PHILIPPINE REPORTS

VOL. 680

JANUARY 25, 2012 TO FEBRUARY 1, 2012

VOLUME 680

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 25, 2012 TO FEBRUARY 1, 2012

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. RENATO C. CORONA, Chief Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. MA. LOURDES P.A. SERENO, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Renato C. Corona

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Mariano C. Del Castillo
Hon. Martin S. Villarama, Jr.

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Arturo D. Brion
Hon. Jose P. Perez
Hon. Maria Lourdes P.A. Sereno
Hon. Bienvenido L. Reyes

Acting Division Clerk of Court

Atty. Teresita A. Tuazon

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Diosdado M. Peralta
Hon. Roberto A. Abad
Hon. Jose C. Mendoza
Hon. Estela M. Perlas-Bernabe

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 154061. January 25, 2012]

PANAY RAILWAYS, INC., *petitioner, vs.* **HEVA MANAGEMENT AND DEVELOPMENT CORPORATION, PAMPLONA AGRO-INDUSTRIAL CORPORATION, and SPOUSES CANDELARIA DAYOT and EDMUNDO DAYOT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES APPLICABLE TO ACTIONS PENDING AND UNRESOLVED AT THE TIME OF THEIR PASSAGE. — Statutes and rules regulating the procedure of courts are considered applicable to actions pending and unresolved at the time of their passage. Procedural laws and rules are retroactive in that sense and to that extent. The effect of procedural statutes and rules on the rights of a litigant may not preclude their retroactive application to pending actions. This retroactive application does not violate any right of a person adversely affected. Neither is it constitutionally objectionable. The reason is that, as a general rule, no vested right may attach to or arise from procedural laws and rules. 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.

2. ID.; ID.; APPEAL; DOCKET FEES; PAYMENT THEREOF INDISPENSABLE FOR PERFECTING AN APPEAL. — As early as 1932, in *Lazaro v. Endencia*, we have held that the payment of the full amount of the docket fees is an indispensable step for the perfection of an appeal. The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fees. Moreover, the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, which may be exercised only in accordance with the law.

3. ID.; ID.; LIBERAL APPLICATION OF THE RULES; SUBSTANTIAL JUSTICE WILL NOT AUTOMATICALLY COMPEL THE COURT TO SUSPEND PROCEDURAL RULES. — We have repeatedly stated that the term "substantial justice" is not a magic wand that would automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may result in prejudice to a party's substantive rights. Like all other rules, they are required to be followed, except only for the most persuasive of reasons when they may be relaxed to relieve litigants of an injustice not commensurate with the degree of their thoughtlessness in not complying with the procedure prescribed.

4. LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT. — We cannot consider counsel's failure to familiarize himself with the Revised Rules of Court as a persuasive reason to relax the application of the Rules. It is well-settled that the negligence of counsel binds the client. This principle is based on the rule that any act performed by lawyers within the scope of their general or implied authority is regarded as an act of the client. Consequently, the mistake or negligence of the counsel of petitioner may result in the rendition of an unfavorable judgment against it.

APPEARANCES OF COUNSEL

Rexes V. Alejano for petitioner.

Nilo S. Sampiano for Pamplona Agro-Industrial Corp.

Raul F. Facon for Edmundo Dayot.

Lina A. Layson & Raul M. Retiro for Heva Management & Dev't. Corp.

D E C I S I O N

SERENO, *J.*:

The present Petition stems from the dismissal by the Regional Trial Court (RTC) of Iloilo City of a Notice of Appeal for petitioner's failure to pay the corresponding docket fees.

The facts are as follows:

On 20 April 1982, petitioner Panay Railways Inc., a government-owned and controlled corporation, executed a Real Estate Mortgage Contract covering several parcels of lands, including Lot No. 6153, in favor of Traders Royal Bank (TRB) to secure ₱20 million worth of loan and credit accommodations. Petitioner excluded certain portions of Lot No. 6153: that already sold to Shell Co., Inc. referred to as 6153-B, a road referred to as 6153-C, and a squatter area known as 6153-D.[1]

Petitioner failed to pay its obligations to TRB, prompting the bank to extra-judicially foreclose the mortgaged properties including Lot No. 6153. On 20 January 1986, a Certificate of Sale was issued in favor of the bank as the highest bidder and purchaser. Consequently, the sale of Lot No. 6153 was registered with the Register of Deeds on 28 January 1986 and annotated at the back of the transfer certificates of title (TCT) covering the mortgaged properties.

Thereafter, TRB caused the consolidation of the title in its name on the basis of a Deed of Sale and an Affidavit of Consolidation after petitioner failed to exercise the right to redeem the properties. The corresponding TCTs were subsequently issued in the name of the bank.

On 12 February 1990, TRB filed a Petition for Writ of Possession against petitioner. During the proceedings, petitioner, through its duly authorized manager and officer-in-charge and with the assistance of counsel, filed a Manifestation and Motion to Withdraw Motion for Suspension of the Petition for the issuance

---

[1] CA *rollo*, pp. 126-139.

of a writ of possession.[2] The pertinent portions of the Manifestation and Motion state:

3. That after going over the records of this case and the case of *Traders Royal Bank vs. Panay Railway, Inc.*, Civil Case No. 18280, PRI is irrevocably withdrawing its Motion for Suspension referred to in paragraph 1 above, and its Motion for Reconsideration referred in paragraph 2 above and will accept and abide by the September 21, 1990 Order denying the Motion For Suspension;

4. **That PRI recognizes and acknowledges petitioner (TRB) to be the registered owner of Lot 1-A; Lot 3834; Lot 6153; Lot 6158; Lot 6159, and Lot 5 covered by TCT No. T-84233; T-84234; T-84235; T-84236; T-84237, T-84238 and T-45724 respectively, free of liens and encumbrances, except that portion sold to Shell Co. found in Lot 5. That Petitioner (TRB) as registered owner is entitled to peaceful ownership and immediate physical possession of said real properties.**

5. That PRI further acknowledges that **the Provincial Sheriff validly foreclosed the Real Estate Mortgage erected by PRI due to failure to pay the loan of ₱20,000,000.00**. That TRB was the purchaser of these lots mentioned in paragraph 4 above at Sheriff's Auction Sale as evidenced by the Certificate of Sale dated January 20, 1986 and the Certificates of Titles issued to Petitioner;

6. **That PRI further manifests that it has no past, present or future opposition to the grant of the Writ of Possession to TRB over the parcels of land mentioned in paragraph 4 above and subject of this Petition and even assuming "*arguendo*" that it has, PRI irrevocably waives the same. That PRI will even assist TRB in securing possession of said properties as witness against squatters, illegal occupants, and all other possible claimants**;

7. That upon execution hereof, **PRI voluntarily surrenders physical possession and control of the premises of these lots to TRB, its successors or its assigns, together with all the buildings, warehouses, offices, and all other permanent improvements constructed thereon and will attest to the title and possession of petitioner over said real properties**. (Emphasis supplied)

---

[2] *Id.* at 95-97.

TCT No. T-84235 mentioned in the quoted portion above is Lot No. 6153, which is under dispute.

It was only in 1994 that petitioner realized that the extrajudicial foreclosure included some excluded properties in the mortgage contract. Thus, on 19 August 1994, it filed a Complaint for Partial Annulment of Contract to Sell and Deed of Absolute Sale with Addendum; Cancellation of Title No. T-89624; and Declaration of Ownership of Real Property with Reconveyance plus Damages.[3]

It then filed an Amended Complaint[4] on 1 January 1995 and again filed a Second Amended Complaint[5] on 8 December 1995.

Meanwhile, respondents filed their respective Motions to Dismiss on these grounds: (1) petitioner had no legal capacity to sue; (2) there was a waiver, an abandonment and an extinguishment of petitioner's claim or demand; (3) petitioner failed to state a cause of action; and (4) an indispensable party, namely TRB, was not impleaded.

On 18 July 1997, the RTC issued an Order[6] granting the Motion to Dismiss of respondents. It held that the Manifestation and Motion filed by petitioner was a judicial admission of TRB's ownership of the disputed properties. The trial court pointed out that the Manifestation was executed by petitioner's duly authorized representative with the assistance of counsel. This admission thus operated as a waiver barring petitioner from claiming otherwise.

On 11 August 1997, petitioner filed a Notice of Appeal without paying the necessary docket fees. Immediately thereafter, respondents filed a Motion to Dismiss Appeal on the ground of nonpayment of docket fees.

---

[3] *Id.* at 44-53.

[4] *Id.* at 111-125.

[5] *Rollo,* pp. 99-112.

[6] *Id.* at 86-98.

In its Opposition,[7] petitioner alleged that its counsel was not yet familiar with the revisions of the Rules of Court that became effective only on 1 July 1997. Its representative was likewise not informed by the court personnel that docket fees needed to be paid upon the filing of the Notice of Appeal. Furthermore, it contended that the requirement for the payment of docket fees was not mandatory. It therefore asked the RTC for a liberal interpretation of the procedural rules on appeals.

On 29 September 1997, the RTC issued an Order[8] dismissing the appeal citing Sec. 4 of Rule 41[9] of the Revised Rules of Court.

Petitioner thereafter moved for a reconsideration of the Order[10] alleging that the trial court lost jurisdiction over the case after the former had filed the Notice of Appeal. Petitioner also alleged that the court erred in failing to relax procedural rules for the sake of substantial justice.

On 25 November 1997, the RTC denied the Motion.[11]

On 28 January 1998, petitioner filed with the Court of Appeals (CA) a Petition for *Certiorari* and *Mandamus* under Rule 65 alleging that the RTC had no jurisdiction to dismiss the Notice of Appeal, and that the trial court had acted with grave abuse of discretion when it strictly applied procedural rules.

On 29 November 2000, the CA rendered its Decision[12] on the Petition. It held that while the failure of petitioner to pay

---

[7] *Id.* at 133-137.

[8] *Id.* at 96.

[9] SECTION 4. Appellate Court Docket and Other Lawful Fees. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

[10] *Id.* at 138-153.

[11] *Id.* at 97-98.

[12] *Id.* at 185-188.

the docket and other lawful fees within the reglementary period was a ground for the dismissal of the appeal pursuant to Sec. 1 of Rule 50 of the Revised Rules of Court, the jurisdiction to do so belonged to the CA and not the trial court. Thus, appellate court ruled that the RTC committed grave abuse of discretion in dismissing the appeal and set aside the latter's assailed Order dated 29 September 1997.

Thereafter, respondents filed their respective Motions for Reconsideration.

It appears that prior to the promulgation of the CA's Decision, this Court issued Administrative Matter (A.M.) No. 00-2-10-SC which took effect on 1 May 2000, amending Rule 4, Sec. 7 and Sec. 13 of Rule 41 of the 1997 Revised Rules of Court. The circular expressly provided that trial courts may, *motu proprio* or upon motion, dismiss an appeal for being filed out of time or for nonpayment of docket and other lawful fees within the reglementary period. Subsequently, Circular No. 48-2000[13] was issued on 29 August 2000 and was addressed to all lower courts.

By virtue of the amendment to Sec. 41, the CA upheld the questioned Orders of the trial court by issuing the assailed Amended Decision[14] in the present Petition granting respondents' Motion for Reconsideration.

The CA's action prompted petitioner to file a Motion for Reconsideration alleging that SC Circular No. 48-2000 should not be given retroactive effect. It also alleged that the CA should consider the case as exceptionally meritorious. Petitioner's counsel, Atty. Rexes V. Alejano, explained that he was yet to familiarize himself with the Revised Rules of Court, which became effective a little over a month before he filed the Notice of Appeal. He was thus not aware that the nonpayment of docket fees might lead to the dismissal of the case.

---

[13] A.M. No. 00-2-10-SC, Re: Amendments to Section 4, Rule 7 and Section 13, Rule 41 of the 1997 Rules of Civil Procedure.

[14] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Elvi John S. Asuncion concurring; *rollo*, pp. 78-81.

On 30 May 2002, the CA issued the assailed Resolution[15] denying petitioner's Motion for Reconsideration.

Hence, this Petition.

Petitioner alleges that the CA erred in sustaining the RTC's dismissal of the Notice of Appeal. Petitioner contends that the CA had exclusive jurisdiction to dismiss the Notice of Appeal at the time of filing. Alternatively, petitioner argues that while the appeal was dismissible for failure to pay docket fees, substantial justice demands that procedural rules be relaxed in this case.

The Petition has no merit.

Statutes and rules regulating the procedure of courts are considered applicable to actions pending and unresolved at the time of their passage. Procedural laws and rules are retroactive in that sense and to that extent. The effect of procedural statutes and rules on the rights of a litigant may not preclude their retroactive application to pending actions. This retroactive application does not violate any right of a person adversely affected. Neither is it constitutionally objectionable. The reason is that, as a general rule, no vested right may attach to or arise from procedural laws and rules. 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."[16] More so when, as in this case, petitioner admits that it was not able to pay the docket fees on time. Clearly, there were no substantive rights to speak of when the RTC dismissed the Notice of Appeal.

The argument that the CA had the exclusive jurisdiction to dismiss the appeal has no merit. When this Court accordingly amended Sec. 13 of Rule 41 through A.M. No. 00-2-10-SC, the RTC's dismissal of the action may be considered to have

---

[15] *Id.* at 83-85.

[16] *Spouses Calo v. Spouses Tan*, 512 Phil. 786, 797-798.

had the imprimatur of the Court. Thus, the CA committed no reversible error when it sustained the dismissal of the appeal, taking note of its directive on the matter prior to the promulgation of its Decision.

As early as 1932, in *Lazaro v. Endencia*,[17] we have held that the payment of the full amount of the docket fees is an indispensable step for the perfection of an appeal. The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fees.[18]

Moreover, the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, which may be exercised only in accordance with the law.[19]

We have repeatedly stated that the term "substantial justice" is not a magic wand that would automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may result in prejudice to a party's substantive rights. Like all other rules, they are required to be followed, except only for the most persuasive of reasons when they may be relaxed to relieve litigants of an injustice not commensurate with the degree of their thoughtlessness in not complying with the procedure prescribed.[20]

We cannot consider counsel's failure to familiarize himself with the Revised Rules of Court as a persuasive reason to relax the application of the Rules. It is well-settled that the negligence of counsel binds the client. This principle is based on the rule that any act performed by lawyers within the scope of their general or implied authority is regarded as an act of the client. Consequently, the mistake or negligence of the counsel of petitioner may result in the rendition of an unfavorable judgment against it.[21]

---

[17] 57 Phil. 552 (1932).

[18] *Manchester Development Corp. v. Court of Appeals*, 233 Phil. 579 (1987).

[19] *Dimarucot v. People*, G.R. No. 183975, 20 September 2010, 630 SCRA 659.

[20] *Far Corporation v. Magdaluyo*, 485 Phil. 599, 610-611.

[21] *Salonga v. Court of Appeals*, 336 Phil. 514.

WHEREFORE, in view of the foregoing, the Petition is **DENIED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 158239. January 25, 2012]

PRISCILLA ALMA JOSE, *petitioner, vs.* **RAMON C. JAVELLANA, *ET AL.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL OF MOTION FOR RECONSIDERATION OF AN ORDER GRANTING A MOTION TO DISMISS IS A FINAL ORDER, SUBJECT TO APPEAL WITHIN THE FRESH PERIOD OF 15 DAYS FROM NOTICE OF DENIAL. — The denial of a motion for reconsideration of an order granting the defending party's motion to dismiss is not an interlocutory but a final order because it puts an end to the particular matter involved, or settles definitely the matter therein disposed of, as to leave nothing for the trial court to do other than to execute the order. Accordingly, the claiming party has a fresh period of 15 days from notice of the denial within which to appeal the denial.

2. ID.; ID.; FINAL ORDER DISTINGUISHED FROM INTERLOCUTORY ORDER. — The Court has distinguished between final and interlocutory orders in *Pahila-Garrido v.*

---

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

Tortogo, thuswise: The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case*? If it does, the order or judgment is interlocutory; otherwise, it is final. And, secondly, whether an order is final or interlocutory determines whether appeal is the correct remedy or not. A final order is appealable, to accord with the *final judgment rule* enunciated in Section 1, Rule 41 of the *Rules of Court* to the effect that "appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable;" but the remedy from an interlocutory one is not an appeal but a special civil action for *certiorari*. The explanation for the differentiation of remedies given in *Pahila-Garrido v. Tortogo* is apt. x x x

3. ID.; ID.; APPEAL; PERIOD; FRESH PERIOD OF 15 DAYS TO APPEAL AN ORDER DENYING A MOTION FOR RECONSIDERATION. — [T]he Court adopted the *fresh period rule* in *Neypes v. Court of Appeals*, by which an aggrieved party desirous of appealing an adverse judgment or final order is allowed a fresh period of 15 days within which to file the notice of appeal in the RTC reckoned from receipt of the order denying a motion for a new trial or motion for reconsideration. x x x The *fresh period rule* may be applied to this case, for the Court has already retroactively extended the *fresh period rule* to "actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there are no vested rights in rules of procedure."

4. ID.; ID.; FORUM SHOPPING; NATURE AND PURPOSE. — The Court expounded on the nature and purpose of forum shopping in *In Re: Reconstitution of Transfer Certificates of*

Title Nos. 303168 and 303169 and Issuance of Owner's Duplicate Certificates of Title In Lieu of Those Lost, Rolando Edward G. Lim, Petitioner: Forum shopping is the act of a party litigant against whom an adverse judgment has been rendered in one forum seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause or supposition that one or the other court would make a favorable disposition. Forum shopping happens when, in the two or more pending cases, there is identity of parties, identity of rights or causes of action, and identity of reliefs sought. Where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other, there is forum shopping. For *litis pendentia* to be a ground for the dismissal of an action, there must be: (*a*) identity of the parties or at least such as to represent the same interest in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (*c*) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. For forum shopping to exist, both actions must involve the same transaction, same essential facts and circumstances and must raise identical causes of action, subject matter and issues. Clearly, it does not exist where different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought.

5. ID.; ID.; ID.; FILING AN APPEAL AND PETITION FOR *CERTIORARI* AGAINST THE SAME ORDER WITH DIFFERENT OBJECTIVES, NOT A CASE OF; CASE AT BAR. — Should Javellana's present appeal now be held barred by his filing of the petition for *certiorari* in the CA when his appeal in that court was yet pending? x x x [T]he appeal and the petition for *certiorari* [filed] actually sought different objectives. In his appeal in C.A.-G.R. CV No. 68259, Javellana aimed to undo the RTC's erroneous dismissal of Civil Case No. 79-M-97 to clear the way for his judicial demand for specific performance to be tried and determined in due course by the RTC; but his petition for *certiorari* had the ostensible objective "to prevent (Priscilla) from developing the subject property and from proceeding with the ejectment case until his appeal is finally resolved," as the CA explicitly determined in its

decision in C.A.-G.R. SP No. 60455. Nor were the dangers that the adoption of the judicial policy against forum shopping designed to prevent or to eliminate attendant. The first danger, *i.e.*, the multiplicity of suits upon one and the same cause of action, would not materialize considering that the appeal was a continuity of Civil Case No. 79-M-97, whereas C.A.-G.R. SP No. 60455 dealt with an independent ground of alleged grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC. The second danger, *i.e.*, the unethical malpractice of shopping for a friendly court or judge to ensure a favorable ruling or judgment after not getting it in the appeal, would not arise because the CA had not yet decided C.A.-G.R. CV No. 68259 as of the filing of the petition for *certiorari*.

APPEARANCES OF COUNSEL

Posadas Law Firm for petitioner.
Joanes G. Caacbay for Ramon C. Javellana.

D E C I S I O N

BERSAMIN, *J.*:

The denial of a motion for reconsideration of an order granting the defending party's motion to dismiss is not an interlocutory but a final order because it puts an end to the particular matter involved, or settles definitely the matter therein disposed of, as to leave nothing for the trial court to do other than to execute the order.[1] Accordingly, the claiming party has a fresh period of 15 days from notice of the denial within which to appeal the denial.[2]

Antecedents

On September 8, 1979, Margarita Marquez Alma Jose (Margarita) sold for consideration of ₱160,000.00 to respondent Ramon Javellana by deed of conditional sale two parcels of

[1] *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631.

[2] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 600 SCRA 1.

land with areas of 3,675 and 20,936 square meters located in Barangay Mallis, Guiguinto, Bulacan. They agreed that Javellana would pay ₱80,000.00 upon the execution of the deed and the balance of ₱80,000.00 upon the registration of the parcels of land under the Torrens System (the registration being undertaken by Margarita within a reasonable period of time); and that should Margarita become incapacitated, her son and attorney-in-fact, Juvenal M. Alma Jose (Juvenal), and her daughter, petitioner Priscilla M. Alma Jose, would receive the payment of the balance and proceed with the application for registration.[3]

After Margarita died and with Juvenal having predeceased Margarita without issue, the vendor's undertaking fell on the shoulders of Priscilla, being Margarita's sole surviving heir. However, Priscilla did not comply with the undertaking to cause the registration of the properties under the Torrens System, and, instead, began to improve the properties by dumping filling materials therein with the intention of converting the parcels of land into a residential or industrial subdivision.[4] Faced with Priscilla's refusal to comply, Javellana commenced on February 10, 1997 an action for specific performance, injunction, and damages against her in the Regional Trial Court in Malolos, Bulacan (RTC), docketed as Civil Case No. 79-M-97 entitled *Ramon C. Javellana, represented by Atty. Guillermo G. Blanco v. Priscilla Alma Jose.*

In Civil Case No. 79-M-97, Javellana averred that upon the execution of the deed of conditional sale, he had paid the initial amount of ₱80,000.00 and had taken possession of the parcels of land; that he had paid the balance of the purchase price to Juvenal on different dates upon Juvenal's representation that Margarita had needed funds for the expenses of registration and payment of real estate tax; and that in 1996, Priscilla had called to inquire about the mortgage constituted on the parcels of land; and that he had told her then that the parcels of land had not been mortgaged but had been sold to him.[5]

---

[3] Records, pp. 25-26.

[4] *Id.,* pp. 18-19 and CA decision, p. 3.

[5] Records, pp. 17-18 (the complaint was amended).

Javellana prayed for the issuance of a temporary restraining order or writ of preliminary injunction to restrain Priscilla from dumping filling materials in the parcels of land; and that Priscilla be ordered to institute registration proceedings and then to execute a final deed of sale in his favor.[6]

Priscilla filed a motion to dismiss, stating that the complaint was already barred by prescription; and that the complaint did not state a cause of action.[7]

The RTC initially denied Priscilla's motion to dismiss on February 4, 1998.[8] However, upon her motion for reconsideration, the RTC reversed itself on June 24, 1999 and granted the motion to dismiss, opining that Javellana had no cause of action against her due to her not being bound to comply with the terms of the deed of conditional sale for not being a party thereto; that there was no evidence showing the payment of the balance; that he had never demanded the registration of the land from Margarita or Juvenal, or brought a suit for specific performance against Margarita or Juvenal; and that his claim of paying the balance was not credible.[9]

Javellana moved for reconsideration, contending that the presentation of evidence of full payment was not necessary at that stage of the proceedings; and that in resolving a motion to dismiss on the ground of failure to state a cause of action, the facts alleged in the complaint were hypothetically admitted and only the allegations in the complaint should be considered in resolving the motion.[10] Nonetheless, he attached to the motion for reconsideration the receipts showing the payments made to Juvenal.[11] Moreover, he maintained that Priscilla could no longer succeed to any rights respecting the parcels of land because he

---

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

[7] *Id.,* p. 40.

[8] *Id.,* pp. 68-70.

[9] *Id.,* pp. 83-84.

[10] *Id.,* pp. 101-102.

[11] Records, pp. 89-94.

had meanwhile acquired absolute ownership of them; and that the only thing that she, as sole heir, had inherited from Margarita was the obligation to register them under the Torrens System.[12]

On June 21, 2000, the RTC denied the motion for reconsideration for lack of any reason to disturb the order of June 24, 1999.[13]

Accordingly, Javellana filed a notice of appeal from the June 21, 2000 order,[14] which the RTC gave due course to, and the records were elevated to the Court of Appeals (CA).

In his appeal (C.A.-G.R. CV No. 68259), Javellana submitted the following as errors of the RTC,[15] to wit:

I

THE TRIAL COURT GRIEVOUSLY ERRED IN NOT CONSIDERING THE FACT THAT PLAINTIFF-APELLANT HAD LONG COMPLIED WITH THE FULL PAYMENT OF THE CONSIDERATION OF THE SALE OF THE SUBJECT PROPERTY AND HAD IMMEDIATELY TAKEN ACTUAL AND PHYSICAL POSSESSION OF SAID PROPERTY UPON THE SIGNING OF THE CONDITIONAL DEED OF SALE;

II

THE TRIAL COURT OBVIOUSLY ERRED IN MAKING TWO CONFLICTING INTERPRETATIONS OF THE PROVISION OF THE CIVIL [CODE], PARTICULARLY ARTICLE 1911, IN THE LIGHT OF THE TERMS OF THE CONDITIONAL DEED OF SALE;

III

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLEE BEING NOT A PARTY TO THE CONDITIONAL DEED OF SALE EXECUTED BY HER MOTHER IN FAVOR OF PLAINTFF-APPELLANT IS NOT BOUND THEREBY AND CAN

---

[12] *Id.,* pp. 103-105.

[13] *Id.,* pp. 128-129.

[14] *Id.,* p. 134.

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

NOT BE COMPELLED TO DO THE ACT REQUIRED IN THE SAID DEED OF CONDITIONAL SALE;

IV

THE TRIAL COURT ERRED IN DISMISSING THE AMENDED COMPLAINT WITHOUT HEARING THE CASE ON THE MERITS.

Priscilla countered that the June 21, 2000 order was not appealable; that the appeal was not perfected on time; and that Javellana was guilty of forum shopping.[16]

It appears that pending the appeal, Javellana also filed a petition for *certiorari* in the CA to assail the June 24, 1999 and June 21, 2000 orders dismissing his complaint (C.A.-G.R. SP No. 60455). On August 6, 2001, however, the CA dismissed the petition for *certiorari*,[17] finding that the RTC did not commit grave abuse of discretion in issuing the orders, and holding that it only committed, at most, an error of judgment correctible by appeal in issuing the challenged orders.

On November 20, 2002, the CA promulgated its decision in C.A.-G.R. CV No. 68259,[18] reversing and setting aside the dismissal of Civil Case No. 79-M-97, and remanding the records to the RTC "for further proceedings in accordance with law."[19] The CA explained that the complaint sufficiently stated a cause of action; that Priscilla, as sole heir, succeeded to the rights and obligations of Margarita with respect to the parcels of land; that Margarita's undertaking under the contract was not a purely personal obligation but was transmissible to Priscilla, who was consequently bound to comply with the obligation; that the action had not yet prescribed due to its being actually one for quieting of title that was imprescriptible brought by Javellana who had

---

[16] *Id.,* pp. 79-81.

[17] *Rollo,* pp. 75-80.

[18] *Id.,* pp. 26-37; penned by Associate Justice Mercedes Gozo-Dadole (retired), with Associate Justice Bennie Adefuin-de la Cruz (retired) and Associate Justice Mariano del Castillo (now a member of the Court) concurring.

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

actual possession of the properties; and that based on the complaint, Javellana had been in actual possession since 1979, and the cloud on his title had come about only when Priscilla had started dumping filling materials on the premises.[20]

On May 9, 2003, the CA denied the motion for reconsideration,[21] stating that it decided to give due course to the appeal even if filed out of time because Javellana had no intention to delay the proceedings, as in fact he did not even seek an extension of time to file his appellant's brief; that current jurisprudence afforded litigants the amplest opportunity to present their cases free from the constraints of technicalities, such that even if an appeal was filed out of time, the appellate court was given the discretion to nonetheless allow the appeal for justifiable reasons.

Issues

Priscilla then brought this appeal, averring that the CA thereby erred in not outrightly dismissing Javellana's appeal because: (*a*) the June 21, 2000 RTC order was not appealable; (*b*) the notice of appeal had been filed belatedly by three days; and (*c*) Javellana was guilty of forum shopping for filing in the CA a petition for *certiorari* to assail the orders of the RTC that were the subject matter of his appeal pending in the CA. She posited that, even if the CA's decision to entertain the appeal was affirmed, the RTC's dismissal of the complaint should nonetheless be upheld because the complaint stated no cause of action, and the action had already prescribed.

On his part, Javellana countered that the errors being assigned by Priscilla involved questions of fact not proper for the Court to review through petition for review on *certiorari*; that the June 21, 2000 RTC order, being a final order, was appealable; that his appeal was perfected on time; and that he was not guilty of forum shopping because at the time he filed the petition for *certiorari* the CA had not yet rendered a decision in C.A.-G.R. CV No. 68259, and because the issue of ownership raised in

---

[20] *Id.,* pp. 35-36.

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

C.A.-G.R. CV No. 68259 was different from the issue of grave abuse of discretion raised in C.A.-G.R. SP No. 60455.

Ruling

The petition for review has no merit.

I

Denial of the motion for reconsideration of the order of dismissal was a final order and appealable

Priscilla submits that the order of June 21, 2000 was not the proper subject of an appeal considering that Section 1 of Rule 41 of the *Rules of Court* provides that no appeal may be taken from an order denying a motion for reconsideration.

Priscilla's submission is erroneous and cannot be sustained.

First of all, the denial of Javellana's motion for reconsideration left nothing more to be done by the RTC because it confirmed the dismissal of Civil Case No. 79-M-97. It was clearly a final order, not an interlocutory one. The Court has distinguished between final and interlocutory orders in *Pahila-Garrido v. Tortogo*,[22] thuswise:

> The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case*? If it does, the order or judgment is interlocutory; otherwise, it is final.

And, secondly, whether an order is final or interlocutory determines whether appeal is the correct remedy or not. A final

---

[22] G.R. No. 156358, August 17, 2011 (the italics are part of the original text).

order is appealable, to accord with the *final judgment rule* enunciated in Section 1, Rule 41 of the *Rules of Court* to the effect that "appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable;"[23] but the remedy from an interlocutory one is not an appeal but a special civil action for *certiorari*. The explanation for the differentiation of remedies given in *Pahila-Garrido v. Tortogo* is apt:

> x x x The reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action, which necessarily suspends the hearing and decision on the merits of the action during the pendency of the appeals. Permitting multiple appeals will necessarily delay the trial on the merits of the case for a considerable length of time, and will compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court. An interlocutory order may be the subject of an appeal, but only after a judgment has been rendered, with the ground for appealing the order being included in the appeal of the judgment itself.
>
> The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Then is *certiorari* under Rule 65 allowed to be resorted to.

Indeed, the Court has held that an appeal from an order denying a motion for reconsideration of a final order or judgment is effectively an appeal from the final order or judgment itself; and has expressly clarified that the prohibition against appealing an order denying a motion for reconsideration referred only to a denial of a motion for reconsideration of an interlocutory order.[24]

---

[23] Bersamin, *Appeal and Review in the Philippines*, 2nd Edition, Central Professional Books, Inc., Quezon City, p. 117; citing Friedenthal, *et al.*, *Civil Procedure*, 2nd Edition, 1993, West Group, pp. 582-583.

[24] *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631, where the Court stated:

II
Appeal was made on time pursuant to *Neypes v. CA*

Priscilla insists that Javellana filed his notice of appeal out of time. She points out that he received a copy of the June 24, 1999 order on July 9, 1999, and filed his motion for reconsideration on July 21, 1999 (or after the lapse of 12 days); that the RTC denied his motion for reconsideration through the order of June 21, 2000, a copy of which he received on July 13, 2000; that he had only three days from July 13, 2000, or until July 16, 2000, within which to perfect an appeal; and that having filed his notice of appeal on July 19, 2000, his appeal should have been dismissed for being tardy by three days beyond the expiration of the reglementary period.

Section 3 of Rule 41 of the *Rules of Court* provides:

> Section 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> **The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed**. (n)

Under the rule, Javellana had only the balance of three days from July 13, 2000, or until July 16, 2000, within which to perfect an appeal due to the timely filing of his motion for reconsideration interrupting the running of the period of appeal.

