.00), Philippine Currency with the Obligee for the purchase of Fuel Products;

WHEREAS, the obligee requires the Principal to post a bond **to guarantee payment/remittance of the cost of fuel products withdrawn within the stipulated time *in accordance with terms and conditions of the agreement***;

IN NO CASE, however, shall the liability of the Surety hereunder exceed the sum of PESOS: Fifteen million seven hundred thousand only (₱15,700,000.00), Philippine Currency.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions and agreements stipulated in said undertakings, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

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[18] Records, p. 129.

The liability of FIRST LEPANTO-TAISHO INSURANCE CORPORATION, under this Bond will expire on 10.15.01 . Furthermore, it is hereby understood that FIRST LEPANTO-TAISHO INSURANCE CORPORATION will not be liable for any claim not presented to it in writing within fifteen (15) days from the expiration of this bond, and that the Obligee hereby waives its right to claim or file any court action against the Surety after the termination of fifteen (15) days from the time its cause of action accrues.[19]

Petitioner posits that non-compliance with the submission of the written agreement, which by the express terms of the surety bond, should be attached and made part thereof, rendered the bond ineffective. Since all stipulations and provisions of the surety contract should be taken and interpreted together, in this case, the unmistakable intention of the parties was to secure only those terms and conditions of the written agreement. Thus, by deleting the required submission and attachment of the written agreement to the surety bond and replacing it with the oral credit agreement, the obligations of the surety have been extended beyond the limits of the surety contract.

On the other hand, respondent contends that the surety bond had been delivered by petitioner to Fumitechniks which paid the premiums and delivered the bond to respondent, who in turn, opened the credit line which Fumitechniks availed of to purchase its merchandise from respondent on credit. Respondent points out that a careful reading of the surety contract shows that there is no such requirement of submission of the written credit agreement for the bond's effectivity. Moreover, respondent's witnesses had already explained that distributorship accounts are not covered by written distribution agreements. Supplying the details of these agreements is allowed as an exception to the parol evidence rule even if it is proof of an oral agreement. Respondent argues that by introducing documents that petitioner sought to exclude, it never intended to change or modify the contents of the surety bond but merely to establish the actual terms of the distribution agreement between Fumitechniks and

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[19] *Id.*

respondent, a separate agreement that was executed shortly after the issuance of the surety bond. Because petitioner still issued the bond and allowed it to be delivered to respondent despite the fact that a copy of the written distribution agreement was never attached thereto, respondent avers that clearly, such attaching of the copy of the principal agreement, was for evidentiary purposes only. The real intention of the bond was to secure the payment of all the purchases of Fumitechniks from respondent up to the maximum amount allowed under the bond.

A reading of Surety Bond FLTICG (16) No. 01012 shows that it secures the payment of purchases on credit by Fumitechniks in accordance with the terms and conditions of the "agreement" it entered into with respondent. The word "agreement" has reference to the distributorship agreement, the principal contract and by implication included the credit agreement mentioned in the rider. However, it turned out that respondent has executed *written* agreements only with its direct customers but not distributors like Fumitechniks and it also never relayed the terms and conditions of its distributorship agreement to the petitioner after the delivery of the bond. This was clearly admitted by respondent's Marketing Coordinator, Alden Casas Fajardo, who testified as follows:

Atty. Selim:

Q : Mr. Fajardo[,] you mentioned during your cross-examination that the surety bond as part of the requirements of [Fumitechniks] before the Distributorship Agreement was approved?

A : Yes Sir.

x x x x x x x x x

Q : Is it the practice or procedure at Caltex to reduce distributorship account into writing?

x x x x x x x x x

A : No, its not a practice to make an agreement.

x x x x x x x x x

Atty. Quiroz:

Q : What was the reason why you are not reducing your agreement with your client into writing?

A : Well, of course as I said, there is no fix pricing in terms of distributorship agreement, its usually with regards to direct service to the customers which have direct fixed price.

x x x x x x x x x

Q : These supposed terms and conditions that you agreed with [Fumitechniks], did you relay to the defendant…

A : Yes Sir.

x x x x x x x x x

Q : How did you relay that, how did you relay the terms and conditions to the defendant?

A : I don't know, it was during the time for collection because I collected them and explain the terms and conditions.

Q : You testified awhile ago that you did not talk to the defendant First Lepanto-Taisho Insurance Corporation?

A : I was confused with the question. I'm talking about Malou Apostol.

Q : So, in your answer, you have not relayed those terms and conditions to the defendant First Lepanto, you have not?

A : Yes Sir.

Q : And as of this present, you have not yet relayed the terms and conditions?

A : Yes Sir.

x x x x x x x x x[20]

Respondent, however, maintains that the delivery of the bond and acceptance of premium payment by petitioner binds the latter as surety, notwithstanding the non-submission of the oral

[20] TSN, May 19, 2003, pp. 49, 51, 53, 57-59.

distributorship and credit agreement which understandably cannot be attached to the bond.

The contention has no merit.

The law is clear that a surety contract should be read and interpreted together with the contract entered into between the creditor and the principal. Section 176 of the Insurance Code states:

> Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined **strictly** by the terms of the contract of suretyship **in relation to the principal contract between the obligor and the obligee.** (Emphasis supplied.)

A surety contract is merely a collateral one, its basis is the principal contract or undertaking which it secures.[21] Necessarily, the stipulations in such principal agreement must at least be communicated or made known to the surety particularly in this case where the bond expressly guarantees the payment of respondent's fuel products withdrawn by Fumitechniks in accordance with the terms and conditions of their agreement. The bond specifically makes reference to a *written agreement.* It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[22] Moreover, being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor.[23] Having accepted the bond, respondent as creditor must be held bound by the recital in the surety bond that the terms and conditions of its distributorship contract be reduced in writing or at the very least communicated in writing

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[21] Hector S. De Leon and Hector M. De Leon, Jr., The Insurance Code of the Philippines, 2010 Ed., p. 424.

[22] Art. 1370, Civil Code of the Philippines.

[23] See *Security Bank and Trust Company, Inc. v. Cuenca,* G.R. No. 138544, October 3, 2000, 341 SCRA 781, 801.

to the surety. Such non-compliance by the creditor (respondent) impacts not on the validity or legality of the surety contract but on the creditor's right to demand performance.

It bears stressing that the contract of suretyship imports entire good faith and confidence between the parties in regard to the whole transaction, although it has been said that the creditor does not stand as a fiduciary in his relation to the surety. The creditor is generally held bound to a faithful observance of the rights of the surety and to the performance of every duty necessary for the protection of those rights.[24] Moreover, in this jurisdiction, obligations arising from contracts have the force of law between the parties and should be complied with in good faith.[25] Respondent is charged with notice of the specified form of the agreement or at least the disclosure of basic terms and conditions of its distributorship and credit agreements with its client Fumitechniks after its acceptance of the bond delivered by the latter. However, it never made any effort to relay those terms and conditions of its contract with Fumitechniks upon the commencement of its transactions with said client, which obligations are covered by the surety bond issued by petitioner. Contrary to respondent's assertion, there is no indication in the records that petitioner had actual knowledge of its alleged business practice of not having *written* contracts with distributors; and even assuming petitioner was aware of such practice, the bond issued to Fumitechniks and accepted by respondent specifically referred to a "written agreement."

As to the contention of petitioner that respondent's motion for reconsideration filed before the trial court should have been deemed not filed for being *pro forma,* the Court finds it to be without merit. The mere fact that a motion for reconsideration reiterates issues already passed upon by the court does not, by itself, make it a *pro forma* motion. Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to

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[24] 74 Am Jur 2d, §127, pp. 90-91.

[25] Art. 1159, Civil Code of the Philippines.

the law or evidence; the movant has to dwell of necessity on issues already passed upon.[26]

Finally, we hold that the trial court correctly dismissed petitioner's counterclaim for moral damages and attorney's fees. The filing alone of a civil action should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages.[27] Besides, a juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[28] Although in some recent cases we have held that the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury*** suffered and not to impose a penalty on the wrongdoer.[29] There is no evidence presented to establish the factual basis of petitioner's claim for moral damages.

Petitioner is likewise not entitled to attorney's fees. The settled rule is that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[30] In pursuing its claim on the surety

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[26] *Republic v. International Communications Corporation (ICC),* G.R. No. 141667, July 17, 2006, 495 SCRA 192, 198.

[27] *Rudolf Lietz, Inc. v. Court of Appeals,* G.R. No. 122463, December 19, 2005, 478 SCRA 451, 460.

[28] *Crystal v. Bank of the Philippine Islands,* G.R. No. 172428, November 28, 2008, 572 SCRA 697, 705, citing *People v. Manero, Jr.,* G.R. Nos. 86883-85, January 29, 1993, 218 SCRA 85, 96-97.

[29] *Id.* at 706, citing *Development Bank of the Phil. v. Court of Appeals,* 451 Phil. 563, 586-587 (2003).

[30] *Tanay Recreation Center and Development Corp. v. Fausto,* G.R. No. 140182, April 12, 2005, 455 SCRA 436, 457.

bond, respondent was acting on the belief that it can collect on the obligation of Fumitechniks notwithstanding the non-submission of the written principal contract.

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED.** The Decision dated November 20, 2006 and Resolution dated May 8, 2007 of the Court of Appeals in CA-G.R. CV No. 86623, are **REVERSED** and **SET ASIDE.** The Decision dated August 5, 2005 of the Regional Trial Court of Makati City, Branch 59 in Civil Case No. 02-857 dismissing respondent's complaint as well as petitioner's counterclaim, is hereby **REINSTATED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177936. January 18, 2012]

STARBRIGHT SALES ENTERPRISES, INC., *petitioner, vs.* **PHILIPPINE REALTY CORPORATION, MSGR. DOMINGO A. CIRILOS, TROPICANA PROPERTIES AND DEVELOPMENT CORPORATION and STANDARD REALTY CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PERFECTED CONTRACTS; ELEMENTS.— Three elements are needed to create a perfected contract: 1) the consent of the contracting parties; (2) an object certain which is the

subject matter of the contract; and (3) the cause of the obligation which is established.

2. ID.; ID.; SALES; CONTRACT OF SALE; WHEN PERFECTED.— Under the law on sales, a contract of sale is perfected when the seller, obligates himself, for a price certain, to deliver and to transfer ownership of a thing or right to the buyer, over which the latter agrees. From that moment, the parties may demand reciprocal performance.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; SUBJECTIVE NOVATION; RESULTS THROUGH SUBSTITUTION OF THE PERSON OF THE DEBTOR OR THROUGH SUBROGATION OF A THIRD PERSON TO THE RIGHTS OF THE CREDITOR.— A subjective novation results through substitution of the person of the debtor or through subrogation of a third person to the rights of the creditor. To accomplish a subjective novation through change in the person of the debtor, the old debtor needs to be expressly released from the obligation and the third person or new debtor needs to assume his place in the relation.

4. ID.; ID.; ID.; NOVATION; REQUISITES.— Novation serves two functions – one is to extinguish an existing obligation, the other to substitute a new one in its place – requiring concurrence of four requisites: 1) a previous valid obligation; 2) an agreement of all parties concerned to a new contract; 3) the extinguishment of the old obligation; and 4) the birth of a valid new obligation.

5. ID.; ID.; SALES; CONTRACT OF SALE; EARNEST MONEY; APPLIES TO A PERFECTED SALE.— The ₱100,000.00 that was given to Msgr. Cirilos as "deposit" cannot be considered as earnest money. Where the parties merely exchanged offers and counter-offers, no contract is perfected since they did not yet give their consent to such offers. Earnest money applies to a perfected sale.

6. ID.; ID.; PRINCIPLE OF RELATIVITY OF CONTRACTS; A CONTRACT CAN ONLY BIND THE PARTIES WHO ENTERED INTO IT.— SSE cannot revert to the original terms stated in Licup's letter to Msgr. Cirilos dated April 17, 1988 since it was not privy to such contract. The parties to it were Licup and Msgr. Cirilos. Under the principle of relativity

of contracts, a contract can only bind the parties who entered into it. It cannot favor or prejudice a third person. Petitioner SSE cannot, therefore, impose the terms Licup stated in his April 17, 1988 letter upon the owners.

APPEARANCES OF COUNSEL

Saklolo A. Leaño for petitioner.

Arturo S. Santos for Tropicana Properties & Dev't. Corp. and Standard Realty Corp.

Tabalingcos & Associates Law Offices for Phil. Realty Corp. & Msgr. Domingo A. Cirilos, Jr.

D E C I S I O N

ABAD, *J.*:

The present case involves a determination of the perfection of contract of sale.

The Facts and the Case

On April 17, 1988 Ramon Licup wrote Msgr. Domingo A. Cirilos, offering to buy three contiguous parcels of land in Parañaque that The Holy See and Philippine Realty Corporation (PRC) owned for ₱1,240.00 per square meter. Licup accepted the responsibility for removing the illegal settlers on the land and enclosed a check for ₱100,000.00 to "close the transaction."[1] He undertook to pay the balance of the purchase price upon presentation of the title for transfer and once the property has been cleared of its occupants.

Msgr. Cirilos, representing The Holy See and PRC, signed his name on the *conforme* portion of the letter and accepted the check. But the check could not be encashed due to Licup's stop-order payment. Licup wrote Msgr. Cirilos on April 26, 1988, requesting that the titles to the land be instead transferred to petitioner Starbright Sales Enterprises, Inc. (SSE). He enclosed

[1] *Rollo,* p. 14.

a new check for the same amount. SSE's representatives, Mr. and Mrs. Cu, did not sign the letter.

On November 29, 1988 Msgr. Cirilos wrote SSE, requesting it to remove the occupants on the property and, should it decide not to do this, Msgr. Cirilos would return to it the ₱100,000.00 that he received. On January 24, 1989 SSE replied with an "updated proposal."[2] It would be willing to comply with Msgr. Cirilos' condition provided the purchase price is lowered to ₱1,150.00 per square meter.

On January 26, 1989 Msgr. Cirilos wrote back, rejecting the "updated proposal." He said that other buyers were willing to acquire the property on an "as is, where is" basis at ₱1,400.00 per square meter. He gave SSE seven days within which to buy the property at ₱1,400.00 per square meter, otherwise, Msgr. Cirilos would take it that SSE has lost interest in the same. He enclosed a check for ₱100,000.00 in his letter as refund of what he earlier received.

On February 4, 1989 SSE wrote Msgr. Cirilos that they already had a perfected contract of sale in the April 17, 1988 letter which he signed and that, consequently, he could no longer impose amendments such as the removal of the informal settlers at the buyer's expense and the increase in the purchase price.

SSE claimed that it got no reply from Msgr. Cirilos and that the next thing they knew, the land had been sold to Tropicana Properties on March 30, 1989. On May 15, 1989 SSE demanded rescission of that sale. Meanwhile, on August 4, 1989 Tropicana Properties sold the three parcels of land to Standard Realty.

Its demand for rescission unheeded, SSE filed a complaint for annulment of sale and reconveyance with damages before the Regional Trial Court (RTC) of Makati, Branch 61, against The Holy See, PRC, Msgr. Cirilos, and Tropicana Properties in Civil Case 90-183. SSE amended its complaint on February 24, 1992, impleading Standard Realty as additional defendant.

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[2] *Id*. at 65.

The Holy See sought dismissal of the case against it, claiming that as a foreign government, it cannot be sued without its consent. The RTC held otherwise but, on December 1, 1994,[3] the Court reversed the ruling of the RTC and ordered the case against The Holy See dismissed. By Order of January 26, 1996 the case was transferred to the Parañaque RTC, Branch 258.

SSE alleged that Licup's original letter of April 17, 1988 to Msgr. Cirilos constituted a perfected contract. Licup even gave an earnest money of ₱100,000.00 to "close the transaction." His offer to rid the land of its occupants was a "mere gesture of accommodation if only to expedite the transfer of its title."[4] Further, SSE claimed that, in representing The Holy See and PRC, Msgr. Cirilos acted in bad faith when he set the price of the property at ₱1,400.00 per square meter when in truth, the property was sold to Tropicana Properties for only ₱760.68 per square meter.

Msgr. Cirilos maintained, on the other hand, that based on their exchange of letters, no contract of sale was perfected between SSE and the parties he represented. And, only after the negotiations between them fell through did he sell the land to Tropicana Properties.

In its Decision of February 14, 2000, the Parañaque RTC treated the April 17, 1988 letter between Licum and Msgr. Cirilos as a perfected contract of sale between the parties. Msgr. Cirilos attempted to change the terms of contract and return SSE's initial deposit but the parties reached no agreement regarding such change. Since such agreement was wanting, the original terms provided in the April 17, 1988 letter continued to bind the parties.

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[3] *Holy See, The v. Rosario, Jr.*, G.R. No. 101949, December 1, 1994, 238 SCRA 524.

[4] CA *rollo*, p. 100.

On appeal to the Court of Appeals (CA), the latter rendered judgment on November 10, 2006,[5] reversing the Parañaque RTC decision. The CA held that no perfected contract can be gleaned from the April 17, 1988 letter that SSE had relied on. Indeed, the subsequent exchange of letters between SSE and Msgr. Cirilos show that the parties were grappling with the terms of the sale. Msgr. Cirilos made no unconditional acceptance that would give rise to a perfected contract.

As to the ₱100,000.00 given to Msgr. Cirilos, the CA considered it an option money that secured for SSE only the privilege to buy the property even if Licup called it a "deposit." The CA denied SSE's motion for reconsideration on May 2, 2007.

The Issue Presented

The only issue in this case is whether or not the CA erred in holding that no perfected contract of sale existed between SSE and the land owners, represented by Msgr. Cirilos.

The Court's Ruling

Three elements are needed to create a perfected contract: 1) the consent of the contracting parties; (2) an object certain which is the subject matter of the contract; and (3) the cause of the obligation which is established.[6] Under the law on sales, a contract of sale is perfected when the seller, obligates himself, for a price certain, to deliver and to transfer ownership of a thing or right to the buyer, over which the latter agrees.[7] From that moment, the parties may demand reciprocal performance.

The Court believes that the April 17, 1988 letter between Licup and Msgr. Cirilos, the representative of the property's

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[5] Penned by Associate Justice Monina Arevalo-Zeñarosa with the concurrence of Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (both Members of the Court), *rollo*, pp. 157-184.

[6] CIVIL CODE, Article 1318.

[7] *Ang Yu Asuncion v. Court of Appeals*, G.R. No. 109125, December 2, 1994, 238 SCRA 602, 611.

owners, constituted a perfected contract. When Msgr. Cirilos affixed his signature on that letter, he expressed his conformity to the terms of Licup's offer appearing on it. There was meeting of the minds as to the object and consideration of the contract.

But when Licup ordered a stop-payment on his deposit and proposed in his April 26, 1988 letter to Msgr. Cirilos that the property be instead transferred to SSE, a subjective novation took place.

A subjective novation results through substitution of the person of the debtor or through subrogation of a third person to the rights of the creditor. To accomplish a subjective novation through change in the person of the debtor, the old debtor needs to be expressly released from the obligation and the third person or new debtor needs to assume his place in the relation.[8]

Novation serves two functions – one is to extinguish an existing obligation, the other to substitute a new one in its place – requiring concurrence of four requisites: 1) a previous valid obligation; 2) an agreement of all parties concerned to a new contract; 3) the extinguishment of the old obligation; and 4) the birth of a valid new obligation.[9]

Notably, Licup and Msgr. Cirilos affixed their signatures on the original agreement embodied in Licup's letter of April 26, 1988. No similar letter agreement can be found between SSE and Msgr. Cirilos.

The proposed substitution of Licup by SSE opened the negotiation stage for a new contract of sale as between SSE and the owners. The succeeding exchange of letters between Mr. Stephen Cu, SSE's representative, and Msgr. Cirilos attests to an unfinished negotiation. Msgr. Cirilos referred to his discussion with SSE regarding the purchase as a "pending transaction."[10]

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[8] *Ajax Marketing & Development Corporation v. Court of Appeals,* G.R. No. 118585, September 14, 1995, 248 SCRA 222, 227.

[9] *Quinto v. People,* 365 Phil. 259, 266 (1999).

[10] *Rollo,* p. 64.

Cu, on the other hand, regarded SSE's first letter to Msgr. Cirilos as an "updated proposal."[11] This proposal took up two issues: which party would undertake to evict the occupants on the property and how much must the consideration be for the property. These are clear indications that there was no meeting of the minds between the parties. As it turned out, the parties reached no consensus regarding these issues, thus producing no perfected sale between them.

Parenthetically, Msgr. Cirilos did not act in bad faith when he sold the property to Tropicana even if it was for a lesser consideration. More than a month had passed since the last communication between the parties on February 4, 1989. It is not improbable for prospective buyers to offer to buy the property during that time.

The ₱100,000.00 that was given to Msgr. Cirilos as "deposit" cannot be considered as earnest money. Where the parties merely exchanged offers and counter-offers, no contract is perfected since they did not yet give their consent to such offers.[12] Earnest money applies to a perfected sale.

SSE cannot revert to the original terms stated in Licup's letter to Msgr. Cirilos dated April 17, 1988 since it was not privy to such contract. The parties to it were Licup and Msgr. Cirilos. Under the principle of relativity of contracts, a contract can only bind the parties who entered into it. It cannot favor or prejudice a third person.[13] Petitioner SSE cannot, therefore, impose the terms Licup stated in his April 17, 1988 letter upon the owners.

WHEREFORE, the Court **DISMISSES** the petition and **AFFIRMS** the Court of Appeals Decision dated November 10, 2006 in CA-G.R. CV 67366.

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[11] See note 2.

[12] *XYST Corporation. v. DMC Urban Properties Development, Inc.*, G.R. No. 171968, July 31, 2009, 594 SCRA 598, 605.

[13] *Ramos v. Court of Appeals,* 362 Phil. 205, 215 (1999).

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181701. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO DOLLENDO and NESTOR MEDICE,** *accused,* **NESTOR MEDICE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS.— To be convicted of murder, the following must concur: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code; and (4) the killing does not constitute parricide or infanticide.

2. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED WHEN THE ATTACK AGAINST AN UNARMED VICTIM IS SO SUDDEN THAT HE HAD CLEARLY NO INKLING OF WHAT THE ASSAILANT WAS ABOUT TO DO.— The law provides that an offender acts with treachery when he "commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." There is, thus, treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about to do. It is clear in the records that the circumstance of treachery is attendant in this case. The aggressors ensured that the victim had no

opportunity to resist or defend himself through the sudden and unexpected attack.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; QUALIFYING CIRCUMSTANCES NEED NOT BE PRECEDED BY DESCRIPTIVE WORDS SUCH AS 'QUALIFYING' OR 'QUALIFIED BY' TO PROPERLY QUALIFY AN OFFENSE.— As to whether the circumstance of treachery can qualify the killing to murder, the fact being that it was not expressly stated as such in the information, this Court has long clarified that "qualifying circumstances need not be preceded by descriptive words such as 'qualifying' or 'qualified by' to properly qualify an offense."

4. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES.— The aggravating circumstance of evident premeditation may only be considered if the following are established: "(1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act."

5. ID.; CONSPIRACY; DULY ESTABLISHED IN CASE AT BAR.— Article 8 of the Revised Penal Code provides that "[a] conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." The "evidence of a chain of circumstances," to wit: that appellant went inside the house of Romines to ascertain that the victim was there; that he fetched Dollendo to bring him to Ruiz; that he gave the *dipang* to Dollendo to commit the crime; and that they both fled after the stabbing, taken collectively, shows a community of criminal design to kill the victim. Evidently, there was conspiracy in the commission of the crime.

6. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— It has been held time and again that alibi may prosper only when the accused establishes that not only was he somewhere else when the crime was committed but that it was physically impossible for him to have been at the *locus criminis* at that time.

7. ID.; ID.; ID.; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION BY WITNESSES, ABSENT ILL MOTIVE ON THEIR PART.— [P]ositive identification destroys the defense of alibi, more so when such is credible and categorical, as it is in this case. Positive identification by witnesses, absent any ill motive on their part, likewise prevails over the defense of denial.

8. CRIMINAL LAW; MURDER; PENALTY.— Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. The proper imposable penalty on the appellant is *reclusion perpetua* inasmuch as neither aggravating nor mitigating circumstances attended the commission of the crime.

9. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— [B]oth the Regional Trial Court and the Court of Appeals did not award damages to cover the unreceipted funeral expenses incurred by the surviving spouse. While actual damages are not recoverable absent any receipt or supporting document pertaining to the expenses, temperate damages may be awarded in its stead. This is in accordance with Article 2224 of the Civil Code, which provides that temperate damages may be recovered "when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." Undeniably, the heirs of Ruiz suffered pecuniary loss representing funeral and burial expenses, although the exact amount is not proved. Accordingly, the heirs of Ruiz shall be entitled to temperate damages in the amount of ₱25,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before this Court is an appeal from the Decision[1] dated 28 November 2006 of the Court of Appeals, finding appellant Nestor Medice guilty beyond reasonable doubt of the crime of Murder.

The Facts

On 18 May 2001, appellant and Eduardo Dollendo (Dollendo) were accused of the crime of MURDER in Criminal Case No. C-2971 before the Regional Trial Court, Branch 19, Catarman, Northern Samar.[2]

On arraignment, only appellant entered a plea of not guilty.[3] His co-accused Dollendo, although earlier arrested, escaped from the Provincial Jail at Dancalan, Bobon, Northern Samar.[4] As Dollendo remained at-large prior to his arraignment, trial proceeded only with respect to appellant.

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[1] *Rollo,* pp. 5-14. Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla, concurring.

[2] The accusatory portion of the Information dated 2 May 2001 reads:

That on or about the 13th day of February, 2001 at about 2:30 o'clock in the afternoon, in Barangay West, Municipality of San Jose, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a small bolo locally called "*dipang*[,]" conspiring with, confederating together and mutually helping each other, with deliberate intent to kill thru treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and stab GARRY RUIZ *y* GARCIA *alias* Boboy, with the use of said weapon which the accused had provided himself for the purpose, thereby inflicting upon said Garry Ruiz *y* Garcia serious and mortal wounds on his left chest which caused the death of said victim.

Records, p. 19.

[3] *Id.* at 38. Certificate of Arraignment dated 15 January 2002.

[4] *Id.* at 34. Spot Report dated 16 July 2001of the Officer-in-Charge, Provincial Jail, Dancalan, Bobon, Northern Samar.

The prosecution presented the testimonies of the following: Mylene Ruiz,[5] wife of victim Garry Ruiz (Ruiz); two (2) eyewitnesses to the crime, namely, Deolito Romines (Romines)[6] and Joseph del Valle (del Valle);[7] and Dr. Norma E. Dato,[8] who examined the body of Ruiz.

Mylene Ruiz testified that on 10 February 2001, appellant and Dollendo went to her house looking for her husband Ruiz. She asked the accused why so since the latter was out peddling fish. The accused told her that they had a problem with him, which she would later find out when they meet.[9]

Soon after, on 13 February 2001 at around 2:30 in the afternoon, Ruiz was killed at the house of Romines at *Barangay* West, San Jose, Northern Samar. Eyewitnesses Romines and del Valle rendered a straightforward account of the incident in the following manner:

On that fateful afternoon, Del Valle, together with one Erles Anquillo and victim Ruiz were playing cards in the *sala* of Romines' house. Meanwhile, Romines was getting their *pulutan* ready.[10] He was in the kitchen, which was about less than two (2) meters away from the *sala*,[11] with an unobstructed view of the *sala*.[12] The drinking session had not yet begun when appellant arrived. He did nothing and left immediately upon seeing them.[13]

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[5] TSN, 13 June 2002, pp. 1-7.

[6] TSN, 11 April 2002, pp. 1-16.

[7] TSN, 6 May 2002, pp. 1-10.

[8] TSN, 6 August 2002, pp. 1-6.

[9] TSN, 13 June 2002, p. 4.

[10] TSN, 11 April 2002, pp. 4-5.

[11] *Id.* at 11.

[12] *Id.* at 14.

[13] *Id.* at 5.

After two (2) minutes, appellant returned with his brother-in-law Dollendo.[14] Ruiz did not notice them enter the house because his back was turned against the door.[15] Appellant pulled out a bolo (*dipang*), handed it over to Dollendo saying, "Uh! [Y]ou take care of it," after which, he stepped back.[16] Dollendo, in turn, immediately stabbed Ruiz on the left chest.[17]

Del Valle ran to seek police assistance[18] while Romines was left behind. Romines recounted that after the first blow, three (3) successive stab blows were further delivered hitting Ruiz in his chest near the heart and in his arm.[19] Thereafter, appellant and Dollendo fled towards the direction of P. Tingzon.[20] Ruiz died on his way to the hospital.[21]

Dr. Norma E. Dato, Municipal Health Officer, San Jose, Northern Samar, identified in court her Autopsy Report,[22] showing that the death of the victim was caused by "shock secondary internal hemorrhage caused by st[a]b wounds," which injured the heart, left lung, and blood vessels. The four stab wounds were described as follows:

St[a]b wound No. 1	- Length -	1.2 cm	located 2.9 cm
	- Width -	.8 cm	above the left nipple
St[a]b wound No. 2	- Length -	1.2 cm	located about 4 cm.
	- Width -	.8 cm	st[a]b wound No. 1 along the anterior axillary line

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[14] *Id.* at 5-6, 9.

[15] *Id.* at 14.

[16] *Id.* at 6.

[17] TSN, 6 May 2002, p. 5.

[18] *Id.*

[19] TSN, 11 April 2002, p. 8.

[20] *Id.* at 9.

[21] *Id.* at 10.

[22] Records, p. 8.

St[a]b wound No. 3	- Length - 2.5 cm - Width - .6 cm	located on the left arm, midportions. This is a through and through wound.
St[a]b wound No. 4	- Length - 1 cm - Width - .6 cm	located 4 cm. below st[a]b wound No. 3. This is a through & through wound

She further testified that stab wound nos. 1 and 2 caused the death of Ruiz.[23]

As the lone witness for the defense, appellant denied the charge against him and claimed that he never saw Dollendo on the date of the incident. He further alleged that he was then in the house of spouses Dafia Pusio and Dondon Morino, also in *Barangay* West, from 12:00 noon to 3:00 o'clock in the afternoon.[24] He learned of the death of Ruiz only on 2 March 2001 when he was apprehended by the policemen.[25]

On cross-examination, the following facts were elicited from the appellant: that Dollendo is his brother-in-law; that he had known victim Ruiz, and prosecution witnesses Romines and del Valle for a long time;[26] that Dafia's house, where he allegedly stayed to watch betamax from 12:00 noon to 3:00 o'clock in the afternoon of 13 February 2001 and Romines' house, where Ruiz was killed, are only forty (40) meters apart one is, in fact, just across the other.[27]

On 30 April 2003, the trial court convicted the appellant.[28] The dispositive portion of the decision reads:

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[23] TSN, 6 August 2002, p. 3.

[24] TSN, 11 October 2002, pp. 4-5.

[25] *Id.* at 6.

[26] *Id.* at 5, 7 and 8.

[27] *Id.* at 9.

[28] Records, pp. 83-86. Decision dated 30 April 2003 penned by Judge Ernesto G. Corocoto.

From the foregoing, the Court finds NESTOR MEDIC[E] guilty beyond reasonable doubt as principal by induction of the crime of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim ₱50,000.00 and another ₱50,000.00 as moral damages and to pay the costs.[29]

Appellant filed a Notice of Appeal[30] dated 16 May 2003 with the trial court. After the submission of their respective briefs, this Court ordered the transfer of the records of the case to the Court of Appeals, for appropriate action and disposition, in order to allow an intermediate review of the case.[31]

On 28 November 2006, the Court of Appeals promulgated its decision[32] in CA-G.R. CR HC No. 00243 denying the appeal. Thus:

WHEREFORE, the appeal is DENIED and the *Decision* dated 30 April 2003 of the Regional Trial Court, Branch 19, Catarman, Northern Samar, finding NESTOR MEDICE guilty beyond reasonable doubt of the crime of Murder, and imposing on him the penalty of *reclusion perpetua* and to indemnify the heirs of the victim Fifty Thousand Pesos (₱50,000.00), and another Fifty Thousand Pesos (₱50,000.00) as moral damages and to pay the costs, is **AFFIRMED** subject to the modification that he shall indemnify the victim in the amount of Thirty Thousand Pesos (₱30,000.00) as exemplary damages.[33]

Appealed to this Court, we required the parties to simultaneously file their respective supplemental briefs.[34]

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[29] *Id.* at 86.

[30] *Id.* at 87.

[31] CA *Rollo,* p. 87. Resolution dated 8 June 2005, First Division, Supreme Court.

[32] *Id.* at 92. Notice of Judgment dated 28 November 2006 of the Clerk of Court of the Nineteenth Division, Court of Appeals.

[33] *Id.* at 101-102. Decision dated 28 November 2006 of the Court of Appeals.

[34] *Rollo,* p. 19. Resolution dated 14 April 2008, Second Division, Supreme Court.

Both manifested that they will no longer file supplemental pleadings.[35]

Our Ruling

We affirm the appellant's conviction.

To be convicted of murder, the following must concur: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code; and (4) the killing does not constitute parricide or infanticide.[36]

Treachery qualified the killing to murder

The law provides that an offender acts with treachery when he "commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[37] There is, thus, treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about to do.[38]

It is clear in the records that the circumstance of treachery is attendant in this case. The aggressors ensured that the victim had no opportunity to resist or defend himself through the sudden and unexpected attack. As testified to by Romines:

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[35] *Id.* at 21-23. Manifestation and Motion dated 30 June 2008 of the Office of the Solicitor General; *Id.* at 28-35. Manifestation (with Motion to Admit) dated 20 October 2008 and Manifestation dated 28 November 2008, both of the Public Attorney's Office.

[36] *People v. Maningding,* G.R. No. 195665, 14 September 2011 citing *People v. de la Cruz,* G.R. No. 188353, 16 February 2010, 612 SCRA 738, 746; cited in *People v. Gabrino,* G.R. No. 189981, 9 March 2011.

[37] Article 14, par.16, Revised Penal Code.

[38] *People v. Lobino,* G.R. No. 123071, 28 October 1999, 317 SCRA 606, 615.

Q Did the victim notice the two accused when they entered your house for the second time?
A No, sir, because they came from his left side.

Q How long thereafter after both accused entered your house when the first stabbing blow was delivered by Edgardo Dollendo to the victim?
A It did not take long before the stabbing.

[Q] Do you mean to say that it was sudden when Edgardo Dollendo stabbed the victim?
A Yes, sir.[39]

Del Valle was likewise positive that Ruiz was not aware that he was about to be attacked.

Q When the accused Eduardo Dollendo delivered the first blow to the victim did the victim notice that he was to be attacked by the accused Eduardo?
A No, sir, he was beside [Ruiz].[40]

As to whether the circumstance of treachery can qualify the killing to murder, the fact being that it was not expressly stated as such in the information, this Court has long clarified that "qualifying circumstances need not be preceded by descriptive words such as 'qualifying' or 'qualified by' to properly qualify an offense."[41]

Evident premeditation was not established as an aggravating circumstance

The aggravating circumstance of evident premeditation may only be considered if the following are established:

(1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his

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[39] TSN, 11 April 2002, p. 7.

[40] TSN, 6 May 2002, p. 5.

[41] *People v. Garin*, G.R. No. 139069, 17 June 2004, 432 SCRA 394, 411 citing *People v. Paulino*, G.R. No. 148810, 18 November 2003, 416 SCRA 122 further citing *People v. Aquino*, 386 SCRA 391 (2002).

determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[42]

None of the requisites, however, is present in this case. First, the testimony of Mylene Ruiz that appellant and Dollendo looked for her husband Ruiz on 10 February 2011 and that they told her that they have a problem to settle, is insufficient to conclude that the assailants have then decided to commit the crime. Second, evidence is wanting to show when the offenders actually resolved to kill the victim. Even assuming that they clung to their determination to commit the crime after it was ascertained that Ruiz was in the house of Romines, the lapse of two (2) minutes or so from the time appellant checked on the whereabouts of Ruiz to the time Ruiz was attacked is not sufficient to afford them time to reflect on the consequences of their actions,[43] the essence of premeditation being "that the execution of the act was 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."[44]

There was conspiracy to commit murder; Appellant is, therefore, liable notwithstanding the evidence showing that it was only Dollendo who stabbed the victim

The prosecution clearly established that it was only Dollendo who stabbed Ruiz. That appellant did not actually stab the victim does not, however, release him from criminal liability.

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[42] *People v. Patelan*, G.R. No. 182918, 6 June 2011 citing *People v. de Guzman*, G.R. No. 173477, 4 February 2009, 578 SCRA 54, 66; and *People v. Escarlos*, G.R. No. 148912, 10 September 2003, 410 SCRA 463, 482.

[43] See *People v. Patelan, id.*, where this Court found that the span of less than thirty minutes is insufficient for the purpose.

[44] *People v. Anticamara*, G.R. No. 178771, 8 June 2011 citing *People v. PO3 Tan,* 411 Phil. 813, 837 (2001).

Article 8 of the Revised Penal Code provides that "[a] conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." The "evidence of a chain of circumstances,"[45] to wit: that appellant went inside the house of Romines to ascertain that the victim was there; that he fetched Dollendo to bring him to Ruiz; that he gave the *dipang* to Dollendo to commit the crime; and that they both fled after the stabbing, taken collectively, shows a community of criminal design to kill the victim. Evidently, there was conspiracy in the commission of the crime. Thus:

> To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act xxx. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[46]

Defense of alibi cannot prosper;
There was failure to establish physical impossibility to be at the locus criminis;
Witnesses positively identified the assailants

It has been held time and again that alibi may prosper only when the accused establishes that not only was he somewhere else when the crime was committed but that it was physically impossible for him to have been at the *locus criminis* at that time.[47]

In the instant case, appellant admitted that the house of his friend where he said he was at the time of the commission of the crime is only forty (40) meters away from the *locus criminis*.[48]

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[45] *Id.* citing *Go v. Fifth Division, Sandiganbayan,* G.R. No. 172602, 13 April 2007, 521 SCRA 270, 290.

[46] *Id.* citing *People v. de Jesus*, 473 Phil. 405, 429 (2004).

[47] *People v. Gabrino, supra* note 35.

[48] See *People v. Anticamara, supra* note 44.

Hence, it was not physically impossible for him to be at Romines' place during the killing incident.

Furthermore, positive identification destroys the defense of alibi, more so when such is credible and categorical,[49] as it is in this case. Positive identification by witnesses, absent any ill motive on their part, likewise prevails over the defense of denial.[50]

All considered, we are convinced that the guilt of appellant has been sufficiently established with moral certainty.

Reclusion perpetua is the imposable penalty

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. The proper imposable penalty on the appellant is *reclusion perpetua* inasmuch as neither aggravating nor mitigating circumstances attended the commission of the crime.[51]

Appellant is liable for civil indemnity, moral damages, temperate damages, exemplary damages and 6% interest per annum on all damages until fully paid

The damages awarded by the Court of Appeals in the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty

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[49] *Id.* citing *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[50] *People v. Combate,* G.R. No. 189301, 15 December 2010, 638 SCRA 797, 810 citing *People v. Padilla,* G.R No. 167955, 30 September 2009, 601 SCRA 385.

[51] Article 63 of the Revised Penal Code provides, in part:

ART. 63. *Rules for the application of indivisible penalties.* – xxx

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. xxx

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

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Thousand Pesos (₱50,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages[52] are in order.

We note, however, that both the Regional Trial Court and the Court of Appeals did not award damages to cover the unreceipted funeral expenses incurred by the surviving spouse. While actual damages are not recoverable absent any receipt or supporting document pertaining to the expenses, temperate damages may be awarded in its stead.[53] This is in accordance with Article 2224 of the Civil Code, which provides that temperate damages may be recovered "when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."[54] Undeniably, the heirs of Ruiz suffered pecuniary loss representing funeral and burial expenses, although the exact amount is not proved.[55] Accordingly, the heirs of Ruiz shall be entitled to temperate damages in the amount of ₱25,000.00.[56]

Finally, consistent with recent jurisprudence on damages,[57] interest on all damages at the rate of six percent (6%) per annum

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[52] *People v. Anches,* G.R. No. 189281, 23 February 2011, 644 SCRA 372, 376-377; *People v. Maningding, supra* note 36 citing *People v. Combate, supra* note 50.

[53] *People v. Comillo, Jr.*, G.R. No. 186538, 25 November 2009, 605 SCRA 756, 781-782; *People v. Lucero,* G.R. No. 179044, 6 December 2010, 636 SCRA 533, 543 citing *People v. Gidoc*, G.R. No. 185162, 24 April 2009, 586 SCRA 825, 837.

[54] *Id.*

[55] *Id.* at 782.

[56] *Id.* citing *People v. Oco,* 458 Phil. 815, 855; 412 SCRA 190, 222 (2003); *People v. Solamillo,* 452 Phil. 261, 281; 404 SCRA 211, 227 (2003). See also *People v. Esquibel,* G.R. No. 192465, 8 June 2011.

[57] *People v. Maningding, supra* note 35 citing *People v. Combate, supra* note 49; *People v. Gabrino, supra* note 36 citing *People v. Combate, supra* note 50; *People v. de Jesus*, G.R. No. 186528, 26 January 2011, 640 SCRA 660, 678 cited in *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742-743; *People v. Dolorido,* G.R. No. 191721, 12 January 2011, 639 SCRA 496, 508 cited in *People v. Tabongbanua, id.*

from the finality of judgment until fully paid is likewise hereby imposed.

WHEREFORE, the Decision dated 28 November 2006 of the Court of Appeals in CA-G.R. CR HC No. 00243 **DENYING** the appeal of appellant Nestor Medice is **AFFIRMED** with **MODIFICATION.**

Appellant is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua.* He is further ordered to pay the heirs of Gary G. Ruiz the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 183822. January 18, 2012]

RUBEN C. CORPUZ, represented by Attorney-in-Fact Wenifreda C. Agullana, *petitioner, vs.* **SPS. HILARION AGUSTIN and JUSTA AGUSTIN,** *respondents.*

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[*] Designated as additional member per Special Order No. 1174 dated 9 January 2012.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; IN EJECTMENT PROCEEDINGS, THE COURTS RESOLVE THE BASIC QUESTION OF WHO IS ENTITLED TO PHYSICAL POSSESSION OF THE PREMISES.— One of the three kinds of action for the recovery of possession of real property is "*accion interdictal,* or an ejectment proceeding ... which may be either that for forcible entry (*detentacion*) or unlawful detainer (*desahucio*), which is a summary action for the recovery of physical possession where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court." In ejectment proceedings, the courts resolve the basic question of who is entitled to physical possession of the premises, possession referring to possession *de facto,* and not possession *de jure*. Where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession, adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue of possession. The adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property.

2. ID.; ID.; ID.; ID.; AN EJECTMENT CASE WILL NOT NECESSARILY BE DECIDED IN FAVOR OF ONE WHO HAS PRESENTED PROOF OF OWNERSHIP OF THE SUBJECT PROPERTY.— The pronouncement in *Co v. Militar* was later reiterated in *Spouses Pascual v. Spouses Coronel* and in *Spouses Barias v. Heirs of Bartolome Boneo, et al.,* wherein we consistently held the age-old rule "that the person who has a Torrens Title over a land is entitled to possession thereof." However, we cannot lose sight of the fact that the present petitioner has instituted an unlawful detainer case against respondents. It is an established fact that for more than three decades, the latter have been in continuous possession of the subject property, which, as such, is in the concept of ownership and not by mere tolerance of petitioner's father. Under these circumstances, petitioner cannot simply oust respondents from possession through the summary procedure

of an ejectment proceeding. Instructive on this matter is *Carbonilla v. Abiera*, which reads thus: x x x "The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. **For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property**." x x x In this case, petitioner has not proven that respondents' continued possession of the subject properties was by mere tolerance of his father, except by a mere allegation thereof. In fact, petitioner has not established when respondents' possession of the properties became unlawful – a requisite for a valid cause of action in an unlawful detainer case.

3. ID.; ID.; ID.; UNLAWFUL DETAINER; COMPLAINT FOR UNLAWFUL DETAINER, WHEN SUFFICIENT.— In *Canlas v. Tubil*, we enumerated the elements that constitute the sufficiency of a complaint for unlawful detainer, as follows: "Well-settled is the rule 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 the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence. Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession. . . . In *Cabrera v. Getaruela*, the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff; (2) eventually,

such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment."

4. CIVIL LAW; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; CANNOT BE THE SUBJECT OF COLLATERAL ATTACK.— It is settled in jurisprudence that a Torrens certificate of title cannot be the subject of collateral attack. Such attack must be direct and not by a collateral proceeding. It is a well-established doctrine that the title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding. Considering that this is an unlawful detainer case wherein the sole issue to be decided is possession *de facto* rather than possession *de jure*, a collateral attack by herein respondents on petitioner's title is proscribed.

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos Law Office for petitioner.
Prospero P. Cortes for respondents.

D E C I S I O N

SERENO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated 08 January 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 90645, which affirmed the Decision of the Regional Trial Court (RTC) of Laoag City and its Resolution[2] dated 15 July 2008 denying the

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by then Associate Justice Mariano C. del Castillo and Associate Justice Romeo F. Barza.

[2] *Rollo*, p. 43.

Motion for Reconsideration. The RTC, in the exercise of its appellate jurisdiction, affirmed the Decision of the Municipal Trial Court (MTC) of Laoag City, which had dismissed the unlawful detainer case filed by herein petitioner.

The Factual Antecedents

The Court adopts the findings of fact of the CA as follows:

Ruben C. Corpuz (Ruben) filed a complaint for ejectment against Spouses Hilarion and Justa Agustin on the allegation that he is the registered owner of two parcels of land located in Santa Joaquina, Laoag City covered by TCT No. 12980 issued on October 29, 1976 by the Laoag City Register of Deeds and with technical descriptions as follows:

1) A parcel of land (Lot No. 20 of the Cadastral Survey of Laoag), with improvements thereon, situated in the barrio of Santa Joaquina, Municipality of Laoag. Bounded x x x containing an area of five thousand seven hundred and fifty nine (5,759) square meters more or less x x x.

2) A parcel of land (Lot No. 11711 of the Cadastral Survey of Laoag), with the improvements thereon, situated in the barrio of Santa Joaquina, Municipality of Laoag. Bounded x x x, containing an area of twenty thousand seven hundred and forty five (20,745) square meters, more or less x x x.

Aforesaid parcels of land were formerly owned by Elias Duldulao in whose name Original Certificate of Title No. O-1717 was issued. Duldulao sold said properties on August 27, 1951 to Francisco D. Corpuz, father of Ruben C. Corpuz. The elder Corpuz allowed spouses Agustin to occupy subject properties, the latter being relatives.

Despite demand to vacate, the Agustins refused to leave the premises.

Ruben alleged further that he has the better right to possess subject property having acquired the same from his father, Francisco, who executed a Deed of Quitclaim in his favor on March 15, 1971.

Spouses Agustin, in their Answer, interposed the defense that on June 5, 1971 Francisco Corpuz, Ruben's father, disposed of subject property by executing a Deed of Absolute Sale in their favor for a

consideration of Eleven Thousand One Hundred Fifty Pesos (₱11,150.00).

The Municipal Trial Court found for the spouses Agustin and dismissed the complaint.

> In sum, considering the evidence of the defendants which shows that they entered into and occupied Lot No. 20 and the 9,657 sq. m. portion of Lot No. 11711 as buyers or owners, disproving the allegation of the plaintiff that defendants were merely allowed by Francisco Corpuz to occupy the subject properties, being his relatives, and considering further the length of time that the defendants have been in possession, as owners, of Lot No. 20 and the 9,657 sq. m. portion of Lot No. 11711, and have been continuously exercising their rights of ownership thereon, this court is of the view and holds, in so far as this case is concerned, that the defendants are the ones entitled to the possession of Lot No. 20 and the 9,657 sq. m. portion of Lot No. 11711.
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> WHEREFORE, premises considered, this case, is hereby dismissed.
>
> SO ORDERED.

On appeal, Branch XVI, Regional Trial Court of Laoag City affirmed said dismissal, the dispositive portion of said decision states:

> "WHEREFORE, premises considered, the Appeal is hereby DISMISSED for lack of merit and the JUDGMENT of the Municipal Trial Court in Cities, Branch 01, Laoag City is hereby AFFIRMED, with costs against the plaintiff-appellant.
>
> SO ORDERED.[3]

Petitioner assailed the Decision of the RTC, affirming the earlier dismissal of the case by the MTC, by instituting an appeal with the CA. On 08 January 2008, the appellate court through its Fourteenth Division dismissed his appeal.[4] It noted that his father engaged in a double sale when he conveyed the disputed

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[3] *Rollo,* pp. 36-38.

[4] *Rollo,* p. 36.

properties to petitioner and respondents. The Quitclaim executed by the elder Corpuz in favor of petitioner was dated 15 March 1971, while the Deed of Sale with respondents was later, on 15 June 1971; both documents were notarized shortly after their execution.[5] The Quitclaim, which was subsequently inscribed at the back of Original Certificate of Title (OCT) No. O-1717 on 29 October 1976,[6] resulted in the issuance of Transfer Certificate of Title (TCT) No. T-12980 in the name of petitioner. The Deed of Sale executed with respondents was, however, not annotated at the back of OCT No. O-1717 and remained unregistered.[7]

Based on the above findings, the CA ruled that petitioner had knowledge of the sale of the disputed real property executed between Francisco Corpuz, petitioner's father, and respondents. Due to this conveyance by the elder Corpuz to respondents, the latter's possession thereof was in the nature of ownership. Thus, in the context of an unlawful detainer case instituted by petitioner against respondents, the appellate court concluded that respondents' possession of the property was not by mere tolerance of its former owner – petitioner's father – but was in the exercise of ownership.[8]

The CA noted that petitioner had knowledge of his father's sale of the properties to respondents as early as 1973. However, despite knowledge of the sale, petitioner failed to initiate any action to annul it and oust respondents from the subject properties.[9] The appellate court rejected his contention that, as registered owner of the disputed properties, he had a better right to possession thereof, compared to the unregistered Deed of Sale relied upon by respondents in their defense of the same properties. The CA ruled that the inaction on his part despite

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[5] CA *rollo,* p. 40.

[6] *Id.*

[7] *Rollo,* p. 88.

[8] *Rollo,* p. 40.

[9] *Id.*

knowledge of the sale in 1973 was equivalent to registration of respondents' unregistered deed.[10] In dismissing his appeal, the CA concluded that respondents' possession was "not ... anchored on mere tolerance nor on any of the grounds for forcible entry or unlawful detainer"; hence "the complaint for ejectment must fail."[11] The dispositive portion of the assailed Decision reads:

> WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED. The decision of Branch XVI, Regional Trial Court of Laoag City in Civil Case No. 13293-16 is hereby AFFIRMED.
>
> SO ORDERED.[12]

The Issues

Petitioner assigns the following errors in this Petition for Review on *Certiorari*:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO CONSIDER THE LEGAL OWNERSHIP OF PETITIONER ON THE DISPUTED PROPERTY TO CLAIM BETTER RIGHT TO POSSESSION.

II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN THE APPRECIATION OF THE ALLEGED SALE IN FAVOR OF RESPONDENTS TO RULE THAT THEY HAVE BETTER RIGHT TO POSSESSION.

III. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO CONSIDER THE CASE OF *JACINTO CO VS. MILITAR, ET AL*. (421 SCRA 455) WHICH IS SIMILAR TO THE INSTANT CASE.

IV. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DENYING THE PETITION FOR REVIEW RAISED BEFORE IT.[13]

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[10] *Id.*

[11] *Id.* at 41.

[12] *Id.*

[13] *Rollo,* pp. 15-16.

Petitioner presents to this Court for resolution the core issue of his Petition: who between the parties has the right to possession of the disputed properties — petitioner, who is the registered owner under TCT No. T-12980; or respondents, who have a notarized yet unregistered Deed of Absolute Sale over the same properties?

The Court's Ruling

We **DENY** the Petition.

Although this case does not present a novel question of law, there is a need to discuss the nature of an ejectment case for the recovery of physical possession in relation to the Torrens system. A resolution of the issue would be relevant to the determination of who has the better right to possession in this unlawful detainer case.

One of the three kinds of action for the recovery of possession of real property is "*accion interdictal,* or an ejectment proceeding ... which may be either that for forcible entry (*detentacion*) or unlawful detainer (*desahucio*), which is a summary action for the recovery of physical possession where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court."[14] In ejectment proceedings, the courts resolve the basic question of who is entitled to physical possession of the premises, possession referring to possession *de facto,* and not possession *de jure*.[15]

Where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession, adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue of possession. The adjudication of the issue of ownership

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[14] FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM I* (7th rev. ed. 2007).

[15] *David v. Cordova,* 502 Phil. 626 (2005).

is only provisional, and not a bar to an action between the same parties involving title to the property.[16]

In the instant case, the position of respondents is that they are occupying the disputed properties as owners, having acquired these from petitioner's father through a Deed of Absolute Sale executed in 1971. Respondents believe that they cannot be dispossessed of the disputed properties, since they are the owners and are in actual possession thereof up to this date. Petitioner, however, rebuts this claim of ownership, contending that he has registered the disputed properties in his name and has been issued a land title under the Torrens system. He asserts that, having registered the properties in his name, he is the recognized owner and consequently has the better right to possession.

Indeed, a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession.[17] Petitioner is correct that as a Torrens title holder over the subject properties, he is the rightful owner and is entitled to possession thereof. However, the lower courts and the appellate court consistently found that possession of the disputed properties by respondents was in the nature of ownership, and not by mere tolerance of the elder Corpuz. In fact, they have been in continuous, open and notorious possession of the property for more than 30 years up to this day.

Petitioner cites *Jacinto Co v. Rizal Militar, et al.*,[18] which has facts and legal issues identical to those of the instant case. The petitioner therein filed an unlawful detainer case against the respondents over a disputed property. He had a Torrens title thereto, while the respondents as actual occupants of the property claimed ownership thereof based on their unregistered

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[16] *Rivera v. Rivera,* 453 Phil. 404, 412 (2003) as cited in *Urieta vda. de Aguilar v. Alfaro,* G.R. No. 164402, 05 July 2010, 623 SCRA 130.

[17] *Vicente v. Avera,* G.R. No. 169970, 20 January 2009, 576 SCRA 634.

[18] G.R. No. 149912, 29 January 2004, 421 SCRA 455.

Deeds of Sale. The principal issue was who between the two parties had the better right to possess the subject property.

This Court resolved the issue by upholding the title holder as the one who had the better right to possession of the disputed property based on the following justification:

> We have, time and again, held that the only issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Moreover, an ejectment suit is summary in nature and is not susceptible to circumvention by the simple expedient of asserting ownership over the property.
>
> In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the lower courts and the Court of Appeals, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of Possession.
>
> Such decision, however, does not bind the title or affect the ownership of the land nor is conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.
>
> In the instant case, the evidence showed that as between the parties, it is the petitioner who has a Torrens Title to the property. Respondents merely showed their unregistered deeds of sale in support of their claims. The Metropolitan Trial Court correctly relied on the transfer certificate of title in the name of petitioner.
>
> In *Tenio-Obsequio v. Court of Appeals*, it was held that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> It is settled that a Torrens Certificate of title is indefeasible and binding upon the whole world unless and until it has been nullified by a court of competent jurisdiction. Under existing statutory and decisional law, the power to pass upon the validity of such certificate of title at the first instance properly belongs to the Regional Trial Courts in a direct proceeding for cancellation of title.

As the registered owner, petitioner had a right to the possession of the property, which is one of the attributes of his ownership. Respondents' argument that petitioner is not an innocent purchaser for value and was guilty of bad faith in having the subject land registered in his name is a collateral attack on the title of petitioner, which is not allowed. A certificate of title cannot be subject to a collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law.[19]

The pronouncement in *Co v. Militar* was later reiterated in *Spouses Pascual v. Spouses Coronel*[20] and in *Spouses Barias v. Heirs of Bartolome Boneo, et al.*,[21] wherein we consistently held the age-old rule "that the person who has a Torrens Title over a land is entitled to possession thereof."[22]

However, we cannot lose sight of the fact that the present petitioner has instituted an unlawful detainer case against respondents. It is an established fact that for more than three decades, the latter have been in continuous possession of the subject property, which, as such, is in the concept of ownership and not by mere tolerance of petitioner's father. Under these circumstances, petitioner cannot simply oust respondents from possession through the summary procedure of an ejectment proceeding.

Instructive on this matter is *Carbonilla v. Abiera*,[23] which reads thus:

Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession

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[19] *Supra*, citing *Estrellita S.J. vda. de Villanueva v. Court of Appeals and Lina F. vda. de Santiago*, G.R. No. 117971, 1 February 2001, 351 SCRA 12; citing NOBLEJAS AND NOBLEJAS, *LAND TITLES AND DEEDS*, 210 (1992); citing *Ching v. Court of Appeals*, 181 SCRA 9 (1990). (*Ching v. Court of Appeals* was erroneously cited as G.R. Nos. 59568-76 in the original Decision in *Co v. Militar*).

[20] G.R. No. 159292, 12 July 2007, 527 SCRA 474.

[21] G.R. No. 166941, 14 December 2009, 608 SCRA 169.

[22] *Id.*

[23] G.R. No. 177637, 26 July 2010, 625 SCRA 461.

thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.

In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases—forcible entry and unlawful detainer—are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. **For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property**. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.

The statements in the complaint that respondents' possession of the building was by mere tolerance of petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either expressed or implied.

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved. (Emphasis supplied.)

In this case, petitioner has not proven that respondents' continued possession of the subject properties was by mere tolerance of his father, except by a mere allegation thereof. In fact, petitioner has not established when respondents' possession of the properties became unlawful – a requisite for a valid cause of action in an unlawful detainer case.

In *Canlas v. Tubil*,[24] we enumerated the elements that constitute the sufficiency of a complaint for unlawful detainer, as follows:

> Well-settled is the rule 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 the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.
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> Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.
>
> An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession.
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> . . . . . .
>
> In *Cabrera v. Getaruela*, the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:
>
> (1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff;
>
> (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
>
> (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

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[24] G.R. No. 184285, 25 September 2009, 601 SCRA 147.

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

Based on the above, it is obvious that petitioner has not complied with the requirements sufficient to warrant the success of his unlawful detainer Complaint against respondents. The lower courts and the CA have consistently upheld the entitlement of respondents to continued possession of the subject properties, since their possession has been established as one in the concept of ownership. Thus, the courts correctly dismissed the unlawful detainer case of petitioner.

We concur in the appellate court's findings that petitioner's father engaged in a double sale of the disputed properties. The records of the case show that it took petitioner more or less five years from 1971 when he acquired the property from his father to 1976 when petitioner registered the conveyance and caused the issuance of the land title registered in his name under the Torrens system. Respondents, on the other hand, continued their possession of the properties, but without bothering to register them or to initiate any action to fortify their ownership.

We cannot, however, sustain the appellate court's conclusion that petitioner's failure to initiate any action to annul the sale to respondents and oust them from the disputed properties had the effect of registration of respondents' unregistered Deed of Absolute Sale. We held thus in *Ruiz, Sr. v. Court of Appeals*:[25]

(But) where a party has knowledge of a prior existing interest which is unregistered at that time he acquired a right to the same land, **his knowledge of that prior unregistered interest has the effect of registration as to him**. Knowledge of an unregistered sale is equivalent to registration. As held in *Fernandez v. Court of Appeals* [189 SCRA 780 (1990)],

> Section 50 of Act No. 496 (now Sec. 51 of P.D. 1529), provides that the registration of the deed is the operative act to bind or affect the land insofar as third persons are concerned.

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[25] 414 Phil. 311, 323 (2001).

> But where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. The Torrens system cannot be used as a shield for the commission of fraud (*Gustillo v. Maravilla*, 48 Phil. 442). [Emphasis supplied.]

In this case, the Quitclaim executed by the elder Corpuz in favor of petitioner was executed ahead of the Deed of Sale of respondents. Thus, the sale of the subject properties by petitioner's father to respondents cannot be considered as a prior interest at the time that petitioner came to know of the transaction.

We also note that, based on the records, respondents do not dispute the existence of TCT No. T-12980 registered in the name of petitioner. They allege, though, that the land title issued to him was an "act of fraud"[26] on his part. We find this argument to be equivalent to a collateral attack against the Torrens title of petitioner – an attack we cannot allow in the instant unlawful detainer case.

It is settled in jurisprudence that a Torrens certificate of title cannot be the subject of collateral attack.[27] Such attack must be direct and not by a collateral proceeding.[28] It is a well-established doctrine that the title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding.[29] Considering that this is an unlawful detainer case wherein the sole issue to be decided is possession

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[26] *Rollo,* p. 291.

[27] *Spouses Marcos R. Esmaquel and Victoria Sordevilla v. Maria Coprada,* G.R. No. 152423, 15 December 2010.

[28] *Borbajo v. Hidden View Homeowners, Inc.,* G.R. No. 152440, 31 January 2005, 450 SCRA 315.

[29] *Legarda and Prieto v. Saleeby,* 31 Phil. 590 (1915); *Magay v. Estiandan,* G.R. No. L-28975, 27 February 1976; 69 SCRA 456 as cited in PENA, PENA, JR. & PENA, *REGISTRATION OF LAND TITLES AND DEEDS* (2008).

de facto rather than possession *de jure*, a collateral attack by herein respondents on petitioner's title is proscribed.

Our ruling in the present case is only to resolve the issue of who has the better right to possession in relation to the issue of disputed ownership of the subject properties. Questions as to the validity of petitioner's Torrens title can be ventilated in a proper suit instituted to directly attack its validity, an issue that we cannot resolve definitively in this unlawful detainer case.

WHEREFORE, in view of the foregoing, we deny the instant Petition for lack of merit. The Decisions of the Court of Appeals in CA-G.R. SP No. 90645 (dated January 08, 2008), of the Regional Trial Court of Laoag City in Civil Case No. 13293-16, as well as of the Municipal Trial Court of Laoag City in Civil Case No. 3111 — all dismissing the unlawful detainer case of petitioner — are **AFFIRMED.**

We make no pronouncements as to attorney's fees for lack of evidence.

SO ORDERED.

Carpio (Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[*] Designated as acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

FIRST DIVISION

[G.R. No. 183350. January 18, 2012]

PRUDENTIAL BANK (now Bank of the Philippine Islands), *petitioner, vs.* **ANTONIO S.A. MAURICIO substituted by his legal heirs, MARIA FE, VOLTAIRE, ANTONIO, JR., ANTONILO, EARL JOHN, and FRANCISCO ROBERTO all surnamed MAURICIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; PROHIBITS PARTIES FROM LITIGATING THE SAME ISSUE MORE THAN ONCE; CASE AT BAR.— The Court need not be reminded of the fact that civil and labor cases require different quanta of proof – the former requiring preponderance of evidence while the latter only calls for substantial evidence. Despite the dissimilarity, however, this does not spell closing our eyes to facts conclusively determined in one proceeding when the determination of the very same facts are crucial in resolving the issues in another proceeding pursuant to the doctrine of *res judicata*. x x x Irrefutably, the present labor case is closely related to the civil case that was decided with finality. In the civil case, the Bank's counterclaim for actual and exemplary damages against Mauricio was grounded on his alleged violations of office policies when he allowed the encashment and/or withdrawal prior to clearing of numerous USTWs and dollar checks and allegedly tried concealing from the Bank the fact that said instruments were returned. Said violations allegedly caused undue damage and prejudice to the Bank. x x x Undeniably, the acts and omissions alleged by the Bank in the civil case as basis of its counterclaim against Mauricio, are the very same acts and omissions which were used as grounds to terminate his employment. The Bank, however, now wants this Court to disregard altogether the factual findings in the civil case concerning the very same acts and omissions and re-evaluate the same pieces of evidence and make new factual findings in the hopes that the same will, this time, be in its favor. This would definitely run contrary to the foundation

principle upon which the doctrine of *res judicata* rests – the parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

2. ID.; ID.; ID.; ID.; RULES.— The doctrine of *res judicata* is provided in Section 47, Rule 39 of the Rules of Court x x x. The doctrine of *res judicata* thus lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether the claim or demand, purpose, or subject matter of the two suits is the same or not. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the aforequoted paragraph (b) of Section 47, is referred to as "bar by former judgment" while the second general rule, which is embodied in paragraph (c) of the same section, is known as "conclusiveness of judgment."

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; FOR A DISMISSAL BASED THEREON TO BE VALID, THE BREACH OF TRUST MUST BE WILLFUL.— [F]or a dismissal based on loss of trust and confidence to be valid, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. Loss of trust and confidence stems from a breach of trust founded on dishonest, deceitful or fraudulent act.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Gatchalian Castro & Mawis for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the January 30, 2008 Decision[1] and June 16, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 82908. The appellate court ruled that respondent Antonio S.A. Mauricio was illegally dismissed from employment by petitioner Prudential Bank.

The antecedent facts of the case are as follows:

Respondent Mauricio was hired by petitioner Prudential Bank on August 17, 1960. He was the Branch Manager of Prudential Bank's Magallanes Branch in Makati City when he was dismissed from employment.

On June 25, 1990, Spouses Marcelo and Corazon Cruz (Spouses Cruz) opened a dollar savings account, FXSD No. 221-6, with an initial cash deposit of US$500.00, in the Bank's Magallanes Branch. At that time, Mauricio was already its Branch Manager.

On July 17, 1990, Spouses Cruz executed in favor of the Bank a Deed of Real Estate Mortgage over their property covered by Transfer Certificate of Title No. 1310-R of the Register of Deeds of San Juan, Metro Manila. Later, the Spouses Cruz

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[1] *Rollo*, pp. 8-24. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring.

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

executed another Deed of Real Estate Mortgage over the same property in favor of the Bank for the amount of ₱600,000.

On September 7, 1992, an audit investigation was conducted in the Magallanes Branch. The salient portions of the reports[3] of the audit team are summarized as follows:

From March 1991 to August 1991, credits to FXSD No. 221-6 consisted mostly of dollar check deposits composed of U.S. Treasury Warrants (USTWs), U.S. Postal Money Orders, Travellers Express and Amexco Money Orders. Despite the fact that Spouses Cruz were not the payees of said instruments and neither of them endorsed the same, Mauricio allowed immediate withdrawals against them. Most of the proceeds of the encashments were then deposited to a peso savings account, S/A No. 3396, also in the name of the Spouses Cruz.

The dollar checks were eventually returned by their drawee banks for having forged endorsements, alterations to the stated amounts, or being drawn against insufficient funds, among other reasons. Allegedly, upon receipt of the returned checks at the Magallanes Branch, Mauricio debited FXSD No. 221-6, but such debits were made against the uncollected deposits of the Spouses Cruz. Some of the returned checks and USTWs were lodged to accounts receivable because the balance of FXSD No. 221-6 was not sufficient to cover the returned checks. The other returned checks were then covered with the personal checks of the Spouses Cruz and their children. Said personal checks, however, were also returned by the drawee banks.

According to the tellers, it was Mauricio who brings the checks to them with the prepared deposit slips for S/A No. 3396. He also received the proceeds of the withdrawals and the difference between the total peso equivalent of the checks and the amount being deposited to S/A No. 3396. When the available teller's machine tapes from March 1 to August 30, 1991 were examined, it was shown that in some instances, cash-in validations on the deposits slips for S/A No. 3396 were effected by the tellers

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[3] *Id.* at 122-125, 129-131.

without actual receipt of cash at the time the validations were made. Simultaneously, cash withdrawals were allowed even if S/A No. 3396 did not have sufficient balance to cover the withdrawals at the time they were made. The cash accountability of the tellers will balance only once the encashment of the USTWs were made later in the day.

On October 16, 1992, Mauricio was directed to report for work at the Head Office immediately.

On November 10, 1992, Prudential Bank President Jose L. Santos issued a Memorandum[4] dated November 9, 1992 to Mauricio furnishing him with a copy of the audit team's report and directing him to report in writing within seventy-two (72) hours from receipt of the memorandum why the bank should not institute an action against him. The report showed that the bank was exposed to losses amounting to $774,561.58, broken down as follows:

1. Returned $ checks deposited to FXSD 221-6		$344,600.00
2. Returned $ checks encashed over the counter		3,190.58
Total Checks returned which cannot be debited to the account		$347,790.58
3. Checks Expected to be returned:		
a. Deposited to FXSD 221-6b.	$202,685.48	
b. Encashments	224,085.52	
		426,771.00
Total Possible Loss to the Bank		$ 774,561.58

In his reply[5] dated November 12, 1992, Mauricio stated that he is "exhausting all efforts to get the Spouses Marcelo and

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[4] *Id.* at 126-127.

[5] *Id.* at 128.

Corazon Cruz to settle their obligation immediately" and that they "have requested the Bank to allow them to fully settle the obligations on or before 31 December 1992." He further stated that he is willing to face an investigation body to explain his side on the matter so he can clear his name and reputation.

Incidentally, in the same year, the property subject of the deeds of real estate mortgage was gutted down by fire. The insurer, Rizal Surety Insurance, paid the proceeds of the policy to the Bank.

As requested by Mauricio, a Hearing Committee was constituted and several hearings were held starting March 2, 1993. In all the proceedings, Mauricio was duly represented by counsel.

The hearings revolved on the following charges brought against Mauricio:

A. VIOLATIONS OF SPECIFIC ORDERS AND MEMORANDUM

1. Violation of Office Order No. 1516 which enjoin approving officers from encashing U.S. Treasury Warrants (USTWs) whenever the presenter is not the payee of the check. x x x

2. Violation of Office Memorandum dated 7 March 1985 re: Any claim/s and/or case/s against the Prudential Bank or where the Bank is involved should be referred immediately to the Head Office, to Dr. Octavio D. Fule, Vice President and Legal Officer, who will take necessary and appropriate action on the said claim/s or case/s. x x x

3. Violation of Office Order No. 1666 re: Prohibition on Drawing against Uncollected Deposit. x x x

4. Violation of Office Order No. 1596 which states that returned items should be lodged to Accounts Receivable when there is no sufficient balance on the ac[c]ount. x x x

B. COMMISSION OF IMPRUDENT ACTS PREJUDICIAL TO THE INTERESTS OF THE BANK

1. Concealment of the overdrawing effects of the returned checks on FXSD No. 221[-6], by allowing the depositor to cover the returned checks with other checks which were also subsequently returned by the drawee banks, instead of reporting it to Management (Lapping)[.]
2. Approval of encashment of various USTWs without endorsement of Mr. Marcelo Cruz which placed the interest of the Bank at great risk, the greater portion of which checks were already returned unpaid by the U.S. Treasury mostly for the reason amount altered, while the rest are expected to be returned unpaid.
3. Instructing tellers to make cash-in validations of the USTWs when in fact there was no deposit yet.[6]

Answering the above charges, Mauricio alleged:

1. Re: Office Order No. 1516

Office Order No. 1516 is directory because of the use of the word "refrain" and that it applies only where the presenter is a stranger to the Bank. x x x

2. Re: Office Memorandum dated March 1985

Everytime there was a complaint by a payee of the USTW, he notified Atty. Pablo Magno, the Bank's external counsel. He presented a Joint Affidavit, Receipt, Quitclaims and Withdrawal Memos x x x.

Claims against the US Treasury are not covered by the Office Order and there is no need to inform Head Office because the Head Office had already debited the amount in favor of the US Treasury and the Head Office in turn, sends him instructions to debit the client's account. x x x

3. Re: Office Order No. 1666

DAUD [Drawings Against Uncollected Deposits] is a tolerated practice and bank managers are given discretion to allow DAUD. It was not the act of allowing DAUD that was punished but the loss resulting therefrom. x x x

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[6] *Id.* at 133-134.

4. Re: Office Order No. 1596

To explain the delay in responding to the returned tickets, he said that everytime there is a returned check, he notifies Mr. Cruz. With respect to the USTWs that are being deposited to SA 3396, the Sps. Cruz deposited in cash; whereas in FXSD 221[-6], he debits the account but because it has an uncleared balance, he still asks for additional deposit. These deposits to FCDU are in the form of personal checks of the Sps. Cruz or relatives but he debits the account even if these checks have not been cleared. x x x

5. Re: Concealment of Overdrawing Effects of Returned Checks on FXSD 221[-6] instead of reporting the same to management; and, Approval of Encashment without Endorsement of Mr. Marcelo Cruz.

He notified Atty. Pablo Magno of the fact of the returned checks. He presented a letter dated 15 May 1992 by Atty. Magno addressed to him assuring the latter that the Sps. Cruz will not renege on their obligation x x x. He further submitted a letter dated 1 August 1992 which is the demand letter of Atty. Magno to the Sps. Cruz x x x.

He is not aware of any procedure of reporting to management x x x and there is no prejudice to the Bank because it earns interest and penalty charges and the Sps. Cruz acknowleged their obligation to the Bank. x x x He presented three (3) letters of the Sps. Cruz, one dated 30 October 1992 and two dated 14 January 1993 where [the] Sps. Cruz admitted their obligation to the Bank. x x x

6. Instructing Tellers to make Cash-in Validations when in fact there is no Deposit yet

Mr. Mauricio explained that whenever he instructed the teller to cash-in validate, the USTWs were already in the Bank but are brought to Mr. Carlos Gresola to prepare the transmittal. The USTWs are not brought to the teller because they are too many. He further explained that by the time the deposit slips are validated, the proceeds of the USTWs were already deposited to SA 3396 and sometimes the amount of cash-in did not tally with the cash-out because Mr. Cruz did not want to withdraw the entire amount. x x x[7]

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

On April 15, 1994, while the investigation against Mauricio was ongoing, the property subject of the deeds of real estate mortgage executed by the Spouses Cruz was extrajudicially foreclosed by the Bank for the amount of ₱5,660,000. Spouses Cruz, however, sought the annulment and/or declaration of nullity of foreclosure in a complaint dated April 18, 1995, filed with the Regional Trial Court (RTC) of Makati City.[8]

In the Bank's Answer dated June 9, 1995,[9] it claimed that it sent the proper demand letters to the Spouses but to no avail. Thus, it was constrained to foreclose the mortgaged property extrajudicially for the settlement of the obligations of the Spouses Cruz including the returned USTWs, checks and drafts. Later, or on November 24, 1995, and while the investigation against Mauricio was still ongoing, the Bank filed an Amended Answer to implead Mauricio in its counterclaim contending that he conspired and confederated with the Spouses Cruz to commit the fraud.

Subsequently, the Bank's investigation on Mauricio was terminated. The Hearing Committee found that there was sufficient evidence to hold Mauricio guilty of the charges against him. In a Memorandum[10] dated November 11, 1996 addressed to the bank's Board of Directors, it recommended that Mauricio be dismissed on the ground of loss of trust and confidence.

On February 19, 1997, the Board of Directors issued Resolution No. 11-08-97[11] adopting the Hearing Committee's recommendation:

RESOLVED, as it is hereby resolved, that upon considering the recommendation of the Hearing Committee, the Board has found Antonio S.A. Mauricio to have violated Bank policies and regulations and committed imprudent acts prejudicial to the interests of the Bank; resulting in monetary loss to the Bank and giving rise to loss of trust and confidence;

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[8] CA *rollo,* Vol. I, p. 87. Cited in the RTC decision.

[9] *Id.* at 88. Cited in the RTC decision.

[10] *Rollo,* pp. 132-139.

[11] *Id.* at 140.

RESOLVED, further, that the services of Mr. Mauricio be terminated effective immediately and that his retirement benefits shall be forfeited except those that may be legally determined to be due him; the dismissal is also without prejudice to the outcome of the civil case entitled "Spouses Marcelo and Corazon vs. Prudential Bank," with Civil Case No. 95-599, pending before the Regional Trial Court of Makati City, Branch 46, where Mr. Mauricio is impleaded as additional defendant on counterclaim.

On the same day, A. Benedicto L. Santos, Senior Vice President for the Administrative Department of the Bank, issued a Memorandum to Mauricio, informing him of the Board's decision to terminate his employment effective immediately. Said memorandum was received by Mauricio on February 24, 1997.[12]

On January 28, 2000, Mauricio filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal with prayer for back wages; retirement and provident benefits; vacation and sick leave credits; and actual, moral and exemplary damages, plus attorney's fees. The parties were enjoined to settle the dispute amicably during the mandatory pre-trial conferences, but to no avail. Thus, they were required to submit their respective position papers and evidence.

Mauricio, in his Position Paper,[13] explained the questioned transactions, to wit:

a. No irregularity attended the transactions between the Magallanes Branch and Spouses Marcelo and Corazon Cruz.

b. [He] allowed the US Treasury Warrant (USTW) and foreign check transactions with the Spouses Cruz on the premise that: (i) the Spouses were valued clients of the Bank, having been referred by the Bank's legal counsel, Atty. Pablo Magno and having substantial deposits and security with the bank, (ii) the Spouses enjoyed a favorable credit standing with the Bank, as the Bank approved a loan in favor of the spouses,

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[12] *Id.* at 141.

[13] CA *rollo,* Vol. I, pp. 98-124.

and (iii) the Spouses undertook to replace any returned USTW and/or foreign checks.

c. Initially, the Spouses were able to replace the returned USTWs and/or foreign checks. However, when [he] noticed that the spouses were having difficulty in fulfilling their obligation, he immediately put a stop to the transactions, and started pressuring the spouses to settle their outstanding obligations.

d. He further intensified his efforts at collecting from the Spouses by making a formal demand upon the Spouses to settle their obligation. He likewise endorsed the account to the Bank's counsel, Atty. Magno, to seek the latter's assistance in settling the obligations of the Spouses.

e. As a result thereof, Atty. Magno assured [him] that the Spouses could settle their obligation because:

> "A. They have an outstanding real estate mortgage in favor of Prudential Bank with a security worth ₱5,000,000.00 x x x
>
> B. Their residential house at San Juan xxx was accidentally burned xxx the proceeds of ₱1,900,000.00 will be paid directly to the Bank;
>
> C. The spouses have left with [the Bank] various real estate titles to show their good faith that they will liquidate all their obligation;
>
> D. The spouses were willing to execute any undertaking whereby they will liquidate their obligation and their intention to pay their accounts."

f. As a result of [his] efforts, he was able to obtain the original copies of the transfer certificates of title to realties registered under the names of Spouses Cruz, which he endorsed to the Bank's counsel. Likewise, he informed Dr. Octavio Fule of the various assets of the Spouses Cruz to further protect the Bank from losses.

g. Unfortunately, [his] efforts were rendered inutile by the Bank's inaction.[14]

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

The Bank, on the other hand, contended that the dismissal of Mauricio was for a just cause, citing the imprudent acts prejudicial to the bank's interest and violations of several office orders and regulations which resulted to loss of trust and confidence on him. It further argued that they complied with the requirements of due process and that complainant was not entitled to payment of separation pay, back wages, retirement pay and provident fund benefits, moral and exemplary damages, and attorney's fees.

While the illegal dismissal complaint was awaiting resolution by the Labor Arbiter, the Makati RTC rendered a Decision[15] on September 28, 2000 in favor of the Spouses Cruz and Mauricio. The dispositive portion of the trial court's decision reads:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered:
>
> 1. Annulling the extrajudicial foreclosure sale conducted on April 15, 1994;
> 2. Ordering defendant to re-account the obligation of the plaintiffs reflecting the credit of the insurance proceeds to the mortgage obligation of the plaintiffs;
> 3. **Dismissing defendant's counterclaim and plaintiffs' cross-claim for lack of merit**.
>
> SO ORDERED.[16] (Emphasis supplied.)

Said decision was affirmed *in toto* on appeal by the CA in a Decision[17] dated February 27, 2004. The Bank filed a petition for review on *certiorari* before this Court appealing the CA decision, but its petition was denied on the ground that no reversible error was committed by the CA.[18]

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[15] *Id.* at 87-94.

[16] *Id.* at 93-94.

[17] *Id.* at 304-315. Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

[18] *Id.* at 453.

On June 17, 2002, the labor arbiter rendered a Decision[19] holding that the Bank was justified in terminating Mauricio's employment. The labor arbiter ruled that even if Mauricio, as branch manager, was clothed with discretion, he gravely abused it to the detriment and prejudice of the Bank. Likewise, Mauricio was afforded procedural due process before he was dismissed. However, the labor arbiter nonetheless ordered the bank to pay Mauricio his 13th month pay and sick leaves earned prior to February 24, 1997 and reimburse him his actual contributions to the provident fund, all with legal interest at 12% per annum from date of the decision until actual payment and/or finality of the decision.

Mauricio filed a partial appeal of the labor arbiter's decision with the NLRC, which, however, affirmed the labor arbiter's decision on August 29, 2003.[20]

Upon recourse to the CA, the CA set aside the NLRC decision and ruled in favor of Mauricio. The *fallo* of the CA Decision reads:

> WHEREFORE, the appeal is GRANTED. Accordingly, the Resolutions of public respondent NLRC dated 16 November 2003 and 29 August 2003 are hereby ANNULLED and SET ASIDE and a new one entered ordering respondent bank to pay petitioner his backwages computed from 27 February 1997, until such time as he would have come under the coverage of said bank's retirement scheme, inclusive of his allowances and the monetary equivalent of the other benefits that would have been due him during such period. Respondent bank is likewise ordered to pay petitioner all gratuity, retirement benefits and pension fund benefits due the latter from the said retirement plan.
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> SO ORDERED.[21]

The CA ruled that the NLRC should have taken into consideration the evidence presented in the civil case particularly

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[19] *Rollo,* pp. 359-372.

[20] *Id.* at 452-458.

[21] *Id.* at 23.

as to the interpretation of Office Order No. 1516-A. The CA held that as correctly pointed out by Mauricio, the rule does not exactly prohibit an approving authority from encashing dubious checks as the rule is more permissive in nature, allowing any such approving authority to exercise discretion on whether to allow or not the encashment of such checks. The CA noted that it was the Bank's own witness, Andres Mangahas, who testified that encashment of, or withdrawal against USTWs by valued clients, is not prohibited although it is not exactly encouraged.

The CA further held that it is difficult to conclude that Mauricio abused his discretion absent some semblance of parameters by which such discretion is to be exercised. In the absence of such guidelines, the appellate court ruled that the validity of Mauricio's acts may be tested using the accepted standards of reasonableness, or by determining whether said acts were justified under the circumstances.

The appellate court also cited the decisions of the RTC and the CA in the civil case where it was found that Mauricio was not in any way prompted by malicious motive in approving the encashment and/or withdrawal. Caught in a dilemma of cashing the checks despite the irregularities evident on their face and refusing such encashment but risk the possibility of losing a valued client, Mauricio chose the former. The CA held that in doing so, Mauricio could not have acted in gross negligence because he made sure that in the final analysis, his employer would not be left holding an empty bag. Mauricio even sought the advice of the bank's legal counsel who assured him that his actions were proper given the circumstances, and acted only after being assured that the Spouses Cruz's real estate mortgages could be made to answer for the premature encashments.

Further citing the decisions of the RTC and the CA in the civil case, the CA ruled that Mauricio reported the transactions to the head office, but the head office continued to credit the account of the spouses for the value of returned checks leading said courts to conclude that the Bank acquiesced to his transactions. The CA held that it defies reason that the Bank

would not immediately call Mauricio's attention if it was true that his dealings with the Spouses Cruz were irregular or prohibited.

The CA likewise noted the Banks's own allegation that under Office Order No. 1596, Mauricio knew, or he is presumed to know, that he is personally liable for returned dollar checks and treasury warrants which he encashed or allowed to be withdrawn prior to clearing. The CA ruled that it is a clear admission that Mauricio is given discretion regarding these matters provided that if hitches resultantly come up, he should personally answer for the damages. Thus, the CA held that Mauricio cannot be charged for having violated the trust and confidence reposed in him. The CA went on to hold that personal responsibility and accountability referred in the Office Order could only mean the reimbursement of the value of the dishonored checks but certainly not termination of the manager's services on the ground of breach of trust and confidence.

Lastly, the CA ruled that the declaration of the Supreme Court in the civil case that the CA did not commit reversible error only meant that the CA correctly applied the law in holding that Mauricio did not abuse his discretion to an extent sufficient to terminate his services.

Aggrieved, the Bank filed the instant petition anchored on the following grounds:

I.

THE COURT OF APPEALS' RELIANCE ON THE CIVIL CASE (CA-G.R. CV No. 73447 x x x) IS ERRONEOUS BECAUSE THERE ARE DIFFERENCES BETWEEN THE ISSUE AND THE CAUSE OF ACTION IN THE SAID CIVIL CASE AND IN THE INSTANT LABOR CASE.

II.

MR. MAURICIO WAS DISMISSED FOR A JUST CAUSE AND WAS AFFORDED DUE PROCESS; AS SUCH, THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF LABOR ARBITER AZARRAGA.

III.

MR. MAURICIO IS NOT ENTITLED TO GRATUITY BACKWAGES, ALLOWANCE, BENEFITS, GRATUITY, RETIREMENT PENSION AND PROVIDENT FUND.[22]

The Bank argues that the CA erred in adopting the findings in the civil case to the illegal dismissal case because the issues and the quantum of evidence required in those two cases are different. The Bank contends that in the civil case, the issue was whether the foreclosure of the properties of the Spouses Cruz was valid while in the instant case, the issue is whether the dismissal of Mauricio is valid. The issues being different, the CA likewise erred in applying the principle of the law of the case. And even if Mauricio was exonerated in the civil case which requires preponderance of evidence, the instant case merely requires substantial evidence for the Bank to substantiate its basis to lose its trust and confidence in him.

The Bank adds that the NLRC did not commit grave abuse of discretion in affirming the labor arbiter's decision upholding Mauricio's dismissal as the said decision was in accord with facts and applicable law and jurisprudence. The Bank insists that what Mauricio did cannot be considered as mere accommodation to the Spouses Cruz but outright connivance. It asserts that Mauricio violated every rule on safe banking practices so he could just accommodate them. Mauricio, as Bank Manager, was in charge of transactions involving millions of pesos and thus, a great degree of responsibility, care and trustworthiness was expected of him. His failure to exercise the required extraordinary diligence and prudence resulted in substantial loss and prejudice to the Bank. And even assuming he was not acting in bad faith, the Bank argues that Mauricio's failure to be vigilant in protecting its interests is enough reason for it to lose its trust and confidence in him.

Considering that Mauricio's dismissal was valid, the Bank contends that he is not entitled to back wages, allowance, benefits,

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[22] *Id.* at 46.

gratuity retirement benefits and pension fund benefits. Having been separated for cause, he is not entitled to gratuity or the provident fund contributions of the employer pursuant to the Bank's Retirement Plan. Furthermore, Mauricio is not entitled to pension because he was below 65 when he was terminated for cause even if he had rendered 30 years of service. More, entitlement to pension requires satisfactory service.

Mauricio, on the other hand, counters that the decision in the civil case must be accorded greater weight and respect because a higher quantum of evidence has sufficiently established that he acted within the confines of his managerial powers and duties. He further argues that the issues in the civil case and in the instant case are closely intertwined such that the issue in the labor case was also passed upon and resolved in the civil case.

Mauricio likewise argues that the circumstances cited by the Bank negate any indication of willfulness to breach the trust reposed in him. The circumstances in fact show that he acted in complete good faith when he dealt with the Spouses Cruz.

Mauricio also insists that Office Order No. 1516-A, which he allegedly violated, is not a restriction but rather a cautionary measure. Office Order No. 1516-A reads:

> The approving officer shall refrain from encashing US Treasury Warrants whenever the presenter is not the payee and the last endorser of the check.[23]

Considering that it is merely a cautionary measure, the bank officer is still given the prerogative to exercise his sound judgment under the circumstances.

Mauricio likewise contends that the Bank cannot feign ignorance of the accommodation to the Spouses Cruz as all the subject transactions were reported to the Head Office. Had it found anything irregular about them, the Head Office should have ordered him to cease from doing such transactions or at the very least called his attention on the matter.

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[23] *Rollo,* p. 928.

Mauricio further argues that as testified in the civil case, USTWs are presumed to be cleared as to funding, within forty-five (45) days from its date of deposit. By the Bank's own admission, they were returned only at the very least over one (1) year after they were deposited to the accounts of the Spouses Cruz. Thus, Mauricio contends that until the time the USTWs and/or checks were returned, he could not have known that they were already facing problems.

Mauricio also asserts that the additional service he provided to the Spouses Cruz as valued clients, *i.e.*, bringing checks to the teller with the prepared deposit and withdrawal slips, does not in any way prove that he favored them over the Bank. The Bank cannot close its eyes to the reality that bank managers go out of their way to assist important and valued clients.

As to the alleged violation of Office Order No. 1516-A, Mauricio insists that he cannot be held liable on a vague and/or uncertain policy. The senior supervising examiner of the bank's audit department, Mangahas, declared that the "encashment of and/or withdrawal against [USTWs] by valued clients is not prohibited though it is not exactly encouraged" while Philip Madrigal, former branch manager of petitioner, declared that the encashment of USTWs by persons who are not the payees is not at all unusual. Mauricio argues that clearly, said rule is susceptible to different interpretations.

Mauricio also stresses that he did not recklessly enter into the subject transactions as he made sure that the interests of the Bank were amply protected.

Mauricio further argues that he was separated from service without due process. The Bank filed a counterclaim against him in the civil case alleging that he conspired with the spouses to defraud the Bank even prior the termination of the investigation of the charges against him. Thus, his guilt was already pre-determined even if he was still presenting his defense to the Hearing Committee.

Mauricio also maintains that he was constructively dismissed. When he was transferred to the Head Office on October 16,

1992, no tasks were assigned to him. He was given no office and given not even a table or a chair. He bore such treatment for more than five years until his dismissal was formalized in 1997.

As his dismissal was illegal, Mauricio insists that he is entitled to gratuity, back wages, allowances, benefits and retirement pension and provident fund.

We affirm the appellate court's decision.

The Court need not be reminded of the fact that civil and labor cases require different quanta of proof – the former requiring preponderance of evidence while the latter only calls for substantial evidence. Despite the dissimilarity, however, this does not spell closing our eyes to facts conclusively determined in one proceeding when the determination of the very same facts are crucial in resolving the issues in another proceeding pursuant to the doctrine of *res judicata*.

The doctrine of *res judicata* is provided in Section 47, Rule 39 of the Rules of Court:

> SEC. 47. *Effect of judgments or final orders*. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* thus lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether the claim or demand, purpose, or subject matter of the two suits is the same or not. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the aforequoted paragraph (b) of Section 47,[24] is referred to as "bar by former judgment" while the second general rule, which is embodied in paragraph (c) of the same section, is known as "conclusiveness of judgment."[25]

In *Lopez v. Reyes*,[26] we further elaborated the distinction between the two:

> The doctrine of *res judicata* has two aspects. The first is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is that it precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action.
>
> *The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in [a] former action [is] commonly applied to all matters essentially connected with*

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[24] Formerly Section 49 of the old Rules of Court.

[25] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 338.

[26] No. L-29498, March 31, 1977, 76 SCRA 179.

the subject matter of the litigation. Thus, it extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, *if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.* x x x"[27] (Italics supplied.)

The foregoing finds application to the instant case. Irrefutably, the present labor case is closely related to the civil case that was decided with finality. In the civil case, the Bank's counterclaim for actual and exemplary damages against Mauricio was grounded on his alleged violations of office policies when he allowed the encashment and/or withdrawal prior to clearing of numerous USTWs and dollar checks and allegedly tried concealing from the Bank the fact that said instruments were returned. Said violations allegedly caused undue damage and prejudice to the Bank. The Bank, in its Amended Answer with Counterclaim and Application for Writ of Preliminary Attachment[28] filed before the Makati RTC, wherein it impleaded Mauricio as defendant, alleged:

19. Plaintiff and defendant Mauricio, in the period spanning from 1990-1992 inclusive, conspired and confederated with each other to defraud defendant Bank in the total amount of Fourteen Million Nine Hundred Sixty Nine Thousand Two Hundred Sixty Seven and 53/100 Pesos (₱14,969,267.53).

20. The defraudation was effected in connection with the encashment and/or withdrawal prior to clearing of numerous U.S. Treasury Warrants and dollar checks.

21. The defraudation was accomplished essentially in the following manner:

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[27] *Id.* at 186-187.

[28] CA *rollo,* Vol. I, pp. 56-77.

FXSD/MAG 357/221-6

21.1 Plaintiffs opened FXSD No. 221-6 on 25 June 1990 in defendant Bank's Magallanes Branch with an initial deposit of US$500.00.

21.2 The succeeding credits on the account were mostly dollar check deposits composed of U.S. Treasury Warrants whose payees were residents of far-flung provinces and foreigners.

21.3 Immediate withdrawals (prior to clearing) against these checks were allowed by the Branch Manager, defendant Mauricio.

21.4 These checks were subsequently returned by their respective drawee banks for various reasons such as: forged endorsement, amount altered, no sufficient fund, and refer to maker.

21.5 In order that these returned checks could be debited to plaintiffs' account, the personal checks of the plaintiffs and their children were deposited to their account.

x x x x x x x x x

SA No. 3396-0

21.7 Plaintiffs opened Peso Savings Account No. 3396.

21.8 Most of the cash deposited to SA No. 3396 were proceeds from the encashments of U.S. Treasury Warrants (USTWs).

21.9 Subsequently, these USTWS were returned for the reasons "forged endorsement" and "amount altered."[29]

The RTC, however, did not give merit to the above-quoted allegations of the Bank and absolved Mauricio from liability. The RTC ruled:

Further, **this court finds that PRUDENTIAL's branch manager MAURICIO's act of allowing SPOUSES CRUZ to immediately withdraw [the] above instruments is well within his functions as a branch manager. A person occupying such position exercises a certain degree of discretion with respect to the accommodations extended [to] certain valued clients such as herein plaintiffs SPOUSES CRUZ**. Having been recommended by the legal counsel

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[29] *Id.* at 72-73.

himself of PRUDENTIAL and in view of the fact that they have substantial deposit with the same bank, it cannot be doubted that SPOUSES CRUZ were valued clients. (TSN dated 8, November 1999 p. 14; TSN dated 27 January 1999, p. 10; and TSN dated 12 January 2000, pp. 7-10)[.]

Further, as testified to by Andres Mangahas, witness of PRUDENTIAL, encashment of and/or withdrawal against US Treasury Warrants by valued client is not prohibited though it is not exactly encouraged. (TSN dated 27 January 1999, p. 10) This court moreover holds that MAURICIO was not in anyway prompted by any malicious motive in approving the encashment and/or withdrawal; he not only tried to collect from herein plaintiffs SPOUSES CRUZ, (Exhibit 8 – Mauricio) **he made sure that worst comes to worst, the withdrawals were covered** (TSN dated 8 November 1999, p. 95) **and that all the transactions were reported to the head office.** (TSN dated 8 November 1999, pp. 17-18) In fact, before MAURICIO allowed the encashment of the dollar checks and as testified by SPOUSES CRUZ, a condition was imposed. (TSN dated 22 July 1998, pp. 10-13) So, **if indeed such transaction was irregular or worse, prohibited, the Head Office of PRUDENTIAL should have immediately called MAURICIO's attention to the same. Instead, PRUDENTIAL continued to credit the account of the spouses for the value of the returned checks.**[30] (Emphasis supplied.)

As mentioned above, the above findings were affirmed not only by the CA but also by this Court.

Undeniably, the acts and omissions alleged by the Bank in the civil case as basis of its counterclaim against Mauricio, are the very same acts and omissions which were used as grounds to terminate his employment. The Bank, however, now wants this Court to disregard altogether the factual findings in the civil case concerning the very same acts and omissions and re-evaluate the same pieces of evidence and make new factual findings in the hopes that the same will, this time, be in its favor. This would definitely run contrary to the foundation principle upon which the doctrine of *res judicata* rests – the

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

parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[31]

Moreover, as correctly held by the CA, Mauricio cannot be held to have abused the discretion he was clothed with absent some semblance of parameters. In the absence of such guidelines, the validity of Mauricio's acts can be tested by determining whether they were justified under the circumstances. Mauricio was faced with a dilemma whether to accommodate the request for immediate encashment and/or withdrawals against USTWs by a valued client, knowing that under the Bank's rules refund of any returned check shall be the personal accountability of the approving officer. In exercising his discretion to allow the questioned withdrawals, Mauricio took into consideration the fact that the Spouses Cruz have substantial deposit and security, and enjoyed a favorable credit standing with the Bank. And, as found by the RTC, no malice can be inferred from Mauricio's acts who tried to collect from the Spouses Cruz and reported all the transactions to the head office; in fact, the Bank never called his attention to any irregularity in the transactions but even continued to credit the account of the spouses for the value of the returned checks. Under the circumstances, Mauricio indeed fully considered the interest of his employer before approving the questioned transactions.

The Bank should be reminded that for a dismissal based on loss of trust and confidence to be valid, the breach of trust must be willful, meaning it must be done intentionally, knowingly,

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[31] *Nabus v. Court of Appeals,* G.R. No. 91670, February 7, 1991, 193 SCRA 732, 738-739, citing *Philippine National Bank v. Barreto,* 52 Phil. 818, 824 (1929); *Escudero, et al. v. Flores, et al.*, 97 Phil. 240, 243 (1955); *Navarro v. The Director of Lands,* 115 Phil. 824, 831 (1962).

and purposely, without justifiable excuse.[32] Loss of trust and confidence stems from a breach of trust founded on dishonest, deceitful or fraudulent act.[33] This is obviously not the case here.

Besides, Office Order No. 1596, one of the office orders allegedly violated by Mauricio, provides:

> Approving officers shall exercise extreme caution in allowing deposit of, encashment or withdrawals against foreign and out-of-town checks. Refund to the bank of the amount involved **shall be the personal responsibility and accountability of the officer who authorized the deposit or encashment over the counter when the check should be returned by the drawee bank for any reason whatsoever.**[34] (Emphasis supplied.)

The above company directive is an explicit admission that Mauricio was clothed with such discretion to enter into the questioned transactions as well as a forewarning that in case the foreign and out-of-town checks were returned for whatever reason, the approving officer, in this case, Mauricio, shall be personally responsible and accountable. We subscribe to the CA's interpretation that "personal responsibility and accountability" could only mean the reimbursement of the value of any dishonored check but does not mean termination of the approving officer's employment for breaching the bank's trust and confidence.

Considering that it has already been conclusively determined with finality in the civil case that the questioned acts of Mauricio were well within his discretion as branch manager and approving officer of the Bank, and the same were sanctioned by the Head Office, we find that the CA did not err in holding that there was no valid or just cause for the Bank to terminate Mauricio's employment.

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[32] *Bank of the Philippine Islands v. National Labor Relations Commission (First Division),* G.R. No. 179801, June 18, 2010, 621 SCRA 283, 293.

[33] *M+W Zander Philippines, Inc. v. Enriquez,* G.R. No. 169173, June 5, 2009, 588 SCRA 590, 606.

[34] *Rollo,* p. 20.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated January 30, 2008 and Resolution dated June 16, 2008 of the Court of Appeals in CA-G.R. SP No. 82908 are **AFFIRMED.**

Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185280. January 18, 2012]

TIMOTEO H. SARONA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, ROYALE SECURITY AGENCY (FORMERLY SCEPTRE SECURITY AGENCY) and CESAR S. TAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); THE FINALITY OF THE NLRC'S DECISION DOES NOT PRECLUDE THE FILING OF A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; CASE AT BAR.— The finality of the NLRC's decision does not preclude the filing of a petition for *certiorari* under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties' receipt of its decision will only give rise to the prevailing party's right to move for the execution thereof but will not prevent the CA from taking cognizance of a petition for *certiorari* on jurisdictional and due process considerations. In turn, the decision rendered by the CA on a petition for

certiorari may be appealed to this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 5, Article VIII of the Constitution, this Court has the power to "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 x x x all cases in which only an error or question of law is involved." Consistent with this constitutional mandate, Rule 45 of the Rules of Court provides the remedy of an appeal by *certiorari* from decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, which would be but a continuation of the appellate process over the original case. Since an appeal to this Court is not an original and independent action but a continuation of the proceedings before the CA, the filing of a petition for review under Rule 45 cannot be barred by the finality of the NLRC's decision in the same way that a petition for *certiorari* under Rule 65 with the CA cannot. Furthermore, if the NLRC's decision or resolution was reversed and set aside for being issued with grave abuse of discretion by way of a petition for *certiorari* to the CA or to this Court by way of an appeal from the decision of the CA, it is considered void *ab initio* and, thus, had never become final and executory.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; MUST EXCLUSIVELY RAISE QUESTIONS OF LAW; EXCEPTIONS.— As a general rule, this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law. Moreover, if factual findings of the NLRC and the LA have been affirmed by the CA, this Court accords them the respect and finality they deserve. It is well-settled and oft-repeated that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA. Nevertheless, this Court will not hesitate to deviate from what are clearly procedural guidelines and disturb and strike down the findings of the CA and those of the labor tribunals if there is a showing that they are unsupported by the evidence on record or there

was a patent misappreciation of facts. Indeed, that the impugned decision of the CA is consistent with the findings of the labor tribunals does not *per se* conclusively demonstrate the correctness thereof. By way of exception to the general rule, this Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.

3. ID.; RULES OF PROCEDURE; TECHNICAL RULES ARE NOT BINDING IN LABOR CASES AND ARE NOT TO BE APPLIED STRICTLY IF THE RESULT WOULD BE DETRIMENTAL TO THE WORKING MAN.— [T]he NLRC refused to disturb LA Gutierrez's denial of the petitioner's plea to pierce Royale's corporate veil as the petitioner did not appeal any portion of LA Gutierrez's May 11, 2005 Decision. In this respect, the NLRC cannot be accused of grave abuse of discretion. Under Section 4(c), Rule VI of the NLRC Rules, the NLRC shall limit itself to reviewing and deciding only the issues that were elevated on appeal. The NLRC, while not totally bound by technical rules of procedure, is not licensed to disregard and violate the implementing rules it implemented. Nonetheless, technicalities should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the working man. This Court may choose not to encumber itself with technicalities and limitations consequent to procedural rules if such will only serve as a hindrance to its duty to decide cases judiciously and in a manner that would put an end with finality to all existing conflicts between the parties.

4. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; NATURE.— A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.

5. ID.; ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; THE APPLICATION THEREOF SHOULD BE DONE WITH CAUTION.— Equally well-settled is the

principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons. Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application. Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

6. ID.; ID.; ID.; ID.; WHEN APPLIED.— The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

7. ID.; ID.; ID.; ID.; FORMULATED TO PREVENT THE ACT OF HIDING BEHIND THE SEPARATE AND DISTINCT PERSONALITIES OF JURIDICAL ENTITIES TO PERPETUATE FRAUD, COMMIT ILLEGAL ACTS OR EVADE ONE'S OBLIGATIONS.— For the piercing doctrine to apply, it is of no consequence if Sceptre is a sole proprietorship. As ruled in *Prince Transport, Inc., et al. v. Garcia, et al.*, it is the act of hiding behind the separate and

distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, evade one's obligations that the equitable piercing doctrine was formulated to address and prevent x x x.

8. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; THE INTERVENING PERIOD BETWEEN THE DAY AN EMPLOYEE WAS ILLEGALLY DISMISSED AND THE DAY THE DECISION FINDING HIM ILLEGALLY DISMISSED BECOMES FINAL AND EXECUTORY SHALL BE CONSIDERED IN THE COMPUTATION THEREOF.— Effectively, the petitioner cannot be deemed to have changed employers as Royale and Sceptre are one and the same. His separation pay should, thus, be computed from the date he was hired by Sceptre in April 1976 until the finality of this decision. Based on this Court's ruling in *Masagana Concrete Products, et al. v. NLRC, et al.*, the intervening period between the day an employee was illegally dismissed and the day the decision finding him illegally dismissed becomes final and executory shall be considered in the computation of his separation pay as a period of "imputed" or "putative" service x x x.

9. ID.; ID.; ID.; BACKWAGES; SHOULD BE COMPUTED FROM THE TIME THE EMPLOYEE WAS TERMINATED UNTIL THE FINALITY OF THE DECISION FINDING THE DISMISSAL UNLAWFUL, IF REINSTATEMENT IS NO LONGER POSSIBLE.— Backwages is a remedy affording the employee a way to recover what he has lost by reason of the unlawful dismissal. In awarding backwages, the primordial consideration is the income that should have accrued to the employee from the time that he was dismissed up to his reinstatement and the length of service prior to his dismissal is definitely inconsequential. As early as 1996, this Court, in *Bustamante, et al. v. NLRC, et al.*, clarified in no uncertain terms that if reinstatement is no longer possible, backwages should be computed from the time the employee was terminated until the finality of the decision, finding the dismissal unlawful.

10. ID.; ID.; ID.; SEPARATION PAY; THE EMPLOYEE'S ACTUAL RECEIPT OF THE FULL AMOUNT THEREOF WILL EFFECTIVELY TERMINATE THE EMPLOYMENT OF AN ILLEGALLY DISMISSED EMPLOYEE.— In case

separation pay is awarded and reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal up to the finality of the decision should separation pay not be paid in the meantime. It is the employee's actual receipt of the full amount of his separation pay that will effectively terminate the employment of an illegally dismissed employee. Otherwise, the employer-employee relationship subsists and the illegally dismissed employee is entitled to backwages, taking into account the increases and other benefits, including the 13th month pay, that were received by his co-employees who are not dismissed. It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working.

11. CIVIL LAW; DAMAGES; MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED FOR AN EMPLOYEE'S DISMISSAL WHICH WAS TAINTED BY BAD FAITH AND FRAUD; CASE AT BAR.— [M]oral damages and exemplary damages at ₱25,000.00 each as indemnity for the petitioner's dismissal, which was tainted by bad faith and fraud, are in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.

APPEARANCES OF COUNSEL

Malabago Law Office for petitioner.
Leandro C. Hilongo for private respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review under Rule 45 of the Rules of Court from the May 29, 2008 Decision[1] of the Twentieth Division of the Court of Appeals (CA) in CA-G.R. SP No. 02127 entitled *"Timoteo H. Sarona v. National Labor Relations Commission, Royale Security Agency (formerly Sceptre Security Agency) and Cesar S. Tan"* (Assailed Decision), which affirmed the National Labor Relations Commission's (NLRC) November 30, 2005 Decision and January 31, 2006 Resolution, finding the petitioner illegally dismissed but limiting the amount of his backwages to three (3) monthly salaries. The CA likewise affirmed the NLRC's finding that the petitioner's separation pay should be computed only on the basis of his length of service with respondent Royale Security Agency (Royale). The CA held that absent any showing that Royale is a mere alter ego of Sceptre Security Agency (Sceptre), Royale cannot be compelled to recognize the petitioner's tenure with Sceptre. The dispositive portion of the CA's Assailed Decision states:

> WHEREFORE, in view of the foregoing, the instant petition is **PARTLY GRANTED**, though piercing of the corporate veil is hereby denied for lack of merit. Accordingly, the assailed Decision and Resolution of the NLRC respectively dated November 30, 2005 and January 31, 2006 are hereby **AFFIRMED** as to the monetary awards.
>
> SO ORDERED.[2]

Factual Antecedents

On June 20, 2003, the petitioner, who was hired by Sceptre as a security guard sometime in April 1976, was asked by Karen Therese Tan (Karen), Sceptre's Operation Manager, to submit

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Amy C. Lazaro-Javier and Florito S. Macalino, concurring; *rollo*, pp. 19-30.

[2] *Id.* at 29.

a resignation letter as the same was supposedly required for applying for a position at Royale. The petitioner was also asked to fill up Royale's employment application form, which was handed to him by Royale's General Manager, respondent Cesar Antonio Tan II (Cesar).[3]

After several weeks of being in floating status, Royale's Security Officer, Martin Gono (Martin), assigned the petitioner at Highlight Metal Craft, Inc. (Highlight Metal) from July 29, 2003 to August 8, 2003. Thereafter, the petitioner was transferred and assigned to Wide Wide World Express, Inc. (WWWE, Inc.). During his assignment at Highlight Metal, the petitioner used the patches and agency cloths of Sceptre and it was only when he was posted at WWWE, Inc. that he started using those of Royale.[4]

On September 17, 2003, the petitioner was informed that his assignment at WWWE, Inc. had been withdrawn because Royale had allegedly been replaced by another security agency. The petitioner, however, shortly discovered thereafter that Royale was never replaced as WWWE, Inc.'s security agency. When he placed a call at WWWE, Inc., he learned that his fellow security guard was not relieved from his post.[5]

On September 21, 2003, the petitioner was once again assigned at Highlight Metal, albeit for a short period from September 22, 2003 to September 30, 2003. Subsequently, when the petitioner reported at Royale's office on October 1, 2003, Martin informed him that he would no longer be given any assignment per the instructions of Aida Sabalones-Tan (Aida), general manager of Sceptre. This prompted him to file a complaint for illegal dismissal on October 4, 2003.[6]

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[3] *Id.* at 3, 4 and 21.

[4] *Id.* at 4-5, 21.

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

[6] *Id.* at 5-6, 21.

In his May 11, 2005 Decision, Labor Arbiter Jose Gutierrez (LA Gutierrez) ruled in the petitioner's favor and found him illegally dismissed. For being unsubstantiated, LA Gutierrez denied credence to the respondents' claim that the termination of the petitioner's employment relationship with Royale was on his accord following his alleged employment in another company. That the petitioner was no longer interested in being an employee of Royale cannot be presumed from his request for a certificate of employment, a claim which, to begin with, he vehemently denies. Allegation of the petitioner's abandonment is negated by his filing of a complaint for illegal dismissal three (3) days after he was informed that he would no longer be given any assignments. LA Gutierrez ruled:

In short, respondent wanted to impress before us that complainant abandoned his employment. We are not however, convinced.

There is abandonment when there is a clear proof showing that one has no more interest to return to work. In this instant case, the record has no proof to such effect. In a long line of decisions, the Supreme Court ruled:

> ***"Abandonment of position is a matter of intention expressed in clearly certain and unequivocal acts, however, an interim employment does not mean abandonment." (Jardine Davis, Inc. vs. NLRC, 225 SCRA 757).***
>
> ***"In abandonment, there must be a concurrence of the intention to abandon and some overt acts from which an employee may be declared as having no more interest to work." (C. Alcontin & Sons, Inc. vs. NLRC, 229 SCRA 109).***
>
> ***"It is clear, deliberate and unjustified refusal to severe employment and not mere absence that is required to constitute abandonment. x x x" (De Ysasi III vs. NLRC, 231 SCRA 173).***

Aside from lack of proof showing that complainant has abandoned his employment, the record would show that immediate action was taken in order to protest his dismissal from employment. He filed a complaint [for] illegal dismissal on October 4, 2004 or three (3) days after he was dismissed. This act, as declared by the Supreme Court is inconsistent with abandonment, as held in the case of

Pampanga Sugar Development Co., Inc. vs. NLRC, 272 SCRA 737 where the Supreme Court ruled:

> ***"The immediate filing of a complaint for [i]llegal [d]ismissal by an employee is inconsistent with abandonment."***[7]

The respondents were ordered to pay the petitioner backwages, which LA Gutierrez computed from the day he was dismissed, or on October 1, 2003, up to the promulgation of his Decision on May 11, 2005. In lieu of reinstatement, the respondents were ordered to pay the petitioner separation pay equivalent to his one (1) month salary in consideration of his tenure with Royale, which lasted for only one (1) month and three (3) days. In this regard, LA Gutierrez refused to pierce Royale's corporate veil for purposes of factoring the petitioner's length of service with Sceptre in the computation of his separation pay. LA Gutierrez ruled that Royale's corporate personality, which is separate and distinct from that of Sceptre, a sole proprietorship owned by the late Roso Sabalones (Roso) and later, Aida, cannot be pierced absent clear and convincing evidence that Sceptre and Royale share the same stockholders and incorporators and that Sceptre has complete control and dominion over the finances and business affairs of Royale. Specifically:

> To support its prayer of piercing the veil of corporate entity of respondent Royale, complainant avers that respondent Royal (sic) was using the very same office of SCEPTRE in C. Padilla St., Cebu City. In addition, all officers and staff of SCEPTRE are now the same officers and staff of ROYALE, that all [the] properties of SCEPTRE are now being owned by ROYALE and that ROYALE is now occupying the property of SCEPTRE. We are not however, persuaded.
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> It should be pointed out at this juncture that SCEPTRE, is a single proprietorship. Being so, it has no distinct and separate personality. It is owned by the late Roso T. Sabalones. After the death of the owner, the property is supposed to be divided by the heirs and any claim against the sole proprietorship is a claim against Roso T. Sabalones. After his death, the claims should be instituted

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[7] *Id.* at 55.

against the estate of Roso T. Sabalones. In short, the estate of the late Roso T. Sabalones should have been impleaded as respondent of this case.

Complainant wanted to impress upon us that Sceptre was organized into another entity now called Royale Security Agency. There is however, no proof to this assertion. Likewise, there is no proof that Roso T. Sabalones, organized his single proprietorship business into a corporation, Royale Security Agency. On the contrary, the name of Roso T. Sabalones does not appear in the Articles of Incorporation. The names therein as incorporators are:

Bruno M. Kuizon	–	[₱]150,000.00
Wilfredo K. Tan	–	100,000.00
Karen Therese S. Tan	–	100,000.00
Cesar Antonio S. Tan	–	100,000.00
Gabeth Maria K. Tan	–	50,000.00

Complainant claims that two (2) of the incorporators are the granddaughters of Roso T. Sabalones. This fact even give (sic) us further reason to conclude that respondent Royal (sic) Security Agency is not an alter ego or conduit of SCEPTRE. It is obvious that respondent Royal (sic) Security Agency is not owned by the owner of "SCEPTRE".

It may be true that the place where respondent Royale hold (sic) office is the same office formerly used by "SCEPTRE." Likewise, it may be true that the same officers and staff now employed by respondent Royale Security Agency were the same officers and staff employed by "SCEPTRE." We find, however, that these facts are not sufficient to justify to require respondent Royale to answer for the liability of Sceptre, which was owned solely by the late Roso T. Sabalones. As we have stated above, the remedy is to address the claim on the estate of Roso T. Sabalones.[8]

The respondents appealed LA Gutierrez's May 11, 2005 Decision to the NLRC, claiming that the finding of illegal dismissal was attended with grave abuse of discretion. This appeal was, however, dismissed by the NLRC in its November 30, 2005 Decision,[9] the dispositive portion of which states:

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

[9] *Id.* at 58-65.

WHEREFORE, premises considered, the Decision of the Labor Arbiter declaring the illegal dismissal of complainant is hereby **AFFIRMED**.

However[,] We modify the monetary award by limiting the grant of backwages to only three (3) months in view of complainant's very limited service which lasted only for one month and three days.

1.	Backwages	-	[₱]15,600.00
2.	Separation Pay	-	5,200.00
3.	13th Month Pay	-	583.34
			[₱]21,383.34
	Attorney's Fees	-	2,138.33
	Total		[₱]23,521.67

The appeal of respondent Royal (sic) Security Agency is hereby **DISMISSED** for lack of merit.

SO ORDERED.[10]

The NLRC partially affirmed LA Gutierrez's May 11, 2005 Decision. It concurred with the latter's finding that the petitioner was illegally dismissed and the manner by which his separation pay was computed, but modified the monetary award in the petitioner's favor by reducing the amount of his backwages from ₱95,600.00 to ₱15,600.00. The NLRC determined the petitioner's backwages as limited to three (3) months of his last monthly salary, considering that his employment with Royale was only for a period for one (1) month and three (3) days, thus:[11]

On the other hand, while complainant is entitled to backwages, We are aware that his stint with respondent Royal (sic) lasted only for one (1) month and three (3) days such that it is Our considered view that his backwages should be limited to only three (3) months.

Backwages:

[₱]5,200.00 x 3 months = [₱]15,600.00[12]

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[10] *Id.* at 64-65.

[11] *Id.* at 64.

[12] *Id.*

The petitioner, on the other hand, did not appeal LA Gutierrez's May 11, 2005 Decision but opted to raise the validity of LA Gutierrez's adverse findings with respect to piercing Royale's corporate personality and computation of his separation pay in his Reply to the respondents' Memorandum of Appeal. As the filing of an appeal is the prescribed remedy and no aspect of the decision can be overturned by a mere reply, the NLRC dismissed the petitioner's efforts to reverse LA Gutierrez's disposition of these issues. Effectively, the petitioner had already waived his right to question LA Gutierrez's Decision when he failed to file an appeal within the reglementary period. The NLRC held:

> On the other hand, in complainant's Reply to Respondent's Appeal Memorandum he prayed that the doctrine of piercing the veil of corporate fiction of respondent be applied so that his services with Sceptre since 1976 [will not] be deleted. If complainant assails this particular finding in the Labor Arbiter's Decision, complainant should have filed an appeal and not seek a relief by merely filing a Reply to Respondent's Appeal Memorandum.[13]

Consequently, the petitioner elevated the NLRC's November 30, 2005 Decision to the CA by way of a Petition for *Certiorari* under Rule 65 of the Rules of Court. On the other hand, the respondents filed no appeal from the NLRC's finding that the petitioner was illegally dismissed.

The CA, in consideration of substantial justice and the jurisprudential dictum that an appealed case is thrown open for the appellate court's review, disagreed with the NLRC and proceeded to review the evidence on record to determine if Royale is Sceptre's alter ego that would warrant the piercing of its corporate veil.[14] According to the CA, errors not assigned on appeal may be reviewed as technicalities should not serve as bar to the full adjudication of cases. Thus:

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[13] *Id.*

[14] *Id.* at 24-25.

In *Cuyco v. Cuyco*, which We find application in the instant case, the Supreme Court held:

> "In their Reply, petitioners alleged that their petition only raised the sole issue of interest on the interest due, thus, by not filing their own petition for review, respondents waived their privilege to bring matters for the Court's review that [does] not deal with the sole issue raised.
>
> Procedurally, the appellate court in deciding the case shall consider only the assigned errors, however, it is equally settled that the Court is clothed with ample authority to review matters not assigned as errors in an appeal, if it finds that their consideration is necessary to arrive at a just disposition of the case."

Therefore, for full adjudication of the case, We have to primarily resolve the issue of whether the doctrine of piercing the corporate veil be justly applied in order to determine petitioner's length of service with private respondents.[15] (citations omitted)

Nonetheless, the CA ruled against the petitioner and found the evidence he submitted to support his allegation that Royale and Sceptre are one and the same juridical entity to be wanting. The CA refused to pierce Royale's corporate mask as one of the "probative factors that would justify the application of the doctrine of piercing the corporate veil is stock ownership by one or common ownership of both corporations" and the petitioner failed to present clear and convincing proof that Royale and Sceptre are commonly owned or controlled. The relevant portions of the CA's Decision state:

> In the instant case, We find no evidence to show that Royale Security Agency, Inc. (hereinafter "Royale"), a corporation duly registered with the Securities and Exchange Commission (SEC) and Sceptre Security Agency (hereinafter "Sceptre"), a single proprietorship, are one and the same entity.
>
> Petitioner, who has been with Sceptre since 1976 and, as ruled by both the Labor Arbiter and the NLRC, was illegally dismissed

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[15] *Id.*

by Royale on October 1, 2003, alleged that in order to circumvent labor laws, especially to avoid payment of money claims and the consideration on the length of service of its employees, Royale was established as an alter ego or business conduit of Sceptre. To prove his claim, petitioner declared that Royale is conducting business in the same office of Sceptre, the latter being owned by the late retired Gen. Roso Sabalones, and was managed by the latter's daughter, Dr. Aida Sabalones-Tan; that two of Royale's incorporators are grandchildren [of] the late Gen. Roso Sabalones; that all the properties of Sceptre are now owned by Royale, and that the officers and staff of both business establishments are the same; that the heirs of Gen. Sabalones should have applied for dissolution of Sceptre before the SEC before forming a new corporation.

On the other hand, private respondents declared that Royale was incorporated only on March 10, 2003 as evidenced by the Certificate of Incorporation issued by the SEC on the same date; that Royale's incorporators are Bruino M. Kuizon, Wilfredo Gracia K. Tan, Karen Therese S. Tan, Cesar Antonio S. Tan II and [Gabeth] Maria K. Tan.

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation. Further, *Section 1 of Rule 131 of the Revised Rules of Court* provides:

> *"**SECTION 1.** 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."*

We believe that petitioner did not discharge the required burden of proof to establish his allegations. As We see it, petitioner's claim that Royale is an alter ego or business conduit of Sceptre is without basis because aside from the fact that there is no common ownership of both Royale and Sceptre, no evidence on record would prove that Sceptre, much less the late retired Gen. Roso Sabalones or his heirs, has control or complete domination of Royale's finances and business transactions. Absence of this first element, coupled by petitioner's failure to present clear and convincing evidence to substantiate his allegations, would prevent piercing of the corporate veil. Allegations must be proven by sufficient evidence. Simply stated, he who alleges

a fact has the burden of proving it; mere allegation is not evidence.[16] (citations omitted)

By way of this Petition, the petitioner would like this Court to revisit the computation of his backwages, claiming that the same should be computed from the time he was illegally dismissed until the finality of this decision.[17] The petitioner would likewise have this Court review and examine anew the factual allegations and the supporting evidence to determine if the CA erred in its refusal to pierce Royale's corporate mask and rule that it is but a mere continuation or successor of Sceptre. According to the petitioner, the erroneous computation of his separation pay was due to the CA's failure, as well as the NLRC and LA Gutierrez, to consider evidence conclusively demonstrating that Royale and Sceptre are one and the same juridical entity. The petitioner claims that since Royale is no more than Sceptre's alter ego, it should recognize and credit his length of service with Sceptre.[18]

The petitioner claimed that Royale and Sceptre are not separate legal persons for purposes of computing the amount of his separation pay and other benefits under the Labor Code. The piercing of Royale's corporate personality is justified by several indicators that Royale was incorporated for the sole purpose of defeating his right to security of tenure and circumvent payment of his benefits to which he is entitled under the law: (i) Royale was holding office in the same property used by Sceptre as its principal place of business;[19] (ii) Sceptre and Royal have the same officers and employees;[20] (iii) on October 14, 1994, Roso, the sole proprietor of Sceptre, sold to Aida, and her husband, Wilfredo Gracia K. Tan (Wilfredo),[21] the property used by Sceptre

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

[17] *Id.* at 13-15.