If the proscription against appealing an order denying a motion for reconsideration is applied to <u>any</u> order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject of appeal. In other words, from the entire provisions of Rules 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order.

Quelnan v. VHF Philippines, Inc. has been cited in *Apuyan v. Haldeman*, G.R. No. 129980, September 20, 2004, 438 SCRA 402 and *Silverio, Jr. v. Court of Appeals*, G.R. No. 178933, September 16, 2009, 600 SCRA 1.

As such, his filing of the notice of appeal only on July 19, 2000 did not perfect his appeal on time, as Priscilla insists.

The seemingly correct insistence of Priscilla cannot be upheld, however, considering that the Court meanwhile adopted the *fresh period rule* in *Neypes v. Court of Appeals*,[25] by which an aggrieved party desirous of appealing an adverse judgment or final order is allowed a fresh period of 15 days within which to file the notice of appeal in the RTC reckoned from receipt of the order denying a motion for a new trial or motion for reconsideration, to wit:

> The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.
>
> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
>
> Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[26]

---

[25] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[26] *Id.*, pp. 643-645.

The *fresh period rule* may be applied to this case, for the Court has already retroactively extended the *fresh period rule* to "actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there are no vested rights in rules of procedure."[27] According to *De los Santos v. Vda. de Mangubat*:[28]

> Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.
>
> The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.
>
> Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in *Neypes* which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.[29]

Consequently, we rule that Javellana's notice of appeal was timely filed pursuant to the *fresh period rule*.

---

[27] *Santiago v. Bergensen D.Y. Philippines*, G.R. No. 148333, November 17, 2004, 442 SCRA 486, 490; *Sumaway v. Urban Bank, Inc.*, G.R. No. 142534, June 27, 2006, 493 SCRA 99.

[28] G.R. No. 149508, October 10, 2007, 535 SCRA 411.

[29] *Supra*, at pp. 422-423.

III
No forum shopping was committed

Priscilla claims that Javellana engaged in forum shopping by filing a notice of appeal and a petition for *certiorari* against the same orders. As earlier noted, he denies that his doing so violated the policy against forum shopping.

The Court expounded on the nature and purpose of forum shopping in *In Re: Reconstitution of Transfer Certificates of Title Nos. 303168 and 303169 and Issuance of Owner's Duplicate Certificates of Title In Lieu of Those Lost, Rolando Edward G. Lim, Petitioner*:[30]

> Forum shopping is the act of a party litigant against whom an adverse judgment has been rendered in one forum seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause or supposition that one or the other court would make a favorable disposition. Forum shopping happens when, in the two or more pending cases, there is identity of parties, identity of rights or causes of action, and identity of reliefs sought. Where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other, there is forum shopping. For *litis pendentia* to be a ground for the dismissal of an action, there must be: (*a*) identity of the parties or at least such as to represent the same interest in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (*c*) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.
>
> For forum shopping to exist, both actions must involve the same transaction, same essential facts and circumstances and must raise identical causes of action, subject matter and issues. Clearly, it does not exist where different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought.

---

[30] G.R. No. 156797, July 6, 2010, 624 SCRA 81, pp. 88-89.

Should Javellana's present appeal now be held barred by his filing of the petition for *certiorari* in the CA when his appeal in that court was yet pending?

We are aware that in *Young v. Sy*,[31] in which the petitioner filed a notice of appeal to elevate the orders concerning the dismissal of her case due to non-suit to the CA and a petition for *certiorari* in the CA assailing the same orders four months later, the Court ruled that the successive filings of the notice of appeal and the petition for *certiorari* to attain the same objective of nullifying the trial court's dismissal orders constituted forum shopping that warranted the dismissal of both cases. The Court said:

> Ineluctably, the petitioner, by filing an ordinary appeal and a petition for *certiorari* with the CA, engaged in forum shopping. When the petitioner commenced the appeal, only four months had elapsed prior to her filing with the CA the Petition for *Certiorari* under Rule 65 and which eventually came up to this Court by way of the instant Petition (re: Non-Suit). The elements of *litis pendentia* are present between the two suits. As the CA, through its Thirteenth Division, correctly noted, both suits are founded on exactly the same facts and refer to the same subject matter — the RTC Orders which dismissed Civil Case No. SP-5703 (2000) for failure to prosecute. In both cases, the petitioner is seeking the reversal of the RTC orders. The parties, the rights asserted, the issues professed, and the reliefs prayed for, are all the same. It is evident that the judgment of one forum may amount to *res judicata* in the other.
>
> x x x x x x x x x
>
> The remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. This is a firm judicial policy. The petitioner cannot hedge her case by wagering two or more appeals, and, in the event that the ordinary appeal lags significantly behind the others, she cannot *post facto* validate this circumstance as a demonstration that the ordinary appeal had not been speedy or adequate enough, in order to justify the recourse to Rule 65. This practice, if adopted, would sanction the filing of multiple suits in multiple *fora*, where each one, as the petitioner couches it,

[31] G.R. No. 157745, September 26, 2006, 503 SCRA 151.

becomes a "precautionary measure" for the rest, thereby increasing the chances of a favorable decision. This is the very evil that the proscription on forum shopping seeks to put right. In *Guaranteed Hotels, Inc. v. Baltao*, the Court stated that the grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of the case.[32]

The same result was reached in *Zosa v. Estrella*,[33] which likewise involved the successive filing of a notice of appeal and a petition for *certiorari* to challenge the same orders, with the Court upholding the CA's dismissals of the appeal and the petition for *certiorari* through separate decisions.

Yet, the outcome in *Young v. Sy* and *Zosa v. Estrella* is unjust here even if the orders of the RTC being challenged through appeal and the petition for *certiorari* were the same. The unjustness exists because the appeal and the petition for *certiorari* actually sought different objectives. In his appeal in C.A.-G.R. CV No. 68259, Javellana aimed to undo the RTC's erroneous dismissal of Civil Case No. 79-M-97 to clear the way for his judicial demand for specific performance to be tried and determined in due course by the RTC; but his petition for *certiorari* had the ostensible objective "to prevent (Priscilla) from developing the subject property and from proceeding with the ejectment case until his appeal is finally resolved," as the CA explicitly determined in its decision in C.A.-G.R. SP No. 60455.[34]

Nor were the dangers that the adoption of the judicial policy against forum shopping designed to prevent or to eliminate attendant. The first danger, *i.e.*, the multiplicity of suits upon

---

[32] *Id.*, pp. 166-169.

[33] G.R. No. 149984, November 28, 2008, 572 SCRA 428.

[34] *Rollo*, p. 78.

one and the same cause of action, would not materialize considering that the appeal was a continuity of Civil Case No. 79-M-97, whereas C.A.-G.R. SP No. 60455 dealt with an independent ground of alleged grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC. The second danger, *i.e.*, the unethical malpractice of shopping for a friendly court or judge to ensure a favorable ruling or judgment after not getting it in the appeal, would not arise because the CA had not yet decided C.A.-G.R. CV No. 68259 as of the filing of the petition for *certiorari.*

Instead, we see the situation of resorting to two inconsistent remedial approaches to be the result of the tactical misjudgment by Javellana's counsel on the efficacy of the appeal to stave off his caretaker's eviction from the parcels of land and to prevent the development of them into a residential or commercial subdivision pending the appeal. In the petition for *certiorari*, Javellana explicitly averred that his appeal was "inadequate and not speedy to prevent private respondent Alma Jose and her transferee/assignee x x x from developing and disposing of the subject property to other parties to the total deprivation of petitioner's rights of possession and ownership over the subject property," and that the dismissal by the RTC had "emboldened private respondents to fully develop the property and for respondent Alma Jose to file an ejectment case against petitioner's overseer x x x."[35] Thereby, it became far-fetched that Javellana brought the petition for *certiorari* in violation of the policy against forum shopping.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on November 20, 2002; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

---

[35] *Id.* (quotes are from the decision in C.A.-G.R. SP No. 60455, p. 4).

[*] Vice Associate Justice Mariano C. del Castillo, who concurred in the decision of the Court of Appeals, per raffle of January18, 2012.

THIRD DIVISION

[G.R. No. 164197. January 25, 2012]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **PROSPERITY.COM, INC.,** *respondent.*

SYLLABUS

COMMERCIAL LAW; SECURITIES REGULATION CODE; INVESTMENT CONTRACTS; ELUCIDATED. — The Securities Regulation Code treats investment contracts as "securities" that have to be registered with the SEC before they can be distributed and sold. An investment contract is a contract, transaction, or scheme where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. x x x The United States Supreme Court held in *Securities and Exchange Commission v. W.J. Howey Co.* that, for an investment contract to exist, the following elements, referred to as the *Howey* test must concur: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Camacho & Associates for respondent.

D E C I S I O N

ABAD, *J.*:

This case involves the application of the *Howey* test in order to determine if a particular transaction is an investment contract.

The Facts and the Case

Prosperity.Com, Inc. (PCI) sold computer software and hosted websites without providing internet service. To make a profit,

PCI devised a scheme in which, for the price of US$234.00 (subsequently increased to US$294), a buyer could acquire from it an internet website of a 15-Mega Byte (MB) capacity. At the same time, by referring to PCI his own down-line buyers, a first-time buyer could earn commissions, interest in real estate in the Philippines and in the United States, and insurance coverage worth ₱50,000.00.

To benefit from this scheme, a PCI buyer must enlist and sponsor at least two other buyers as his own down-lines. These second tier of buyers could in turn build up their own down-lines. For each pair of down-lines, the buyer-sponsor received a US$92.00 commission. But referrals in a day by the buyer-sponsor should not exceed 16 since the commissions due from excess referrals inure to PCI, not to the buyer-sponsor.

Apparently, PCI patterned its scheme from that of Golconda Ventures, Inc. (GVI), which company stopped operations after the Securities and Exchange Commission (SEC) issued a cease and desist order (CDO) against it. As it later on turned out, the same persons who ran the affairs of GVI directed PCI's actual operations.

In 2001, disgruntled elements of GVI filed a complaint with the SEC against PCI, alleging that the latter had taken over GVI's operations. After hearing,[1] the SEC, through its Compliance and Enforcement unit, issued a CDO against PCI. The SEC ruled that PCI's scheme constitutes an Investment contract and, following the Securities Regulations Code,[2] it should have first registered such contract or securities with the SEC.

Instead of asking the SEC to lift its CDO in accordance with Section 64.3 of Republic Act (R.A.) 8799, PCI filed with the Court of Appeals (CA) a petition for *certiorari* against the SEC with an application for a temporary restraining order (TRO) and preliminary injunction in CA-G.R. SP 62890. Because the CA did not act promptly on this application for TRO, on January

---

[1] Docketed as CED Case 01-2585.

[2] Republic Act 8799.

31, 2001 PCI returned to the SEC and filed with it before the lapse of the five-day period a request to lift the CDO. On the following day, February 1, 2001, PCI moved to withdraw its petition before the CA to avoid possible forum shopping violation.

During the pendency of PCI's action before the SEC, however, the CA issued a TRO, enjoining the enforcement of the CDO.[3] In response, the SEC filed with the CA a motion to dismiss the petition on ground of forum shopping. In a Resolution,[4] the CA initially dismissed the petition, finding PCI guilty of forum shopping. But on PCI's motion, the CA reversed itself and reinstated the petition.[5]

In a joint resolution,[6] CA-G.R. SP 62890 was consolidated with CA-G.R. SP 64487 that raised the same issues. On July 31, 2003 the CA rendered a decision, granting PCI's petition and setting aside the SEC-issued CDO.[7] The CA ruled that, following the *Howey* test, PCI's scheme did not constitute an investment contract that needs registration pursuant to R.A. 8799, hence, this petition.

The Issue Presented

The sole issue presented before the Court is whether or not PCI's scheme constitutes an investment contract that requires registration under R.A. 8799.

The Ruling of the Court

The Securities Regulation Code treats investment contracts as "securities" that have to be registered with the SEC before they can be distributed and sold. An investment contract is a contract, transaction, or scheme where a person invests his money

---

[3] Resolution dated February 14, 2001.

[4] Dated March 13, 2001.

[5] Resolution dated April 30, 2001.

[6] Resolution dated July 6, 2001.

[7] Penned by Justice Eloy R. Bello, Jr. and concurred in by Justice Cancio C. Garcia (a retired member of this Court) and Justice Mariano C. Del Castillo (currently, a member of this Court).

in a common enterprise and is led to expect profits primarily from the efforts of others.[8]

Apart from the definition, which the Implementing Rules and Regulations provide, Philippine jurisprudence has so far not done more to add to the same. Of course, the United States Supreme Court, grappling with the problem, has on several occasions discussed the nature of investment contracts. That court's rulings, while not binding in the Philippines, enjoy some degree of persuasiveness insofar as they are logical and consistent with the country's best interests.[9]

The United States Supreme Court held in *Securities and Exchange Commission v. W.J. Howey Co.*[10] that, for an investment contract to exist, the following elements, referred to as the *Howey* test must concur: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others.[11] Thus, to sustain the SEC position in this case, PCI's scheme or contract with its buyers must have all these elements.

An example that comes to mind would be the long-term commercial papers that large companies, like San Miguel Corporation (SMC), offer to the public for raising funds that it needs for expansion. When an investor buys these papers or securities, he invests his money, together with others, in SMC with an expectation of profits arising from the efforts of those who manage and operate that company. SMC has to register these commercial papers with the SEC before offering them to investors.

---

[8] Implementing Rules and Regulations of R.A. 8799, Rule 3.1-1.

[9] See *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009, 600 SCRA 413, 427, citing *Prudential Guarantee and Assurance, Inc. v. Trans-Asia Shipping Lines, Inc.*, 524 Phil. 716 (2006).

[10] 328 US 293 (1946).

[11] See also *United Housing Foundation, Inc. v. Forman*, 421 US 837 (1975); *Securities and Exchange Commission v. Glen W. Turner Enterprises, Inc.*, 474 F. 2d 476 (1973).

Here, PCI's clients do not make such investments. They buy a product of some value to them: an Internet website of a 15-MB capacity. The client can use this website to enable people to have internet access to what he has to offer to them, say, some skin cream. The buyers of the website do not invest money in PCI that it could use for running some business that would generate profits for the investors. The price of US$234.00 is what the buyer pays for the use of the website, a tangible asset that PCI creates, using its computer facilities and technical skills.

Actually, PCI appears to be engaged in network marketing, a scheme adopted by companies for getting people to buy their products outside the usual retail system where products are bought from the store's shelf. Under this scheme, adopted by most health product distributors, the buyer can become a down-line seller. The latter earns commissions from purchases made by new buyers whom he refers to the person who sold the product to him. The network goes down the line where the orders to buy come.

The commissions, interest in real estate, and insurance coverage worth ₱50,000.00 are incentives to down-line sellers to bring in other customers. These can hardly be regarded as profits from investment of money under the *Howey* test.

The CA is right in ruling that the last requisite in the *Howey* test is lacking in the marketing scheme that PCI has adopted. Evidently, it is PCI that expects profit from the network marketing of its products. PCI is correct in saying that the US$234 it gets from its clients is merely a consideration for the sale of the websites that it provides.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the decision dated July 31, 2003 and the resolution dated June 18, 2004 of the Court of Appeals in CA-G.R. SP 62890.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166482. January 25, 2012]

SILKAIR (SINGAPORE) PTE. LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION LAW; EXCISE TAX, AS AN INDIRECT TAX; PROPER PARTY TO ASSAIL THE SAME IS THE STATUTORY TAXPAYER; ELUCIDATED. — Excise taxes, which apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines, is basically an indirect tax. While the tax is directly levied upon the manufacturer/importer upon removal of the taxable goods from its place of production or from the customs custody, the tax, in reality, is actually passed on to the end consumer as part of the transfer value or selling price of the goods, sold, bartered or exchanged. In early cases, we have ruled that for indirect taxes (such as valued-added tax or VAT), the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another. Thus, in *Contex Corporation v. Commissioner of Internal Revenue*, we held that while it is true that petitioner corporation should not have been liable for the VAT inadvertently passed on to it by its supplier since their transaction is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund. Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ON THE DOCTRINE OF *STARE DECISIS ET NON QUIETA MOVERE*. — [T]he doctrine**,** *stare decisis et non quieta movere*, follow past precedents and do not disturb what has been settled. Once a case has been decided one way, any

other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.

APPEARANCES OF COUNSEL

Agan & Montenegro Law Offices for petitioner.
Litigation Division (BIR) for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this Rule 45 Petition is the Decision[1] dated September 13, 2004 and Resolution[2] dated December 21, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 82902.

Petitioner Silkair (Singapore) Pte. Ltd. is a foreign corporation duly licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines as an on-line international carrier operating the Cebu-Singapore-Cebu and Davao-Singapore-Davao routes. In the course of its international flight operations, petitioner purchased aviation fuel from Petron Corporation (Petron) from July 1, 1998 to December 31, 1998, paying the excise taxes thereon in the sum of ₱5,007,043.39. The payment was advanced by Singapore Airlines, Ltd. on behalf of petitioner.

On October 20, 1999, petitioner filed an administrative claim for refund in the amount of ₱5,007,043.39 representing excise taxes on the purchase of jet fuel from Petron, which it alleged to have been erroneously paid. The claim is based on Section 135 (a) and (b) of the 1997 Tax Code, which provides:

---

[1] *Rollo*, pp. 71-81. Penned by Associate Justice Remedios A. Salazar-Fernando with Presiding Justice Cancio C. Garcia (now a retired member of this Court) and Associate Justice Hakim S. Abdulwahid concurring.

[2] *Id.* at 101-102. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Hakim S. Abdulwahid and Noel G. Tijam concurring.

SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — Petroleum products sold to the following are exempt from excise tax:

(a) ***International carriers of Philippine or foreign registry*** on their use or consumption outside the Philippines: *Provided,* That the petroleum products sold to these international carriers shall be stored in a ***bonded storage tank*** and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

(b) Exempt entities or agencies covered by ***tax treaties, conventions and other international agreements*** for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

x x x x x x x x x

(Emphasis supplied.)

Petitioner also invoked Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore[3] (Air Transport Agreement between RP and Singapore) which reads:

ART. 4

x x x x x x x x x

2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory

[3] Exhibit "T", CTA records, pp. 172-177.

of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.[4]

Due to the inaction by respondent Commissioner of Internal Revenue, petitioner filed a petition for review with the Court of Tax Appeals (CTA) on June 30, 2000.

On July 28, 2003, the CTA rendered its decision[5] denying petitioner's claim for refund. Said court ruled that while petitioner's country indeed exempts from similar taxes petroleum products sold to Philippine carriers, petitioner nevertheless failed to comply with the second requirement under Section 135 (a) of the 1997 Tax Code as it failed to prove that the jet fuel delivered by Petron came from the latter's bonded storage tank. Presiding Justice Ernesto D. Acosta dissented from the majority view that petitioner's claim should be denied, stating that even if the bonded storage tank is required under Section 135 (a), the claim can still be justified under Section 135 (b) in view of our country's existing Air Transport Agreement with the Republic of Singapore which shows the reciprocal enjoyment of the privilege of the designated airline of the contracting parties.

Its motion for reconsideration having been denied by the CTA, petitioner elevated the case to the CA. Petitioner assailed the CTA in not holding that there are distinct and separate instances of exemptions provided in paragraphs (a), (b) and (c) of Section 135, and therefore the proviso found in paragraph (a) should not have been applied to the exemption granted under paragraph (b).

The CA affirmed the denial of the claim for tax refund and dismissed the petition. It ruled that while petitioner is exempt from paying excise taxes on petroleum products purchased in the Philippines by virtue of Section 135 (b), petitioner is not

---

[4] *Id*. at 174.

[5] CA *rollo*, pp. 61-71. Penned by Associate Justice Lovell R. Bautista with Associate Justice Juanito C. Castañeda, Jr. concurring. Presiding Justice Ernesto D. Acosta dissented (see Dissenting Opinion, *id*. at 72-74).

the proper party to seek for the refund of the excise taxes paid. Petitioner's motion for reconsideration was likewise denied by the appellate court.

In this appeal, petitioner argues that it is the proper party to file the claim for refund, being the entity granted the tax exemption under the Air Transport Agreement between RP and Singapore. It disagrees with respondent's reasoning that since excise tax is an indirect tax it is the direct liability of the manufacturer, Petron, and not the petitioner, because this puts to naught whatever exemption was granted to petitioner by Article 4 of the Air Transport Agreement.

Petitioner further contends that respondent is estopped from questioning the right of petitioner to claim a refund of the excise taxes paid after issuing BIR Ruling No. 339-92 which already settled the matter. It further points out that the CTA has consistently ruled in a number of decisions involving the same parties that petitioner is the proper party to seek the refund of excise taxes paid on its purchases of petroleum products. Finally, it emphasizes that respondent never raised in issue petitioner's legal personality to seek a tax refund in the administrative level. Citing this Court's ruling in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*[6] petitioner asserts that respondent is in estoppel to question petitioner's standing to file the claim for refund for its failure to timely raise the issue in the administrative level, as well as before the CTA.

On the other hand, the Solicitor General on behalf of respondent, maintains that the excise tax passed on to the petitioner by Petron being in the nature of an indirect tax, it cannot be the subject matter of an administrative claim for refund/tax credit, following the ruling in *Contex Corporation v. Commissioner of Internal Revenue*.[7] Moreover, assuming *arguendo* that petitioner falls under any of the enumerated transactions/persons entitled to tax exemption under Section 135 of the 1997 Tax Code,

---

[6] G.R. No. 93901, February 11, 1992 (Unsigned Resolution) cited in the Petition for Review, *rollo*, p. 58.

[7] G.R. No. 151135, July 2, 2004, 433 SCRA 376.

what the law merely contemplates is exemption from the payment of excise tax to the seller/manufacturer, in this case Petron, but not an exemption from payment of excise tax to the BIR, much more an entitlement to a refund from the BIR. Being the buyer, petitioner is not the person required by law nor the person statutorily liable to pay the excise tax but the seller, following the provision of Section 130 (A) (1) (2).

The Solicitor General also asserts that contrary to petitioner's argument that respondent never raised in the administrative level the issue of whether petitioner is the proper party to file the claim for refund, records would show that respondent actually raised the matter of whether petitioner is entitled to the tax refund being claimed in his Answer dated August 8, 2000, in the Joint Stipulation of Facts, and in his Memorandum submitted before the CTA where respondent categorically averred that "petitioner x x x is not the entity directly liable for the payment of the tax, hence, not the proper party who should claim the refund of the excise taxes paid."[8]

We rule for the respondent.

The core issue presented is the legal personality of petitioner to file an administrative claim for refund of excise taxes alleged to have been erroneously paid to its supplier of aviation fuel here in the Philippines.

In three previous cases involving the same parties, this Court has already settled the issue of whether petitioner is the proper party to seek the refund of excise taxes paid on its purchase of aviation fuel from a local manufacturer/seller. Following the principle of *stare decisis*, the present petition must therefore be denied.

Excise taxes, which apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines,[9] is basically an indirect tax. While the tax is directly levied upon

---

[8] CTA Records, pp. 23, 45, 222-223.

[9] Sec. 129, National Internal Revenue Code, as amended.

the manufacturer/importer upon removal of the taxable goods from its place of production or from the customs custody, the tax, in reality, is actually passed on to the end consumer as part of the transfer value or selling price of the goods, sold, bartered or exchanged.[10] In early cases, we have ruled that for indirect taxes (such as valued-added tax or VAT), the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another.[11] Thus, in *Contex Corporation v. Commissioner of Internal Revenue,*[12] we held that while it is true that petitioner corporation should not have been liable for the VAT inadvertently passed on to it by its supplier since their transaction is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund. Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.[13]

In the first *Silkair* case[14] decided on February 6, 2008, this Court categorically declared:

> The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "[u]nless

---

[10] H. S. De Leon and H. M. De Leon, Jr., *The National Revenue Internal Revenue Code Annotated*, 2003 Ed., Vol. 2, p. 199, citing BIR Ruling No. 201-99, December 16, 1999.

[11] *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005, 465 SCRA 308, 317-318, citing *Cebu Portland Cement Co. v. Collector of Internal Revenue,* No. L-20563, October 29, 1968, 25 SCRA 789, 797 and *Commissioner of Internal Revenue v. American Rubber Co.,* No. L-19667, November 29, 1966, 18 SCRA 842, 853.

[12] *Supra* note 7.

[13] *Id*. at 387, 388.

[14] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 173594, February 6, 2008, 544 SCRA 100.

otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, **Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.**

Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.[15] (Emphasis supplied.)

Just a few months later, the decision in the second *Silkair* case[16] was promulgated, reiterating the rule that in the refund of indirect taxes such as excise taxes, the statutory taxpayer is the proper party who can claim the refund. We also clarified that petitioner Silkair, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform its status into a statutory taxpayer.

The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as "any person subject to tax." In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

> 'A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.'

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the "person subject to tax." In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the "person liable for tax." Petitioner is neither a "person liable for tax" nor "a person subject to tax." There is also no legal duty

---

[15] *Id*. at 112.

[16] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141.

on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts and invoices issued to its customers, **Petron remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron, as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.**[17] (Emphasis supplied.)

Petitioner's contention that the CTA and CA rulings would put to naught the exemption granted under Section 135 (b) of the 1997 Tax Code and Article 4 of the Air Transport Agreement is not well-taken. Since the supplier herein involved is also Petron, our pronouncement in the second *Silkair* case, relative to the contractual undertaking of petitioner to submit a valid exemption certificate for the purpose, is relevant. We thus noted:

The *General Terms & Conditions for Aviation Fuel Supply* (Supply Contract) signed between petitioner (buyer) and Petron (seller) provide:

> "**11.3** If Buyer is entitled to purchase any Fuel sold pursuant to the Agreement free of any taxes, duties or charges, **Buyer shall timely deliver to Seller a valid exemption certificate for such purchase**." (Emphasis supplied)

This provision instructs petitioner to timely submit a valid exemption certificate to Petron in order that Petron will not pass on the excise tax to petitioner. As correctly suggested by the CTA, petitioner should invoke its tax exemption to Petron before buying the aviation jet fuel. Petron, however, remains the statutory taxpayer on those excise taxes.

Revenue Regulations No. 3-2008 (RR 3-2008) provides that "subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery

---

[17] *Id.* at 157-158.

to international carriers or to tax-exempt entities/agencies." The Department of Finance and the BIR recognize the tax exemption granted to international carriers but they consistently adhere to the view that manufacturers of articles subject to excise tax are the statutory taxpayers that are liable to pay the tax, thus, the proper party to claim any tax refunds.[18]

The above observation remains pertinent to this case because the very same provision in the General Terms and Conditions for Aviation Fuel Supply Contract also appears in the documentary evidence submitted by petitioner before the CTA.[19] Except for its bare allegation of being "placed in a very complicated situation" because Petron, "for fear of being assessed by Respondent, will not allow the withdrawal and delivery of the petroleum products without Petitioner's pre-payment of the excise taxes," petitioner has not demonstrated that it dutifully complied with its contractual undertaking to timely submit to Petron a valid certificate of exemption so that Petron may subsequently file a claim for excise tax credit/refund pursuant to Revenue Regulations No. 3-2008 (RR 3-2008). It was indeed premature for petitioner to assert that the denial of its claim for tax refund nullifies the tax exemption granted to it under Section 135 (b) of the 1997 Tax Code and Article 4 of the Air Transport Agreement.

In the third *Silkair* case[20] decided last year, the Court called the attention to the consistent rulings in the previous two *Silkair* cases that petitioner as the purchaser and end-consumer of the aviation fuel is not the proper party to claim for refund of excise taxes paid thereon. The situation clearly called for the application of the doctrine, *stare decisis et non quieta movere*. Follow past precedents and do not disturb what has been settled. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be

---

[18] *Id.* at 158-159.

[19] CTA records, p. 127.

[20] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 638.

decided in the same manner.[21] The Court thus finds no cogent reason to deviate from those previous rulings on the same issues herein raised.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated September 13, 2004 and Resolution dated December 21, 2004 of the Court of Appeals in CA-G.R. SP No. 82902 are **AFFIRMED.**

With costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168120. January 25, 2012]

MANSION PRINTING CENTER and CLEMENT CHENG, *petitioners, vs.* **DIOSDADO BITARA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PURPOSE IS TO CORRECT ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. — The special civil action for *certiorari* seeks to correct errors of jurisdiction and not errors of judgment. x x x The *raison d'etre* for the rule is **when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed**. If it did, every error committed by a court would deprive it of its jurisdiction and

[21] *Id*. at 660, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc*., G.R. No. 149834, May 2, 2006, 488 SCRA 538, 545.

every erroneous judgment would be a void judgment. x x x **Hence, where the issue or question involved affects the wisdom or legal soundness of the decision — not the jurisdiction of the court to render said decision — the same is beyond the province of a special civil action for *certiorari***. x x x

2. LABOR AND SOCIAL LEGISLATION; LABOR CASE; REQUIRES SUBSTANTIAL EVIDENCE. — Upon examination of the documents presented by the parties, we are convinced that the finding of facts on which the conclusions of the Commission and the Labor Arbiter were based was actually supported by **substantial evidence** — "that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, **even if other minds, equally reasonable, might conceivably opine otherwise**."

3. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; REQUIRES OBSERVANCE OF BOTH SUBSTANTIVE AND PROCEDURAL ASPECTS. — In order to validly dismiss an employee, the employer is required to observe both substantive and procedural aspects — the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing.

4. ID.; ID.; ID.; ID.; SUBSTANTIVE DUE PROCESS; HABITUAL ATTENDANCE DELINQUENCIES ARE SUFFICIENT JUSTIFICATION FOR TERMINATION OF EMPLOYMENT. — We agree with the Labor Arbiter's findings, to wit: The imputed absence and tardiness of the complainant are documented. He faltered on his attendance 38 times of the 66 working days. His last absences on 11, 13, 14, 15 and 16 March 2000 were undertaken without even notice/permission from management. These attendance delinquencies may be characterized as habitual and are sufficient justifications to terminate the complainant's employment. On this score, *Valiao v. Court of Appeals* is instructive: x x x It bears stressing that petitioner's absences and tardiness were not isolated incidents but manifested a pattern of habituality. x x x The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of

character, conduct, and ability separate and independent of each other.

5. ID.; ID.; ID.; ID.; TERMINATION BY EMPLOYER; GROSS AND HABITUAL NEGLECT BY THE EMPLOYEE OF HIS DUTIES. — In *Valiao*, we defined **gross negligence** as "want of care in the performance of one's duties" and **habitual neglect** as "repeated failure to perform one's duties for a period of time, depending upon the circumstances." These are not overly technical terms, which, in the first place, are expressly sanctioned by the Labor Code of the Philippines, to wit: ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes: (a) x x x (b) **Gross and habitual neglect by the employee of his duties**; x x x Clearly, even in the absence of a written company rule defining gross and habitual neglect of duties, respondent's omissions qualify as such warranting his dismissal from the service. We cannot simply tolerate injustice to employers if only to protect the welfare of undeserving employees.

6. D.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWO-NOTICE RULE; WHERE EMPLOYEE REFUSED RECEIPT OF THE NOTICE OF TERMINATION. — Procedural due process entails compliance with the two-notice rule in dismissing an employee, to wit: (1) the employer must inform the employee of the specific acts or omissions for which his dismissal is sought; and (2) after the employee has been given the opportunity to be heard, the employer must inform him of the decision to terminate his employment. Respondent claimed that he was denied due process because the company did not observe the two-notice rule. He maintained that the Notice of Explanation and the Notice of Termination, both of which he allegedly refused to sign, were never served upon him. x x x In *Bughaw v. Treasure Island Industrial Corporation*, this Court, in verifying the veracity of the allegation that respondent refused to receive the Notice of Termination, essentially looked for the following: (1) affidavit of service stating the reason for failure to serve the notice upon the recipient; and (2) a notation to that effect, which shall be written on the notice itself.

7. ID.; ID.; SERVICE INCENTIVE PAY. — [P]etitioners did not deny respondent's entitlement to service incentive leave pay as, indeed, it is indisputable that he is entitled thereto. In *Fernandez v. NLRC*, this Court elucidated: The clear policy

> of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year." It is also "commutable to its money equivalent if not used or exhausted at the end of the year." In other words, an employee who has served for one year is entitled to it. **He may use it as leave days** or he may collect its monetary value. x x x

APPEARANCES OF COUNSEL

Pamaran Ramos & Partners Law Offices for petitioners.

D E C I S I O N

PEREZ, ***J.*:**

Before us is a petition for review on *certiorari* seeking to reverse and set aside the issuances of the Court of Appeals in CA-GR. SP No. 70965, to wit: (a) the Decision[1] dated 18 March 2004 granting the petition for *certiorari* under Rule 65 of herein respondent Diosdado Bitara, Jr.; and (b) the Resolution[2] dated 10 May 2005 denying the petitioners Motion for Reconsideration of the Decision. The assailed decision of the Court of Appeals reversed the findings of the National Labor Relations Commission[3]

---

[1] Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes and Edgardo P. Cruz, concurring. CA *rollo*, pp. 131-141.

[2] *Id*. at 161.

[3] *Id.* at 87-89 and 90-91. Resolution dated 29 June 2001 and Order dated 21 February 2002 of the First Division, National Labor Relations Commission

and the Labor Arbiter[4] that respondent was validly dismissed from the service.

The Antecedents

Petitioner Mansion Printing Center is a single proprietorship registered under the name of its president and co-petitioner Clement Cheng. It is engaged in the printing of quality self-adhesive labels, brochures, posters, stickers, packaging and the like.[5]

Sometime in August 1998, petitioners engaged the services of respondent as a helper (*kargador*). Respondent was later promoted as the company's sole driver tasked to pick-up raw materials for the printing business, collect account receivables and deliver the products to the clients within the delivery schedules.[6]

Petitioners aver that the timely delivery of the products to the clients is one of the foremost considerations material to the operation of the business.[7] It being so, they closely monitored the attendance of respondent. They noted his habitual tardiness and absenteeism.

Thus, as early as 23 June 1999, petitioners issued a Memorandum[8] requiring respondent to submit a written explanation why no administrative sanction should be imposed on him for his habitual tardiness.

---

in NLRC NCR CA No. 027871-01 both penned by Presiding Commissioner Roy V. Señeres with Commissioners Vicente S.E. Veloso and Alberto R. Quimpo, concurring.

[4] *Id.* at 62-64. Decision dated 21 December 2000 of Labor Arbiter Manuel P. Asuncion in NLRC NCR Case No. 04-02393-2000.

[5] *Rollo*, p. 13. Petition dated 29 June 2005; *Id.* at 73. *Respondent's Position Paper* dated 19 July 2000, Annex "G" of the Petition; *Id.* at 65. Complainant's *Position Paper* dated 20 July 2000, Annex "F" of the Petition.

[6] *Id.*

[7] *Id.* at 74. *Respondent's Position Paper* [petitioner's in the instant petition] dated 19 July 2000, Annex "G" of the Petition.

[8] *Id.* at 85. *Respondent's Position Paper* [petitioner's in the instant petition] dated 19 July 2000, Annex "G-12" of the Petition.

Several months after, respondent's attention on the matter was again called to which he replied:

29 NOV. 1999

MR. CLEMENT CHENG

SIR:

I UNDERSTAND MY TARDINESS WHATEVER REASON I HAVE AFFECTS SOMEHOW THE DELIVERY SCHEDULE OF THE COMPANY, THUS DISCIPLINARY ACTION WERE IMPOSED TO ME BY THE MANAGEMENT. AND ON THIS END, ACCEPT MY APOLOGIES AND REST ASSURED THAT I WILL COME ON TIME (ON OR BEFORE 8:30 AM) AND WILLINGNESS TO EXTEND MY SERVICE AS A COMPANY DRIVER. WHATEVER HELP NEEDED. (sic)

RESPECTFULLY YOURS,
(SGD.) DIOSDADO BITARA, JR.[9]

Despite respondent's undertaking to report on time, however, he continued to disregard attendance policies. His weekly time record for the first quarter of the year 2000[10] revealed that he came late nineteen (19) times out of the forty-seven (47) times he reported for work. He also incurred nineteen (19) absences out of the sixty-six (66) working days during the quarter. His absences without prior notice and approval from March 11-16, 2000 were considered to be the most serious infraction of all[11] because of its adverse effect on business operations.

Consequently, Davis Cheng, General Manager of the company and son of petitioner Cheng, issued on 17 March 2000 another Memorandum[12] (Notice to Explain) requiring respondent to explain why his services should not be terminated. He personally handed the Notice to Explain to respondent but the latter, after

---

[9] *Id.* at 86.

[10] *Id.* at 82-84. *Respondent's Position Paper* [petitioner's in the instant petition] dated 19 July 2000, Annex "G-9" to "G-11" of the Petition.

[11] *Id.* at 74.

[12] *Id.* at 87. Annex "G-14" of the Petition.

reading the directive, refused to acknowledge receipt thereof.[13] He did not submit any explanation and, thereafter, never reported for work.

On 21 March 2000, Davis Cheng personally served another Memorandum[14] (Notice of Termination) upon him informing him that the company found him grossly negligent of his duties, for which reason, his services were terminated effective 1 April 2000.

On even date, respondent met with the management requesting for reconsideration of his termination from the service. However, after hearing his position, the management decided to implement the 21 March 2000 Memorandum. Nevertheless, the management, out of generosity, offered respondent financial assistance in the amount of ₱6,110.00 equivalent to his one month salary. Respondent demanded that he be given the amount equivalent to two (2) months' salary but the management declined as it believed it would, in effect, reward respondent for being negligent of his duties.[15]

On 27 April 2000, respondent filed a complaint[16] for illegal dismissal against the petitioners before the Labor Arbiter. He prayed for his reinstatement and for the payment of full backwages, legal holiday pay, service incentive leave pay, damages and attorney's fees.[17]

In his *Position Paper*[18] filed with the Labor Arbiter, respondent claimed that he took a leave of absence from March 17-23,

---

[13] *Id.* at 89. Affidavit dated 29 July 2000, Annex "G-16" of the Petition.

[14] *Id.* at 88. Annex "G-15" of the Petition.

[15] *Id.* at 75. *Respondent's Position Paper* [petitioner's in the instant petition] dated 19 July 2000, Annex "G-2" of the Petition.

[16] CA *rollo*, pp. 16-17. *Complaint* dated 27 April 2000, Annex "C" of the Petition for *Certiorari* dated 3 June 2002 brought before the Court of Appeals.

[17] *Id.* at 17.

[18] *Id.* at 18-25. *Position Paper* [of respondent in the instant petition] dated 19 July 2000, Annex "D" of the Petition before the Court of Appeals.

2000[19] due to an urgent family problem. He returned to work on 24 March 2000[20] but Davis Cheng allegedly refused him admission because of his unauthorized absences.[21] On 1 April 2000, respondent was summoned by Davis Cheng who introduced him to a lawyer, who, in turn, informed him that he will no longer be admitted to work because of his 5-day unauthorized absences. Respondent explained that he was compelled to immediately leave for the province on 17 March 2000[22] due to the urgency of the matter and his wife informed the office that he will be absent for a week. The management found his explanation unacceptable and offered him an amount equivalent to his one (1) month salary as separation pay but respondent refused the offer because he wanted to keep the job.[23] In his *Reply to Respondents' Position Paper*,[24] however, respondent averred that he rejected the offer because he wanted an amount equivalent to one and a half months' pay.

On 21 December 2000, the Labor Arbiter dismissed the complaint for lack of merit.[25]

On appeal to the National Labor Relations Commission (hereinafter referred to as the Commission), the findings of the Labor Arbiter was AFFIRMED *en toto*. Thus, in its Resolution of 29 June 2001 in NLRC NCR CA No. 027871-01, the Commission declared:

---

[19] *Id.* at 19. [Note: The dates were corrected to March 11-16, 2000 in his Reply to Respondent's Position Paper.]

[20] *Id.* [Note: The date was changed to 17 March 2000 in his Reply to Respondent's Position Paper.]

[21] *Id.*

[22] *Id.* at 21. [Note: The date was corrected to 11 March 2000 in his Reply to Respondent's Position Paper.]

[23] *Id.*

[24] *Id.* at 49-57. *Reply to Respondent's Position Paper* [of respondent in the instant petition] dated 6 November 2000.

[25] *Rollo*, pp. 62-64. Labor Arbiter's Decision dated 21 December 2000 in NLRC-NCR Case No. 04-02393-2000.

Upon Our review of the record of the case, We perceive no abuse of discretion as to compel a reversal. Appellant failed to adduce convincing evidence to show that the Labor Arbiter in rendering the assailed decision has acted in a manner inconsistent with the criteria set forth in the foregoing pronouncement.

Neither are we persuaded to disturb the factual findings of the Labor Arbiter *a quo*. The material facts as found are all in accordance with the evidence presented during the hearing as shown by the record.

WHEREFORE, finding no cogent reason to modify, alter, much less reverse the decision appealed from, the same is AFFIRMED *en toto* and the instant appeal DISMISSED for lack of merit.[26]

It likewise denied respondent's Motion for Reconsideration of the Resolution on 21 February 2002.[27]

Before the Court of Appeals, respondent sought the annulment of the Commission's Resolution dated 29 June 2001 and Order dated 21 February 2002 on the ground that they were rendered with grave abuse of discretion and/or without or in excess of jurisdiction.[28]

The Court of Appeals found for the respondent and reversed the findings of the Commission. The dispositive portion of its Decision dated 18 March 2004 reads:

WHEREFORE, the petition is GRANTED. In lieu of the assailed Resolution and Order of the respondent NLRC, a NEW DECISION is hereby rendered declaring petitioner Diosdado Bitara, Jr. to have been *Illegally Dismissed* and, thus, entitled to the following:

1. *Reinstatement* or if no longer feasible, *Separation Pay* to be computed from the commencement of his employment in August 1988 up to the time of his termination on April 1, 2000, including his imputed service from April 1, 2000

---

[26] *Id.* at 59. Resolution dated 29 June 2001 of the National Labor Relations Commission.

[27] CA *rollo*, pp. 90-91. Order dated 21 February 2002 of the National Labor Relations Commission.

[28] *Id.* at 2-14. Petition for *Certiorari* dated 3 June 2002.

until the finality of this decision, based on the salary rate prevailing at the said finality;

2. *Backwages,* inclusive of allowances and other benefits, computed from April 1, 2000 up to the finality of this decision, without qualification or deduction; and

3. 5-day *Service Incentive Leave Pay* for every year of service from the commencement of his employment in August 1988 up to its termination on April 1, 2000.[29]

On 10 May 2005, the Court of Appeals denied respondent's Motion for Reconsideration of the decision for lack of merit. [30]

Hence, the instant petition.[31]

Issue

The core issue in this case is whether or not the Court of Appeals correctly found that the Commission acted without

---

[29] *Rollo,* pp. 44-45.

[30] *Id.* at 46.

[31] This Court resolved to dispense with the filing of the respondent's comment on the petition on account of the following circumstances:

The petition was filed on 4 July 2005 after the petitioner was granted an extension of thirty (30) days from the expiration of the reglementary period within which to file the same.

On 17 August 2005, respondent was required to COMMENT thereon. For failure to comply with the resolution, several court directives were issued culminating in the following: (a) the arrest and detention of respondent's counsel Atty. Virgilio Morales at the National Bureau of Investigation (NBI) until he has complied with the directives of this Court; (b) the release of Atty. Morales from the custody of the NBI in view of his health condition and pending receipt of respondent's comment on the former's motion to withdraw as counsel; (c) the imposition of several court fines against respondent, which respondent, nonetheless, did not pay; and (d) the numerous reiteration of the earlier directives with a warning that respondent's comments shall be deemed waived should he fail to pay the fines and file the required comments. *Id.* at 110, 117-118, 120, 123, 127, 140, 148.

After the transfer of the case to the First Division on 15 June 2010, this Court resolved to dispense with the payment of court fines and the filing of the comment on the petition by the respondent. *Id.* at 176.

and/or in excess of jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction (a) in upholding the termination of respondent's employment and (b) in affirming the denial of his claim for non-payment of holiday pay, service incentive leave pay, moral and exemplary damages.

Our Ruling

The petition is meritorious.

The special civil action for *certiorari* seeks to correct errors of jurisdiction and not errors of judgment.[32]

x x x The *raison d'etre* for the rule is **when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed**. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. x x x **Hence, where the issue or question involved affects the wisdom or legal soundness of the decision — not the jurisdiction of the court to render said decision — the same is beyond the province of a special civil action for *certiorari***. x x x[33]

x x x [J]udicial review does not go as far as to evaluate the sufficiency of evidence upon which the Labor Arbiter and NLRC based their determinations, the inquiry being limited essentially to whether or not said public respondents had acted without or in excess of its jurisdiction or with grave abuse of discretion.[34] The said rule directs us to merely determine whether there is basis established on record to support the findings of a tribunal and such findings meet the required quantum of proof, which in this case, is substantial evidence. Our deference to the expertise acquired by quasi-judicial agencies and the limited scope granted

---

[32] *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, 11 August 2010, 628 SCRA 154, 166.

[33] *Beluso v. Commission on Elections*, G.R. No. 180711, 22 June 2010, 621 SCRA 450, 457-458 citing *People v. Court of Appeals*, G.R. No. 142051, 24 February 2004, 423 SCRA 605.

[34] *Travelaire & Tours Corp. v. NLRC*, G.R. No. 131523, 20 August 1998, 294 SCRA 505, 510 citing *Ilocos Sur Electric Cooperative, Inc. v. NLRC*, 241 SCRA 36, 50 (1995).

to us in the exercise of *certiorari* jurisdiction restrain us from going so far as to probe into the correctness of a tribunal's evaluation of evidence, unless there is palpable mistake and complete disregard thereof in which case *certiorari* would be proper.[35]

It is on the alleged lack of substantial evidence that the Court of Appeals found for the respondents, thereby reversing the decision of the Commission.

We hold otherwise.

Upon examination of the documents presented by the parties, we are convinced that the finding of facts on which the conclusions of the Commission and the Labor Arbiter were based was actually supported by **substantial evidence** — "that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, **even if other minds, equally reasonable, might conceivably opine otherwise**."[36] *(Emphasis supplied.)*

I

In order to validly dismiss an employee, the employer is required to observe both substantive and procedural aspects — the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing.[37]

---

[35] *Id.* at 510-511 citing *PMI Colleges v. NLRC*, G.R. No. 121466, 15 August 1997, 277 SCRA 462.

[36] *Caltex (Philippines), Inc. v. Agad*, G.R. No. 162017, 23 April 2010, 619 SCRA 196, 207 citing *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, 23 June 2009, 590 SCRA 633, further citing *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, 30 March 2005, 454 SCRA 792, 803.

[37] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, 28 March 2008, 550 SCRA 307, 316-318 citing Articles 282 and 283 of the Labor Code of the Philippines and *Challenge Socks Corporation v. Court of Appeals*, G.R. No. 165268, 8 November 2005, 474 SCRA 356, 363-364.

Substantive Due Process

We cannot agree with the Court of Appeals that the sole basis of the termination of respondent's employment was his absences from March 11-16, 2000.

Indeed, the Notice to Explain[38] clearly stated:

> **We are seriously considering your termination from service, and for this reason you are directed to submit a written explanation**, within seventy-two hours from your receipt of this notice, **why you should not be terminated from service** for failure to report for work without verbal or written notice or permission on March 11, 13, 14, 15 and 16, 2000. x x x *(Emphasis supplied.)*

To give full meaning and substance to the Notice to Explain, however, the paragraph should be read together with its preceding paragraph, to wit:

> **We have time and again, verbally and formally, called your attention to your negligence from your tardiness and your frequent absences without any notice but still, you remain to ignore our reminder.** As you know, we are in need of a regular driver and your action greatly affected the operation of our company. *(Emphasis supplied.)*

Necessarily, he was considered for termination of employment because of his previous infractions capped by his recent unauthorized absences from March 11-16, 2000.

That the recent absences were unauthorized were satisfactorily established by petitioners. Two (2) employees of the company belied the claim of respondent's wife Mary Ann Bitara that she called the office on 11 March 2000, and, through a certain Delia, as allegedly later identified by respondent, informed petitioners that her husband would take a leave of absence for a week because he went to the province.[39]

---

[38] *Rollo*, p. 87. Memorandum dated 17 March 2000 issued by Davis Cheng.

[39] *Id.* at 107-108. Affidavits both dated 15 August 2000 of Delia Abalos and Ritchie Distor. *Id.* at 103. Affidavit dated 9 November 2000 of Mary Ann Bitara.

Delia Abalos, a "binder/finisher" of the company, stated in her Affidavit that she never received a call from respondent nor his wife regarding his absences from March 11-16 and 17-23 during the month of March 2000.[40] On the other hand, Ritchie Distor, a messenger of the company, narrated in his Affidavit that, upon instruction of the Management, he went to respondent's house on 13 March 2000 to require him to report for work. Instead of relaying the message to him, as respondent would have it, the wife informed him that respondent had already left the house but that she did not know where he was going.[41]

The Court of Appeals relied heavily on our ruling in *Stellar Industrial Services, Inc. vs. NLRC*,[42] which is not on all fours with the present case. In that case, the employer dismissed respondent for non-observance of company rules and regulations. On the basis of the facts presented, this Court honored the questioned medical certificate justifying the absences he incurred. It further ratiocinated:

> x x x [P]rivate respondent's absences, as already discussed, were incurred with due notice and compliance with company rules and he had not thereby committed a "similar offense" as those he had committed in the past [to wit: gambling, for which he was preventively suspended; habitual tardiness for which he received several warnings; and violation of company rules for carrying three sacks of rice, for which he was required to explain.] x x x To refer to those earlier violations as added grounds for dismissing him is doubly unfair to private respondent.[43] *(Emphasis supplied.)*

In the present case, however, petitioners have repeatedly called the attention of respondent concerning his habitual tardiness. The Memorandum dated 23 June 1999 of petitioner Cheng required him to explain his tardiness. Also in connection with a similar infraction, respondent even wrote petitioner Cheng a

---

[40] *Id.* at 108.

[41] *Id.* at 107.

[42] 322 Phil. 352 (1996).

[43] *Id.* at 364-365.

letter dated 29 November 1999 where he admitted that his tardiness has affected the delivery schedules of the company, offered an apology, and undertook to henceforth report for duty on time. Despite this undertaking, he continued to either absent himself from work or report late during the first quarter of 2000.

We, therefore, agree with the Labor Arbiter's findings, to wit:

> The imputed absence and tardiness of the complainant are documented. He faltered on his attendance 38 times of the 66 working days. His last absences on 11, 13, 14, 15 and 16 March 2000 were undertaken without even notice/permission from management. These attendance delinquencies may be characterized as habitual and are sufficient justifications to terminate the complainant's employment.[44]

On this score, *Valiao v. Court of Appeals*[45] is instructive:

> x x x It bears stressing that petitioner's absences and tardiness were not isolated incidents but manifested a pattern of habituality. x x x The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other.[46]

There is likewise no merit in the observation of the Court of Appeals that the petitioners themselves are not certain of the official time of their employees after pointing out the seeming inconsistencies between the statement of the petitioners that "there is no need for written rules since even the [respondent] is aware that his job starts from 8 am to 5 pm"[47] and its Memorandum of 23 June 1999, where it was mentioned that

---

[44] *Rollo*, pp. 63-64. Decision dated 21 December 2000 in NLRC-NCR Case No. 04-2393-2000.

[45] 479 Phil. 459 (2004).

[46] *Id.* at 470-471 citing *National Service Corporation v. Leogardo, Jr.*, G.R. No. 64296, 20 July 1984, 130 SCRA 502, 509.

[47] *Rollo*, p. 41. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.

respondent's official time was from 8:30 a.m. to 5:30 p.m. On the contrary, it was clearly stated in the Memorandum that the Management adjusted his official time from 8:00 a.m. to 5:00 p.m. to 8:30 a.m. to 5:30 p.m. to hopefully solve the problem on his tardiness.[48]

Neither is there basis to hold that the company tolerates the offsetting of undertime with overtime services. The Weekly Time Record relied upon by respondent does not conclusively confirm the alleged practice.

In *Valiao*,[49] we defined **gross negligence** as "want of care in the performance of one's duties"[50] and **habitual neglect** as "repeated failure to perform one's duties for a period of time, depending upon the circumstances."[51] These are not overly technical terms, which, in the first place, are expressly sanctioned by the Labor Code of the Philippines, to wit:

> ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) x x x
>
> (b) **Gross and habitual neglect by the employee of his duties**;
>
> x x x

Clearly, even in the absence of a written company rule defining gross and habitual neglect of duties, respondent's omissions qualify as such warranting his dismissal from the service.

We cannot simply tolerate injustice to employers if only to protect the welfare of undeserving employees. As aptly put by then Associate Justice Leonardo A. Quisumbing:

> Needless to say, so irresponsible an employee like petitioner does not deserve a place in the workplace, and it is within the management's prerogative x x x to terminate his employment. Even as the law is

---

[48] *Id.* at 85. Memorandum dated 23 June 1999.

[49] *Valiao v. CA, et al.*, *supra* note 45.

[50] *Id.* at 469.

[51] *Id.* citing *JGB and Associates, Inc. v. NLRC*, G.R. No. 109390, 7 March 1996, 254 SCRA 457, 463.

solicitous of the welfare of employees, it must also protect the rights of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of those rights and prerogative is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[52]

And, in the words of then Associate Justice Ma. Alicia Austria-Martinez in *Philippine Long Distance and Telephone Company, Inc. v. Balbastro*:[53]

While it is true that compassion and human consideration should guide the disposition of cases involving termination of employment since it affects one's source or means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer. The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer.[54] It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. *Justitia nemini neganda est* (Justice is to be denied to none).[55]

Procedural Due Process

Procedural due process entails compliance with the two-notice rule in dismissing an employee, to wit: (1) the employer must

---

[52] *Id.* at 471 citing *Maya Farms Employees Organization v. NLRC*, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 515.

[53] G.R. No. 157202, 28 March 2007, 519 SCRA 233.

[54] *Id*. at 248 citing *Philippine Geothermal, Inc. v. National Labor Relations Commission*, G.R. No. 106370, September 8, 1994, 236 SCRA 371, 378-379 further citing *Pacific Mills, Inc. v. Alonzo*, G.R. No. 78090, July 26, 1991, 199 SCRA 617, 622.

[55] *Id.* at 248-249 citing *Philippine Geothermal, Inc. v. National Labor Relations Commission, id*. at 379.

inform the employee of the specific acts or omissions for which his dismissal is sought; and (2) after the employee has been given the opportunity to be heard, the employer must inform him of the decision to terminate his employment.[56]

Respondent claimed that he was denied due process because the company did not observe the two-notice rule. He maintained that the Notice of Explanation and the Notice of Termination, both of which he allegedly refused to sign, were never served upon him.[57]

The Court of Appeals favored respondent and ruled in this wise:

> Furthermore, We believe that private respondents failed to afford petitioner due process. The allegation of private respondents that petitioner refused to sign the memoranda dated March 17 and 21, 2000 despite receipt thereof is not only lame but also implausible. *First*, the said allegation is self-serving and unsubstantiated. *Second*, a prudent employer would simply not accept such mere refusal, but would exert effort to observe the mandatory requirement of due process. We cannot accept the self-serving claim of respondents that petitioner refused to sign both memoranda. Otherwise, We would be allowing employers to do away with the mandatory twin-notice rule in the termination of employees. We find more credible the claim of petitioner that he was illegally dismissed on **April 1, 2000** when the lawyer of the company informed him, without prior notice and in derogation of his right to due process, of his termination by offering him a 1-month salary as separation pay. The petitioner's immediate filing of a complaint for illegal dismissal on April 27, 2000 reinforced Our belief that petitioner was illegally dismissed and was denied due process.[58] (*Emphasis in the original.)*

We rule otherwise.

---

[56] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, *supra* note 37 at 320-321 citing *Pastor Austria v. National Labor Relations Commissions*, 371 Phil. 340, 357 (1999).

[57] CA *rollo*, p. 52. *Reply to Respondents' Position Paper* in NLRC-NCR Case No. 00-04-02393-2000.

[58] *Rollo*, pp. 42-43. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.

In *Bughaw v. Treasure Island Industrial Corporation*,[59] this Court, in verifying the veracity of the allegation that respondent refused to receive the Notice of Termination, essentially looked for the following: (1) affidavit of service stating the reason for failure to serve the notice upon the recipient; and (2) a notation to that effect, which shall be written on the notice itself.[60] Thus:

> x x x Bare and vague allegations as to the manner of service and the circumstances surrounding the same would not suffice. A mere copy of the notice of termination allegedly sent by respondent to petitioner, without proof of receipt, or in the very least, actual service thereof upon petitioner, does not constitute substantial evidence. It was unilaterally prepared by the petitioner and, thus, evidently self-serving and insufficient to convince even an unreasonable mind.[61]

Davis Cheng, on the other hand, did both. *First*, he indicated in the notices the notation that respondent "refused to sign" together with the corresponding dates of service. *Second,* he executed an Affidavit dated 29 July 2000 stating that: (1) he is the General Manager of the company; (2) he personally served each notice upon respondent, when respondent went to the office/factory on 17 March 2000 and 21 March 2000, respectively; and (3) on both occasions, after reading the contents of the memoranda, respondent refused to acknowledge receipt thereof. We are, thus, convinced that the notices have been validly served.

Premises considered, we find that respondent was accorded both substantive and procedural due process.

II

As to respondent's monetary claims, petitioners did not deny respondent's entitlement to service incentive leave pay as, indeed, it is indisputable that he is entitled thereto. In *Fernandez v. NLRC*,[62] this Court elucidated:

---

[59] *Supra* note 37.

[60] *Id.* at 321.

[61] *Id.* at 322.

[62] G.R. No. 105892, 28 January 1998, 285 SCRA 149.

The clear policy of the Labor Code is to grant service incentive leave pay to workers in all establishments, subject to a few exceptions. Section 2, Rule V, Book III of the Implementing Rules and Regulations[63] provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay." Service incentive leave is a right which accrues to every employee who has served "within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year."[64] It is also "commutable to its money equivalent if not used or exhausted at the end of the year."[65] In other words, an employee who has served for one year is entitled to it. **He may use it as leave days** or he may collect its monetary value. x x x[66] *(Emphasis supplied.)*

Be that as it may, petitioners failed to establish by evidence that respondent had already used the service incentive leave when he incurred numerous absences notwithstanding that employers have complete control over the records of the company so much so that they could easily show payment of monetary claims against them by merely presenting vouchers or payrolls,[67] or any document showing the off-setting of the payment of service incentive leave with the absences, as acknowledged by the absentee, if such is the company policy. Petitioners presented none.

We thus quote with approval the findings of the Court of Appeals on the following:

---

[63] *Id.* at 175.

[64] *Id.* citing Section 3, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.

[65] *Id.* citing Section 5, Rule V, Book III, Implementing Rules and Regulations of the Labor Code.

[66] *Id.*

[67] *Exodus International Construction Corporation v. Guillermo Biscocho*, G.R. No. 166109, 23 February 2011.

[P]rivate respondents bear the burden to prove that employees have received these benefits in accordance with law. It is incumbent upon the employer to present the necessary documents to prove such claim. Although private respondents labored to show that they paid petitioner his holiday pay, no similar effort was shown with regard to his service incentive leave pay. We do not agree with the Labor Arbiter's conclusion that petitioner's service incentive leave pay has been used up by his numerous absences, there being no proof to that effect.[68]

As to the payment of holiday pay, we are convinced that respondent had already received the same based on the cash vouchers on record.

Accordingly, we affirm the ruling of the National Labor Relations Commission that the dismissal was valid. However, respondent shall be entitled to the money equivalent of the five-day service incentive leave pay for every year of service from the commencement of his employment in August 1988 up to its termination on 1 April 2000. The Labor Arbiter shall compute the corresponding amount.

WHEREFORE, the Resolution dated 29 June 2001 and the Order dated 21 February 2002 of the National Labor Relations Commission in NLRC NCR CASE No. 027871-01 are hereby **REINSTATED** with the **MODIFICATION** that petitioners are **ORDERED** to pay respondent the money equivalent of the five-day service incentive leave for every year of service covering his employment period from August 1988 to 1 April 2000. This case is hereby **REMANDED** to the Labor Arbiter for the computation of respondent's service incentive leave pay.

SO ORDERED.

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

---

[68] *Rollo,* pp. 43-44. Decision dated 18 March 2004 in CA-G.R. SP No. 70965.

[*] Designated as additional member per Special Order No. 1174 dated 9 January 2012.

THIRD DIVISION

[G.R. No. 171750. January 25, 2012]

UNITED PULP AND PAPER CO., INC., *petitioner, vs.* **ACROPOLIS CENTRAL GUARANTY CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; RECOVERY UPON THE COUNTER-BOND; TWIN REQUIREMENTS OF NOTICE AND DEMAND; COMPLIED WITH. — Section 17, Rule 57 of the Rules of Court sets forth the procedure for the recovery from a surety on a counter-bond: Sec. 17. Recovery upon the counter-bond. — When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing on the same action. From a reading of the abovequoted provision, it is evident that a surety on a counter-bond given to secure the payment of a judgment becomes liable for the payment of the amount due upon: (1) demand made upon the surety; and (2) notice and summary hearing on the same action. After a careful scrutiny of the records of the case, the Court is of the view that UPPC indeed complied with these twin requirements.

2. ID.; ID.; ID.; ID.; ID.; FILING OF A COMPLAINT CONSTITUTES A JUDICIAL DEMAND; LACK OF NOTICE AND HEARING CANNOT BE INVOKED WHERE PARTY WAS GIVEN THE OPPORTUNITY TO DEFEND ITSELF BUT CHOSE TO IGNORE ITS DAY IN COURT. — This Court has consistently held that the filing of a complaint constitutes a judicial demand. Accordingly, the filing by UPPC of the Motion to Order Surety to Pay Amount of Counter-Bond was already a demand upon Acropolis, as surety, for the payment of the amount due, pursuant to the terms of the bond. In said bond, Acropolis bound itself in the sum of ₱42,844,353.14 to

secure the payment of any judgment that UPPC might recover against Unibox and Ortega. Furthermore, an examination of the records reveals that the motion was filed by UPPC on November 11, 2004 and was set for hearing on November 19, 2004. Acropolis was duly notified of the hearing and it was personally served a copy of the motion on November 11, 2004, contrary to its claim that it did not receive a copy of the motion. On November 19, 2004, the case was reset for hearing on November 30, 2004. The minutes of the hearing on both dates show that only the counsel for UPPC was present. Thus, Acropolis was given the opportunity to defend itself. That it chose to ignore its day in court is no longer the fault of the RTC and of UPPC. It cannot now invoke the alleged lack of notice and hearing when, undeniably, both requirements were met by UPPC.