[18] *Id.* at 7-13.

[19] *Id.* at 5, 6 and 9.

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

[21] *Id.* at 74-80.

as its principal place of business;[22] (iv) Wilfredo is one of the incorporators of Royale;[23] (v) on May 3, 1999, Roso ceded the license to operate Sceptre issued by the Philippine National Police to Aida;[24] (vi) on July 28, 1999, the business name "Sceptre Security & Detective Agency" was registered with the Department of Trade and Industry (DTI) under the name of Aida;[25] (vii) Aida exercised control over the affairs of Sceptre and Royale, as she was, in fact, the one who dismissed the petitioner from employment;[26] (viii) Karen, the daughter of Aida, was Sceptre's Operation Manager and is one of the incorporators of Royale;[27] and (ix) Cesar Tan II, the son of Aida was one of Sceptre's officers and is one of the incorporators of Royale.[28]

In their Comment, the respondents claim that the petitioner is barred from questioning the manner by which his backwages and separation pay were computed. Earlier, the petitioner moved for the execution of the NLRC's November 30, 2005 Decision[29] and the respondents paid him the full amount of the monetary award thereunder shortly after the writ of execution was issued.[30] The respondents likewise maintain that Royale's separate and distinct corporate personality should be respected considering that the evidence presented by the petitioner fell short of establishing that Royale is a mere alter ego of Sceptre.

The petitioner does not deny that he has received the full amount of backwages and separation pay as provided under

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[22] *Id.* at 82.

[23] *Id.* at 44.

[24] *Id.* at 73-79.

[25] *Id.* at 73-80.

[26] *Id.* at 12.

[27] *Id.* at 8, 44, 73-74.

[28] *Id.*

[29] *Id.* at 58-65.

[30] *Id.* at 49.

the NLRC's November 30, 2005 Decision.[31] However, he claims that this does not preclude this Court from modifying a decision that is tainted with grave abuse of discretion or issued without jurisdiction.[32]

ISSUES

Considering the conflicting submissions of the parties, a judicious determination of their respective rights and obligations requires this Court to resolve the following substantive issues:

a. Whether Royale's corporate fiction should be pierced for the purpose of compelling it to recognize the petitioner's length of service with Sceptre and for holding it liable for the benefits that have accrued to him arising from his employment with Sceptre; and

b. Whether the petitioner's backwages should be limited to his salary for three (3) months.

OUR RULING

Because his receipt of the proceeds of the award under the NLRC's November 30, 2005 Decision is qualified and without prejudice to the CA's resolution of his petition for *certiorari*, the petitioner is not barred from exercising his right to elevate the decision of the CA to this Court.

Before this Court proceeds to decide this Petition on its merits, it is imperative to resolve the respondents' contention that the full satisfaction of the award under the NLRC's November 30, 2005 Decision bars the petitioner from questioning the validity thereof. The respondents submit that they had paid the petitioner

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[31] *Id.* at 77.

[32] *Id.*

the amount of ₱21,521.67 as directed by the NLRC and this constitutes a waiver of his right to file an appeal to this Court.

The respondents fail to convince.

The petitioner's receipt of the monetary award adjudicated by the NLRC is not absolute, unconditional and unqualified. The petitioner's May 3, 2007 Motion for Release contains a reservation, stating in his prayer that: "it is respectfully prayed that the respondents and/or Great Domestic Insurance Co. be ordered to RELEASE/GIVE the amount of ₱23,521.67 in favor of the complainant TIMOTEO H. SARONA without prejudice to the outcome of the petition with the CA."[33]

In *Leonis Navigation Co., Inc., et al. v. Villamater, et al.*,[34] this Court ruled that the prevailing party's receipt of the full amount of the judgment award pursuant to a writ of execution issued by the labor arbiter does not close or terminate the case if such receipt is qualified as without prejudice to the outcome of the petition for *certiorari* pending with the CA.

Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court. In the present case, petitioners already paid Villamater's widow, Sonia, the amount of ₱3,649,800.00, representing the total and permanent disability award plus attorney's fees, pursuant to the Writ of Execution issued by the Labor Arbiter. Thereafter, an Order was issued declaring the case as "closed and terminated". However, although there was no motion for reconsideration of this last Order, Sonia was, nonetheless, estopped from claiming that the controversy had already reached its end with the issuance of the Order closing and terminating the case. This is because the Acknowledgment Receipt she signed when she received petitioners' payment was without prejudice to the final outcome of the petition for *certiorari* pending before the CA.[35]

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[33] *Id.* at 67.

[34] G.R. No. 179169, March 3, 2010, 614 SCRA 182.

[35] *Id.* at 193-194.

The finality of the NLRC's decision does not preclude the filing of a petition for *certiorari* under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties' receipt of its decision[36] will only give rise to the prevailing party's right to move for the execution thereof but will not prevent the CA from taking cognizance of a petition for *certiorari* on jurisdictional and due process considerations.[37] In turn, the decision rendered by the CA on a petition for *certiorari* may be appealed to this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 5, Article VIII of the Constitution, this Court has the power to "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 x x x all cases in which only an error or question of law is involved." Consistent with this constitutional mandate, Rule 45 of the Rules of Court provides the remedy of an appeal by *certiorari* from decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, which would be but a continuation of the appellate process over the original case.[38] Since an appeal to this Court is not an original and independent action but a continuation of the proceedings before the CA, the filing of a petition for review under Rule 45 cannot be barred by the finality of the NLRC's decision in the same way that a petition for *certiorari* under Rule 65 with the CA cannot.

Furthermore, if the NLRC's decision or resolution was reversed and set aside for being issued with grave abuse of discretion by way of a petition for *certiorari* to the CA or to this Court by way of an appeal from the decision of the CA, it is considered void *ab initio* and, thus, had never become final and executory.[39]

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[36] 2011 NLRC Rules of Procedure, Rule VII, Section 14.

[37] *Id.*

[38] *Cua, Jr. v. Tan,* G.R. No. 181455-56, December 4, 2009, 607 SCRA 686-687.

[39] *Leonis Navigation Co., Inc. v. Villamater, supra* note 34 at 192.

A Rule 45 Petition should be confined to questions of law. Nevertheless, this Court has the power to resolve a question of fact, such as whether a corporation is a mere alter ego of another entity or whether the corporate fiction was invoked for fraudulent or malevolent ends, if the findings in assailed decision is not supported by the evidence on record or based on a misapprehension of facts.

The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether the petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of the respondent's corporate personality.[40]

As a general rule, this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law. Moreover, if factual findings of the NLRC and the LA have been affirmed by the CA, this Court accords them the respect and finality they deserve. It is well-settled and oft-repeated that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA.[41]

Nevertheless, this Court will not hesitate to deviate from what are clearly procedural guidelines and disturb and strike down

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[40] *China Banking Corporation v. Dyne-Sem Electronics Corporation,* 527 Phil. 80 (2006).

[41] *Reyes v. National Labor Relations Commission,* G.R. No. 160233, August 8, 2007, 529 SCRA 499.

the findings of the CA and those of the labor tribunals if there is a showing that they are unsupported by the evidence on record or there was a patent misappreciation of facts. Indeed, that the impugned decision of the CA is consistent with the findings of the labor tribunals does not *per se* conclusively demonstrate the correctness thereof. By way of exception to the general rule, this Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.

A resolution of an issue that has supposedly become final and executory as the petitioner only raised it in his reply to the respondents' appeal may be revisited by the appellate court if such is necessary for a just disposition of the case.

As above-stated, the NLRC refused to disturb LA Gutierrez's denial of the petitioner's plea to pierce Royale's corporate veil as the petitioner did not appeal any portion of LA Gutierrez's May 11, 2005 Decision.

In this respect, the NLRC cannot be accused of grave abuse of discretion. Under Section 4(c), Rule VI of the NLRC Rules,[42] the NLRC shall limit itself to reviewing and deciding only the issues that were elevated on appeal. The NLRC, while not totally bound by technical rules of procedure, is not licensed to disregard and violate the implementing rules it implemented.[43]

Nonetheless, technicalities should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Technical rules are not binding in

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[42] New Rules of Procedure of the National Labor Relations Commission (as amended by NLRC Resolution No. 01-02, Series of 2002).

[43] *Del Monte Philippines, Inc. v. NLRC*, G.R. No. 87371, August 6, 1990, 188 SCRA 370.

labor cases and are not to be applied strictly if the result would be detrimental to the working man.[44] This Court may choose not to encumber itself with technicalities and limitations consequent to procedural rules if such will only serve as a hindrance to its duty to decide cases judiciously and in a manner that would put an end with finality to all existing conflicts between the parties.

Royale is a continuation or successor of Sceptre.

A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.[45]

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.[46]

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise,

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[44] *Government Service Insurance System v. NLRC,* G.R. No. 180045, November 17, 2010, 635 SCRA 258.

[45] *General Credit Corporation v. Alsons Development and Investment Corporation,* G.R. No. 154975, January 29, 2007, 513 SCRA 237-238.

[46] *Philippine National Bank v. Andrada Electric Engineering Company,* 430 Phil. 894 (2002).

an injustice that was never unintended may result from an erroneous application.[47]

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.[48]

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[49]

In this regard, this Court finds cogent reason to reverse the CA's findings. Evidence abound showing that Royale is a mere continuation or successor of Sceptre and fraudulent objectives are behind Royale's incorporation and the petitioner's subsequent employment therein. These are plainly suggested by events that the respondents do not dispute and which the CA, the NLRC and LA Gutierrez accept as fully substantiated but misappreciated as insufficient to warrant the use of the equitable weapon of piercing.

As correctly pointed out by the petitioner, it was Aida who exercised control and supervision over the affairs of both Sceptre and Royale. Contrary to the submissions of the respondents that Roso had been the only one in sole control of Sceptre's

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[47] *Id.* at 894-895; citations omitted.

[48] *Supra* note 45 at 238.

[49] *Id.* at 238-239.

finances and business affairs, Aida took over as early as 1999 when Roso assigned his license to operate Sceptre on May 3, 1999.[50] As further proof of Aida's acquisition of the rights as Sceptre's sole proprietor, she caused the registration of the business name "Sceptre Security & Detective Agency" under her name with the DTI a few months after Roso abdicated his rights to Sceptre in her favor.[51] As far as Royale is concerned, the respondents do not deny that she has a hand in its management and operation and possesses control and supervision of its employees, including the petitioner. As the petitioner correctly pointed out, that Aida was the one who decided to stop giving any assignments to the petitioner and summarily dismiss him is an eloquent testament of the power she wields insofar as Royale's affairs are concerned. The presence of actual common control coupled with the misuse of the corporate form to perpetrate oppressive or manipulative conduct or evade performance of legal obligations is patent; Royale cannot hide behind its corporate fiction.

Aida's control over Sceptre and Royale does not, by itself, call for a disregard of the corporate fiction. There must be a showing that a fraudulent intent or illegal purpose is behind the exercise of such control to warrant the piercing of the corporate veil.[52] However, the manner by which the petitioner was made to resign from Sceptre and how he became an employee of Royale suggest the perverted use of the legal fiction of the separate corporate personality. It is undisputed that the petitioner tendered his resignation and that he applied at Royale at the instance of Karen and Cesar and on the impression they created that these were necessary for his continued employment. They orchestrated the petitioner's resignation from Sceptre and subsequent employment at Royale, taking advantage of their ascendancy over the petitioner and the latter's lack of knowledge of his rights and the consequences of his actions. Furthermore, that

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[50] *Rollo,* p. 79.

[51] *Id.* at 80.

[52] *NASECO Guards Association-PEMA (NAGA-PEMA) v. National Service Corporation,* G.R. No. 165442, August 25, 2010, 629 SCRA 101.

the petitioner was made to resign from Sceptre and apply with Royale only to be unceremoniously terminated shortly thereafter leads to the ineluctable conclusion that there was intent to violate the petitioner's rights as an employee, particularly his right to security of tenure. The respondents' scheme reeks of bad faith and fraud and compassionate justice dictates that Royale and Sceptre be merged as a single entity, compelling Royale to credit and recognize the petitioner's length of service with Sceptre. The respondents cannot use the legal fiction of a separate corporate personality for ends subversive of the policy and purpose behind its creation[53] or which could not have been intended by law to which it owed its being.[54]

For the piercing doctrine to apply, it is of no consequence if Sceptre is a sole proprietorship. As ruled in *Prince Transport, Inc., et al. v. Garcia, et al.*,[55] it is the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, evade one's obligations that the equitable piercing doctrine was formulated to address and prevent:

> A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.[56]

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[53] *Cf. Emiliano Cano Enterprises, Inc. v. CIR, et al.*, 121 Phil. 276 (1965).

[54] *Land Bank of the Philippines v. Court of Appeals*, 416 Phil. 774, 783 (2001).

[55] G.R. No. 167291, January 12, 2011, 639 SCRA 312.

[56] *Id.* at 328.

Also, Sceptre and Royale have the same principal place of business. As early as October 14, 1994, Aida and Wilfredo became the owners of the property used by Sceptre as its principal place of business by virtue of a Deed of Absolute Sale they executed with Roso.[57] Royale, shortly after its incorporation, started to hold office in the same property. These, the respondents failed to dispute.

The respondents do not likewise deny that Royale and Sceptre share the same officers and employees. Karen assumed the dual role of Sceptre's Operation Manager and incorporator of Royale. With respect to the petitioner, even if he has already resigned from Sceptre and has been employed by Royale, he was still using the patches and agency cloths of Sceptre during his assignment at Highlight Metal.

Royale also claimed a right to the cash bond which the petitioner posted when he was still with Sceptre. If Sceptre and Royale are indeed separate entities, Sceptre should have released the petitioner's cash bond when he resigned and Royale would have required the petitioner to post a new cash bond in its favor.

Taking the foregoing in conjunction with Aida's control over Sceptre's and Royale's business affairs, it is patent that Royale was a mere subterfuge for Aida. Since a sole proprietorship does not have a separate and distinct personality from that of the owner of the enterprise, the latter is personally liable. This is what she sought to avoid but cannot prosper.

Effectively, the petitioner cannot be deemed to have changed employers as Royale and Sceptre are one and the same. His separation pay should, thus, be computed from the date he was hired by Sceptre in April 1976 until the finality of this decision. Based on this Court's ruling in *Masagana Concrete Products, et al. v. NLRC, et al.*,[58] the intervening period between the day an employee was illegally dismissed and the day the decision

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[57] *Rollo*, pp. 5, 54, 74 and 82.

[58] 372 Phil. 459 (1999).

finding him illegally dismissed becomes final and executory shall be considered in the computation of his separation pay as a period of "imputed" or "putative" service:

> Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation.[59]

It is well-settled, even axiomatic, that if reinstatement is not possible, the period covered in the computation of backwages is from the time the employee was unlawfully terminated until the finality of the decision finding illegal dismissal.

With respect to the petitioner's backwages, this Court cannot subscribe to the view that it should be limited to an amount equivalent to three (3) months of his salary. Backwages is a remedy affording the employee a way to recover what he has lost by reason of the unlawful dismissal.[60] In awarding backwages, the primordial consideration is the income that should have accrued to the employee from the time that he was dismissed up to his reinstatement[61] and the length of service prior to his dismissal is definitely inconsequential.

As early as 1996, this Court, in *Bustamante, et al. v. NLRC, et al.*,[62] clarified in no uncertain terms that if reinstatement is no longer possible, backwages should be computed from the

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[59] *Id.* at 481.

[60] *De Guzman v. National Labor Relations Commission*, 371 Phil. 202 (1999).

[61] *Velasco v. NLRC, et al.*, 525 Phil. 749, 761-762, (2006).

[62] 332 Phil. 833 (1996).

time the employee was terminated until the finality of the decision, finding the dismissal unlawful.

Therefore, in accordance with R.A. No. 6715, petitioners are entitled on their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld on them up to the time of their actual reinstatement.

As to reinstatement of petitioners, this Court has already ruled that reinstatement is no longer feasible, because the company would be adjustly prejudiced by the continued employment of petitioners who at present are overage, a separation pay equal to one-month salary granted to them in the Labor Arbiter's decision was in order and, therefore, affirmed on the Court's decision of 15 March 1996. **Furthermore, since reinstatement on this case is no longer feasible, the amount of backwages shall be computed from the time of their illegal termination on 25 June 1990 up to the time of finality of this decision.**[63] **(**emphasis supplied**)**

A further clarification was made in *Javellana, Jr. v. Belen*:[64]

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

> Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled

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[63] *Id.* at 843.

[64] G.R. No. 181913, March 5, 2010, 614 SCRA 342.

that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.[65] (citation omitted)

In case separation pay is awarded and reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal up to the finality of the decision should separation pay not be paid in the meantime. It is the employee's actual receipt of the full amount of his separation pay that will effectively terminate the employment of an illegally dismissed employee.[66] Otherwise, the employer-employee relationship subsists and the illegally dismissed employee is entitled to backwages, taking into account the increases and other benefits, including the 13th month pay, that were received by his co-employees who are not dismissed.[67] It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working.[68]

In fine, this Court holds Royale liable to pay the petitioner backwages to be computed from his dismissal on October 1, 2003 until the finality of this decision. Nonetheless, the amount received by the petitioner from the respondents in satisfaction of the November 30, 2005 Decision shall be deducted accordingly.

Finally, moral damages and exemplary damages at ₱25,000.00 each as indemnity for the petitioner's dismissal, which was tainted by bad faith and fraud, are in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only

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[65] *Id.* at 350-351.

[66] *Rasonable v. NLRC*, 324 Phil. 191, 200 (1996).

[67] *Id.*

[68] *St. Louis College of Tuguegarao v. NLRC*, 257 Phil. 1008 (1989), citing *East Asiatic Co., Ltd. v. Court of Industrial Relations*, 148-B Phil. 401, 429 (1971).

if the dismissal was done in a wanton, oppressive, or malevolent manner.[69]

WHEREFORE, premises considered, the Petition is hereby **GRANTED.** We **REVERSE** and **SET ASIDE** the CA's May 29, 2008 Decision in C.A.-G.R. SP No. 02127 and order the respondents to pay the petitioner the following minus the amount of (₱23,521.67) paid to the petitioner in satisfaction of the NLRC's November 30, 2005 Decision in NLRC Case No. V-000355-05:

a) full backwages and other benefits computed from October 1, 2003 (the date Royale illegally dismissed the petitioner) until the finality of this decision;

b) separation pay computed from April 1976 until the finality of this decision at the rate of one month pay per year of service;

c) ten percent (10%) attorney's fees based on the total amount of the awards under (a) and (b) above;

d) moral damages of Twenty-Five Thousand Pesos (₱25,000.00); and

e) exemplary damages of Twenty-Five Thousand Pesos (₱25,000.00).

This case is **REMANDED** to the labor arbiter for computation of the separation pay, backwages, and other monetary awards due the petitioner.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[69] *Norkis Trading Co., Inc. v. NLRC,* 504 Phil. 709, 719-720 (2005).

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

FIRST DIVISION

[G.R. No. 186392. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCOS SABADLAB *y* NARCISO @ "Bong Pango",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE IN ORDER TO PROSPER AS DEFENSES.— "[W]e have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence."

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE LACK OF PARTICIPATION OF THE PHILIPPINE DRUG ENFORCEMENT AGENCY IN THE BUY-BUST OPERATION WOULD NOT MAKE THE ARREST OF THE ACCUSED ILLEGAL OR THE EVIDENCE OBTAINED PURSUANT THERETO INADMISSIBLE.— [T]he accused-appellant argued that the buy-bust operation was illegal as it was made without a close coordination with PDEA. The accused-appellant was apparently referring to Section 86 of Republic Act No. 9165 x x x. As this Court held in *People v. Berdadero,* the foregoing provision, as well as the Internal Rules and Regulations implementing the same, "is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation x x x. [T]his silence cannot be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible." In the case at bar, even if we assume for the sake of argument that Narciso Sabadlab and accused-appellant Marcos Sabadlab *y* Narciso *alias* Bong Pango could have been different persons, the established fact remains

that it was accused-appellant who was caught *in flagrante delicto* by the buy-bust team. Following the aforementioned jurisprudence, even the lack of participation of PDEA would not make accused-appellant's arrest illegal or the evidence obtained pursuant thereto inadmissible.

3. ID.; ID.; A PRIOR SURVEILLANCE IS NOT NECESSARY FOR THE VALIDITY OF A BUY-BUST OPERATION.— Neither is prior surveillance a necessity for the validity of the buy-bust operation. Thus, in *People v. Padua*, this Court held: "A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof. The police officers may decide that time is of the essence and dispense with the need for prior surveillance."

4. ID.; ID.; ILLEGAL SALE OF DRUGS; ELEMENTS.— The testimony of PO3 Lowaton showed the complete details of the transaction: the initial contact between him and accused-appellant, the offer to purchase *shabu*, the delivery of the dangerous drug and payment with the marked money, and the eventual arrest of accused-appellant. We carefully examined said testimony and found ourselves in agreement with the Court of Appeals that the same was straightforward and clearly established the elements of the crime of illegal sale of drugs, namely: "(1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor."

5. ID.; ID.; ILLEGAL POSSESSION OF ILLEGAL DRUGS; ELEMENTS.— [T]he testimony of PO3 Lowaton and MADAC Castillo as regards the sachet seized from accused-appellant also sufficiently established the elements of the crime of illegal possession of illegal drugs, which are: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug."

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE DETERMINATION BY THE TRIAL

COURT THEREOF, WHEN AFFIRMED BY THE APPELLATE COURT, IS ACCORDED GREAT RESPECT, IF NOT CONCLUSIVE EFFECT.— "[T]he determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect." The trial court, which had the opportunity to observe the demeanor of PO3 Lowaton and MADAC Castillo, on one hand, and accused-appellant, on the other, was in a better position than this Court to determine which of them is telling the truth.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF A DANGEROUS DRUG; PENALTY.— For the crime of illegal sale of a dangerous drug in Criminal Case No. 06-1837, the trial court imposed the penalty of life imprisonment and a fine of ₱500,000.00. This is correctly within the period and range of the imposable fine provided for in Section 5 of Republic Act No. 9165 x x x.

8. ID.; ID.; ILLEGAL POSSESSION OF A DANGEROUS DRUG; PENALTY.— For the crime of illegal possession of a dangerous drug in Criminal Case No. 06-1838, the trial court imposed the penalty of imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of ₱300,000.00. x x x The fine of ₱300,000.00 is clearly within the range of the imposable fine for possession of less than 5 grams of *methamphetamine hydrochloride* or *shabu* under Section 11. As regards the penalty of imprisonment, the Court should take into consideration the Indeterminate Sentence Law and provide for an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. The minimum (12 years and 1 day) and maximum (14 years and 8 months) of the indeterminate term imposed by the trial court are likewise correctly within the terms (12 years and 1 day to 20 years) prescribed under Section 11.

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 assailing the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02690 dated July 31, 2008, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Makati convicting accused-appellant Marcos Sabadlab *y* Narciso of violation of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On September 22, 2006, accused-appellant was charged with violation of Sections 5 and 11 of Republic Act No. 9165, as follows:

CRIMINAL CASE NO. 06-1837:

The undersigned Prosecutor accuses MARCOS SABADLAB *y* NARCISO @ "BONG PANGO" of the crime of Violation of Section 5 of R.A. 9165, committed as follows:

> That on or about the 21st day of September, 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport Methylamphetamine Hydrochloride, weighing zero point zero two (0.02) gram, which is a dangerous drug, in consideration of five hundred [sic] (Php300.00) pesos, in violation of the above-cited law.[3]

CRIMINAL CASE NO. 06-1838:

The undersigned Prosecutor accuses MARCOS SABADLAB *y* NARCISO @ "BONG PANGO" of the crime of Violation of Section 11 of R.A. 9165, committed as follows:

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Amelita G. Tolentino with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., concurring.

[2] CA *rollo*, pp. 41-45.

[3] Records, p. 2.

> That on or about the 21st day of September, 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control Methylamphetamine Hydrochloride (*Shabu*) weighing zero point zero two (0.02) gram, which is a dangerous drug, in violation of the above-cited law.[4]

Trial ensued, during which the prosecution presented Police Officer (PO) 3 Eusebio Lowaton, Jr. (PO3 Lowaton) and Makati Anti-Drug Abuse Council (MADAC) Operative Miguel Castillo (MADAC Castillo).

PO3 Lowaton, a police officer in the Makati Central Police Station assigned to the Station Anti-Illegal Drugs-Special Operation Task Force (SAID-SOTF), testified that at around 9:00 a.m. on September 21, 2006, an informant came to their office, together with operatives from the MADAC. The informant and the operatives reported that a certain "Bong" was engaged in delivering and selling *shabu*. The informant told PO3 Lowaton that he personally bought *shabu* from said "Bong." The SAID-SOTF officers went through their records and learned that said "Bong" had a previous record related to illegal drug activities. SAID-SOTF coordinated with the Philippine Drug Enforcement Agency (PDEA) through fax by sending a Pre-operational Report/ Coordination Sheet, stating that it received information that one "Narciso Sabadlab" is engaged in illegal drug trade.[5] PDEA, in turn, sent SAID-SOTF a Certificate of Coordination[6] for an operation in Dapitan Street, Bgy. Guadalupe Nuevo, Makati City, with one "Narciso Sabadlab" as target.[7] A team composed of PO3 Lowaton and three other police officers, some MADAC operatives, and the informant, was formed to conduct a buy-

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[4] *Id.* at 4.

[5] *Id.* at 12.

[6] *Id.* at 14.

[7] TSN, October 20, 2006, pp. 1-5; 13.

bust operation. In preparation, the team leader marked three one hundred-peso bills to be used in the operation with the initials "ATS," standing for "Angel T. Sumulong."[8]

Before alighting at the area of the operation at Dapitan Street, Guadalupe Nuevo, Makati City, the informant told PO3 Lowaton that the person standing at the corner was their subject. The informant introduced PO3 Lowaton to accused-appellant as the buyer. The accused-appellant, who was carrying his son at the time,[9] asked PO3 Lowaton how much he was going to buy. PO3 Lowaton replied that he will buy ₱300.00 worth. The accused-appellant took a plastic sachet from his pocket and gave it to PO3 Lowaton. PO3 Lowaton handed ₱300.00 to accused-appellant. PO3 Lowaton reversed his cap to signal the completion of the transaction. He thereafter introduced himself as a police officer, arrested the accused-appellant, and informed him of his constitutional rights and nature of his arrest.[10]

PO3 Lowaton instructed his back-up MADAC personnel to conduct a body search on the accused-appellant. The ₱300 in marked money and another plastic sachet was recovered from the accused-appellant. PO3 Lowaton marked the sachet sold to him and the one recovered from the accused-appellant with "EBL-1" and "EBL-2", respectively.[11]

The accused-appellant was then brought to SAID-SOTF, while the two plastic sachets were turned over to the Scene of the Crime Operation (SOCO) for laboratory examination. PO3 Lowaton prepared an Acknowledgment Receipt[12] turning over the two plastic sachets, the marked money and another ₱60 recovered from accused-appellant to a certain PO2 Castillo.[13]

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

[9] *Id.* at 18.

[10] *Id.* at 5-7.

[11] *Id.* at 7-8.

[12] *Id.* at 10.

[13] Records, p. 58, Exhibit J.

The sachets marked EBL-1 and EBL-2 were forwarded to the PNP Crime Laboratory for laboratory examination.[14] Forensic Chemist Police Senior Inspector Abraham Verde Tecson prepared Physical Science Report No. D0649-06S reporting his finding that EBL-1 and EBL-2, each weighing 0.02 grams, gave positive results for methylamphetamine hydrochloride.[15] This report was admitted with no objection from the defense.[16]

MADAC Castillo, another member of the team that conducted the buy-bust operation, corroborated the testimony of PO3 Lowaton. MADAC Castillo testified that he, together with certain persons named PO3 Ruiz, PO2 Julius Lique, MADAC Dezer, MADAC Balote and MADAC Ruben Salandanan, acted as back-ups of PO3 Lowaton in the operation, which was led by a certain female police officer called Waje.[17] PO3 Lowaton acted as the poseur-buyer. While he was still around 20-25 meters away from the scene of the crime, MADAC Castillo observed that there was an "exchange of something." MADAC Castillo then saw PO3 Lowaton reversing his cap, so he went near the place of transaction, where he was ordered by PO3 Lowaton to conduct a body search on the accused-appellant. MADAC Castillo told accused-appellant to empty his pocket. When the accused-appellant refused to do so, MADAC Castillo frisked him and recovered a plastic sachet, the marked money worth ₱300.00 (three ₱100 bills), and another ₱60.00 (three ₱20 bills) in his front right pocket.[18]

Only the accused-appellant testified for the defense. According to the accused-appellant, he was arrested on September 21, 2006 by PO3 Lowaton and his men in front of his house in Dapitan Street, Guadalupe Nuevo, Makati City. He was with his three

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[14] *Id.* at 50, Exhibit C.

[15] *Id.* at 51, Exhibit D.

[16] *Id.* at 72.

[17] TSN, October 25, 2006, pp. 7-8.

[18] *Id.* at 4-9.

children at this time, the eldest of which was five years old. Eight to ten men in civilian clothes alighted from their vehicle and were looking for a certain "Minyong." When he told them that he does not know said person, they started to force him to go with them. He asked them why they were taking him, but they did not reply and instead brought him to the SAID-SOTF office. In said office, he learned that he was being charged for drug peddling. He was forced to give a urine sample and was thereafter brought to the Ospital ng Makati.[19]

The accused-appellant testified that PO3 Lowaton had already previously arrested him and three others for playing *cara y cruz* on September 16, 2006 and was released when he paid PO3 Lowaton a total of ₱2,000.00. The accused-appellant denied the charges against him. His brother, Reymundo Sabadlab, his sister, Myrna Capco, and his wife, Edna Militar, are all undergoing trial for drug-related offenses.[20]

On December 8, 2006, the RTC rendered its Decision finding accused-appellant guilty. The dispositive portion of the Decision states:

> WHEREFORE, it appearing that the guilt of accused MARCOS SABADLAB *y* NARCISO was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, for violation [of] Section[s] 5 and 11, Article II of Republic Act 9165, he is hereby sentenced:
>
> 1. In Criminal Case No. 06-1837, to suffer life imprisonment and to pay a fine of ₱500,000.00;
>
> 2. In Criminal Case No. 06-1838, 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 of ₱300,000.00; and
>
> 3. To pay the costs.

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[19] TSN, November 15, 2006, pp. 2-6.

[20] *Id.* at 7-11.

Let the two [2] plastic sachets each containing 0.02 gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.[21]

Accused-appellant appealed. The case was raffled to the Thirteenth Division of the Court of Appeals and was docketed as CA-G.R. CR.-H.C. No. 02690.

On July 31, 2008, the Court of Appeals rendered its Decision affirming that of the RTC. Hence, the present recourse, where accused-appellant assigns the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II, R.A. NO. 9165.[22]

Whether accused-appellant's guilt was established beyond reasonable doubt

The accused-appellant denied ownership of the *methylamphetamine hydrochloride* allegedly recovered by the police officers in the operation. He claimed that there was no legitimate buy-bust operation since the pre-operation report from the Makati Police Station and the Certificate of Coordination from the PDEA did not carry his name and instead mentions a certain "Narciso Sabadlab." The accused-appellant argued that the prosecution was not able to establish that he and this Narciso Sabadlab were the same person. The accused-appellant added that the absence of a prior surveillance rendered suspect the

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[21] CA *rollo*, p. 45.

[22] *Id.* at 34.

genuineness of the alleged buy-bust operation. Finally, accused-appellant asserted that it was contrary to human nature and experience for him to have carried his child while engaged in such nefarious activity.[23]

In the recent case of *People v. Tion*,[24] this Court had the opportunity to discuss the weight given to testimonies of members of buy-bust teams in drug-related cases:

> Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit. Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. x x x.[25]

Similarly, in another case, "[w]e have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence."[26]

In the case at bar, accused-appellant failed to prove his allegation of denial and frame-up by strong and convincing evidence. He, in fact, presented no evidence to prove the same, and instead relied on the alleged irregularity in the buy-bust operation brought about by the inexact name mentioned in the

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[23] *Id.* at 35-37.

[24] *People v. Tion,* G.R. No. 172092, December 16, 2009, 608 SCRA 299.

[25] *Id.* at 316-317.

[26] *People v. Gonzaga,* G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

Pre-operation Report from the Makati Police Station and the Certificate of Coordination from the PDEA. On this matter, the accused-appellant argued that the buy-bust operation was illegal as it was made without a close coordination with PDEA. The accused-appellant was apparently referring to Section 86 of Republic Act No. 9165, which provides:

> Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.
>
> The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.
>
> Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, **That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.** (Emphasis supplied.)

As this Court held in *People v. Berdadero*,[27] the foregoing provision, as well as the Internal Rules and Regulations implementing the same, "is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation x x x. [T]his silence cannot be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible."[28] In the case at bar, even if we assume for the sake of argument that Narciso Sabadlab and accused-appellant Marcos Sabadlab *y* Narciso *alias* Bong Pango could have been different persons, the established fact remains that it was accused-appellant who was caught *in flagrante delicto* by the buy-bust team. Following the aforementioned jurisprudence, even the lack of participation of PDEA would not make accused-appellant's arrest illegal or the evidence obtained pursuant thereto inadmissible.

Neither is prior surveillance a necessity for the validity of the buy-bust operation. Thus, in *People v. Padua*,[29] this Court held:

> A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.[30]

As regards accused-appellant's allegation that he would not knowingly expose his son to peril by having him around while he is engaged in his drug peddling activity, suffice it to say that

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[27] G.R. No. 179710, June 29, 2010, 622 SCRA 196.

[28] *Id.* at 207.

[29] G.R. No. 174097, July 21, 2010, 625 SCRA 220.

[30] *Id.* at 239.

accused-appellant's testimony as to his own good moral character was self-serving and cannot be given credence.

In *People v. Doria*,[31] this Court laid down the objective test in evaluating buy-bust operations:

> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[32]

The testimony of PO3 Lowaton showed the complete details of the transaction: the initial contact between him and accused-appellant,[33] the offer to purchase *shabu*,[34] the delivery of the dangerous drug and payment with the marked money,[35] and the eventual arrest of accused-appellant.[36] We carefully examined

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[31] G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[32] *Id.* at 698-699.

[33] TSN, October 20, 2006, pp. 2-6.

[34] *Id.* at 6.

[35] *Id.*

[36] TSN, October 20, 2006, pp. 6-8.

said testimony and found ourselves in agreement with the Court of Appeals that the same was straightforward and clearly established the elements of the crime of illegal sale of drugs, namely: "(1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor."[37] Likewise, the testimony of PO3 Lowaton[38] and MADAC Castillo[39] as regards the sachet seized from accused-appellant also sufficiently established the elements of the crime of illegal possession of illegal drugs, which are: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug."[40]

It is furthermore a fundamental rule that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."[41] The trial court, which had the opportunity to observe the demeanor of PO3 Lowaton and MADAC Castillo, on one hand, and accused-appellant, on the other, was in a better position than this Court to determine which of them is telling the truth.

Propriety of the penalty imposed on accused- appellant

For the crime of illegal sale of a dangerous drug in Criminal Case No. 06-1837, the trial court imposed the penalty of life imprisonment and a fine of ₱500,000.00. This is correctly within

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[37] *People v. Araneta,* G.R. No. 191064, October 20, 2010, 634 SCRA 475, 485.

[38] TSN, October 20, 2006, pp. 6-7.

[39] TSN, October 25, 2006, pp. 3-5.

[40] *People v. Tan,* G.R. No. 191069, November 15, 2010, 634 SCRA 773, 788.

[41] *People v. Mayingque,* G.R. No. 179709, July 6, 2010, 624 SCRA 123, 140.

the period and range of the imposable fine provided for in Section 5 of Republic Act No. 9165:

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.

For the crime of illegal possession of a dangerous drug in Criminal Case No. 06-1838, the trial court imposed the penalty of imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of ₱300,000.00. Section 11 of Republic Act No. 9165 provides:

Section 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana

resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

The fine of ₱300,000.00 is clearly within the range of the imposable fine for possession of less than 5 grams of *methamphetamine hydrochloride* or *shabu* under Section 11. As regards the penalty of imprisonment, the Court should take into consideration the Indeterminate Sentence Law[42] and provide for an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.[43] The minimum (12 years and 1 day) and maximum (14 years and 8 months) of the indeterminate term imposed by the trial court are likewise correctly within the terms (12 years and 1 day to 20 years) prescribed under Section 11.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02690 dated July 31, 2008 is hereby **AFFIRMED.**

SO ORDERED.

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

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[42] Act No. 4103 as amended by Act No. 4225 and Republic Act No. 4203.

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

THIRD DIVISION

[G.R. No. 192813. January 18, 2012]

VASHDEO GAGOOMAL, *petitioner, vs.* **SPOUSES RAMON and NATIVIDAD VILLACORTA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WRIT OF POSSESSION; WHEN ISSUED.—** A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. We clarified in the case of *Motos v. Real Bank (A Thrift Bank), Inc.* that a writ of possession may be issued under any of the following instances: (a) land registration proceedings under Section 17 of Act No. 496; (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118.

2. **ID.; ID.; ID.; MONEY JUDGMENTS; ENFORCEABLE ONLY AGAINST PROPERTY INCONTROVERTIBLY BELONGING TO THE JUDGMENT DEBTOR.—** It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor, and if property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. Section 16, Rule 39 thereof specifically provides that a third person may avail himself of the remedies of either *terceria,* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent "separate action" to vindicate their claim of ownership and/or possession over the foreclosed property. However, "a person other than the judgment debtor who claims ownership or right over the levied properties is not precluded from taking other legal remedies to prosecute his claim."

3. ID.; ID.; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; NOTICE OF *LIS PENDENS*; EFFECTS.— The filing of a notice of *lis pendens* has a dual effect: (1) to keep the property subject matter of the litigation within the power of the court until the entry of the final judgment in order to prevent the defeat of the final judgment by successive alienations; and (2) to bind a purchaser, *bona fide* or otherwise, of the property subject of the litigation to the judgment that the court will subsequently promulgate.

4. ID.; ID.; ID.; ID.; VALID AND EFFECTIVE ONLY WHEN IT AFFECTS TITLE OVER OR RIGHT OF POSSESSION OF A REAL PROPERTY.— [A] notice of *lis pendens* is proper in the following actions and their concomitant proceedings: "(a) an action to recover possession of real estate; (b) an action to quiet title thereto; (c) an action to remove clouds thereon; (d) an action for partition; and (e) any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the buildings thereon." Thus, a notice of *lis pendens* is only valid and effective when it affects *title over or right of possession of a real property*.

5. ID.; ID.; ID.; ID.; THE DOCTRINE OF *LIS PENDENS* HAS NO APPLICATION TO A PROCEEDING IN WHICH THE ONLY OBJECT SOUGHT IS THE RECOVERY OF A MONEY JUDGMENT, THOUGH THE TITLE OR RIGHT OF POSSESSION TO PROPERTY BE INCIDENTALLY AFFECTED.— To be sure, in *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*, We have previously explained that the doctrine of *lis pendens* has no application to a proceeding in which the only object sought is the recovery of a money judgment, though the title or right of possession to property be incidentally affected. It is essential that the property be directly affected such as when the relief sought in the action or suit includes the recovery of possession, or the enforcement of a lien, or an adjudication between conflicting claims of title, possession, or the right of possession to specific property, or requiring its transfer or sale. Even if a party initially avails of a notice of *lis pendens* upon the filing of a case in court, such notice is rendered nugatory if the case turns out to be a purely personal action. In such event, the notice of *lis pendens* becomes *functus officio*.

6. ID.; ID.; JUDGMENTS; CAN ONLY BE EXECUTED OR ISSUED AGAINST A PARTY TO THE ACTION.— It bears to stress that the court issuing the writ of execution may enforce its authority *only over properties or rights of the judgment debtor*, and the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor. Should the sheriff levy upon the assets of a third person in which the judgment debtor has not even the remotest interest, then he is acting beyond the limits of his authority. A judgment can only be executed or issued against a party to the action, not against one who has not yet had his day in court.

7. ID.; ID.; EXECUTION OF JUDGMENTS; A COURT HAS A GENERAL SUPERVISORY CONTROL OVER THE ENTIRE EXECUTION PROCESS; CASE AT BAR.— [P]etitioner's contention that the writ of possession had already been enforced and can no longer be quashed deserves scant consideration. Unquestionably, the RTC has a general supervisory control over the entire execution process, and such authority carries with it the right to determine every question which may be invariably involved in the execution. Respondents invoked this supervisory power when they sought the quashal of the writ of possession.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Zamora Poblador Vasquez & Bretaña for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals ("CA") dated March 8, 2010 in CA-G.R. SP No. 109004, as

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Mariflor P. Punzalan Castillo and Elihu A. Ybañez, concurring; *rollo*, pp. 50-63.

well as the Resolution[2] dated July 7, 2010 denying the motion for reconsideration thereof. The dispositive portion of the assailed Decision reads:

"WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Orders dated August 5, 2008 and March 20, 2009 issued by Hon. Danilo S. Cruz of the Regional Trial Court, Branch 152, Pasig City are hereby **REVERSED** and **SET ASIDE** and another one entered, the Motion to Quash Writ of Possession filed by spouses Ramon and Natividad Villacorta in Civil Case No. 67381 is **GRANTED**. **ACCORDINGLY**, the Writ of Possession issued in Civil Case No. 67381 is ordered **QUASHED**.

SO ORDERED."

The Facts

Albert Zeñarosa ("Zeñarosa") was the registered owner of a parcel of land located in Ayala Alabang Village, Alabang, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. 170213. He mortgaged the same in favor of BPI Family Savings Bank ("BPI") which was duly annotated on the title on June 7, 1990.

Subsequently, Zeñarosa obtained a loan in the amount of $300,000.00 from RAM Holdings Corporation ("RAM"), secured by a second mortgage[3] over the property and a Promissory Note[4]. The parties likewise executed a Memorandum of Agreement[5] ("MOA") dated March 2, 1995 whereby Zeñarosa, through an Irrevocable Special Power of Attorney, authorized RAM, among others, to sell the subject property in case of his failure to pay.

Zeñarosa failed to settle his obligations prompting RAM to file a Complaint[6] for collection of sum of money with damages

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[2] *Id.*, pp. 66-67.

[3] *Id.*, Annex "C", pp. 69-75.

[4] *Id.*, Annex "D", pp. 77-78.

[5] *Id.*, Annex "E", pp. 80-83.

[6] *Id.*, Annex "F", pp. 85-94.

against him and BPI before the RTC of Pasig City, Branch 152, docketed as Civil Case No. 67381. RAM also caused the annotation of a notice of *lis pendens* on TCT No. 170213 on June 11, 1999.

Pending Civil Case No. 67381, Zeñarosa failed to pay his obligation to BPI resulting in the foreclosure of the subject property. The certificate of sale was annotated on TCT No. 170213 on March 24, 2000.

Meanwhile, RAM sold its rights and interests over the subject property to New Summit International, Inc., represented by its President, Vashdeo Gagoomal, herein petitioner. The assignment was annotated on TCT No. 170213 on October 16, 2000.

On August 29, 2002, one Luis P. Lorenzo, Jr. ("Lorenzo") filed a complaint for recovery of sum of money with application for a writ of preliminary attachment against Zeñarosa before the RTC of Makati City, Branch 64, docketed as Civil Case No. 02-1038. A writ of preliminary attachment was issued on September 20, 2002, pursuant to which the Branch Sheriff of Makati City attached the subject property. The lien was annotated on TCT No. 170213 on September 30, 2002.

On the other hand, Zeñarosa redeemed the foreclosed property from BPI on March 23, 2003. Thereafter, he sold the property to a certain Patricia A. Tan ("Tan") in whose favor TCT No. 10206[7] was issued on April 4, 2003. The annotations of the notice of *lis pendens* in Civil Case No. 67381, as well as the notice of levy on attachment in Civil Case No. 02-1038, were carried over to her title.

In the meantime, in Civil Case No. 02-1038, Lorenzo obtained a favorable decision which had become final and executory. A notice of levy and execution on the subject attached property was issued and annotated on the title. On January 15, 2004, the property was sold at public auction to Lorenzo for ₱9,034,166.00 and the Certificate of Sale was annotated on

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[7] *Id.*, Annex "G", pp. 127-131.

TCT No. 10206 on January 30, 2004, giving Zeñarosa until January 29, 2005 within which to redeem the property.

Subsequently, or on April 30, 2004, the RTC rendered judgment in favor of RAM in Civil Case No. 67381 for sum of money.[8] Pending Zeñarosa's appeal to the CA, docketed as CA-G.R. CV No. 84523, RAM filed a motion for execution pending appeal, which was granted.[9] On December 14, 2004, the property subject of notice of *lis pendens* was sold at public auction to petitioner, the successor-in-interest of RAM, for ₱19,793,500.00.[10] The certificate of sale was annotated on Tan's TCT No. 10206 on December 17, 2004.

On January 29, 2005, in view of Zeñarosa's failure to redeem the property from Lorenzo, the title over the subject property was consolidated in the latter's name. A writ of possession was issued in favor of Lorenzo, who subsequently sold the property to Natividad Villacorta, one of the respondents herein, for ₱6,000,000.00. Immediately after purchasing the property, respondents took possession thereof.

Meanwhile, Zeñarosa's appeal in CA-G.R. CV No. 84523 was dismissed, and the decision in favor of RAM became final and executory on October 7, 2005. With a sale annotated in its favor, and without Zeñarosa exercising his right of redemption, a final Deed of Sale was issued in favor of petitioner, the successor-in-interest of RAM, on December 14, 2005. By virtue of a writ of possession[11] issued by the RTC on February 1, 2007 in Civil Case No. 67381, petitioner divested the respondents of possession of the disputed property.

The foregoing developments prompted the respondents to file a Motion to Quash Writ of Possession[12] in Civil Case No. 67381

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[8] *Id.*, Annex "H", Decision dated April 30, 2004, pp. 133-138.

[9] *Id.*, Annex "I", pp. 140-141.

[10] *Id.*, Annex "J", pp. 143-144.

[11] *Id.*, Annex "N", pp. 159-160.

[12] *Id.*, Annex "O", pp. 162-172.

before the RTC of Pasig City, Branch 152, on March 20, 2007. They also filed a case for quieting of title and recovery of possession before the RTC of Muntinlupa City, Branch 276, docketed as Civil Case No. 08-011.

On August 5, 2008, the RTC of Pasig City, Branch 152, issued an Order[13] in Civil Case No. 67381 denying respondents' Motion to Quash Writ of Possession. It also directed the Registry of Deeds of Muntinlupa City to issue a new transfer certificate of title in the name of petitioner Vashdeo Gagoomal. The motion for reconsideration[14] thereof was similarly denied.[15]

Aggrieved, the respondents filed a petition for certiorari with prayer for injunctive relief[16] before the CA, ascribing grave abuse of discretion on the part of the RTC in directing the "transfer of title over the subject property" to petitioner; in denying their motion to quash the writ of possession; and in refusing to restore to them the possession of the subject property.

In its assailed Decision, the CA granted respondents' petition, ratiocinating as follows:

"Records show that spouses Villacorta derived their rights in the subject property from their predecessor-in-interest, Lorenzo, who purchased the same in a sale on execution on January 15, 2004. The title to the subject property was consolidated in favor of Lorenzo on January 29, 2005 and said annotation was reflected on the certificate of title. Gagoomal, on his part, maintains that he has a superior right over Lorenzo because his predecessor-in-interest, Ram, was able to cause the annotation of *lis pendens* ahead of Lorenzo's writ of attachment.

The fact that the notice of *lis pendens* regarding to [sic] Civil Case No. 67381 was annotated ahead of the attachment of the subject property in Civil Case No. 02-1038 is of no moment. Hence, We

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[13] *Id.*, Annex "P", pp. 178-191.

[14] *Id.*, Annex "Q", pp. 193-201.

[15] *Id.*, Annex "R", p. 205.

[16] *Id.*, Annex "S", pp. 207-238.

agree with spouses Villacorta that Gagoomal did not acquire any title to the property since what he purchased during the public auction on October 14, 2004 was only the remaining right of redemption of Zeñarosa.

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In the present case, the annotation of Ram of the *lis pendens* was improper because the case filed by Ram against Zeñarosa was purely a personal action. Civil Case No. 67381, entitled *Ram Holdings Corporation vs. Albert Zeñarosa, et. al.*, is for Collection of Sum of Money with Damages. It has been held that the doctrine of *lis pendens* has no application to a proceeding in which the only object sought is the recovery of a money judgment, though the title or right of possession to property may be affected. It is essential that the property be directly affected, as where the relief sought in the action or suit includes the recovery of possession, or the enforcement of a lien, or an adjudication between conflicting claims of title, possession, or right of possession to specific property, or requiring its transfer or sale [citation omitted]"[17]

Essentially, the CA concluded that the RTC committed grave abuse of discretion when it ordered the Register of Deeds to transfer to petitioner the title and possession of the subject property notwithstanding unrebutted evidence that Zeñarosa, the judgment debtor in Civil Case No. 67381, was no longer its owner and had only the remaining right of redemption at the time the property was sold at public auction to petitioner on December 14, 2004.

Corollary thereto, the CA held that the power of the RTC to execute its judgment extends only to property belonging to the judgment debtor in Civil Case No. 67381, Zeñarosa in this case, and did not include the respondents. The CA likewise refused to give merit to petitioner's contentions that the respondents can no longer ask for the modification or abrogation of the decision of the RTC which had already attained finality, and that since the writ of possession had already been implemented, then it can no longer be quashed.

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[17] *Supra* note 1, at p. 57, paragraphs 1-4.

The Issues

Hence, this petition advancing the following issues for Our resolution, to wit:

"I.

RESPONDENTS DO NOT HAVE A RIGHTFUL CLAIM TO THE PROPERTY.

II.

RESPONDENTS HAD NO BASIS TO ASK FOR THE QUASHAL OF THE WRIT OF POSSESSION.

III.

THE PASIG REGIONAL TRIAL COURT CAN RULE ON TRANSFER OF TITLE.

IV.

PETITIONER'S RIGHTS ARE SUPERIOR TO THAT OF RESPONDENT'S.

V.

THE HONORABLE COURT OF APPEALS' DECISION OVERSTEPPED ISSUES."[18]

The Ruling of the Court

The petition is bereft of merit.

A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. We clarified in the case of *Motos v. Real Bank (A Thrift Bank), Inc.*[19] that a writ of possession may be issued under any of the following instances: (a) land registration proceedings under Section 17 of Act No. 496;[20] (b) judicial foreclosure, provided the debtor is in possession of the mortgaged

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[18] *Rollo,* Petition, pp. 20-21.

[19] G.R. No. 171386, July 17, 2009, 593 SCRA 216, 224.

[20] The Land Registration Act, approved on November 6, 1902.

realty and no third person, not a party to the foreclosure suit, had intervened; and (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118.[21]

Corollary thereto, Section 33, Rule 39 of the Rules of Court provides:

"SEC. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. - If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor."

In this case, the writ of possession was issued and executed in favor of petitioner under the foregoing provision. However, a punctilious review of the records will show that its grant and *enforcement* against the subject property, over which the respondents – third parties to Civil Case No. 67381 – claim an adverse interest, are devoid of legal basis.

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[21] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 144-145.

It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor, and if property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. Section 16,[22] Rule 39 thereof specifically provides that a third person may avail himself of the remedies of either *terceria,* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent "separate action" to vindicate their claim of ownership and/or possession over the foreclosed

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[22] "Sec. 16. Proceedings where property claimed by third person.

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

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

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

property.[23] However, "a person other than the judgment debtor who claims ownership or right over the levied properties is not precluded from taking other legal remedies to prosecute his claim."[24]

In the present case, respondents filed a motion to quash the writ of possession substantiating their preferential rights over the subject property which they had purchased from Lorenzo. As earlier stated, Lorenzo, in Civil Case No. 02-1038, caused the annotation of a writ of preliminary attachment on September 30, 2002 and thereafter, a notice of levy and execution, finally acquiring the property in a public auction sale on January 30, 2004. Similarly, respondents have instituted a separate civil action for quieting of title and recovery of property before the RTC of Muntinlupa City, Branch 276, docketed as Civil Case No. 08-011.

Petitioner's argument that he acquired a superior right over the subject property by virtue of the earlier annotation of a notice of *lis pendens* on June 11, 1999 by his predecessor-in-interest RAM on the same title cannot be given credence.

Section 14, Rule 13 of the Rules of Court provides:

"Sec. 14. *Notice of lis pendens*. - In an **action affecting the title or the right of possession** of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

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[23] *Gomez v. Sta. Ines,* G.R. No. 132537, October 14, 2005, 473 SCRA 25, 38.

[24] *Yupangco Cotton Mills, Inc. v. Court of Appeals, et. al.,* G.R. No. 126322, January 16, 2002, 373 SCRA 451, 459.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded." [emphasis ours]

The filing of a notice of *lis pendens* has a dual effect: (1) to keep the property subject matter of the litigation within the power of the court until the entry of the final judgment in order to prevent the defeat of the final judgment by successive alienations; and (2) to bind a purchaser, *bona fide* or otherwise, of the property subject of the litigation to the judgment that the court will subsequently promulgate.[25]

Relative thereto, a notice of *lis pendens* is proper in the following actions and their concomitant proceedings:

"(a) an action to recover possession of real estate;

(b) an action to quiet title thereto;

(c) an action to remove clouds thereon;

(d) an action for partition; and

(e) any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the buildings thereon."[26]

Thus, a notice of *lis pendens* is only valid and effective when it affects *title over or right of possession of a real property*.

In this case, it cannot be denied that Civil Case No. 67381, which RAM, predecessor-in-interest of petitioner, instituted against Zeñarosa was for collection of sum of money with damages – a *purely personal action*. Hence, the notice of *lis pendens* in favor of RAM annotated on the cancelled TCT No. 170213

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[25] *Spouses Conrado and Ma. Corona Romero v. Court of Appeals*, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 493.

[26] *Id.*, citing *Magdalena Homeowners Association, Inc. v. Court of Appeals*, G.R. No. 60323, April 17, 1990, 184 SCRA 325, 330.

and carried over to Tan's TCT No. 10206 conferred upon it no rights over the subject property and, as a necessary consequence, upon petitioner, its successor-in-interest.

To be sure, in *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*,[27] We have previously explained that the doctrine of *lis pendens* has no application to a proceeding in which the only object sought is the recovery of a money judgment, though the title or right of possession to property be incidentally affected. It is essential that the property be directly affected such as when the relief sought in the action or suit includes the recovery of possession, or the enforcement of a lien, or an adjudication between conflicting claims of title, possession, or the right of possession to specific property, or requiring its transfer or sale. Even if a party initially avails of a notice of *lis pendens* upon the filing of a case in court, such notice is rendered nugatory if the case turns out to be a purely personal action. In such event, the notice of *lis pendens* becomes *functus officio*.

Accordingly, petitioner has not created a superior right over the subject property as against respondents by reason of the prior annotation in 1999 of the notice of *lis pendens* by his predecessor RAM. Hence, the subsequent levy on execution on October 14, 2004 arising from the final money judgment in favor of petitioner cannot prevail over the earlier annotated attachment made by Lorenzo on September 30, 2002 and its subsequent notice of levy on execution and sale of the property to respondents on January 30, 2004, who then took possession. On October 14, 2004, what petitioner merely levied upon on execution was the remaining redemption rights of Zeñarosa until January 29, 2005 which period expired without any redemption having been made. Consequently, the writ of possession issued as a result of a wrongful execution was not proper and cannot be enforced against the respondents who are third parties in possession of and claiming an adverse interest on the property in controversy.

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[27] G.R. No. 148568, March 20, 2003, 399 SCRA 409, 419-420.

It bears to stress that the court issuing the writ of execution may enforce its authority *only over properties or rights of the judgment debtor,* and the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor. Should the sheriff levy upon the assets of a third person in which the judgment debtor has not even the remotest interest, then he is acting beyond the limits of his authority. A judgment can only be executed or issued against a party to the action, not against one who has not yet had his day in court.[28]

Neither can We affirm petitioner's contention that in seeking the quashal of the writ of possession, the respondents were, in effect, asking the RTC to abrogate its decision, which had already attained finality. As correctly observed[29] by the CA, the quashal of a writ of possession does not have the effect of modifying or abrogating the judgment of the RTC. "The settled rule is that a judgment which has acquired finality becomes immutable and unalterable, and hence may no longer be modified in any respect except only to correct clerical errors or mistakes – all the issues between the parties being deemed resolved and laid to rest."[30] To reiterate, however, the court's power with regard to *execution of judgments* extends only to properties irrefutably belonging to the judgment debtor, which does not obtain in this case.

Therefore, petitioner's contention that the writ of possession had already been enforced and can no longer be quashed deserves scant consideration. Unquestionably, the RTC has a general supervisory control over the entire execution process, and such authority carries with it the right to determine every question

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[28] *Naguit v. Court of Appeals,* G.R. No. 137675, December 5, 2000, 347 SCRA 60, 67.

[29] *Supra* note 1, at p. 60, paragraph 3.

[30] *Johnson & Johnson (Phils.), Inc. v. Court of Appeals,* G.R. No. 102692, September 23, 1996, 262 SCRA 298, 309.

which may be invariably involved in the execution.[31] Respondents invoked this supervisory power when they sought the quashal of the writ of possession.

Finally, considering the circumstances of this case, We cannot uphold the RTC's directive to transfer the title over the subject property from respondents to petitioner, for utter lack of legal basis. To emphasize, apart from the motion to quash the writ of possession, respondents have instituted a case for quieting of title and recovery of possession before the RTC of Muntinlupa City, docketed as Civil Case No. 08-011.

In sum, We find that the RTC erred in implementing the writ of execution against the subject property which does not irrefutably belong to Zeñarosa, the judgment debtor in Civil Case No. 67381. Hence, the writ of possession issued relative thereto was likewise improper and must necessarily be quashed, as correctly ruled by the CA. Accordingly, since the respondents were unduly deprived of possession of the subject property, they must be immediately restored into its possession, without prejudice to the result of Civil Case No. 08-011.

WHEREFORE, the instant petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[31] *Kukan International Corporation v. Hon. Amor Reyes,* G.R. No. 182729, September 29, 2010, 631 SCRA 596, 608, citing *Carpio v. Doroja,* G.R. No. 84516, December 5, 1989, 180 SCRA 1, 7.

SECOND DIVISION

[G.R. No. 193362. January 18, 2012]

EDGARDO MEDALLA, *petitioner, vs.* **RESURRECCION D. LAXA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEWING ERRORS OF LAW.— A perusal of the arguments set forth by the petitioner in support of the instant petition would clearly show that the same only raised questions of fact. The petition failed to show any extraordinary circumstance justifying a departure from the established doctrine that findings of fact of the CA are conclusive on the Court and will not be disturbed on appeal. The issue on whether the prosecution was able to establish the dishonor of the subject check is factual in nature and, hence, not a proper subject of a petition for review on *certiorari* under Rule 45. Settled is the rule that when the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court, for it is not our function to analyze and weigh the parties' evidence all over again except when there is a serious ground to believe a possible miscarriage of justice would thereby result. To reiterate, our task in an appeal *via certiorari* is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the CA.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; NOT A MODE OF EXTINGUISHING CRIMINAL LIABILITY.— Anent the petitioner's contention that novation had extinguished his criminal liability for violation of B.P. 22, we likewise find the same utterly specious. The petitioner ought to be reminded that novation is not a mode of extinguishing criminal liability. As astutely opined by the CA, novation may only prevent the rise of criminal liability if it occurs prior to the filing of the Information in court. In other

words, novation does not extinguish criminal liability but may only prevent its rise.

3. CRIMINAL LAW; VIOLATION OF BATAS PAMBANSA BLG. 22; THE GRAVAMEN OF THE OFFENSE IS THE ACT OF MAKING AND ISSUING A WORTHLESS CHECK.— The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property, but an offense against public order.

APPEARANCES OF COUNSEL

Adarlo Caoile & Associates for petitioner.
Teresita Dizon Capulong for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Edgardo Medalla (petitioner) assailing the Decision[1] dated May 17, 2010 and Resolution[2] dated August 13, 2010 issued by the Court of Appeals (CA) in CA-G.R. SP No. 101818.

Sometime in April 1998, the petitioner issued to Resurreccion Laxa (respondent) a Far East Bank Check dated May 5, 1998

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 51-61.

[2] *Id*. at 63.

in the amount of ₱742,000.00 as payment of the loan which he obtained from the latter. However, when the said check was deposited by the respondent on May 5, 1998, the same was dishonored as the account from which it was drawn had already been closed. Thereupon, the respondent verbally informed the petitioner of the dishonor of the said check and subsequently sent him a demand letter dated May 7, 1998. Nevertheless, the petitioner failed to pay the amount of the said check.