3. ID.; ID.; ID.; ID.; NATURE OF THE LIABILITY OF A SURETY ON A COUNTER-BOND, DISCUSSED. — The terms of the Bond for Dissolution of Attachment issued by Unibox and Acropolis in favor of UPPC are clear and leave no room for ambiguity: x x x. Acropolis voluntarily bound itself with Unibox to be solidarily liable to answer for ANY judgment which UPPC may recover from Unibox in its civil case for collection. Its counter-bond was issued in consideration of the dissolution of the writ of attachment on the properties of Unibox and Ortega. The counter-bond then replaced the properties to ensure recovery by UPPC from Unibox and Ortega. It would be the height of injustice to allow Acropolis to evade its obligation to UPPC, especially after the latter has already secured a favorable judgment. This issue is not novel. In the case of *Luzon Steel Corporation v. Sia*, x x x. [T]his Court, speaking through the learned Justice J.B.L. Reyes, discussed the nature of the liability of a surety on a counter-bond: Main issues posed are (1) whether the judgment upon the compromise discharged the surety from its obligation under its attachment counterbond and (2) whether the writ of execution could be issued against the surety without previous exhaustion of the debtor's properties. Both questions can be solved by bearing in mind that we are dealing with a *counterbond* filed to *discharge* a levy on attachment. Rule 57, section 12, specifies that an attachment may be discharged upon the making of a cash deposit or filing a counterbond "in an amount equal to the value of the property attached as determined by the judge";

that upon the filing of the counterbond "the property attached . . . shall be delivered to the party making the deposit or giving the counterbond, or the person appearing on his behalf, *the deposit or counterbond aforesaid standing in place of the property so released*." The italicized expressions constitute the key to the entire problem. Whether the judgment be rendered after trial on the merits or upon compromise, such judgment undoubtedly may be made effective upon the property released; and **since the counterbond merely stands in the place of such property, there is no reason why the judgment should not be made effective against the counterbond regardless of the manner how the judgment was obtained.**

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; NOVATION; IN ORDER FOR NOVATION TO EXTINGUISH THE SURETY'S OBLIGATION, IT MUST BE SHOWN THAT THERE IS AN INCOMPATIBILITY BETWEEN THE COMPROMISE AGREEMENT AND THE TERMS OF THE COUNTER-BOND. — The argument of Acropolis that its obligation under the counter-bond was novated by the compromise agreement is untenable. In order for novation to extinguish its obligation, Acropolis must be able to show that there is an incompatibility between the compromise agreement and the terms of the counter-bond, as required by Article 1292 of the Civil Code, which provides that: Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (1204) Nothing in the compromise agreement indicates, or even hints at, releasing Acropolis from its obligation to pay UPPC after the latter has obtained a favorable judgment. Clearly, there is no incompatibility between the compromise agreement and the counter-bond. Neither can novation be presumed in this case. As explained in *Duñgo v. Lopena*: Novation by presumption has never been favored. To be sustained, it need be established that the old and new contracts are incompatible in all points, or that the will to novate appears by express agreement of the parties or in acts of similar import. All things considered, Acropolis, as surety under the terms of the counter-bond it issued, should be held liable for the payment of the unpaid balance due to UPPC.

5. REMEDIAL LAW; MOTIONS; THREE-DAY NOTICE REQUIREMENT; NOT A HARD AND FAST RULE AND SUBSTANTIAL COMPLIANCE IS ALLOWED; PURPOSE OF THE 3-DAY NOTICE REQUIREMENT. — The Court would like to point out that the three-day notice requirement is not a hard and fast rule and substantial compliance is allowed. x x x. [Section 4, Rule 15 of the Rules of Court] is clear that it intends for the other party to receive a copy of the written motion at least three days before the date set for its hearing. The purpose of the three (3)-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein. In *Preysler, Jr. v. Manila Southcoast Development Corporation*, the Court restated the ruling that "the date of the hearing should be at least three days after receipt of the notice of hearing by the other parties." It is not, however, a hard and fast rule. Where a party has been given the opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule. x x x. In the case at bench, the RTC gave UPPC sufficient time to file its comment on the motion. On January 14, 2005, UPPC filed its Opposition to the motion, discussing the issues raised by Acropolis in its motion. Thus, UPPC's right to due process was not violated because it was afforded the chance to argue its position.

APPEARANCES OF COUNSEL

Raymund B. Sena for petitioner.
Lopez & Associates Law Offices for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 praying for the annulment of the November 17, 2005 Decision[1] and the March

[1] *Rollo*, pp. 234-241; Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Fernanda Lampas-Peralta.

2, 2006 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 89135 entitled *Acropolis Central Guaranty Corporation (formerly known as the Philippine Pryce Assurance Corp.) v. Hon. Oscar B. Pimentel, as Presiding Judge, RTC of Makati City, Branch 148 (RTC), and United Pulp and Paper Co., Inc.*

The Facts

On May 14, 2002, United Pulp and Paper Co., Inc. (*UPPC*) filed a civil case for collection of the amount of ₱42,844,353.14 against Unibox Packaging Corporation (*Unibox*) and Vicente Ortega (*Ortega*) before the Regional Trial Court of Makati, Branch 148 (*RTC*).[3] UPPC also prayed for a Writ of Preliminary Attachment against the properties of Unibox and Ortega for the reason that the latter were on the verge of insolvency and were transferring assets in fraud of creditors.[4] On August 29, 2002, the RTC issued the Writ of Attachment[5] after UPPC posted a bond in the same amount of its claim. By virtue of the said writ, several properties and assets of Unibox and Ortega were attached.[6]

On October 10, 2002, Unibox and Ortega filed their Motion for the Discharge of Attachment,[7] praying that they be allowed to file a counter-bond in the amount of ₱42,844,353.14 and that the writ of preliminary attachment be discharged after the filing of such bond. Although this was opposed by UPPC, the RTC, in its Order dated October 25, 2002, granted the said motion for the discharge of the writ of attachment subject to the condition that Unibox and Ortega file a counter-bond.[8] Thus, on November 21, 2002, respondent Acropolis Central Guaranty Corporation (*Acropolis*) issued the Defendant's Bond for

---

[2] *Id.* at 257.

[3] *Id.* at 47 and 235.

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

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

[6] *Id.* at 53 and 235.

[7] *Id.* at 56-59.

[8] *Id.* at 235-236.

Dissolution of Attachment[9] in the amount of ₱42,844,353.14 in favor of Unibox.

Not satisfied with the counter-bond issued by Acropolis, UPPC filed its Manifestation and Motion to Discharge the Counter-Bond[10] dated November 27, 2002, claiming that Acropolis was among those insurance companies whose licenses were set to be cancelled due to their failure to put up the minimum amount of capitalization required by law. For that reason, UPPC prayed for the discharge of the counter-bond and the reinstatement of the attachment. In its December 10, 2002 Order,[11] the RTC denied UPPC's Motion to Discharge Counter-Bond and, instead, approved and admitted the counter-bond posted by Acropolis. Accordingly, it ordered the sheriff to cause the lifting of the attachment on the properties of Unibox and Ortega.

On September 29, 2003, Unibox, Ortega and UPPC executed a compromise agreement,[12] wherein Unibox and Ortega acknowledged their obligation to UPPC in the amount of ₱35,089,544.00 as of August 31, 2003, inclusive of the principal and the accrued interest, and bound themselves to pay the said amount in accordance with a schedule of payments agreed upon by the parties. Consequently, the RTC promulgated its Judgment[13] dated October 2, 2003 approving the compromise agreement.

For failure of Unibox and Ortega to pay the required amounts for the months of May and June 2004 despite demand by UPPC, the latter filed its Motion for Execution[14] to satisfy the remaining unpaid balance. In the July 30, 2004 Order,[15] the RTC acted

---

[9] *Id.* at 54.

[10] *Id.* at 64-66.

[11] *Id.* at 90-93.

[12] *Id.* at 106-113.

[13] *Id.* at 114-115.

[14] *Id.* at 118-119.

[15] *Id.* at 131-132.

favorably on the said motion and, on August 4, 2004, it issued the requested Writ of Execution.[16]

The sheriff then proceeded to enforce the Writ of Execution. It was discovered, however, that Unibox had already ceased its business operation and all of its assets had been foreclosed by its creditor bank. Moreover, the responses of the selected banks which were served with notices of garnishment indicated that Unibox and Ortega no longer had funds available for garnishment. The sheriff also proceeded to the residence of Ortega to serve the writ but he was denied entry to the premises. Despite his efforts, the sheriff reported in his November 4, 2008 Partial Return[17] that there was no satisfaction of the remaining unpaid balance by Unibox and Ortega.

On the basis of the said return, UPPC filed its Motion to Order Surety to Pay Amount of Counter-Bond[18] directed at Acropolis. On November 30, 2004, the RTC issued its Order[19] granting the motion and ordering Acropolis to comply with the terms of its counter-bond and pay UPPC the unpaid balance of the judgment in the amount of ₱27,048,568.78 with interest of 12% per annum from default.

Thereafter, on December 13, 2004, Acropolis filed its Manifestation and Very Urgent Motion for Reconsideration,[20] arguing that it could not be made to pay the amount of the counter-bond because it did not receive a demand for payment from UPPC. Furthermore, it reasoned that its obligation had been discharged by virtue of the novation of its obligation pursuant to the compromise agreement executed by UPPC, Unibox and Ortega. The motion, which was set for hearing on December 17, 2004, was received by the RTC and UPPC only on December

---

[16] *Id.* at 132.

[17] *Id.* at 133-134.

[18] *Id.* at 135-138.

[19] *Id.* at 139.

[20] *Id.* at 140-148.

20, 2004.[21] In the Order dated February 22, 2005, the RTC denied the motion for reconsideration for lack of merit and for having been filed three days after the date set for the hearing on the said motion.[22]

Aggrieved, Acropolis filed a petition for *certiorari* before the CA with a prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.[23] On November 17, 2005, the CA rendered its Decision[24] granting the petition, reversing the February 22, 2005 Order of the RTC, and absolving and relieving Acropolis of its liability to honor and pay the amount of its counter-attachment bond. In arriving at said disposition, the CA stated that, firstly, Acropolis was able to comply with the three-day notice rule because the motion it filed was sent by registered mail on December 13, 2004, four days prior to the hearing set for December 17, 2004;[25] secondly, UPPC failed to comply with the following requirements for recovery of a judgment creditor from the surety on the counter-bond in accordance with Section 17, Rule 57 of the Rules of Court, to wit: (1) demand made by creditor on the surety, (2) notice to surety and (3) summary hearing as to his liability for the judgment under the counter-bond;[26] and, thirdly, the failure of UPPC to include Acropolis in the compromise agreement was fatal to its case.[27]

UPPC then filed a motion for reconsideration but it was denied by the CA in its Resolution dated March 1, 2006.[28]

---

[21] *Id.* at 18.

[22] *Id.* at 159-160.

[23] *Id.* at 166-189.

[24] *Id.* at 234-241.

[25] *Id.* at 239.

[26] *Id.* at 239-240.

[27] *Id.* at 240.

[28] *Id.* at 257.

Hence, this petition.

The Issues

For the allowance of its petition, UPPC raises the following

GROUNDS

I.

The Court of Appeals erred in not holding respondent liable on its counter-attachment bond which it posted before the trial court inasmuch as:

A. The requisites for recovering upon the respondent-surety were clearly complied with by petitioner and the trial court, inasmuch as prior demand and notice in writing was made upon respondent, by personal service, of petitioner's motion to order respondent surety to pay the amount of its counter-attachment bond, and a hearing thereon was held for the purpose of determining the liability of the respondent-surety.

B. The terms of respondent's counter-attachment bond are clear, and unequivocally provide that respondent as surety shall jointly and solidarily bind itself with defendants to secure and pay any judgment that petitioner may recover in the action. Hence, such being the terms of the bond, in accordance with fair insurance practices, respondent cannot, and should not be allowed to, evade its liability to pay on its counter-attachment bond posted by it before the trial court.

II.

The Court of Appeals erred in holding that the trial court gravely abused its discretion in denying respondent's manifestation and motion for reconsideration considering that the said motion failed to comply with the three (3)-day notice rule under Section 4, Rule 15 of the Rules of Court, and that it had lacked substantial merit to warrant a reversal of the trial court's previous order.[29]

---

[29] *Id.* at 23-24.

Simply put, the issues to be dealt with in this case are as follows:

(1) Whether UPPC failed to make the required demand and notice upon Acropolis; and

(2) Whether the execution of the compromise agreement between UPPC and Unibox and Ortega was tantamount to a novation which had the effect of releasing Acropolis from its obligation under the counter-attachment bond.

The Court's Ruling

UPPC complied with the twin requirements of notice and demand

On the recovery upon the counter-bond, the Court finds merit in the arguments of the petitioner.

UPPC argues that it complied with the requirement of demanding payment from Acropolis by notifying it, in writing and by personal service, of the hearing held on UPPC's Motion to Order Respondent-Surety to Pay the Bond.[30] Moreover, it points out that the terms of the counter-attachment bond are clear in that Acropolis, as surety, shall jointly and solidarily bind itself with Unibox and Ortega to secure the payment of any judgment that UPPC may recover in the action.[31]

Section 17, Rule 57 of the Rules of Court sets forth the procedure for the recovery from a surety on a counter-bond:

> Sec. 17. Recovery upon the counter-bond. — When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing on the same action.

---

[30] *Id.* at 25.

[31] *Id.* at 28.

From a reading of the abovequoted provision, it is evident that a surety on a counter-bond given to secure the payment of a judgment becomes liable for the payment of the amount due upon: (1) demand made upon the surety; and (2) notice and summary hearing on the same action. After a careful scrutiny of the records of the case, the Court is of the view that UPPC indeed complied with these twin requirements.

This Court has consistently held that the filing of a complaint constitutes a judicial demand.[32] Accordingly, the filing by UPPC of the Motion to Order Surety to Pay Amount of Counter-Bond was already a demand upon Acropolis, as surety, for the payment of the amount due, pursuant to the terms of the bond. In said bond, Acropolis bound itself in the sum of ₱42,844,353.14 to secure the payment of any judgment that UPPC might recover against Unibox and Ortega.[33]

Furthermore, an examination of the records reveals that the motion was filed by UPPC on November 11, 2004 and was set for hearing on November 19, 2004.[34] Acropolis was duly notified of the hearing and it was personally served a copy of the motion on November 11, 2004,[35] contrary to its claim that it did not receive a copy of the motion.

On November 19, 2004, the case was reset for hearing on November 30, 2004. The minutes of the hearing on both dates show that only the counsel for UPPC was present. Thus, Acropolis was given the opportunity to defend itself. That it chose to ignore its day in court is no longer the fault of the RTC and of UPPC. It cannot now invoke the alleged lack of notice and hearing when, undeniably, both requirements were met by UPPC.

---

[32] *Guerrero v. Court of Appeals*, G.R. No. L-22366, October 30, 1969, 29 SCRA 791, 796; *Monzon v. Intermediate Appellate Court*, 251 Phil. 695, 704 (1989).

[33] Records, p. 885.

[34] *Id.* at 1067-1070.

[35] *Id.* at 1070.

No novation despite compromise agreement; Acropolis still liable under the terms of the counter-bond

UPPC argues that the undertaking of Acropolis is to secure any judgment rendered by the RTC in its favor. It points out that because of the posting of the counter-bond by Acropolis and the dissolution of the writ of preliminary attachment against Unibox and Ortega, UPPC lost its security against the latter two who had gone bankrupt.[36] It cites the cases of *Guerrero v. Court of Appeals*[37] and *Martinez v. Cavives*[38] to support its position that the execution of a compromise agreement between the parties and the subsequent rendition of a judgment based on the said compromise agreement does not release the surety from its obligation nor does it novate the obligation.[39]

Acropolis, on the other hand, contends that it was not a party to the compromise agreement. Neither was it aware of the execution of such an agreement which contains an acknowledgment of liability on the part of Unibox and Ortega that was prejudicial to it as the surety. Accordingly, it cannot be bound by the judgment issued based on the said agreement.[40] Acropolis also questions the applicability of *Guerrero* and draws attention to the fact that in said case, the compromise agreement specifically stipulated that the surety shall continue to be liable, unlike in the case at bench where the compromise agreement made no mention of its obligation to UPPC.[41]

On this issue, the Court finds for UPPC also.

The terms of the Bond for Dissolution of Attachment issued by Unibox and Acropolis in favor of UPPC are clear and leave no room for ambiguity:

---

[36] *Rollo,* p. 28.

[37] *Supra* note 32.

[38] 25 Phil. 581 (1913).

[39] *Rollo,* pp. 29-30.

[40] *Id.* at 306-307.

[41] *Id.* at 308.

WHEREAS, the Honorable Court in the above-entitled case issued on _____ an Order dissolving / lifting partially the writ of attachment levied upon the defendant/s personal property, upon the filing of a counterbond by the defendants in the sun of PESOS FORTY TWO MILLION EIGHT HUNDRED FORTY FOUR THOUSAND THREE HUNDRED FIFTY THREE AND 14/100 ONLY (₱42,844,353.14) Philippine Currency.

NOW, THEREFORE, we UNIBOX PACKAGING CORP. as Principal and PHILIPPINE PRYCE ASSURANCE CORP., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, **in consideration of the dissolution of said attachment, hereby jointly and severally bind ourselves in the sum of FORTY TWO MILLION EIGHT HUNDRED FORTY FOUR THOUSAND THREE HUNDRED FIFTY THREE AND 14/100 ONLY (₱42,844,353.14) Philippine Currency, in favor of the plaintiff to secure the payment of <u>any judgment</u> that the plaintiff may recover against the defendants in this action**.[42] [Emphasis and underscoring supplied]

Based on the foregoing, Acropolis voluntarily bound itself with Unibox to be solidarily liable to answer for ANY judgment which UPPC may recover from Unibox in its civil case for collection. Its counter-bond was issued in consideration of the dissolution of the writ of attachment on the properties of Unibox and Ortega. The counter-bond then replaced the properties to ensure recovery by UPPC from Unibox and Ortega. It would be the height of injustice to allow Acropolis to evade its obligation to UPPC, especially after the latter has already secured a favorable judgment.

This issue is not novel. In the case of *Luzon Steel Corporation v. Sia*,[43] Luzon Steel Corporation sued Metal Manufacturing of the Philippines and Jose Sia for breach of contract and damages. A writ of preliminary attachment was issued against the properties of the defendants therein but the attachment was lifted upon the filing of a counter-bond issued by Sia, as principal, and Times Surety & Insurance Co., as surety. Later, the plaintiff

---

[42] Records, p. 885.

[43] 138 Phil. 62 (1969).

and the defendants entered into a compromise agreement whereby Sia agreed to settle the plaintiff's claim. The lower court rendered a judgment in accordance with the terms of the compromise. Because the defendants failed to comply with the same, the plaintiff obtained a writ of execution against Sia and the surety on the counter-bond. The surety moved to quash the writ of execution on the ground that it was not a party to the compromise and that the writ was issued without giving the surety notice and hearing. Thus, the court set aside the writ of execution and cancelled the counter-bond. On appeal, this Court, speaking through the learned Justice J.B.L. Reyes, discussed the nature of the liability of a surety on a counter-bond:

> Main issues posed are (1) whether the judgment upon the compromise discharged the surety from its obligation under its attachment counterbond and (2) whether the writ of execution could be issued against the surety without previous exhaustion of the debtor's properties.
>
> Both questions can be solved by bearing in mind that we are dealing with a *counterbond* filed to *discharge* a levy on attachment. Rule 57, section 12, specifies that an attachment may be discharged upon the making of a cash deposit or filing a counterbond "in an amount equal to the value of the property attached as determined by the judge"; that upon the filing of the counterbond "the property attached . . . shall be delivered to the party making the deposit or giving the counterbond, or the person appearing on his behalf, *the deposit or counterbond aforesaid standing in place of the property so released.*"
>
> The italicized expressions constitute the key to the entire problem. Whether the judgment be rendered after trial on the merits or upon compromise, such judgment undoubtedly may be made effective upon the property released; and **since the counterbond merely stands in the place of such property, there is no reason why the judgment should not be made effective against the counterbond regardless of the manner how the judgment was obtained.**
>
> x x x x x x x x x
>
> As declared by us in *Mercado v. Macapayag*, 69 Phil. 403, 405-406, in passing upon the liability of counter sureties in replevin who bound themselves to answer solidarily for the obligations of the

defendants to the plaintiffs in a fixed amount of ₱912.04, to secure payment of the amount that said plaintiff be adjudged to recover from the defendants,

> **the liability of the sureties was fixed and conditioned on the finality of the judgment rendered regardless of whether the decision was based on the consent of the parties or on the merits. A judgment entered on a stipulation is nonetheless a judgment of the court because consented to by the parties.**[44]
>
> [Emphases and underscoring supplied]

The argument of Acropolis that its obligation under the counter-bond was novated by the compromise agreement is, thus, untenable. In order for novation to extinguish its obligation, Acropolis must be able to show that there is an incompatibility between the compromise agreement and the terms of the counter-bond, as required by Article 1292 of the Civil Code, which provides that:

> Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (1204)

Nothing in the compromise agreement indicates, or even hints at, releasing Acropolis from its obligation to pay UPPC after the latter has obtained a favorable judgment. Clearly, there is no incompatibility between the compromise agreement and the counter-bond. Neither can novation be presumed in this case. As explained in *Duñgo v. Lopena*:[45]

> Novation by presumption has never been favored. To be sustained, it need be established that the old and new contracts are incompatible in all points, or that the will to novate appears by express agreement of the parties or in acts of similar import.[46]

---

[44] *Luzon Steel Corporation v. Sia*, 138 Phil. 62, 65-67 (1969).

[45] 116 Phil. 1305 (1962).

[46] *Id.* at 1313-1314, citing *Martinez v. Cavives*, 25 Phil. 581 (1913); *Tiu Siuco v. Habana*, 45 Phil. 707 (1924); *Asia Banking Corp. v. Lacson Co.*, 48 Phil. 482 (1925); *Pascual v. Lacsamana*, 53 O.G. 2467, April 1957.

All things considered, Acropolis, as surety under the terms of the counter-bond it issued, should be held liable for the payment of the unpaid balance due to UPPC.

Three-day notice rule, not a hard and fast rule

Although this issue has been obviated by our disposition of the two main issues, the Court would like to point out that the three-day notice requirement is not a hard and fast rule and substantial compliance is allowed.

Pertinently, Section 4, Rule 15 of the Rules of Court reads:

> Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof **shall be served in such a manner as to insure its receipt by the other party at least three (3) days before the date of hearing**, unless the court for good cause sets the hearing on shorter notice. [Emphasis supplied]

The law is clear that it intends for the other party to receive a copy of the written motion at least three days before the date set for its hearing. The purpose of the three (3)-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.[47] In *Preysler, Jr. v. Manila Southcoast Development Corporation*,[48] the Court restated the ruling that "the date of the hearing should be at least three days after receipt of the notice of hearing by the other parties."

It is not, however, a hard and fast rule. Where a party has been given the opportunity to be heard, the time to study the

---

[47] *Sembrano v. Ramirez*, 248 Phil. 260, 266 (1988), citing *E & L Mercantile, Inc. v. Intermediate Appellate Court*, 226 Phil. 299, 305 (1986).

[48] G.R. No. 171872, June 28, 2010, 621 SCRA 636, 645.

motion and oppose it, there is compliance with the rule. This was the ruling in the case of *Jehan Shipping Corporation v. National Food Authority*,[49] where it was written:

Purpose Behind the
Notice Requirement

This Court has indeed held time and time again that, under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.

As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. Considering the circumstances of the present case, we believe that the requirements of procedural due process were substantially complied with, and that the compliance justified a departure from a literal application of the rule on notice of hearing.[50] [Emphasis supplied]

In the case at bench, the RTC gave UPPC sufficient time to file its comment on the motion. On January 14, 2005, UPPC filed its Opposition to the motion, discussing the issues raised by Acropolis in its motion. Thus, UPPC's right to due process was not violated because it was afforded the chance to argue its position.

---

[49] 514 Phil. 166 (2005).

[50] *Id.* at 173-174.

WHEREFORE, the petition is **GRANTED.** The November 17, 2005 Decision and the March 1, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 89135, are hereby **REVERSED** and **SET ASIDE.** The November 30, 2004 Order of the Regional Trial Court, Branch 148, Makati City, ordering Acropolis to comply with the terms of its counter-bond and pay UPPC the unpaid balance of the judgment in the amount of ₱27,048,568.78 with interest of 12% per annum from default is **REINSTATED**.

Corona,[*] *C.J., Velasco, Jr. (Chairperson), Abad,* and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174005. January 25, 2012]

VIRGINIA A. ZAMORA, *petitioner, vs.* **JOSE ARMANDO L. EDUQUE, ROY TANG CHEE HENG, PETER A. BINAMIRA, GILDA A. DE JESUS, ESTELA C. MADRIDEJOS, CELIA J. ZUNO, JEANETTE C. DELGADO, MA. LETICIA R. JOSON and REMICAR UY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; FOR SIMULTANEOUSLY ACTING AS DEALER OF COMMERCIAL PAPERS AND CUSTODIAN OF THE SAME ON BEHALF OF THE CLIENT, THE INVESTMENT COMPANY IS OBLIGED TO DELIVER THE COMMERCIAL PAPERS AND THEIR

---

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated July 20, 2009.

PROCEEDS TO ITS CLIENT, FAILING WHICH, ITS RESPONSIBLE OFFICERS COULD BE PROSECUTED FOR ESTAFA. — Zamora's transaction with East Asia in this case is no different. East Asia acted as dealer of commercial papers and custodian of the same on Zamora's behalf. This is clear from the terms of its sale invoice and custodian receipt. East Asia acquired the commercial papers in trust and was obliged to deliver them and their proceeds to Zamora, failing which, its responsible officers could be prosecuted for *estafa*. Consequently, the CA erred in characterizing Zamora's transaction with East Asia as a sale or loan of money based only on the nomenclature of the invoice it issued.

2. ID.; ID.; ONLY CORPORATE OFFICERS WHO ACTUALLY HAD PART IN THE MISAPPROPRIATION OR CONVERSION OF THE FUNDS MAY BE HELD LIABLE FOR ESTAFA. — [T]he Court finds no probable cause to charge the respondents with *estafa*. As the Secretary of Justice found, Zamora failed to identify the particular officers of East Asia who were responsible for the misappropriation or conversion of her funds. She simply assumed that since she had been communicating with them in connection with her investments, they all had part in misappropriating her money or converting them to their use. Many of them were evidently mere employees doing work for East Asia. She did not submit proof of their specific criminal role in the transactions she assailed. It is settled that only corporate officers who actually had part in the crime may be held liable for it.

APPEARANCES OF COUNSEL

Martinez Vergara Gonzales & Serrano for petitioner.

Romulo Mabanta Buenaventura Sayoc and Delos Angeles for J.A. L. Eduque.

Martinez Alcudia Concepcion for Ma. Leticia Joson.

D E C I S I O N

ABAD, *J.*:

Respondents Jose Armando L. Eduque, Peter A. Binamira, Roy Tang Chee Heng, Gilda A. De Jesus, Estela C. Madridejos, Celia J. Zuno, Jeanette C. Delgado, Ma. Leticia R. Joson, and Remicar Uy held the positions of officers or directors or both of East Asia Capital Corporation (East Asia), a licensed investment company, that dealt in securities and commercial papers.[1]

Petitioner Virginia Zamora claims that she gave East Asia sums in July 1999 to buy for her certain commercial papers that Metro Pacific Corporation (MPC) had issued. In turn, East Asia gave her an outright sale invoice for each transaction, which served to confirm its purchase of MPC's Series B2 commercial papers for her account. East Asia also gave her a Custodian Receipt, indicating that it was keeping the commercial papers for her.[2] Once these papers matured, East Asia was to either roll-over the investments or have the papers redeemed, depending on Zamora's instruction.

Sometime in 2000 Zamora became suspicious of her dealings with East Asia when she discovered that some of the new commercial papers it bought for her carried the same serial numbers as some of the commercial papers it also previously bought for her. Further, East Asia reinvested the proceeds of her matured commercial papers without consulting her and gave her unofficial and unsigned invoices and receipts covering their transactions. When she requested East Asia for a breakdown of her account, it gave her a report that lacked specific details.

Because of apprehensions, Zamora wrote East Asia's Joson and Uy, requesting redemption of her matured and "on demand"

---

[1] Respondents respectively held the following positions: Chief Executive Officer and Director, Executive Director and Treasurer (1999), Executive Director (2000), Assistant Vice-President (1999) and Treasurer (2000), Vice-President for Accounting, Assistant Vice-President (1999-2000) and Chief Accountant (2000), Manager for Treasury Operations, Vice-President for Trade.

[2] *Rollo*, pp. 171-172.

placements.[3] East Asia told her, however, that it did not have enough funds to comply with her request. When she subsequently met with Eduque, Heng, and Delgado, they assured her that East Asia was merely experiencing temporary problems with its financing and accounting records and that these would all be resolved by the entry of a new investor. East Asia then issued to her, through Madridejos, documents acknowledging her outstanding placements.[4]

Meanwhile, Zamora queried MPC regarding the status of the commercial papers that East Asia got for her. She learned that MPC had already paid East Asia for these papers and that most of the papers that matured were not in her name but in those of other persons.[5] When Zamora finally got a copy of her Statement of Account[6] from East Asia, it showed that what she had in her account were East Asia's promissory notes rather than MPC commercial papers.

When Zamora met with Eduque, the latter admitted to her that East Asia had no money to pay her and could only propose that it secure its promissory notes with collateral or substitute the commercial papers with East Asia-owned real property and shares of stock. Zamora declined both offers. Still, East Asia made several payments to Zamora and issued to her a certificate which acknowledged and pegged her remaining placements at ₱37,330,749.53.

On January 7, 2002 Zamora wrote East Asia demanding payment. Since the demand went unheeded, on January 11, 2002 Zamora filed a Complaint-Affidavit[7] with the Office of the City Prosecutor of Makati, charging East Asia's officers with *estafa* under Art. 315 (1)(b) of the penal code. She alleged that they received her money as agents or trustees with a duty to buy

[3] *Id.* at 200.

[4] *Id.* at 201-204.

[5] *Id.* at 205-215.

[6] *Id.* at 227.

[7] *Id.* at 262.

MPC commercial papers for her and subsequently turn over the proceeds of these papers to her. But they instead misappropriated her money and its incomes.[8] Zamora claimed that Eduque, Madridejos, Delgado, Joson, and Uy would not have been able to misappropriate the money without the indispensable assistance of Heng, Binamira, De Jesus, and Zuno. Eduque, Delgado, Joson and Uy cajoled and sweet-talked their company's clients while Heng, Benamira, De Jesus, Madridejos and Zuno worked within East Asia.[9]

But respondent East Asia officers countered, citing *Sesbreno v. Court of Appeals*,[10] that they did not commit *estafa* since Zamora actually made money-market placements with East Asia. Since these transactions were in the nature of loans to the company, their non-payment would give rise only to civil liability. Respondent officers further claimed that they could not be held personally liable for East Asia's corporate acts and that, moreover, Zamora failed to allege overt acts that would make them liable as co-conspirators.

On September 4, 2002 the Office of the City Prosecutor issued a resolution,[11] recommending the filing of an information for *estafa* against East Asia's officers considering their failure to show that their transactions with Zamora's transactions were similar to those involved in the *Sesbreno* case. At any rate, the City Prosecutor said that respondents' defenses presented issues of fact and law that were proper for trial. Additionally, the City Prosecutor found that respondents received money from Zamora with an obligation to buy MPC commercial papers but they did not. The City Prosecutor cited 42 MPC commercial papers that East Asia supposedly bought for Zamora's account but were not registered in her name. Respondent East Asia officers also acted with malice and bad faith when they covered up their

---

[8] *Id.* at 268-269.

[9] *Id.* at 268.

[10] 310 Phil. 671 (1995).

[11] *Rollo*, pp. 400-407.

fraudulent acts. And these would not have been possible without the indispensable cooperation of all of them.[12]

On motion for reconsideration, however, the City Prosecutor issued another resolution dated November 7, 2002,[13] reversing its previous one. It now held that Zamora's transactions with East Asia "are undeniably money market placements which the Supreme Court has ruled to be in the nature of a loan." East Asia and respondent officers had no obligation to return the very same money that she delivered to it. She is merely entitled to a return of the amount invested plus the interests agreed on. Since there was no obligation to return the exact same thing delivered, no probable cause for *estafa* can be said to exist.

Zamora appealed the City Prosecutor's resolution to the Secretary of Justice who dismissed the same on September 3, 2003.[14] Undaunted, she challenged the Secretary's ruling before the Court of Appeals (CA) by special civil action of *certiorari* under Rule 65. But the CA dismissed her petition in a decision dated June 2, 2006.[15] The appellate court held that based on the nomenclature of the certificate issued by East Asia, *i.e.*, Outright **Sale** Invoice, its transaction with Zamora is beyond doubt a sale or loan of money.