For his part, the petitioner admitted to having issued the subject check but averred that it was not meant to be deposited or encashed, but that it was a mere guarantee for the loan he obtained from the respondent. Likewise, the petitioner admitted to having been informed by the respondent of the fact of the dishonor of the subject check.

The petitioner further alleged that he had executed a Real Estate Mortgage over his parcel of land in Bulacan in favor of the respondent with the understanding that, should he fail to pay his loan, the latter would foreclose the said mortgage and apply the proceeds thereof to his loan. Reneging on the said agreement, the respondent opted not to foreclose the mortgage and deposit the subject check instead.

Consequently, in an Information docketed as Criminal Case No. 0058531, the petitioner was charged with violation of Batas Pambansa Blg. 22 (B.P. 22) before the Metropolitan Trial Court (MeTC) of Metro Manila.

After due proceedings, the MeTC of Metro Manila, on July 29, 2003, rendered a Decision[3] finding the petitioner guilty beyond reasonable doubt of the crime charged. He was then sentenced to suffer the penalty of imprisonment of six months and to pay the respondent the amount of ₱742,000.00, less the amount of partial payments made by the former, and the amount of ₱20,000.00 as attorney's fees.

Aggrieved, the petitioner appealed from the said Decision to the Regional Trial Court (RTC) of Quezon City. The petitioner

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[3] *Id*. at 101-106.

claimed that he and the respondent had entered into a novation of contract thereby effectively obliterating his liability for the issuance of the said dishonored check. He pointed out that, during the pendency of the case with the MeTC of Metro Manila, he and the respondent entered into a new agreement with respect to the civil aspect of the case pursuant to which, substantial payments were made by him, with only ₱25,000.00 left unpaid.

On November 21, 2005, the RTC of Quezon City rendered a Decision affirming the July 29, 2003 Decision of the MeTC of Metro Manila, albeit with modification. The RTC of Quezon City deleted the penalty of imprisonment for six months and, instead, imposed a fine in the amount of ₱200,000.00.

The RTC of Quezon City opined that the prosecution was able to establish beyond reasonable doubt all the elements of the crime charged. As to the petitioner's defense of novation, the RTC of Quezon City held that the substantial payments made by the petitioner to the respondent would not affect his criminal liability for violation of B.P. 22 since what is punished by the said law is the issuance *per se* of a worthless check and not the failure to pay his obligation.

A Motion for Partial Reconsideration[4] was filed by the petitioner but it was denied by the RTC of Quezon City in its Order[5] dated November 27, 2007.

The petitioner then filed a petition for review with the CA reiterating his arguments before the RTC of Quezon City. On May 17, 2010, the CA rendered the herein assailed Decision[6] dismissing the petition for review filed by the petitioner and affirming the November 21, 2005 Decision of the RTC of Quezon City.

On the petitioner's defense of novation, the CA found the same untenable and asserted that, for novation to prevent criminal

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[4] *Id*. at 123-133.

[5] *Id*. at 134-137.

[6] *Supra* note 1.

liability, it must occur prior to the filing of Information in court. The petitioner sought reconsideration of the May 17, 2010 Decision but it was denied by the CA in its Resolution[7] dated August 13, 2010.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court asserting the following arguments: (1) the prosecution failed to establish the fact of the dishonor of the subject check beyond reasonable doubt; and (2) the novation subsequently entered between him and the respondent extinguished his criminal liability.

The petition is denied.

A perusal of the arguments set forth by the petitioner in support of the instant petition would clearly show that the same only raised questions of fact. The petition failed to show any extraordinary circumstance justifying a departure from the established doctrine that findings of fact of the CA are conclusive on the Court and will not be disturbed on appeal. The issue on whether the prosecution was able to establish the dishonor of the subject check is factual in nature and, hence, not a proper subject of a petition for review on *certiorari* under Rule 45.

Settled is the rule that when the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court, for it is not our function to analyze and weigh the parties' evidence all over again except when there is a serious ground to believe a possible miscarriage of justice would thereby result. To reiterate, our task in an appeal *via certiorari* is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the CA.[8]

Anent the petitioner's contention that novation had extinguished his criminal liability for violation of B.P. 22, we likewise find the same utterly specious. The petitioner ought to be reminded

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[7] *Supra* note 2.

[8] *Danafrata v. People*, 458 Phil. 1018, 1026-1027 (2003).

that novation is not a mode of extinguishing criminal liability. As astutely opined by the CA, novation may only prevent the rise of criminal liability if it occurs prior to the filing of the Information in court. In other words, novation does not extinguish criminal liability but may only prevent its rise.[9]

The fact the petitioner had already made substantial payments to the respondent and that only ₱25,000.00 out of his total obligation in favor of the respondent remains unpaid is immaterial to the extinguishment of the petitioner's criminal liability.

The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property, but an offense against public order.[10]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.**

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[9] *Diongzon v. Court of Appeals,* 378 Phil. 1090, 1097 (1999).

[10] *Lozano v. Hon. Martinez,* 230 Phil. 406, 421 (1986).

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

SECOND DIVISION

[G.R. No. 193484. January 18, 2012]

HYPTE R. AUJERO, *petitioner, vs.* **PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER ONLY IN CASE OF EXCESS OR GRAVE ABUSE OF DISCRETION.— A petition for *certiorari* under Rule 65 of the Rules of Court is confined to the correction of errors of jurisdiction and will not issue absent a showing of a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction. Not every error in a proceeding, or every erroneous conclusion of law or of fact, is an act in excess of jurisdiction or an abuse of discretion. The prerogative of writ of *certiorari* does not lie except to correct, not every misstep, but a grave abuse of discretion.

2. ID.; CIVIL PROCEDURE; PROCEDURAL RULES MAY BE RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE.— Procedural rules may be waived or dispensed with in absolutely meritorious cases. A review of the cases cited by the petitioner, *Rubia v. Government Service Insurance System* and *Videogram Regulatory Board v. Court of Appeals,* where this Court adhered to the strict implementation of the rules and considered them inviolable, shows that the patent lack of merit of the appeals render liberal interpretation pointless and naught. The contrary obtains in this case as Philcomsat's case is not entirely unmeritorious. x x x The emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. Far from having gravely abused its discretion, the NLRC correctly prioritized substantial justice over the rigid and stringent application of procedural rules. This, by all means, is not a case of grave abuse of discretion calling for the issuance of a writ of *certiorari.*

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; QUITCLAIM; UPHELD ABSENT EVIDENCE OF VICE IN CONSENT AND CONSIDERING EMPLOYEE'S HIGH POSITION AND EDUCATION.— In *Goodrich Manufacturing Corporation v. Ativo,* this Court reiterated the standards that must be observed in determining whether a waiver and quitclaim has been validly executed: 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. In *Callanta v. National Labor Relations Commission,* this Court ruled that: It is highly unlikely and incredible for a man of petitioner's position and educational attainment to so easily succumb to private respondent company's alleged pressures without even defending himself nor demanding a final audit report before signing any resignation letter. Assuming that pressure was indeed exerted against him, there was no urgency for petitioner to sign the resignation letter. He knew the nature of the letter that he was signing, for as argued by respondent company, petitioner being "a man of high educational attainment and qualification, x x x he is expected to know the import of everything that he executes, whether written or oral." While the law looks with disfavor upon releases and quitclaims by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities, a legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties. Considering the petitioner's claim of fraud and bad faith against Philcomsat to be unsubstantiated, this Court finds the quitclaim in dispute to be legitimate waiver.

4. ID.; ID.; ID.; ALLEGATION OF COERCION OR PRESSURE IN SIGNING THE QUITCLAIM WITHOUT EVIDENCE

IS SELF-SERVING THAT WILL NOT INVALIDATE THE QUITCLAIM.— While the petitioner bewailed as having been coerced or pressured into signing the release and waiver, his failure to present evidence renders his allegation self-serving and inutile to invalidate the same. That no portion of his retirement pay will be released to him or his urgent need for funds does not constitute the pressure or coercion contemplated by law. That the petitioner was all set to return to his hometown and was in dire need of money would likewise not qualify as undue pressure sufficient to invalidate the quitclaim. "Dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it, but is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it. While it is our duty to prevent the exploitation of employees, it also behooves us to protect the sanctity of contracts that do not contravene our laws.

5. ID.; NATIONAL LABOR RELATIONS COMMISSION; FACTUAL FINDINGS THEREOF AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— The CA and the NLRC were unanimous in holding that the petitioner voluntarily executed the subject quitclaim. The Supreme Court (SC) is not a trier of facts, and this doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve and whether the petitioner voluntarily executed the subject quitclaim is a question of fact. In this case, the factual issues have already been determined by the NLRC and its findings were affirmed by the CA. Judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the SC. Verily, their conclusions are accorded great weight upon appeal, especially when supported by substantial evidence. Consequently, the SC is not duty-bound to delve into the accuracy of their factual findings, in the absence of a clear showing that the same were arbitrary and bereft of any rational basis.

APPEARANCES OF COUNSEL

Regalado Aujero & Divinagracia for petitioner.
Bernadette Yanzon for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court from the November 12, 2009 Decision[1] and July 28, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107233 entitled "*Hypte R. Aujero v. National Labor Relations Commission and Philippine Communications Satellite Corporation.*"

In its November 12, 2009 Decision, the CA dismissed the petitioner's petition for *certiorari* under Rule 65 of the Rules of Court from the National Labor Relations Commission's (NLRC) July 4, 2008 and September 29, 2008 Resolutions, the dispositive portion of which states:

> WHEREFORE, the petition is **DISMISSED**. The assailed Resolutions dated July 4, 2008 and September 29, 2008 of public respondent National Labor Relations Commission in NLRC NCR Case No. 00-07-08921-2004 [NLRC NCR CA No. 049644-06] are **AFFIRMED**.
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> SO ORDERED.[3]

The petitioner filed a Motion for Reconsideration from the above Decision but this was likewise denied by the CA in its July 28, 2010 Resolution.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Sesinando E. Villon and Stephen C. Cruz, concurring; *rollo*, at 31-52.

[2] *Id.* at 54-55.

[3] *Id.* at 51.

The Antecedent Facts

It was in 1967 that the petitioner started working for respondent Philippine Communications Satellite Corporation (Philcomsat) as an accountant in the latter's Finance Department. On August 15, 2001 or after thirty-four (34) years of service, the petitioner applied for early retirement. His application for retirement was approved, effective September 15, 2001, entitling him to receive retirement benefits at a rate equivalent to one and a half of his monthly salary for every year of service. At that time, the petitioner was Philcomsat's Senior Vice-President with a monthly salary of Two Hundred Seventy-Four Thousand Eight Hundred Five Pesos (₱274,805.00).[4]

On September 12, 2001, the petitioner executed a Deed of Release and Quitclaim[5] in Philcomsat's favor, following his receipt from the latter of a check in the amount of Nine Million Four Hundred Thirty-Nine Thousand Three Hundred Twenty-Seven and 91/100 Pesos (₱9,439,327.91).[6]

Almost three (3) years thereafter, the petitioner filed a complaint for unpaid retirement benefits, claiming that the actual amount of his retirement pay is Fourteen Million Fifteen Thousand and Fifty-Five Pesos (₱14,015,055.00) and the ₱9,439,327.91 he received from Philcomsat as supposed settlement for all his claims is unconscionable, which is more than enough reason to declare his quitclaim as null and void. According to the petitioner, he had no choice but to accept a lesser amount as he was in dire need thereof and was all set to return to his hometown and he signed the quitclaim despite the considerable deficiency as no single centavo would be released to him if he did not execute a release and waiver in Philcomsat's favor.[7]

The petitioner claims that his right to receive the full amount of his retirement benefits, which is equivalent to one and a half

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[4] *Id.* at 14.

[5] *Id.* at 349.

[6] *Id.* at 16.

[7] *Id.*

of his monthly salary for every year of service, is provided under the Retirement Plan that Philcomsat created on January 1, 1977 for the benefit of its employees.[8] On November 3, 1997, Philcomsat and the United Coconut Planters Bank (UCPB) executed a Trust Agreement, where UCPB, as trustee, shall hold, administer and manage the respective contributions of Philcomsat and its employees, as well as the income derived from the investment thereof, for and on behalf of the beneficiaries of the Retirement Plan.[9]

The petitioner claims that Philcomsat has no right to withhold any portion of his retirement benefits as the trust fund created pursuant to the Retirement Plan is for the exclusive benefit of Philcomsat employees and Philcomsat had expressly recognized that it has no right or claim over the trust fund even on the portion pertaining to its contributions.[10] As Section 4 of the Trust Agreement provides:

> Section 4 – The Companies, in accordance with the provisions of the Plan, hereby waive all their rights to their contributions in money or property which are and will be paid or transferred to the Trust Fund, and no person shall have any right in, or with respect to, the Trust Fund or any part thereof except as expressly provided herein or in the Plan. At no time, prior to the satisfaction of all liabilities with respect to the participants and their beneficiaries under the Plan, shall any part of the corpus or income of the Fund be used for or diverted to purposes other than for the exclusive benefit of Plan participants and their beneficiaries.[11]

The petitioner calls attention to the August 15, 2001 letter of Philcomsat's Chairman and President, Mr. Carmelo Africa, addressed to UCPB for the release of ₱9,439,327.91 to the petitioner and ₱4,575,727.09 to Philcomsat, which predated

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[8] *Id.* at 14, 141 and 225.

[9] *Id.* at 141-142.

[10] *Id.* at 15.

[11] *Id.* at 143.

the execution of his quitclaim on September 12, 2001.[12] According to the petitioner, this indicates Philcomsat's pre-conceived plans to deprive him of a significant portion of his retirement pay.

On May 31, 2006, Labor Arbiter Joel S. Lustria (LA Lustria) issued a Decision[13] in the petitioner's favor, directing Philcomsat to pay him the amount of ₱4,575,727.09 and ₱274,805.00, representing the balance of his retirement benefits and salary for the period from August 15 to September 15, 2001, respectively. LA Lustria found it hard to believe that the petitioner would voluntary waive a significant portion of his retirement pay. He found the consideration supporting the subject quitclaim unconscionable and ruled that the respondent failed to substantiate its claim that the amount received by the petitioner was a product of negotiations between the parties. Thus:

> It would appear from the tenor of the letter that, rather that the alleged agreement, between complainant and respondent, respondent is claiming payment for an "outstanding due to Philcomsat" out of the retirement benefits of complainant. This could hardly be considered as proof of an agreement to reduce complainant's retirement benefits. Absent any showing of any agreement or authorization, the deductions from complainant's retirement benefits should be considered as improper and illegal.
>
> If we were to give credence to the claim of respondent, it would appear that complainant has voluntarily waived a total amount of [₱]4,575,727.09. Given the purpose of retirement benefits to provide for a retiree a source of income for the remainder of his years, it defies understanding how complainant could accept such an arrangement and lose more than [₱]4.5 million in the process. One can readily see the unreasonableness of such a proposition. By the same token, the Quitclaim and Waiver over benefits worth millions is apparently unconscionable and unacceptable under normal circumstances. The Supreme Court has consistently ruled that waivers must be fair, reasonable, and just and must not be unconscionable on its face. The explanation of the complainant that he was presented with a lower amount on pain that the entire benefits will not be

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[12] *Id.* at 15, 16 and 319.

[13] *Id.* at 76-85.

released is more believable and consistent with evidence. We, therefore, rule against the effectivity of the waiver and quitclaim, thus, complainant is entitled to the balance of his retirement benefits in the amount of [₱]4,575,727.09.[14]

In its July 4, 2008 Resolution,[15] the NLRC granted Philcomsat's appeal and reversed and set aside LA Lustria's May 31, 2006 Decision. The NLRC dismissed the petitioner's complaint for unpaid retirement benefits and salary in consideration of the Deed of Release and Quitclaim he executed in September 12, 2001 following his receipt from Philcomsat of the amount of ₱9,439,327.91, which constitutes the full settlement of all his claims against Philcomsat. According to the NLRC, the petitioner failed to allege, much less, adduce evidence that Philcomsat employed means to vitiate his consent to the quitclaim. The petitioner is well-educated, a licensed accountant and was Philcomsat's Senior Vice-President prior to his retirement; he cannot therefore claim that he signed the quitclaim without understanding the consequences and implications thereof. The relevant portions of the NLRC's July 4, 2008 Resolution states:

> After analyzing the antecedent, contemporaneous and subsequent facts surrounding the alleged underpayment of retirement benefits, We rule that respondent-appellant have no more obligation to the complainant-appellee.
>
> The complainant-appellee willingly received the check for the said amount, without having filed any objections nor reservations thereto, and even executed and signed a Release and Quitclaim in favor of the respondent-appellant. Undoubtedly, the quitclaim the complainant-appellee signed is valid. Complainant-appellee has not denied at any time its due execution and authenticity. He never imputed claims of coercion, undue influence, or fraud against the respondent-appellant. His statement in his reply to the respondent-appellant's position paper that the quitclaim is void alleging that it was obtained through duress is only an afterthought to make his

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[14] *Id.* at 83-84.

[15] *Id.* at 177-185.

claim appear to be convincing. If it were true, complainant-appellee should have asserted such fact from the very beginning. Also, there was no convincing proof shown by the complainant-appellee to prove existence of duress exerted against him. His stature and educational attainment would both negate that he can be forced into something against his will.

It should be stressed that complainant-appellee even waited for a period of almost three (3) years before he filed the complaint. If he really felt aggrieved by the amount he received, prudence dictates that he immediately would call the respondent-appellant's attention and at the earliest opportune shout his objections, rather than wait for years, before deciding to claim his supposed benefits, [e]specially that his alleged entitlement is a large sum of money. Thus, it is evident that the filing of the instant case is a clear case of afterthought, and that complainant-appellee simply had a change of mind. This We cannot allow.

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In the instant case, having willingly signed the Deed of Release and Quitclaim dated September 12, 2001, it is hard to conclude that the complainant-appellee was merely forced by the necessity to execute the quitclaim. Complainant-appellee is not a gullible or unsuspecting person who can easily be tricked or inveigled and, thus, needs the extra protection of law. He is well-educated and a highly experienced man. The release and quitclaim executed by the complainant-appellee is therefore considered valid and binding on him and the respondent-appellant. He is already estopped from questioning the same.[16]

Philcomsat's appeal to the NLRC from LA Lustria's May 31, 2006 Decision was filed and its surety bond posted beyond the prescribed period of ten (10) days. On June 20, 2006, a copy of LA Lustria's Decision was served on Maritess Querubin (Querubin), one of Philcomsat's executive assistants, as Philcomsat's counsel and the executive assistant assigned to her were both out of the office. It was only the following day that Querubin gave a copy of the said Decision to the executive assistant of Philcomsat's counsel, leading the latter to believe

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[16] *Id.* at 182-184.

that it was only then that the said Decision had been served. In turn, this led Philcomsat's counsel to believe that it was on June 21, 2006 that the ten (10) day-period started to run.

Having in mind that the delay was only one (1) day and the explanation offered by Philcomsat's counsel, the NLRC disregarded Philcomsat's procedural lapse and proceeded to decide the appeal on its merits. Thus:

> It appears that on June 20[,] 2006[,] copy of the Decision was received by one (Maritess) who is not the Secretary of respondents-appellants' counsel and therefore not authorized to receive such document. It was only the following day, June 21, 2006, that respondents-appellants[']' counsel actually received the Decision which was stamped received on said date. Verily, counsel has until July 3, 2006 within which to perfect the appeal, which he did. In *PLDT vs. NLRC, et al.*, G.R. No. 60250, March 26, 1984, the Honorable Supreme Court held that: "where notice of the Decision was served on the receiving station at the ground floor of the defendant's company building, and received much later at the office of the legal counsel on the ninth floor of said building, which was his address of record, service of said decision has taken effect from said later receipt at the aforesaid office of its legal counsel."
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> Be that as it may, the provisions of Section 10, Rule VII of the NLRC Rules of Procedure, states, that:
>
> > *"SECTION 10. TECHNICAL RULES NOT BINDING. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. x x x"*
>
> Additionally, the Supreme Court has allowed appeals from decisions of the Labor Arbiter to the NLRC, even if filed beyond the reglementary period, in the interest of justice. Moreover, under Article 218 (c) of the Labor Code, the NLRC may, in the exercise of its appellate powers, correct, amend or waive any error, defect or irregularity whether in substance or in form. Further, Article 221 of the same provides that: In any proceedings before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law

or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.[17]

In his petition for *certiorari* under Rule 65 of the Rules of Court to the CA, the petitioner accused the NLRC of grave abuse of discretion in giving due course to the respondent's belated appeal by relaxing the application of one of the fundamental requirements of appeal. An appeal, being a mere statutory right, should be exercised in a manner that strictly conforms to the prescribed procedure. As of July 3, 2006, or when Philcomsat filed its appeal and posted its surety bond, LA Lustria's Decision had become final and executory and Philcomsat's counsel's failure to verify when the copy of said Decision was actually received does not constitute excusable negligence.

The petitioner likewise anchored his allegation of grave abuse of discretion against the NLRC on the latter's refusal to strike as invalid the quitclaim he executed in Philcomsat's favor. According to the petitioner, his retirement pay amounts to ₱14,015,055.00 and ₱9,439,327.91 he received from Philcomsat as supposed settlement for all his claims against it is unconscionable and this is more than enough reason to declare his quitclaim as null and void.

By way of the assailed Decision, the CA found no merit in the petitioner's claims, holding that the NLRC did not act with grave abuse of discretion in giving due course to the respondent's appeal.

The Supreme Court has ruled that where a copy of the decision is served on a person who is neither a clerk nor one in charge of the attorney's office, such service is invalid. In the case at bar, it is undisputed that Maritess Querubin, the person who received a copy of the Labor Arbiter's decision, was neither a clerk of Atty. Yanzon,

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[17] *Id.* at 180-181.

private respondent's counsel, nor a person in charge of Atty. Yanzon's office. Hence, her receipt of said decision on June 20, 2006 cannot be considered as notice to Atty. Yanzon. Since a copy of the decision was actually delivered by Maritess to Atty. Yanzon's secretary only on June 21, 2006, it was only on this date that the ten-day period for the filing of private respondent's appeal commenced to run. Thus, private respondent's July 3, 2006 appeal to the NLRC was seasonably filed.

Similarly, the provision of Article 223 of the Labor Code requiring the posting of a bond for the perfection of an appeal of a monetary award must be given liberal interpretation in line with the desired objective of resolving controversies on the merits. If only to achieve substantial justice, strict observance of the reglementary periods may be relaxed if warranted. However, this liberal interpretation must be justified by substantial compliance with the rule. As the Supreme Court ruled in *Buenaobra v. Lim King Guan*:

x x x x x x x x x

We note that in the instant case, private respondent substantially complied with the filing of its appeal and the required appeal bond on July 3, 2006 – the next working day after July 1, 2006, the intervening days between the said two dates being a Saturday and a Sunday. Substantial justice dictates that the present case be decided on the merits, especially since there was a mere one-day delay in the filing by private respondent of its appeal and appeal bond with the NLRC. x x x.[18] (citation omitted)

The CA further ruled that the NLRC was correct in upholding the validity of the petitioner's quitclaim. Thus:

In the same vein, this Court finds that the NLRC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in declaring as valid the *Deed of Release and Quitclaim* dated September 12, 2001 – absolving private respondent from liability arising from any and all suits, claims, demands or other causes of action of whatever nature in consideration of the amount petitioner received in connection with his retirement – signed by petitioner. x x x

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

x x x x x x x x x

The assertion of petitioner that the *Deed of Release and Quitclaim* he signed should be struck down for embodying unconscionable terms is simply untenable. Petitioner himself admits that he has received the amount of [₱]9,327,000.00 – representing his retirement pay and other benefits – from private respondent. By no stretch of the imagination could the said amount be considered unconscionably low or shocking to the conscience, so as to warrant the invalidation of the *Deed of Release and Quitclaim*. Granting that the source of the retirement pay of petitioner is the trust fund maintained by private respondent at the UCPB for the payment of the retirement pay of private-respondent's employees, the said circumstance would still not justify the invalidation of the *Deed of Release and Quitclaim*, for petitioner clearly understood the contents thereof at the time of its execution but still choose to sign the deed. The terms thereof being reasonable and there being no showing that private respondent employed coercion, fraud or undue influence upon petitioner to compel him to sign the same, the subject *Deed of Release and Quitclaim* signed by petitioner shall be upheld as valid.[19] (citations omitted)

The petitioner ascribes several errors on the part of the CA. Specifically, the petitioner claims that the CA erred in not dismissing the respondent's appeal to the NLRC, which was filed beyond the prescribed period. There is no dispute that Querubin was authorized to receive mails and correspondences on behalf of Philcomsat's counsel and her receipt of LA Lustria's Decision on June 20, 2006 is binding on Philcomsat. Also, the failure of Philcomsat's counsel to ascertain when exactly the copy of LA Lustria's Decision was received by Querubin is inexcusable negligence. Since the perfection of an appeal within the ten (10)-day period is a mandatory and jurisdictional requirement, Philcomsat's failure to justify its delay should have been reason enough to dismiss its appeal.

The petitioner also claims that the CA erred in upholding the validity of the subject quitclaim. The respondent has no right to retain a portion of his retirement pay and the consideration for the execution of the quitclaim is simply unconscionable.

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[19] *Id.* at 49-51.

The petitioner submits that the CA should have taken into account that Philcomsat's retirement plan was for the exclusive benefit of its employees and to allow Philcomsat to appropriate a significant portion of his retirement pay is a clear case of unjust enrichment.

On the other hand, Philcomsat alleges that the petitioner willfully and knowingly executed the subject quitclaim in consideration of his receipt of his retirement pay. Albeit his retirement pay was in the reduced amount of ₱9,439,327.91, Philcomsat alleges that this was arrived at following its negotiations with the petitioner and the latter participated in the computation thereof, taking into account his accountabilities to Philcomsat and the latter's financial debacles.

Philcomsat likewise alleges that the NLRC is clothed with ample authority to set aside technical rules; hence, the NLRC did not act with grave abuse of discretion in entertaining Philcomsat's appeal in consideration of the circumstances surrounding the late filing thereof and the amount subject of the dispute.

Issues

In view of the conflicting positions adopted by the parties, this Court is confronted with two (2) issues that are far from being novel, to wit:

a. Whether the delay in the filing of Philcomsat's appeal and posting of surety bond is inexcusable; and

b. Whether the quitclaim executed by the petitioner in Philcomsat's favor is valid, thereby foreclosing his right to institute any claim against Philcomsat.

Our Ruling

A petition for *certiorari* under Rule 65 of the Rules of Court is confined to the correction of errors of jurisdiction and will not issue absent a showing of a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction. Not every error in a proceeding, or every erroneous conclusion of law or of

fact, is an act in excess of jurisdiction or an abuse of discretion.[20] The prerogative of writ of *certiorari* does not lie except to correct, not every misstep, but a grave abuse of discretion.[21]

Procedural rules may be relaxed to give way to the full determination of a case on its merits.

Confronted with the task of determining whether the CA erred in not finding grave abuse of discretion in the NLRC's decision to give due course to Philcomsat's appeal despite its being belatedly filed, this Court rules in Philcomsat's favor.

Procedural rules may be waived or dispensed with in absolutely meritorious cases. A review of the cases cited by the petitioner, *Rubia v. Government Service Insurance System*[22] and *Videogram Regulatory Board v. Court of Appeals*,[23] where this Court adhered to the strict implementation of the rules and considered them inviolable, shows that the patent lack of merit of the appeals render liberal interpretation pointless and naught. The contrary obtains in this case as Philcomsat's case is not entirely unmeritorious. Specifically, Philcomsat alleged that the petitioner's execution of the subject quitclaim was voluntary and he made no claim that he did so. Philcomsat likewise argued that the petitioner's educational attainment and the position he occupied in Philcomsat's hierarchy militate against his claim that he was pressured or coerced into signing the quitclaim.

The emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities.[24] Far from having gravely abused its discretion,

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[20] *Alhambra Cigar and Cigarette Mfg. Co., Inc. v. Caleda, et al.*, 122 Phil. 355, 363 (1965).

[21] *Garcia, Jr. v. Judge Ranada, Jr.*, 248 Phil. 239, 246 (1988).

[22] 476 Phil. 623 (2004).

[23] 332 Phil. 820 (1996).

[24] *Heirs of the Deceased Spouses Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 557.

the NLRC correctly prioritized substantial justice over the rigid and stringent application of procedural rules. This, by all means, is not a case of grave abuse of discretion calling for the issuance of a writ of *certiorari*.

Absent any evidence that any of the vices of consent is present and considering the petitioner's position and education, the quitclaim executed by the petitioner constitutes a valid and binding agreement.

In *Goodrich Manufacturing Corporation v. Ativo*,[25] this Court reiterated the standards that must be observed in determining whether a waiver and quitclaim has been validly executed:

> 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.[26] (emphasis supplied)

In *Callanta v. National Labor Relations Commission*,[27] this Court ruled that:

> It is highly unlikely and incredible for a man of petitioner's position and educational attainment to so easily succumb to private respondent company's alleged pressures without even defending himself nor demanding a final audit report before signing any resignation letter.

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[25] G.R. No. 188002, February 1, 2010, 611 SCRA 261, citing *Periquet v. NLRC,* 264 Phil. 1115, 1122 (1990).

[26] *Id.* at 266.

[27] G.R. No. 105083, August 20, 1993, 225 SCRA 526.

Assuming that pressure was indeed exerted against him, there was no urgency for petitioner to sign the resignation letter. He knew the nature of the letter that he was signing, for as argued by respondent company, petitioner being "a man of high educational attainment and qualification, x x x he is expected to know the import of everything that he executes, whether written or oral."[28]

While the law looks with disfavor upon releases and quitclaims by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities, a legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties.[29] Considering the petitioner's claim of fraud and bad faith against Philcomsat to be unsubstantiated, this Court finds the quitclaim in dispute to be legitimate waiver.

While the petitioner bewailed as having been coerced or pressured into signing the release and waiver, his failure to present evidence renders his allegation self-serving and inutile to invalidate the same. That no portion of his retirement pay will be released to him or his urgent need for funds does not constitute the pressure or coercion contemplated by law.

That the petitioner was all set to return to his hometown and was in dire need of money would likewise not qualify as undue pressure sufficient to invalidate the quitclaim. "Dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it, but is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it.[30] While it is our duty to prevent the

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[28] *Id.* at 535.

[29] *Talam v. NLRC,* G.R. No. 175040, April 6, 2010, 617 SCRA 408, 425, citing *Veloso and Liguaton v. DOLE, et al.*, G.R. No. 87297, August 5, 1991, 200 SCRA 201.

[30] *Coats Manila Bay, Inc. v. Ortega,* G.R. No. 172628, February 13, 2009, 579 SCRA 300, 312.

exploitation of employees, it also behooves us to protect the sanctity of contracts that do not contravene our laws.[31]

The petitioner is not an ordinary laborer. He is mature, intelligent and educated with a college degree, who cannot be easily duped or tricked into performing an act against his will. As no proof was presented that the said quitclaim was entered into through fraud, deception, misrepresentation, the same is valid and binding. The petitioner is estopped from questioning the said quitclaim and cannot renege after accepting the benefits thereunder. This Court will never satisfy itself with surmises, conjectures or speculations for the purpose of giving imprimatur to the petitioner's attempt to abdicate from his obligations under a valid and binding release and waiver.

The petitioner's educational background and employment stature render it improbable that he was pressured, intimidated or inveigled into signing the subject quitclaim. This Court cannot permit the petitioner to relieve himself from the consequences of his act, when his knowledge and understanding thereof is expected. Also, the period of time that the petitioner allowed to lapse before filing a complaint to recover the supposed deficiency in his retirement pay clouds his motives, leading to the reasonable conclusion that his claim of being aggrieved is a mere afterthought, if not a mere pretention.

The CA and the NLRC were unanimous in holding that the petitioner voluntarily executed the subject quitclaim. The Supreme Court (SC) is not a trier of facts, and this doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve and whether the petitioner voluntarily executed the subject quitclaim is a question of fact. In this case, the factual issues have already been determined by the NLRC and its findings were affirmed by the CA. Judicial review by this Court does not extend to a reevaluation of the sufficiency

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[31] *Asian Alcohol Corp. v. NLRC,* 364 Phil. 912, 933 (1999).

of the evidence upon which the proper labor tribunal has based its determination.[32]

Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the SC. Verily, their conclusions are accorded great weight upon appeal, especially when supported by substantial evidence. Consequently, the SC is not duty-bound to delve into the accuracy of their factual findings, in the absence of a clear showing that the same were arbitrary and bereft of any rational basis.[33]

WHEREFORE, premises considered, the Petition is hereby **DENIED.** The assailed November 12, 2009 Decision and July 28, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107233 are hereby **AFFIRMED.**

No pronouncements as to cost.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[32] *Alfaro v. Court of Appeals,* 416 Phil. 310, 318 (2001), citing *Social Security System Employees Association v. Bathan-Velasco,* 372 Phil. 124, 128-129 (1999).

[33] *Id.*

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

THIRD DIVISION

[G.R. No. 193672. January 18, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GLENFORD SAMOY and LEODIGARIO ISRAEL,** *accused,* **LEODIGARIO ISRAEL,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THREE YEARS NOT TOO LONG FOR VICTIMS OF CRIMINAL VIOLENCE TO FORGET THEIR APPALLING EXPERIENCE.— Contrary to the theory of the accused, victims of criminal violence are more likely to observe and remember their appalling experience rather than ignore and forget them. Three years are not too long. Such victims are able to recall the faces of and the body movements unique to the men who terrorized them. Parenthetically, the robbery in this case took place in broad daylight, the assailants were not wearing masks or hats, and the frightening episode lasted for several minutes. The offenders tried before fleeing to send their victims up the mountain after robbing them.

2. ID.; ID.; DENIAL AND ALIBI; FAILS AS AGAINST POSITIVE IDENTIFICATION OF ACCUSED AND ABSENT IMPROPER MOTIVE.— For his part, all that Israel could claim is that he could not have been involved in the robbery since he was planting rice elsewhere when it happened. But Israel's house was just near the Maluyo highway, giving him an easy access to any public transport which could bring him to the Logac junction. He was not able to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission. Thus, in the absence of any improper motive to incriminate Israel, the positive identification made by the prosecution witnesses must prevail over his mere denial and alibi.

3. CRIMINAL LAW; ROBBERY ON THE HIGHWAY (PD 532); REQUIRES PROOF OF GROUP ORGANIZED TO COMMIT ROBBERY INDISCRIMINATELY.— The RTC

and the CA were likewise correct in finding accused Israel guilty only of robbery with homicide, not of robbery on the highway as defined in P.D. 532. Conviction for the latter crime requires proof that several accused organized themselves for the purpose of committing robbery indiscriminately, preying upon innocent and defenseless people on the highway. Here, the prosecution proved only one act of robbery.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the reliability of the identification of the accused involved in a robbery with homicide case three years after the commission of the crime.

The Facts and the Case

The Cagayan Provincial Prosecutor filed a case for robbery on the highway[1] against accused Jonathan Valencia, Glenford Samoy, and Leodigario Israel before the Aparri Regional Trial Court (RTC), Branch 6, in Criminal Case VI-967.

Edmund Addun and Johnny Ventura (Johnny) testified that on the morning of December 27, 1997 they left Tuguegarao City for Sanchez Mira, Cagayan, with Rodolfo Cachola, Canuto Forlaje, and Melencio Ventura (Melencio) to buy pigs. They rode a small Isuzu Elf truck with Johnny on the wheel. They were on errand for spouses Edwin and Elizabeth Cauilan, their employers, who bought and sold hogs.

When the group reached the boundary of *Barangay* Logac, Lallo, Cagayan and *Barangay* Iringan, Allacapan, Cagayan,

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[1] Section 3b of Presidential Decree 532, Anti-Piracy and Anti-Highway Robbery Law of 1974.

three armed men, which included accused Glenford Samoy and Leodigario Israel, flagged them down. One carried an M16 armalite rifle, the second a .45 caliber pistol, and the third a .38 caliber pistol. The accused ordered those on the truck to alight and hand over their money. Melencio, who was in charge of buying the hogs for their employer, immediately handed over the ₱60,000.00 he had with him.

The accused then ordered their captives to get their things from the truck and go up the mountain. When they hesitated, one of the accused fired his gun. This prompted the captives to run for their lives, except Addun who closed his eyes because of a gun aimed directly at him. The accused fired three warning shots to stop those who where running away. When the latter did not heed the shots, the accused fired directly at them, seriously wounding Melencio while slightly hurting Johnny and Forlaje. The robbers then fled to the mountain. Although the robbery victims brought Melencio to the hospital, he was pronounced dead on arrival.

The accused, on the other hand, denied having taken part in the commission of the crime. Accused Samoy claimed that when the robbery took place, he was helping out in the wedding preparations of a cousin. He was unable, however, to attend the wedding on the next day because of a hangover he got from drinking the night before. Accused Israel, for his part, claimed that he was planting rice in a farm all day on December 27, 1997. He left home early in the morning and returned home in the afternoon.

On July 1, 2003 the RTC found both Samoy and Israel guilty beyond reasonable doubt of robbery with homicide and meted out to them the penalty of *reclusion perpetua*. The RTC held that the accused committed only one act of robbery and that the prosecution was unable to prove that they organized themselves to commit robbery on the highway. The RTC likewise held them solidarily liable to Melencio's heirs in the sum of ₱1,260,000.00 for loss of earning capacity, ₱30,000.00 as actual damages, and ₱50,000.00 as moral damages. The RTC also

ordered the accused to return the ₱60,000.00 taken during the robbery to the spouses Cauilan.

Both accused appealed to the Court of Appeals (CA) in CA-G.R. CR-H.C. 00328 but Samoy escaped from prison on October 5, 2004, resulting in the dismissal of his appeal. On June 4, 2010 the CA affirmed the RTC decision with respect to Israel. In addition, it ordered him to pay ₱50,000.00 as civil indemnity and ₱20,000.00 more for loss of earning capacity to correct a discrepancy in computation.

The Issue Presented

The only issue presented is whether or not the CA, along with the RTC, erred in finding that accused Israel committed robbery with homicide in company of others.

The Ruling of the Court

Accused Israel assails the manner by which Johnny and Addun identified him. Three years had passed, he said, before they identified him at the trial as one of the robbers. Israel argues that his physical appearance had surely changed through those years, rendering Johnny and Addun's identification of him inaccurate. Israel also pointed out that the RTC and the CA failed to take into account the witnesses' "emotional imbalance," caused by the terrible experience they went through, making their testimonies altogether untrustworthy. The Court disagrees.

Contrary to the theory of the accused, victims of criminal violence are more likely to observe and remember their appalling experience rather than ignore and forget them.[2] Three years are not too long. Such victims are able to recall the faces of and the body movements unique to the men who terrorized them.[3] Parenthetically, the robbery in this case took place in broad daylight, the assailants were not wearing masks or hats, and the frightening episode lasted for several minutes. The offenders

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[2] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 571.

[3] *Id*.

tried before fleeing to send their victims up the mountain after robbing them.

Accused Israel claims that the CA improperly ignored inconsistent testimonies regarding the question of whether or not he wore sunglasses during the robbery. But the fact is that Addun and Johnny categorically identified him as the robber among the three who was armed with a .45 caliber pistol. That one of these witnesses had the impression that Israel wore sunglasses could not diminish the strength of such identification.

For his part, all that Israel could claim is that he could not have been involved in the robbery since he was planting rice elsewhere when it happened. But Israel's house was just near the Maluyo highway, giving him an easy access to any public transport which could bring him to the Logac junction. He was not able to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission.[4] Thus, in the absence of any improper motive to incriminate Israel, the positive identification made by the prosecution witnesses must prevail over his mere denial and alibi.

The RTC and the CA were likewise correct in finding accused Israel guilty only of robbery with homicide, not of robbery on the highway as defined in P.D. 532. Conviction for the latter crime requires proof that several accused organized themselves for the purpose of committing robbery indiscriminately, preying upon innocent and defenseless people on the highway.[5] Here, the prosecution proved only one act of robbery.

WHEREFORE, this Court **AFFIRMS** in its entirety the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. 00328 dated June 4, 2010.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[4] *People v. Apelado,* 374 Phil. 773, 783 (1999).

[5] *People v. Pascual,* 432 Phil. 224, 234 (2002).

EN BANC

[G.R. No. 152093. January 24, 2012]

NATIONAL POWER CORPORATION, *petitioner, vs.* **CIVIL SERVICE COMMISSION and RODRIGO A. TANFELIX,** *respondent.*

SYLLABUS

POLITICAL LAW; CIVIL SERVICE; GRAVE MISCONDUCT; RIGGING BY A PUBLIC OFFICIAL AT A BIDDING IN THE ORGANIZATION WHERE HE BELONGS IS A SPECIE OF CORRUPTION; CASE AT BAR.— It is unmistakable from the evidence that Tanfelix wrongfully and unlawfully used his station or reputation as NPC Supervising Mechanical Engineer to rig the bids for an NPC construction project. Although he was not a member of NPC's bids committee, he was NPC's supervising mechanical engineer. Undoubtedly, Tanfelix misused his position to gain access to information on construction projects that were up for bidding and to the NPC staffs involved in them. And he misused his reputation and credibility as ranking NPC officer to bring the pre-qualified bidders together in a restaurant to hammer out with them a scheme for cheating NPC of a large sum of money, the result of rigged bids. It is of course true, as the CSC suggested, that the evidence fails to show that Tanfelix tried to influence the members of the bids committee. But there was really no need to influence them since Tanfelix already succeeded in rigging the bids among the pre-qualified bidders, leaving the bids committee no choice but to award the contract to ALC. Grave misconduct, of which Tanfelix has been charged, consists in a government official's deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present. In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character [reputation] to procure some benefit for himself or for another person, contrary to duty and the rights of others. Rigging by a public official at a bidding in the organization

where he belongs is a specie of corruption. As a public officer, Tanfelix had the duty to protect the process of public bidding in the NPC, his organization. The requirement of public bidding is not an idle ceremony. It is the accepted method for arriving at a fair and reasonable price. It ensures that overpricing, favoritism, and other anomalous practices are eliminated or minimized. A ruling that would absolve Tanfelix of any liability for rigging the bids in the government office where he works on the pretext that he was not a member of the bids and awards committee would encourage public officers who are not members of bids committees to make an industry of rigging bids, using their offices and official reputations.

APPEARANCES OF COUNSEL

Rainier B. Butalid, Comie P. Doromal and *Wilfredo J. Collado* for petitioner.

The Solicitor General for public respondent.

Grapilon Chan Cueva Obias Pasana & Hidalgo Law Offices for private respondent.

D E C I S I O N

ABAD, *J.*:

It is difficult to accept that an odious act like rigging a public bidding can get the public officer responsible for it wholly absolved of liability just because he was not a member of the bids committee that chose the winning bid.

The Facts and the Case

On April 7, 1997 the President of petitioner National Power Corporation (NPC) filed an administrative action against respondent Rodrigo A. Tanfelix, a Supervising Mechanical Engineer, for rigging the bidding for the construction of the wind break fence of its thermal power plant's coal storage in Calaca, Batangas.

After hearing, the NPC's Board of Inquiry and Discipline (BID) found Tanfelix guilty of grave misconduct for rigging

the bidding to favor ALC Industries, Inc. (ALC), one of the five pre-qualified contractors. Two witnesses, the board chairman of one of the losing bidders, Ley Construction and Development Corp. (LCDC), and the head of the latter's engineering department, testified that Tanfelix invited the pre-qualified bidders to a restaurant meeting and offered ₱1 million each to four of them in exchange for letting ALC win the bidding. He also built into the successful bid a ₱2 million fee for arranging the rig and for padding NPC's price estimate so the winning bid could make it big. Days later, the heads of ALC and LCDC met and signed in Tanfelix's presence a memorandum of agreement that embodied the bid-rigging deal between the two companies. ALC won the bidding. With this finding, the NPC discipline board ordered Tanfelix dismissed from the service.

On November 9, 1999, acting on Tanfelix's appeal, the Civil Service Commission (CSC) rendered a decision, affirming the NPC-BID ruling. But, on motion for reconsideration, the CSC reversed itself and exonerated Tanfelix in a resolution dated December 21, 2000. The CSC ruled in the main that the misconduct which warrants removal must have direct relation to and be connected with the performance of official duties. As it happened, Tanfelix was neither a member of the NPC bids committee nor was there any proof that he influenced the members of that committee.

The NPC appealed to the Court of Appeals (CA) but on October 18, 2001 the latter affirmed the ultimate ruling of the CSC. The NPC questions the CA decision before this Court.

The Issue Presented

The issue in this case is whether or not the CA, like the CSC, correctly absolved Tanfelix of any administrative liability for rigging the bids on an NPC construction contract since he was not a member of the bids committee that awarded it to a pre-selected bidder.

Argument

It is unmistakable from the evidence that Tanfelix wrongfully and unlawfully used his station or reputation as NPC Supervising

Mechanical Engineer to rig the bids for an NPC construction project. Although he was not a member of NPC's bids committee, he was NPC's supervising mechanical engineer. Undoubtedly, Tanfelix misused his position to gain access to information on construction projects that were up for bidding and to the NPC staffs involved in them. And he misused his reputation and credibility as ranking NPC officer to bring the pre-qualified bidders together in a restaurant to hammer out with them a scheme for cheating NPC of a large sum of money, the result of rigged bids.

It is of course true, as the CSC suggested, that the evidence fails to show that Tanfelix tried to influence the members of the bids committee. But there was really no need to influence them since Tanfelix already succeeded in rigging the bids among the pre-qualified bidders, leaving the bids committee no choice but to award the contract to ALC.

Grave misconduct, of which Tanfelix has been charged, consists in a government official's deliberate violation of a rule of law or standard of behavior. It is regarded as grave when the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.[1] In particular, corruption as an element of grave misconduct consists in the official's unlawful and wrongful use of his station or character [reputation][2] to procure some benefit for himself or for another person, contrary to duty and the rights of others.[3] Rigging by a public official at a bidding in the organization where he belongs is a specie of corruption.

As a public officer, Tanfelix had the duty to protect the process of public bidding in the NPC, his organization. The requirement of public bidding is not an idle ceremony. It is the accepted method for arriving at a fair and reasonable price. It ensures

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[1] *Imperial v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011.

[2] *Black's Law Dictionary*, 5th Edition, p. 211.

[3] *Civil Service Commission v. Belagan*, 483 Phil. 601, 623 (2004).

that overpricing, favoritism, and other anomalous practices are eliminated or minimized.[4] A ruling that would absolve Tanfelix of any liability for rigging the bids in the government office where he works on the pretext that he was not a member of the bids and awards committee would encourage public officers who are not members of bids committees to make an industry of rigging bids, using their offices and official reputations.

ACCORDINGLY, the Court **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. SP 62642 dated October 18, 2001 as well as Civil Service Commission Resolution 002816 dated December 21, 2000, **ADJUDGES** respondent Rodrigo A. Tanfelix guilty of grave misconduct, and **IMPOSES** on him the penalty of dismissal with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from re-employment in the government service, including government-owned or controlled corporation.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Brion, J., on official leave.

EN BANC

[G.R. No. 153569. January 24, 2012]

LOLITA S. CONCEPCION, *petitioner, vs.* **MINEX IMPORT CORPORATION/MINERAMA CORPORATION, KENNETH MEYERS, SYLVIA P. MARIANO and VINA MARIANO,** *respondents.*

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[4] *Tatad v. Garcia, Jr.*, 313 Phil. 296, 351 (1995), Davide, Jr., *J.*, Dissenting Opinion.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; JUST CAUSES.—** To dismiss an employee, the law requires the existence of a just and valid cause. Article 282 of the *Labor Code* enumerates the *just* causes for termination by the employer: (*a*) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's work; (*b*) gross and habitual neglect by the employee of his duties; (*c*) fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative; (*d*) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (*e*) other causes analogous to the foregoing.

2. **ID.; ID.; ID.; FORMAL CHARGE IN COURT FOR THE ACTS PREJUDICIAL TO THE INTEREST OF THE EMPLOYER IS NOT A PRE-REQUISITE FOR A VALID DISMISSAL.—** It has been raised and rejected many times before on the basis that neither conviction beyond reasonable doubt for a crime against the employer nor acquittal after criminal prosecution was indispensable. Nor was a formal charge in court for the acts prejudicial to the interest of the employer a pre-requisite for a valid dismissal. x x x Indeed, the employer is not expected to be as strict and rigorous as a judge in a criminal trial in weighing all the probabilities of guilt before terminating the employee. Unlike a criminal case, which necessitates a moral certainty of guilt due to the loss of the personal liberty of the accused being the issue, a case concerning an employee suspected of wrongdoing leads only to his termination as a consequence. The quantum of proof required for convicting an accused is thus higher – proof of guilt beyond reasonable doubt – than the quantum prescribed for dismissing an employee – substantial evidence. In so stating, we are not diminishing the value of employment, but only noting that the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof. It is also unfair to require an employer to first be morally certain of the guilt of the employee by awaiting a conviction before terminating him when there is already

sufficient showing of the wrongdoing. Requiring that certainty may prove too late for the employer, whose loss may potentially be beyond repair. Here, no less than the DOJ Secretary found probable cause for qualified theft against the petitioner. That finding was enough to justify her termination for loss of confidence.

3. ID.; ID.; ID.; STANDARDS OF DUE PROCESS TO BE OBSERVED.— [T]he requirements of due process prior to the termination as embodied in Section 2 (*d*) of Rule I of the *Implementing Rules of Book VI of the Labor Code, viz*: Section 2. *Security of tenure*. – xxx (*d*) In all cases of termination of employment, the following standards of due process shall be substantially observed: **For termination of employment based on just causes as defined in Article 282 of the Labor Code:** (i) **A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side**. (ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.** (iii) **A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.**

4. ID.; ID.; ID.; ID.; OPPORTUNITY TO BE HEARD AND DEFEND SELF; VIOLATED WHEN EMPLOYER HAD THE EMPLOYEE IMMEDIATELY ARRESTED AND INVESTIGATED BY POLICE FOR QUALIFIED THEFT ALLEGEDLY COMMITTED AGAINST EMPLOYER; NOMINAL DAMAGES OF ₱30,000.00 FOR EMPLOYEE, PROPER.— The petitioner plainly demonstrated how quickly and summarily her dismissal was carried out without first requiring her to explain anything in her defense as demanded under Section 2 (*d*) of Rule I of the *Implementing Rules of Book VI of the Labor Code*. Instead, the respondents forthwith had her arrested and investigated by the police authorities for qualified theft. This, we think, was a denial of her right to due process of law, consisting in the opportunity to be heard and to defend herself. In fact, their decision to dismiss her was already final even before the police authority commenced

> an investigation of the theft, the finality being confirmed by no less than Sylvia Mariano herself telling the petitioner during their phone conversation following the latter's release from police custody on November 11, 1997 that she (Sylvia) "no longer wanted to see" her. x x x They wittingly shunted aside the tenets that mere accusation did not take the place of proof of wrongdoing, and that a suspicion or belief, no matter how sincere, did not substitute for factual findings carefully established through an orderly procedure. x x x In view of the foregoing, we impose on the respondents the obligation to pay to the petitioner an indemnity in the form of nominal damages of ₱30,000.00, conformably with *Agabon v. NLRC*.

APPEARANCES OF COUNSEL

Potenciano A. Flores for petitioner.
Rogel R. Atienza for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The employer may validly dismiss for loss of trust and confidence an employee who commits an act of fraud prejudicial to the interest of the employer. Neither a criminal prosecution nor a conviction beyond reasonable doubt for the crime is a requisite for the validity of the dismissal. Nonetheless, the dismissal for a just or lawful cause must still be made upon compliance with the requirements of due process under the *Labor Code*; otherwise, the employer is liable to pay nominal damages as indemnity to the dismissed employee.

Antecedents

Respondent Minex Import-Export Corporation (Minex) engaged in the retail of semi-precious stones, selling them in kiosks or stalls installed in various shopping centers within Metro Manila. It employed the petitioner initially as a salesgirl,[1] rotating

[1] The petitioner claimed that she started working for Minex on July 27, 1994 but Minex stated that it employed her in 1991.

her assignment among nearly all its outlets. It made her a supervisor in July 1997, but did not grant her any salary increase. On October 23, 1997, respondent Vina Mariano, an Assistant Manager of Minex, assigned the petitioner to the SM Harrison Plaza kiosk with the instruction to hold the keys of the kiosk. Working under her supervision there were salesgirls Cristina Calung and Lida Baquilar.

On November 9, 1997, a Sunday, the petitioner and her salesgirls had sales of crystal items totaling ₱39,194.50. At the close of business that day, they conducted a cash-count of their sales proceeds, including those from the preceding Friday and Saturday, and determined their total for the three days to be ₱50,912.00. The petitioner wrapped the amount in a plastic bag and deposited it in the drawer of the locked wooden cabinet of the kiosk.

At about 9:30 am of November 10, 1997, the petitioner phoned Vina Mariano to report that the ₱50,912.00 was missing, explaining how she and her salesgirls had placed the wrapped amount at the bottom of the cabinet the night before, and how she had found upon reporting to work that morning that the contents of the cabinet were in disarray and the money already missing.

Later, while the petitioner was giving a detailed statement on the theft to the security investigator of Harrison Plaza, Vina and Sylvia Mariano, her superiors, arrived with a policeman who immediately placed the petitioner under arrest and brought her to Precinct 9 of the Malate Police Station. There, the police investigated her. She was detained for a day, from 11:30 am of November 10, 1997 until 11:30 am of November 11, 1997, being released only because the inquest prosecutor instructed so.

On November 12, 1997, the petitioner complained against the respondents for illegal dismissal in the Department of Labor and Employment.

On November 14, 1997, Minex, through Vina, filed a complaint for qualified theft against the petitioner in the Office of the City Prosecutor in Manila.

To the charge of qualified theft, the petitioner insisted on her innocence, reiterating that on November 9, 1997 she, together with Calung and Baquilar, had first counted the cash before placing it in a plastic bag that she deposited inside the drawer of the cabinet with the knowledge of Calung and Baquilar. She explained that on that night Baquilar had left for home ahead, leaving her and Calung to close the kiosk at around 8:00 pm; that at exactly 8:01 pm she proceeded to SM Department Store in Harrison Plaza to wait for her friends whom she had previously walked with to the LRT station; that she noticed upon arriving at the kiosk the next morning that the cabinet that they had positioned to block the entrance of the kiosk had been slightly moved; and that she then discovered upon opening the cabinet that its contents, including the cash, were already missing.

Calung executed a *sinumpaang salaysay*, however, averring that she had left the petitioner alone in the kiosk in the night of November 9, 1997 because the latter had still to change her clothes; and that that was the first time that the petitioner had ever asked to be left behind, for they had previously left the kiosk together.

Vina declared that the petitioner did not call the office of Minex for the pick-up of the ₱39,194.50 cash sales on Sunday, November 9, 1997, in violation of the standard operating procedure (SOP) requiring cash proceeds exceeding ₱10,000.00 to be reported for pick-up if the amount could not be deposited in the bank.

After the preliminary investigation, the Assistant Prosecutor rendered a resolution dated February 4, 1998 finding probable cause for qualified theft and recommending the filing of an information against the petitioner.[2] Thus, she was charged with qualified theft in the Regional Trial Court (RTC) in Manila, docketed as Criminal Case No. 98-165426.

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[2] *Rollo,* pp. 496-497.

The petitioner appealed by petition for review to the Department of Justice (DOJ), but the DOJ Secretary denied her petition for review on July 4, 2001.[3]

As to the petitioner's complaint for illegal dismissal, Labor Arbiter Jose G. de Vera rendered his decision dated December 15, 1998, *viz*:[4]

> WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of the complainant and against the respondents declaring the dismissal of the latter from work illegal and ordering her reinstatement to her former work position with full backwages counted from November 10, 1997 until her actual reinstatement without loss of seniority or other employees' rights and benefits.
>
> Respondents are likewise ordered to pay complainant her monetary claims above as well as moral damages of ₱50,000.00 and exemplary damages of ₱20,000.00.
>
> Lastly, respondents are liable to pay ten percent (10%) of the total award as and by way of payment of attorney's fees.
>
> SO ORDERED.

On appeal by the respondents, the National Labor Relations Commission (NLRC) reversed the decision of the Labor Arbiter on December 28, 2000, declaring that the petitioner had not been dismissed, but had abandoned her job after being found to have stolen the proceeds of the sales; and holding that even if she had been dismissed, her dismissal would be justifiable for loss of trust and confidence in the light of the finding of probable cause by the DOJ and the City Prosecutor and the filing of the information for qualified theft against her.[5]

The NLRC deleted the awards of backwages, service incentive leave pay, holiday pay and 13th month pay, moral and exemplary damages and attorney's fees, opining that the petitioner would

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[3] *Id.,* pp. 468-472.

[4] *Id.,* pp. 275-286.

[5] *Id.,* pp. 227-246.

be entitled to an award of damages only when the dismissal was shown to be effected in bad faith or fraud or was an act oppressive to labor, or was done in a manner contrary to good morals, good customs, or public policy.[6]

After the NLRC denied her motion for reconsideration on March 16, 2001, the petitioner challenged the reversal by the NLRC in the Court of Appeals (CA) on *certiorari*, claiming that the NLRC thereby committed grave abuse of discretion amounting to excess of jurisdiction for finding that there had been lawful cause to dismiss her; and insisting that the NLRC relied on mere suspicions and surmises, disregarding not only her explanations that, if considered, would have warranted a judgment in her favor but even the findings and disquisitions of the Labor Arbiter, which were in full accord with pertinent case law.

On December 20, 2001,[7] however, the CA sustained the NLRC mainly because of the DOJ Secretary's finding of probable cause for qualified theft, holding:

> With the finding of probable cause not only by the Investigating Prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal. The felony of qualified theft involves moral turpitude.
>
> "Respondent cannot use social justice to shield wrongdoing. He occupied a position of trust and confidence. Petitioner relied on him to protect the properties of the company. Respondent betrayed this trust when he ordered the subject lamp posts to be delivered to the Adelfa Homeowners' Association. The offense he committed involves moral turpitude. Indeed, a City Prosecutor found probable cause to file an information for qualified theft

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[6] *Id.*

[7] *Id.*, pp. 113-124; penned by Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, but already retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Josefina Guevarra-Salonga, concurring.

against him." (United South Dockhandlers, Inc. *versus* NLRC, *et al*., 267 SCRA 401, at page 407, *supra*)

Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.

IN THE LIGHT OF ALL THE FOREGOING, the Petition at bench is denied due course and is hereby DISMISSED.

SO ORDERED.

On May 13, 2002, the CA denied the petitioner's motion for reconsideration.[8]

Issues

In her appeal, the petitioner submits that:

THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS NO ILLEGAL DISMISSAL IN THE CASE AT BAR, PARTICULARLY IN FINDING THAT:

A. THERE WAS JUST CAUSE FOR HER DISMISSAL, AND

B. RESPONDENT NEED NOT AFFORD THE PETITIONER DUE PROCESS TO PETITIONER.

Ruling

The petition lacks merit.

The decisive issue for resolution is whether or not the petitioner was terminated for a just and valid cause.

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[8] *Id.,* p. 126.

To dismiss an employee, the law requires the existence of a just and valid cause. Article 282 of the *Labor Code* enumerates the *just* causes for termination by the employer: (*a*) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's work; (*b*) gross and habitual neglect by the employee of his duties; (*c*) fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative; (*d*) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (*e*) other causes analogous to the foregoing.

The NLRC held that the termination of the petitioner was due to loss of trust and confidence. Sustaining the NLRC, the CA stated:

> With the finding of probable cause not only by the investigating prosecutor but by the Secretary of Justice no less, it cannot be validly claimed, as the Petitioner does, in her Petition at bench, that there is no lawful cause for her dismissal xxx.
>
> x x x x x x x x x
>
> Admittedly, there is no direct evidence that the Petitioner took the money from the drawer in the cabinet in the Kiosk. But direct evidence that the Petitioner took the money is not required for the Petitioner to be lawfully dismissed for the loss of the money of the Private Respondent corporation. If circumstantial evidence is sufficient on which to anchor a judgment of conviction in criminal cases under Section 4, Rule 133 of the Revised Rules of Evidence, there is no cogent reason why circumstantial evidence is not sufficient on which to anchor a factual basis for the dismissal of the Petitioner for loss of confidence.[9]

The petitioner still argues, however, that there was no evidence at all upon which Minex could validly dismiss her considering that she had not yet been found guilty beyond reasonable doubt of the crime of qualified theft.

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[9] *Id.,* pp. 123-124.

The petitioner's argument is not novel. It has been raised and rejected many times before on the basis that neither conviction beyond reasonable doubt for a crime against the employer nor acquittal after criminal prosecution was indispensable. Nor was a formal charge in court for the acts prejudicial to the interest of the employer a pre-requisite for a valid dismissal.

In its 1941 ruling in *National Labor Union, Inc. v. Standard Vacuum Oil Company*,[10] the Court expressly stated thus:

xxx **The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer**. **If there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, it cannot justly deny to the employer the authority to dismiss such employee.** All that is incumbent upon the Court of Industrial Relations (now National Labor Relations Commission) to determine is whether the proposed dismissal is for just cause xxx. **It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal**. (Emphasis supplied)

In *Philippine Long Distance Telephone Co. vs. NLRC*,[11] the Court held that the acquittal of the employee from the criminal prosecution for a crime committed against the interest of the employer did not automatically eliminate loss of confidence as a basis for administrative action against the employee; and that in cases where the acts of misconduct amounted to a crime, a dismissal might still be properly ordered notwithstanding that the employee was not criminally prosecuted or was acquitted after a criminal prosecution.

In *Batangas Laguna Tayabas Bus Co. v. NLRC*,[12] the Court explained further, as follows:

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[10] 73 Phil. 279, 282 (1941).

[11] G.R. No. 63193, April 30, 1984, 129 SCRA 163, 172.

[12] G.R. No. 69875, October 28, 1988, 166 SCRA 721, 726-727.

Fraud or willful breach of trust reposed upon an employee by his employer is a recognized cause for termination of employment and **it is not necessary that the employer should await the employee's final conviction in the criminal case involving such fraud or breach of trust before it can terminate the employee's services.** In fact, **even the dropping of the charges or an acquittal of the employee therefrom does not preclude the dismissal of an employee for acts inimical to the interests of the employer.**

To our mind, **the criminal charges initiated by the company against private respondents and the finding after preliminary investigation of their *prima facie* guilt of the offense charged constitute substantial evidence sufficient to warrant a finding** by the Labor Tribunal of the existence **of a just cause for their termination based on loss of trust and confidence.** The Labor Tribunal need not have gone further as to require private respondent's conviction of the crime charged, or inferred innocence on their part from their release from detention, which was mainly due to their posting of bail. (Emphasis supplied)

Indeed, the employer is not expected to be as strict and rigorous as a judge in a criminal trial in weighing all the probabilities of guilt before terminating the employee. Unlike a criminal case, which necessitates a moral certainty of guilt due to the loss of the personal liberty of the accused being the issue, a case concerning an employee suspected of wrongdoing leads only to his termination as a consequence. The quantum of proof required for convicting an accused is thus higher – proof of guilt beyond reasonable doubt – than the quantum prescribed for dismissing an employee – substantial evidence. In so stating, we are not diminishing the value of employment, but only noting that the loss of employment occasions a consequence lesser than the loss of personal liberty, and may thus call for a lower degree of proof.

It is also unfair to require an employer to first be morally certain of the guilt of the employee by awaiting a conviction before terminating him when there is already sufficient showing of the wrongdoing. Requiring that certainty may prove too late for the employer, whose loss may potentially be beyond repair. Here, no less than the DOJ Secretary found probable cause for

qualified theft against the petitioner. That finding was enough to justify her termination for loss of confidence. To repeat, her responsibility as the supervisor tasked to oversee the affairs of the kiosk, including seeing to the secure handling of the sales proceeds, could not be ignored or downplayed. The employer's loss of trust and confidence in her was directly rooted in the manner of how she, as the supervisor, had negligently handled the large amount of sales by simply leaving the amount inside the cabinet drawer of the kiosk despite being aware of the great risk of theft. At the very least, she could have resorted to the SOP of first seeking guidance from the main office on how to secure the amount if she could not deposit in the bank due to that day being a Sunday.

Yet, even as we now say that the respondents had a just or valid cause for terminating the petitioner, it becomes unavoidable to ask whether or not they complied with the requirements of due process prior to the termination as embodied in Section 2 (*d*) of Rule I of the *Implementing Rules of Book VI of the Labor Code, viz*:

> Section 2. *Security of tenure*. – xxx
>
> x x x x x x x x x
>
> (*d*) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> **For termination of employment based on just causes as defined in Article 282 of the Labor Code:**
>
> (i) **A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side**.
>
> (ii) **A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.**
>
> (iii) **A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.** (emphasis supplied)

x x x x x x x x x

We answer the query in the negative in the light of the circumstances of the petitioner's termination set forth in her affidavit, to wit:

x x x x x x x x x

14. **While I was giving my statement to the security officer of the Mall, respondents Vina and Sylvia Mariano came with a policeman and they brought me to Precinct 9, Malate Police Station. Cristina Calung also arrived and together with the sister of Vina and Sylvia, they operated the booth as if nothing happened**;

15. **I was detained at the police station from 11:15 a.m., November 10, up to 11:30 a.m., November 11, 1997**;

16. **After my release from the police precinct, I contacted by phone our office and I was able to talk to respondent Sylvia Mariano. I told her that since I was innocent of the charges they filed against me, I will report back to work. She shouted at me on the phone and told me she no longer wanted to see my face.** I therefore decided to file a complaint for illegal dismissal against respondents with the NLRC, hence this present suit; (emphasis supplied)[13]

x x x x x x x x x

The petitioner plainly demonstrated how quickly and summarily her dismissal was carried out without first requiring her to explain anything in her defense as demanded under Section 2 (*d*) of Rule I of the *Implementing Rules of Book VI of the Labor Code*. Instead, the respondents forthwith had her arrested and investigated by the police authorities for qualified theft. This, we think, was a denial of her right to due process of law, consisting in the opportunity to be heard and to defend herself.[14] In fact, their decision to dismiss her was already final even before the

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[13] *Rollo,* p. 360.

[14] *Agabon v. NLRC,* G.R. No. 158693, November 17, 2004, 442 SCRA 573; citing *Santos v. San Miguel Corporation,* G.R. No. 149416, March 14, 2003, 399 SCRA 172, 182.

police authority commenced an investigation of the theft, the finality being confirmed by no less than Sylvia Mariano herself telling the petitioner during their phone conversation following the latter's release from police custody on November 11, 1997 that she (Sylvia) "no longer wanted to see" her.

The fact that the petitioner was the only person suspected of being responsible for the theft aggravated the denial of due process. When the respondents confronted her in the morning of November 10, 1997 for the first time after the theft, they brought along a police officer to arrest and hale her to the police precinct to make her answer for the theft. They evidently already concluded that she was the culprit despite a thorough investigation of the theft still to be made. This, despite their obligation under Section 2 (*d*) of Rule I of the *Implementing Rules of Book VI of the Labor Code*, *firstly*, to give her a "reasonable opportunity within which to explain (her) side"; *secondly*, to set a "hearing or conference during which the employee concerned, with the assistance of counsel if (she) so desires is given opportunity to respond to the charge, present (her) evidence, or rebut the evidence presented against (her)"; and *lastly*, to serve her a "written notice of termination xxx indicating that upon due consideration of all the circumstances, grounds have been established to justify (her) termination." They wittingly shunted aside the tenets that mere accusation did not take the place of proof of wrongdoing, and that a suspicion or belief, no matter how sincere, did not substitute for factual findings carefully established through an orderly procedure.[15]

The fair and reasonable opportunity required to be given to the employee before dismissal encompassed not only the giving to the employee of notice of the cause and the ability of the employee to explain, but also the chance to defend against the accusation. This was our thrust in *Philippine Pizza, Inc. v. Bungabong*,[16] where we held that the employee was not afforded

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[15] *Austria v. NLRC*, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 303.

[16] G.R. No. 154315, May 9, 2005, 458 SCRA 288, 299-300.

due process despite the dismissal being upon a just cause, considering that he was not given a fair and reasonable opportunity to confront his accusers and to defend himself against the charge of theft notwithstanding his having submitted his explanation denying that he had stolen beer from the company dispenser. The termination letter was issued a day before the employee could go to the HRD Office for the investigation, which made it clear to him that the decision to terminate was already final even before he could submit his side and refute the charges against him. Nothing that he could say or do at that point would have changed the decision to dismiss him. Such omission to give the employee the benefit of a hearing and investigation before his termination constituted an infringement of his constitutional right to due process by the employer.

The respondents would further excuse their failure to afford due process by averring that "even before the respondents could issue the petitioner any formal written memorandum requiring her to explain the loss of the ₱50,912.00 sales proceeds xxx she went post haste to the NLRC and filed a case for illegal dismissal" in order to "beat the gun on respondents."[17] However, we cannot excuse the non-compliance with the requirement of due process on that basis, considering that her resort to the NLRC came after she had been told on November 11, 1997 by Sylvia that she (Sylvia) "no longer wanted to see" her. The definitive termination closed the door to any explanation she would tender. Being afforded no alternative, she understandably resorted to the complaint for illegal dismissal.

In view of the foregoing, we impose on the respondents the obligation to pay to the petitioner an indemnity in the form of nominal damages of ₱30,000.00, conformably with *Agabon v. NLRC*,[18] where the Court said:

Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or

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[17] *Rollo,* p. 531.

[18] *Supra* note 14 at pp. 616-617.

render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

As enunciated by this Court in *Viernes v. National Labor Relations Commissions*, an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process. The Court, after considering the circumstances therein, fixed the indemnity at ₱2,590.50, which was equivalent to the employee's one month salary. This indemnity is intended not to penalize the employer but to vindicate or recognize the employee's right to statutory due process which was violated by the employer.

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. **Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at ₱30,000.00.** We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules. (emphasis is in the original text)

WHEREFORE, the Court **AFFIRMS** the decision promulgated on December 20, 2001 by the Court of Appeals, but **ORDERS** the respondents to pay to the petitioner an indemnity in the form of nominal damages of ₱30,000.00 for non-compliance with the requirements of due process.

No pronouncement as to costs of suit.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., on official leave.

EN BANC

[G.R. Nos. 177857-58. January 24, 2012]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, and RAYMUNDO C. DE VILLA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

WIGBERTO E. TAÑADA, OSCAR F. SANTOS, SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC) and MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS), represented by ROMEO C. ROYANDOYAN, *intervenors.*

[G.R. No. 178193. January 24, 2012]

DANILO S. URSUA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; AS THE ALLEGATIONS IN THE SUBDIVIDED COMPLAINTS PARTAKE THE NATURE OF ILL-GOTTEN WEALTH SUITS, JURISDICTION OVER WHICH FALL UNDER THE SANDIGANBAYAN.— It is, therefore, clear that jurisdiction over the subject matter is conferred by law. In turn, the question on whether a given suit comes within the pale of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the plaintiff will be entitled at the end to recover upon all or some of the claims asserted therein. x x x Judging from the allegations of the defendants' illegal acts thereat made, it is fairly obvious that both CC Nos. 0033-A and CC 0033-F partake, in the context of EO Nos. 1, 2 and 14, series of 1986, the nature of ill-gotten wealth suits. Both deal with the recovery of sequestered shares, property or business enterprises claimed, as alleged in the corresponding basic complaints, to be ill-gotten assets of President Marcos, his cronies and nominees and acquired by taking undue advantage of relationships or influence and/or through or as a result of improper use, conversion or **diversion** of government funds or property. Recovery of these assets—determined as shall hereinafter be discussed as *prima facie* ill-gotten—falls within the unquestionable jurisdiction of the Sandiganbayan. P.D. No. 1606, as amended by R.A. 7975 and E.O. No. 14, Series of 1986, vests the Sandiganbayan with, among others, original jurisdiction over civil and criminal cases instituted pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A.

2. ID.; ID.; ID.; ID.; THERE IS NO NEED FOR THE REPUBLIC, AS PLAINTIFF, TO FIRST PROVE THE SUBJECT MATTER JURISDICTION OF THE SANDIGANBAYAN BEFORE WHICH THE COMPLAINT IS FILED.— There was no actual need for Republic, as plaintiff *a quo*, to adduce evidence to show that the Sandiganbayan has jurisdiction over the subject matter of the complaints as it leaned on the averments in the initiatory pleadings to make visible the jurisdiction of the Sandiganbayan over the ill-gotten wealth complaints. As previously discussed, a perusal of the allegations easily reveals the sufficiency of the statement of matters disclosing the claim

of the government against the coco levy funds and the assets acquired directly or indirectly through said funds as ill-gotten wealth. Moreover, the Court finds no rule that directs the plaintiff to first prove the subject matter jurisdiction of the court before which the complaint is filed. Rather, such burden falls on the shoulders of defendant in the hearing of a motion to dismiss anchored on said ground or a preliminary hearing thereon when such ground is alleged in the answer.

3. ID.; ID.; ID.; ID.; THE PARTIES WHO INTERVENED IN THE CASE AND ACTIVELY PARTICIPATED THEREIN ARE PRECLUDED FROM ASSAILING THE JURISDICTION OF THE SANDIGANBAYAN.— Considering the antecedents of CC Nos. 0033-A and 0033-F, COCOFED, Lobregat, Ballares, *et al*. and Ursua are already precluded from assailing the jurisdiction of the Sandiganbayan. Remember that the COCOFED and the Lobregat group were not originally impleaded as defendants in CC No. 0033. They later asked and were allowed by the Sandiganbayan to intervene. If they really believe then that the Sandiganbayan is without jurisdiction over the subject matter of the complaint in question, then why intervene in the first place? They could have sat idly by and let the proceedings continue and would not have been affected by the outcome of the case as they can challenge the jurisdiction of the Sandiganbayan when the time for implementation of the flawed decision comes. More importantly, the decision in the case will have no effect on them since they were not impleaded as indispensable parties. After all, the joinder of all indispensable parties to a suit is not only mandatory, but jurisdictional as well. By their intervention, which the Sandiganbayan allowed per its resolution dated September 30, 1991, COCOFED and Ursua have clearly manifested their desire to submit to the jurisdiction of the Sandiganbayan and seek relief from said court. Thereafter, they filed numerous pleadings in the subdivided complaints seeking relief and actively participated in numerous proceedings. Among the pleadings thus filed are the *Oppositions to the Motion for Intervention* interposed by the Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyogan and Gabay ng Mundo sa Kaunlaran Foundation, Inc., a *Class Action Omnibus Motion* to enjoin the PCGG from voting the SMC shares dated February 23, 2001 (granted by Sandiganbayan) and the *Class Action Motion for a Separate Summary Judgment*

dated April 11, 2001. By these acts, COCOFED, *et al*. are now legally estopped from asserting the Sandiganbayan's want of jurisdiction, if that be the case, over the subject matter of the complaint as they have voluntarily yielded to the jurisdiction of the Sandiganbayan. Estoppel has now barred the challenge on Sandiganbayan's jurisdiction.

4. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE ORDER NOS. 1, 2 AND 14, S. OF 1986, CONSTRUED; THE TERM "NOMINEE" OF THE MARCOSES INCLUDES THE UNIDENTIFIED COCONUT FARMERS-BENEFICIARIES OF THE UCPB SHARES.— E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "*well entrenched plundering regime of twenty years*," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market. Hence, to give full effect to E.O. 1, 2 and 14, s. of 1986, the term "nominee," as used in the above issuances, must be taken to mean to include any person or group of persons, natural or juridical, in whose name government funds or assets were transferred to by Pres. Marcos, his cronies or his associates. To this characterization must include what the Sandiganbayan

considered the "*unidentified*" coconut farmers, more than a million of faceless and **nameless coconut farmers, the alleged beneficiaries of the distributed UCPB shares, who, under the terms of Sec. 10 of PCA A.O. No. 1, s. of 1975, were required, upon the delivery of their respective stock certificates, to execute an irrevocable proxy in favor of the Bank's manager.** There is thus ample truth to the observations - *"[That] the PCA provided this condition only indicates that the PCA had no intention to constitute the coconut farmer UCPB stockholder as a bona fide stockholder;" that the 1.5 million registered farmer-stockholders were "**mere nominal stockholders**."*

5. ID.; ID.; BILL OF RIGHTS; DUE PROCESS; RIGHT TO BE HEARD WAS NOT VIOLATED BY MERE ISSUANCE OF PARTIAL SUMMARY JUDGMENT EVEN BEFORE THE PARTIES ADDUCE THEIR EVIDENCE.— The records reveal that the Republic, after adducing its evidence in CC No. 0033-A, subsequently filed *a Motion Ad Cautelam for Leave to Present Additional Evidence* dated March 28, 2001. This motion remained unresolved at the time the Republic interposed its *Motion for Partial Summary Judgment*. The Sandiganbayan granted the later motion and accordingly rendered the Partial Summary Judgment, effectively preempting the presentation of evidence by the defendants in said case (herein petitioners COCOFED and Ursua). Section 5, Rule 30 the Rules of Court clearly sets out the order of presenting evidence x x x for the orderly administration of justice, the plaintiff shall first adduce evidence in support of his complaint and after the formal offer of evidence and the ruling thereon, then comes the turn of defendant under Section 3 (b) to adduce evidence in support of his defense, counterclaim, cross-claim and third party complaint, if any. Deviation from such order of trial is purely discretionary upon the trial court, in this case, the Sandiganbayan, which cannot be questioned by the parties unless the vitiating element of grave abuse of discretion supervenes. Thus, the right of COCOFED to present evidence on the main case had not yet ripened. And the rendition of the partial summary judgments overtook their right to present evidence on their defenses. It cannot be stressed enough that the Republic as well as herein petitioners were well within their rights to move, as they in fact separately did, for a partial summary judgment. Summary judgment may be allowed where,

save for the amount of damages, there is, as shown by affidavits and like evidentiary documents, no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. A "genuine issue", as distinguished from one that is fictitious, contrived and set up in bad faith, means an issue of fact that calls for the presentation of evidence. Summary or accelerated judgment, therefore, is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation. x x x Clearly, petitioner COCOFED's right to be heard had not been violated by the mere issuance of PSJ-A and PSJ-F before they can adduce their evidence. As it were, petitioners COCOFED, *et al*. were able to present documentary evidence in conjunction with its "Class Action Omnibus Motion" dated February 23, 2001 where they appended around four hundred (400) documents including affidavits of alleged farmers. These petitioners manifested that said documents comprise their evidence to prove the farmers' ownership of the UCPB shares, which were distributed in accordance with valid and existing laws. Lastly, COCOFED, *et al*. even filed their own *Motion for Separate Summary Judgment*, an event reflective of their admission that there are no more factual issues left to be determined at the level of the Sandiganbayan. This act of filing a motion for summary judgment is a judicial admission against COCOFED under Section 26, Rule 130 which declares that the "act, declaration or omission of a party as to a relevant fact may be given in evidence against him." Viewed in this light, the Court has to reject petitioners' self-serving allegations about being deprived the right to adduce evidence.

6. ID.; ID.; ID.; RIGHT TO A SPEEDY TRIAL AND RIGHT TO A SPEEDY DISPOSITION OF THE CASE, DISTINGUISHED.— It must be clarified right off that the right to a speedy disposition of cases and the accused's right to a speedy trial are distinct, albeit kindred, guarantees, the most obvious difference being that a speedy disposition of cases, as provided in Article III, Section 16 of the Constitution, obtains regardless of the nature of the cases: Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. In fine, the right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings

conducted by state agencies. Thus, in *Licaros* the Court dismissed the criminal case against the accused due to the palpable transgression of his right to a speedy trial.

7. ID.; ID.; ID.; RIGHT TO A SPEEDY DISPOSITION OF CASES IS LOST UNLESS SEASONABLY INVOKED; APPLICATION.— The more recent case of *Tello v. People* laid stress to the restrictive dimension to the right to speedy disposition of cases, *i.e.*, it is lost unless seasonably invoked: In *Bernat* …, the Court denied petitioner's claim of denial of his right to a speedy disposition of cases considering that [he] … chose to remain silent for eight years before complaining of the delay in the disposition of his case. The Court ruled that petitioner failed to seasonably assert his right and he merely sat and waited from the time his case was submitted for resolution. In this case, petitioner similarly failed to assert his right to a speedy disposition of his case…. He only invoked his right to a speedy disposition of cases after [his conviction]….Petitioner's silence may be considered as a waiver of his right. An examination of the petitioners' arguments and the cited *indicia* of delay would reveal the absence of any allegation that petitioners moved before the Sandiganbayan for the dismissal of the case on account of vexatious, capricious and oppressive delays that attended the proceedings. Following *Tello,* petitioners are deemed to have waived their right to a speedy disposition of the case. Moreover, delays, if any, prejudiced the Republic as well. What is more, the alleged breach of the right in question was not raised below. As a matter of settled jurisprudence, but subject to equally settled exception, an issue not raised before the trial court cannot be raised for the first time on appeal. The sporting idea forbidding one from pulling surprises underpins this rule. For these reasons, the instant case cannot be dismissed for the alleged violation of petitioners' right to a speedy disposition of the case.

8. ID.; ID.; CONSTITUTIONALITY OF P.D. NOS. 755, 961 AND 1468 (COCONUT LEVY LAWS); THE COURT MAY PASS UPON THE CONSTITUTIONALITY OF THE COCONUT LEVY LAWS AS THE ISSUE RAISED CANNOT BE RESOLVED WITHOUT GOING INTO THE CONSTITUTIONALITY THEREOF.— It is basic that courts will not delve into matters of constitutionality unless unavoidable, when the question of constitutionality is the very

lis mota of the case, meaning, that the case cannot be legally resolved unless the constitutional issue raised is determined**.** This rule finds anchorage on the presumptive constitutionality of every enactment. Withal, to justify the nullification of a statute, there must be a clear and unequivocal breach of the Constitution. A doubtful or speculative infringement would simply not suffice. Just as basic is the precept that lower courts are not precluded from resolving, whenever warranted, constitutional questions, subject only to review by this Court. To Us, the present controversy cannot be peremptorily resolved without going into the constitutionality of P.D. Nos. 755, 961 and 1468 in particular. For petitioners COCOFED, *et al*. and Ballares, *et al*. predicate their claim over the sequestered shares and necessarily their cause on laws and martial law issuances assailed by the Republic on constitutional grounds. Indeed, as aptly observed by the Solicitor General, this case is for the recovery of shares grounded on the invalidity of certain enactments, which in turn is rooted in the shares being public in character, purchased as they were by funds raised by the taxing and/or a mix of taxing and police powers of the state. x x x In other words, the relevant provisions of P.D. No. 755, as well as those of P.D. Nos. 961 and 1468, could have been the only plausible means by which close to a purported million and a half coconut farmers could have acquired the said shares of stock. It has, therefore, become necessary to determine the validity of the authorizing law, which made the stock transfer and acquisitions possible. To reiterate, it is of crucial importance to determine the validity of P.D. Nos. 755, 961 and 1468 in light of the constitutional proscription against the use of special funds save for the purpose it was established. Otherwise, petitioners' claim of **legitimate private ownership** over UCPB shares and indirectly over SMC shares held by UCPB's subsidiaries will have no leg to stand on, P.D. No. 755 being the only law authorizing the distribution of the SMC and UCPB shares of stock to coconut farmers, and with the aforementioned provisions actually stating and holding that the coco levy fund shall not be considered as a special – not even general – fund, but shall be owned by the farmers in their private capacities.

9. ID.; ID.; ID.; ID.; THE LAW OF THE CASE PRINCIPLE IS NOT APPLICABLE IN CASE AT BAR; REASONS.— [T]he principle means that questions of law that have been previously raised and disposed of in the proceedings shall be

controlling in succeeding instances where the same legal question is raised, provided that the facts on which the legal issue was predicated continue to be the facts of the case before the court. Guided by this definition, the law of the case principle cannot provide petitioners any comfort. We shall explain why. In the first instance, petitioners cite *COCOFED v. PCGG*. There, respondent PCGG questioned the validity of the coconut levy laws based on the limits of the state's taxing and police power. x x x The issue, therefore, in *COCOFED v. PCGG* turns on the legality of the transfer of the shares of stock bought with the coconut levy funds to coconut farmers. This must be distinguished with the issues in the instant case of whether P.D. No. 755 violated Section 29, paragraph 3 of Article VI of the 1987 Constitution as well as to whether P.D. No. 755 constitutes undue delegation of legislative power. Clearly, the issues in both sets of cases are so different as to preclude the application of the law of the case rule. The second and third instances that petitioners draw attention to refer to the rulings in *Republic v. Sandiganbayan*, where the Court by Resolution of December 13, 1994, as reiterated in another resolution dated March 26, 1996, resolved to deny the separate motions of the Republic to resolve legal questions on the character of the coconut levy funds, more particularly to declare as unconstitutional (a) coconut levies collected pursuant to various issuances as public funds and (b) Article III, Section 5 of P.D. No. 1468. Prescinding from the foregoing considerations, petitioners would state: "Having filed at least three (3) motions … seeking, among others, to declare certain provisions of the Coconut Levy Laws unconstitutional and having been rebuffed all three times by this Court," the Republic — and necessarily Sandiganbayan — "should have followed as [they were] legally bound by this … Court's prior determination" on that above issue of constitutionality under the doctrine of Law of the Case. Petitioners are wrong. The Court merely declined to pass upon the constitutionality of the coconut levy laws or some of their provisions. It did not declare that the UCPB shares acquired with the use of coconut levy funds have legitimately become private.

10. ID.; ID.; ID.; THE COCONUT LEVY FUNDS ARE IN THE NATURE OF TAXES AND CAN ONLY BE USED FOR PUBLIC PURPOSE; THEY CANNOT BE USED TO

PURCHASE SHARES OF STOCKS TO BE GIVEN FOR FREE TO PRIVATE INDIVIDUALS.— [T]he coconut levy was imposed in the exercise of the State's inherent power of taxation. x x x We have ruled time and again that taxes are imposed only for a public purpose. "They cannot be used for purely private purposes or for the exclusive benefit of private persons." When a law imposes taxes or levies from the public, with the intent to give undue benefit or advantage to private persons, or the promotion of private enterprises, that law cannot be said to satisfy the requirement of public purpose. x x x [T]he coconut levy funds were sourced from forced exactions decreed under P.D. Nos. 232, 276 and 582, among others, with the end-goal of developing the entire coconut industry. Clearly, to hold therefore, even by law, that the revenues received from the imposition of the coconut levies be used purely for private purposes to be owned by private individuals in their private capacity and for their benefit, would contravene the rationale behind the imposition of taxes or levies. Needless to stress, courts do not, as they cannot, allow by judicial fiat the conversion of special funds into a private fund for the benefit of private individuals. In the same vein, We cannot subscribe to the idea of what appears to be an indirect – if not exactly direct – conversion of special funds into private funds, *i.e.*, by using special funds to purchase shares of stocks, which in turn would be distributed for free to private individuals. Even if these private individuals belong to, or are a part of the coconut industry, the free distribution of shares of stocks purchased with special public funds to them, nevertheless cannot be justified.

11. ID.; ID.; ID.; ID.; THE COCONUT LEVY FUNDS ARE SPECIAL PUBLIC FUNDS OF THE GOVERNMENT.— We have ruled in *Republic v. COCOFED* that the coconut levy funds are not only affected with public interest; they are *prima facie* public funds. In fact, this pronouncement that the levies are government funds was admitted and recognized by respondents, COCOFED, *et al.*, in G.R. No. 147062-64. And more importantly, in the same decision, We clearly explained exactly what kind of government fund the coconut levies are. We were categorical in saying that coconut levies are treated as special funds by the very laws which created them[.] x x x If only to stress the point, P.D. No. 1234 expressly stated that coconut levies are special funds to be remitted to the Treasury

in the General Fund of the State, but treated as Special Accounts[.] x x x Sec.1 (a) of P.D. No. 276 states that the proceeds from the coconut levy shall be deposited with the PNB, then a government bank, or any other government bank under the account of the CCSF, ***as a separate trust fund,*** which shall not form part of the government's general fund. And even assuming *arguendo* that the coconut levy funds were transferred to the general fund pursuant to P.D. No. 1234, it was with the specific directive that the same be treated as ***special accounts*** in the general fund.

12. ID.; ID.; ID.; THE COCONUT LEVY FUNDS CAN ONLY BE USED FOR THE SPECIAL PURPOSE AND THE BALANCE THEREOF SHOULD REVERT BACK TO THE GENERAL FUND; THEIR SUBSEQUENT RECLASSIFICATION AS A PRIVATE FUND TO BE OWNED BY PRIVATE INDIVIDUALS IN THEIR PRIVATE CAPACITIES UNDER THE COCONUT LEVY LAWS ARE UNCONSTITUTIONAL.— Article VI, Section 29 (3) of the 1987 Constitution, restating a general principle on taxation, enjoins the disbursement of a special fund in accordance with the special purpose for which it was collected, the balance, if there be any, after the purpose has been fulfilled or is no longer forthcoming, to be transferred to the general funds of the government[.] x x x Likewise, x x x Article III, Section 5 of both P.D. Nos. 961 and 1468 provides that the CCSF shall not be construed by any law as a special and/or trust fund, the stated intention being that actual ownership of the said fund shall pertain to coconut farmers in their private capacities. Thus, in order to determine whether the relevant provisions of P.D. Nos. 755, 961 and 1468 complied with Article VI, Section 29 (3) of the 1987 Constitution, a look at the public policy or the purpose for which the CCSF levy was imposed is necessary. x x x P.D. No. 276 created and exacted the CCSF "to advance the government's avowed policy of protecting the coconut industry." Evidently, the CCSF was originally set up as a special fund to support consumer purchases of coconut products. To put it a bit differently, the protection of the entire coconut industry, and even more importantly, for the consuming public provides the rationale for the creation of the coconut levy fund. There can be no quibbling then that the foregoing provisions of P.D. No. 276 intended the fund created and set up therein not especially for the coconut farmers but for the

entire coconut industry, albeit the improvement of the industry would doubtless redound to the benefit of the farmers. Upon the foregoing perspective, the following provisions of P.D. Nos. 755, 961 and 1468 insofar as they declared, as the case may be, that: "[the coconut levy] fund and the disbursements thereof [shall be] authorized for the benefit of the coconut farmers and shall be owned by them in their private capacities;" or the coconut levy fund shall not be construed by any law to be a special and/or fiduciary fund, and do not therefore form part of the general fund of the national government later on; or the UCPB shares acquired using the coconut levy fund shall be distributed to the coconut farmers for free, violated the special public purpose for which the CCSF was established. In sum, not only were the challenged presidential issuances unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and, therefore, negating the public purpose declared by P.D. No. 276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified, nay treated, the coconut levy fund as *private fund* to be disbursed and/or invested for the benefit of *private individuals* in their *private capacities*, contrary to the original purpose for which the fund was created. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers, is therefore void.

13. ID.; ID.; ID.; SECTION 1 OF P.D. 755 AS WELL AS PCA ADMINISTRATIVE ORDER NO. 1, SERIES OF 1975 AND RESOLUTION NO. 074-75 ARE INVALID DELEGATION OF LEGISLATIVE POWER.— Jurisprudence is consistent as regards the two tests, which must be complied with to determine the existence of a valid delegation of legislative power. In *Abakada Guro Party List, et al. v. Purisima*, We reiterated the discussion, to wit: Two tests determine the validity of delegation of legislative power: (1) the completeness test

and (2) the sufficient standard test. A law is complete when it **sets forth therein the policy to be executed, carried out or implemented** by the delegate. It lays down a sufficient standard when it provides **adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented**. In the instant case, the requisite standards or criteria are absent in P.D. No. 755. As may be noted, the decree authorizes the PCA to distribute to coconut farmers, for free, the shares of stocks of UCPB and to pay from the CCSF levy the financial commitments of the coconut farmers under the Agreement for the acquisition of such bank. Yet, the decree does not even state who are to be considered as coconut farmers. Would, say, one who plants a single coconut tree be already considered a coconut farmer and, therefore, entitled to own UCPB shares? If so, how many shares shall be given to him? The definition of a coconut farmer and the basis as to the number of shares a farmer is entitled to receive for free are important variables to be determined by law and cannot be left to the discretion of the implementing agency. Moreover, P.D. No. 755 did not identify or delineate any clear condition as to how the disposition of the UCPB shares or their conversion into private ownership will redound to the advancement of the national policy declared under it. To recall, P.D. No. 755 seeks to "accelerate the growth and development of the coconut industry and achieve a vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of, such growth and development." The Sandiganbayan is correct in its observation and ruling that the said law gratuitously gave away public funds to private individuals, and converted them exclusively into private property without any restriction as to its use that would reflect the avowed national policy or public purpose. Conversely, the private individuals to whom the UCPB shares were transferred are free to dispose of them by sale or any other mode from the moment of their acquisition. x x x P.D. No. 755, insofar as it grants PCA a veritable *carte blanche* to distribute to coconut farmers UCPB shares at the level it may determine, as well as the full disposition of such shares to private individuals in their private capacity without any

conditions or restrictions that would advance the law's national policy or public purpose, present a case of undue delegation of legislative power. As such, there is even no need to discuss the validity of the administrative orders and resolutions of PCA implementing P.D. No. 755. Water cannot rise higher than its source. Even so, PCA AO 1 and PCA Resolution No. 078-74, are in themselves, infirm under the undue delegation of legislative powers. x x x [T]he said PCA issuances did not take note of the national policy or public purpose for which the coconut levy funds were imposed under P.D. No. 755, *i.e.* the acceleration of the growth and development of the entire coconut industry, and the achievement of a vertical integration thereof that could make the coconut farmers participants in, and beneficiaries of, such growth and development. Instead, the PCA prioritized the coconut farmers themselves by fully disposing of the bank shares, totally disregarding the national policy for which the funds were created. This is clearly an undue delegation of legislative powers.

14. ID.; ID.; ID.; ARTICLE III, SECTION 2 OF P.D. NO. 961 AND ARTICLE III, SECTION 5 OF P.D. 1468 MUST BE STRUCK DOWN FOR BEING VIOLATIVE OF ARTICLE IX (D) (2) OF THE CONSTITUTION.— The Constitution, by express provision, vests the COA with the responsibility for State audit. As an independent supreme State auditor, its audit jurisdiction cannot be undermined by any law. Indeed, under Article IX (D), Section 3 of the 1987 Constitution, "[n]o law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or ***any investment of public funds***, from the jurisdiction of the Commission on Audit." Following the mandate of the COA and the parameters set forth by the foregoing provisions, it is clear that it has jurisdiction over the coconut levy funds, being special public funds. Conversely, the COA has the power, authority and duty to examine, audit and settle all accounts pertaining to the coconut levy funds and, consequently, to the UCPB shares purchased using the said funds. However, declaring the said funds as partaking the nature of private funds, ergo subject to private appropriation, removes them from the coffer of the public funds of the government, and consequently renders them impervious to the COA audit jurisdiction. Clearly, the pertinent provisions of P.D. Nos. 961 and 1468 divest the COA of its constitutionally-mandated function and undermine its constitutional

independence. The assailed purchase of UCPB shares of stocks using the coconut levy funds presents a classic example of an investment of public funds. The conversion of these special public funds into private funds by allowing private individuals to own them in their private capacities is something else. It effectively deprives the COA of its constitutionally-invested power to audit and settle such accounts. The conversion of the said shares purchased using special public funds into pure and exclusive private ownership has taken, or will completely take away the said funds from the boundaries with which the COA has jurisdiction. Obviously, the COA is without audit jurisdiction over the receipt or disbursement of private property. Accordingly, Article III, Section 5 of both P.D. Nos. 961 and 1468 must be struck down for being unconstitutional, be they assayed against Section 2(1), Article XII (D) of the 1973 Constitution or its counterpart provision in the 1987 Constitution.

15. ID.; ID.; ID.; THE COCONUT INDUSTRY INVESTMENT FUND (CIIF) COMPANIES AND THE CIIF BLOCK OF SMC SHARES ARE PUBLIC FUNDS/ASSETS.— [I]t is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property. In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of ₱1.656 Billion. Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds – funds, which

have been established to be public in character – it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.

16. ID.; ID.; ID.; THE OPERATIVE FACT DOCTRINE DOES NOT APPLY IN CASE AT BAR; REASONS.— In the case at bar, the Court rules that the dictates of justice, fairness and equity do not support the claim of the alleged farmer-owners that their ownership of the UCPB shares should be respected. Our reasons: 1. Said farmers or alleged claimants do not have any legal right to own the UCPB shares distributed to them. It was not successfully refuted that said claimants were issued receipts under R.A. 6260 for the payment of the levy that went into the Coconut Investment Fund (CIF) upon which shares in the "Coconut Investment Company" will be issued. The Court upholds the finding of the Sandiganbayan that said investment company is a different corporate entity from the United Coconut Planters Bank. x x x The payments therefore under R.A. 6260 are not the same as those under P.D. No. 276. The amounts of CIF contributions under R.A. 6260 which were collected starting 1971 are undeniably different from the CCSF levy under P.D. No. 276, which were collected starting 1973. The two (2) groups of claimants differ not only in identity but also in the levy paid, the amount of produce and the time the government started the collection. Thus, petitioners and the alleged farmers claiming them pursuant to R.A. 6260 do not have any legal basis to own the UCPB shares distributed to them, **assuming for a moment** the legal feasibility of transferring these shares paid from the R.A. 6260 levy to private individuals. 2. To grant all the UCPB shares to petitioners and its alleged members would be iniquitous and prejudicial to the remaining 4.6 million farmers who have not received any UCPB shares when in fact they also made payments to either the CIF or the CCSF but did not receive any receipt or who was not able to register their receipts or misplaced them. x x x 3. The Sandiganbayan made the finding that due to enormous operational problems and administrative complications, the intended beneficiaries of the UCPB shares were not able to receive the shares due to them. x x x Due to numerous flaws in the distribution of the UCPB shares by PCA, it would be best for the interest of all coconut farmers

to revert the ownership of the UCBP shares to the government for the entire coconut industry, which includes the farmers; 4. The Court also takes judicial cognizance of the fact that a number, if not all, of the coconut farmers who sold copra did not get the receipts for the payment of the coconut levy for the reason that the copra they produced were bought by traders or middlemen who in turn sold the same to the coconut mills. The reality on the ground is that it was these traders who got the receipts and the corresponding UCPB shares. In addition, some uninformed coconut farmers who actually got the COCOFUND receipts, not appreciating the importance and value of said receipts, have already sold said receipts to non-coconut farmers, thereby depriving them of the benefits under the coconut levy laws. Ergo, the coconut farmers are the ones who will not be benefited by the distribution of the UCPB shares contrary to the policy behind the coconut levy laws. The nullification of the distribution of the UCPB shares and their transfer to the government for the coconut industry will, therefore, ensure that the benefits to be deprived from the UCPB shares will actually accrue to the intended beneficiaries – the genuine coconut farmers. From the foregoing, it is highly inappropriate to apply the operative fact doctrine to the UCPB shares. Public funds, which were supposedly given utmost safeguard, were haphazardly distributed to private individuals based on statutory provisions that are found to be constitutionally infirm on not only one but on a variety of grounds. Worse still, the recipients of the UCPB shares may not actually be the intended beneficiaries of said benefit. Clearly, applying the Operative Fact Doctrine would not only be iniquitous but would also serve injustice to the Government, to the coconut industry, and to the people, who, whether willingly or unwillingly, contributed to the public funds, and therefore expect that their Government would take utmost care of them and that they would be used no less, than for public purpose.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for COCOFED, *et al.*

The Solicitor General for public respondent.

Cesar G. David and *Francisco B.A. Saavedra* for UCPB.

Efren Moncupa for intervenors.

Estelito P. Mendoza for Eduardo M. Cojuangco, Jr.
Gregorio S. Diño for Danilo Ursua.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Cast against a similar backdrop, these consolidated petitions for review under Rule 45 of the Rules of Court assail and seek to annul certain issuances of the Sandiganbayan in its **Civil Case No. 0033-A** entitled, "*Republic of the Philippines, Plaintiff, v. Eduardo M. Cojuangco, Jr., et al., Defendants, COCOFED, et al., BALLARES, et al., Class Action Movants,*" and **Civil Case No. 0033-F** entitled, "*Republic of the Philippines, Plaintiff, v. Eduardo M. Cojuangco, Jr., et al., Defendants.*" Civil Case (CC) Nos. 0033-A and 0033-F are the results of the splitting into eight (8) amended complaints of CC No. 0033 entitled, "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.,*" a suit for recovery of ill-gotten wealth commenced by the Presidential Commission on Good Government (PCGG), for the Republic of the Philippines (Republic), against Ferdinand E. Marcos and several individuals, among them, Ma. Clara Lobregat (Lobregat) and petitioner Danilo S. Ursua (Ursua). Lobregat and Ursua occupied, at one time or another, directorial or top management positions in either the Philippine Coconut Producers Federation, Inc. (COCOFED) or the Philippine Coconut Authority (PCA), or both.[1] Each of the eight (8) subdivided complaints correspondingly impleaded as defendants only the alleged participants in the transaction/s subject of the suit, or who are averred as owner/s of the assets involved.

The original complaint, CC No. 0033, as later amended to make the allegations more specific, is described in *Republic v.*

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[1] Per the Affidavit of Atty. Arturo Liquete, then PCA Board Secretary, Lobregat was a member of the PCA Board for the most part from 1970 to 1985; *rollo* (G.R. No. 180705), p. 804.

Sandiganbayan[2] (one of several ill-gotten suits of the same title disposed of by the Court) as revolving around the provisional take over by the PCGG of COCOFED, Cocomark, and Coconut Investment Company and their assets and the sequestration of shares of stock in United Coconut Planters Bank (UCPB) allegedly owned by, among others, over a million coconut farmers, and the six (6) Coconut Industry Investment Fund (CIIF) corporations,[3] referred to in some pleadings as CIIF oil mills and the fourteen (14) CIIF holding companies[4] (hereafter collectively called "CIIF companies"), so-called for having been either organized, acquired and/or funded as UCPB subsidiaries with the use of the CIIF levy. The basic complaint also contained allegations about the alleged misuse of the coconut levy funds to buy out the majority of the outstanding shares of stock of San Miguel Corporation (SMC).

More particularly, in **G.R. Nos. 177857-58**, class action petitioners COCOFED and a group of purported coconut farmers and COCOFED members (hereinafter "COCOFED, *et al*." collectively)[5] seek the reversal of the following judgments and resolutions of the anti-graft court insofar as these issuances are adverse to their interests:

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[2] G.R. No. 96073, January 23, 1995, 240 SCRA 376.

[3] Southern Luzon Coconut Oil Mills, Cagayan de Oro Oil Co. Inc., Iligan Coconut Industries, San Pablo Manufacturing Corp, Granexport Manufacturing Corp., & Legaspi Oil Co., Inc.

[4] Composed of Soriano Shares, ASC Investors, ARC Investors, Roxas Shares, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and First Meridian Development, all names ending with the suffix "Corp." or "Inc."

[5] Aside from being coconut farmers, petitioners del Rosario and Espina represent themselves as Directors of COCOFED and the ultimate beneficial owners of CIIF companies.

1) Partial Summary Judgment[6] dated **July 11, 2003**, as reiterated in a resolution[7] of December 28, 2004, denying COCOFED's motion for reconsideration, and the **May 11, 2007** resolution denying COCOFED's motion to set case for trial and declaring the partial summary judgment final and appealable,[8] all issued in **Civil Case No. 0033-A**; and

2) Partial Summary Judgment[9] dated **May 7, 2004**, as also reiterated in a resolution[10] of December 28, 2004, and the **May 11, 2007** resolution[11] issued in **Civil Case No. 0033-F.** The December 28, 2004 resolution denied COCOFED's Class Action Omnibus Motion therein praying to dismiss CC Case No. 0033-F on jurisdictional ground and alternatively, reconsideration and to set case for trial. The May 11, 2007 resolution declared the judgment final and appealable.

For convenience, the partial summary judgment (PSJ) rendered on July 11, 2003 in CC No. 0033-A shall hereinafter be referred to as **PSJ-A**, and that issued on May 7, 2004 in CC 0033-F, as **PSJ-F**. PSJ-A and PSJ-F basically granted the Republic's separate motions for summary judgment.

On June 5, 2007, the court *a quo* issued a Resolution in CC No. 0033-A, which modified PSJ-A by ruling that no further trial is needed on the issue of ownership of the subject properties. Likewise, on May 11, 2007, the said court issued a Resolution in CC No. 0033-F amending PSJ-F in like manner.

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[6] Penned by Associate Justice Teresita Leonardo-De Castro (now a member of this Court), concurred in by Associate Justices Diosdado M. Peralta (now also a member of this Court) and Francisco H. Villaruz, Jr.; *rollo* (G.R. Nos. 177857-58), pp. 205-287.

[7] *Id.* at 289-327.

[8] *Id.* at 329-39.

[9] *Id.* at 341-405.

[10] *Id.* at 407-25.

[11] *Id.* at 427-42.

On the other hand, petitioner Ursua, in **G.R. No. 178193**, limits his petition for review on PSJ-A to the extent that it negates his claims over shares of stock in UCPB.

Tañada, *et al*. have intervened[12] in G.R. Nos. 177857-58 in support of the government's case.

Another petition was filed and docketed as **G.R. No. 180705**. It involves questions relating to Eduardo M. Cojuangco, Jr.'s (Cojuangco, Jr.'s) ownership of the UCPB shares, which he allegedly received as option shares, and which is one of the issues raised in PSJ-A.[13] G.R. No. 180705 was consolidated with G.R. Nos. 177857-58 and 178193. On September 28, 2011, respondent Republic filed a Motion to Resolve G.R. Nos. 177857-58 and 178193.[14] On January 17, 2012, the Court issued a Resolution deconsolidating G.R. Nos. 177857-58 and 178193 from G.R. No. 180705. This Decision is therefore separate and distinct from the decision to be rendered in G.R. No. 180705.

The Facts

The relevant facts, as culled from the records and as gathered from Decisions of the Court in a batch of coco levy and illegal wealth cases, are:

In 1971, **Republic Act No. (R.A.) 6260** was enacted creating the Coconut Investment Company (CIC) to administer the **Coconut Investment Fund** (CIF), which, under Section 8[15]

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[12] Dated September 2, 2009, *id.* at 2127-49.

[13] *See* PSJ-A.

[14] On July 19, 2011, petitioner Eduardo M. Cojuangco, Jr. also filed a Motion to Deconsolidate G.R. No. 180705 from G.R. Nos. 177857-58 and 178193.

[15] **Section 8.** *The Coconut Investment Fund.* There shall be levied on the coconut farmer a sum … which shall be converted into shares of stock of the [CIC] upon its incorporation…. For every fifty-five centavos (₱0.55) so collected, fifty centavos (₱0.50) shall be set aside to constitute a special fund, to be known as the **Coconut Investment Fund**, which shall be used exclusively to pay the subscription by the Philippine Government for and in behalf of the coconut farmers to the capital stock of said Company:

thereof, was to be sourced from a PhP 0.55 levy on the sale of every 100 kg. of copra. Of the PhP 0.55 levy of which the copra seller was, or ought to be, issued **COCOFUND** receipts, PhP 0.02 was placed at the disposition of COCOFED, the national association of coconut producers declared by the Philippine Coconut Administration (PHILCOA, now PCA[16]) as having the largest membership.[17]

The declaration of martial law in September 1972 saw the issuance of several presidential decrees ("P.Ds.") purportedly designed to improve the coconut industry through the collection and use of the coconut levy fund. While coming generally from impositions on the first sale of copra, the coconut levy fund came under various names, the different establishing laws and the stated ostensible purpose for the exaction explaining the differing denominations. Charged with the duty of collecting and administering the Fund was PCA.[18] Like COCOFED with which it had a legal linkage,[19] the PCA, by statutory provisions scattered in different coco levy decrees, had its share of the coco levy.[20]

Provided, …. Provided, further, That the … (PHILCOA) shall, in consultation with [COCOFED] … prescribe and promulgate the necessary rules, regulations and procedures for the collection of such levy and issuance of the corresponding receipts…. (Emphasis added.)

[16] *COCOFED v. PCGG*, G.R. No. 75713, October 2, 1989, 178 SCRA 236.

[17] R.A. 6260, Sec. 9.

[18] *Republic v. Sandiganbayan,* G.R. No. 118661, January 22, 2007; not to be confused with an earlier cited case of the same title.

[19] Per P.D. No. 623, 3 board seats of the PCA 7-man board were reserved to those recommended by COCOFED.

[20] For example: Article III, Sec. 2(c) of the Coconut Industry Code (P.D. No. 961) allows the use of the CCSF levy to finance the development and operating expenses of COCOFED inclusive of its projects; Art. II, Sec. 3(k) of the same Code empowers the PCA to collect a fee from desiccating factory to defray its operating expenses.

The following were some of the issuances on the coco levy, its collection and utilization, how the proceeds of the levy will be managed and by whom, and the purpose it was supposed to serve:

1. **P.D. No. 276** established the Coconut Consumers Stabilization Fund (**CCSF**) and declared the proceeds of the CCSF levy as trust fund,[21] to be utilized to subsidize the sale of coconut-based products, thus stabilizing the price of edible oil.[22]

2. **P.D. No. 582** created the Coconut Industry Development Fund (**CIDF**) to finance the operation of a hybrid coconut seed farm.

3. Then came **P.D. No. 755** providing under its Section 1 the following:

> It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at a preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the "Agreement for the Acquisition of a Commercial Bank for the benefit of Coconut Farmers" executed by the [PCA]…; and that the [PCA] is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers….

Towards achieving the policy thus declared, P.D. No. 755, under its **Section 2,** authorized PCA to utilize the CCSF and the CIDF collections to acquire a commercial bank and **deposit the CCSF levy collections in said bank, interest free,** the deposit withdrawable only when the bank has attained a certain level of sufficiency in its equity capital. The same section also decreed that all levies PCA is authorized to collect shall not be considered as special and/or fiduciary funds or form part of the general

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[21] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[22] P.D. No. 276, Sec. 1(b).

funds of the government within the contemplation of P.D. No. 711.[23]

4. **P.D. No. 961** codified the various laws relating to the development of coconut/palm oil industries.

5. The relevant provisions of P.D. No. 961, as later amended by **P.D. No. 1468** (*Revised Coconut Industry Code*), read:

ARTICLE III
Levies

Section 1. *Coconut Consumers Stabilization Fund Levy*. — The [PCA] is hereby empowered to impose and collect … the Coconut Consumers Stabilization Fund Levy ….

. . . . . .

Section 5. *Exemption*. — The **[CCSF]** and the **[CIDF]** as well as all disbursements as herein authorized, shall **not** be construed … as **special and/or fiduciary funds,** or as **part of the general funds** of the national government within the contemplation of PD 711; … **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers** shall be **owned by them in their private capacities**: …. (Emphasis supplied.)

6. **Letter of Instructions No**. (**LOI**) **926,** Series of 1979, made reference to the creation, out of other coco levy funds, of the Coconut Industry Investment Fund (**CIIF**) in P.D. No. 1468 and entrusted a portion of the CIIF levy to UCPB for investment, on behalf of coconut farmers, in oil mills and other private corporations, with the following equity ownership structure:[24]

Section 2. Organization of the Cooperative Endeavor. – The [UCPB], in its capacity as the investment arm of the coconut farmers thru the [CIIF] … is hereby directed to invest, on behalf of the

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[23] P.D. No. 711 is entitled: "Abolishing all Existing Special and Fiduciary Funds and Transferring to the General Fund the Operations and Funding of all Special and Fiduciary Funds."

[24] *Vital Legal Documents*, Vol. 69, pp. 90-95.

coconut farmers, such portion of the CIIF … in private corporations … under the following guidelines:

a) The coconut farmers shall own or control at least … (50%) of the outstanding voting capital stock of the private corporation [acquired] thru the CIIF and/or corporation owned or controlled by the farmers thru the CIIF …. (Words in bracket added.)

Through the years, a part of the coconut levy funds went directly or indirectly to various projects and/or was converted into different assets or investments.[25] Of particular relevance to this case was their use to acquire the **First United Bank** (FUB), later renamed **UCPB**, and the acquisition by UCPB, through the CIIF companies, of a large block of SMC shares.[26]

Apropos the intended acquisition of a commercial bank for the purpose stated earlier, it would appear that FUB was the bank of choice which the Pedro Cojuangco group (collectively, "Pedro Cojuangco") had control of. The plan, then, was for PCA to buy all of Pedro Cojuangco's shares in FUB. However, as later events unfolded, a simple direct sale from the seller (Pedro) to PCA did not ensue as it was made to appear that Cojuangco, Jr. had the exclusive option to acquire the former's FUB controlling interests. Emerging from this elaborate, circuitous arrangement were two deeds; the first, simply denominated as *Agreement*,[27] dated May 1975,[28] entered into by and between Cojuangco, Jr., for and in his behalf and in behalf of "*certain other buyers*," and Pedro Cojuangco, purportedly accorded Cojuangco, Jr. the option to buy **72.2%** of FUB's outstanding capital stock, or 137,866 shares (the "option shares," for brevity), at PhP 200 per share.

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[25] *Republic v. Sandiganbayan,* G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[26] A total of 33.1 million shares; *Republic v. Sandiganbayan*, *supra*.

[27] Annex "G" to Petition in G.R. No. 180705; *rollo,* pp. 459-463.

[28] No particular day was indicated, although the special power of attorney granted to Atty. Edgardo Angara by Cojuangco for the former to sign the Agreement was dated May 25, 1975.

The second but related contract, dated May 25, 1975, was denominated as *Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines*.[29] It had PCA,[30] for itself and for the benefit of the coconut farmers, purchase from Cojuangco, Jr. the shares of stock subject of the First Agreement for PhP 200 per share. As additional consideration for PCA's buy-out of what Cojuangco, Jr. would later claim to be his exclusive and personal option,[31] it was stipulated that, from PCA, Cojuangco, Jr. shall receive equity in FUB amounting to 10%, or **7.22%,** of the 72.2%, or fully paid shares.

Apart from the aforementioned 72.2%, PCA purchased from other FUB shareholders 6,534 shares.

While the 64.98% portion of the option shares (72.2% – 7.22% = 64.98%) ostensibly pertained to the farmers, the corresponding stock certificates supposedly representing the farmers' equity were in the name of and delivered to PCA.[32] There were, however, shares forming part of the aforesaid 64.98% portion, which ended up in the hands of non-farmers.[33] The remaining 27.8% of the FUB capital stock were not covered by any of the agreements.

Under paragraph 8 of the second agreement, PCA agreed to expeditiously distribute the FUB shares purchased to such "*coconut farmers holding registered COCOFUND receipts*" on equitable basis.

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[29] Annex "I" to Petition in G.R. No. 180705, *rollo*, pp. 466-76.

[30] Represented by Lobregat.

[31] Albeit not mentioned in the first contract document, the notion of an "option" was adverted to in the SPA in favor of Mr. Angara and in the second contract document between PCA and Cojuangco.

[32] On May 30, 1975, FUB issued Stock Certificate Nos. 745 and 746 covering 124,080 and 5,880 shares, respectively, in the name of "[PCA] for the benefit of the coconut farmers of the Philippines"; *Republic v. Sandiganbayan, supra* note 25.

[33] PSJ-A, p. 4.

As found by the Sandiganbayan, the PCA appropriated, out of its own fund, an amount for the purchase of the said 72.2% equity, **albeit it would later reimburse itself from the coconut levy fund**.[34]

As of June 30, 1975, the list of FUB stockholders shows PCA with 129,955 shares.[35]

Shortly after the execution of the PCA – Cojuangco, Jr. Agreement, President Marcos issued, on July 29, 1975, P.D. No. 755 directing, as earlier narrated, PCA to use the CCSF and CIDF to acquire a commercial bank to provide coco farmers with "*readily available credit facilities at preferential rate*," and PCA "*to distribute, for free*," the bank shares to coconut farmers.

Then came the 1986 EDSA event. One of the priorities of then President Corazon C. Aquino's revolutionary government was the recovery of ill-gotten wealth reportedly amassed by the Marcos family and close relatives, their nominees and associates. Apropos thereto, she issued Executive Order Nos. (E.Os.) 1, 2 and 14, as amended by E.O. 14-A, all Series of 1986. E.O. 1 created the PCGG and provided it with the tools and processes it may avail of in the recovery efforts;[36] E.O. No. 2 asserted that the ill-gotten assets and properties come in the form of shares of stocks, *etc.*; while E.O. No. 14 conferred on the Sandiganbayan exclusive and original jurisdiction over ill-gotten wealth cases, with the proviso that "*technical rules of procedure and evidence shall not be applied strictly*" to the civil cases filed under the E.O. Pursuant to these issuances, the PCGG issued numerous orders of sequestration, among which were those handed out, as earlier mentioned, against shares of

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[34] *Republic v. COCOFED,* G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 477

[35] *Republic v. Sandiganbayan,* G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[36] The validity and propriety of these processes were sustained by the Court in *BASECO v. PCGG,* No. 75885, May 27, 1987, 150 SCRA 181.

stock in UCPB purportedly owned by or registered in the names of (a) more than a million coconut farmers and (b) the CIIF companies, including the SMC shares held by the CIIF companies. On July 31, 1987, the PCGG instituted before the Sandiganbayan a recovery suit docketed thereat as CC No. 0033.

After the filing and subsequent amendments of the complaint in CC 0033, Lobregat, COCOFED, *et al.*, and Ballares, *et al.*, purportedly representing over a million coconut farmers, sought and were allowed to intervene.[37] Meanwhile, the following incidents/events transpired:

1. On the postulate, *inter alia*, that its coco-farmer members own at least 51% of the outstanding capital stock of UCPB, the CIIF companies, *etc.*, COCOFED, *et al.*, on November 29, 1989, filed *Class Action Omnibus Motion* praying for the lifting of the orders of sequestration referred to above and for a chance to present evidence to prove the coconut farmers' ownership of the UCPB and CIIF shares. The plea to present evidence was denied;

2. Later, the Republic moved for and secured approval of a motion for separate trial which paved the way for the subdivision of the causes of action in CC 0033, each detailing how the assets subject thereof were acquired and the key roles the principal played;

3. Civil Case 0033, pursuant to an order of the Sandiganbayan would be subdivided into eight complaints, docketed as CC 0033-A to CC 0033-H.[38]

Lobregat, Ballares, *et al.*, COCOFED, *et al.*, on the strength of their authority to intervene in CC 0033, continued to participate in CC 0033-A where one of the issues raised was the misuse of the names/identities of the over a million coconut farmers;[39]

4. On February 23, 2001, Lobregat, COCOFED, Ballares, *et al.*, filed a *Class Action Omnibus Motion* to enjoin the PCGG from voting the sequestered UCPB shares and the SMC shares registered in the

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[37] Per the Sandiganbayan's Resolution of October 1, 1991.

[38] The Complaints in CC 0033-A and CC 0033-F contain common allegations, as shall be detailed later.

[39] *Rollo* (G.R. Nos. 177857-58), p. 216.

names of the CIIF companies. The Sandiganbayan, by Order of February 28, 2001, granted the motion, sending the **Republic to come to this Court on *certiorari*, docketed as G.R. Nos. 147062-64, to annul said order; and**

5. By Decision of **December 14, 2001**, in **G.R. Nos. 147062-64** (*Republic v. COCOFED*),[40] the Court declared the coco levy funds as *prima facie* public funds. And purchased as the sequestered UCPB shares were by such funds, beneficial ownership thereon and the corollary voting rights *prima facie* pertain, according to the Court, to the government.

The instant proceedings revolve around CC 0033-A (*Re: Anomalous Purchase and Use of [FUB] now [UCPB]*)[41] and CC 0033-F (*Re: Acquisition of San Miguel Corporation Shares of Stock*), the first case pivoting mainly on the series of transactions culminating in the alleged anomalous purchase of 72.2% of FUB's outstanding capital stock and the transfer by PCA of a portion thereof to private individuals. COCOFED, *et al*. and Ballares, *et al*. participated in CC No. 0033-A as class action movants.

Petitioners COCOFED, *et al*.[42] and Ursua[43] narrate in their petitions how the farmers' UCPB shares in question ended up in the possession of those as hereunder indicated:

1) The farmers' UCPB shares were originally registered in the name of PCA for the eventual free distribution thereof to and registration in the individual names of the coconut farmers in accordance with PD 755 and the IRR that PCA shall issue;

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[40] Reported in 372 SCRA 2001.

[41] Named as defendants were Cojuangco, Ferdinand and Imelda Marcos, Lobregat, Enrile, Urusa, Jose Eleazar, Jr. and Herminigildo Zayco; *rollo* (G.R. No. 180705), pp. 481-00.

[42] Class Action Petition for Review, pp. 38-41; *Rollo* (G.R. Nos. 177857-58), pp. 51-54.

[43] Ursua's Petition for Review, pp. 11-14; *Rollo* (G.R. No. 178193), pp. 26-29.

2) Pursuant to the stock distribution procedures set out in PCA Administrative Order No. 1, s. of 1975, (PCA AO 1),[44] farmers who had paid to the CIF under RA 6260 and registered their COCOFUND (CIF) receipts with PCA were given their corresponding UCPB stock certificates. As of June 1976, the cut-off date for the extended registration, only 16 million worth of COCOFUND receipts were registered, leaving over 50 million shares undistributed;

3) PCA would later pass Res. 074-78, s. of 1978, to allocate the 50 million undistributed shares to (a) farmers who were already recipients thereof and (b) qualified farmers to be identified by COCOFED after a national census.

4) As of May 1981, some 15.6 million shares were still held by and registered in the name of COCOFED "*in behalf of coconut farmers*" for distribution immediately after the completion of the national census, to all those determined by the PCA to be *bonafide* coconut farmers, but who have not received the bank shares;[45] and

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[44] In its pertinent parts, PCA A.O. No. 1 reads:

Section 1. Eligible Coconut Farmers. – All coconut farmers … who have paid to the [CIF] and registered their COCOFUND receipts … and registered the same with the [PCA] … shall be entitled to a proportionate share of the equity in the Bank, subject to the terms and conditions herein provided.