Upon denial of Zamora's motion for reconsideration by the appellate court, she filed this petition for review under Rule 45. The issues to be resolved are the following:

(1) Whether or not Zamora's transaction with East Asia was a sale or loan of money; and

(2) Whether or not there is probable cause to charge respondents with *estafa* under Article 315(1)(b) of the Revised Penal Code.

---

[12] *Id.* at 404-405.

[13] *Id.* at 522-526.

[14] *Id.* at 676-680.

[15] *Id.* at 79-91.

ONE. Zamora asserts that the CA erred in characterizing her transaction with East Asia as a sale or loan of money, where ownership of the money changed hands. Zamora insists that her relationship with East Asia was that of principal and agent and that its officers received her money in trust with an obligation to acquire with it commercial papers that MPC had issued. When these papers matured, East Asia also received the proceeds which they had the obligation to deliver to her. But respondents neither bought MPC commercial papers for her nor delivered to her the proceeds that MPC paid to East Asia.

This is not the first time that Eduque, Binamira, Delgado, and Joson have been sued for *estafa* under the same circumstances. In *Cruzvale, Inc. v. Eduque*,[16] the CA caused the dismissal of the same charge for lack of probable cause upon a finding that the transaction was a loan that could not give rise to *estafa* by misappropriation. The CA ruled that East Asia did not receive Cruzvale's money in trust for it. On appeal to this Court, however, it reversed the CA ruling. The Court held that *Sesbreno* was not applicable because that case involved a money market placement under a short-term credit instrument, not commercial papers. *Sesbreno* also dealt with the liability of respondent, not as middleman or dealer, but as petitioner's debtor.

The Court thus concluded that East Asia had a fiduciary obligation to Cruzvale, Inc., both as middleman or dealer of commercial papers and custodian of the same for the latter's account. For simultaneously acting as middleman or dealer and custodian, East Asia was obliged to turn over to its client the proceeds of the matured commercial papers and deliver the outstanding ones to it together with accrued interests.[17]

Zamora's transaction with East Asia in this case is no different. East Asia acted as dealer of commercial papers and custodian of the same on Zamora's behalf. This is clear from the terms of its sale invoice and custodian receipt. East Asia acquired

---

[16] G.R. Nos. 172785-86, June 18, 2009, 589 SCRA 534.

[17] *Id.* at 544.

the commercial papers in trust and was obliged to deliver them and their proceeds to Zamora, failing which, its responsible officers could be prosecuted for *estafa*. Consequently, the CA erred in characterizing Zamora's transaction with East Asia as a sale or loan of money based only on the nomenclature of the invoice it issued.

TWO. Notwithstanding the foregoing, however, the Court finds no probable cause to charge the respondents with *estafa*. As the Secretary of Justice found, Zamora failed to identify the particular officers of East Asia who were responsible for the misappropriation or conversion of her funds.[18] She simply assumed that since she had been communicating with them in connection with her investments, they all had part in misappropriating her money or converting them to their use. Many of them were evidently mere employees doing work for East Asia. She did not submit proof of their specific criminal role in the transactions she assailed. It is settled that only corporate officers who actually had part in the crime may be held liable for it.[19]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP 92330 dated June 2, 2006 and its resolution dated August 8, 2006 denying reconsideration are **AFFIRMED,** without prejudice to the subsequent filing of charges against the responsible persons as the evidence may warrant.

SO ORDERED.

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

---

[18] *Rollo*, p. 679.

[19] *Supra* note 16, at 546.

FIRST DIVISION

[G.R. No. 174089. January 25, 2012]

ORIX METRO LEASING AND FINANCE CORPORATION (*Formerly* CONSOLIDATED ORIX LEASING AND FINANCE CORPORATION), *petitioner, vs.* **MINORS: DENNIS, MYLENE, MELANIE and MARIKRIS, all surnamed MANGALINAO *Y* DIZON, MANUEL M. ONG, LORETO LUCILO, SONNY LI, and ANTONIO DE LOS SANTOS,** *respondents.*

[G.R. No. 174266. January 25, 2012]

SONNY LI and ANTONIO DE LOS SANTOS, *petitioners, vs.* **MINORS: DENNIS, MYLENE, MELANIE and MARIKRIS, all surnamed MANGALINAO *Y* DIZON, LORETO LUCILO, CONSOLIDATED ORIX LEASING AND FINANCE CORPORATION and MANUEL M. ONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS, AND THE CONCURRENCE OF THE FINDINGS OF FACT OF THE COURTS BELOW ARE CONCLUSIVE. — Negligence and proximate cause are factual issues. Settled is the rule that this Court is not a trier of facts, and the concurrence of the findings of fact of the courts below are conclusive. "A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law - questions of fact are not reviewable" save for several exceptions, two of which petitioners invoke, *i.e.*, that 'the finding is grounded on speculations, surmises, and conjectures,' and that 'the judgment is based on a misapprehension of facts.' There is no compelling reason to disturb the lower courts' factual conclusions.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUASI-DELICTS; REGISTERED OWNER CANNOT ESCAPE LIABILITY FOR THE DAMAGES OR INJURY THE

MOTOR VEHICLE REGISTERED UNDER IT HAVE CAUSED, BY DISPROVING OWNERSHIP THEREOF. — Orix cannot point fingers at the alleged real owner to exculpate itself from vicarious liability under Article 2180 of the Civil Code. Regardless of whoever Orix claims to be the actual owner of the Fuso by reason of a contract of sale, it is nevertheless primarily liable for the damages or injury the truck registered under it have caused. It has already been explained: Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. x x x Besides, the registered owners have a right to be indemnified by the real or actual owner of the amount that they may be required to pay as damage for the injury caused to the plaintiff, which Orix rightfully acknowledged by filing a third-party complaint against the owner of the Fuso, Manuel.

3. ID.; DAMAGES; ACTUAL DAMAGES; ONE IS ENTITLED TO AN ADEQUATE COMPENSATION ONLY FOR SUCH PECUNIARY LOSS SUFFERED BY HIM AS HE HAS DULY PROVED; AWARD OF ACTUAL DAMAGES INCREASED TO PHP107,000.00. — With regard to actual damages, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Anent the funeral and burial expenses, the receipts issued by San Roque Funeral Homes in the amount of ₱57,000.00 and by St. Peter Memorial Homes in the amount of ₱50,000.00, as supported by the testimonies of the witnesses who secured these documents, prove payment by the respondent heirs of the funeral costs not only of their deceased relatives but of the latter's helpers as well, and thus we find it proper to award the total amount of ₱107,000.00.

4. ID.; ID.; TEMPERATE DAMAGES; AWARDED IN LIEU OF ACTUAL DAMAGES FOR LOSS OF EARNING CAPACITY WHERE EARNING CAPACITY IS PLAINLY ESTABLISHED BUT NO EVIDENCE WAS PRESENTED TO SUPPORT THE ALLEGATION OF THE INJURED PARTY'S ACTUAL INCOME; AWARD OF TEMPERATE DAMAGES FOR LOSS OF EARNING CAPACITY REDUCED TO PHP500,000.00. — In addition to ₱150,000.00 indemnity for the death of the spouses Mangalinao and their daughter Marianne as a result of *quasi-delict*, actual damages shall likewise include the loss of the earning capacity of the deceased. In this case, the CA awarded ₱2,000,000.00, which it found reasonable after considering the income statement of Roberto Mangalinao as of the year 1989. Petitioners challenge this for lack of basis, arguing that the CA failed to consider the formula provided by this Court, and that the income statement was not even testified to by the accountant who prepared such document. While the net income had not been sufficiently established, the Court recognizes the fact that the Mangalinao heirs had suffered loss deserving of compensation. What the CA awarded is in actuality a form of temperate damages. Such form of damages under Article 2224 of the Civil Code is given in the absence of competent proof on the actual damages suffered. "In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income." In this case, Roberto Mangalinao, the breadwinner of the family, was a businessman engaged in buying and selling *palay* and agricultural supplies that required high capital in its operations and was only 37 at the time of his death. Moreover, the Pathfinder which the Mangalinaos own, became a total wreck. Under the circumstances, we find the award of ₱500,000.00 as temperate damages as reasonable.

5. ID.; ID.; MORAL DAMAGES; AWARDED TO ENABLE THE INJURED PARTY TO OBTAIN MEANS, DIVERSIONS, OR AMUSEMENTS THAT WILL SERVE TO ALLEVIATE THE MORAL SUFFERING HE HAD UNDERGONE DUE TO THE OTHER PARTY'S CULPABLE ACTION AND MUST, PERFORCE, BE PROPORTIONAL TO THE SUFFERING INFLICTED; AWARD OF MORAL DAMAGES REDUCED TO PHP500,000.00. — Moral

damages, it must be stressed, are not intended to enrich plaintiff at the expense of the defendant. They are awarded to enable the injured party to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he/she had undergone due to the other party's culpable action and must, perforce, be proportional to the suffering inflicted. While the children did not testify before the court, undoubtedly, they suffered the pain and ordeal of losing both their parents and sibling and hence, the award of moral damages is justified. However, the amount must be reduced to ₱500,000.00.

6. ID.; ID.; EXEMPLARY DAMAGES; MAY BE GRANTED IF THE DEFENDANT ACTED WITH GROSS NEGLIGENCE. — In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence." It is given by way of example or correction for the public good. Before the court may consider such award, the plaintiff must show his entitlement first to moral, temperate, or compensatory damages, which the respondents have. In the case at bench, the reckless driving of the two trucks involved caused the death of the victims. However, we shall reduce the amount of exemplary damages to ₱200,000.00.

7. ID.; ID.; ATTORNEY'S FEES; GRANT OF ATTORNEY'S FEES OF PHP 50,000.00, PROPER. — Lastly, because exemplary damages are awarded and that we find it equitable that expenses of litigation should be recovered, we find it sufficient and reasonable enough to grant attorney's fees of ₱50,000.00.

APPEARANCES OF COUNSEL

Damasen Law Offices for Minors Mangalinao.
Albert V. Alcala for Sonny Li and Antonio Delos Santos.
Claribelle A. Ykutanen for Orix Leasing & Finance Corp.

D E C I S I O N

DEL CASTILLO, *J.*:

The ones at fault are to answer for the effects of vehicular accidents.

A multiple-vehicle collision in North Luzon Expressway (NLEX) resulting in the death of all the passengers in one vehicle, including the parents and a sibling of the surviving orphaned minor heirs, compelled the latter to file an action for damages against the registered owners and drivers of the two 10-wheeler trucks that collided with their parents' Nissan Pathfinder (Pathfinder).

Assailed in these consolidated Petitions for Review on *Certiorari*[1] filed by Orix Metro Leasing and Finance Corporation (Orix)[2] and by Sonny Li (Sonny) and Antonio delos Santos (Antonio)[3] are the October 27, 2005 Decision[4] and August 17, 2006 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 70530.

Factual Antecedents

On June 27, 1990, at about 11:15 p.m., three vehicles were traversing the two-lane northbound NLEX in the vicinity of *Barangay* Tibag, Pulilan, Bulacan. It was raining that night.

Anacleto Edurese, Jr. (Edurese) was driving a Pathfinder with plate number BBG-334. His Isabela-bound passengers were the owners of said vehicle, spouses Roberto and Josephine Mangalinao (Mangalinao spouses), their daughter Marriane, housemaid Rufina Andres and helper Armando Jebueza (Jebueza). Before them on the outer lane was a Pampanga-bound Fuso 10-wheeler truck (Fuso), with plate number PAE-160, driven by Loreto Lucilo (Loreto), who was with truck helper Charlie

---

[1] Consolidated pursuant to our Resolution dated October 4, 2006, *rollo* (G.R. No. 174266, p. 31 and G.R. No. 174089, p. 133).

[2] Docketed as G.R. No. 174089. Orix is formerly known as the Consolidated Orix Leasing and Finance Corporation. See Manifestation and Motion, records, pp. 533-536.

[3] Docketed as G.R. No. 174266.

[4] CA *rollo*, pp. 164-181; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Ruben T. Reyes and Rebecca de Guia-Salvador.

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

Palomar (Charlie). The Fuso was then already moving in an erratic and swerving motion.[6] Following behind the Pathfinder was another 10-wheeler truck, an Isuzu Cargo (Isuzu) with plate number PNS-768 driven by Antonio, who was then with helper Rodolfo Navia (Rodolfo).

Just when the Pathfinder was already cruising along the NLEX's fast lane and about to overtake the Fuso, the latter suddenly swerved to the left and cut into the Pathfinder's lane thereby blocking its way. As a result, the Pathfinder hit the Fuso's left door and left body.[7] The impact caused both vehicles to stop in the middle of the expressway. Almost instantly, the inevitable pileup happened. Although Antonio stepped on the brakes,[8] the Isuzu's front crashed[9] into the rear of the Pathfinder leaving it a total wreck.[10] Soon after, the Philippine National Construction Corporation (PNCC) patrol arrived at the scene of the accident and informed the Pulilan police about the vehicular mishap. Police Investigator SPO2 Emmanuel Banag responded at about 2:15-2:30 a.m. of June 28, 1990 and investigated the incident as gathered from the information and sketch[11] provided by the PNCC patrol as well as from the statements[12] provided by the truck helpers Charlie and Rodolfo.

In the meantime, the Mangalinao spouses, the driver Edurese, and the helper Jebueza were declared dead on the spot while 6-month old Marriane and the housemaid were declared dead on arrival at a nearby hospital.[13] The occupants of the trucks escaped serious injuries and death.

---

[6] Records, pp. 401-402; TSN-SPO2 Emmanuel Banag, p. 35, February 1, 1996; TSN-Antonio delos Santos, May 16, 1997, pp. 11, 25-26.

[7] Exhibit "S-3", records, p. 411; Exhibit "7", *id.* at 446.

[8] TSN-Antonio delos Santos, March 18, 1997, p. 8.

[9] Exhibit "S-4", records, p. 411; Exhibit "6", *id.* at 446.

[10] Exhibits "S-1" and "S-2", *id.* at 411.

[11] *Id.* at 403.

[12] *Id.* at 392-393.

[13] *Id.* at 395-400, 401-402, 419-421.

As their letters[14] to the registered owners of the trucks demanding compensation for the accident were ignored, the minor children of the Mangalinao spouses, Dennis, Mylene, Melanie and Marikris, through their legal guardian,[15] consequently filed on January 16, 1991 a Complaint[16] for damages based on *quasi-delict*, before the Regional Trial Court (RTC) of Makati which was docketed as Civil Case No. 91-123.[17] They impleaded the drivers Loreto and Antonio, as well as the registered owners of the Fuso and the Isuzu trucks, namely Orix and Sonny,[18] respectively. The children imputed recklessness, negligence, and imprudence on the truck drivers for the deaths of their sister and parents; while they hold Sonny and Orix equally liable for failing to exercise the diligence of a good father of a family in the selection and supervision of their respective drivers. The children demanded payment of more than ₱10.5 million representing damages and attorney's fees.

Orix in its Motion to Dismiss[19] interposed that it is not the actual owner of the Fuso truck. As the trial court denied the motion,[20] it then filed its Answer with Compulsory Counterclaim and Cross-claim.[21] Orix reiterated that the children had no cause of action against it because on September 9, 1983, it already sold the Fuso truck to MMO Trucking owned by Manuel Ong (Manuel).[22] The latter being the alleged owner at the time of

---

[14] *Id.* at 409-410.

[15] N.B. Pedro Dizon was then the legal guardian at the time the damages suit was filed. He was replaced by the children's grandfather, Raymundo Mangalinao, *id.* at 386 and 388. Upon Raymundo Mangalinao' death, the children's aunt, Zenaida Mercado, was appointed to replace him, *id.* at 351-352.

[16] *Id.* at 1-6.

[17] Raffled to Branch 133.

[18] *Id.* at 408.

[19] *Id.* at 12-17.

[20] *Id.* at 99.

[21] *Id.* at 143-152.

[22] *Id.* at 463-472.

the collision, Orix filed a Third Party Complaint[23] against Manuel, a.k.a. Manuel Tan.

In their Answer with Compulsory Counterclaim and Cross-Claim,[24] Sonny and Antonio attributed fault for the accident solely on Loreto's reckless driving of his truck which suddenly stopped and slid across the highway. They claimed that Sonny had exercised the expected diligence required of an employer; that Antonio had been all along driving with care; and, that with the abrupt and unexpected collision of the vehicles before him and their precarious proximity, he had no way of preventing his truck from hitting the Pathfinder.

For failing to file any responsive pleading, both Manuel and Loreto were declared in default.[25]

Ruling of the Regional Trial Court

After trial, the court *a quo* issued a Decision[26] on February 9, 2001 finding Sonny, Antonio, Loreto and Orix liable for damages. It likewise ruled in favor of Orix anent its third party complaint, the latter having sufficiently proven that Manuel of MMO Trucking is the real owner of the Fuso.

The dispositive portion of the RTC Decision states:

> Wherefore, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendants, ordering the latter to pay plaintiffs, jointly and severally, the following:
>
> (a) ₱3,077,000.00 as actual damages;
> (b) ₱2,000,000.00 as moral damages;
> (c) ₱1,000,000.00 as exemplary damages; and
> (d) ₱400,000.00 as and for reasonable attorney's fees
> (e) legal interest at six percent (6%) per annum on the above-stated amounts from the filing of the complaint on January 16, 1991 until fully paid; and

---

[23] *Id.* at 115-124.

[24] *Id.* at 61-65.

[25] *Id.* at 243 and 289.

[26] *Id.* at 526-529; penned by Judge Napoleon E. Inoturan.

(f) costs of suit and expenses of litigation.

Third party defendant Manuel M. Ong is ordered to indemnify third party plaintiff [Orix] for the amounts adjudged against the latter in this case.

SO ORDERED.[27]

Ratiocinating its finding of recklessness on both truck drivers, the RTC said:

The evidence leaves no doubt that both truck drivers were at fault and should be held liable. Lucilo, who was driving the Fuso truck, was reckless when he caused the swerving of his vehicle directly on the lane of the Pathfinder to his left. The Pathfinder had no way to avoid a collision because it was about to pass the truck when suddenly blocked. On the other hand, the Isuzu truck was practically tailgating the Pathfinder on the dark slippery highway such that when the Pathfinder collided with the Fuso truck, it became inevitable for the Isuzu truck to crash into the Pathfinder. So, de los Santos, the driver of the Isuzu truck was likewise reckless.[28]

In an attempt to exonerate itself, Orix appealed to the CA[29] followed by Sonny and Antonio.[30] All of them challenged the factual findings and conclusions of the court *a quo* with regard to their respective liabilities, each pinpointing to the negligence of the other and vice versa. All of them likewise assailed the amounts the RTC awarded to the minors for lack of basis.

Ruling of the Court of Appeals

On October 27, 2005, the CA rendered its Decision[31] affirming the factual findings of the trial court of reckless driving. It said:

It may be true that it was the Nissan Pathfinder which first hit and bumped and eventually crashed into the Fuso truck. However,

---

[27] *Id.* at 529.

[28] *Id.* at 528.

[29] See Notice of Appeal, *id.* at 530-531.

[30] See Notice of Appeal, *id.* at 539-540.

[31] *Supra* note 4.

this would not have happened if the truck did not swerve into the lane of the Nissan Pathfinder. As afore-mentioned [sic], the latter had no way then to avoid a collision because it was about to overtake the former.

As a motorist, Lucilo [Loreto] should have operated his truck with reasonable caution considering the width, traffic, grades, crossing, curvatures, visibility and other conditions of the highway and the conditions of the atmosphere and weather. He should have carefully and cautiously driven his vehicle so as not to have endangered the property or the safety or rights of other persons. By failing to drive with reasonable caution, Lucilo is, hence, liable for the resultant vehicle collision.

Neither do [we] find credence in delos Santos' claim that he is without liability for the vehicular collision. We cannot overemphasize the primacy in probative value of physical evidence, that mute but eloquent manifestation of the truth. An examination of the destroyed front part of the Isuzu truck, as shown by photographic evidence, clearly indicates strong bumping of the rear of the Pathfinder. The photographs belie delos Santos' claim that he was driving at a safe speed and even slowed down when he noticed the [erratic] traveling of the Fuso truck. In fact, by his own admission, it was a matter of seconds before his Isuzu truck hit the Nissan Pathfinder — a clear indication that he did not actually [slow] down considering the weather and road condition at that time. Had he been actually prudent in driving, the impact on the Nissan Pathfinder would not have been that great or he might have even taken evasive action to avoid hitting it. Sadly, that was not the case as shown by the evidence on record.[32]

The CA also ruled that Orix, as the registered owner of the Fuso, is considered in the eyes of the law and of third persons responsible for the deaths of the passengers of the Pathfinder, regardless of the lack of an employer-employee relationship between it and the driver Loreto.

The CA modified the award of damages as follows:

(a) ₱150,000.00 as indemnity for the death of Spouses Roberto and Josephine Mangalinao and their daughter Marianne Mangalinao;
(b) ₱2,000,000.00 for loss of earning capacity;

---

[32] CA *rollo*, pp. 174-175.

(c) ₱64,200.00 for funeral expenses;
(d) ₱1,000,000.00 as moral damages;
(e) ₱1,000,000.00 as exemplary damages;
(f) ₱400,000.00 as attorney's fees.

If the amounts adjudged remain unpaid upon the finality of this decision, the interest rate shall be twelve percent (12%) per annum computed from the time the judgment bec[a]me final and executory until fully satisfied.

The six percent (6%) interest per annum from the filing of the complaint indicated in the assailed decision is DELETED.

SO ORDERED.[33]

Orix and Sonny joined by Antonio, filed their separate Motions for Reconsideration[34] but same were denied in a Resolution[35] dated August 17, 2006.

Hence, these consolidated petitions.

Petitioners' Respective Arguments

Orix's contentions in its petition may be summarized as follows:

(a) It is not the owner and operator of the Fuso at the time of the collision and should not be held responsible for compensating the minor children of the Mangalinaos;

(b) The Fuso's swerving towards the inner lane where the Pathfinder is cruising is attributable not to the alleged negligence of Loreto but to adverse driving conditions, *i.e.*, the stormy weather and slippery road;

(c) The CA has no reliable evidentiary basis for computing loss of earning capacity as the Balance Sheet and Income Statement of Roberto Mangalinao, as certified by accountant Wilfredo de Jesus for the year 1989, is hearsay evidence; and

---

[33] *Id.* at 180-181.

[34] See Orix's Motion for Reconsideration, *id.* at 182-193, and Sonny and Antonio's Motion for Reconsideration, *id.* at 227-237.

[35] *Supra* note 5.

(d) The award of attorney's fees sustained by the CA is not justified and is exorbitant.

On the other hand, Sonny and Antonio argue in their petition that:

(a) the CA erred in affirming the trial court's erroneous finding that the Isuzu was tailgating, which is contradicted by the material evidence on record;

(b) the proximate cause of the death of the victims is Loreto's gross negligence. Antonio should have been accorded the benefit of the 'emergency rule' wherein he was immediately confronted with a sudden danger and had no time to think of how to avoid it;

(c) the CA should not have awarded damages and attorney's fees because of the total absence of evidence to substantiate them.

In short, petitioners want us to review the finding of negligence by the CA of both truck drivers, the solidary liability of Orix as the registered owner of the Fuso, and the propriety of the damages the CA awarded in favor of the Mangalinao children.

Our Ruling

The finding of negligence of petitioners as found by the lower courts is binding

Negligence and proximate cause are factual issues.[36] Settled is the rule that this Court is not a trier of facts, and the concurrence of the findings of fact of the courts below are conclusive. "A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable"[37] save for several exceptions,[38] two of which

---

[36] *Kierulf v. Court of Appeals*, 336 Phil. 414, 423 (1997).

[37] *OMC Carriers, Inc. v. Nabua*, G.R. No. 148974, July 2, 2010, 622 SCRA 624, 631.

[38] "The exceptions are when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment

petitioners invoke, *i.e.*, that 'the finding is grounded on speculations, surmises, and conjectures,' and that 'the judgment is based on a misapprehension of facts.'

There is no compelling reason to disturb the lower courts' factual conclusions.

With regard to the Fuso, we note the statement given by the helper Charlie before the Pulilan police immediately after the incident:

> *T: Pakisalaysay mo nga ang mga pangyayari?*
> *S: Nuon nga pong oras at petsang nabanggit habang ako ay sakay ng isang truck patungo Pampanga at sa lugar ng pinangyarihan ay namireno ang aking driver dahil sa madulas at nagawi kami sa gawing kaliwa (inner lane) na isang mabilis na pajero (Nissan 4x4) ang bumangga sa gawing unahan hanggang sa tagiliran gawing kaliwa, na ang nasabing pajero ay papalusot (overtake) na pagkatapos nuon ay may isa (1) pang truck na bumangga sa hulihan.*[39]

Based on the helper's statement, the Fuso had lost control, skidded to the left and blocked the way of the Pathfinder, which was about to overtake. The Pathfinder had absolutely no chance to avoid the truck. Instead of slowing down and moving towards the shoulder in the highway if it really needed to stop, it was very negligent of Loreto to abruptly hit the brake in a major

---

is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record." *Sealoader Shipping Corporation v. Grand Cement Manufacturing Corporation*, G.R. Nos. 167363 & 177466, December 15, 2010, 638 SCRA 488, 510 citing *Spouses Rosario v. PCI Leasing and Finance, Inc.*, 511 Phil. 115, 123-124 (2005).

[39] Records, p. 392.

highway wherein vehicles are highly likely to be at his rear. He opened himself up to a major danger and naturally, a collision was imminent.

On the other hand, the parties for the Isuzu contend that the CA erred in ruling that the truck was moving at a fast speed and was tailgating. They assert that they be absolved because the fault lay entirely on the Fuso, which had been zigzagging along the highway. They aver that when the Fuso and the Pathfinder collided in the middle of the highway with the Fuso blocking both lanes of the northbound stretch, there was no room left for driver Antonio to maneuver to avoid them, and that the Pathfinder was hit as a natural consequence.

The Isuzu's driver, Antonio, claims that he and the two vehicles before him were travelling at the right lane of the highway, and on his part, he was travelling at a speed of 50-60 kph and that he was three cars away from the Pathfinder. When the Pathfinder hit the left side of the Fuso, he stepped on the brake but still struck the Pathfinder.[40] He further narrated:

CROSS-EXAMINATION BY ATTY. DOMINGO:

Q And what was this if you noticed anything before the incident happened?

A The Fu[s]o Cargo Truck was swerving from left to right, Sir.

Q How long before this collision did you notice this kind of travelling on the part of the Fu[s]o Cargo Truck?

A About 15 to 20 minutes, Sir.

Q When you noticed this, what if anything, did you do?

A I slow[ed] down, Sir.

Q When you said you slow[ed] down, at what speed do you mean you were travelling?

A More or less 50 kph., Sir.

Q So prior to that, you were travelling faster than 50 to 60 kph. Is that correct?

A Yes, Sir.

---

[40] TSN-Antonio delos Santos, March 18, 1997, pp. 6-9.

Q And [in spite] of that, you testified that you hit the Nissan Pathfinder after it hit the Fu[s]o Cargo Truck?
A Despite the fact that it slow[ed] down, I also hit the Nissan Pathfinder when I skidded because of the slippery condition of the road at that time.

Q And it was precisely this slippery condition of the road that you are talking about that caused you to hit the Nissan Pathfinder?
A Yes, Sir.[41]

x x x x x x x x x

Q I will just go back to the incident on the collision. At what particular point in the vehicle you were driving hit the Nissan Pathfinder? At what portion of the Nissan Pathfinder was it hit by the vehicle that you were driving?
A At the rear portion of the Nissan Pathfinder, Sir.

Q What portion, the right o[r] the left portion of the rear?
A I hit the right side of the rear portion of the Nissan Pathfinder, Sir.

Q And what happened to the Nissan Pathfinder after you hit it on the right rear portion?
A The back portion of the Nissan Pathfinder was damaged, Sir.

Q And what was the extent of the [damage] on the back portion?
A The rear portion was extensively damaged, Sir.

Q After you hit the rear portion of the Nissan Pathfinder, did your vehicle hit any other portion of that Nissan Pathfinder?
A None, Sir.

Q After you hit the Nissan Pathfinder at the rear, in what mnner did it move, if it moved?
A After I hit the rear portion of the Nissan Pathfinder, it did not move anymore, but I also hit the right side of the Fu[s]o Cargo Truck, Sir.

COURT:
For a while, what part of the Fu[s]o Cargo Truck did you hit?

---

[41] TSN-Antonio delos Santos, May 16, 1997, pp. 11-12.

WITNESS:

A I hit the sidings of the Fu[s]o Cargo Truck, Your Honor.[42]

x x x x x x x x x

CROSS-EXAMINATION BY ATTY. GUERRERO:

Q When the Pathfinder hit the Fu[s]o Truck, were you still behind the Pathfinder?
A Yes, Sir.

Q [Were you] still in the same lane that you were travelling 30 minutes before the impact?
A Yes, Sir.

Q You did not move from your lane [in spite] of the collision between the Pathfinder and the Fu[s]o Truck?
A No, Sir. I did not move. I stayed on my lane.[43]

x x x x x x x x x

REDIRECT EXAMINATION BY ATTY. NATIVIDAD:

Q You stated a while ago, during the cross-examination by counsel that the moment you saw the Nissan Pathfinder [smash] against the side of the Fu[s]o, you did not move your Truck anymore. Why did you not swerve to the left or to the right?
A Because there was an [oncoming] bus signalling [sic] to me, Sir.

Q How about to the right, why did you not abruptly maneuver your truck to the right to avoid hitting the Nissan Pathfinder?
A I cannot move my truck to the right side because my truck will not pass thorugh [sic] the lane because it is very narrow and if I will do that, I might fall on the other side of the highway where houses were standing.

Q You said that you were unable to pass through the right side of the road. Why [were you] not able to pass [through] to the right side[?] You said it was too narrow. Why is it too narrow?

---

[42] *Id.* at 15-16.

[43] *Id.* at 19.

A Because the Fu[s]o Truck cut across the highway and my truck cannot pass through that space. It is only in the fast lane where I can pass through, Sir.

Q All the while this bumping or the impact between the Nissan Pathfinder and the Fu[s]o Truck and your bumping against the Nissan Pathfinder happened in a few seconds only. Is that correct?

A Yes, Sir.[44]

The exact positions of the vehicles upon a perusal of the sketch[45] (drawn only after the Fuso was moved to the shoulder to decongest traffic) would show that both the Pathfinder and the Isuzu rested on the highway diagonally. The left part of the former occupied the right portion of the inner lane while the rest of its body was already on the outer lane, indicating that it was about to change lane, *i.e.*, to the inner lane to overtake. Meanwhile, the point of collision between the Pathfinder and the Isuzu occurred on the right portion of the outer lane, with the Isuzu's front part ramming the Pathfinder's rear, while the rest of the 10-wheeler's body lay on the shoulder of the road.

We are not convinced that the Isuzu is without fault. As correctly found by the CA, the smashed front of the Isuzu strongly indicates the strong impact of the ramming of the rear of the Pathfinder that pinned its passengers. Furthermore, Antonio admitted that despite stepping on the brakes, the Isuzu still suddenly smashed into the rear of the Pathfinder causing extensive damage to it, as well as hitting the right side of the Fuso. These militate against Antonio's claim that he was driving at a safe speed, that he had slowed down, and that he was three cars away. Clearly, the Isuzu was not within the safe stopping distance to avoid the Pathfinder in case of emergency. Thus, the 'Emergency Rule' invoked by petitioners will not apply. Such principle states:

[O]ne who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted

---

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

[45] *Supra* note 11.

to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence.[46]

Considering the wet and slippery condition of the road that night, Antonio should have been prudent to reduce his speed and increase his distance from the Pathfinder. Had he done so, it would be improbable for him to have hit the vehicle in front of him or if he really could not avoid hitting it, prevent such extensive wreck to the vehicle in front. With the glaring evidence, he obviously failed to exercise proper care in his driving.

Orix as the operator on record of the Fuso truck is liable to the heirs of the victims of the mishap

Orix cannot point fingers at the alleged real owner to exculpate itself from vicarious liability under Article 2180[47] of the Civil Code. Regardless of whoever Orix claims to be the actual owner of the Fuso by reason of a contract of sale, it is nevertheless primarily liable for the damages or injury the truck registered under it have caused. It has already been explained:

Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses

---

[46] *Gan v. Court of Appeals*, 247-A Phil. 460, 465 (1988).

[47] Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. x x x[48]

Besides, the registered owners have a right to be indemnified by the real or actual owner of the amount that they may be required to pay as damage for the injury caused to the plaintiff,[49] which Orix rightfully acknowledged by filing a third-party complaint against the owner of the Fuso, Manuel.

The heirs deserve to receive the damages awarded by the CA, with modifications as to their amounts

With regard to actual damages, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.[50] Anent the funeral and burial expenses, the receipts issued by San Roque Funeral Homes[51] in the amount of ₱57,000.00 and by St. Peter Memorial Homes[52] in the amount of ₱50,000.00, as supported by the testimonies of the witnesses who secured these documents, prove payment by the respondent heirs of the funeral costs not only of their deceased relatives but of the latter's helpers as well, and thus we find it proper to award the total amount of ₱107,000.00.

---

[48] *Erezo v. Jepte*, 102 Phil. 103, 109 (1957) as reiterated in *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, G.R. No. 162267, July 4, 2008, 557 SCRA 141, 147 and *Cadiente v. Macas*, G.R. No. 161946, November 14, 2008, 571 SCRA 105, 111.

[49] *Erezo v. Jepte*, *id.* at 110.

[50] Civil Code, Article 2199.

[51] Records, p. 414, Exhibit "X". While there is another receipt issued by San Roque dated June 28, 1990, *id.* at 413, Exhibit "X" certifies that ₱57,000.00 have been paid by the Mangalinaos all in all for the services the funeral homes rendered in 1990.

[52] *Id.* at 412.

In addition to ₱150,000.00 indemnity for the death of the spouses Mangalinao and their daughter Marianne as a result of *quasi-delict*, actual damages shall likewise include the loss of the earning capacity of the deceased.[53] In this case, the CA awarded ₱2,000,000.00, which it found reasonable after considering the income statement of Roberto Mangalinao as of the year 1989.[54] Petitioners challenge this for lack of basis, arguing that the CA failed to consider the formula provided by this Court,[55] and that the income statement was not even testified to by the accountant who prepared such document.

In its Decision, the CA, while recognizing that there is a formula provided for computing the loss of the earning capacity of the victims, itself acknowledged that such formula cannot be used to arrive at the net earning capacity using the 1989 income statement alone, more so when such was not authenticated by the proper party. If the net income stated therein was used in the formula, the CA would have awarded the Mangalinao heirs more than ₱18,000,000.00. It did not, however, use the income statement as its sole gauge.

While the net income had not been sufficiently established, the Court recognizes the fact that the Mangalinao heirs had

---

[53] Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

x x x x x x x x x

[54] Records, pp. 415-417. The net income of Roberto was computed at ₱1,300,634.47.

[55] Under established jurisprudence, the formula for net earning capacity is computed at:

Net Earning Capacity = 2/3 x (80 less the age of the victim at the time of death) x (Gross Annual Income less the Reasonable and Necessary Living Expenses, e.g. 50% of the Gross Annual Income).

suffered loss deserving of compensation. What the CA awarded is in actuality a form of temperate damages. Such form of damages under Article 2224[56] of the Civil Code is given in the absence of competent proof on the actual damages suffered.[57] "In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income."[58] In this case, Roberto Mangalinao, the breadwinner of the family, was a businessman engaged in buying and selling *palay* and agricultural supplies that required high capital in its operations and was only 37 at the time of his death. Moreover, the Pathfinder which the Mangalinaos own, became a total wreck. Under the circumstances, we find the award of ₱500,000.00 as temperate damages as reasonable.[59]

Moral damages,[60] it must be stressed, are not intended to enrich plaintiff at the expense of the defendant. They are awarded

---

[56] Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

[57] *Viron Transportation Co., Inc. v. Delos Santos*, 399 Phil. 243, 255 (2000).

[58] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 484.

[59] *Id.*, citing *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 591, 596 (2004).

[60] Predicated on Articles 2217 and 2219 of the Civil Code which provide:

Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) *Quasi-delicts* causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;

to enable the injured party to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he/she had undergone due to the other party's culpable action and must, perforce, be proportional to the suffering inflicted.[61] While the children did not testify before the court, undoubtedly, they suffered the pain and ordeal of losing both their parents and sibling and hence, the award of moral damages is justified. However, the amount must be reduced to ₱500,000.00.[62]

"In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence."[63] It is given by way of example or correction for the public good.[64] Before the court may consider such award, the plaintiff must show his entitlement first to moral, temperate, or compensatory damages,[65] which the respondents have. In the case at bench, the reckless driving of the two trucks involved caused the death of the victims. However, we shall reduce the amount of exemplary damages to ₱200,000.00.[66]

---

(6) Illegal search;
(7) Liberal, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages. The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[61] *OMC Carriers, Inc., v. Nabua, supra* note 37 at 639, citing *Spouses Hernandez v. Spouses Dolor*, 479 Phil. 593, 605 (2004).

[62] *Tan v. OMC Carriers, Inc., supra* note 58 at 488; *Heirs of Redentor Completo v. Albayda, Jr.,* G.R. No. 172200, July 6, 2010, 624 SCRA 97, 115.

[63] Civil Code, Article 2231.

[64] Civil Code, Article 2229.

[65] Civil Code, Article 2234.

[66] *Tan v. OMC Carriers, Inc., supra* note 58 at 488; *Go v. Cordero,* G.R. Nos. 164703 and 164747, May 4, 2010, 620 SCRA 1, 32.

Lastly, because exemplary damages are awarded and that we find it equitable that expenses of litigation should be recovered,[67] we find it sufficient and reasonable enough to grant attorney's fees of ₱50,000.00.[68]

Parenthetically, the Manifestation and Motion with notice of change of address by counsel for respondents; and the transmittal of CA's *rollo* consisting of 256 pages with two attached Supreme Court petitions, one folder of original records and one folder of transcript of stenographic notes, by the Judicial Records Division, CA, are noted.

WHEREFORE, the instant petitions are **PARTIALLY GRANTED.** The Decision of the Court of Appeals in CA-G.R. CV No. 70530 is **AFFIRMED with MODIFICATIONS.** The award of actual damages is hereby **INCREASED** to ₱107,000.00. The award of moral damages is **REDUCED** to ₱500,000.00, the award of temperate damages for loss of earning capacity is likewise **REDUCED** to ₱500,000.00, and the award of exemplary damages and of attorney's fees are **REDUCED** to ₱200,000.00 and ₱50,000.00, respectively. All other awards of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

---

[67] Civil Code, Article 2208(1) and (11).

[68] *Government Service Insurance System v. Pacific Airways Corp.*, G.R. Nos. 170414, 170418 and 170460, August 25, 2010, 629 SCRA 219, 237; *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 704.

[*] Per raffle dated January 10, 2012.

SECOND DIVISION

[G.R. No. 174208. January 25, 2012]

JONATHAN V. MORALES, *petitioner, vs.* **HARBOUR CENTRE PORT TERMINAL, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; EXPLAINED. — Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. In cases of a transfer of an employee, the rule is settled that the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity and that the transfer is not unreasonable, inconvenient or prejudicial to the employee. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal. Our perusal of the record shows that HCPTI miserably failed to discharge the foregoing onus.

2. ID.; ID.; MANAGEMENT'S PREROGATIVE TO CHANGE THE ASSIGNMENTS OF ITS WORKERS OR TO TRANSFER THEM IS NOT ABSOLUTE BUT IS SUBJECT TO LIMITATIONS IMPOSED BY LAW, COLLECTIVE BARGAINING AGREEMENT, AND GENERAL PRINCIPLES OF FAIR PLAY AND JUSTICE. — Admittedly, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. By management prerogative is meant the right of an employer to regulate all aspects of employment, such as the

freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. Although jurisprudence recognizes said management prerogative, it has been ruled that the exercise thereof, while ordinarily not interfered with, is not absolute and is subject to limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice. Thus, an employer may transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. Indeed, having the right should not be confused with the manner in which that right is exercised.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; SINCE THE BURDEN OF EVIDENCE LIES WITH THE PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE, THE RESPONDENT HAS TO PROVE THE ALLEGATIONS IN HIS ADMINISTRATIVE DEFENSES IN THE SAME MANNER THAT THE COMPLAINANT HAS TO PROVE THE ALLEGATIONS IN THE COMPLAINT. — By itself, HCPTI's claim of reorganization is bereft of any supporting evidence in the record. Having pointed out the matter in his 31 March 2003 written protest, Morales was able to prove that HCPTI's existing plantilla did not include an Operations Cost Accounting Department and/or an Operations Cost Accountant. As the party belatedly seeking to justify the reassignment due to the supposed reorganization of its corporate structure, HCPTI, in contrast, did not even bother to show that it had implemented a corporate reorganization and/or approved a new plantilla of positions which included the one to which Morales was being transferred. Since the burden of evidence lies with the party who asserts the affirmative of an issue, the respondent has to prove the allegations in his affirmative defenses in the same manner that the complainant has to prove the allegations in the complaint. In administrative or quasi-judicial proceedings like those conducted before the NLRC, the standard of proof is substantial evidence which is understood to be more than just a scintilla or such amount of

relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

4. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE; TERMINATION OF EMPLOYMENT; ABANDONMENT; REQUIRES THE DELIBERATE, UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO RESUME HIS EMPLOYMENT, WITHOUT ANY INTENTION OF RETURNING; FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL IS INCONSISTENT WITH ABANDONMENT OF EMPLOYMENT. — Although much had been made about Morales' supposed refusal to heed his employer's repeated directives for him to return to work, our perusal of the record also shows that HCPTI's theory of abandonment of employment cannot bear close scrutiny. While ostensibly dated 6 May 2003, the Inter-Office Memorandum labeled as a *Second Warning* was sent to Morales thru the JRS Express only on 9 May 2003 or two (2) days after summons were served on HCPTI, Filart and Singson on 7 May 2003. Sent to Morales on 26 May 2003 or after the parties' initial conference before the Labor Arbiter on 19 May 2003, there was obviously even less reason for HCPTI's 22 May 2003 letter denominated as *Notice to Report for Work and Final Warning*. As a just and valid ground for dismissal, at any rate, abandonment requires the deliberate, unjustified refusal of the employee to resume his employment, without any intention of returning. Since an employee like Morales who takes steps to protest his dismissal cannot logically be said to have abandoned his work, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment.

APPEARANCES OF COUNSEL

Julito M. Briola for petitioner.
Batino Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* is the Decision[1] dated 19 June 2006 rendered by the Special Tenth Division of the Court of Appeals in CA-G.R. SP No. 92491,[2] the dispositive portion of which states:

> WHEREFORE, premises considered, the Petition is GRANTED and the assailed NLRC decision is hereby SET ASIDE. In lieu thereof, the decision of the Labor Arbiter is ordered REINSTATED. No costs.
>
> SO ORDERED.[3]

The Facts

On 16 May 2000, petitioner Jonathan V. Morales (Morales) was hired by respondent Harbour Centre Port Terminal, Inc. (HCPTI) as an Accountant and Acting Finance Officer, with a monthly salary of ₱18,000.00.[4] Regularized on 17 November 2000,[5] Morales was promoted to Division Manager of the Accounting Department, for which he was compensated a monthly salary of ₱33,700.00, plus allowances starting 1 July 2002.[6] Subsequent to HCPTI's transfer to its new offices at Vitas, Tondo, Manila on 2 January 2003, Morales received an inter-office memorandum dated 27 March 2003, reassigning him to Operations Cost Accounting, tasked with the duty of "monitoring and evaluating all consumables requests, gears and equipment"

---

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas.

[2] Record, CA-G.R. SP No. 92491, CA's 19 June 2006 Decision, pp. 266-277.

[3] *Id.* at 277.

[4] Record, NLRC Case No. 00-04-05061-2003, 16 May 2000 Initial Work Instructions, p. 27; 33.

[5] 17 November 2000 Letter, *id.* at 38.

[6] 22 October 2002 Letter, *id.* at 47.

related to the corporation's operations and of interacting with its sub-contractor, Bulk Fleet Marine Corporation. The memorandum was issued by Danilo V. Singson (Singson), HCPTI's new Administration Manager, duly noted by Johnny U. Filart (Filart), its new Vice President for Administration and Finance, and approved by its President and Chief Executive Officer, Vicente T. Suazo, Jr.[7]

On 31 March 2003, Morales wrote Singson, protesting that his reassignment was a clear demotion since the position to which he was transferred was not even included in HCPTI's plantilla. In response to Morales' grievance that he had been effectively placed on floating status,[8] Singson issued a 4 April 2003 inter-office memorandum to the effect that "transfer of employees is a management prerogative" and that HCPTI had "the right and responsibility to find the perfect balance between the skills and abilities of employees to the needs of the business."[9] For the whole of the ensuing month Morales was absent from work and/or tardy. Singson issued to Morales a 29 April 2003 inter-office memorandum denominated as a *First Warning*. The memorandum reminded Morales that, as an employee of HCPTI, he was subject to its rules and regulations and could be disciplinarily dealt with pursuant to its Code of Conduct.[10] In view of the absences Morales continued to incur, HCPTI issued a *Second Warning* dated 6 May 2003[11] and a *Notice to Report for Work and Final Warning* dated 22 May 2003.[12]

In the meantime, Morales filed a complaint dated 25 April 2003 against HCPTI, Filart and Singson, for constructive dismissal, moral and exemplary damages as well as attorney's fees. In support of the complaint which was docketed as NLRC-

---

[7] 27 March 2003 Inter-Office Memorandum, *id.* at 54.

[8] Letter 31 March 2003, *id.* at 57.

[9] 4 April 2003 Inter-Office Memorandum, *id.* at 89.

[10] 29 April 2003 Inter-Office Memorandum, *id.* at 90.

[11] 6 May 2003 Inter-Office Memorandum, *id.* at 92.

[12] 22 May 2003 Inter-Office Memorandum, *id.* at 94.

NCR Case No. 00-04-05061-2003 before the arbitral level of the National Labor Relations Commission (NLRC),[13] Morales alleged that subsequent to its transfer to its new offices, HCPTI had suspended all the privileges enjoyed by its Managers, Division Chiefs and Section Heads; that upon the instruction of Filart, Paulo Christian Suarez, HCPTI's Corporate Treasurer, informed him on 7 March 2003 that he was going to be terminated and had only three (3) weeks to look for another job; that having confirmed his impending termination on 27 March 2003, Filart decided to "temper" the same by instead reassigning him to Operations Cost Accounting; and, that his reassignment to a position which was not included in HCPTI's plantilla was a demotion and operated as a termination from employment as of said date. Maintaining that he suffered great humiliation when, in addition to being deprived of his office and its equipments, he received no further instructions from Filart and Singson regarding his new position, Morales claimed that he was left no other choice but file his complaint for constructive dismissal.[14]

Served with summons on 7 May 2003,[15] HCPTI, Filart and Singson filed their position paper, arguing that Morales abandoned his employment and was not constructively dismissed. Calling attention to the supposed fact that Morales' negligence had resulted in HCPTI's payment of ₱3,350,000.00 in taxes from which it was exempt as a PEZA-registered company, said respondents averred that, confronted by Filart sometime in March 2003 regarding the lapses in his work performance, Morales admitted his inability to handle his tasks at the corporation's Accounting Department; that as a consequence, HCPTI reassigned Morales from managerial accounting to operations cost accounting as an exercise of its management prerogative to assign its employees to jobs for which they are best suited; and, that despite the justification in Singson's 4 April 2003 reply to his 31 March 2003 protest against his reassignment, Morales chose to stop

---

[13] 25 April 2003 Complaint, *id.* at 2.

[14] Morales' Affidavit 15 August 2003, *id.* at 27-31.

[15] 29 April 2006 Summons, *id.* at 6.

reporting for work. Faulting Morales with unjustified refusal to heed the repeated warnings and notices directing him to report for work, HCPTI, Filart and Singson prayed for the dismissal of the complaint and the grant of their counterclaim for attorney's fees.[16]

In receipt of the parties' replies[17] and rejoinders,[18] Labor Arbiter Facundo L. Leda went on to render a Decision dated 21 November 2003, dismissing for lack of merit Morales' complaint for constructive dismissal. In discounting said employees' illegal dismissal from service, the Labor Arbiter ruled that Morales' reassignment was a valid exercise of HCPTI's management prerogative which cannot be construed as constructive dismissal absent showing that the same was done in bad faith and resulted in the diminution of his salary and benefits.[19] On appeal, the foregoing decision was, however, reversed and set aside in the 29 July 2005 Decision rendered by the NLRC's Third Division in NLRC NCR CA No. 038548-04. Finding that Morales' reassignment was a clear demotion despite lack of showing of diminution of salaries and benefits,[20] the NLRC disposed of the appeal in the following wise:

WHEREFORE, the decision dated 21 November 2003 is VACATED and SET ASIDE. The respondent company is ordered to pay complainant the following:

1. Backwages: (28 March 2003 to 21 Nov. 2003)		
a. Salary: ₱33,700 x 7.77 mos.	=	₱261,849.00
b. 13th month pay: ₱261,849/12		21,820.75
		₱283,669.75

[16] Respondents' 11 August 2003 Position Paper, *id.* at 61-76.

[17] Morales 3 September 2003 Reply and Respondents' 11 September 2003 Reply, *id.* at 97-106; 111-119.

[18] Respondents' 26 September 2003 Rejoinder and Morales 30 September 2003 Rejoinder, *id.* at 121-141.

[19] Labor Arbiter's 21 November 2003 Decision, *id.* at 142-156.

[20] NLRC's 29 July 2005 Decision, *id.* at 303-313.

2. Separation Pay: (16 May 2000 to 21 Nov. 2003)
one month for every year of service
(₱33,700.00 x 4) = ₱134,800.00

Total = ₱ 418,469.75

The other claims are DISMISSED.

SO ORDERED.[21]

With the NLRC's 10 October 2005 denial of the motion for reconsideration of the foregoing decision,[22] HCPTI elevated the case to the CA through the Rule 65 petition for *certiorari* docketed before said court's then Special Tenth Division as CA-G.R. SP No. 92491.[23] In view of the 3 November 2005 Entry of Judgment issued by the NLRC,[24] Morales filed a motion for execution[25] which remained unresolved due to the parties' signification of their willingness to explore the possibility of amicably settling the case.[26] On 19 June 2006, the CA rendered the herein assailed decision, reversing the NLRC's 29 July 2005 Decision, upon the following findings and conclusions: (a) Morales' reassignment to Operations Cost Accounting was a valid exercise of HCPTI's prerogative to transfer its employees as the exigencies of the business may require; (b) the transfer cannot be construed as constructive dismissal since it entailed no demotion in rank, salaries and benefits; and, (c) rather than being terminated, Morales refused his new assignment by taking a leave of absence from 4 to 17 April 2003 and disregarding HCPTI's warnings and directives to report back for work.[27]

---

[21] *Id.* at 312.

[22] NLRC's 10 October 2005 Resolution, *id.* at 364-365.

[23] CA *rollo*, CA-G.R. SP No. 92491, HCPTI's 13 December 2005 Rule 65 Petition for *Certiorari*, pp. 2-35.

[24] Record, NLRC Case No. 00-04-0561-2003, NLRC's 3 November 2005 Entry of Judgment.

[25] Morales' 13 February 2006 Motion for Execution, *id.* at 408-409.

[26] 15 August 2006 Minutes of Proceedings before Labor Arbiter Aliman D. Mangandog, *id.* at 454.

[27] CA *rollo*, CA-G.R. SP No. 92491, CA's 19 June 2006 Decision, pp. 266-277.

Morales' motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's Resolution dated 14 August 2006,[28] hence, this petition.

The Issues

Morales proffers the following issues for resolution in seeking the reversal of the CA's 19 June 2006 Decision and 14 August 2006 Resolution, to wit:

I

WHETHER OR NOT THE CHANGE IN THE DESIGNATION/ POSITION OF PETITIONER CONSTITUTED CONSTRUCTIVE DISMISSAL.

II

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION.

III

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION DECISION WHICH HAS GAINED FINALITY MAY BE PREVENTED EXECUTION BY REASON OF THE PETITION FOR *CERTIORARI* FILED BY RESPONDENTS.[29]

The Court's Ruling

We find the petition impressed with merit.

Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay"[30] and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but

---

[28] CA's 14 August 2006 Resolution, *id.* at 315.

[29] *Rollo*, p. 618.

[30] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 766 (2002) citing *Philippine Japan Active Carbon Corporation v. NLRC, et al.*, 253 Phil. 149, 152, (1989).

made to appear as if it were not,[31] constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[32] In cases of a transfer of an employee, the rule is settled that the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity[33] and that the transfer is not unreasonable, inconvenient or prejudicial to the employee. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.[34]

Our perusal of the record shows that HCPTI miserably failed to discharge the foregoing onus. While there was a lack of showing that the transfer or reassignment entailed a diminution of salary and benefits, one fact that must not be lost sight of was that Morales was already occupying the position of Division Manager at HCPTI's Accounting Department as a consequence of his promotion to said position on 22 October 2002. Concurrently appointed as member of HCPTI's Management Committee (MANCOM) on 2 December 2002,[35] Morales was subsequently reassigned by HCPTI "from managerial accounting to Operations Cost Accounting" on 27 March 2003, without any mention of the position to which he was actually being transferred. That the reassignment was a demotion is, however, evident from Morales' new duties which, far from being managerial in nature, were very simply and vaguely described as inclusive of "monitoring and evaluating all consumables requests, gears and

---

[31] *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 236.

[32] *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).

[33] *Philippine Veterans Bank v. National Labor Relations Commission*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 212.

[34] *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 51 (2006).

[35] Record, NLRC Case No. 00-04-0561-2003, 2 December 2002 Inter-Office Memorandum, p. 49.

equipments related to [HCPTI's] operations" as well as "close interaction with [its] sub-contractor Bulk Fleet Marine Corporation."[36]

We have carefully pored over the records of the case but found no evidentiary basis for the CA's finding that Morales was designated as head of HCPTI's Operations Department[37] which, as indicated in the corporation's plantilla, had the Vice-President for Operations at its helm.[38] On the contrary, Morales' demotion is evident from the fact that his reassignment entailed a transfer from a managerial position to one which was not even included in the corporation's plantilla. For an employee newly charged with functions which even the CA recognized as pertaining to the Operations Department, it also struck a discordant chord that Morales was, just the same, directed by HCPTI to report to Filart, its Vice- President for Finance[39] with whom he already had a problematic working relationship.[40] This matter was pointed out in Morales' 31 March 2003 protest but was notably brushed aside by HCPTI by simply invoking management prerogative in its inter-office memorandum dated 4 April 2003.[41]

Admittedly, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[42] By management prerogative is meant the right of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and

---

[36] 27 March 2003 Inter-Office Memorandum, *id.* at 54.

[37] Record, CA-G.R. SP No. 92491, p. 273.

[38] Record, NLRC Case No. 00-04-0561-2003, p. 55.

[39] *Id.* at 50; 54.

[40] *Id.* at 102.

[41] *Id.* at 89.

[42] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, 7 July 2004, 433 SCRA 756, 766.

discipline, and dismissal and recall of workers.[43] Although jurisprudence recognizes said management prerogative, it has been ruled that the exercise thereof, while ordinarily not interfered with,[44] is not absolute and is subject to limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice.[45] Thus, an employer may transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[46] Indeed, having the right should not be confused with the manner in which that right is exercised.[47]

In its comment to the petition, HCPTI argues that Morales' transfer was brought about by the reorganization of its corporate structure in 2003 which was undertaken in the exercise of its management prerogative to regulate every aspect of its business.[48] This claim is, however, considerably at odds with HCPTI's assertions before the Labor Arbiter to the effect, among other matters, that Morales erroneously and negligently authorized the repeated payments of realty taxes from which the corporation was exempt as a PEZA-registered company; that confronted by Filart regarding his poor work performance which resulted in losses amounting to ₱3,350,000.00, Morales admitted his inability to handle his job at the accounting department; and, that as a consequence, HCPTI decided to reassign him to the

---

[43] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, 13 April 2010, 618 SCRA 218, 237.

[44] *Castillo v. National Labor Relations Commission*, 367 Phil. 605, 616 (1999).

[45] *Norkis Trading Co., Inc. v. NLRC*, 504 Phil. 709, 718 (2005).

[46] *Herida v. F&C Pawnshop and Jewelry Store*, G.R. No. 172601, 16 April 2009, 585 SCRA 395, 401.

[47] *Emirate Security and Maintenance Systems, Inc. and Roberto A. Yan v. Menese*, G.R. No. 182848, 5 October 2011.

[48] *Rollo*, pp. 109-110.

Operations Cost Accounting.[49] Without so much as an affidavit from Filart to prove the same, this purported reason for the transfer was, moreover, squarely refuted by Morales' 31 March 2003 protest against his reassignment.[50]

By itself, HCPTI's claim of reorganization is bereft of any supporting evidence in the record. Having pointed out the matter in his 31 March 2003 written protest, Morales was able to prove that HCPTI's existing plantilla did not include an Operations Cost Accounting Department and/or an Operations Cost Accountant.[51] As the party belatedly seeking to justify the reassignment due to the supposed reorganization of its corporate structure, HCPTI, in contrast, did not even bother to show that it had implemented a corporate reorganization and/or approved a new plantilla of positions which included the one to which Morales was being transferred. Since the burden of evidence lies with the party who asserts the affirmative of an issue, the respondent has to prove the allegations in his affirmative defenses in the same manner that the complainant has to prove the allegations in the complaint.[52] In administrative or quasi-judicial proceedings like those conducted before the NLRC, the standard of proof is substantial evidence which is understood to be more than just a scintilla or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[53]

Having alleged 27 March 2003 as the date of his constructive dismissal, Morales was erroneously taken to task by the CA for inconsistently claiming that he took a leave of absence from 4 April 2003 to 17 April 2003.[54] As the date of his reassignment, 27 March 2003 was understandably specified by Morales as

---

[49] Record, NLRC Case No. 00-04-0561-2003, pp. 63-64; 70; 98-99.

[50] Letter dated 31 March 2003, *id.* at 57.

[51] HCPTI Plantilla of Positions for CY 2002, *id.* at 55-56.

[52] *Aklan Electric Cooperative, Incorporated v. NLRC*, 380 Phil. 225, 245 (2000).

[53] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).

[54] Record, CA-G.R. SP No. 92491, p. 275.

the date of his constructive dismissal since it was on said date that he considered himself demoted. Alongside his reporting for duty subsequent thereto, Morales' leave of absence on the aforesaid dates is, in turn, buttressed by HCPTI's 29 April 2003 Inter-Office Memorandum which, labeled as a *First Warning*, called attention to his being "either absent or tardy from work on several occasions during the entire month of April".[55] Since Morales could not have been tardy had he outrightly rejected his reassignment, this Inter-Office Memorandum notably debunks HCPTI's contention that he altogether stopped reporting for work after receiving Singson's reply to his 31 March 2003 protest against the demotion that resulted from his reassignment to Operations Cost Accounting.[56]

Although much had been made about Morales' supposed refusal to heed his employer's repeated directives for him to return to work, our perusal of the record also shows that HCPTI's theory of abandonment of employment cannot bear close scrutiny. While ostensibly dated 6 May 2003, the Inter-Office Memorandum labeled as a *Second Warning* was sent to Morales thru the JRS Express only on 9 May 2003[57] or two (2) days after summons were served on HCPTI, Filart and Singson on 7 May 2003.[58] Sent to Morales on 26 May 2003 or after the parties' initial conference before the Labor Arbiter on 19 May 2003,[59] there was obviously even less reason for HCPTI's 22 May 2003 letter denominated as *Notice to Report for Work and Final Warning*. As a just and valid ground for dismissal, at any rate, abandonment requires the deliberate, unjustified refusal of the employee to resume his employment,[60] without any intention

---

[55] Record, NLRC Case No. 00-04-0561-2003, Inter-Office Memorandum dated 29 April 2003, p. 90.

[56] *Rollo*, p. 141.

[57] Record, NLRC Case No. 00-04-0561-2003, JRS Express' 5 May 2009 Receipt, p. 93.

[58] Return Cards for Summons, *id.* at 3-5.

[59] 19 May 2003 Minutes, *id.* at 7.

[60] *Aliten v. U-Need Lumber & Hardware*, G.R. No. 168931, 12 September 2006, 501 SCRA 577, 586.

of returning.[61] Since an employee like Morales who takes steps to protest his dismissal cannot logically be said to have abandoned his work, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment.[62]

WHEREFORE, premises considered, the petition is **GRANTED** and the CA's assailed 19 June 2006 Decision is, accordingly, **REVERSED** and **SET ASIDE.** In lieu thereof, another is entered **REINSTATING** the NLRC's 29 July 2005 Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 176298. January 25, 2012]

ANITA L. MIRANDA, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; THEFT; ELEMENTS. — The elements of the crime of theft as provided for in Article 308 of the Revised

---

[61] *Baron Republic Theatrical v. Peralta*, G.R. No. 170525, 2 October 2009, 602 SCRA 258, 265.

[62] *Megaforce Security and Allied Services, Inc. v. Lactao,* G.R. No. 160940, 21 July 2008, 559 SCRA 110, 118.

[*] Associate Justice Estela M. Perlas-Bernabe is designated as Acting Member of the Second Division per Special Order No. 1174 dated 9 January 2012.

Penal Code are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

2. ID.; QUALIFIED THEFT; ELEMENTS. — Theft becomes qualified when any of the following circumstances under Article 310 is present: (1) the theft is committed by a domestic servant; (2) *the theft is committed with grave abuse of confidence*; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY SHOWING THAT THE LOWER COURTS OVERLOOKED SUBSTANTIAL FACTS AND CIRCUMSTANCES, WHICH IF CONSIDERED, WOULD CHANGE THE RESULT OF THE CASE, THE COURT GIVES DEFERENCE TO THE TRIAL COURT'S APPRECIATION OF THE FACTS AND OF THE CREDIBILITY OF WITNESSES. — We find no cogent reason to disturb the findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court has held that the facts found by the trial court, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial. Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.

4. CRIMINAL LAW; QUALIFIED THEFT; AS LONG AS THE PROPERTY TAKEN BY THE ACCUSED DOES NOT BELONG TO HIM, IT IS IMMATERIAL WHETHER SAID OFFENDER STOLE IT FROM THE OWNER, A MERE POSSESSOR, OR EVEN A THIEF OF THE PROPERTY. — [W]e agree with the CA when it gave short shrift to petitioner's argument that full ownership of the thing stolen needed to be established first before she could be convicted of qualified theft. As correctly held by the CA, the subject of the crime of theft is any personal property belonging to another. Hence, as long as the property taken does not belong to the accused who has a valid claim thereover, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property. In any event, as stated above, the factual findings of the courts *a quo* as to the ownership of the amount petitioner stole is conclusive upon this Court, the finding being adequately supported by the evidence on record.