. . . . . .

SECTION 3. Eligible COCOFUND Receipts. – All COCOFUND receipts issued by the PCA from the effectivity of R.A.6260 up to June 30, 1975 shall be considered eligible for registration by the coconut farmers for purposes of qualifying them to participate in the equity in the Bank.

SECTION 4. Registered COCOFUND Receipts. – All COCOFUND receipts eligible under Section 3 hereof and which are registered … on or before December 31, 1975 shall be qualified for equity participation in the Bank.

. . . . . .

SECTION 7. Additional Period of Registration. – To enable all qualified farmers to participate in the sharing of the equity in the Bank, the period of registration … shall be extended up to March 31, 1976, thereafter any unregistered COCOFUND receipts can no longer qualify for registration for purposes of these rules and regulations.

[45] COCOFED, *et al.*'s Petition, *rollo* (G.R. Nos. 177857-58), pp. 52-53.

5) Prior to June 1986, a large number of coconut farmers opted to sell all/part of their UCPB shares below their par value. This prompted the UCPB Board to authorize the CIIF companies to buy these shares. **Some 40.34 million common voting shares of UCPB ended up with these CIIF companies** albeit initially registered in the name of UCPB.

On the other hand, the subject of CC 0033-F are two (2) blocks of SMC shares of stock, the first referring to shares purchased through and registered in the name of the CIIF holding companies. The purported ownership of the second block of SMC shares is for the nonce irrelevant to the disposition of this case. During the time material, the CIIF block of SMC shares represented 27% of the outstanding capital stock of SMC.

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After the pre-trial, but before the Republic, as plaintiff *a quo*, could present, as it committed to, a list of UCPB stockholders as of February 25, 1986,[46] among other evidence, COCOFED, *et al.*, on the premise that the sequestered farmers' UCPB shares are not unlawfully acquired assets, filed in April 2001 their *Class Action Motion for a Separate Summary Judgment.* In it, they prayed for a judgment dismissing the complaint in CC 0033-A, for the reason that the over than a million unimpleaded coconut farmers own the UCPB shares. In March 2002, they filed *Class Action Motion for Partial Separate Trial* on the issue of whether said UCPB shares have legitimately become the private property of the million coconut farmers.

Correlatively, the Republic, on the strength of the December 14, 2001 ruling in *Republic v. COCOFED*[47] and on the argument, among others, that the claim of COCOFED and Ballares, *et al*. over the subject UCPB shares is based solely on the supposed COCOFUND receipts issued for payment of the R.A. 6260 CIF

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[46] The list was not adduced; in March 2001, the Republic filed a *Motion Ad Cautelam for Leave to Present Additional Evidence* which COCOFED opposed.

[47] *Supra* note 34.

levy, filed a *Motion for Partial Summary Judgment* [RE: COCOFED, *et al*. and Ballares, *et al*.] dated April 22, 2002, praying that a summary judgment be rendered declaring:

a. That Section 2 of [PD] 755, Section 5, Article III of P.D. 961 and Section 5, Article III of P.D. No. 1468 are unconstitutional;

b. That … (CIF) payments under … (R.A.) No. 6260 are not valid and legal bases for ownership claims over UCPB shares; and

c. That COCOFED, *et al.*, and Ballares, *et al.* have not legally and validly obtained title over the subject UCPB shares.

After an exchange of pleadings, the Republic filed its sur-rejoinder praying that it be conclusively held to be the true and absolute owner of the coconut levy funds and the UCPB shares acquired therefrom.[48]

A joint hearing on the separate motions for summary judgment to determine what material facts exist with or without controversy followed.[49] By Order[50] of March 11, 2003, the Sandiganbayan detailed, based on this Court's ruling in related cases, the parties' manifestations made in open court and the pleadings and evidence on record, the facts it found to be without substantial controversy, together with the admissions and/or extent of the admission made by the parties respecting relevant facts, as follows:

As culled from the exhaustive discussions and manifestations of the parties in open court of their respective pleadings and evidence on record, the facts which exist without any substantial controversy are set forth hereunder, together with the admissions and/or the extent or scope of the admissions made by the parties relating to the relevant facts:

1. The late President Ferdinand E. Marcos was President … for two terms . . . and, during the second term, … declared Martial Law through Proclamation No. 1081 dated September 21, 1972.

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[48] *Rollo* (G.R. Nos. 177857-58), pp. 830-871.

[49] *See* PSJ-A, p. 2.

[50] *Rollo* (G.R. No.180705), pp. 956-961.

2. On January 17, 1973, [he] issued Proclamation No. 1102 announcing the ratification of the 1973 Constitution.

3. From January 17, 1973 to April 7, 1981, [he] . . . exercised the powers and prerogative of President under the 1935 Constitution and the powers and prerogative of President . . . the 1973 Constitution.

[He] …promulgated various [P.D.s], among which were P.D. No. 232, P.D. No. 276, P.D. No. 414, P.D. No. 755, P.D. No. 961 and P.D. No. 1468.

4. On April 17, 1981, amendments to the 1973 Constitution were effected and, on June 30, 1981, [he], after being elected President, "reassumed the title and exercised the powers of the President until 25 February 1986."

5. Defendants Maria Clara Lobregat and Jose R. Eleazar, Jr. were [PCA] Directors … during the period 1970 to 1986….

6. Plaintiff admits the existence of the following agreements which are attached as Annexes "A" and "B" to the Opposition dated October 10, 2002 of defendant Eduardo M. Cojuangco, Jr. to the above-cited Motion for Partial Summary Judgment:

a) "Agreement made and entered into this _____ day of May, 1975 at Makati, Rizal, Philippines, by and between:

PEDRO COJUANGCO, Filipino, x x x, for and in his own behalf and in behalf of certain other stockholders of First United Bank listed in Annex "A" attached hereto (hereinafter collectively called the SELLERS);

– and –

EDUARDO COJUANGCO, JR., Filipino, x x x, represented in this act by his duly authorized attorney-in-fact, EDGARDO J. ANGARA, for and in his own behalf and in behalf of certain other buyers, (hereinafter collectively called the BUYERS)";

WITNESSETH: That

WHEREAS, the SELLERS own of record and beneficially a total of 137,866 shares of stock, with a par value of ₱100.00 each, of the common stock of the First United Bank (the "Bank"), a commercial banking corporation existing under the laws of the Philippines;

WHEREAS, the BUYERS desire to purchase, and the SELLERS are willing to sell, the aforementioned shares of stock totaling 137,866 shares (hereinafter called the "Contract Shares") owned by the SELLERS due to their special relationship to EDUARDO COJUANGCO, JR.;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Sale and Purchase of Contract Shares

Subject to the terms and conditions of this Agreement, the SELLERS hereby sell, assign, transfer and convey unto the BUYERS, and the BUYERS hereby purchase and acquire, the Contract Shares free and clear of all liens and encumbrances thereon.

2. Contract Price

The purchase price per share of the Contract Shares payable by the BUYERS is ₱200.00 or an aggregate price of ₱27,573,200.00 (the "Contract Price").

3. Delivery of, and payment for, stock certificates

Upon the execution of this Agreement, (i) the SELLERS shall deliver to the BUYERS the stock certificates representing the Contract Shares, free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties, duly endorsed in blank or with stock powers sufficient to transfer the shares to bearer; and (ii) BUYERS shall deliver to the SELLERS ₱27,511,295.50 representing the Contract Price less the amount of stock transfer taxes payable by the SELLERS, which the BUYERS undertake to remit to the appropriate authorities. (Emphasis added.)

4. Representation and Warranties of Sellers

The SELLERS respectively and independently of each other represent and warrant that:

(a) The SELLERS are the lawful owners of, with good marketable title to, the Contract Shares and that (i) the certificates to be delivered pursuant thereto have been validly issued and are fully paid and no-assessable; (ii) the Contract

Shares are free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties…

This representation shall survive the execution and delivery of this Agreement and the consummation or transfer hereby contemplated.

(b) The execution, delivery and performance of this Agreement by the SELLERS does not conflict with or constitute any breach of any provision in any agreement to which they are a party or by which they may be bound.

(c) They have complied with the condition set forth in Article X of the Amended Articles of Incorporation of the Bank.

5. Representation of BUYERS ….

6. Implementation

The parties hereto hereby agree to execute or cause to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

7. Notices ….

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands at the place and on the date first above written.

PEDRO COJUANGCO	EDUARDO COJUANGCO, JR.
(on his own behalf and in behalf of the other Sellers listed in Annex "A" hereof)	(on his own behalf and in behalf of the other Buyers)
(BUYERS)	
(SELLERS)	

By:

EDGARDO J. ANGARA
Attorney-in-Fact

. . . . . .

b) "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines,

made and entered into this 25th day of May 1975 at Makati, Rizal, Philippines, by and between:

EDUARDO M. COJUANGCO, JR., x x x, hereinafter referred to as the SELLER;

– and –

PHILIPPINE COCONUT AUTHORITY, a public corporation created by Presidential Decree No. 232, as amended, for itself and for the benefit of the coconut farmers of the Philippines, (hereinafter called the BUYER)"

WITNESSETH: That

WHEREAS, on May 17, 1975, the Philippine Coconut Producers Federation ("PCPF"), through its Board of Directors, expressed the desire of the coconut farmers to own a commercial bank which will be an effective instrument to solve the perennial credit problems and, for that purpose, passed a resolution requesting the PCA to negotiate with the SELLER for the transfer to the coconut farmers of the SELLER's option to buy the First United Bank (the "Bank") under such terms and conditions as BUYER may deem to be in the best interest of the coconut farmers and instructed Mrs. Maria Clara Lobregat to convey such request to the BUYER;

WHEREAS, the PCPF further instructed Mrs. Maria Clara Lobregat to make representations with the BUYER to utilize its funds to finance the purchase of the Bank;

WHEREAS, the SELLER has the exclusive and personal option to buy 144,400 shares (the "Option Shares") of the Bank, constituting 72.2% of the present outstanding shares of stock of the Bank, at the price of ₱200.00 per share, which option only the SELLER can validly exercise;

WHEREAS, in response to the representations made by the coconut farmers, the BUYER has requested the SELLER to exercise his personal option for the benefit of the coconut farmers;

WHEREAS, the SELLER is willing to transfer the Option Shares to the BUYER at a price equal to his option price of ₱200 per share;

WHEREAS, recognizing that ownership by the coconut farmers of a commercial bank is a permanent solution to their perennial credit problems, that it will accelerate the growth and development of the coconut industry and that the policy of the state which the BUYER is required to implement is to achieve vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of, the request of PCPF that it acquire a commercial bank to be owned by the coconut farmers and, appropriated, for that purpose, the sum of ₱150 Million to enable the farmers to buy the Bank and capitalize the Bank to such an extension as to be in a position to adopt a credit policy for the coconut farmers at preferential rates;

WHEREAS, x x x the BUYER is willing to subscribe to additional shares ("Subscribed Shares") and place the Bank in a more favorable financial position to extend loans and credit facilities to coconut farmers at preferential rates;

NOW, THEREFORE, for and in consideration of the foregoing premises and the other terms and conditions hereinafter contained, the parties hereby declare and affirm that their principal contractual intent is (1) to ensure that the coconut farmers own at least 60% of the outstanding capital stock of the Bank; and (2) that the SELLER shall receive compensation for exercising his personal and exclusive option to acquire the Option Shares, for transferring such shares to the coconut farmers at the option price of ₱200 per share, and for performing the management services required of him hereunder.

1. To ensure that the transfer to the coconut farmers of the Option Shares is effected with the least possible delay and to provide for the faithful performance of the obligations of the parties hereunder, the parties hereby appoint the Philippine National Bank as their escrow agent (the "Escrow Agent").

Upon execution of this Agreement, the BUYER shall deposit with the Escrow Agent such amount as may be necessary to implement the terms of this Agreement….

2. As promptly as practicable after execution of this Agreement, the SELLER shall exercise his option to acquire

the Option Share and SELLER shall immediately thereafter deliver and turn over to the Escrow Agent such stock certificates as are herein provided to be received from the existing stockholders of the Bank by virtue of the exercise on the aforementioned option….

3. To ensure the stability of the Bank and continuity of management and credit policies to be adopted for the benefit of the coconut farmers, the parties undertake to cause the stockholders and the Board of Directors of the Bank to authorize and approve a management contract between the Bank and the SELLER under the following terms:

(a) The management contract shall be for a period of five (5) years, renewable for another five (5) years by mutual agreement of the SELLER and the Bank;

(b) The SELLER shall be elected President and shall hold office at the pleasure of the Board of Directors. While serving in such capacity, he shall be entitled to such salaries and emoluments as the Board of Directors may determine;

(c) The SELLER shall recruit and develop a professional management team to manage and operate the Bank under the control and supervision of the Board of Directors of the Bank;

(d) The BUYER undertakes to cause three (3) persons designated by the SELLER to be elected to the Board of Directors of the Bank;

(e) The SELLER shall receive no compensation for managing the Bank, other than such salaries or emoluments to which he may be entitled by virtue of the discharge of his function and duties as President, provided … and

(f) The management contract may be assigned to a management company owned and controlled by the SELLER.

4. As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing

the management services required of him, SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below;

5. In order to comply with the Central Bank program for increased capitalization of banks and to ensure that the Bank will be in a more favorable financial position to attain its objective to extend to the coconut farmers loans and credit facilities, the BUYER undertakes to subscribe to shares with an aggregate par value of ₱80,864,000 (the "Subscribed Shares"). The obligation of the BUYER with respect to the Subscribed Shares shall be as follows:

(a) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱15,884,000 from the present authorized but unissued shares of the Bank; and

(b) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱64,980,000 from the increased capital stock of the Bank, which subscriptions shall be deemed made upon the approval by the stockholders of the increase of the authorized capital stock of the Bank from ₱50 Million to ₱140 Million.

The parties undertake to declare stock dividends of ₱8 Million out of the present authorized but unissued capital stock of ₱30 Million.

6. To carry into effect the agreement of the parties that the SELLER shall receive as his compensation 95,304 shares:

(a) ….

(b) With respect to the Subscribed Shares, the BUYER undertakes, in order to prevent the dilution of SELLER's equity position, that it shall cede over to the SELLER 64,980 fully-paid shares out of the Subscribed Shares. Such undertaking shall be complied with in the following manner:

….

7. The parties further undertake that the Board of Directors and management of the Bank shall establish and

implement a loan policy for the Bank of making available for loans at preferential rates of interest to the coconut farmers ….

8. The BUYER shall expeditiously distribute from time to time the shares of the Bank, that shall be held by it for the benefit of the coconut farmers of the Philippines under the provisions of this Agreement, to such, coconut farmers holding registered COCOFUND receipts on such equitable basis as may be determine by the BUYER in its sound discretion.

9. ….

10. To ensure that not only existing but future coconut farmers shall be participants in and beneficiaries of the credit policies, and shall be entitled to the benefit of loans and credit facilities to be extended by the Bank to coconut farmers at preferential rates, the shares held by the coconut farmers shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof.

11. After the parties shall have acquired two-thirds (2/3) of the outstanding shares of the Bank, the parties shall call a special stockholders' meeting of the Bank:

(a) To classify the present authorized capital stock of ₱50,000,000 divided into 500,000 shares, with a par value of ₱100.00 per share into: 361,000 Class A shares, with an aggregate par value of ₱36,100,000 and 139,000 Class B shares, with an aggregate par value of ₱13,900,000. All of the Option Shares constituting 72.2% of the outstanding shares, shall be classified as Class A shares and the balance of the outstanding shares, constituting 27.8% of the outstanding shares, as Class B shares;

(b) To amend the articles of incorporation of the Bank to effect the following changes:

(i) change of corporate name to First United Coconut Bank;

(ii) replace the present provision restricting the transferability of the shares with a limitation on ownership by any individual or entity to not more than 10% of the outstanding shares of the Bank;

(iii) provide that the holders of Class A shares shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof; and

(iv) provide that the holders of Class B shares shall be absolutely entitled to pre-emptive rights, with respect to the unissued portion of Class B shares comprising part of the authorized capital stock or any increase thereof, to subscribe to Class B shares in proportion t the subscriptions of Class A shares, and to pay for their subscriptions to Class B shares within a period of five (5) years from the call of the Board of Directors.

(c) To increase the authorized capital stock of the Bank from ₱50 Million to ₱140 Million….;

(d) To declare a stock dividend of ₱8 Million payable to the SELLER, the BUYER and other stockholders of the Bank out of the present authorized but unissued capital stock of ₱30 Million;

(e) To amend the by-laws of the Bank accordingly; and

(f) To authorize and approve the management contract provided in paragraph 2 above.

The parties agree that they shall vote their shares and take all the necessary corporate action in order to carry into effect the foregoing provisions of this paragraph 11 ….

12. It is the contemplation of the parties that the Bank shall achieve a financial and equity position to be able to lend to the coconut farmers at preferential rates.

In order to achieve such objective, the parties shall cause the Bank to adopt a policy of reinvestment, by way of stock dividends, of such percentage of the profits of the Bank as may be necessary.

13. The parties agree to execute or cause to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF, …

PHILIPPINE COCONUT AUTHORITY
(BUYER)

By:

EDUARDO COJUANGCO, JR. MARIA CLARA L. LOBREGAT
(SELLER)

. . . . . .

7. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al*. admit that the … (PCA) was the "other buyers" represented by …. Cojuangco, Jr. in the May 1975 Agreement entered into between Pedro Cojuangco (on his own behalf and in behalf of other sellers listed in Annex "A" of the agreement) and … Cojuangco, Jr. (on his own behalf and in behalf of the other buyers). Defendant Cojuangco insists he was the "only buyer" under the aforesaid Agreement.

8. …..

9. Defendants Lobregat, *et al.*, and COCOFED, *et al.*, and Ballares, *et al*. admit that in addition to the 137,866 FUB shares of Pedro Cojuangco, *et al*. covered by the Agreement, other FUB stockholders sold their shares to PCA such that the total number of FUB shares purchased by PCA … increased from 137,866 shares to 144,400 shares, the OPTION SHARES referred to in the Agreement of May 25, 1975. Defendant Cojuangco did not make said admission as to the said 6,534 shares in excess of the 137,866 shares covered by the Agreement with Pedro Cojuangco.

10. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* admit that the Agreement, described in Section 1 of Presidential Decree (P.D.) No. 755 dated July 29, 1975 as the "Agreement for the Acquisition of a Commercial Bank for the Benefit of Coconut Farmers" executed by the Philippine Coconut Authority and incorporated in Section 1 of P.D. No. 755 by reference, refers to the "AGREEMENT FOR THE ACQUISITION OF A COMMERCIAL BANK FOR THE BENEFIT OF THE COCONUT FARMERS OF THE PHILIPPINES" dated May 25, 1975 between defendant Eduardo M. Cojuangco, Jr. and the [PCA] (Annex "B" for defendant

Cojuangco's OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT [RE: EDUARDO M. COJUANGCO, JR.] dated September 18, 2002).

Plaintiff refused to make the same admission.

11. … the Court takes judicial notice that P.D. No. 755 was published [in] … volume 71 of the Official Gazette but the text of the agreement … was not so published with P.D. No. 755.

12. Defendants Lobregat, *et al.* and COCOFED, *et al.* and Ballares, *et al.* admit that the PCA used public funds, … in the total amount of ₱150 million, to purchase the FUB shares amounting to 72.2% of the authorized capital stock of the FUB, although the **PCA was later reimbursed from the coconut levy funds** and that the PCA subscription in the increased capitalization of the FUB, which was later renamed the … (UCPB), came from the said coconut levy funds….

13. Pursuant to the May 25, 1975 Agreement, out of the 72.2% shares of the authorized and the increased capital stock of the FUB (later UCPB), entirely paid for by PCA, 64.98% of the shares were placed in the name of the "PCA for the benefit of the coconut farmers" and 7.22% were given to defendant Cojuangco. The remaining 27.8% shares of stock in the FUB which later became the UCPB were not covered by the two (2) agreements referred to in item no. 6, par. (a) and (b) above.

"There were shares forming part of the aforementioned 64.98% which were later sold or transferred to non-coconut farmers.

14. Under the May 27, 1975 Agreement, defendant Cojuangco's equity in the FUB (now UCPB) was ten percent (10%) of the shares of stock acquired by the PCA for the benefit of the coconut farmers.

15. That the fully paid 95.304 shares of the FUB, later the UCPB, acquired by defendant … Cojuangco, Jr. pursuant to the May 25, 1975 Agreement were paid for by the PCA in accordance with the terms and conditions provided in the said Agreement.

16. Defendants Lobregat, *et al.* and COCOFED, *et al.* and Ballares, *et al.* admit that the affidavits of the coconut farmers (specifically, Exhibit "1-Farmer" to "70-Farmer") uniformly state that:

a. they are coconut farmers who sold coconut products;

b. in the sale thereof, they received COCOFUND receipts pursuant to R.A. No. 6260;

c. they registered the said COCOFUND receipts; and

d. by virtue thereof, and under R.A. No. 6260, P.D. Nos. 755, 961 and 1468, they are allegedly entitled to the subject UCPB shares.

but subject to the following qualifications:

a. there were other coconut farmers who received UCPB shares although they did not present said COCOFUND receipt because the PCA distributed the unclaimed UCPB shares not only to those who already received their UCPB shares in exchange for their COCOFUND receipts but also to the coconut farmers determined by a national census conducted pursuant to PCA administrative issuances;

b. [t]here were other affidavits executed by Lobregat, Eleazar, Ballares and Aldeguer relative to the said distribution of the unclaimed UCPB shares; and

c. the coconut farmers claim the UCPB shares by virtue of their compliance not only with the laws mentioned in item (d) above but also with the relevant issuances of the PCA such as, PCA Administrative Order No. 1, dated August 20, 1975 (Exh. "298-Farmer"); PCA Resolution No. 033-78 dated February 16, 1978….

The plaintiff did not make any admission as to the foregoing qualifications.

17. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* claim that the UCPB shares in question have legitimately become the private properties of the 1,405,366 coconut farmers solely on the basis of their having acquired said shares in compliance with R.A. No. 6260, P.D. Nos. 755, 961 and 1468 and the administrative issuances of the PCA cited above.

18. …..

On July 11, 2003, the Sandiganbayan issued the assailed PSJ-A finding for the Republic, the judgment accentuated by (a) the observation that COCOFED has all along manifested as representing over a million coconut farmers and (b) a

declaration on the issue of ownership of UCPB shares and the unconstitutionality of certain provisions of P.D. No. 755 and its implementing regulations. On the matter of ownership in particular, the anti-graft court declared that the 64.98% sequestered "Farmers' UCPB shares," plus other shares paid by PCA are "***conclusively***" owned by the Republic. In its pertinent parts, PSJ-A, resolving the separate motions for summary judgment in *seriatim* with separate dispositive portions for each, reads:

> WHEREFORE, in view of the foregoing, we rule as follows:
>
> . . . .
>
> A. Re: CLASS ACTION MOTION FOR A SEPARATE SUMMARY JUDGMENT dated April 11, 2001 filed by Defendant Maria Clara L. Lobregat, COCOFED, *et al.*, and Ballares, *et al.*
>
> The Class Action Motion for Separate Summary Judgment dated April 11, 2001 filed by defendant Maria Clara L. Lobregat, COCOFED, *et al.* and Ballares, *et al.*, is hereby DENIED for lack of merit.
>
> B. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: COCOFED, *ET AL.* AND BALLARES, *ET AL.)* dated April 22, 2002 filed by Plaintiff.
>
> 1. a. Section 1 of P.D. No. 755, taken in relation to Section 2 of the same P.D., is unconstitutional: (i) for having allowed the use of the CCSF to benefit directly private interest by the outright and unconditional grant of absolute ownership of the FUB/UCPB shares paid for by PCA entirely with the CCSF to the undefined "coconut farmers", which negated or circumvented the national policy or public purpose declared by P.D. No. 755 to accelerate the growth and development of the coconut industry and achieve its vertical integration; and (ii) for having unduly delegated legislative power to the PCA.
>
> b. The implementing regulations issued by PCA, namely, Administrative Order No. 1, Series of 1975 and Resolution No. 074-78 are likewise invalid for their failure to see to it that the distribution of shares serve exclusively or at least primarily or directly the

aforementioned public purpose or national policy declared by P.D. No. 755.

2. Section 2 of P.D. No. 755 which mandated that the coconut levy funds shall not be considered special and/or fiduciary funds nor part of the general funds of the national government and similar provisions of Sec. 5, Art. III, P.D. No. 961 and Sec. 5, Art. III, P.D. No. 1468 contravene the provisions of the Constitution, particularly, Art. IX (D), Sec. 2; and Article VI, Sec. 29 (3).

3. Lobregat, COCOFED, *et al.* and Ballares, *et al.* have not legally and validly obtained title of ownership over the subject UCPB shares by virtue of P.D. No. 755, the Agreement dated May 25, 1975 between the PCA and defendant Cojuangco, and PCA implementing rules, namely, Adm. Order No. 1, s. 1975 and Resolution No. 074-78.

4. The so-called "Farmers' UCPB shares" covered by 64.98% of the UCPB shares of stock, which formed part of the 72.2% of the shares of stock of the former FUB and now of the UCPB, the entire consideration of which was charged by PCA to the CCSF, are hereby declared conclusively owned by, the Plaintiff Republic of the Philippines.

C. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: EDUARDO M. COJUANGCO, JR.) dated September 18, 2002 filed by Plaintiff.

1. Sec. 1 of P.D. No. 755 did not validate the Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 nor did it give the Agreement the binding force of a law because of the non-publication of the said Agreement.

2. Regarding the questioned transfer of the shares of stock of FUB (later UCPB) by PCA to defendant Cojuangco or the so-called "Cojuangco UCPB shares" which cost the PCA more than Ten Million Pesos in CCSF in 1975, we declare, that the transfer of the following FUB/UCPB shares to defendant Eduardo M. Cojuangco, Jr. was not supported by valuable consideration, and therefore null and void:

   a. The 14,400 shares from the "Option Shares";

b. Additional Bank Shares Subscribed and Paid by PCA, consisting of:

1. Fifteen Thousand Eight Hundred Eighty-Four (15,884) shares out of the authorized but unissued shares of the bank, subscribed and paid by PCA;

2. Sixty Four Thousand Nine Hundred Eighty (64,980) shares of the increased capital stock subscribed and paid by PCA; and

3. Stock dividends declared pursuant to paragraph 5 and paragraph 11 (iv) (d) of the Agreement.

3. The above-mentioned shares of stock of the FUB/UCPB transferred to defendant Cojuangco are hereby declared conclusively owned by the Republic of the Philippines.

4. The UCPB shares of stock of the alleged fronts, nominees and dummies of defendant Eduardo M. Cojuangco, Jr. which form part of the 72.2% shares of the FUB/UCPB paid for by the PCA with public funds later charged to the coconut levy funds, particularly the CCSF, belong to the plaintiff Republic of the Philippines as their true and beneficial owner.

Let trial of this Civil Case proceed with respect to the issues which have not been disposed of in this Partial Summary Judgment. For this purpose, the plaintiff's Motion *Ad Cautelam* to Present Additional Evidence dated March 28, 2001 is hereby GRANTED.

From PSJ-A, Lobregat moved for reconsideration which COCOFED, *et al*. and Ballares, *et al*. adopted. All these motions were denied in the extended assailed Resolution[51] of December 28, 2004.

Civil Case No. 0033-F

Here, the Republic, after filing its pre-trial brief, interposed a *Motion for Judgment on the Pleadings and/or for [PSJ] (Re: Defendants CIIF Companies, 14 Holding Companies and*

[51] *Supra* note 7.

COCOFED, et al.) praying that, in light of the parties' submissions and the supervening ruling in *Republic v. COCOFED*[52] which left certain facts beyond question, a judgment issue:

1) Declaring Section 5 of Article III of P.D. No. 961 (Coconut Industry Code) and Section 5 of Article III of P.D. No. 1468 (Revised Coconut Industry Code) to be unconstitutional;

2) Declaring that CIF payments under RA No. 6260 are not valid and legal bases for ownership claims over the CIIF companies and, ultimately, the CIIF block of SMC shares; and

3) Ordering the reconveyance of the CIIF companies, the 14 holding companies, and the 27% CIIF block of San Miguel Corporation shares of stocks in favor of the government and declaring the ownership thereof to belong to the government in trust for all the coconut farmers.

At this juncture, it may be stated that, *vis-à-vis* CC 0033-F, Gabay Foundation, Inc. sought but was denied leave to intervene. But petitioners COCOFED, *et al*. moved and were allowed to intervene[53] on the basis of their claim that COCOFED members beneficially own the block of SMC shares held by the CIIF

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[52] *Supra* note 34.

[53] The Answer-In-Intervention of COCOFED, *et al*., reads in part as follows:

"1.2. The more than one million COCOFED members are the registered owners and/or the beneficial owners of all, or at least not less than … (51%) of the capital stock of the CIIF Companies. The CIIF Companies have wholly owned subsidiaries described as the 14 CIIF Holding Companies. These 14 … are the registered owners of SMC shares. As such, COCOFED *et al.*, and the COCOFED members are the ultimate beneficial owners of SMC shares."

"1.3. The individual COCOFED members … are filing and prosecuting this INTERVENTION in their capacities as: …. ; b) Coconut farmers/ producers who registered receipts that were issued in their favor by the [PCA] as required by Rep. Act No. 6260 (hereinafter referred to as COCOFUND Receipt Law) for themselves and for and on behalf of the more than one million coconut farmers who are similarly situated…."

companies, at least 51% of whose capitol stock such members own. The claim, as the OSG explained, arose from the interplay of the following: (a) COCOFED, *et al.*'s alleged majority ownership of the CIIF companies under Sections 9[54] and 10[55] of P.D. No. 1468, and (b) their alleged entitlement to shares in the CIIF companies by virtue of their supposed registration of COCOFUND receipts allegedly issued to COCOFED members upon payment of the R.A. 6260 CIF levy.[56]

Just as in CC No. 0033-A, the Sandiganbayan also conducted a hearing in CC No. 0033-F to determine facts that appeared without substantial controversy as culled from the records and, by Order[57] of February 23, 2004, outlined those facts.

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[54] Section 9. Investment For the Benefit of the Coconut Farmers. Notwithstanding any law to the contrary notwithstanding, the bank acquired … under PD 755 is hereby given full power and authority to make investments in the form of shares of stock in corporations engaged … activities … relating to the coconut and other palm oils industry….

[55] Section 10. Distribution to Coconut Farmers. The investment made by the bank as authorized under Section 9 hereof shall all be equitably distributed, for free, by the bank to the coconut farmers…."

[56] OSG's Comment, pp. 33-34; *rollo* (G.R. Nos. 177857-58), pp. 688-689.

[57] The MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR FOR PARTIAL SUMMARY JUDGMENT (Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, *et al.*) dated July 12, 2002 filed by plaintiff Republic of the Philippines involves the Twenty-Seven Percent Coconut Industry Investment Fund (CIIF) Block of San Miguel Corporation (SMC) shares of stock. As culled from the records of this case, the following are the admitted facts or the facts that appear without substantial controversy:

1. The above-mentioned 27% Block of SMC Shares are registered in the names of fourteen (14) holding companies listed hereunder:

. . . . . .

3. The CIIF is an accumulation of a portion of the Coconut Consumers Stabilization Fund (CCSF) and the Coconut Industry Development Fund (CIDF), which is mandated by Section 2(d) and Section 9 and 10, Article III, Presidential Decrees (P.D.) No. 961 and No. 1468 to be utilized by the United Coconut Planters Bank (UCPB) for investment in the form of shares of stock in corporations organized for the purpose of engaging in the

On May 7, 2004, the Sandiganbayan, in light of its ruling in CC No. 0033-A and disposing of the issue on ownership of the CIIF oil and holding companies and their entire block of subject SMC shares, issued the assailed PSJ-F also finding for the Republic, the *fallo* of which pertinently reading:

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establishment and the operation of industries and commercial activities and other allied business undertakings relating to coconut and other palm oils industry in all its aspects. The corporations, including their subsidiaries or affiliates wherein the CIIF has been invested are referred to as CIIF companies.

4. The investments made by UCPB in CIIF companies are required by the said Decrees to be equitably distributed for free by the said bank to the coconut farmers except such portion of the investment which it may consider necessary to retain to insure continuity and adequacy of financing of the particular endeavor.

5. Through PCA Resolution No. 130-77 dated July 19, 1977 (Exh. 337-Farmer), the Philippine Coconut Authority (PCA), after having ascertained that the CCSF collections are more than sufficient to finance the primary purposes for which the CCSF is to be utilized, ordered as follows: "all unexpected appropriations from out of the CCSF Collections as of this date shall constitute the initial funds of the Coconut Industry Investment Fund (CIIF), and that the Acting Administrator of the Philippine Coconut Authority is hereby directed to deliver to the United Coconut Planters Bank all such unexpended sums."

6. **The UCPB acquired controlling interests in the CIIF Oil Mills mentioned in paragraph 2 above using the CIIF.**

7. The UCPB as trustee for the CIIF and in compliance with P.D. 1468, prescribed the equitable distribution for free to the coconut farmers of the shares of the CIIF Companies and the measures that would afford the widest distribution of the investment among coconut farmers. (Excerpts of Minutes of the UCPB Board of Directors Meeting held on November 17, 1981) (Exh. 346-Farmer).

8. The UCPB distributed a part of the investments made in such companies to the identified coconut farmers and retained part as administrator of the CIIF. The said identified coconut farmers and the UCPB for the benefit of the coconut farmers are the registered controlling stockholders of the outstanding capital stock of the defendants CIIF Oil Mills listed in paragraph 2 above.

9. **In 1983, the UCPB, as administrator of the CIIF, authorized SOLCOM, CAGOIL, ILICOCO, GRANEX and LEGOIL to acquire 33,133,266 shares of stock of San Miguel Corporation (SMC).**

WHEREFORE, in view of the foregoing, we hold that:

The **Motion for Partial Summary Judgment (**Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al*.) filed by Plaintiff is hereby GRANTED. ACCORDINGLY, THE CIIF COMPANIES, namely:

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);

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10. To hold the SMC Shares, defendants 14 Holding Companies were incorporated under the Corporation Code as follows: ….

11. **All the outstanding capital stock of defendants 14 Holding Companies are owned by defendants CIIF Oil Mills in the following proportion**: ….

12. The terms and conditions for the purchase of the CIIF Block of SMC Shares were contained in a written agreement entered into between defendant Eduardo M. Cojuangco, Jr. and late Don Andres Soriano, Jr. To finance the acquisition of the CIIF Block of SMC shares, the parent CIIF Companies extended cash advances to the 14 Holding Companies. The 14 CIIF Holding Companies also used its incorporating equity and borrowed funds from UCPB.

13. The purported farmer-affidavits submitted by defendants COCOFED, *et al*. in Civil Cases No. 0033-A, B and F uniformly allege, *mutatis mutandis*, as basis of their claim for the CIIF Block of SMC Shares, that:

a. they are allegedly coconut farmers who supposedly sold coconut products;

b. in the supposed sale thereof, they allegedly received COCOFUND receipts pursuant to RA No. 6260;

c. they allegedly registered the said COCOFUND receipts; and

d. by virtue thereof, and under RA No. 6260, PD Nos. 961 and 1468, they are allegedly entitled to ownership of the CIIF Companies, and ultimately the CIIF Block of SMC Shares.

However, defendants COCOFED, *et al*. claim in their opposition to the subject motion that the payors of the CIF under R.A. No. 6260 were the same payors of the CCSF and CIDF, that shares of stock of the UCPB were also distributed to those who did not register any COCOFUND Receipt; and that their claim over the CIIF Block of SMC Shares is based on the express mandate of laws and their implementing rules and regulations.

5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors, Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

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14. In particular, the COCOFED, *et al*. claim that the COCOFED members are the registered owners and/or beneficial owner of all, or at least not less than … (51%) of the capital stock of the CIIF companies, which have wholly owned subsidiaries described as the 14 holding companies. These 14 holding companies are the registered owners of the CIIF Block of SMC Shares. Accordingly, COCOFED, *et al*. claim that they and the COCOFED members are the ultimate beneficial owners of the said share. (Record, Vol. III, pp. 526-527 and pp. 138-539).

15. The … COCOFED, is a private non-stock, non-profit corporation which was recognized … as the national association of coconut producers with the largest number of membership.

16. The identification of the coconut farmers and distribution of the shares of stock of the CIIF companies for free to the so identified coconut farmers followed the same procedure laid down by PCA Administration Order No. 1, series of 1975 and PCA Resolution No. 074-78 dated June 7, 1978.

17. Defendant Eduardo M. Cojuangco, Jr. disclaims any interest in the 27% CIIF Block of SMC Shares.

The plaintiff and the defendants are hereby directed to submit their comment on the foregoing list of admitted facts or facts that appear without substantial controversy within ten (10) days from receipt hereof.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALLING 33,133,266 SHARES AS OF 1983 … ARE DECLARED OWNED BY THE GOVERNMENT IN TRUST FOR ALL THE COCONUT FARMERS GOVERNMENT AND ORDERDED RECONVEYED TO THE GOVERNMENT.[58] (Emphasis and capitalization in the original; underscoring added.)

Let the trial of this Civil Case proceed with respect to the issues which have not been disposed of in this Partial Summary Judgment, including the determination of whether the CIIF Block of SMC Shares adjudged to be owned by the Government represents 27% of the issued and outstanding capital stock of SMC according to plaintiff or to 31.3% of said capital stock according to COCOFED, *et al.* and Ballares, *et al.*

SO ORDERED.

Expressly covered by the declaration and the reconveyance directive are "*all dividends declared, paid and issued thereon as well as any increments thereto arising from, but not limited to, exercise of pre-emptive rights.*"

On May 26, 2004, COCOFED, *et al.*, filed an omnibus motion (to dismiss for lack of subject matter jurisdiction or alternatively for reconsideration and to set case for trial), but this motion was denied per the Sandiganbayan's Resolution[59] of December 28, 2004.

On May 11, 2007, in CC 0033-A, the Sandiganbayan issued a Resolution[60] denying Lobregat's and COCOFED's separate motions to set the case for trial/hearing, noting that there is no longer any point in proceeding to trial when the issue of their claim of ownership of the sequestered UCPB shares and related sub-issues have already been resolved in PSJ-A.

For ease of reference, PSJ-A and PSJ-F each originally decreed trial or further hearing on issues yet to be disposed of. However,

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[58] *Rollo* (G.R. No. 180705), pp. 404-05.

[59] *Supra* note 10.

[60] *Supra* note 8.

the Resolution[61] issued on June 5, 2007 in CC 0033-A and the Resolution[62] of May 11, 2007 rendered in CC 0033-F effectively modified the underlying partial summary judgments by **deleting that portions on the necessity of further trial on the issue of ownership of (1) the sequestered UCPB shares, (2) the CIIF block of SMC shares and (3) the CIIF companies**. As the anti-graft court stressed in both resolutions, the said issue of ownership has been finally resolved in the corresponding PSJs.[63]

Hence, the instant petitions.

The Issues

COCOFED, *et al.*, in G.R. Nos. 177857-58, impute reversible error on the Sandiganbayan for (a) assuming jurisdiction over CC Nos. 0033-A and 0033-F despite the Republic's failure to establish below the jurisdictional facts, *i.e.*, that the sequestered assets sought to be recovered are ill-gotten in the context of E.O. Nos. 1, 2, 14 and 14-A; (b) declaring certain provisions of coco levy issuances unconstitutional; and (c) denying the petitioners' plea to prove that the sequestered assets belong to coconut farmers. Specifically, petitioners aver:

I. The Sandiganbayan gravely erred … when it refused to acknowledge that it did not have subject matter jurisdiction over the ill-gotten wealth cases because the respondent Republic failed to prove, and did not even attempt to prove, the jurisdictional fact that the sequestered assets constitute ill-gotten wealth of former President Marcos and Cojuangco. Being without subject matter jurisdiction over the ill-gotten wealth cases, a defect previously pointed out and

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[61] *Rollo* (G.R. Nos. 177857-58), pp. 501-516.

[62] *Supra* note 11.

[63] The paragraph in PSJ-F which the May 11, 2007 Resolution deleted reads: "Let a trial of this Civil Case proceed with respect to the issue which has not been disposed in this [PSA-F] including the determination of whether the CIIF Block of SMC shares adjudged to be owned by the Government represents 27% of the issued and outstanding capital stock of the Government according to plaintiff or to 31% of said capital stock according to COCOFED, *et al*. and Banares, *et al*."

repeatedly assailed by COCOFED, *et al.*, the assailed PSJs and the assailed Resolutions are all null and void.

> A. Insofar as the ill-gotten wealth cases are concerned, the Sandiganbayan's subject matter jurisdiction is limited to the recovery of "ill-gotten wealth" as defined in Eos 1, 2, 14 and 14-A. Consistent with that jurisdiction, the subdivided complaints in the ill-gotten wealth cases expressly alleged that the sequestered assets constitutes "ill-gotten wealth" of former President Marcos and Cojuangco, having been filed pursuant to, and in connection with, Eos 1, 2, 14 and 14-A, the Sandiganbayan gravely erred, if not exceeded its jurisdiction, when it refused to require the respondent Republic to prove the aforesaid jurisdictional fact.
>
> B. .... Having no evidence on record to prove the said jurisdictional fact, the Sandiganbayan gravely erred, if not grossly exceeded its statutory jurisdiction, when it rendered the assailed PSJs instead of dismissing the ill-gotten wealth cases....
>
> C. Under Section 1 of Rule 9 of the Rules of Court, lack of jurisdiction over the subject matter may be raised at any stage of the proceedings.... In any event, in pursuing its intervention in the ill-gotten wealth cases, COCOFED, *et al.* precisely questioned the Sandiganbayan's subject matter jurisdiction, asserted that the jurisdictional fact does not exist, moved to dismiss the ill-gotten wealth cases and even prayed that the writs of sequestration over the sequestered assets be lifted. In concluding that those actions constitute an "invocation" of its jurisdiction, the Sandiganbayan clearly acted whimsically, capriciously and in grave abuse of its discretion.

II. Through the assailed PSJs and the assailed Resolutions, the Sandiganbayan declared certain provisions of the coconut levy laws as well as certain administrative issuances of the PCA as unconstitutional. In doing so, the Sandiganbayan erroneously employed, if not grossly abused, its power of judicial review....

> A. ... the Sandiganbayan gravely erred, if not brazenly exceeded its statutory jurisdiction and abused the judicial powers, when it concluded that the public purpose of certain coconut levy laws was not evident, when it thereupon formulated its own public policies and purposes for the coconut levy laws and at

the same time disregarded the national policies specifically prescribed therein.

B. In ruling that "it is not clear or evident how the means employed by the [coconut levy] laws" would "serve the avowed purpose of the law" or "can serve a public purpose", the Sandiganbayan erroneously examined, determined and evaluated the wisdom of such laws, a constitutional power within the exclusive province of the legislative department.

C. The Sandiganbayan gravely erred in declaring Section 1 of PD 755, PCA [AO] 1 and PCA Resolution No. 074-78 constitutionally infirm by reason of alleged but unproven and unsubstantiated flaws in their implementation.

D. The Sandiganbayan gravely erred in concluding that Section 1 of PD 755 constitutes an undue delegation of legislative power insofar as it authorizes the PCA to promulgate rules and regulations governing the distribution of the UCPB shares to the coconut farmers. Rather, taken in their proper context, Section 1 of PD 755 was complete in itself, [and] prescribed sufficient standards that circumscribed the discretion of the PCA….

More importantly, this Honorable Court has, on three (3) separate occasions, rejected respondent Republic's motion to declare the coconut levy laws unconstitutional. The Sandiganbayan gravely erred, if not acted in excess of its jurisdiction, when it ignored the settled doctrines of law of the case and/or *stare decisis* and granted respondent Republic's fourth attempt to declare the coconut levy laws unconstitutional, despite fact that such declaration of unconstitutionality was not necessary to resolve the ultimate issue of ownership involved in the ill-gotten wealth cases.

III. In rendering the assailed PSJs and thereafter refusing to proceed to trial on the merits, on the mere say-so of the respondent Republic, the Sandiganbayan committed gross and irreversible error, gravely abused its judicial discretion and flagrantly exceeded its jurisdiction as it effectively sanctioned the taking of COCOFED, *et al*.'s property by the respondent Republic without due process of law and through retroactive application of the declaration of unconstitutionality of the coconut levy laws, an act that is not only illegal and violative of the settled Operative Fact Doctrine but, more importantly,

inequitable to the coconut farmers whose only possible mistake, offense or misfortune was to follow the law.

A. ….

1. In the course of the almost twenty (20) years that the ill-gotten wealth cases were pending, COCOFED, *et al.* repeatedly asked to be allowed to present evidence to prove that the true, actual and beneficial owners of the sequestered assets are the coconut farmers and not Cojuangco, an alleged "crony" of former President Marcos. The Sandiganbayan grievously erred and clearly abused its judicial discretion when it repeatedly and continuously denied COCOFED, *et al.* the opportunity to present their evidence to disprove the baseless allegations of the Ill-Gotten Wealth Cases that the sequestered assets constitute ill-gotten wealth of Cojuangco and of former President Marcos, an error that undeniably and illegally deprived COCOFED, *et al.* of their constitutional right to be heard.

2. The Sandiganbayan erroneously concluded that the Assailed PSJs and Assailed Resolutions settled the ultimate issue of ownership of the Sequestered Assets and, more importantly, resolved all factual and legal issues involved in the ill-gotten wealth cases. Rather, as there are triable issues still to be resolved, it was incumbent upon the Sandiganbayan to receive evidence thereon and conduct trial on the merits.

3. Having expressly ordered the parties to proceed to trial and thereafter decreeing that trial is unnecessary as the Assailed PSJs were "final" and "appealable" judgments, the Sandiganbayan acted whimsically, capriciously and contrary to the Rules of Court, treated the parties in the ill-gotten wealth cases unfairly, disobeyed the dictate of this Honorable Court and, worse, violated COCOFED, *et al.*'s right to due process and equal protection of the laws.

B. The Sandiganbayan gravely erred if not grossly abused its discretion when it repeatedly disregarded, and outrightly refused to recognize, the operative facts that existed as well as the rights that vested from the time the coconut levy laws were enacted until their declaration of unconstitutionality in the assailed PSJs. As a result, the assailed PSJs constitute a

> proscribed retroactive application of the declaration of unconstitutionality, a taking of private property, and an impairment of vested rights of ownership, all without due process of law.[64] Otherwise stated, the assailed PSJs and the assailed Resolutions effectively penalized the coconut farmers whose only possible mistake, offense or misfortune was to follow the laws that were then legal, valid and constitutional.

IV. The voluminous records of these ill-gotten wealth cases readily reveal the various dilatory tactics respondent Republic resorted to…. As a result, despite the lapse of almost twenty (20) years of litigation, the respondent Republic has not been required to, and has not even attempted to prove, the bases of its perjurious claim that the sequestered assets constitute ill-gotten wealth of former President Marcos and his crony, Cojuangco. In tolerating respondent Republic's antics for almost twenty (20) years…, the Sandiganbayan so glaringly departed from procedure and thereby flagrantly violated COCOFED, *et al.*'s right to speedy trial.

In G.R. No. 178193, petitioner Ursua virtually imputes to the Sandiganbayan the same errors attributed to it by petitioners in G.R. Nos. 177857-58.[65] He replicates as follows:

I

The Sandiganbayan decided in a manner not in accord with the Rules of Court and settled jurisprudence in rendering the questioned PSJ as final and appealable thereafter taking the sequestered assets from their owners or record without presentation of any evidence, thus, the questioned PSJ and the questioned Resolutions are all null and void.

> A. The Sandiganbayan's jurisdiction insofar as the ill-gotten wealth cases are concerned, is limited to the recovery of "ill-gotten wealth" as defined in Executive Orders No. 1, 2, 14 and 14-A.
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> B. The Sandiganbayan should have decided to dismiss the case or continue to receive evidence instead of ruling against

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[64] *Rollo* (G.R. Nos. 177857-58), pp. 35-40.

[65] *Rollo* (G.R. No. 178193), pp. 18-20.

the constitutionality of some coconut levy laws and PCA issuances because it could decide on other grounds available to it.

II

The Sandiganbayan gravely erred when it declared PD. 755, Section 1 and 2, Section 5, Article 1 of PD 961, and Section 5 of Art. III of PD 1468 as well as administrative issuances of the PCA as unconstitutional in effect, it abused it power of judicial review….

A. The Sandiganbayan gravely erred in concluding that the purpose of PD 755 Section 1 and 2, Section 5, Article 1 of PD 961, and Section 5 of Art. III of PD 1468 is not evident. It then proceeded to formulated its own purpose thereby intruding into the wisdom of the legislature in enacting [t]he law.

B. The Sandiganbayan gravely erred in declaring Section 1 of PD 755, PCA [AO] No. 1 and PCA Resolution No. 074-78 unconstitutional due to alleged flaws in their implementation.

C. The Sandiganbayan gravely erred in concluding that Section 1 of PD No. 755 constitutes an undue delegation of legislative power insofar as it authorizes the PCA to promulgate rules and regulations governing the distribution of the UCPB shares to the coconut farmers. Section 1 of PD 755 was complete in itself, prescribed sufficient standards that circumscribed the discretion of the PCA and merely authorized the PCA to fill matters of detail an execution through promulgated rules and regulations.

III

The coconut levy laws, insofar as they allowed the PCA to promulgate rules and regulations governing the distribution of the UCPB to the coconut farmers, do not constitute an undue delegation of legislative power as they were complete in themselves and prescribed sufficient standards that circumscribed the discretion of the PCA.

IV

Assuming *ex-gratia argumenti* that the coconut levy laws are unconstitutional, still, the owners thereof cannot be deprived of their property without due process of law considering that they have in good faith acquired vested rights over the sequestered assets.

In sum, the instant petitions seek to question the decisions of the Sandiganbayan in both CC Nos. 0033-A and 0033-F, along with the preliminary issues of objection. We shall address at the outset, (1) the common preliminary questions, including jurisdictional issue, followed by (2) the common primary contentious issues (*i.e.* constitutional questions), and (3) the issues particular to each case.

The Court's Ruling

I

The Sandiganbayan has jurisdiction over the subject matter of the subdivided amended complaints.

The primary issue, as petitioners COCOFED, *et al*. and Ursua put forward, boils down to the Sandiganbayan's alleged lack of jurisdiction over the subject matter of the amended complaints. Petitioners maintain that the jurisdictional facts necessary to acquire jurisdiction over the subject matter in CC No. 0033-A have yet to be established. In fine, the Republic, so petitioners claim, has failed to prove the ill-gotten nature of the sequestered coconut farmers' UCPB shares. Accordingly, the controversy is removed from the subject matter jurisdiction of the Sandiganbayan and necessarily any decision rendered on the merits, such as PSJ-A and PSJ-F, is void.

To petitioners, it behooves the Republic to prove the jurisdictional facts warranting the Sandiganbayan's continued exercise of jurisdiction over ill-gotten wealth cases. Citing *Manila Electric Company [Meralco] v. Ortañez*,[66] petitioners argue that the jurisdiction of an adjudicatory tribunal exercising limited jurisdiction, like the Sandiganbayan, "depends upon the facts of the case as proved at the trial and not merely upon the allegation in the complaint."[67] Cited too is *PCGG v. Nepumuceno*,[68] where the Court held:

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[66] No. L-19557, March 31, 1964, 10 SCRA 637.

[67] *Rollo* (G.R. Nos. 177857-58), p. 86.

[68] G.R. No. 78750, April 20, 1990, 184 SCRA 449, 460.

The determinations made by the PCGG at the time of issuing sequestration … orders cannot be considered as final determinations; that the properties or entities sequestered or taken-over in fact constitute "ill-gotten wealth" according to [E.O.] No. 1 is a question which can be finally determined only by a court – the Sandiganbayan. The PCGG has the burden of proving before the Sandiganbayan that the assets it has sequestered or business entity it has provisionally taken-over constitutes "ill-gotten wealth" within the meaning of [E.O.] No. 1 and Article No. XVIII (26) of the 1987 Constitution.

Petitioners' above posture is without merit.

Justice Florenz D. Regalado explicates subject matter jurisdiction:

16. Basic … is the doctrine that the jurisdiction of a court over the subject-matter of an action is conferred only by the Constitution or the law and that the Rules of Court yield to substantive law, in this case, the Judiciary Act and B.P. Blg. 129, both as amended, and of which jurisdiction is only a part. Jurisdiction … cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties; neither can it be conferred by the acquiescence of the court.... Jurisdiction must exist as a matter of law.... Consequently, questions of jurisdiction may be raised for the first time on appeal even if such issue was not raised in the lower court....

17. Nevertheless, in some case, the principle of estoppel by laches has been availed … to bar attacks on jurisdiction....[69]

It is, therefore, clear that jurisdiction over the subject matter is conferred by law. In turn, the question on whether a given suit comes within the pale of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the plaintiff will be entitled at the end to recover upon all or some of the claims asserted therein.[70] We said as much in *Magay v. Estiandan*:[71]

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[69] 1 Regalado, *REMEDIAL LAW COMPENDIUM* 11 (6th revised ed., 1997).

[70] *Id.* at 271.

[71] No. L-28975, February 27, 1976, 69 SCRA 456.

[J]urisdiction over the subject matter is determined by the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein-a matter that can be resolved only after and as a result of the trial. Nor may the jurisdiction of the court be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for, were we to be governed by such rule, the question of jurisdiction could depend almost entirely upon the defendant.

Of the same tenor was what the Court wrote in *Allied Domecq Philippines, Inc. v. Villon*:[72]

Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong. Jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Basic is the rule that jurisdiction over the subject matter is determined by the cause or causes of action as alleged in the complaint.

The material averments in subdivided CC No. 0033-A and CC No. 0033-F included the following:

12. Defendant Eduardo Cojuangco, Jr. served as a public officer during the Marcos administration….

13. Defendant Eduardo Cojuangco, Jr., taking advantage of his association, influence and connection, acting in unlawful concert with the [Marcoses] and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves as the expense of the Plaintiff and the Filipino people, such as when he –

a) manipulated, beginning the year 1975 with the active collaboration of Defendants …, Marai Clara Lobregat, Danilo Ursua [*etc.*], the purchase by the … (PCA) of 72.2% of the outstanding capital stock of the … (FUB) which was subsequently converted into a universal bank named … (UCPB) through the use of … (CCSF) … in a manner contrary to law and to the specific purposes for which said coconut levy funds were imposed and collected under

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[72] G.R. No. 156264, September 30, 2004, 439 SCRA 667, 672-73.

P.D. 276 and under anomalous and sinister designs and circumstances, to wit:

(i) Defendant Eduardo Cojuangco, Jr. coveted the coconut levy funds as a cheap, lucrative and risk-free source of funds with which to exercise his private option to buy the controlling interest in FUB….

(ii) to legitimize *a posteriori* his highly anomalous and irregular use and diversion of government funds to advance his own private and commercial interests … Defendant Eduardo Cojuangco, Jr. caused the issuance … of PD 755 (a) declaring that the coconut levy funds shall not be considered special and fiduciary and trust funds … conveniently repealing for that purpose a series of previous decrees … establishing the character of the coconut levy funds as special, fiduciary, trust and governments; (b) confirming the agreement between … Cojuangco and PCA on the purchase of FUB by incorporating by reference said private commercial agreement in PD 755;

(iii) ….

(iv) To perpetuate his opportunity … to build his economic empire, … Cojuangco caused the issuance of an unconstitutional decree (PD 1468) requiring the deposit of all coconut levy funds with UCPB interest free to the prejudice of the government and finally

(v) Having fully established himself as the undisputed "coconut king" with unlimited powers to deal with the coconut levy funds, the stage was now set for Defendant Eduardo Cojuangco, Jr. to launch his predatory forays into almost all aspects of Philippine activity namely …. oil mills.

(vi) In gross violation of their fiduciary positions and in contravention of the goal to create a bank for coconut farmers of the country, the capital stock of UCPB as of February 25, 1986 was actually held by the defendants, their lawyers, factotum and business associates, thereby finally gaining control of the UCPB by misusing the names and identities of the so-called "more than one million coconut farmers."

(b) created and/or funded with the use of coconut levy funds various corporations, such as … (COCOFED) … with the active

collaboration and participation of Defendants Juan Ponce Enrile, Maria Clara Lobregat … most of whom comprised the interlocking officers and directors of said companies; dissipated, misused and/or misappropriated a substantial part of said coco levy funds … FINALLY GAIN OWNERSHIP AND CONTROL OF THE UNITED COCONUT PLANTERS BANK BY MISUSING THE NAMES AND/OR IDENTIFIES OF THE SO-CALLLED "MORE THAN ONE MILLION COCONUT FARNMERS;

(c) misappropriated, misused and dissipated ₱840 million of the … (CIDF) levy funds deposited with the National Development Corporation (NIDC) as administrator – trustee of said funds and later with UCPB, of which Defendant Eduardo Cojuangco, Jr. was the Chief Executive Officer….

(d) established and caused to be funded with coconut levy fundfs, with the active collaboration of Defendants Ferdinand E. Marcos through the issuance of LOI 926 and of [other] defendants … the United Coconut Oil Mills, Inc., a corporation controlled by Defendant Eduardo Cojuangco, Jr. and bought sixteen (16) certain competing oil mills at exorbitant prices … then mothballed them….

. . . . . .

(i) misused coconut levy funds to buy majority of the outstanding shares of stock of San Miguel Corporation….

. . . . . .

14. Defendants Eduardo Cojuangco, Jr. … of the Angara Concepcion Cruz Regala and Abello law offices (ACCRA) plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of the coconut levy funds the financial and corporate structures that led to the establishment of UCPB UNICOM [*etc*.] and more than twenty other coconut levy funded corporations including the acquisition of [SMC] shares and its institutionalization through presidential directives of the coconut monopoly….

. . . . . .

16. The acts of Defendants, singly or collectively, and /or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment,

violation of the Constitution and laws … to the grave and irreparable damage of the Plaintiff and the Filipino people.

CC No. 0033-F

12. Defendant Eduardo Cojuangco, Jr., served as a public officer during the Marcos administration….

13. Having fully established himself as the undisputed "coconut king" with unlimited powers to deal with the coconut levy funds, the stage was now set for … Cojuangco, Jr. to launch his predatory forays into almost all aspects of Philippine economic activity namely … oil mills ….

14. Defendant Eduardo Cojuangco, Jr., taking undue advantage of his association, influence, and connection, acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people….

(a) Having control over the coconut levy, Defendant Eduardo M. Cojuangco invested the funds in diverse activities, such as the various businesses SMC was engaged in….;

. . . . . .

(c) Later that year [1983], Cojuangco also acquired the Soriano stocks through a series of complicated and secret agreements, a key feature of which was a "voting trust agreement" that stipulated that Andres, Jr. or his heir would proxy over the vote of the shares owned by Soriano and Cojuangco….

. . . . . .

(g) All together, Cojuangco purchased 33 million shares of the SMC through the … 14 holding companies

. . . . . .

3.1. The same fourteen companies were in turn owned by the … six (6) so-called CIIF Companies….

(h) Defendant Corporations are but "shell" corporations owned by interlocking shareholders who have previously admitted that they are just "nominee stockholders" who do not have any proprietary interest over the shares in their names….

[L]awyers of the Angara Abello Concepcion Regala & Cruz (ACCRA) Law offices, the previous counsel who incorporated said corporations, prove that they were merely nominee stockholders thereof.

(l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares, were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, … (COCOLIFE), among others. Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies to borrow money from the UCPB and purchase these holding companies and the SMC stocks. Cojuangco used $ 150 million from the coconut levy, broken down as follows:

Amount (in million)	Source	Purpose
$ 22.26	Oil Mills	equity in holding Companies
$ 65.6	Oil Mills	loan to holding Companies
$ 61.2	UCPB	loan to holding Companies [164]

The entire amount, therefore, came from the coconut levy, some passing through the Unicom Oil mills, others directly from the UCPB.

(m) With his entry into the said Company, it began to get favors from the Marcos government, significantly the lowering of the excise taxes … on beer, one of the main products of SMC.

15. Defendants … plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, [*etc*.], and more than twenty other coconut levy-funded corporations, including the acquisition of [SMC] shares and its institutionalization through presidential directives of the coconut monopoly….

16. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.[73]

Judging from the allegations of the defendants' illegal acts thereat made, it is fairly obvious that both CC Nos. 0033-A and CC 0033-F partake, in the context of EO Nos. 1, 2 and 14, series of 1986, the nature of ill-gotten wealth suits. Both deal with the recovery of sequestered shares, property or business enterprises claimed, as alleged in the corresponding basic complaints, to be ill-gotten assets of President Marcos, his cronies and nominees and acquired by taking undue advantage of relationships or influence and/or through or as a result of improper use, conversion or **diversion** of government funds or property. Recovery of these assets—determined as shall hereinafter be discussed as *prima facie* ill-gotten—falls within the unquestionable jurisdiction of the Sandiganbayan.[74]

P.D. No. 1606, as amended by R.A. 7975 and E.O. No. 14, Series of 1986, vests the Sandiganbayan with, among others, original jurisdiction over civil and criminal cases instituted pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A. Correlatively, the PCGG Rules and Regulations defines the term "*Ill-Gotten Wealth*" as "*any asset, property, business enterprise or material possession of persons within the purview of [E.O.] Nos. 1 and 2, acquired by them directly, or indirectly thru* ***dummies, nominees, agents, subordinates and/or business associates*** *by any of the following means or similar schemes*":

(1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

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[73] *See* PSJ-F, pp. 5-9.

[74] *San Miguel Corporation v. Sandiganbayan,* G.R. Nos. 104637-38, September 14, 2000, 340 SCRA 289.

(2) ….;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.[75] (Emphasis supplied)

Section 2(a) of E.O. No. 1 charged the PCGG with the task of assisting the President in "*[T]he recovery of all ill-gotten wealth accumulated by former … [President] Marcos, his immediate family, relatives, subordinates and close associates … including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through* ***nominees****, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*" Complementing the aforesaid Section 2(a) is Section 1 of E.O. No. 2 decreeing the freezing of all assets "*in which the [Marcoses] their close relatives, subordinates, business associates, dummies, agents or nominees have any interest or participation.*"

The Republic's averments in the amended complaints, particularly those detailing the alleged wrongful acts of the defendants, sufficiently reveal that the subject matter thereof comprises the recovery by the Government of ill-gotten wealth acquired by then President Marcos, his cronies or their associates and dummies through the unlawful, improper utilization or diversion of coconut levy funds aided by P.D. No. 755 and

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[75] Section 1.

other sister decrees. President Marcos himself issued these decrees in a brazen bid to legalize what amounts to private taking of the said public funds.

Petitioners COCOFED, *et al*. and Ursua, however, would insist that the Republic has failed to prove the jurisdiction facts: that the sequestered assets indeed constitute ill-gotten wealth as averred in the amended subdivided complaints.

This contention is incorrect.

There was no actual need for Republic, as plaintiff *a quo*, to adduce evidence to show that the Sandiganbayan has jurisdiction over the subject matter of the complaints as it leaned on the averments in the initiatory pleadings to make visible the jurisdiction of the Sandiganbayan over the ill-gotten wealth complaints. As previously discussed, a perusal of the allegations easily reveals the sufficiency of the statement of matters disclosing the claim of the government against the coco levy funds and the assets acquired directly or indirectly through said funds as ill-gotten wealth. Moreover, the Court finds no rule that directs the plaintiff to first prove the subject matter jurisdiction of the court before which the complaint is filed. Rather, such burden falls on the shoulders of defendant in the hearing of a motion to dismiss anchored on said ground or a preliminary hearing thereon when such ground is alleged in the answer.

COCOFED, *et al*. and Ursua's reliance on *Manila Electric Company [Meralco] v. Ortanez*[76] is misplaced, there being a total factual dissimilarity between that and the case at bar. *Meralco* involved a labor dispute before the Court of Industrial Relations (CIR) requiring the interpretation of a collective bargaining agreement to determine which between a regular court and CIR has jurisdiction. There, it was held that in case of doubt, the case may not be dismissed for failure to state a cause of action as jurisdiction of CIR is not merely based on the allegations of the complaint but must be proved during the trial of the case. The factual milieu of *Meralco* shows that the said

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[76] *Meralco v. Ortañez,* 119 Phil. 911 (1964).

procedural holding is peculiar to the CIR. Thus, it is not and could not be a precedent to the cases at bar.

Even *PCGG v. Nepomuceno*[77] is not on all fours with the cases at bench, the issue therein being whether the regional trial court has jurisdiction over the PCGG and sequestered properties, *vis-à-vis* the present cases, which involve an issue concerning the Sandiganbayan's jurisdiction. Like in *Meralco*, the holding in *Nepomuceno* is not determinative of the outcome of the cases at bar.

While the 1964 *Meralco* and the *Nepomuceno* cases are inapplicable, the Court's ruling in *Tijam v. Sibonghanoy*[78] is the leading case on estoppel relating to jurisdiction. In *Tijam*, the Court expressed displeasure on "the undesirable practice of a party submitting his case for decision and then accepting judgment, only if favorable, and then attacking it for lack of jurisdiction, when adverse."

Considering the antecedents of CC Nos. 0033-A and 0033-F, COCOFED, Lobregat, Ballares, *et al*. and Ursua are already precluded from assailing the jurisdiction of the Sandiganbayan. Remember that the COCOFED and the Lobregat group were not originally impleaded as defendants in CC No. 0033. They later asked and were allowed by the Sandiganbayan to intervene. If they really believe then that the Sandiganbayan is without jurisdiction over the subject matter of the complaint in question, then why intervene in the first place? They could have sat idly by and let the proceedings continue and would not have been affected by the outcome of the case as they can challenge the jurisdiction of the Sandiganbayan when the time for implementation of the flawed decision comes. More importantly, the decision in the case will have no effect on them since they were not impleaded as indispensable parties. After all, the joinder of all indispensable parties to a suit is not only mandatory, but

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[77] G.R. No. 78750, April 20, 1990, 184 SCRA 449.

[78] No. L-21450, April 15, 1968, 23 SCRA 30.

jurisdictional as well.[79] By their intervention, which the Sandiganbayan allowed per its resolution dated September 30, 1991, COCOFED and Ursua have clearly manifested their desire to submit to the jurisdiction of the Sandiganbayan and seek relief from said court. Thereafter, they filed numerous pleadings in the subdivided complaints seeking relief and actively participated in numerous proceedings. Among the pleadings thus filed are the *Oppositions to the Motion for Intervention* interposed by the Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyogan and Gabay ng Mundo sa Kaunlaran Foundation, Inc., a *Class Action Omnibus Motion* to enjoin the PCGG from voting the SMC shares dated February 23, 2001 (granted by Sandiganbayan) and the *Class Action Motion for a Separate Summary Judgment* dated April 11, 2001. By these acts, COCOFED, *et al*. are now legally estopped from asserting the Sandiganbayan's want of jurisdiction, if that be the case, over the subject matter of the complaint as they have voluntarily yielded to the jurisdiction of the Sandiganbayan. Estoppel has now barred the challenge on Sandiganbayan's jurisdiction.

The ensuing excerpts from *Macahilig v. Heirs of Magalit*[80] are instructive:

> We cannot allow her to attack its jurisdiction simply because it rendered a Decision prejudicial to her position. Participation in all stages of a case before a trial court effectively estops a party from challenging its jurisdiction. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. If, by deed or conduct, a party has induced another to act in a particular manner, estoppel effectively bars the former from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to the latter.

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[79] See *Pascual v. Robles,* G.R. No. 182645, December 15, 2010, 638 SCRA 712, 719.

[80] G.R. No. 141423, November 15, 2000, 344 SCRA 838.

Lest it be overlooked, this Court has already decided that the sequestered shares are *prima facie* ill-gotten wealth rendering the issue of the validity of their sequestration and of the jurisdiction of the Sandiganbayan over the case beyond doubt. In the case of *COCOFED v. PCGG*,[81] We stated that:

> It is of course not for this Court to pass upon the factual issues thus raised. That function pertains to the Sandiganbayan in the first instance. For purposes of this proceeding, all that the Court needs to determine is whether or not there is *prima facie* justification for the sequestration ordered by the PCGG. The Court is satisfied that there is. **The cited incidents, given the public character of the coconut levy funds, place petitioners COCOFED and its leaders and officials, at least *prima facie*, squarely within the purview of Executive Orders Nos. 1, 2 and 14,** as construed and applied in **BASECO,** to wit:
>
> "1. that ill-gotten properties (were) amassed by the leaders and supporters of the previous regime;
>
> "a. more particularly, that '(i)ll-gotten wealth was accumulated by … Marcos, his immediate family, relatives, subordinates and close associates, …. (and) business enterprises and entities (came to be) owned or controlled by them, during … (the Marcos) administration, directly or through nominees, *by taking undue advantage of their public office and using their powers, authority, influence, connections or relationships*';
>
> "b. otherwise stated, that *there are assets and properties purportedly pertaining to [the Marcoses], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government …or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment* ….;
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> . . . . . .

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[81] G.R. No. 75713, October 2, 1989, 178 SCRA 237, 250-252.

2. The petitioners' claim that the assets acquired with the coconut levy funds are privately owned by the coconut farmers is founded on certain provisions of law, to wit [Sec. 7, RA 6260 and Sec. 5, Art. III, PD 1468]… (Words in bracket added; italics in the original).

In their attempt to dismiss the amended complaints in question, petitioners asseverate that (1) the coconut farmers cannot be considered as "subordinates, close and/or business associates, dummies, agents and nominees" of Cojuangco, Jr. or the Marcoses, and (2) the sequestered shares were not illegally acquired nor acquired "through or as result of improper or illegal use or conversion of funds belonging to the Government." While not saying so explicitly, petitioners are doubtless conveying the idea that wealth, however acquired, would not be considered "ill-gotten" in the context of EO 1, 2 and 14, s. of 1986, absent proof that the recipient or end possessor thereof is outside the Marcos' circle of friends, associates, cronies or nominees.

We are not convinced.

As may be noted, E.O. 1 and 2 advert to President Marcos, or his associates' nominees. In its most common signification, the term "*nominee*" refers to one who is designated to act for another usually in a limited way;[82] a person in whose name a stock or bond certificate is registered but who is not the actual owner thereof is considered a nominee."[83] *Corpus Juris Secundum* describes a nominee as one:

… designated to act for another as his representative in a rather limited sense. It has no connotation, however, other than that of acting for another, in representation of another or as the grantee of another. In its commonly accepted meaning the term connoted the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment to the nominee of any property in, or ownership of, the rights of the person nominating him.[84]

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[82] *BLACK'S LAW DICTIONARY* 1050 (6th ed., 1990).

[83] *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* (1981 ed.).

[84] 66 C.J.S. 600.

So, the next question that comes to the fore is: would the term "nominee" include the more than one million coconut farmers alleged to be the recipients of the UCPB shares?

Guided by the foregoing definitions, the query must be answered in the affirmative if only to give life to those executive issuances aimed at ensuring the recovery of ill-gotten wealth. It is basic, almost elementary, that:

> Laws must receive a sensible interpretation to promote the ends for which they are enacted. They should be so given reasonable and practical construction as will give life to them, if it can be done without doing violence to reason. Conversely, a law should not be so construed as to allow the doing of an act which is prohibited by law, not so interpreted as to afford an opportunity to defeat compliance with its terms, create an inconsistency, or contravene the plain words of the law. *Interpretatio fienda est ut res magis valeat quam pereat* or that interpretation as will give the thing efficacy is to be adopted.[85]

E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses[86] refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations[87] or manipulated

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[85] Agpalo, *STATUTORY CONSTRUCTION* 259 (4th ed., 1998).

[86] Their close relatives, subordinates, business associates, dummies, agents or nominees.

[87] *Yuchengco v. Sandiganbayan,* G.R. No. 149802, January 20, 2006, 479 SCRA 1.

instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "*well entrenched plundering regime of twenty years*," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market.[88]

Hence, to give full effect to E.O. 1, 2 and 14, s. of 1986, the term "nominee," as used in the above issuances, must be taken to mean to include any person or group of persons, natural or juridical, in whose name government funds or assets were transferred to by Pres. Marcos, his cronies or his associates. To this characterization must include what the Sandiganbayan considered the "*unidentified*" coconut farmers, more than a million of faceless and **nameless coconut farmers, the alleged beneficiaries of the distributed UCPB shares, who, under the terms of Sec. 10 of PCA A.O. No. 1, s. of 1975, were required, upon the delivery of their respective stock certificates, to execute an irrevocable proxy in favor of the Bank's manager.** There is thus ample truth to the observations — "*[That] the PCA provided this condition only indicates that the PCA had no intention to constitute the coconut farmer UCPB stockholder as a bona fide stockholder"; that the 1.5 million registered farmer-stockholders were "**mere nominal stockholders**."*[89]

From the foregoing, the challenge on the Sandiganbayan's subject matter jurisdiction at bar must fail.

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[88] No. 77663, April 12, 1988, 159 SCRA 556, 574.

[89] Separate concurring opinion in PSJ-A of Associate Justice Villaruz; *rollo* (G.R. No. 180705), p. 271.

II

Petitioners COCOFED, *et al.* were not deprived of their right to be heard.

As a procedural issue, COCOFED, *et al*. and Ursua next contend that in the course of almost 20 years that the cases have been with the anti-graft court, they have repeatedly sought leave to adduce evidence (prior to respondent's complete presentation of evidence) to prove the coco farmers' actual and beneficial ownership of the sequestered shares. The Sandiganbayan, however, had repeatedly and continuously disallowed such requests, thus depriving them of their constitutional right to be heard.

This contention is untenable, their demand to adduce evidence being disallowable on the ground of prematurity.

The records reveal that the Republic, after adducing its evidence in CC No. 0033-A, subsequently filed *a Motion Ad Cautelam for Leave to Present Additional Evidence* dated March 28, 2001. This motion remained unresolved at the time the Republic interposed its *Motion for Partial Summary Judgment*. The Sandiganbayan granted the later motion and accordingly rendered the Partial Summary Judgment, effectively preempting the presentation of evidence by the defendants in said case (herein petitioners COCOFED and Ursua).

Section 5, Rule 30 the Rules of Court clearly sets out the order of presenting evidence:

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:

(a) The plaintiff shall adduce evidence in support of his complaint;

(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;

. . . . . .

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth. having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (Emphasis supplied.)

Evidently, for the orderly administration of justice, the plaintiff shall first adduce evidence in support of his complaint and after the formal offer of evidence and the ruling thereon, then comes the turn of defendant under Section 3 (b) to adduce evidence in support of his defense, counterclaim, cross-claim and third party complaint, if any. Deviation from such order of trial is purely discretionary upon the trial court, in this case, the Sandiganbayan, which cannot be questioned by the parties unless the vitiating element of grave abuse of discretion supervenes. Thus, the right of COCOFED to present evidence on the main case had not yet ripened. And the rendition of the partial summary judgments overtook their right to present evidence on their defenses.

It cannot be stressed enough that the Republic as well as herein petitioners were well within their rights to move, as they in fact separately did, for a partial summary judgment. Summary judgment may be allowed where, save for the amount of damages, there is, as shown by affidavits and like evidentiary documents, no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. A "genuine issue", as distinguished from one that is fictitious, contrived and set up in bad faith, means an issue of fact that calls for the presentation of evidence.[90] Summary or accelerated judgment, therefore, is a procedural technique aimed at weeding out sham

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[90] *PNB v. Noah's Ark Sugar Refinery,* G.R. No. 107243, September 1, 1993, 226 SCRA 36.

claims or defenses at an early stage of the litigation.[91] Sections 1, 2 and 4 of Rule 35 of the Rules of Court on Summary Judgment, respectively provide:

> SECTION 1. *Summary judgment for claimant*.—A party seeking to recover upon a claim, counterclaim, or cross-claim … may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
>
> *SEC. 2. Summary judgment for defending party.*—A party against whom a claim, counterclaim or cross-claim is asserted … is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.
>
> SEC. 4. *Case not fully adjudicated on motion*.—If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly.

Clearly, petitioner COCOFED's right to be heard had not been violated by the mere issuance of PSJ-A and PSJ-F before they can adduce their evidence.

As it were, petitioners COCOFED, *et al*. were able to present documentary evidence in conjunction with its "Class Action Omnibus Motion" dated February 23, 2001 where they appended around four hundred (400) documents including affidavits of alleged farmers. These petitioners manifested that said documents comprise their evidence to prove the farmers' ownership of the

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[91] *Carcon Development Corp. v. Court of Appeals*, G.R. No. 88218, December 19, 1989, 180 SCRA 348.

UCPB shares, which were distributed in accordance with valid and existing laws.[92]

Lastly, COCOFED, *et al*. even filed their own *Motion for Separate Summary Judgment*, an event reflective of their admission that there are no more factual issues left to be determined at the level of the Sandiganbayan. This act of filing a motion for summary judgment is a judicial admission against COCOFED under Section 26, Rule 130 which declares that the "act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

Viewed in this light, the Court has to reject petitioners' self-serving allegations about being deprived the right to adduce evidence.

III

The right to speedy trial was not violated.

This brings to the fore the alleged violation of petitioners' right to a speedy trial and speedy disposition of the case. In support of their contention, petitioners cite *Licaros v. Sandiganbayan*,[93] where the Court dismissed the case pending before the Sandiganbayan for violation of the accused's right to a speedy trial.

It must be clarified right off that the right to a speedy disposition of case and the accused's right to a speedy trial are distinct, albeit kindred, guarantees, the most obvious difference being that a speedy disposition of cases, as provided in Article III, Section 16 of the Constitution, obtains regardless of the nature of the case:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

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[92] *Republic v. COCOFED, et al.*, TSN, April 17, 2001, p. 198.

[93] G.R. No. 145851, November 22, 2001, 370 SCRA 394.

In fine, the right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings conducted by state agencies. Thus, in *Licaros* the Court dismissed the criminal case against the accused due to the palpable transgression of his right to a speedy trial.

In the instant case, the appropriate right involved is the right to a speedy disposition of cases, the recovery of ill-gotten wealth being a civil suit.

Nonetheless, the Court has had the occasion to dismiss several cases owing to the infringement of a party's right to a speedy disposition of cases.[94] Dismissal of the case for violation of this right is the general rule. *Bernat v. The Honorable Sandiganbayan (5th Division)*[95] expounds on the extent of the right to a speedy disposition of cases as follows:

> Section 16 of Article III of the Constitution guarantees the right of all persons to a "speedy disposition of their cases." Nevertheless, this right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. Moreover, the determination of whether the delays are of said nature is relative and cannot be based on a mere mathematical reckoning of time. Particular regard must be taken of the facts and circumstances peculiar to each case. As a guideline, the Court in Dela Peña v. Sandiganbayan mentioned certain factors that should be considered and balanced, namely: 1) length of delay; 2) reasons for the delay; 3) assertion or failure to assert such right by the accused; and 4) prejudice caused by the delay.
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> . . . . . .

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[94] *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008, 545 SCRA 618; *Lopez, Jr. v. Office of the Ombudsman*, G.R. No. 140529, September 6, 2001, 364 SCRA 569; *Roque v. Office of the Ombudsman*, G.R. No. 129978, May 12, 1999, 307 SCRA 104; *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721; *Tatad v. Sandiganbayan*, Nos. 72335-39, March 21, 1988, 159 SCRA 70.

[95] G.R. No. 158018, May 20, 2004, 428 SCRA 787, 789-790.

While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits… we hold it proper and equitable to give the parties fair opportunity to obtain … substantial justice in the premises.

The more recent case of *Tello v. People*[96] laid stress to the restrictive dimension to the right to speedy disposition of cases, *i.e.*, it is lost unless seasonably invoked:

In *Bernat* …, the Court denied petitioner's claim of denial of his right to a speedy disposition of cases considering that [he] … chose to remain silent for eight years before complaining of the delay in the disposition of his case. The Court ruled that petitioner failed to seasonably assert his right and he merely sat and waited from the time his case was submitted for resolution. In this case, petitioner similarly failed to assert his right to a speedy disposition of his case…. He only invoked his right to a speedy disposition of cases after [his conviction]…. Petitioner's silence may be considered as a waiver of his right.

An examination of the petitioners' arguments and the cited indicia of delay would reveal the absence of any allegation that petitioners moved before the Sandiganbayan for the dismissal of the case on account of vexatious, capricious and oppressive delays that attended the proceedings. Following *Tello*, petitioners are deemed to have waived their right to a speedy disposition of the case. Moreover, delays, if any, prejudiced the Republic as well. What is more, the alleged breach of the right in question was not raised below. As a matter of settled jurisprudence, but

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[96] G.R. No. 165781, June 5, 2009, 588 SCRA 519, 527-528.

subject to equally settled exception, an issue not raised before the trial court cannot be raised for the first time on appeal.[97] The sporting idea forbidding one from pulling surprises underpins this rule. For these reasons, the instant case cannot be dismissed for the alleged violation of petitioners' right to a speedy disposition of the case.

IV

Sections 1 and 2 of P.D. No. 755, Article III, Section 5 of P.D. No. 961 and Article III, Section 5 of P.D. No. 1468, are unconstitutional.

The Court may pass upon the constitutionality of P.D. Nos. 755, 961 and 1468.

Petitioners COCOFED, *et al.* and Ursua uniformly scored the Sandiganbayan for abusing its power of judicial review and wrongly encroaching into the exclusive domain of Congress when it declared certain provisions of the coconut levy laws and PCA administrative issuances as unconstitutional.

We are not persuaded.

It is basic that courts will not delve into matters of constitutionality unless unavoidable, when the question of constitutionality is the very *lis mota* of the case, meaning, that the case cannot be legally resolved unless the constitutional issue raised is determined. This rule finds anchorage on the presumptive constitutionality of every enactment. Withal, to justify the nullification of a statute, there must be a clear and unequivocal breach of the Constitution. A doubtful or speculative infringement would simply not suffice.[98]

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[97] *Heirs of Bernardo Ulep v. Ducat,* G.R. No. 159284, January 27, 2009, 577 SCRA 6, 19.

[98] *Garcia v. Executive Secretary,* G.R. No. 157584, April 2, 2009, 583 SCRA 119, 138-39.

Just as basic is the precept that lower courts are not precluded from resolving, whenever warranted, constitutional questions, subject only to review by this Court.

To Us, the present controversy cannot be peremptorily resolved without going into the constitutionality of P.D. Nos. 755, 961 and 1468 in particular. For petitioners COCOFED, *et al*. and Ballares, *et al*. predicate their claim over the sequestered shares and necessarily their cause on laws and martial law issuances assailed by the Republic on constitutional grounds. Indeed, as aptly observed by the Solicitor General, this case is for the recovery of shares grounded on the invalidity of certain enactments, which in turn is rooted in the shares being public in character, purchased as they were by funds raised by the taxing and/or a mix of taxing and police powers of the state.[99] As may be recalled, P.D. No. 755, under the policy-declaring provision, authorized the distribution of UCPB shares of stock free to coconut farmers. On the other hand, Section 2 of P.D. No. 755, hereunder quoted below, effectively authorized the PCA to utilize portions of the CCSF to pay the financial commitment of the farmers to acquire UCPB and to deposit portions of the CCSF levies with UCPB interest free. And as there also provided, the CCSF, CIDF and like levies that PCA is authorized to collect shall be considered as non-special or fiduciary funds to be transferred to the general fund of the Government, meaning they shall be deemed private funds.

Section 2 of P.D. No. 755 reads:

> Section 2. *Financial Assistance*. — To enable the coconut farmers to comply with their contractual obligations under the aforesaid Agreement, **the [PCA] is hereby directed to draw and utilize the collections under the [CCSF] authorized to be levied by [PD] No. 232, as amended, to pay for the financial commitments of the coconut farmers under the said agreement** and, except for [PCA's] budgetary requirements …, all collections under the [CCSF] Levy and (50%) of the collections under the [CIDF] shall be deposited, interest free, with the said bank of the coconut farmers and such

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[99] Sur-Rejoinder, p. 17, *rollo* (G.R. Nos. 177857-58), p. 846.

deposits shall not be withdrawn until the … the bank has sufficient equity capital …; and since the operations, and activities of the [PCA] are all in accord with the present social economic plans and programs of the Government, **all collections and levies which the [PCA] is authorized to levy and collect such as but not limited to the [CCS Levy] and the [CIDF] … shall not be considered or construed, under any law or regulation, special and/or fiduciary funds and do not form part of the general funds of the national government within the contemplation of [P.D.] No. 711.** (Emphasis supplied)

A similar provision can also be found in Article III, Section 5 of P.D. No. 961 and Article III, Section 5 of P.D. No. 1468, which We shall later discuss in turn:

P.D. No. 961

Section 5. *Exemptions*. **The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund as well as all disbursements of said funds for the benefit of the coconut farmers as herein authorized shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government** within the contemplation of P.D. No. 711; nor as a subsidy, donation, levy, government funded investment, or government share within the contemplation of P.D. 898, **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their own private capacities**.[100] (Emphasis Ours)

P.D. No. 1468

Section 5. *Exemptions*. **The [CCSF] and the [CIDF] as well as all disbursement as herein authorized, shall not be construed or interpreted, under nay law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government** within the contemplation of PD 711; nor as subsidy, donation, levy government funded investment, or government share within the contemplation of PD 898, **the intention being that said**

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[100] An Act to Codify the Laws Dealing with the Development of the Coconut and other Palm Oil Industry and for other Purposes [Presidential Decree No. 961], Art. III, § 5.

Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities....[101] (Emphasis Ours.)

In other words, the relevant provisions of P.D. No. 755, as well as those of P.D. Nos. 961 and 1468, could have been the only plausible means by which close to a purported million and a half coconut farmers could have acquired the said shares of stock. It has, therefore, become necessary to determine the validity of the authorizing law, which made the stock transfer and acquisitions possible.

To reiterate, it is of crucial importance to determine the validity of P.D. Nos. 755, 961 and 1468 in light of the constitutional proscription against the use of special funds save for the purpose it was established. Otherwise, petitioners' claim of **legitimate private ownership** over UCPB shares and indirectly over SMC shares held by UCPB's subsidiaries will have no leg to stand on, P.D. No. 755 being the only law authorizing the distribution of the SMC and UCPB shares of stock to coconut farmers, and with the aforementioned provisions actually stating and holding that the coco levy fund shall not be considered as a special – not even general – fund, but shall be owned by the farmers in their private capacities.[102]

The Sandiganbayan's ensuing ratiocination on the need to pass upon constitutional issues the Republic raised below commends itself for concurrence:

This Court is convinced of the imperative need to pass upon the issues of constitutionality raised by Plaintiff. **The issue of constitutionality of the provisions of P.D. No. 755 and the laws related thereto goes to the very core of Plaintiff's causes of action and defenses thereto.** It will serve the best interest of justice to define this early the legal framework within which this case shall be heard and tried, taking into account the admission of the parties

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[101] Presidential Decree No. 1468, Art. III, Sec. 5.

[102] P.D. No. 755, Sec. 2; P.D. No. 961, Art. III, Sec. 5; P.D. No. 1468, Art. III, Sec. 5.

and the established facts, particularly those relating to the main substance of **the defense of Lobregat, COCOFED, *et al*. and Ballares, *et al*., which is anchored on the laws being assailed by Plaintiff on constitutional grounds.**

. . . . . .

> The Court is also mindful that lower courts are admonished to observe a becoming modesty in examining constitutional questions, but that they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal (*Ynot v. Intermediate Appellate Court*).

. . . . . .

It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity. The Honorable Supreme Court … has clearly stated that the general rule admits of exceptions, thus:

. . . . . .

> 'For courts will pass upon a constitutional question only when presented before it in bona fide cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later…. It has been held that the determination of a constitutional question is necessary whenever it is essential to the decision of the case … as where the right of a party is founded solely on a statute, the validity of which is attacked.'

In the case now before us, the allegations of the Subdivided Complaint are consistent with those in the subject Motion, and they sufficiently raise the issue of constitutionality of the provisions of laws in question. The Third Amended Complaint (Subdivided) states:

> '(ii) to legitimize a posteriori his highly anomalous and irregular use and diversion of government funds to advance his own private and commercial interests, … Cojuangco, Jr. caused the issuance … of PD 755 (a) declaring that the coconut levy funds shall not be considered special and fiduciary and trusts funds and do not form part of the general funds of the National Government, conveniently repealing for that purpose a series of coconut levy funds as special, fiduciary, trust and government funds….

. . . . . .

'(iv) To perpetuate his opportunity to deal with and make use the coconut levy funds to build his economic empire, Cojuangco, Jr. caused the issuance by Defendant Ferdinand E. Marcos of an unconstitutional decree (PD 1468) requiring the deposit of all coconut levy funds with UCPB, interest free, to the prejudice of the government.'

The above-quoted allegations in the Third Amended Complaint (Subdivided) already question the "legitimacy" of the exercise by former President Marcos of his legislative authority when he issued P.D. Nos. 755 and 1468. The provision of Sec. 5, Art. III of P.D. 961 is substantially similar to the provisions of the aforesaid two [PDs]. P.D. No. 755 allegedly legitimized the "highly anomalous and irregular use and diversion of government funds to advance his [defendant Cojuangco's] own private and commercial interest." The issuance of the said [PD] which has the force and effect of a law can only be assailed on constitutional grounds. The merits of the grounds adverted to in the allegations of the Third Amended Complaint (Subdivided) can only be resolved by this Court by testing the questioned [PDs], which are considered part of the laws of the land….

As early as June 20, 1989, this Court in its Resolution expressed this Court's understanding of the import of the allegations of the complaint, as follows:

"It is likewise alleged in the Complaint that in order to legitimize the diversion of funds, defendant Ferdinand E. Marcos issued the Presidential Decrees referred to by the movants. **This is then the core of Plaintiff's complaint: that, insofar as the coconut levy is concerned, these decrees had been enacted as tools for the acquisition of ill-gotten wealth for specific favored individuals.**

Even if Plaintiff may not have said so effectively, the complaint in fact disputes the legitimacy, and, if one pleases, the constitutionality of such enactments….

The issue is validly raised on the face of the complaint and defendants must respond to it."

Since … the question of constitutionality … may be raised even on appeal if the determination of such a question is essential to the

decision of the case, we find more reason to resolve this constitutional question at this stage of the proceedings, where **the defense is grounded solely on the very laws the constitutionality of which are being questioned** and where the evidence of the defendants would seek mainly to prove their faithful and good faith compliance with the said laws and their implementing rules and regulations.[103] (Emphasis added.)

The Court's rulings in COCOFED v. PCGG and Republic v. Sandiganbayan, as law of the case, are speciously invoked.

To thwart the ruling on the constitutionality of P.D. Nos. 755, 961 and 1468, petitioners would sneak in the argument that the Court has, in three separate instances, upheld the validity, and thumbed down the Republic's challenge to the constitutionality, of said laws imposing the different coconut levies and prescribing the uses of the fund collected. The separate actions of the Court, petitioners add, would conclude the Sandiganbayan on the issue of constitutionality of said issuances, following the law-of-the-case principle. Petitioners allege:

> Otherwise stated, the decision of this Honorable Court in the COCOFED Case overruling the strict public fund theory espoused by the Respondent Republic, upholding the propriety of the laws imposing the collections of the different Coconut Levies and expressly allowing COCOFED, *et al.*, to prove that the Sequestered Assets have legitimately become their private properties had become final and immutable.[104]

Petitioners are mistaken.

Yu v. Yu,[105] as effectively reiterated in *Vios v. Pantangco*,[106] defines and explains the ramifications of the law of the case principle as follows:

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[103] *Rollo* (G.R. Nos. 177857-58), pp. 33-37, 237-241.

[104] *Id.* at 136.

[105] G.R. No. 164915, March 10, 2006, 484 SCRA 485, 497.

[106] G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143.

Law of the case has been defined as the opinion delivered on a former appeal. It 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, … so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

Otherwise put, the principle means that questions of law that have been previously raised and disposed of in the proceedings shall be controlling in succeeding instances where the same legal question is raised, provided that the facts on which the legal issue was predicated continue to be the facts of the case before the court. Guided by this definition, the law of the case principle cannot provide petitioners any comfort. We shall explain why.

In the first instance, petitioners cite *COCOFED v. PCGG.*[107] There, respondent PCGG questioned the validity of the coconut levy laws based on the limits of the state's taxing and police power, as may be deduced from the ensuing observations of the Court:

…. Indeed, the Solicitor General suggests quite strongly that the laws operating or purporting to convert the coconut levy funds into private funds, are a transgression of the basic limitations for the licit exercise of the state's taxing and police powers, and that certain provisions of said laws are merely clever stratagems to keep away government audit in order to facilitate misappropriation of the funds in question.

The utilization and proper management of the coconut levy funds, [to acquire shares of stocks for coconut farmers and workers] raised as they were by the State's police and taxing power are certainly the concern of the Government…. The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds, they must *prima facie* be accounted subject to measures prescribed in EO Nos. 1, 2,

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[107] *Supra* note 16.

and 14 to prevent their concealment, dissipation, *etc*….[108] [Words in bracket added.]

The issue, therefore, in *COCOFED v. PCGG* turns on the legality of the transfer of the shares of stock bought with the coconut levy funds to coconut farmers. This must be distinguished with the issues in the instant case of whether P.D. No. 755 violated Section 29, paragraph 3 of Article VI of the 1987 Constitution as well as to whether P.D. No. 755 constitutes undue delegation of legislative power. Clearly, the issues in both sets of cases are so different as to preclude the application of the law of the case rule.

The second and third instances that petitioners draw attention to refer to the rulings in *Republic v. Sandiganbayan*, where the Court by Resolution of December 13, 1994, as reiterated in another resolution dated March 26, 1996, resolved to deny the separate motions of the Republic to resolve legal questions on the character of the coconut levy funds, more particularly to declare as unconstitutional (a) coconut levies collected pursuant to various issuances as public funds and (b) Article III, Section 5 of P.D. No. 1468.

Prescinding from the foregoing considerations, petitioners would state: "Having filed at least three (3) motions … seeking, among others, to declare certain provisions of the Coconut Levy Laws unconstitutional and having been rebuffed all three times by this Court," the Republic — and necessarily Sandiganbayan — "should have followed as [they were] legally bound by this … Court's prior determination" on that above issue of constitutionality under the doctrine of Law of the Case.

Petitioners are wrong. The Court merely declined to pass upon the constitutionality of the coconut levy laws or some of their provisions. It did not declare that the UCPB shares acquired with the use of coconut levy funds have legitimately become private.

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[108] *Id.* at 252.

The coconut levy funds are in the nature of taxes and can only be used for public purpose. Consequently, they cannot be used to purchase shares of stocks to be given for free to private individuals.

Indeed, We have hitherto discussed, the coconut levy was imposed in the exercise of the State's inherent power of taxation. As We wrote in *Republic v. COCOFED*:[109]

> Indeed, **coconut levy funds partake of the nature of taxes**, which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs.
>
> Based on its definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements for the following reasons:
>
> (a) They were generated by virtue of statutory enactments imposed on the coconut farmers requiring the payment of prescribed amounts. Thus, PD No. 276, which created the Coconut Consumer[s] Stabilization Fund (CCSF), mandated the following:
>
> > "a. A levy, initially, of ₱15.00 per 100 kilograms of copra resecada or its equivalent in other coconut products, shall be imposed on every first sale, in accordance with the mechanics established under RA 6260, effective at the start of business hours on August 10, 1973.
> >
> > "The proceeds from the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government."
>
> The coco levies were further clarified in amendatory laws, specifically PD No. 961 and PD No. 1468 – in this wise:

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[109] *Republic v. COCOFED*, G.R. No. 147062-64, December 14, 2001, 372 SCRA 462, 482-84.

> "The Authority (PCA) is hereby empowered to impose and collect a levy, to be known as the Coconut Consumers Stabilization Fund Levy, on every one hundred kilos of copra resecada, or its equivalent … delivered to, and/or purchased by, copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products. **The levy shall be paid by such copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products** under such rules and regulations as the Authority may prescribe. Until otherwise prescribed by the Authority, the current levy being collected shall be continued."

Like other tax measures, they were not voluntary payments or donations by the people. They were enforced contributions exacted on pain of penal sanctions, as provided under PD No. 276:

> "3. Any person or firm who violates any provision of this Decree or the rules and regulations promulgated thereunder, shall, in addition to penalties already prescribed under existing administrative and special law, pay a fine of not less than ₱2,500 or more than ₱10,000, or suffer cancellation of licenses to operate, or both, at the discretion of the Court."

Such penalties were later amended thus: ….

(b) The coconut levies were imposed pursuant to the laws enacted by the proper legislative authorities of the State. Indeed, the CCSF was collected under PD No. 276…."

(c) They were clearly imposed for a **public purpose**. **There is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry.** This Court takes judicial notice of the fact that the **coconut industry** is one of the great economic pillars of our nation, and coconuts and their byproducts occupy a leading position among the country's export products….

Taxation is done not merely to raise revenues to support the government, but also to provide means for the **rehabilitation and the stabilization of a threatened industry**, which is so affected with **public interest** as to be within the police power of the State….

Even if the money is allocated for a **special purpose** and raised by special means, **it is still public in character**.... In *Cocofed v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of law of the late dictatorship ... with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly." The Court continued: ".... **It cannot be denied that the coconut industry is one of the major industries supporting the national economy.** It is, therefore, the State's concern to make it a strong and secure source **not only** of the livelihood of a significant segment of the population, **but also of export earnings the sustained growth of which is one of the imperatives of economic stability**.[110] (Emphasis Ours)

We have ruled time and again that taxes are imposed only for a public purpose.[111] "They cannot be used for purely private purposes or for the exclusive benefit of private persons."[112] When a law imposes taxes or levies from the public, with the intent to give undue benefit or advantage to private persons, or the promotion of private enterprises, that law cannot be said to satisfy the requirement of public purpose.[113] In *Gaston v. Republic Planters Bank*, the petitioning sugar producers, sugarcane planters and millers sought the distribution of the shares of stock of the Republic Planters Bank, alleging that they are the true beneficial owners thereof.[114] In that case, the investment, *i.e.*, the purchase of the said bank, was funded by the deduction of PhP 1.00 per picul from the sugar proceeds of the sugar producers pursuant

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[110] *Republic v. COCOFED*, G.R. No. 147062-64, December 14, 2001, 372 SCRA 462, 482-84.

[111] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485, 510.

[112] *Id.*; *Pascual v. Secretary of Public Works and Communications*, 110 Phil. 331 (1960).

[113] *Id.* at 511.

[114] *Gaston v. Republic Planters Bank*, No. 77194, March 15, 1988, 158 SCRA 626, 628-629.

to P.D. No. 388.[115] In ruling against the petitioners, the Court held that to rule in their favor would contravene the general principle that revenues received from the imposition of taxes or levies "cannot be used for purely private purposes or for the exclusive benefit of private persons."[116] The Court amply reasoned that the Stabilization Fund must "be utilized for the benefit of the ***entire sugar industry, and all its components, stabilization of the domestic market including foreign market, the industry being of vital importance to the country's economy and to national interest.***"[117]

Similarly in this case, the coconut levy funds were sourced from forced exactions decreed under P.D. Nos. 232, 276 and 582, among others,[118] with the end-goal of developing the entire coconut industry.[119] Clearly, to hold therefore, even by law, that the revenues received from the imposition of the coconut levies be used purely for private purposes to be owned by private individuals in their private capacity and for their benefit, would contravene the rationale behind the imposition of taxes or levies.

Needless to stress, courts do not, as they cannot, allow by judicial fiat the conversion of special funds into a private fund for the benefit of private individuals. In the same vein, We cannot subscribe to the idea of what appears to be an indirect – if not exactly direct – conversion of special funds into private funds, *i.e.*, by using special funds to purchase shares of stocks, which in turn would be distributed for free to private individuals.

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[115] *Id.* at 629.

[116] *Id.* at 634.

[117] *Id.*

[118] Creating a Philippine Coconut Authority [P.D. No. 232], June 30, 1973; Establishing a Coconut Consumers Stabilization Fund [P.D. No. 276], August 20, 1973; Further Amending Presidential Decree No. 232, As Amended [P.D. No. 582], November 14, 1974.

[119] *Republic v. COCOFED*, G.R. No. 147062-64, December 14, 2001, 372 SCRA 462, 482-84.

Even if these private individuals belong to, or are a part of the coconut industry, the free distribution of shares of stocks purchased with special public funds to them, nevertheless cannot be justified. *The ratio in Gaston,*[120] as expressed below, applies *mutatis mutandis* to this case*:*

> The stabilization fees in question are levied by the State … for a special purpose – that of "financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market." **The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them as state funds even though they are held for a special purpose….**
>
> ***That the fees were collected from sugar producers, [etc.], and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fund for their benefit nor make them the beneficial owners of the shares so purchased. It is but rational that the fees be collected from them since it is also they who are benefited from the expenditure of the funds derived from it.*** ….[121] (Emphasis Ours.)

In this case, the coconut levy funds were being exacted from copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products.[122] Likewise so, the funds here were channeled to the purchase of the shares of stock in UCPB. Drawing a clear parallelism between *Gaston* and this case, the fact that the coconut levy funds were collected from the persons or entities in the coconut industry, among others, does not and cannot entitle them to be beneficial owners of the

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[120] No. 77194, March 15, 1988, 158 SCRA 626, 633-634; cited in *Republic v. COCOFED,* G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 485-86.

[121] *Gaston v. Republic Planters Bank,* No. 77194, March 15, 1988, 158 SCRA 626, 633-34; cited in *Republic v. COCOFED,* G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 485-86.

[122] *Republic v. COCOFED,* G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 483; citing P.D. No. 961, 1976, Art. III, § 1; P.D. No. 1468, 1978, Art. III, § 1.

subject funds – or more bluntly, owners thereof in their private capacity. Parenthetically, the said private individuals cannot own the UCPB shares of stocks so purchased using the said special funds of the government.[123]

Coconut levy funds are special public funds of the government.

Plainly enough, the coconut levy funds are public funds. We have ruled in *Republic v. COCOFED* that the coconut levy funds are not only affected with public interest; they are *prima facie* public funds.[124] In fact, this pronouncement that the levies are government funds was admitted and recognized by respondents, COCOFED, *et al*., in G.R. Nos. 147062-64.[125] And more importantly, in the same decision, We clearly explained exactly what kind of government fund the coconut levies are. We were categorical in saying that coconut levies are treated as special funds by the very laws which created them:

> Finally and tellingly, the very laws governing the coconut levies recognize their public character. **Thus, the third *Whereas* clause of PD No. 276 treats them as special funds for a specific public purpose**. Furthermore, **PD No. 711 transferred to the general funds of the State all existing special and fiduciary funds including the CCSF**. On the other hand, **PD No. 1234 specifically declared the CCSF as a special fund for a special purpose, which should be treated as a *special account* in the National Treasury**.[126] (Emphasis Ours.)

If only to stress the point, P.D. No. 1234 expressly stated that coconut levies are special funds to be remitted to the Treasury in the General Fund of the State, but treated as Special Accounts:

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[123] *See infra* discussion, coconut levy fund as special fund of the government.

[124] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 491.

[125] *Id.* at 488.

[126] *Id.* at 490.

Section 1. All income and collections for **Special or Fiduciary Funds** authorized by law shall be remitted to the Treasury and treated as Special Accounts in the General Fund, **including the following**:

(a) [*PCA] Development Fund, including all income derived therefrom under Sections 13 and 14 of [RA] No. 1145; Coconut Investments Fund under Section 8 of [RA] No. 6260, including earnings, profits, proceeds and interests derived therefrom; Coconut Consumers Stabilization Funds under Section 3-A of PD No. 232, as inserted by Section 3 of P.D. No. 232, as inserted by Section 2 of P.D. No. 583; and all other fees accruing to the [PCA] under the provisions of Section 19 of [RA] No. 1365, in accordance with Section 2 of P.D. No. 755 and all other income accruing to the [PCA] under existing laws.*[127] (Emphasis Ours)

Moreover, the Court, in *Gaston,* stated the observation that the character of a stabilization fund as a special fund "is emphasized by the fact that the funds are deposited in the Philippine National Bank [PNB] and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law."[128] Similarly in this case, Sec.1 (a) of P.D. No. 276 states that the proceeds from the coconut levy shall be deposited with the PNB, then a government bank, or any other government bank under the account of the CCSF, ***as a separate trust fund,*** which shall not form part of the government's general fund.[129] And even assuming *arguendo* that the coconut levy funds were transferred to the general fund pursuant to P.D. No. 1234, it was with the specific directive that the same be treated as ***special accounts*** in the general fund.[130]

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[127] Instituting a Procedure for the Management of Special and Fiduciary Funds Earmarked or Administered by Departments, Bureaus, Offices and Agencies of the National Government, including Government-Owned or Controlled Corporations [P.D. No. 1234], 1977, § 1 (a).

[128] *Gaston v. Republic Planters Bank,* G.R. No. 77194, March 15, 1988, 158 SCRA 626, 633.

[129] P.D. No. 276, § 1 (a).

[130] P.D. No. 1234, § 1 (a).

The coconut levy funds can only be used for the special purpose and the balance thereof should revert back to the general fund. Consequently, their subsequent reclassification as a private fund to be owned by private individuals in their private capacities under P.D. Nos. 755, 961 and 1468 are unconstitutional.

To recapitulate, Article VI, Section 29 (3) of the 1987 Constitution, restating a general principle on taxation, enjoins the disbursement of a special fund in accordance with the special purpose for which it was collected, the balance, if there be any, after the purpose has been fulfilled or is no longer forthcoming, to be transferred to the general funds of the government, thus:

> Section 29(3)….
>
> (3) **All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only**. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. (Emphasis Ours)

Correlatively, Section 2 of P.D. No. 755 clearly states that:

> Section 2. *Financial Assistance.* To enable the coconut farmers to comply with their contractual obligations under the aforesaid Agreement, the [PCA] is hereby directed to draw and utilize the collections under the **Coconut Consumers Stabilization Fund [CCSF]** authorized to be levied by [P.D.] 232, as amended, to pay for the financial commitments of the coconut farmers under the said agreement…. and the Coconut Industry Development Fund as prescribed by Presidential Decree No. 582 **shall not be considered or construed, under any law or regulation, special and/or fiduciary funds and do not form part of the general funds of the national government** within the contemplation of Presidential Decree No. 711. (Emphasis Ours)

Likewise, as discussed *supra,* Article III, Section 5 of both P.D. Nos. 961 and 1468 provides that the CCSF shall not be construed by any law as a special and/or trust fund, the stated

intention being that actual ownership of the said fund shall pertain to coconut farmers in their private capacities.[131] Thus, in order to determine whether the relevant provisions of P.D. Nos. 755, 961 and 1468 complied with Article VI, Section 29 (3) of the 1987 Constitution, a look at the public policy or the purpose for which the CCSF levy was imposed is necessary.

The CCSF was established by virtue of P.D. No. 276 wherein it is stated that:

> WHEREAS, an escalating crisis brought about by an abnormal situation in the world market for fats and oils has resulted in supply and price dislocations **in the domestic market** for coconut-based goods, and has **created hardships for consumers** thereof;
>
> WHEREAS, the **representatives of the coconut industry** … have proposed the implementation of an industry-financed stabilization scheme which will permit socialized pricing of coconut-based commodities;
>
> WHEREAS, it is the policy of the State to promote the welfare and economic well-being **of the consuming public**;
>
> . . . . . .
>
> 1. In addition to its powers granted under [P.D.] No. 232, the [PCA] is hereby authorized to formulate and immediately implement a stabilization scheme for coconut-based consumer goods, along the following general guidelines:
>
> (a) ….The proceeds of the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the CCSF as a separate trust fund….
>
> (b) The Fund shall be **utilized to subsidize the sale of coconut-based products** at prices set by the Price Control Council….:
>
> . . . . . .

As couched, P.D. No. 276 created and exacted the CCSF "to advance the government's avowed policy of protecting the

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[131] P.D. No. 961, Art. III, § 5; P.D. No. 1468, Art. III, § 5.

coconut industry."[132] Evidently, the CCSF was originally set up as a special fund to support consumer purchases of coconut products. To put it a bit differently, the protection of the entire coconut industry, and even more importantly, for the consuming public provides the rationale for the creation of the coconut levy fund. There can be no quibbling then that the foregoing provisions of P.D. No. 276 intended the fund created and set up therein not especially for the coconut farmers but for the entire coconut industry, albeit the improvement of the industry would doubtless redound to the benefit of the farmers. Upon the foregoing perspective, the following provisions of P.D. Nos. 755, 961 and 1468 insofar as they declared, as the case may be, that: "[the coconut levy] fund and the disbursements thereof [shall be] authorized for the benefit of the coconut farmers and shall be owned by them in their private capacities;"[133] or the coconut levy fund shall not be construed by any law to be a special and/or fiduciary fund, and do not therefore form part of the general fund of the national government later on;[134] or the UCPB shares acquired using the coconut levy fund shall be distributed to the coconut farmers for free,[135] violated the special public purpose for which the CCSF was established.

In sum, not only were the challenged presidential issuances unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and, therefore, negating the public purpose declared by P.D. No. 276, *i.e.*, to stabilize the price of edible oil[136] and to protect the coconut industry.[137] They likewise reclassified, nay treated, the coconut levy fund

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[132] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 484.

[133] P.D. No. 961, Art. III, § 5; P.D. No. 1468, Art. III, § 5.

[134] P.D. No. 775, § 2; P.D. No. 961, Art. III, § 5; P.D. No. 1468, Art. III, § 5.

[135] P.D. No. 775, § 1.

[136] *Supra* note 118.

[137] *Supra* note 119.

as *private fund* to be disbursed and/or invested for the benefit of *private individuals* in their *private capacities*, contrary to the original purpose for which the fund was created. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law.[138] The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers, is therefore void.

We quote with approval the Sandiganbayan's reasons for declaring the provisions of P.D. Nos. 755, 961 and 1468 as unconstitutional:

> It is now settled, in view of the ruling in *Republic v. COCOFED, et al.*, *supra*, that "Coconut levy funds are raised with the use of the police and taxing powers of the State;" that "they are levies imposed by the State for the benefit of the coconut industry and its farmers" and that "they were clearly imposed for a public purpose." This public purpose is explained in the said case, as follows:
>
> > …. c) They were clearly imposed for a public purpose. There is absolutely no question that they were colleted to advance the government's avowed policy of protecting the coconut industry….
> >
> > "Taxation is done not merely to raise revenues to support the government, but also to provide means for the rehabilitation and the stabilization of a threatened industry, which is so affected with public interest as to be within the police power of the State, as held in *Caltex Philippines v. COA* and *Osmeña v. Orbos*.
>
> . . . . . .

[138] CONSTITUTION, Art. VI, § 29 (1).

The avowed public purpose for the disbursement of the CCSF is contained in the perambulatory clauses and Section 1 of P.D. No. 755. The imperativeness of enunciating the public purpose of the expenditure of funds raised through taxation is underscored in the case of *Pascual v. The Secretary of Public Works and Communications, et al., supra,* which held:

> "As regards the legal feasibility of appropriating public funds for a private purpose the principle according to Ruling Case Law, is this:
>
> 'It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose … it is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare may be ultimately benefited by their promotion. Incidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money.' 25 R.L.C. pp. 398-400)
>
> "The rule is set forth in Corpus Juris Secundum in the following language:
>
> . . . . . .
>
> 'The test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public interests, as opposed to the furtherance of the advantage of individuals, although each advantage to individuals might incidentally serve the public….' (81 C.J.S. p. 1147)
>
> "Needless to say, this Court is fully in accord with the foregoing views…. Besides, reflecting as they do, the established jurisprudence in the United States, after whose constitutional system ours has been patterned, said views and jurisprudence are, likewise, part and parcel of our own constitutional law."

The gift of funds raised by the exercise of the taxing powers of the State which were converted into shares of stock in a private corporation, slated for free distribution to the coconut farmers, can

only be accorded constitutional sanction if it will directly serve the public purpose declared by law….[139]

Section 1 of P.D. No. 755, as well as PCA Administrative Order No. 1, Series of 1975 (PCA AO 1), and Resolution No. 074-75, are invalid delegations of legislative power.

Petitioners argue that the anti-graft court erred in declaring Section 1 of PD 755, PCA Administrative Order No. 1 and PCA Resolution No. 074-78 constitutionally infirm by reason of alleged but unproven and unsubstantiated flaws in their implementation. Additionally, they explain that said court erred in concluding that Section 1 of PD No. 755 constitutes an undue delegation of legislative power insofar as it authorizes the PCA to promulgate rules and regulations governing the distribution of the UCPB shares to the farmers.

These propositions are meritless.

The assailed PSJ-A noted the operational distribution nightmare faced by PCA and the mode of distribution of UCPB shares set in motion by that agency left much room for diversion. Wrote the Sandiganbayan:

> The actual distribution of the bank shares was admittedly an enormous operational problem which resulted in the failure of the intended beneficiaries to receive their shares of stocks in the bank, as shown by the rules and regulations, issued by the PCA, without adequate guidelines being provided to it by P.D. No. 755. PCA Administrative Order No. 1, Series of 1975 (August 20, 1975), "Rules and Regulations Governing the Distribution of Shares of Stock of the Bank Authorized to be Acquired Pursuant to PCA Board Resolution No. 246-75", quoted hereunder discloses how the undistributed shares of stocks due to anonymous coconut farmers or payors of the coconut levy fees were authorized to be distributed to existing shareholders of the Bank:
>
> > "Section 9. Fractional and Undistributed Shares – Fractional shares and shares which remain undistributed

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[139] *Rollo* (G.R. No. 177857-58), pp. 144-148, 799-803.

> … shall be distributed to all the coconut farmers who have qualified and received equity in the Bank and shall be apportioned among them, as far as practicable, in proportion to their equity in relation to the number of undistributed equity and such further rules and regulations as may hereafter be promulgated.'
>
> The foregoing PCA issuance was further amended by Resolution No. 074-78, still citing the same problem of distribution of the bank shares….:
>
> . . . . . .

Thus, when 51,200,806 shares in the bank remained undistributed, the PCA deemed it proper to give a "bonanza" to coconut farmers who already got their bank shares, by giving them an additional share for each share owned by them and by converting their fractional shares into full shares. The rest of the shares were then transferred to a private organization, the COCOFED, for distribution to those determined to be "bona fide coconut farmers" who had "not received shares of stock of the Bank." ….

The PCA thus assumed, due to lack of adequate guidelines set by P.D. No. 755, **that it had complete authority to define who are the coconut farmers and to decide as to who among the coconut farmers shall be given the gift of bank shares;** how many shares shall be given to them, and what basis it shall use to determine the amount of shares to be distributed for free to the coconut farmers. In other words, P.D. No. 755 fails the completeness test which renders it constitutionally infirm.

Regarding the second requisite of standard, it is settled that legislative standard need not be expressed….

We observed, however, that the PCA [AO] No. 1, Series of 1975 and PCA Rules and Regulations 074-78, did not take into consideration the accomplishment of the public purpose or the national standard/ policy of P.D. No. 755 which is directly to accelerate the development and growth of the coconut industry and as a consequence thereof, to make the coconut farmers "participants in and beneficiaries" of such growth and development. The said PCA issuances did nothing more than provide guidelines as to whom the UCPB shares were to be distributed and how many bank shares shall be allotted to the beneficiaries. There was no mention of how the distributed shares shall be used to achieve exclusively or at least directly or primarily

the aim or public purpose enunciated by P.D. No. 755. The numerical or quantitative distribution of shares contemplated by the PCA regulations which is a condition for the validly of said administrative issuances. **There was a reversal of priorities. The narrow private interests prevailed over the laudable objectives of the law….** However, under the May 25, 1975 agreement implemented by the PCA issuances, the PCA acquired only 64.98% of the shares of the bank and even the shares covering the said 64.98% were later on transferred to non-coconut farmers."

The distribution for free of the shares of stock of the CIIF Companies is tainted with the above-mentioned constitutional infirmities of the PCA administrative issuances. In view of the foregoing, we cannot consider the provision of P.D. No. 961 and P.D. No. 1468 and the implementing regulations issued by the PCA as valid legal basis to hold that assets acquired with public funds have legitimately become private properties."[140] (Emphasis added.)

P.D. No. 755 involves an invalid delegation of legislative power, a concept discussed in *Soriano v. Laguardia*,[141] citing the following excerpts from *Edu v. Ericta*:

It is a fundamental … that Congress may not delegate its legislative power…. What cannot be delegated is the authority … to make laws and to alter and repeal them; the test is the completeness of the statute in all its term and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. **The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority….**

To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. **A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be**

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[140] *Id.* at 62-64.

[141] G.R. No. 164785, April 29, 2009, 587 SCRA 79, 117-18.

effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations.[142] (Emphasis supplied)

Jurisprudence is consistent as regards the two tests, which must be complied with to determine the existence of a valid delegation of legislative power. In *Abakada Guro Party List, et al. v. Purisima*,[143] We reiterated the discussion, to wit:

> Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it **sets forth therein the policy to be executed, carried out or implemented** by the delegate. It lays down a sufficient standard when it provides **adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented**.

In the instant case, the requisite standards or criteria are absent in P.D. No. 755. As may be noted, the decree authorizes the PCA to distribute to coconut farmers, for free, the shares of stocks of UCPB and to pay from the CCSF levy the financial commitments of the coconut farmers under the Agreement for the acquisition of such bank. Yet, the decree does not even state who are to be considered as coconut farmers. Would, say, one who plants a single coconut tree be already considered a coconut farmer and, therefore, entitled to own UCPB shares? If so, how many shares shall be given to him? The definition of a coconut farmer and the basis as to the number of shares a farmer is entitled to receive for free are important variables to be determined by law and cannot be left to the discretion of the implementing agency.

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[142] No. L-32096, October 24, 1970, 35 SCRA 481, 496-497.

[143] G.R. No. 166715, August 14, 2008, 562 SCRA 251, 277.

Moreover, P.D. No. 755 did not identify or delineate any clear condition as to how the disposition of the UCPB shares or their conversion into private ownership will redound to the advancement of the national policy declared under it. To recall, P.D. No. 755 seeks to "accelerate the growth and development of the coconut industry and achieve a vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of, such growth and development."[144] The Sandiganbayan is correct in its observation and ruling that the said law gratuitously gave away public funds to private individuals, and converted them exclusively into private property without any restriction as to its use that would reflect the avowed national policy or public purpose. Conversely, the private individuals to whom the UCPB shares were transferred are free to dispose of them by sale or any other mode from the moment of their acquisition. In fact and true enough, the Sandiganbayan categorically stated in its Order dated March 11, 2003,[145] that out of the 72.2% shares and increased capital stock of the FUB (later UCPB) allegedly covered by the May 25, 1975 Agreement,[146] entirely paid for by PCA, 7.22% were given to Cojuangco and the remaining 64.98%, which were originally held by PCA for the benefit of the coconut farmers, were later sold or transferred to non-coconut farmers.[147] Even the proposed rewording of the factual allegations of Lobregat, COCOFED, *et al.* and Ballares, *et al*., reveals that indeed, P.D. No. 755 did not provide for any guideline, standard, condition or restriction by which the said shares shall be distributed to the coconut farmers that would ensure that the same will be undertaken to accelerate the growth and development of the coconut industry pursuant to its national policy. The proposed rewording of admissions reads:

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[144] P.D. No. 755, whereas clause.

[145] *Supra* note 50.

[146] *See infra* discussion Part III, Civil Case No. 0033-A.

[147] PSJ-A, pp. 51-52.

There were shares forming part of the aforementioned 64.98% which were, after their distribution, for free, to the coconut farmers as required by P.D. No. 755, sold or transferred respectively by individual coconut farmers who were then the registered stockholders of those UCPB shares to non-coconut farmers.[148]

Clearly, P.D. No. 755, insofar as it grants PCA a veritable *carte blanche* to distribute to coconut farmers UCPB shares at the level it may determine, as well as the full disposition of such shares to private individuals in their private capacity without any conditions or restrictions that would advance the law's national policy or public purpose, present a case of undue delegation of legislative power. As such, there is even no need to discuss the validity of the administrative orders and resolutions of PCA implementing P.D. No. 755. Water cannot rise higher than its source.

Even so, PCA AO 1 and PCA Resolution No. 078-74, are in themselves, infirm under the undue delegation of legislative powers. Particularly, Section 9 of PCA AO I provides:

SECTION 9. Fractional and Undistributed Shares – Fractional shares and shares which remain undistributed as a consequence of the failure of the coconut farmers to register their COCOFUND receipts or the destruction of the COCOFUND receipts or the registration of COCOFUND receipts in the name of an unqualified individual, after the final distribution is made on the basis of the consolidated IBM registration Report as of March 31, 1976 shall be distributed to all the coconut farmers who have qualified and received equity in the Bank and shall be appointed among them, as far as practicable, in proportion to their equity in relation to the number of undistributed equity and such further rules and regulations as may hereafter be promulgated.

The foregoing provision directs and authorizes the distribution of fractional and undistributed shares as a consequence of the failure of the coconut farmers with COCOFUND receipts to

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[148] PSJ-A, p. 52, *citing* Comment of Defendant Maria Clara L. Lobregat, Movants COCOFED, *et al*., and Movants Ballares, *et al*. (Re: Order of March 11, 2003), p. 16.

register them, even without a clear mandate or instruction on the same in any pertinent existing law. PCA Resolution No. 078-74 had a similar provision, albeit providing more detailed information. The said Resolution identified 51,200,806 shares of the bank that remained undistributed and PCA devised its own rules as to how these undistributed and fractional shares shall be disposed of, notwithstanding the dearth as to the standards or parameters in the laws which it sought to implement.