5. ID.; ID.; IMPOSABLE PENALTY. — However, notwithstanding the correctness of the finding of petitioner's guilt, a modification is called for as regards the imposable penalty. On the imposition of the correct penalty, *People v. Mercado* is instructive. Pursuant to said case, in the determination of the penalty for qualified theft, note is taken of the value of the property stolen, which is ₱797,187.85 in this case. Since the value exceeds ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*. To determine the additional years of imprisonment to be added to the basic penalty, the amount of ₱22,000.00 is deducted from ₱797,187.85, which yields a remainder of ₱775,187.85. This amount is then divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. The end result is that 77 years should be added to the basic penalty. However, the total imposable penalty for simple theft should not exceed 20 years. Thus, had petitioner committed simple theft, the penalty would be 20 years of *reclusion temporal*. As the penalty for qualified theft is two degrees higher, the trial court, as well as the appellate court, should have imposed the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

Marcelino F. Bautista, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Anita L. Miranda appeals the January 11, 2007 Decision[1] of the Court of Appeals (CA) affirming the judgment[2] of the Regional Trial Court (RTC) of Manila, Branch 20, convicting her of qualified theft.

Petitioner was charged with qualified theft in an Information dated November 28, 2002. The Information reads:

> That in or about and during the period comprised between April 28, 1998 and May 2, 2002, inclusive, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the total amount of ₱797,187.85 belonging to VIDEO CITY COMMERCIAL, INC. and VIVA VIDEOCITY, INC. represented by MIGUEL Q. SAMILLANO, in the following manner, to wit: by making herself the payee in forty-two pre-signed BPI Family Bank checks in the account of Video City Commercial and Jefferson Tan (the latter as franchise[e]) and encashing said checks in the total amount of ₱797,187.85, for her personal benefit, to the damage and prejudice of said owner in the aforesaid amount of ₱797,187.85, Philippine Currency.
>
> That the said accused acted with grave abuse of confidence, she being then employed as bookkeeper in the aforesaid firm and as such was privy to the financial records and checks belonging to

---

[1] *Rollo*, pp. 24-35. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Conrado M. Vasquez, Jr. and Lucenito N. Tagle concurring. The assailed decision was rendered in CA-G.R. CR No. 29858.

[2] CA *rollo*, pp. 33-42. The decision of the RTC was penned by Judge Marivic T. Balisi-Umali.

complainant and was actually entrusted with the said financial records, documents and checks and their transactions thereof in behalf of complainant.[3]

Upon arraignment, petitioner pleaded not guilty. Trial thereafter ensued.

Summarily, the prosecution proved the following facts: Video City Commercial, Inc. (VCCI) and Viva Video City, Inc. (Viva) were sister companies which managed a chain of stores known as Video City. These stores, some company-owned while others were operated in joint ventures with franchisees, were engaged in the sale and rental of video-related merchandises. During the period of April 28, 1998 to May 2, 2002, petitioner was the accounting clerk and bookkeeper of VCCI and Viva. One of her duties was to disburse checks for the accounts she handled. She was assigned to handle twelve (12) Video City store franchise accounts, including those of Tommy Uy, Wilma Cheng, Jefferson Tan and Sharon Cuneta. As regards the franchisee Jefferson Tan, who was out of the country most of the time, Tan pre-signed checks to cover the store's disbursements and entrusted them to petitioner. The pre-signed checks by Jefferson Tan were from a current account maintained jointly by VCCI and Jefferson Tan at BPI Family Bank, Sta. Mesa. There was also an existing agreement with the bank that any disbursement not exceeding ₱20,000.00 would require only Tan's signature.[4]

Taking advantage of Tan's constant absence from the country, petitioner was able to use Tan's joint-venture bank account with VCCI as a clearing house for her unauthorized transfer of funds. Petitioner deposited VCCI checks coming from other franchisees' accounts into the said bank account, and withdrew the funds by writing checks to her name using the checks pre-signed by Tan. It was only after petitioner went on maternity leave and her subsequent resignation from the company in May 2002 that an audit was conducted since she refused to turn over all the

---

[3] Records, p. 1.

[4] CA *rollo*, pp. 34-39; *rollo*, pp. 26-27.

financial records in her possession. The audit was made on all the accounts handled by petitioner and it was discovered that she made unauthorized withdrawals and fund transfers amounting to ₱4,877,759.60.[5]

The prosecution, in proving that petitioner had unlawfully withdrawn ₱797,187.85 for her own benefit, presented as its witness Jose Laureola, the assistant manager/acting cashier of BPI Family Bank, Sta. Mesa Branch. Laureola presented a microfilm of the checks, the encashed checks and deposit slips. He also presented the bank statement of VCCI which showed the encashment of forty-two (42) checks from the account of VCCI and Jefferson Tan amounting to ₱797,187.85.[6]

In the face of the prosecution's evidence, petitioner chose not to present any evidence during trial.

On October 7, 2005, the RTC found petitioner guilty beyond reasonable doubt of qualified theft. The RTC sentenced her to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years, two (2) months and twenty-one (21) days of *reclusion temporal*, as maximum, and to pay VCCI ₱797,187.85 plus costs.[7]

The RTC found that the prosecution was able to establish that the checks deposited to the joint account of VCCI and Jefferson Tan at BPI Family Bank were unlawfully withdrawn by the petitioner without VCCI's consent. Petitioner took advantage of her position with VCCI and her access to the checks and its bank accounts.

On appeal, the CA affirmed the decision of the RTC. The CA held that contrary to petitioner's claim that the prosecution failed to show who was the absolute owner of the thing stolen, there was no doubt that the personal property taken by petitioner does not belong to her but to Jefferson Tan and his joint venture partner VCCI. Thus, petitioner was able to gain from taking

---

[5] *Id.*

[6] *Id.* at 38.

[7] *Id.* at 39-41.

other people's property without their consent. More, she was able to perpetrate the crime due to her position in VCCI which gave her access to the joint venture account of VCCI and Jefferson Tan, both of whom reposed trust and confidence in her. She exploited said trust and confidence to their damage in the amount of ₱797,187.85.

Undaunted, petitioner filed the instant petition for review on *certiorari* before this Court, raising the following issues:

1. WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT.

1-a. WHETHER THE PHRASE "X X X SHALL TAKE THE PERSONAL PROPERTY OF ANOTHER WITHOUT THE LATTER'S CONSENT X X X" IN ARTICLE 308 OF THE REVISED PENAL CODE IN RELATION TO ARTICLE 310 OF THE SAME CODE WOULD REQUIRE AS AN ELEMENT OF "QUALIFIED THEFT" AN ESTABLISHED PROOF OF "OWNERSHIP" OF THE PROPERTY ALLEGEDLY STOLEN?

1-b. WHETHER IT IS IMPERATIVE THAT THE DUE EXECUTION AND AUTHENTICITY OF THE ALLEGED SIGNATURES OF THE ACCUSED IN THE CHECKS BE FULLY ESTABLISHED AND IDENTIFIED AND IF NOT SO ESTABLISHED AND IDENTIFIED, THE SAME WOULD BE A FATAL FLAW IN THE EVIDENCE OF THE PROSECUTION WHICH INEVITABLY WOULD LEAD TO ACCUSED'S ACQUITTAL?

1-c. WHETHER THE FAILURE TO ESTABLISH AND AUTHENTICATE OR IDENTIFY THE SIGNATURES OF THE ACCUSED ANNIE MIRANDA AND JEFFERSON TAN CONSTITUTED A FATAL FLAW IN PROVING THAT THE ACCUSED AND JEFFERSON TAN WERE THE AUTHORS OF SAID SIGNATURES?

1-d. [WHETHER THE] CONCLUSION OF FACTS BY THE REGIONAL TRIAL COURT AND COURT OF APPEALS ARE NOT SUPPORTED BY EVIDENCE.

1-e. WHETHER THE CHECKS AND VOUCHERS PRESENTED AS EVIDENCE NOT IN THEIR ORIGINALS SHOULD HAVE BEEN DENIED ADMISSION BY THE COURT *A QUO,* THERE BEING

NO SUFFICIENT FACTS ADDUCED TO JUSTIFY THE PRESENTATION OF XEROX COPIES OR SECONDARY EVIDENCE.[8]

Essentially, the issue for our resolution is whether the CA correctly affirmed petitioner's conviction for qualified theft.

Petitioner insists that she should not have been convicted of qualified theft as the prosecution failed to prove the private complainant's absolute ownership of the thing stolen. Further, she maintains that Jefferson Tan's signatures on the checks were not identified by any witness who is familiar with his signature. She likewise stresses that the checks and vouchers presented by the prosecution were not original copies and that no secondary evidence was presented in lieu of the former.

The appeal lacks merit.

A careful review of the records of this case and the parties' submissions leads the Court to conclude that there exists no cogent reason to disturb the decision of the CA. We note that the arguments raised by petitioner in her petition are a mere rehash of her arguments raised before, and correctly resolved by, the CA.

The elements of the crime of theft as provided for in Article 308[9] of the Revised Penal Code are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[10]

---

[8] *Rollo,* pp. 12-14.

[9] Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

x x x x x x x x x

[10] *People v. Sison*, G.R. No. 123183, January 19, 2000, 322 SCRA 345, 363-364.

Theft becomes qualified when any of the following circumstances under Article 310[11] is present: (1) the theft is committed by a domestic servant; (2) *the theft is committed with grave abuse of confidence*; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[12]

Here, the prosecution was able to prove beyond reasonable doubt that the amount of ₱797,187.85 taken does not belong to petitioner but to VCCI and that petitioner took it without VCCI's consent and with grave abuse of confidence by taking advantage of her position as accountant and bookkeeper. The prosecution's evidence proved that petitioner was entrusted with checks payable to VCCI or Viva by virtue of her position as accountant and bookkeeper. She deposited the said checks to the joint account maintained by VCCI and Jefferson Tan, then withdrew a total of ₱797,187.85 from said joint account using the pre-signed checks, with her as the payee. In other words, the bank account was merely the instrument through which petitioner stole from her employer VCCI.

We find no cogent reason to disturb the above findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court has held that the facts found by the trial court, as affirmed *in toto* by

---

[11] Art. 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

[12] *People v. Sison*, *supra* note 10 at 364.

the CA, are as a general rule, conclusive upon this Court[13] in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable.[14] The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.[15] Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the

---

[13] See *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 584, citing *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 283.

[14] See *Reyes v. CA*, 328 Phil. 171, 179-180 (1996) citing *Floro v. Llenado*, 314 Phil. 715, 727-728 (1995). The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, such as:

(1) when the inference made is manifestly mistaken, absurd or impossible;

(2) when there is a grave abuse of discretion;

(3) when the finding is grounded entirely on speculations, surmises or conjectures;

(4) when the judgment of the Court of Appeals is based on misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) when the findings of the Court of Appeals are contrary to those of the trial court;

(8) when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

[15] *People v. Martinada*, G.R. Nos. 66401-03, February 13, 1991, 194 SCRA 36, 41.

trial court's appreciation of the facts and of the credibility of witnesses.

Moreover, we agree with the CA when it gave short shrift to petitioner's argument that full ownership of the thing stolen needed to be established first before she could be convicted of qualified theft. As correctly held by the CA, the subject of the crime of theft is any personal property belonging to another. Hence, as long as the property taken does not belong to the accused who has a valid claim thereover, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property.[16] In any event, as stated above, the factual findings of the courts *a quo* as to the ownership of the amount petitioner stole is conclusive upon this Court, the finding being adequately supported by the evidence on record.

However, notwithstanding the correctness of the finding of petitioner's guilt, a modification is called for as regards the imposable penalty. On the imposition of the correct penalty, *People v. Mercado*[17] is instructive. Pursuant to said case, in the determination of the penalty for qualified theft, note is taken of the value of the property stolen, which is ₱797,187.85 in this case. Since the value exceeds ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*.

To determine the additional years of imprisonment to be added to the basic penalty, the amount of ₱22,000.00 is deducted from ₱797,187.85, which yields a remainder of ₱775,187.85. This amount is then divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. The end result is that 77 years should be added to the basic penalty. However, the total imposable penalty for simple theft should not exceed 20 years. Thus, had petitioner committed simple theft, the penalty would be 20 years of *reclusion temporal*. As the penalty for qualified theft is two

---

[16] Florenz D. Regalado, *CRIMINAL LAW CONSPECTUS*, First edition, p. 522.

[17] G.R. No. 143676, February 19, 2003, 397 SCRA 746, 758.

degrees higher, the trial court, as well as the appellate court, should have imposed the penalty of *reclusion perpetua*.

WHEREFORE, the January 11, 2007 Decision of the Court of Appeals in CA-G.R. CR No. 29858 affirming the conviction of petitioner Anita L. Miranda for the crime of qualified theft is **AFFIRMED** with the **MODIFICATION** that the penalty is increased to *reclusion perpetua*.

With costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177578. January 25, 2012]

MAGSAYSAY MARITIME CORPORATION and/or WASTFEL-LARSEN MANAGEMENT A/S,[*] *petitioners, vs.* **OBERTO S. LOBUSTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; LABOR CODE PROVISION ON PERMANENT TOTAL DISABILITY APPLIES TO SEAFARERS. — Petitioners are mistaken that it is only the POEA Standard Employment Contract that must be considered in determining Lobusta's disability. In *Palisoc v. Easways Marine, Inc.*, we said that whether the Labor Code's provision on permanent total disability applies to seafarers is already a settled matter. In *Palisoc*, we cited the earlier case of *Remigio*

[*] Also referred to as Westfal-Larsen Management A/S.

v. National Labor Relations Commission where we said (1) that the standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247 "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith," and "to promote and protect the well-being of Filipino workers overseas"; (2) that Section 29 of the 1996 POEA Standard Employment Contract itself provides that all rights and obligations of the parties to the contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory; and (3) that even without this provision, a contract of labor is so impressed with public interest that the Civil Code expressly subjects it to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects. x x x. In *Vergara v. Hammonia Maritime Services, Inc.*, we also said that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance. Thus, the CA was correct in applying the Labor Code provisions in Lobusta's claim for disability benefits. The Labor Arbiter erred in failing to apply them.

2. ID.; ID.; CONCEPT OF PERMANENT TOTAL DISABILITY. — Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads: **ART. 192.** ***Permanent total disability***. — x x x (c) The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules; x x x Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads: Sec. 2. *Disability*. — x x x (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. x x x. According to *Vergara*, these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand

with the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract which reads: Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician[,] but in no case shall this period exceed one hundred twenty (120) days. x x x To be sure, there is one Labor Code concept of permanent total disability, as stated in Article 192(c)(1) of the Labor Code, as amended, and the ECC Rules. We also note that the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract was lifted verbatim from the first paragraph of Section 20(B)(3) of the 1996 POEA Standard Employment Contract, to wit: Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days. Applying the foregoing considerations, we agree with the CA that Lobusta suffered permanent total disability. On this point, the NLRC ruling was not in accord with law and jurisprudence.

3. ID.; ID.; ID.; UNFITNESS TO WORK FOR 11-13 MONTHS IS CONSIDERED PERMANENT TOTAL DISABILITY; AWARD OF US$60,000.00 AS PERMANENT TOTAL DISABILITY, AFFIRMED. — Upon repatriation, Lobusta was first examined by the Pulmonologist and Orthopedic Surgeon on May 22, 1998. The maximum 240-day (8-month) medical-treatment period expired, but no declaration was made that Lobusta is fit to work. Nor was there a declaration of the existence of Lobusta's permanent disability. On February 16, 1999, Lobusta was still prescribed medications for his lumbosacral pain and was advised to return for reevaluation. May 22, 1998 to February 16, 1999 is 264 days or 6 days short of 9 months. On Lobusta's other ailment, Dr. Roa's clinical summary also shows that as of December 16, 1999, Lobusta was still unfit to resume his normal work as a seaman due to the persistence of his symptoms. But neither did Dr. Roa declare the existence of Lobusta's permanent disability. Again, the maximum 240-day medical treatment period had already expired. May 22, 1998 to December 16, 1999 is 19 months or 570 days. In *Remigio*, unfitness to work for 11-13

months was considered permanent total disability. So it must be in this case. And Dr. David's much later report that Lobusta "ought not to be considered fit to return to work as an Able Seaman" validates that his disability is permanent and total as provided under the POEA Standard Employment Contract and the Labor Code, as amended. x x x. Thus, we affirm the award to Lobusta of US$60,000 as permanent total disability benefits, the maximum award under Section 30 and 30-A of the 1996 POEA Standard Employment Contract. We also affirm the award of US$2,060 as sickness allowance which is not contested and appears to have been accepted by the parties.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; CONDITIONS FOR THE AWARD THEREOF; PRESENT. — On the matter of attorney's fees, under Article 2208 of the Civil Code, attorney's fees can be recovered in actions for recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. Such conditions being present here, we affirm the award of attorney's fees, which we compute as US$3,103 or 5% of US$62,060.

5. REMEDIAL LAW; COURTS; RESOLUTIONS OF THE COURT REQUIRING THE PARTIES AND THEIR COUNSELS TO FILE PLEADINGS ARE NOT TO BE CONSTRUED AS MERE REQUESTS, NOR SHOULD THEY BE COMPLIED WITH PARTIALLY, INADEQUATELY OR SELECTIVELY. — [W]e note petitioners' repeated failure to comply with our resolutions, as well as the orders issued by the tribunals below. We remind petitioners and their counsels that our resolutions requiring them to file pleadings are not to be construed as mere requests, nor should they be complied with partially, inadequately or selectively. Counsels are also reminded that lawyers are called upon to obey court orders and willful disregard thereof will subject the lawyer not only for contempt but to disciplinary sanctions as well. We may also dismiss petitioners' appeal for their failure to comply with any circular, directive or order of the Supreme Court without justifiable cause. In fact, we actually denied the instant petition on July 9, 2008 since petitioners failed to file the required reply to the comment filed by Lobusta. On reconsideration, however, we reinstated the petition. But when

we required the parties to submit memoranda, petitioners again did not comply. As regards the proceedings below, they did not file their position paper on time, despite the extensions granted by the Labor Arbiter. Nor did they file the comment and memorandum required by the CA.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Linsangan Linsangan & Linsangan Law Offices for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioners appeal the Decision[1] dated August 18, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 74035 and its Resolution[2] dated April 19, 2007, denying the motion for reconsideration thereof. The CA declared that respondent is suffering from permanent total disability and ordered petitioners to pay him US$2,060 as medical allowance, US$60,000 as disability benefits and 5% of the total monetary award as attorney's fees.

The facts follow:

Petitioner Magsaysay Maritime Corporation is a domestic corporation and the local manning agent of the vessel MV "Fossanger" and of petitioner Wastfel-Larsen Management A/S.[3]

Respondent Oberto S. Lobusta is a seaman who has worked for Magsaysay Maritime Corporation since 1994.[4] In March

[1] *Rollo*, pp. 34-44. Penned by Associate Justice Santiago Javier Ranada with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino.

[2] *Id.* at 46-47. Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Lucas P. Bersamin (now a Member of this Court) and Amelita G. Tolentino.

[3] *Id.* at 11.

[4] Records, p. 50.

1998, he was hired again as Able Seaman by Magsaysay Maritime Corporation in behalf of its principal Wastfel-Larsen Management A/S. The employment contract[5] provides for Lobusta's basic salary of US$515 and overtime pay of US$206 per month. It also provides that the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels, approved per Department Order No. 33 of the Department of Labor and Employment and Memorandum Circular No. 55 of the Philippine Overseas Employment Administration (POEA Standard Employment Contract), both series of 1996, shall be strictly and faithfully observed.

Lobusta boarded MV "Fossanger" on March 16, 1998.[6] After two months, he complained of breathing difficulty and back pain. On May 12, 1998, while the vessel was in Singapore, Lobusta was admitted at Gleneagles Maritime Medical Center and was diagnosed to be suffering from severe acute bronchial asthma with secondary infection and lumbosacral muscle strain. Dr. C K Lee certified that Lobusta was fit for discharge on May 21, 1998, for repatriation for further treatment.[7]

Upon repatriation, Lobusta was referred to Metropolitan Hospital. The medical coordinator, Dr. Robert Lim, issued numerous medical reports regarding Lobusta's condition. Lobusta was first seen by a Pulmonologist and an Orthopedic Surgeon on May 22, 1998.[8] Upon reexamination by the Orthopedic Surgeon on August 11, 1998, he opined that Lobusta needs surgery, called decompression laminectomy,[9] which was done on August 30, 1998.[10] On October 12, 1998, Dr. Lim issued another medical report stating the opinion of the Orthopedic Surgeon that the prognosis for Lobusta's recovery after the spine

---

[5] *Id.* at 3.

[6] *Rollo*, p. 49.

[7] *Id.* at 34-35, 73.

[8] *Id.* at 74.

[9] *Id.* at 81.

[10] *Id.* at 83.

surgery is good. However, the Pulmonologist opined that Lobusta's obstructive airway disease needs to be monitored regularly and that Lobusta needs to be on bronchodilator indefinitely. Hence, Lobusta should be declared disabled with a suggested disability grading of 10-20%.[11] The suggestion was not heeded and Lobusta's treatment continued.

On February 16, 1999, Lobusta was reexamined. Dr. Lim reported that Lobusta still complains of pain at the lumbosacral area although the EMG/NCV[12] test revealed normal findings. Lobusta was prescribed medications and was advised to return on March 16, 1999 for re-evaluation.[13]

On February 19, 1999, Dr. Lim reported that Lobusta has been diagnosed to have a moderate obstructive pulmonary disease which tends to be a chronic problem, such that Lobusta needs to be on medications indefinitely. Dr. Lim also stated that Lobusta has probably reached his maximum medical care.[14]

Petitioners "then faced the need for confirmation and grading by a second opinion" and "it took the parties time to agree on a common doctor, until they agreed on Dr. Camilo Roa."[15] Dr. Roa's clinical summary states that Lobusta's latest follow-up check-up was on December 16, 1999; that Lobusta is not physically fit to resume his normal work as a seaman due to the persistence of his symptoms; that his asthma will remain chronically active and will be marked by intermittent exacerbations; and that he needs multiple controller medications for his asthma.[16]

As the parties failed to reach a settlement as to the amount to which Lobusta is entitled, Lobusta filed on October 2, 2000,

---

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

[12] Electromyography/Nerve Conduction Velocity.

[13] *Rollo*, p. 91.

[14] *Id.* at 92.

[15] *Id.* at 53.

[16] *Id.* at 95.

a complaint[17] for disability/medical benefits against petitioners before the National Labor Relations Commission (NLRC).

Sometime in October 2000, Magsaysay Maritime Corporation suggested that Lobusta be examined by another company-designated doctor for an independent medical examination. The parties agreed on an independent medical examination by Dr. Annette M. David, whose findings it was agreed upon, would be considered final.

On November 17, 2000, Dr. David interviewed and examined Lobusta.[18] Pertinent portions of Dr. David's report read:

x x x ***Based on the Classes of Respiratory Impairment as described in the American Medical Association's Guidelines for the Evaluation of Permanent Impairment, this is equivalent to Class 2 or Mild Impairment of the Whole Person (level of impairment: 10-25% of the whole person). Given the persistence of the symptoms despite an adequate medical regimen, the impairment may be considered permanent.***

The determination of disability and fitness for duty/return-to-work is more complex. During asymptomatic periods, Mr. Lobusta could conceivably be capable of performing the duties and responsibilities of an Able Seaman as listed in the memos provided by Pandiman (Duties of an Able Seaman on board an average vessel, January 26, 2000; and Deck Crew general Responsibilities, 95.11.01). However, consideration needs to be given to the following:

- During the personal interview, Mr. Lobusta reported the need to use a self-contained breathing apparatus (SCBA) for "double bottom" work. While the use of these devices may not appreciably increase the work of breathing, an individual who develops an acute asthmatic attack under conditions requiring the use of an SCBA (oxygen-poor atmospheres) may be at increased risk for a poor outcome.

- When out at sea, the medical facilities on board an average vessel may not be adequate to provide appropriate care for an acute asthmatic exacerbation. Severe asthmatic attacks require life-

---

[17] Records, p. 2.

[18] *Rollo*, pp. 101-103.

sustaining procedures such as endotracheal intubation and on occasion, mechanical ventilation. Asthma can be fatal if not treated immediately. The distance from and the time required to transport an individual having an acute asthmatic attack on a vessel at sea to the appropriate medical facilities on land are important factors in the decision regarding fitness for duty.

• Several of the duties listed for an Able Seaman require the use of a variety of chemical substances (*e.g*. grease, solvents, cleaning agents, de-greasers, paint, *etc*.), many of which are known or suspected asthma triggers in sensitized individuals. The potential for an Able Seaman's exposure to these asthma triggers is considerable.

***Taken altogether, it is my opinion that Mr. Lobusta ought not to be considered fit to return to work as an Able Seaman*.** While the degree of impairment is mild, for the reasons stated above, it would be in the interest of all parties involved if he were to no longer be considered as capable of gainful employment as a seafarer. It is possible that he may perform adequately in another capacity, given a land-based assignment.[19] (Stress in the original by Dr. David.)

As no settlement was reached despite the above findings, the Labor Arbiter ordered the parties to file their respective position papers.

On April 20, 2001, the Labor Arbiter rendered a decision[20] ordering petitioners to pay Lobusta (a) US$2,060 as medical allowance, (b) US$20,154 as disability benefits, and (c) 5% of the awards as attorney's fees.

The Labor Arbiter ruled that Lobusta suffered illness during the term of his contract. Hence, petitioners are liable to pay Lobusta his medical allowance for 120 days or a total of US$2,060. The Labor Arbiter held that provisions of the Labor Code, as amended, on permanent total disability do not apply to overseas seafarers. Hence, he awarded Lobusta US$20,154 instead of US$60,000, the maximum rate for permanent and total disability under Section 30 and 30-A of the 1996 POEA Standard Employment Contract. The Labor Arbiter also awarded attorney's

---

[19] *Id.* at 103.

[20] *Id.* at 43-57.

fees equivalent to 5% of the total award since Lobusta was assisted by counsel.[21]

Lobusta appealed. The NLRC dismissed his appeal and affirmed the Labor Arbiter's decision. The NLRC ruled that Lobusta's condition may only be considered permanent partial disability. While Dr. David suggested that Lobusta's prospects as seafarer may have been restricted by his bronchial asthma, Dr. David also stated that the degree of impairment is mild. Said qualification puts Lobusta's medical condition outside the definition of total permanent disability, said the NLRC.[22] Later, the NLRC also denied Lobusta's motion for reconsideration.

Unsatisfied, Lobusta brought the case to the CA under Rule 65 of the 1997 Rules of Civil Procedure, as amended. As aforesaid, the CA declared that Lobusta is suffering from permanent total disability and increased the award of disability benefits in his favor to US$60,000, to wit:

> WHEREFORE, the petition for certiorari is hereby GRANTED. The challenged resolution of the NLRC dated 20 June 2002 is MODIFIED, declaring [Lobusta] to be suffering from permanent total disability.
>
> [Petitioners] are ORDERED to pay [Lobusta] the following:
>
> a) US$2,060.00 as medical allowance,
> b) US$60,000.00 as disability benefits, and
> c) 5% of the total monetary award as attorney's fees
>
> x x x x x x x x x[23]

The CA faulted the NLRC for "plucking only particular phrases" from Dr. David's report and said that the NLRC cannot wantonly disregard the full import of said report. The CA ruled that Lobusta's disability brought about by his bronchial asthma is permanent and total as he had been unable to work since May

---

[21] *Id.* at 51-56.

[22] *Id.* at 334-336.

[23] *Rollo*, p. 43.

14, 1998 up to the present or for more than 120 days, and because Dr. David found him not fit to return to work as an able seaman.

Hence, this petition which raises two legal issues:

I

WHETHER OR NOT THE POEA CONTRACT CONSIDERS THE MERE LAPSE OF MORE THAN ONE HUNDRED TWENTY (120) DAYS AS TOTAL AND PERMANENT DISABILITY.

II.

WHETHER OR NOT THERE IS LEGAL BASIS TO AWARD RESPONDENT LOBUSTA ATTORNEY'S FEES.[24]

Petitioners argue that the CA erred in applying the provisions of the Labor Code instead of the provisions of the POEA contract in determining Lobusta's disability, and in ruling that the mere lapse of 120 days entitles Lobusta to total and permanent disability benefits. The CA allegedly erred also in holding them liable for attorney's fees, despite the absence of legal and factual bases.

The petition lacks merit.

Petitioners are mistaken that it is only the POEA Standard Employment Contract that must be considered in determining Lobusta's disability. In *Palisoc v. Easways Marine, Inc.*,[25] we said that whether the Labor Code's provision on permanent total disability applies to seafarers is already a settled matter. In *Palisoc*, we cited the earlier case of *Remigio v. National Labor Relations Commission*[26] where we said (1) that the standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247[27] "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith," and "to

---

[24] *Id.* at 18.

[25] G.R. No. 152273, September 11, 2007, 532 SCRA 585, 592.

[26] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

[27] REORGANIZING THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND FOR OTHER PURPOSES.

promote and protect the well-being of Filipino workers overseas"; (2) that Section 29 of the 1996 POEA Standard Employment Contract itself provides that all rights and obligations of the parties to the contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory; and (3) that even without this provision, a contract of labor is so impressed with public interest that the Civil Code expressly subjects it to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.[28]

In affirming the Labor Code concept of permanent total disability, *Remigio* further stated:

> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.
>
> The same principles were cited in the more recent case of *Crystal Shipping, Inc. v. Natividad*. In addition, the Court cited *GSIS v. Cadiz* and *Ijares v. CA* that "permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."
>
> x x x x x x x x x

[28] *Supra* note 26 at 207.

These facts clearly prove that petitioner was unfit to work as drummer for at least 11-13 months — from the onset of his ailment on March 16, 1998 to 8-10 months after June 25, 1998. This, by itself, already constitutes permanent total disability. x x x[29]

In *Vergara v. Hammonia Maritime Services, Inc.*,[30] we also said that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

Thus, the CA was correct in applying the Labor Code provisions in Lobusta's claim for disability benefits. The Labor Arbiter erred in failing to apply them.

Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:

ART. 192. ***Permanent total disability***. — x x x

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

x x x x x x x x x

Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads:

Sec. 2. *Disability*. — x x x

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

x x x x x x x x x

---

[29] *Id.* at 207-208, 212.

[30] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 626.

Section 2, Rule X of the ECC Rules reads:

SEC. 2. *Period of entitlement*. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be pa*id*. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x x

According to *Vergara*,[31] these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand with the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract which reads:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician[,] but in no case shall this period exceed one hundred twenty (120) days.

Vergara continues:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended

[31] *Id.* at 627.

up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

x x x x x x x x x

As we outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.[32]

To be sure, there is one Labor Code concept of permanent total disability, as stated in Article 192(c)(1) of the Labor Code, as amended, and the ECC Rules. We also note that the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract was lifted verbatim from the first paragraph of Section 20(B)(3) of the 1996 POEA Standard Employment Contract, to wit:

Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

Applying the foregoing considerations, we agree with the CA that Lobusta suffered permanent total disability. On this point, the NLRC ruling was not in accord with law and jurisprudence.

Upon repatriation, Lobusta was first examined by the Pulmonologist and Orthopedic Surgeon on May 22, 1998. The maximum 240-day (8-month) medical-treatment period expired, but no declaration was made that Lobusta is fit to work. Nor was there a declaration of the existence of Lobusta's permanent disability. On February 16, 1999, Lobusta was still prescribed medications for his lumbosacral pain and was advised to return for reevaluation. May 22, 1998 to February 16, 1999 is 264 days or 6 days short of 9 months.

[32] *Id.* at 628-629.

On Lobusta's other ailment, Dr. Roa's clinical summary also shows that as of December 16, 1999, Lobusta was still unfit to resume his normal work as a seaman due to the persistence of his symptoms. But neither did Dr. Roa declare the existence of Lobusta's permanent disability. Again, the maximum 240-day medical treatment period had already expired. May 22, 1998 to December 16, 1999 is 19 months or 570 days. In *Remigio*, unfitness to work for 11-13 months was considered permanent total disability. So it must be in this case. And Dr. David's much later report that Lobusta "ought not to be considered fit to return to work as an Able Seaman" validates that his disability is permanent and total as provided under the POEA Standard Employment Contract and the Labor Code, as amended.