Eventually, what happened was that, as correctly pointed out by the Sandiganbayan, the PCA gave a "bonanza" to supposed coconut farmers who already got their bank shares, by giving them extra shares according to the rules established – on its own – by the PCA under PCA AO 1 and Resolution No. 078-74. Because of the lack of adequate guidelines under P.D. No. 755 as to how the shares were supposed to be distributed to the coconut farmers, the PCA thus assumed that it could decide for itself how these shares will be distributed. This obviously paved the way to playing favorites, if not allowing outright shenanigans. In this regard, this poser raised in the Court's February 16, 1993 Resolution in G.R. No. 96073 is as relevant then as it is now: "*How is it that shares of stocks in such entities which was organized and financed by revenues derived from coconut levy funds which were imbued with public interest ended up in private hands who are not farmers or beneficiaries; and whether or not the holders of said stock, who in one way or another had had some part in the collection, administration, disbursement or other disposition of the coconut levy funds were qualified to acquire stock in the corporations formed and operated from these funds*." [149]

Likewise, the said PCA issuances did not take note of the national policy or public purpose for which the coconut levy funds were imposed under P.D. No. 755, *i.e.* the acceleration of the growth and development of the entire coconut industry, and the achievement of a vertical integration thereof that could

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[149] See Separate Opinion of Justice Vitug in *Republic v. COCOFED, supra* note 34.

make the coconut farmers participants in, and beneficiaries of, such growth and development.[150] Instead, the PCA prioritized the coconut farmers themselves by fully disposing of the bank shares, totally disregarding the national policy for which the funds were created. This is clearly an undue delegation of legislative powers.

With this pronouncement, there is hardly any need to establish that the sequestered assets are ill-gotten wealth. The documentary evidence, the P.D.s and Agreements, prove that the transfer of the shares to the more than one million of supposed coconut farmers was tainted with illegality.

Article III, Section 5 of P.D. No. 961 and Article III, Section 5 of P.D. No. 1468 violate Article IX (D) (2) of the 1987 Constitution.

Article III, Section 5 of P.D. No. 961 explicitly takes away the coconut levy funds from the coffer of the public funds, or, to be precise, privatized revenues derived from the coco levy. Particularly, the aforesaid Section 5 provides:

> Section 5. *Exemptions.* The Coconut Consumers Stabilization Fund and the Coconut Industry Development fund as well as all disbursements of said funds for the benefit of the coconut farmers as herein authorized ***shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government within the contemplation of P.D. No. 711; nor as a subsidy, donation, levy, government funded investment, or government share within the contemplation of P.D. 898 the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned in their own private capacity***.[151] (Emphasis Ours)

The same provision is carried over in Article III, Section 5 of P.D. No. 1468, the *Revised Coconut Industry Code*:

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[150] P.D. 755, whereas clause.

[151] P.D. No. 961, Art. III, § 5.

These identical provisions of P.D. Nos. 961 and 1468 likewise violate Article IX (D), Section 2(1) of the Constitution, defining the powers and functions of the Commission on Audit ("COA") as a constitutional commission:

> Sec. 2. (1) ***The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities***, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries;.[152] (Emphasis Ours)

A similar provision was likewise previously found in Article XII (D), Section 2 (1) of the 1973 Constitution, thus:

> Section 2. The Commission on Audit shall have the following powers and functions:
>
> (1) ***Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities,*** including government-owned and controlled corporations; keep the general accounts of the government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or use of funds and property.[153] (Emphasis Ours)

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[152] CONSTITUTION, Art. IX (D), § 2 (1).

[153] 1973 CONSTITUTION, Art. XII (D), § 2 (1).

The Constitution, by express provision, vests the COA with the responsibility for State audit.[154] As an independent supreme State auditor, its audit jurisdiction cannot be undermined by any law. Indeed, under Article IX (D), Section 3 of the 1987 Constitution, "[n]o law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or ***any investment of public funds***, from the jurisdiction of the Commission on Audit."[155] Following the mandate of the COA and the parameters set forth by the foregoing provisions, it is clear that it has jurisdiction over the coconut levy funds, being special public funds. Conversely, the COA has the power, authority and duty to examine, audit and settle all accounts pertaining to the coconut levy funds and, consequently, to the UCPB shares purchased using the said funds. However, declaring the said funds as partaking the nature of private funds, ergo subject to private appropriation, removes them from the coffer of the public funds of the government, and consequently renders them impervious to the COA audit jurisdiction. Clearly, the pertinent provisions of P.D. Nos. 961 and 1468 divest the COA of its constitutionally-mandated function and undermine its constitutional independence.

The assailed purchase of UCPB shares of stocks using the coconut levy funds presents a classic example of an investment of public funds. The conversion of these special public funds into private funds by allowing private individuals to own them in their private capacities is something else. It effectively deprives the COA of its constitutionally-invested power to audit and settle such accounts. The conversion of the said shares purchased using special public funds into pure and exclusive private ownership has taken, or will completely take away the said funds from the boundaries with which the COA has jurisdiction. Obviously, the COA is without audit jurisdiction over the receipt or disbursement of private property. Accordingly, Article III,

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[154] *Mamaril v. Domingo,* G.R. No. 100284, October 13, 1993, 227 SCRA 206.

[155] CONSTITUTION, Art. IX (D), § 3. (Emphasis Ours.)

Section 5 of both P.D. Nos. 961 and 1468 must be struck down for being unconstitutional, be they assayed against Section 2(1), Article XII (D) of the 1973 Constitution or its counterpart provision in the 1987 Constitution.

The Court, however, takes note of the dispositive portion of PSJ-A, which states that:[156]

. . . . . .

2. Section 2 of P.D. No. 755 which mandated that the coconut levy funds shall not be considered special and/or fiduciary funds nor part of the general funds of the national government **and similar provisions of Sec. 3, Art. III, P.D. 961 and Sec. 5, Art. III, P.D. 1468** contravene the provisions of the Constitution, particularly, Art. IX (D), Sec. 2; and Article VI, Sec. 29 (3). (Emphasis Ours)

. . . . . .

However, a careful reading of the discussion in PSJ-A reveals that it is Section 5 of Article III of P.D. No. 961 and not Section 3 of said decree, which is at issue, and which was therefore held to be contrary to the Constitution. The dispositive portion of the said PSJ should therefore be corrected to reflect the proper provision that was declared as unconstitutional, which is Section 5 of Article III of P.D. No. 961 and not Section 3 thereof.

V

The CIIF Companies and the CIIF Block of SMC shares are public funds/assets

From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.

In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds.[157] On the other hand, the 14 CIIF

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[156] PSJ-A, pp. 55 & 81.

[157] *Rollo,* G.R. Nos. 177857-58, pp. 504 & 524; PSJ-F, pp. 37 & 57.

holding companies are wholly owned subsidiaries of the CIIF Oil Mills.[158] Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator.[159] The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78.[160] And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares.[161] In fact, these companies were formed or organized solely for the purpose of holding the SMC shares.[162] As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of ₱1.656 Billion.[163]

Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds – funds, which have been established to be public in character – it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.[164]

It may be conceded hypothetically, as COCOFED, *et al.* urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting

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[158] *Id.* at 504 & 513; PSJ-F, pp. 37 & 46.

[159] *Id.* at 504 & 515; PSJ-F, pp. 37 & 48.

[160] *Id.* at 510; PSJ-F, p. 43.

[161] *Id.* at 505 & 515; PSJ-F, pp. 38 & 48.

[162] *Id.* at 476 & 515; PSJ-F, pp. 8 & 48.

[163] *Id.* at 515-16; PSJ-F, pp. 48-49.

[164] *Supra* note 114.

as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED*,[165] the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: "*Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner*." By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.

We thus affirm the decision of the Sandiganbayan on this point. But as We have earlier discussed, reiterating our holding in *Republic v. COCOFED,* the State's avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population.[166] Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the CIIF companies and the CIIF block of SMC shares are public funds necessary owned by the Government. We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry.

Sandiganbayan did not err in ruling that PCA (AO) No. 1, Series of 1975 and PCA rules and regulations 074-78 did not comply with the national standard or policy of P.D. No. 755.

According to the petitioners, the Sandiganbayan has identified the national policy sought to be enhanced by and expressed

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[165] *Supra* note 34, at 491.

[166] *Id.* at 482-484.

under Section 1 in relation to Section 2 of P.D. No. 755. Yet, so petitioners argue, that court, with grave abuse of discretion, disregarded such policy and thereafter, ruled that Section 1 in relation to Section 2 of P.D. No. 755 is unconstitutional as the decree failed to promote the purpose for which it was enacted in the first place.

We are not persuaded. The relevant assailed portion of PSJ-A states:

> We observe, however, that the PCA [AO] No. 1, Series of 1975 and PCA Rules and Regulations 074-78, did not take into consideration the accomplishment of the public purpose or the national standard/ policy of P.D. No. 755 which is directly to accelerate the development and growth of the coconut industry and as a consequence thereof, to make the coconut farmers "participants in and beneficiaries" of such growth and development.…

It is a basic legal precept that courts do not look into the wisdom of the laws passed. The principle of separation of powers demands this hands-off attitude from the judiciary. *Saguiguit v. People*[167] teaches why:

> … [W]hat the petitioner asks is for the Court to delve into the policy behind or wisdom of a statute, … which, under the doctrine of separation of powers, it cannot do,…. Even with the best of motives, the Court can only interpret and apply the law and cannot, despite doubts about its wisdom, amend or repeal it. Courts of justice have no right to encroach on the prerogatives of lawmakers, as long as it has not been shown that they have acted with grave abuse of discretion. And while the judiciary may interpret laws and evaluate them for constitutional soundness and to strike them down if they are proven to be infirm, this solemn power and duty do not include the discretion to correct by reading into the law what is not written therein.

We reproduce the policy-declaring provision of P.D. No. 755, thus:

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[167] G.R. No. 144054, June 30, 2006, 484 SCRA 128, 134.

Section 1. *Declaration of National Policy*. — It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be … efficiently realized by the implementation of the **"Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers"** executed by the [PCA], **the terms of which "Agreement" are hereby incorporated by reference**; and that the [PCA] is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate.

P.D. No. 755 having stated in no uncertain terms that the national policy of providing cheap credit facilities to coconut farmers shall be achieved with the acquisition of a commercial bank, the Court is without discretion to rule on the wisdom of such an undertaking. It is abundantly clear, however, that the Sandiganbayan did not look into the policy behind, or the wisdom of, P.D. No. 755. In context, it did no more than to inquire whether the purpose defined in P.D. No. 755 and for which the coco levy fund was established would be carried out, obviously having in mind the (a) dictum that the power to tax should only be exercised for a public purpose and (b) command of Section 29, paragraph 3 of Article VI of the 1987 Constitution that:

(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and **paid out for such purpose only**. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. (Emphasis supplied)

For the above reason, the above-assailed action of the Sandiganbayan was well within the scope of its sound discretion and mandate.

Moreover, petitioners impute on the anti-graft court the commission of grave abuse of discretion for going into the validity of and in declaring the coco levy laws as unconstitutional, when there were still factual issues to be resolved in a full blown trial as directed by this Court.[168]

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[168] *Rollo* (G.R. Nos. 177857-58), p. 156.

Petitioners COCOFED and the farmer representatives miss the point. They acknowledged that their alleged ownership of the sequestered shares in UCPB and SMC is predicated on the coco levy decrees. Thus, the legality and propriety of their ownership of these valuable assets are directly related to and must be assayed against the constitutionality of those presidential decrees. This is a primordial issue, which must be determined to address the validity of the rest of petitioners' claims of ownership. Verily, the Sandiganbayan did not commit grave abuse of discretion, a phrase which, in the abstract, denotes the idea of capricious or whimsical exercise of judgment or the exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility as to be equivalent to having acted without jurisdiction.[169]

The Operative Fact Doctrine does not apply

Petitioners assert that the Sandiganbayan's refusal to recognize the vested rights purportedly created under the coconut levy laws constitutes taking of private property without due process of law. They reason out that to accord retroactive application to a declaration of unconstitutionality would be unfair inasmuch as such approach would penalize the farmers who merely obeyed then valid laws.

This contention is specious.

In *Yap v. Thenamaris Ship's Management*,[170] the Operative Fact Doctrine was discussed in that:

> As a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. The general rule is supported by Article 7 of the Civil Code, which provides:

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[169] *Julie's Franchise Corp. v. Ruiz*, G.R. No. 180988, August 28, 2009, 597 SCRA 463, 471.

[170] G.R. No. 179532, May 30, 2011.

> Art. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.

The doctrine of operative fact serves as an exception to the aforementioned general rule. In *Planters Products, Inc. v. Fertiphil Corporation*, we held:

> ***The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play.*** It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.
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> The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.[171]

In that case, this Court further held that the Operative Fact Doctrine will not be applied as an exception when to rule otherwise would be **iniquitous** and would send a wrong signal that an act may be justified when based on an unconstitutional provision of law.[172]

The Court had the following disquisition on the concept of the Operative Fact Doctrine in the case of *Chavez v. National Housing Authority*:[173]

The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or executive act,

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[171] *Yap v. Thenamaris Ship's Management*, G.R. No. 179532, May 30, 2011. (Emphasis Ours)

[172] See *e.g. Yap v. Thenamaris Ship's Management*, G.R. No. 179532, May 30, 2011.

[173] G.R. No. 164527, August 15, 2007, 530 SCRA 235.

prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:

> As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution

> in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co*. (Emphasis supplied.)

The principle was further explicated in the case of *Rieta v. People of the Philippines*, thus:

> In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:
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> > The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree…. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects –with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Moreover, the Court ruled in *Chavez* that:

Furthermore, when petitioner filed the instant case against respondents on August 5, 2004, the JVAs were already terminated by virtue of the MOA between the NHA and RBI. The respondents had no reason to think that their agreements were unconstitutional or even

questionable, as in fact, the concurrent acts of the executive department lent validity to the implementation of the Project. The SMDRP agreements have produced vested rights in favor of the slum dwellers, the buyers of reclaimed land who were issued titles over said land, and the agencies and investors who made investments in the project or who bought SMPPCs. These properties and rights cannot be disturbed or questioned after the passage of around ten (10) years from the start of the SMDRP implementation. Evidently, the "operative fact" principle has set in. The titles to the lands in the hands of the buyers can no longer be invalidated.[174]

In the case at bar, the Court rules that the dictates of justice, fairness and equity do not support the claim of the alleged farmer-owners that their ownership of the UCPB shares should be respected. Our reasons:

1. Said farmers or alleged claimants do not have any legal right to own the UCPB shares distributed to them. It was not successfully refuted that said claimants were issued receipts under R.A. 6260 for the payment of the levy that went into the Coconut Investment Fund (CIF) upon which shares in the "Coconut Investment Company" will be issued. The Court upholds the finding of the Sandiganbayan that said investment company is a different corporate entity from the United Coconut Planters Bank. This was in fact admitted by petitioners during the April 17, 2001 oral arguments in G.R. Nos. 147062-64.[175]

The payments under R.A. 6260 cannot be equated with the payments under P.D. No. 276, the first having been made as contributions to the Coconut Investment Fund while the payments under P.D. No. 276 constituted the Coconut Consumers Stabilization Fund ("CCSF"). R.A. 6260 reads:

Section 2. Declaration of Policy. It is hereby declared to be the national policy to accelerate the development of the coconut industry through the provision of adequate medium and long-term financing for capital investment in the industry, by instituting a Coconut

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[174] *Id.* at 336.

[175] *Rollo* (G.R. Nos. 147062-64), TSN, April 17, 2001, p. 169.

Investment fund capitalized and administered by coconut farmers through a Coconut Investment Company.[176]

P.D. No. 276 provides:

1. In addition to its powers granted under Presidential Decree No. 232, the Philippine Coconut Authority is hereby authorized to formulate and immediately implement a stabilization scheme for coconut-based consumer goods, along the following general guidelines:

(a) ….

The proceeds from the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government.

(b) The Fund shall be utilized to subsidize the sale of coconut-based products at prices set by the Price Control Council, under rules and regulations to be promulgated by the Philippine Consumers Stabilization Committee….[177]

The PCA, via Resolution No. 045-75 dated May 21, 1975, clarified the distinction between the CIF levy payments under R.A. 6260 and the CCSF levy paid pursuant to P.D. 276, thusly:

It must be remembered that the receipts issued under R.A. No. 6260 were to be registered in exchange for shares of stock in the Coconut Investment Company (CIC), which obviously is a different corporate entity from UCPB. This fact was admitted by petitioners during the April 17, 2001 oral arguments in G.R. Nos. 147062-64.

In fact, while the CIF levy payments claimed to have been paid by petitioners were meant for the CIC, the distribution of UCPB stock certificates to the coconut farmers, if at all, were meant for the payors of the CCSF in proportion to the coconut farmer's CCSF contributions pursuant to PCA Resolution No. 045-75 dated May 21, 1975:

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[176] R.A. No. 6260, § 2.

[177] P.D. No. 276, § 1 (a) & (b).

> RESOLVED, FURTHER, That the amount of ONE HUNDRED FIFTY MILLION (₱150,000,000.00) PESOS be appropriated and set aside from available funds of the PCA to be utilized in payment for the shares of stock of such existing commercial bank and that the Treasurer be instructed to disburse the said amount accordingly.
>
> . . . . . .
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> RESOLVED, FINALLY, That … be directed to organize a team which shall prepare a list of coconut farmers who have paid the levy and contributed to the [CCSF] and to prepare a stock distribution plan to the end that the aforesaid coconut farmers shall receive certificates of stock of such commercial bank in proportion to their contributions to the Fund.

Unfortunately, the said resolution was never complied with in the distribution of the so-called "farmers" UCPB shares.

The payments therefore under R.A. 6260 are not the same as those under P.D. No. 276. The amounts of CIF contributions under R.A. 6260 which were collected starting 1971 are undeniably different from the CCSF levy under P.D. No. 276, which were collected starting 1973. The two (2) groups of claimants differ not only in identity but also in the levy paid, the amount of produce and the time the government started the collection.

Thus, petitioners and the alleged farmers claiming them pursuant to R.A. 6260 do not have any legal basis to own the UCPB shares distributed to them, **assuming for a moment** the legal feasibility of transferring these shares paid from the R.A. 6260 levy to private individuals.

2. To grant all the UCPB shares to petitioners and its alleged members would be iniquitous and prejudicial to the remaining 4.6 million farmers who have not received any UCPB shares when in fact they also made payments to either the CIF or the CCSF but did not receive any receipt or who was not able to register their receipts or misplaced them.

Section 1 of P.D. No. 755 which was declared unconstitutional cannot be considered to be the legal basis for the transfer of the

supposed private ownership of the UCPB shares to petitioners who allegedly paid the same under R.A. 6260. The Solicitor General is correct in concluding that such unauthorized grant to petitioners constitutes illegal deprivation of property without due process of law. Due process of law would mean that the distribution of the UCPB shares should be made only to farmers who have paid the contribution to the CCSF pursuant to P.D. No. 276, and not to those who paid pursuant to R.A. 6260. What would have been the appropriate distribution scheme was violated by Section 1 of P.D. No. 755 when it required that the UCPB shares should be distributed to coconut farmers without distinction – in fact, giving the PCA limitless power and free hand, to determine who these farmers are, or would be.

We cannot sanction the award of the UCPB shares to petitioners who appear to represent only 1.4 million members without any legal basis to the extreme prejudice of the other 4.6 million coconut farmers (Executive Order No. 747 fixed the number of coconut farmers at 6 million in 1981). Indeed, petitioners constitute only a small percentage of the coconut farmers in the Philippines. Thus, the Sandiganbayan correctly declared that the UCPB shares are government assets in trust for the coconut farmers, which would be more beneficial to all the coconut farmers instead of a very few dubious claimants;

3. The Sandiganbayan made the finding that due to enormous operational problems and administrative complications, the intended beneficiaries of the UCPB shares were not able to receive the shares due to them. To reiterate what the anti-graft court said:

> The actual distribution of the bank shares was admittedly an enormous operational problem which resulted in the failure of the intended beneficiaries to receive their shares of stocks in the bank, as shown by the rules and regulations, issued by the PCA, without adequate guidelines being provided to it by P.D. No. 755. PCA Administrative Order No. 1, Series of 1975 (August 20, 1975), "Rules and Regulations Governing the Distribution of Shares of Stock of the Bank Authorized to be Acquired Pursuant to PCA Board Resolution No. 246-75", quoted hereunder discloses how the undistributed shares of stocks due to anonymous coconut farmers or payors of the coconut

levy fees were authorized to be distributed to existing shareholders of the Bank:

> "Section 9. Fractional and Undistributed Shares – Fractional shares and shares which remain undistributed as a consequence of the failure of the coconut farmers to register their COCOFUND receipts or the destruction of the COCOFUND receipts or the registration of the COCOFUND receipts in the name of an unqualified individual, after the final distribution is made on the basis of the consolidated IBM registration Report as of March 31, 1976 shall be distributed to all the coconut farmers who have qualified and received equity in the Bank and shall be apportioned among them, as far as practicable, in proportion to their equity in relation to the number of undistributed equity and such further rules and regulations as may hereafter be promulgated."

The foregoing PCA issuance was further amended by Resolution No. 074-78, still citing the same problem of distribution of the bank shares. This latter Resolution is quoted as follows:

RESOLUTION NO. 074-78

AMENDMENT OF ADMINISTRATIVE ORDER NO. 1, SERIES OF 1975, GOVERNING THE DISTRIBUTION OF SHARES

> WHEREAS, pursuant to PCA Board Resolution No. 246-75, the total par value of the shares of stock of the Bank purchased by the PCA for the benefit of the coconut farmers is ₱85,773,600.00 with a par value of ₱1.00 per share or equivalent to 85,773.600 shares;
>
> WHEREAS, out of the 85,773,600 shares, a total of 34,572,794 shares have already been distributed in accordance with Administrative Order No. 1, Series of 1975, to wit:

First Distribution	-	12,573,059
Second Distribution	-	10,841,409
Third Distribution	-	11,158,326
		34,572,794

> "WHEREAS, there is, therefore, a total of 51,200,806 shares still available for distribution among the coconut farmers;

WHEREAS, it was determined by the PCA Board, in consonance with the policy of the state on the integration of the coconut industry, that the Bank shares must be widely distributed as possible among the coconut farmers, for which purpose a national census of coconut farmers was made through the Philippine Coconut Producers Federation (COCOFED);

WHEREAS, to implement such determination of the PCA Board, there is a need to accordingly amend Administrative Order No. 1, Series of 1975;

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that the remaining 51,200,806 shares of stock of the Bank authorized to be acquired pursuant to the PCA Board Resolution No. 246-75 dated July 25, 1975 be distributed as follows:

(1) All the coconut farmers who have received their shares in the equity of the Bank on the basis of Section 8 of Administrative Order No. 1, Series of 1975, shall receive additional share for each share presently owned by them;

(2) Fractional shares shall be completed into full shares, and such full shares shall be distributed among the coconut farmers who qualified for the corresponding fractional shares;

(3) The balance of the shares, after deducting those to be distributed in accordance with (1) and (2) above, shall be transferred to COCOFED for distribution, immediately after completion of the national census of coconut farmers prescribed under Resolution No. 033-78 of the PCA Board, to all those who are determined by the PCA Board to be bona fide coconut farmers and have not received shares of stock of the Bank. The shares shall be equally determined among them on the basis of per capita.

RESOLVED, FURTHER, That the rules and regulations under Administrative Order No. 1, Series of 1975, which are inconsistent with this Administrative Order be, as they are hereby, repealed and/or amended accordingly."

Thus, when 51,200,806 shares in the bank remained undistributed, the PCA deemed it proper to give a "bonanza" to coconut farmers who already got their bank shares, by giving them an additional share for each share owned by them and by converting their fractional

shares into full shares. The rest of the shares were then transferred to a private organization, the COCOFED, for distribution to those determined to be "bona fide coconut farmers" who had "not received shares of stock of the Bank." The distribution to the latter was made on the basis of "per capita", meaning without regard to the COCOFUND receipts. The PCA considered itself free to disregard the said receipts in the distribution of the shares although they were considered by the May 25, 1975 Agreement between the PCA and defendant Cojuangco (par. [8] of said Agreement) and by Sections 1, 3, 4, 6 and 9, PCA Administrative Order No. 1, Series of 1975 as the basis for the distribution of shares.

The PCA thus assumed, due to lack of adequate guidelines set by P.D. No. 755, that it had complete authority to define who are the coconut farmers and to decide as to who among the coconut farmers shall be given the gift of bank shares; how many shares shall be given to them, and what basis it shall use to determine the amount of shares to be distributed for free to the coconut farmers. In other words, P.D. No. 755 fails the completeness test which renders it constitutionally infirm.

Due to numerous flaws in the distribution of the UCPB shares by PCA, it would be best for the interest of all coconut farmers to revert the ownership of the UCBP shares to the government for the entire coconut industry, which includes the farmers;

4. The Court also takes judicial cognizance of the fact that a number, if not all, of the coconut farmers who sold copra did not get the receipts for the payment of the coconut levy for the reason that the copra they produced were bought by traders or middlemen who in turn sold the same to the coconut mills. The reality on the ground is that it was these traders who got the receipts and the corresponding UCPB shares. In addition, some uninformed coconut farmers who actually got the COCOFUND receipts, not appreciating the importance and value of said receipts, have already sold said receipts to non-coconut farmers, thereby depriving them of the benefits under the coconut levy laws. Ergo, the coconut farmers are the ones who will not be benefited by the distribution of the UCPB shares contrary to the policy behind the coconut levy laws. The nullification of the distribution of the UCPB shares and their transfer to the

government for the coconut industry will, therefore, ensure that the benefits to be deprived from the UCPB shares will actually accrue to the intended beneficiaries – the genuine coconut farmers.

From the foregoing, it is highly inappropriate to apply the operative fact doctrine to the UCPB shares. Public funds, which were supposedly given utmost safeguard, were haphazardly distributed to private individuals based on statutory provisions that are found to be constitutionally infirm on not only one but on a variety of grounds. Worse still, the recipients of the UCPB shares may not actually be the intended beneficiaries of said benefit. Clearly, applying the Operative Fact Doctrine would not only be iniquitous but would also serve injustice to the Government, to the coconut industry, and to the people, who, whether willingly or unwillingly, contributed to the public funds, and therefore expect that their Government would take utmost care of them and that they would be used no less, than for public purpose.

We clarify that PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705 entitled, *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by this Court. Said petition should accordingly not be affected by this Decision save for determinatively legal issues directly addressed herein.

WHEREFORE, the petitions in G.R. Nos. 177857-58 and 178193 are hereby **DENIED.** The Partial Summary Judgment dated July 11, 2003 in Civil Case No. 0033-A as reiterated with modification in Resolution dated June 5, 2007, as well as the Partial Summary Judgment dated May 7, 2004 in Civil Case No. 0033-F, which was effectively amended in Resolution dated May 11, 2007, are **AFFIRMED with MODIFICATION,** only with respect to those issues subject of the petitions in G.R. Nos. 177857-58 and 178193. However, the issues raised in G.R. No. 180705 in relation to Partial Summary Judgment dated July 11, 2003 and Resolution dated June 5, 2007 in Civil Case No. 0033-A, shall be decided by this Court in a separate decision.

The Partial Summary Judgment in Civil Case No. 0033-A dated July 11, 2003, is hereby **MODIFIED,** and shall read as follows:

WHEREFORE, in view of the foregoing, We rule as follows:

SUMMARY OF THE COURT'S RULING.

A. Re: CLASS ACTION MOTION FOR A SEPARATE SUMMARY JUDGMENT dated April 11, 2001 filed by Defendant Maria Clara L. Lobregat, COCOFED, *et al.*, and Ballares, *et al.*

The Class Action Motion for Separate Summary Judgment dated April 11, 2001 filed by defendant Maria Clara L. Lobregat, COCOFED, *et al.* and Ballares, *et al.*, is hereby DENIED for lack of merit.

B. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: COCOFED, *ET AL.* AND BALLARES, *ET AL.)* dated April 22, 2002 filed by Plaintiff.

1. a. The portion of Section 1 of P.D. No. 755, which reads:

> …and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate.

taken in relation to Section 2 of the same P.D., is unconstitutional: (i) for having allowed the use of the CCSF to benefit directly private interest by the outright and unconditional grant of absolute ownership of the FUB/UCPB shares paid for by PCA entirely with the CCSF to the undefined "coconut farmers", which negated or circumvented the national policy or public purpose declared by P.D. No. 755 to accelerate the growth and development of the coconut industry and achieve its vertical integration; and (ii) for having unduly delegated legislative power to the PCA.

b. The implementing regulations issued by PCA, namely, Administrative Order No. 1, Series of 1975 and Resolution No. 074-78 are likewise invalid for their failure to see to it that the distribution of shares serve exclusively or at least primarily or directly the aforementioned public purpose or national policy declared by P.D. No. 755.

2. Section 2 of P.D. No. 755 which mandated that the coconut levy funds shall not be considered special and/or fiduciary funds nor part of the general funds of the national government and similar provisions of Sec. 5, Art. III, P.D. No. 961 and Sec. 5, Art. III, P.D. No. 1468 contravene the provisions of the Constitution, particularly, Art. IX (D), Sec. 2; and Article VI, Sec. 29 (3).

3. Lobregat, COCOFED, *et al*. and Ballares, *et al*. have not legally and validly obtained title of ownership over the subject UCPB shares by virtue of P.D. No. 755, the Agreement dated May 25, 1975 between the PCA and defendant Cojuangco, and PCA implementing rules, namely, Adm. Order No. 1, s. 1975 and Resolution No. 074-78.

4. The so-called "Farmers' UCPB shares" covered by 64.98% of the UCPB shares of stock, which formed part of the 72.2% of the shares of stock of the former FUB and now of the UCPB, the entire consideration of which was charged by PCA to the CCSF, are hereby declared conclusively owned by, the Plaintiff Republic of the Philippines.

. . . . . .

SO ORDERED.

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED,** and shall read as follows:

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT

INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.

THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES. AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.

SO ORDERED.

Costs against petitioners COCOFED, *et al*. in G.R. Nos. 177857-58 and Danila S. Ursua in G.R. No. 178193.

Corona, C.J., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., no part. He was a petitioner in related case with same issue G.R. Nos. 147036 & 147811.

Leonardo-de Castro and *Peralta, JJ.,* no part.

Brion, J., on official leave.

EN BANC

[G.R. No. 194139. January 24, 2012]

DOUGLAS R. CAGAS, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and CLAUDE P. BAUTISTA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; THE COURT'S POWER TO REVIEW ANY DECISION, ORDER OR RULING OF THE COMELEC IS LIMITED TO A FINAL DECISION OR RESOLUTION OF THE COMELEC *EN BANC*.— The governing provision is Section 7, Article IX of the 1987 Constitution, which provides: Section 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. This provision, although it confers on the Court the power to review any decision, order or ruling of the COMELEC, limits such power to a *final* decision or resolution of the COMELEC *en banc*, and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on *certiorari* an interlocutory order or even a final resolution issued by a Division of the COMELEC.

2. ID.; ID.; ID.; ID.; THAT THE RULING OF THE COMELEC FIRST DIVISION SHOULD BE APPEALED TO THE COMELEC *EN BANC*; EXCEPTION IN THE CASE OF *KHO V. COMELEC* WHERE RESORT TO THE COURT ALLOWED.— There is no question x x x that the Court has no jurisdiction to take cognizance of the petition for *certiorari* assailing the denial by the COMELEC First Division of the special affirmative defenses of the petitioner. The proper remedy is for the petitioner to wait for the COMELEC First Division to first decide the protest on its merits, and if the result should aggrieve him, to appeal the denial of his special affirmative defenses to the COMELEC *en banc* along with the other errors committed by the Division upon the merits. It is true that there may be an exception to the general rule, as the Court conceded in *Kho v. Commission on Elections*. In that case,

the protestant assailed the order of the COMELEC First Division admitting an *answer with counter-protest* belatedly filed in an election protest by filing a petition for *certiorari* directly in this Court on the ground that the order constituted grave abuse of discretion on the part of the COMELEC First Division. The Court granted the petition and nullified the assailed order for being issued without jurisdiction.

3. ID.; ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE WHERE THE COMELEC FIRST DIVISION HAD THE COMPETENCE TO DECIDE AN ELECTION CONTROVERSY.— However, the *Kho v. Commission on Elections* exception has no application herein, because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the outright dismissal of the protest. For sure, the 1987 Constitution vested in the COMELEC broad powers involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections but also the resolution and determination of election controversies. The breadth of such powers encompasses the authority to determine the sufficiency of allegations contained in every election protest and to decide based on such allegations whether to admit the protest and proceed with the hearing or to outrightly dismiss the protest in accordance with Section 9, Rule 6 of COMELEC Resolution No. 8804. The Court has upheld the COMELEC's determination of the sufficiency of allegations contained in election protests, conformably with its imperative duty to ascertain in an election protest, by all means within its command, who was the candidate elected by the electorate. Indeed, in *Panlilio v. Commission on Elections*, we brushed aside the contention that the election protest was insufficient in form and substance and was a sham for having allegations couched in general terms.

4. ID.; ID.; ID.; ELECTION PROTEST; MADE PROPER IN ASSAILING THE SYSTEM AND PROCEDURE OF COUNTING AND CANVASSING OF VOTES CAST IN AN AUTOMATED SYSTEM OF ELECTIONS.— The petitioner adds that with the Court having noted the reliability and accuracy of the PCOS machines and consolidation/ canvassing system (CCS) computers in *Roque, Jr. v. Commission*

on Elections, Bautista's election protest assailing the system and procedure of counting and canvassing of votes cast in an automated system of elections should be immediately dismissed. We are not persuaded. *Roque, Jr. v. Commission on Elections* does not preclude the filing of an election protest to challenge the outcome of an election undertaken in an automated system of elections. Instead, the Court only ruled there that the system and procedure implemented by the COMELEC in evaluating the PCOS machines and CCS computers met the minimum system requirements prescribed in Section 7 of Republic Act No. 8436. The Court did not guarantee the efficiency and integrity of the automated system of elections.

APPEARANCES OF COUNSEL

Romulo B. Macalintal & Edgardo Carlo L. Vistan for petitioner.

The Solicitor General for public respondent.

Sibayan Lumbos and Associates Law Office for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

A party aggrieved by an interlocutory order issued by a Division of the Commission on Elections (COMELEC) in an election protest may not directly assail the order in this Court through a special civil action for *certiorari*. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course.

For resolution is the petition for *certiorari* brought under Rule 64 of the *Rules of Court*, assailing the order dated August 13, 2010 (denying the affirmative defenses raised by the petitioner),[1] and the order dated October 7, 2010 (denying his

[1] *Rollo,* pp. 34-35.

motion for reconsideration),[2] both issued by the COMELEC First Division in EPC No. 2010-42, an election protest entitled *Claude P. Bautista, protestant v. Douglas R. Cagas, protestee*.[3]

Antecedents

The petitioner and respondent Claude P. Bautista (Bautista) contested the position of Governor of the Province of Davao del Sur in the May 10, 2010 automated national and local elections. The fast transmission of the results led to the completion by May 14, 2010 of the canvassing of votes cast for Governor of Davao del Sur, and the petitioner was proclaimed the winner (with 163,440 votes), with Bautista garnering 159,527 votes.[4]

Alleging fraud, anomalies, irregularities, vote-buying and violations of election laws, rules and resolutions, Bautista filed an electoral protest on May 24, 2010 (EPC No. 2010-42).[5] The protest was raffled to the COMELEC First Division.

In his answer submitted on June 22, 2010,[6] the petitioner averred as his special affirmative defenses that Bautista did not make the requisite cash deposit on time; and that Bautista did not render a detailed specification of the acts or omissions complained of.

On August 13, 2010, the COMELEC First Division issued the first assailed order denying the special affirmative defenses of the petitioner,[7] *viz*:

After careful examination of the records of the case, this Commission (First Division) makes the following observation:

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

[3] *Id.*, pp. 38-77.

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

[5] *Supra*, note 3.

[6] *Id.*, pp. 78-95.

[7] *Supra* note 1.

1. Protestant paid the cash deposit amounting to one hundred thousand pesos (₱100,000.00) on June 3, 2010 as evidenced by O.R. No. 1118105; and

2. **Paragraph nos. 9 to 28 of the initiatory petition filed by the Protestant set forth the specific details of the acts and omissions complained of against the Protestee**.

It is therefore concluded that the payment by the Protestant on June 3, 2010 is a substantial compliance with the requirement of COMELEC Resolution No. 8804, taking into consideration Section 9(e), Rule 6 of said Resolution. Furthermore, **the Protestant has likewise essentially complied with Section 7(g), Rule 6 of the above-mentioned Resolution**.

In view of the foregoing, this Commission (First Division) RESOLVES to DENY the Protestee's special affirmative defenses.

SO ORDERED.[8]

The petitioner moved to reconsider on the ground that the order did not discuss whether the protest specified the alleged irregularities in the conduct of the elections, in violation of Section 2, paragraph 2,[9] Rule 19 of COMELEC Resolution No. 8804,[10] requiring all decisions to clearly and distinctly express the facts and the law on which they were based; and that it also contravened

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[8] Emphasis supplied.

[9] Section 2. *Procedure in Making Decisions*.— The conclusions of the Commission in any case submitted to it for decision shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion. A certification to this effect signed by the Chairman or Presiding Commissioner shall be incorporated in the decision. Any member who took no part or dissented, or abstained from a decision or resolution must state the reason therefor.

Every decision shall express therein clearly and distinctly the facts and the law on which it is based. In its decision, the Commission shall be guided by the principle that every ballot is presumed to be valid unless there is clear and good reason to justify its rejection and that the object of the election is to obtain the true expression of the voters.

[10] *In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in connection with the May 10, 2010 Elections*.

Section 7(*g*),[11] Rule 6 of COMELEC Resolution No. 8804 requiring a detailed specification of the acts or omissions complained of. He prayed that the matter be certified to the COMELEC *en banc* pursuant to Section 1,[12] Section 5,[13] and Section 6,[14] all of Rule 20 of COMELEC Resolution No. 8804.

The petitioner insisted that COMELEC Resolution No. 8804 had introduced the requirement for the "detailed specification" to prevent "shotgun fishing expeditions by losing candidates;"[15] that such requirement contrasted with Rule 6, Section 1 of the 1993 COMELEC *Rules of Procedure*,[16] under which the protest

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[11] Section 7. *Contents of the protest of petition*.— An election protest or petition for *quo warranto* shall specifically state the following facts:

x x x x x x x x x

g) **A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts**.

[12] Section 1. *Grounds of Motion for Reconsideration*.— A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, is contrary to law.

[13] Section 5. *How Motion for Reconsideration Disposed of*.—Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the ECAD Clerk concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

[14] Section 6. *Duty of ECAD Director to Calendar Motion for Resolution*.—The ECAD Director concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten days from the certification thereof.

[15] *Rollo*, p. 120.

[16] Section 1. *Commencement of Action or Proceedings by Parties*.— Any natural or juridical person authorized by these rules to initiate any action or proceeding shall file with the Commission a protest or petition alleging therein his personal circumstances as well as those of the protestee or respondent, the jurisdictional facts, and a concise statement of the ultimate facts constituting his cause or causes of action and specifying the relief sought. He may add a general prayer for such further or other relief as may be deemed just or equitable.

needed only to contain a "concise statement of the ultimate facts" constituting the cause or causes of action; that Bautista's protest did not meet the new requirement under COMELEC Resolution No. 8804; and that in *Peña v. House of Representatives Electoral Tribunal*,[17] the Court upheld the dismissal of a protest by the House of Representatives Electoral Tribunal (HRET) for not specifically alleging the electoral anomalies and irregularities in the May 8, 1995 elections.

In his opposition,[18] Bautista countered that the assailed orders, being merely interlocutory, could not be elevated to the COMELEC *en banc* pursuant to the ruling in *Panlilio v. COMELEC*;[19] that the rules of the COMELEC required the initiatory petition to specify the acts or omissions constituting the electoral frauds, anomalies and election irregularities, and to contain the ultimate facts upon which the cause of action was based; and that *Peña v. House of Representatives Electoral Tribunal* did not apply because, firstly, *Peña* had totally different factual antecedents than this case, and, secondly, the omission of material facts from Peña's protest prevented the protestee (Alfredo E. Abueg, Jr.) from being apprised of the issues that he must meet and made it eventually impossible for the HRET to determine which ballot boxes had to be collected.

On October 7, 2010, the COMELEC First Division issued its second assailed order,[20] denying the petitioner's motion for reconsideration for failing to show that the first order was contrary to law, to wit:

> The Protestee's August 28, 2010 "Motion for Reconsideration with Prayer to Certify the Case to the Commission *En Banc*" relative to the Order issued by the Commission (First Division) dated August 13, 2010 is hereby DENIED for failure to show that the assailed order is contrary to law

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[17] G.R. No. 123037, March 21, 1997, 270 SCRA 340.

[18] *Rollo*, pp. 128-138.

[19] G.R. No. 181478, July 15, 2009, 593 SCRA 139.

[20] *Rollo*, p. 37 (emphasis supplied).

Without going into the merits of the protest, the allegations in the protestant's petition have substantially complied with the requirements of COMELEC Resolution No. 8804 that will warrant the opening of the ballot boxes in order to resolve not only the issues raised in the protest but also those set forth in the Protestee's answer. When substantial compliance with the rules is satisfied, allowing the protest to proceed is the best way of removing any doubt or uncertainty as to the true will of the electorate. All other issues laid down in the parties' pleadings, including those in the Protestee's special and affirmative defenses and those expressed in the preliminary conference brief, will best be threshed out in the final resolution of the instant case.

The prayer to elevate the instant Motion for Reconsideration to the Commission *En Banc* is DENIED considering that the 13 August 2010 Order is merely interlocutory and it does not dispose of the instant case with finality, in accordance with Section 5(c), Rule 3 of the COMELEC Rules of Procedure.

SO ORDERED.

Not satisfied, the petitioner commenced this special civil action directly in this Court.

Issue

The petitioner submits that:—

THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE PROTEST FOR INSUFFICIENCY IN FORM AND CONTENT.

The petitioner argues that Section 9,[21] Rule 6 of COMELEC Resolution No. 8804 obliged the COMELEC First Division to

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[21] Section 9. Summary dismissal of election contest. – The Commission shall summarily dismiss, *motu proprio*, an election protest and counter-protest on the following grounds:

x x x x x x x x x

b) The protest is insufficient in form and content as required in Section 7 hereof;

x x x x x x x x x

summarily dismiss the protest for being insufficient in form and content; and that the insufficiency in substance arose from the failure of the protest to: (*a*) specifically state how the various irregularities and anomalies had affected the results of the elections; (*b*) indicate in which of the protested precincts were "pre-shaded bogus-ballots" used; (*c*) identify the precincts where the PCOS machines had failed to accurately account for the votes in favor of Bautista; and (*d*) allege with particularity how many additional votes Bautista stood to receive for each of the grounds he protested. He concludes that the COMELEC First Division gravely abused its discretion in allowing the protest of Bautista despite its insufficiency.

Moreover, the petitioner urges that the protest be considered as a mere fishing expedition to be outrightly dismissed in light of the elections being held under an automated system. In support of his urging, he cites *Roque, Jr. v. Commission on Elections*,[22] where the Court took judicial notice of the accuracy and reliability of the PCOS machines and CCS computers, such that allegations of massive errors in the automated counting and canvassing had become insufficient as basis for the COMELEC to entertain or to give due course to defective election protests.[23] He submits that a protest like Bautista's cast doubt on the automated elections.

On the other hand, the Office of the Solicitor General (OSG) and Bautista both posit that the COMELEC had the power and prerogative to determine the sufficiency of the allegations of an election protest; and that *certiorari* did not lie because the COMELEC First Division acted within its discretion. Additionally, the OSG maintains that the assailed orders, being interlocutory, are not the proper subjects of a petition for *certiorari*.

As we see it, the decisive issue is whether the Court can take cognizance of the petition for *certiorari*.

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[22] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

[23] *Rollo,* pp. 23-24.

Ruling

We dismiss the petition for lack of merit.

The governing provision is Section 7, Article IX of the 1987 Constitution, which provides:

> Section 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

This provision, although it confers on the Court the power to review any decision, order or ruling of the COMELEC, limits such power to a *final* decision or resolution of the COMELEC *en banc*, and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on *certiorari* an interlocutory order or even a final resolution issued by a Division of the COMELEC. The following cogent observations made in *Ambil v. Commission on Elections*[24] are enlightening, *viz*:

> To begin with, the power of the Supreme Court to review decisions of the Comelec is prescribed in the Constitution, as follows:
>
> > "Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or

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[24] G.R. No. 143398, October 25, 2000, 344 SCRA 358, 365-366; reiterated in, among others, *Jumamil v. Commission on Elections*, G.R. Nos. 167989-93, March 6, 2007, 517 SCRA 553; *Dimayuga v. Commission on Elections*, G.R. No. 174763, April 24, 2007, 522 SCRA 220; *Cayetano v. Commission on Elections*, G.R. No. 193846, April 12, 2011.

memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by *this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.*" [emphasis supplied]

"We have interpreted this provision to mean *final orders, rulings and decisions* of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers." This decision must be a *final decision or resolution* of the Comelec *en banc, not of a division,* certainly not an interlocutory order *of a division*. The Supreme Court has no power to review *via certiorari,* an interlocutory order or even a final resolution of a Division of the Commission on Elections.

The mode by which a decision, order or ruling of the Comelec *en banc* may be elevated to the Supreme Court is by the special civil action of *certiorari* under Rule 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended.

Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no *appeal, or any plain, speedy* and *adequate remedy* in the ordinary course of law. A motion for reconsideration *is a plain* and *adequate remedy provided by law. Failure to abide* by this procedural requirement *constitutes a ground for dismissal of the petition.*

In like manner, a decision, order or resolution of a division of the Comelec must be reviewed by the Comelec *en banc via* a motion for reconsideration before the final *en banc* decision may be brought to the Supreme Court on *certiorari*. The pre-requisite filing of a motion for reconsideration is mandatory.xxx[25]

There is no question, therefore, that the Court has no jurisdiction to take cognizance of the petition for *certiorari* assailing the denial by the COMELEC First Division of the special affirmative defenses of the petitioner. The proper remedy is for the petitioner to wait for the COMELEC First Division to first decide the protest on its merits, and if the result should

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[25] Emphasis supplied.

aggrieve him, to appeal the denial of his special affirmative defenses to the COMELEC *en banc* along with the other errors committed by the Division upon the merits.

It is true that there may be an exception to the general rule, as the Court conceded in *Kho v. Commission on Elections*.[26] In that case, the protestant assailed the order of the COMELEC First Division admitting an *answer with counter-protest* belatedly filed in an election protest by filing a petition for *certiorari* directly in this Court on the ground that the order constituted grave abuse of discretion on the part of the COMELEC First Division. The Court granted the petition and nullified the assailed order for being issued without jurisdiction, and explained the exception thuswise:

As to the issue of whether or not the case should be referred to the COMELEC *en banc*, this Court finds the respondent COMELEC First Division correct when it held in its order dated February 28, 1996 that no final decision, resolution or order has yet been made which will necessitate the elevation of the case and its records to the Commission *en banc*. No less than the Constitution requires that election cases must be heard and decided first in division and any motion for reconsideration of decisions shall be decided by the Commission *en banc*. Apparently, the orders dated July 26, 1995, November 15, 1995 and February 28, 1996 and the other orders relating to the admission of the answer with counter-protest are issuances of a Commission in division and are all interlocutory orders because they merely rule upon an incidental issue regarding the admission of Espinosa's answer with counter-protest and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits. In such a situation, the rule is clear that the authority to resolve incidental matters of a case pending in a division, like the questioned interlocutory orders, falls on the division itself, and not on the Commission *en banc*. Section 5 (c), Rule 3 of the COMELEC Rules of Procedure explicitly provides for this,

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[26] G.R. No. 124033, September 25, 1997, 279 SCRA 463, 471-473. See also *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321.

> Sec. 5. Quorum; Votes Required xxx
>
> x x x x x x x x x
>
> (c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except motions on interlocutory orders of the division which shall be resolved by the division which issued the order. (emphasis provided)

Furthermore, a look at Section 2, Rule 3 of the COMELEC Rules of Procedure confirms that the subject case does not fall on any of the instances over which the Commission *en banc* can take cognizance of. It reads as follows:

> Section 2. *The Commission en banc*. — The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of a Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*.

In the instant case, it does not appear that the subject controversy is one of the cases specifically provided under the COMELEC Rules of Procedure in which the Commission may sit *en banc*. Neither is it shown that the present controversy a case where a division is not authorized to act nor a situation wherein the members of the First Division unanimously voted to refer the subject case to the Commission *en banc*. Clearly, the Commission *en banc*, under the circumstances shown above, can not be the proper forum which the matter concerning the assailed interlocutory orders can be referred to.

In a situation such as this where the Commission in division committed grave abuse of discretion or acted without or in excess of jurisdiction in issuing interlocutory orders relative to an action pending before it and the controversy did not fall under any of the instances mentioned in Section 2, Rule 3 of the COMELEC Rules of Procedure, the remedy of the aggrieved party is not to refer the controversy to the Commission *en banc* as this is not permissible under its present rules but to elevate it to this Court

***via* a petition for *certiorari* under Rule 65 of the Rules of Court.** (Bold emphasis supplied)

Under the exception, therefore, the Court may take cognizance of a petition for *certiorari* under Rule 64 to review an interlocutory order issued by a Division of the COMELEC on the ground of the issuance being made without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it does not appear to be specifically provided under the COMELEC *Rules of Procedure* that the matter is one that the COMELEC *en banc* may sit and consider, or a Division is not authorized to act, or the members of the Division unanimously vote to refer to the COMELEC *en banc*. Of necessity, the aggrieved party can directly resort to the Court because the COMELEC *en banc* is not the proper forum in which the matter concerning the assailed interlocutory order can be reviewed.

However, the *Kho v. Commission on Elections* exception has no application herein, because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the outright dismissal of the protest. For sure, the 1987 Constitution vested in the COMELEC broad powers involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections but also the resolution and determination of election controversies.[27] The breadth of such powers encompasses the authority to determine the sufficiency of allegations contained in every election protest and to decide based on such allegations whether to admit the protest and proceed with the hearing or to outrightly dismiss the protest in accordance with Section 9, Rule 6 of COMELEC Resolution No. 8804.

The Court has upheld the COMELEC's determination of the sufficiency of allegations contained in election protests,

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[27] *Dela Llana v. Commission on Elections*, G.R. No. 152080, November 28, 2003, 416 SCRA 638.

conformably with its imperative duty to ascertain in an election protest, by all means within its command, who was the candidate elected by the electorate.[28] Indeed, in *Panlilio v. Commission on Elections*,[29] we brushed aside the contention that the election protest was insufficient in form and substance and was a sham for having allegations couched in general terms, stating:

> In *Miguel v. COMELEC*, the Court belittled the petitioner's argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:
>
> > The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.
>
> In a kindred case, *Homer Saquilayan v. COMELEC*, the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance.
>
> Again, in *Dayo v. COMELEC*, the Court declared that allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots. The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads:
>
> > Judicial counting of votes in election contest. – Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the

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[28] *Benito v. Commission on Elections*, G.R. No. 106053, August 17, 1994, 235 SCRA 436, 422.

[29] *Supra* note 19 at pp. 151-153.

election be brought before it and that the ballots be examined and the votes recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

The petitioner adds that with the Court having noted the reliability and accuracy of the PCOS machines and consolidation/canvassing system (CCS) computers in *Roque, Jr. v. Commission on Elections,*[30] Bautista's election protest assailing the system and procedure of counting and canvassing of votes cast in an automated system of elections should be immediately dismissed.

We are not persuaded.

Roque, Jr. v. Commission on Elections does not preclude the filing of an election protest to challenge the outcome of an election undertaken in an automated system of elections. Instead, the Court only ruled there that the system and procedure implemented by the COMELEC in evaluating the PCOS machines and CCS computers met the minimum system requirements prescribed in Section 7 of Republic Act No. 8436.[31] The Court did not guarantee the efficiency and integrity of the automated system of elections, as can be gleaned from the following pronouncement thereat:

The Court, however, will not indulge in the presumption that nothing would go wrong, that a successful automation election unmarred by fraud, violence, and like irregularities would be the order of the moment on May 10, 2010. Neither will it guarantee, as it cannot guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded

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[30] *Supra* note 22.

[31] Entitled "*An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and For Other Purposes*."

in them. That task belongs at the first instance to Comelec, as part of its mandate to ensure clean and peaceful elections. This independent constitutional commission, it is true, possesses extraordinary powers and enjoys a considerable latitude in the discharge of its functions. The road, however, towards successful 2010 automation elections would certainly be rough and bumpy. The Comelec is laboring under very tight timelines. It would accordingly need the help of all advocates of orderly and honest elections, of all men and women of goodwill, to smoothen the way and assist Comelec personnel address the fears expressed about the integrity of the system. Like anyone else, the Court would like and wish automated elections to succeed, credibly.[32]

In view of the foregoing, we have no need to discuss at length the other submissions of the petitioner.

ACCORDINGLY, the petition for *certiorari* is **DISMISSED** for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Peralta, J., took no part.

Brion, J., on official leave.

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[32] *Supra* note 22 at pp. 153-154.

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MOTION FOR RECONSIDERATION

Purpose — Intended to convince the court that its ruling is erroneous and improper, contrary to law or evidence. (First Lepanto-Taisho Ins. Corp. *vs*. Chevron Phils., Inc., G.R. No. 177839, Jan. 18, 2012) p. 313

MOTION TO DISMISS

Litis pendentia as a ground — Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case,

regardless of which party is successful, would amount to res judicata in the other case. (Cabreza, Jr. *vs*. Robles Cabreza, G. R. No. 181962, Jan. 16, 2012) p. 30

MOTIONS

Motion for extension of time to file a pleading — Must be filed before the expiration of the period sought to be extended; the court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. (Posiquit *vs*. People of the Phils., G.R. No. 193943, Jan. 16, 2012) p. 115

MURDER

Commission of — The elements of murder that the prosecution must establish are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide. (People of the Phils. *vs*. Dollendo, G.R. No. 181701, Jan. 18, 1012) p. 338

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Decisions of — The finality of the NLRC's decision does not preclude the filing of a petition for certiorari under Rule 65 of the Rules of Court. (Sarona *vs*. Nat'l. Labor Relations Commission, G.R. No. 185280, Jan. 18, 2012) p. 394

OBLIGATIONS, EXTINGUISHMENT OF

Novation — A novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. (Stolt-Nielsen Transportation Group, Inc. *vs*. Medequillo, Jr., G.R. No. 177498, Jan. 18, 2012) p. 297

— For a valid novation to take place, there must be: (a) a previous valid obligation; (b) an agreement of the parties to make a new contract; (c) an extinguishment of the old contract; and (d) a valid new contract. *(Id.)*

— Not a mode of extinguishing criminal liability. (Medalla *vs*. Laxa, G.R. No. 193362, Jan. 18, 2012) p. 457

Subjective novation — Results through substitution of the person of the debtor or through subrogation of a third person to the rights of the creditor. (Starbright Sales Enterprises, Inc. *vs*. Phil. Realty Corp., G.R. No. 177936, Jan. 18, 2012) p. 330

PLEADINGS

Verification — 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. (Estel *vs*. Heirs of Recaredo P. Diego, Sr., G.R. No. 174082, Jan. 16, 2012) p. 18

PUBLIC OFFICERS AND EMPLOYEES

Duty of public servants — Requires integrity and discipline, for said reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. (Cabalit *vs*. COA, Region VII, G.R. No. 180236, Jan. 17, 2012) p. 138

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — It is present if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength. (People of the Phils. *vs*. Del Castillo *y* Vargas, G.R. No. 169084, Jan. 18, 2012) p. 233

Treachery — Present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and

specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (People of the Phils. *vs.* PO2 Valdez, G.R. No. 175602, Jan. 18, 2012) p. 279

— The particular acts and circumstances constituting treachery must be alleged in the information. *(Id.)*

QUASI-DELICTS

Application in agency — A principal can only be held liable for the tort committed by its agent's employees if it has been established by preponderance of evidence that the principal was also at fault or negligent or that the principal exercised control and supervision over them. (Sps. Fernando and Lourdes Viloria *vs*. Continental Airlines, Inc., G.R. No. 188288, Jan. 16, 2012) p. 61

RES JUDICATA

Application — A final judgment on the merits by a court that has jurisdiction over the parties and over the subject matter in the petition to nullify the writ of possession would have barred subsequent judgment on the complaint for declaration of nullity of the deed of sale based on the principle of *res judicata*. (Cabreza, Jr. *vs*. Robles Cabreza, G. R. No. 181962, Jan. 16, 2012) p. 30

ROBBERY ON THE HIGHWAY (P.D. NO. 532)

Commission of — Requires proof of group organized to commit robbery indiscriminately. (People of the Phils. *vs*. Samoy, G.R. No. 193672, Jan. 18, 2012) p. 482

RULES OF PROCEDURE

Application — May be relaxed in the interest of substantial justice. (Aujero *vs*. Phil. Communications Satellite Corp., G.R. No. 193484, Jan. 18, 2012) p. 463

— One does not have a vested right in the rules of procedure. (Cabalit *vs.* COA, Region VII, G.R. No. 180236, Jan. 17, 2012) p. 138

— Should not be ignored simply because their non-observance may result in prejudice to a party's substantial rights. (Pigcaulan *vs*. Security and Credit Investigation, Inc., G.R. No. 173648, Jan. 16, 2012) p. 1

— Technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the working man. (Sarona *vs*. Nat'l. Labor Relations Commission, G.R. No. 185280, Jan. 18, 2012) p. 394

— The liberal application of the rules of procedure for perfecting appeals is still the exception and not the rule and is only allowed in exceptional circumstances to better serve the interest of justice. (Cadena *vs*. CSC, G.R. No. 191412, Jan. 17, 2012) p. 165

SALES

Contract of sale — When perfected. (Starbright Sales Enterprises, Inc. *vs*. Phil. Realty Corp., G.R. No. 177936, Jan. 18, 2012) p. 330

SURETYSHIP

Contract of suretyship — Nature; discussed. (First Lepanto-Taisho Ins. Corp. *vs*. Chevron Phils., Inc., G.R. No. 177839, Jan. 18, 2012) p. 313

— The creditor is generally held bound to a faithful observance of the rights of the surety and to the performance of every duty necessary for the protection of those rights. *(Id.)*

— The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. *(Id.)*

— The surety contract should be read and interpreted together with the contract entered into between the creditor and the principal. *(Id.)*

TAXES

Coconut levy funds — The coconut levy funds are in the nature of taxes and can only be used for public purpose; they cannot be used to purchase shares of stocks to be given for free to private individuals; the coconut levy funds are special public funds of the government. (Phil. Coconut Producers Federation, Inc. [COCOFED] *vs*. Rep. of the Phils., G.R. Nos. 177857-58, Jan. 24, 2012) p. 508

— The coconut levy funds can only be used for the special purpose and the balance thereof should revert back to the general fund; their subsequent reclassification as a private fund to be owned by private individuals in their private capacities under the coconut levy laws are unconstitutional. *(Id.)*

UNLAWFUL DETAINER

Complaint for — When sufficient. (Corpuz *vs*. Sps. Hilarion and Justa Agustin, G.R. No. 183822, Jan. 18, 2012) p. 352

VOIDABLE CONTRACTS

Fraud — Must be serious and its existence must be established by clear and convincing evidence; fraud cannot be proved by mere speculations and conjectures. (Sps. Fernando and Lourdes Viloria *vs*. Continental Airlines, Inc., G.R. No. 188288, Jan. 16, 2012) p. 61

WAGES

Employee benefits — The employer has the burden of proving that it has paid these benefits to its employees. (Pigcaulan *vs*. Security and Credit Investigation, Inc., G.R. No. 173648, Jan. 16, 2012) p. 1

Overtime pay — Grant thereof requires substantial evidence; the handwritten itemized computations are self-serving, unreliable and unsubstantial evidence to sustain the grant of salary differentials, particularly overtime pay. (Pigcaulan *vs*. Security and Credit Investigation, Inc., G.R. No. 173648, Jan. 16, 2012) p. 1

WITNESSES

Credibility — Factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings, are to be given the highest respect; exceptions. (People of the Phils. *vs*. Sabadlab *y* Narciso, G.R. No. 186392, Jan. 18, 2012) p. 425

(People of the Phils. *vs*. PO2 Valdez, G.R. No. 175602, Jan. 18, 2012) p. 279

(People of the Phils. *vs*. Del Castillo *y* Vargas, G.R. No. 169084, Jan. 18, 2012) p. 233

— Three years not too long for victims of criminal violence to forget their appalling experience. (People of the Phils. *vs.* Samoy, G.R. No. 193672, Jan. 18, 2012) p. 482

Testimony of — Testimonies of witnesses constituted strong evidence of the possession of shabu. (People of the Phils. *vs.* De Los Santos *y* Maristela, G.R. No. 170839, Jan. 18, 2012) p. 259

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