In fact, the CA has found that Lobusta was not able to work again as a seaman and that his disability is permanent "as he has been unable to work since 14 May 1998 to the present or for more than 120 days." This period is more than eight years, counted until the CA decided the case in August 2006. On the CA ruling that Lobusta's disability is permanent since he was unable to work "for more than 120 days," we have clarified in *Vergara* that this "temporary total disability period may be extended up to a maximum of 240 days."

Thus, we affirm the award to Lobusta of US$60,000 as permanent total disability benefits, the maximum award under Sections 30 and 30-A of the 1996 POEA Standard Employment Contract. We also affirm the award of US$2,060 as sickness allowance which is not contested and appears to have been accepted by the parties.

On the matter of attorney's fees, under Article 2208[33] of the Civil Code, attorney's fees can be recovered in actions for recovery

[33] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

x x x x x x x x x

(7) In actions for the recovery of wages of x x x laborers x x x;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees are also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[34] Such conditions being present here, we affirm the award of attorney's fees, which we compute as US$3,103 or 5% of US$62,060.

Before we end, we note petitioners' repeated failure to comply with our resolutions, as well as the orders issued by the tribunals below. We remind petitioners and their counsels that our resolutions requiring them to file pleadings are not to be construed as mere requests, nor should they be complied with partially, inadequately or selectively. Counsels are also reminded that lawyers are called upon to obey court orders and willful disregard thereof will subject the lawyer not only for contempt but to disciplinary sanctions as well.[35] We may also dismiss petitioners' appeal for their failure to comply with any circular, directive or order of the Supreme Court without justifiable cause.[36] In fact, we actually denied the instant petition on July 9, 2008 since petitioners failed to file the required reply to the comment filed by Lobusta.[37] On reconsideration, however, we reinstated the petition.[38] But when we required the parties to submit memoranda, petitioners again did not comply.[39] As regards the proceedings below, they did not file their position paper on time, despite the

---

[34] *Remigio v. National Labor Relations Commission, supra* note 26 at 215.

[35] *Sebastian v. Bajar,* A.C. No. 3731, September 7, 2007, 532 SCRA 435, 449.

[36] Rules of Court, Rule 56, Section 5. *Grounds for dismissal of appeal.* — x x x

x x x x x x x x x

(e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause.

x x x x x x x x x

[37] *Rollo,* p. 300.

[38] *Id.* at 319.

[39] *Id.* at 337.

extensions granted by the Labor Arbiter.[40] Nor did they file the comment and memorandum required by the CA.[41]

Finally, we note that the Labor Arbiter improperly included Miguel Magsaysay as respondent in his decision.[42] It should be noted that Lobusta sued Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S in his complaint.[43] He also named them as the respondents in his position paper.[44] Petitioners are the proper parties.

WHEREFORE, we **DENY** the present petition for review on *certiorari* and **AFFIRM** the Decision dated August 18, 2006 of the Court of Appeals and its Resolution dated April 19, 2007 in CA-G.R. SP No. 74035. We **ORDER** petitioners Magsaysay Maritime Corporation and/or Wastfel-Larsen Management A/S to pay respondent Oberto S. Lobusta US$65,163 as total award, to be paid in Philippine pesos at the exchange rate prevailing during the time of payment.

With costs against the petitioners.

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

---

[40] Records, p. 48.

[41] CA *rollo,* pp. 182, 183-245.

[42] Records, p. 43.

[43] *Id.* at 2.

[44] *Id.* at 18.

[**] Designated additional member per Raffle dated February 10, 2010 vice Associate Justice Lucas P. Bersamin who recused himself from the case due to prior action in the Court of Appeals.

FIRST DIVISION

[G.R. No. 177743. January 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFONSO FONTANILLA *Y* OBALDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — Fontanilla pleaded self-defense. In order for self-defense to be appreciated, he had to 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.

2. ID.; ID.; ID.; UNLAWFUL AGGRESSION; AN INDISPENSABLE ELEMENT OF SELF-DEFENSE; ELEMENTS AND KINDS OF UNLAWFUL AGRESSION. — Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel. The character of the element of unlawful aggression is aptly explained 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 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.

3. ID.; ID.; ID.; HAVING ADMITTED BEING THE AUTHOR OF THE DEATH OF THE VICTIM, THE ACCUSED ASSUMED THE BURDEN OF PROVING THE JUSTIFYING CIRCUMSTANCE TO THE SATISFACTION OF THE COURT AND HE WOULD BE HELD CRIMINALLY LIABLE UNLESS HE ESTABLISHED SELF-DEFENSE BY SUFFICIENT AND SATISFACTORY PROOF. — By invoking self-defense, however, Fontanilla admitted inflicting the fatal injuries that caused the death of Olais. It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability. Having thus admitted being the author of the death of the victim, Fontanilla came to bear the burden of proving the justifying circumstance to the satisfaction of the court, and he would be held criminally liable unless he established self-defense by sufficient and satisfactory proof. He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved in view of his admission of the killing. Nonetheless, the burden to prove guilt beyond reasonable doubt remained with the State until the end of the proceedings. Fontanilla did not discharge his burden. A review of the records reveals that, *one*, Olais did not commit unlawful aggression against Fontanilla, and, *two*, Fontanilla's act of hitting the victim's head with a stone, causing the mortal injury, was not proportional to, and constituted an unreasonable response to the victim's fistic attack and kicks.

4. ID.; ID.; ID.; THE GRAVITY OF THE WOUNDS INFLICTED UPON THE VICTIM MANIFESTED THE DETERMINED EFFORT OF THE ACCUSED TO KILL HIM NOT JUST TO DEFEND HIMSELF. — Indeed, had Olais really attacked Fontanilla, the latter would have sustained some injury from the aggression. It remains, however, that no injury of any kind or gravity was found on the person of Fontanilla when he presented himself to the hospital; hence, the attending physician of the hospital did not issue any medical certificate to him. Nor was any medication applied to him. In contrast, the physician who examined the cadaver of Olais testified that Olais had been hit on the head more than once. The plea of self-defense was thus belied, for the weapons used by Fontanilla and the location and number of wounds he inflicted on Olais revealed his intent to kill, not merely an effort to prevent or repel an attack from Olais. We consider to be significant that the gravity of the wounds manifested the determined effort of the accused to kill his victim, not just to defend himself.

5. ID.; QUALIFYING CIRCUMSTANCE; TREACHERY; THE SUDDENNESS AND UNEXPECTEDNESS OF THE ATTACK EFFECTIVELY DENIED TO THE VICTIM THE ABILITY TO DEFEND HIMSELF OR TO RETALIATE AGAINST THE ACCUSED. — The CA and the RTC found that treachery was attendant. We concur. Fontanilla had appeared out of nowhere to strike Olais on the head, first with the wooden stick, and then with a big stone, causing Olais to fall to the ground facedown. The suddenness and unexpectedness of the attack effectively denied to Olais the ability to defend himself or to retaliate against Fontanilla.

6. ID.; MURDER; PROPER PENALTY. — The imposition of *reclusion perpetua* by the CA was warranted under Article 248 of the *Revised Penal Code*, which prescribes *reclusion perpetua* to death as the penalty for murder. Under the rules on the application of indivisible penalties in Article 63 of the *Revised Penal Code*, the lesser penalty of *reclusion perpetua* is imposed if there are neither mitigating nor aggravating circumstances. Yet, the Court points out that the RTC erroneously imposed "*RECLUSION PERPETUA* TO DEATH" as the penalty. Such imposition was bereft of legal justification, for *reclusion perpetua* and death, being indivisible, should not be imposed as a compound, alternative or successive

penalty for a single felony. In short, the imposition of one precluded the imposition of the other.

7. CIVIL LAW; DAMAGES; MORAL DAMAGES; THE COURT IS BOUND TO AWARD MORAL DAMAGES DESPITE THE ABSENCE OF ANY ALLEGATION AND PROOF OF THE HEIRS' MENTAL ANGUISH AND EMOTIONAL SUFFERING; RATIONALE. — The Court also modifies the limiting of civil damages by the CA and the RTC to only the death indemnity of ₱50,000.00. When death occurs due to a crime, the damages to be awarded may include: (*a*) civil indemnity *ex delicto* for the death of the victim; (*b*) actual or compensatory damages; (*c*) moral damages; (*d*) exemplary damages; and (*e*) temperate damages. Accordingly, the CA and the RTC should also have granted moral damages in addition to the death indemnity, which were of different kinds. The death indemnity compensated the loss of life due to crime, but appropriate and reasonable moral damages would justly assuage the mental anguish and emotional sufferings of the surviving family of Olais. Although mental anguish and emotional sufferings of the surviving family were not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore the heirs of the deceased to their moral *status quo ante*. Given the circumstances, ₱50,000.00 should be reasonable as moral damages, which, pursuant to prevailing jurisprudence, we are bound to award despite the absence of any allegation and proof of the heirs' mental anguish and emotional suffering. The rationale for doing so rested on human nature and experience having shown that: x x x a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.

8. ID.; ID.; TEMPERATE DAMAGES; WHEN ACTUAL DAMAGES SUBSTANTIATED BY RECEIPTS SUM UP TO LOWER THAN PHP25,000.00, TEMPERATE DAMAGES OF AT LEAST PHP 25,000.00 BECOME JUSTIFIED, IN

LIEU OF ACTUAL DAMAGES IN THE LESSER AMOUNT ACTUALLY PROVED BY RECEIPTS. — Another omission of the CA and the RTC was their non-recognition of the right of the heirs of the victim to temperate damages. The victim's wife testified about her family's incurring funeral expenses of ₱36,000.00, but only ₱18,000.00 was backed by receipts. It is already settled that when actual damages substantiated by receipts sum up to lower than ₱25,000.00, temperate damages of at least ₱25,000.00 become justified, in lieu of actual damages in the lesser amount actually proved by receipts. It would obviously be unfair to the heirs of the victim to deny them compensation by way of actual damages despite their honest attempt to prove their actual expenses by receipts (but succeeding only in showing expenses lower than ₱25,000.00 in amount). Indeed, the heirs should not be left in a worse situation than the heirs of another victim who might be nonetheless allowed temperate damages of ₱25,000.00 despite not having presented any receipts at all. With the victim's wife having proved ₱18,000.00 worth of expenses, granting his heirs temperate damages of ₱25,000.00, not only ₱18,000.00, is just and proper. Not to do so would foster a travesty of basic fairness.

9. ID.; ID.; EXEMPLARY DAMAGES; MAY BE IMPOSED IN CRIMINAL CASES AS PART OF THE CIVIL LIABILITY WHEN AN AGGRAVATING CIRCUMSTANCE, WHETHER ORDINARY OR QUALIFYING, ATTENDED THE COMMISSION OF THE CRIME. — The *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The *Civil Code* permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." In light of such legal provisions, the CA and the RTC should have recognized the entitlement of the heirs of the victim to exemplary damages on account of the attendance of treachery. It was of no moment that treachery was an attendant circumstance in murder, and, as such, inseparable and absorbed in murder. As well explained in *People v. Catubig*: The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect,

one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.** For the purpose, ₱30,000.00 is reasonable and proper as exemplary damages, for a lesser amount would not serve result in genuine exemplarity.

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.*:

An indispensable requisite of self-defense is that the victim must have mounted an unlawful aggression against the accused. Without such unlawful aggression, the accused cannot invoke self-defense as a justifying circumstance.

The accused prays for the review and reversal of the decision promulgated on June 29, 2006,[1] whereby the Court of Appeals (CA) affirmed his conviction for murder handed down by the Regional Trial Court (RTC), Branch 34, in Balaoan, La Union.

Antecedents

At around 9:30 p.m. on October 29, 1996, Jose Olais was walking along the provincial road in Butubut Oeste, Balaoan, La Union when Alfonso Fontanilla suddenly struck him in the head with a piece of wood called *bellang*.[2] Olais fell facedown to the ground, but Fontanilla hit him again in the head with a piece of stone. Fontanilla desisted from hitting Olais a third time only because Joel Marquez and Tirso Abunan, the sons-in-law of Olais, shouted at him, causing him to run away. Marquez and Abunan rushed their father-in-law to a medical clinic, where Olais was pronounced dead on arrival.[3]

On April 25, 1997, the Office of the Provincial Prosecutor of La Union filed an information for murder against Fontanilla in the RTC, *viz*:

> That on or about the 29th day of October 1996, along the Provincial Road at Barangay Butubut Oeste, Municipality of Balaoan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and strike with a long coconut night stick and thereafter hit with a stone the head of Jose Olais, thereby inflicting on the latter head wounds which caused the death of the latter, to the damage and prejudice of the heirs of said victim.
>
> CONTRARY TO LAW.[4]

---

[1] CA *rollo*, pp. 98-108; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, now retired), with Associate Justice Mariano C. Del Castillo (now a Member of the Court) and Associate Justice Vicente S.E. Veloso concurring.

[2] *Bellang* is a blunt instrument made of coconut wood used by *barangay tanod* in their patrols (per TSN November 12, 1998, p. 6).

[3] Records, pp. 167-168.

[4] *Id.*, p. 1.

The accused pleaded *not guilty*.

The State presented Marquez and Abunan as its witnesses. They claimed that they were only several meters away from Olais when Fontanilla struck him; that they shouted at Fontanilla, who fled because of them; and that they were able to see and to identify Fontanilla as the attacker of their father-in-law because the area was then well-lighted.[5]

Dr. Felicidad Leda, the physician who conducted the autopsy on the cadaver of Olais, attested that her *post-mortem* examination showed that Olais had suffered a fracture on the left temporal area of the skull, causing his death. She opined that a hard object or a severe force had hit the skull of the victim more than once, considering that the skull had been already fragmented and the fractures on the skull had been radiating.[6]

SPO1 Abraham Valdez, who investigated the slaying and apprehended Fontanilla, declared that he had gone looking for Fontanilla in his house along with other policemen; that Fontanilla's father had denied that he was around; that their search of the house had led to the arrest of Fontanilla inside; and that they had then brought him to the police station.[7] Valdez further declared that Fontanilla asserted that he would only speak in court.[8]

At the trial, Fontanilla claimed self-defense. He said that on the night of the incident, he had been standing on the road near his house when Olais, wielding a nightstick and appearing to be drunk, had boxed him in the stomach; that although he had then talked to Olais nicely, the latter had continued hitting him with his fists, striking him with straight blows; that Olais, a karate expert, had also kicked him with both his legs; that he had thus been forced to defend himself by picking up a stone with which he had hit the right side of the victim's head, causing the latter to fall face down to the ground; and that he had then

---

[5] *Id.*, pp. 167-168.

[6] *Id.*, p. 170.

[7] CA *rollo*, p.101.

[8] Records, p.170.

left the scene for his house upon seeing that Olais was no longer moving.[9]

Fontanilla's daughter Marilou corroborated her father's version.[10]

On June 21, 2001, the RTC declared Fontanilla guilty as charged, and disposed thusly:

> WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring he accused ALFONSO FONTANILLA *Y* OBALDO @ 'Carlos' guilty beyond reasonable doubt of the crime of MURDER as defined and penalized in Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659, Sec. 6, and thereby sentences him to suffer the penalty of *RECLUSION PERPETUA* TO DEATH and to indemnify the heirs of the victim in the amount of Fifty Thousand Pesos (₱50,000.00).
>
> SO ORDERED.[11]

The RTC rejected Fontanilla's plea of self-defense by observing that he had "no necessity to employ a big stone, inflicting upon the victim a mortal wound causing his death"[12] due to the victim attacking him only with bare hands. It noted that Fontanilla did not suffer any injury despite his claim that the victim had mauled him; that Fontanilla did not receive any treatment, and no medical certificate attested to any injury he might have suffered, having been immediately released from the hospital;[13] that Fontanilla's failure to give any statement at the time he surrendered to the police was inconsistent with his plea of self-defense;[14] and that the manner of attack against Olais established the attendance of treachery.[15]

---

[9] *Id.*, p. 168.

[10] CA *rollo*, p. 101.

[11] Records, p. 172.

[12] *Id.*, p. 169.

[13] *Id.*, p. 170.

[14] *Id.*

[15] *Id.*, p. 172.

On appeal, the CA affirmed the RTC, holding that Fontanilla did not establish the indispensable element of unlawful aggression; that his failure to report the incident to the police at the earliest opportunity, or even after he was taken into custody, negated the plea of self-defense; and that the nature of the victim's injury was a significant physical proof to show a determined effort on the part of Fontanilla to kill him, and not just to defend himself.[16]

The CA ruled that treachery was attendant, because Olais had no inkling that a fatal blow was looming upon him, and because Fontanilla was inconspicuously hidden from view when he struck Olais from behind, rendering Olais unable to retaliate.[17]

Nonetheless, the CA rectified the penalty from *reclusion perpetua* to death to only *reclusion perpetua* upon noting the absence of any aggravating or mitigating circumstance, and disposed as follows:

> IN VIEW OF ALL THE FOREGOING, the appealed decision of the Regional Trial Court of Balaoan, La Union, Branch 34, in Criminal Case No. 2561 is hereby AFFIRMED with MODIFICATION that appellant Fontanilla is hereby sentenced to suffer the penalty of *reclusion perpetua*. No cost.
>
> SO ORDERED.[18]

The accused is now appealing, insisting that the CA erred because:

I.

THE TRIAL COURT GRAVELY ERRED IN IGNORING THE ACCUSED-APPELLANT'S CLAIM OF SELF-DEFENSE.

II.

EVEN GRANTING THAT ACCUSED-APPELLANT KILLED THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN CONVICTING

---

[16] CA *rollo*, pp. 104-105.

[17] *Id.*, pp.105-106.

[18] *Id.*, pp. 107-108.

THE ACCUSED-APPELLANT OF THE CRIME OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III.

FURTHERMORE, THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE SPECIAL PRIVILEGE[D] MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

Ruling

We affirm the conviction.

Fontanilla pleaded self-defense. In order for self-defense to be appreciated, he had to 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.[19] Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.[20] The character of the element of unlawful aggression is aptly explained 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 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

[19] Article 11 (1), *Revised Penal Code*.

[20] *Calim v. Court of Appeals*, G.R. No. 140065, February 13, 2001, 351 SCRA 559, 571.

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.[21]

By invoking self-defense, however, Fontanilla admitted inflicting the fatal injuries that caused the death of Olais. It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability.[22] Having thus admitted being the author of the death of the victim, Fontanilla came to bear the burden of proving the justifying circumstance to the satisfaction of the court,[23] and he would be held criminally liable unless he established self-defense by sufficient and satisfactory proof.[24] He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved

---

[21] *People v. Nugas*, G.R. No. 172606, November 23, 2011.

[22] *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 256-257.

[23] *People v. Capisonda*, 1 Phil. 575 (1902); *People v. Baguio*, 43 Phil. 683 (1922); *People v. Gutierrez*, 53 Phil. 609 (1929); *People v. Silang Cruz*, 53 Phil. 625 (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.

[24] *People v. Gelera*, G. R. No. 121377, August 15, 1997, 277 SCRA 450, 461; *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 256-257.

in view of his admission of the killing.[25] Nonetheless, the burden to prove guilt beyond reasonable doubt remained with the State until the end of the proceedings.

Fontanilla did not discharge his burden. A review of the records reveals that, *one*, Olais did not commit unlawful aggression against Fontanilla, and, *two*, Fontanilla's act of hitting the victim's head with a stone, causing the mortal injury, was not proportional to, and constituted an unreasonable response to the victim's fistic attack and kicks.

Indeed, had Olais really attacked Fontanilla, the latter would have sustained some injury from the aggression. It remains, however, that no injury of any kind or gravity was found on the person of Fontanilla when he presented himself to the hospital; hence, the attending physician of the hospital did not issue any medical certificate to him. Nor was any medication applied to him.[26] In contrast, the physician who examined the cadaver of Olais testified that Olais had been hit on the head more than once. The plea of self-defense was thus belied, for the weapons used by Fontanilla and the location and number of wounds he inflicted on Olais revealed his intent to kill, not merely an effort to prevent or repel an attack from Olais. We consider to be significant that the gravity of the wounds manifested the determined effort of the accused to kill his victim, not just to defend himself.[27]

The CA and the RTC found that treachery was attendant. We concur. Fontanilla had appeared out of nowhere to strike Olais on the head, first with the wooden stick, and then with a

---

[25] *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.

[26] TSN, May 23, 2000, p. 12.

[27] *People v. Nagum*, G.R. No. 134003, January 19, 2000, 322 SCRA 474, 479, *People v. Baniel*, G.R. No. 108492, July 15, 1995, 275 SCRA 472,482.

big stone, causing Olais to fall to the ground facedown. The suddenness and unexpectedness of the attack effectively denied to Olais the ability to defend himself or to retaliate against Fontanilla.

The imposition of *reclusion perpetua* by the CA was warranted under Article 248 of the *Revised Penal Code*,[28] which prescribes *reclusion perpetua* to death as the penalty for murder. Under the rules on the application of indivisible penalties in Article 63 of the *Revised Penal Code*,[29] the lesser penalty of *reclusion perpetua* is imposed if there are neither mitigating nor aggravating circumstances. Yet, the Court points out that the RTC erroneously imposed "*RECLUSION PERPETUA* TO

---

[28] Article 248. *Murder*. — **Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances**:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[29] 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:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

DEATH" as the penalty. Such imposition was bereft of legal justification, for *reclusion perpetua* and death, being indivisible, should not be imposed as a compound, alternative or successive penalty for a single felony. In short, the imposition of one precluded the imposition of the other.

The Court also modifies the limiting of civil damages by the CA and the RTC to only the death indemnity of ₱50,000.00. When death occurs due to a crime, the damages to be awarded may include: (*a*) civil indemnity *ex delicto* for the death of the victim; (*b*) actual or compensatory damages; (*c*) moral damages; (*d*) exemplary damages; and (*e*) temperate damages.[30]

Accordingly, the CA and the RTC should also have granted moral damages in addition to the death indemnity, which were of different kinds.[31] The death indemnity compensated the loss of life due to crime, but appropriate and reasonable moral damages would justly assuage the mental anguish and emotional sufferings of the surviving family of Olais.[32] Although mental anguish and emotional sufferings of the surviving family were not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore the heirs of the deceased to their moral *status quo ante*. Given the circumstances,

---

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[30] *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 456.

[31] *Heirs of Castro v. Raymundo Bustos*, L-25913, February 28, 1969, 27 SCRA 327.

[32] Article 2206, (3), in relation to Article 2217 and Article 2219, *Civil Code*, and Article 107, *Revised Penal Code*.

₱50,000.00 should be reasonable as moral damages, which, pursuant to prevailing jurisprudence,[33] we are bound to award despite the absence of any allegation and proof of the heirs' mental anguish and emotional suffering. The rationale for doing so rested on human nature and experience having shown that:

> x x x a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[34]

Another omission of the CA and the RTC was their non-recognition of the right of the heirs of the victim to temperate damages. The victim's wife testified about her family's incurring funeral expenses of ₱36,000.00, but only ₱18,000.00 was backed by receipts. It is already settled that when actual damages substantiated by receipts sum up to lower than ₱25,000.00, temperate damages of at least ₱25,000.00 become justified, in lieu of actual damages in the lesser amount actually proved by receipts. It would obviously be unfair to the heirs of the victim to deny them compensation by way of actual damages despite their honest attempt to prove their actual expenses by receipts (but succeeding only in showing expenses lower than ₱25,000.00 in amount).[35] Indeed, the heirs should not be left in a worse situation than the heirs of another victim who might be nonetheless

---

[33] *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69; *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 456-457; *People v. Berondo*, G.R. No. 177827, March 30, 2009, 582 SCRA 547.

[34] *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[35] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804-805.

allowed temperate damages of ₱25,000.00 despite not having presented any receipts at all. With the victim's wife having proved ₱18,000.00 worth of expenses, granting his heirs temperate damages of ₱25,000.00, not only ₱18,000.00, is just and proper. Not to do so would foster a travesty of basic fairness.

The *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[36] The *Civil Code* permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[37] In light of such legal provisions, the CA and the RTC should have recognized the entitlement of the heirs of the victim to exemplary damages on account of the attendance of treachery. It was of no moment that treachery was an attendant circumstance in murder, and, as such, inseparable and absorbed in murder. As well explained in *People v. Catubig*:[38]

> The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating**

[36] Article 2230, *Civil Code.*

[37] Article 2229, *Civil Code*.

[38] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.

For the purpose, ₱30,000.00 is reasonable and proper as exemplary damages,[39] for a lesser amount would not serve result in genuine exemplarity.

WHEREFORE, we **AFFIRM** the decision promulgated on June 29, 2006 by the Court of Appeals, subject to the **MODIFICATION** of the civil damages, by ordering accused Alfonso Fontanilla *y* Obaldo to pay to the heirs of Jose Olais ₱25,000.00 as temperate damages and ₱30,000.00 as exemplary damages in addition to the ₱50,000.00 as death indemnity and the ₱50,000.00 as moral damages, plus interest of 6% *per annum* on such amounts from the finality of the judgment.

The accused shall pay the costs of suit.

SO ORDERED.

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

---

[39] See *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625.

[*] Vice Associate Justice Mariano C. Del Castillo, who took part in the proceedings in the Court of Appeals, per raffle of January 18, 2012.

FIRST DIVISION

[G.R. No. 177780. January 25, 2012]

METROPOLITAN BANK & TRUST CO. (METROBANK), represented by ROSELLA A. SANTIAGO, *petitioner, vs.* **ANTONINO O. TOBIAS III,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; ABSENT GRAVE ABUSE OF DISCRETION, COURTS WILL NOT INTERFERE WITH THE EXECUTIVE'S DETERMINATION OF PROBABLE CAUSE FOR THE PURPOSE OF FILING AN INFORMATION. — Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. For instance, in *Balanganan v. Court of Appeals, Special Nineteenth Division, Cebu City,* the Court ruled that the Secretary of Justice exceeded his jurisdiction when he required "hard facts and solid evidence" in order to hold the defendant liable for criminal prosecution when such requirement should have been left to the court after the conduct of a trial.

2. ID.; ID.; ID.; THE EXISTENCE OF PROBABLE CAUSE DEPENDS UPON THE FINDING OF THE PUBLIC PROSECUTOR CONDUCTING THE EXAMINATION, WHO IS CALLED UPON NOT TO DISREGARD THE FACTS PRESENTED, AND TO ENSURE THAT HIS FINDING SHOULD NOT RUN COUNTER TO THE CLEAR

DICTATES OF REASON. — [W]e stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged. Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason.

3. CRIMINAL LAW; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS. — Tobias was charged with *estafa through falsification of public document* the elements of which are: (*a*) the accused uses a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or employs other similar deceits; (*b*) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (*c*) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (*d*) as a result thereof, the offended party suffered damage. It is required that the false statement or fraudulent representation constitutes the very cause or the only motive that induced the complainant to part with the thing.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; A PRESUMPTION OF LAW IS MATERIAL DURING THE ACTUAL TRIAL OF THE CRIMINAL CASE WHERE IN THE ESTABLISHMENT THEREOF THE PARTY AGAINST WHOM THE INFERENCE IS MADE SHOULD ADDUCE EVIDENCE TO REBUT THE PRESUMPTION AND DEMOLISH THE *PRIMA FACIE* CASE, WHILE IN A PRELIMINARY INVESTIGATION, THE INVESTIGATING PROSECUTOR ONLY DETERMINES THE EXISTENCE

OF A *PRIMA FACIE* CASE THAT WARRANTS THE PROSECUTION OF A CRIMINAL CASE IN COURT. — [A] presumption affects the burden of proof that is normally lodged in the State. The effect is to create the need of presenting evidence to overcome the *prima facie* case that shall prevail in the absence of proof to the contrary. As such, a presumption of law is material during the actual trial of the criminal case where in the establishment thereof the party against whom the inference is made should adduce evidence to rebut the presumption and demolish the *prima facie* case. This is not so in a preliminary investigation, where the investigating prosecutor only determines the existence of a *prima facie* case that warrants the prosecution of a criminal case in court.

5. ID.; ID.; ID.; PRESUMPTION OF AUTHORSHIP; MAY BE ACCEPTED AND ACTED UPON WHERE NO EVIDENCE UPHOLDS THE CONTENTION FOR WHICH IT STANDS; THE SECRETARY OF JUSTICE HAS AMPLE DISCRETION TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE, A DISCRETION THAT MUST BE USED TO FILE ONLY A CRIMINAL CHARGE THAT THE EVIDENCE AND INFERENCE CAN PROPERLY WARRANT. — [T]he presumption of authorship, being disputable, may be accepted and acted upon where no evidence upholds the contention for which it stands. It is not correct to say, consequently, that the investigating prosecutor will try to determine the existence of the presumption during preliminary investigation, and then to disregard the evidence offered by the respondent. The fact that the finding of probable cause during a preliminary investigation is an executive function does not excuse the investigating prosecutor or the Secretary of Justice from discharging the duty to weigh the evidence submitted by the parties. Towards that end, the investigating prosecutor, and, ultimately, the Secretary of Justice have ample discretion to determine the existence of probable cause, a discretion that must be used to file only a criminal charge that the evidence and inferences can properly warrant.

6. ID.; ID.; ID.; THE PRESUMPTION THAT WHOEVER POSSESSES OR USES A SPURIOUS DOCUMENT IS ITS FORGER APPLIES ONLY IN THE ABSENCE OF A SATISFACTORY EXPLANATION. — The presumption that whoever possesses or uses a spurious document is its forger

applies only in the absence of a satisfactory explanation. Accordingly, we cannot hold that the Secretary of Justice erred in dismissing the information in the face of the controverting explanation by Tobias showing how he came to possess the spurious document. Much less can we consider the dismissal as done with abuse of discretion, least of all grave.

7. COMMERCIAL LAW; BANKS AND BANKING; BANKS ARE EXPECTED TO EXERCISE GREATER CARE AND PRUDENCE THAN OTHERS IN THEIR DEALINGS BECAUSE THEIR BUSINESS IS IMPRESSED WITH PUBLIC INTEREST; THEIR FAILURE TO DO SO CONSTITUTES NEGLIGENCE ON ITS PART. — We do not lose sight of the fact that METROBANK, a commercial bank dealing in real property, had the duty to observe due diligence to ascertain the existence and condition of the realty as well as the validity and integrity of the documents bearing on the realty. Its duty included the responsibility of dispatching its competent and experienced representatives to the realty to assess its actual location and condition, and of investigating who was its real owner. Yet, it is evident that METROBANK did not diligently perform a thorough check on Tobias and the circumstances surrounding the realty he had offered as collateral. As such, it had no one to blame but itself. Verily, banks are expected to exercise greater care and prudence than others in their dealings because their business is impressed with public interest. Their failure to do so constitutes negligence on its part.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Offices for petitioner.

Liberato C. Teneza for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal assails the adverse decision of the Court of Appeals (CA)[1] that dismissed the petition for *certiorari* brought by the petitioner to nullify and set aside the resolutions issued by the Secretary of Justice on July 20, 2004[2] and November 18, 2005[3] directing the City Prosecutor of Malabon City to withdraw the information in Criminal Case No. 27020 entitled *People v. Antonino O. Tobias III*.

We affirm the CA in keeping with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the latter's determination of the existence of probable cause, absent any showing that the Secretary of Justice thereby commits grave abuse of his discretion.

Antecedents

In 1997, Rosella A. Santiago, then the OIC-Branch Head of Metropolitan Bank & Trust Company (METROBANK) in Valero Street, Makati City, was introduced to respondent Antonino O. Tobias III (Tobias) by one Jose Eduardo Gonzales, a valued client of METROBANK. Subsequently, Tobias opened a savings/current account for and in the name of Adam Merchandising, his frozen meat business. Six months later, Tobias applied for a loan from METROBANK, which in due course conducted trade and credit verification of Tobias that resulted in negative findings. METROBANK next proceeded to appraise the property Tobias offered as collateral by asking him for a photocopy of

---

[1] *Rollo*, pp. 40-51; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, but retired), with Associate Justice Mariano C. Del Castillo (now a Member of the Court) and Associate Justice Ricardo R. Rosario concurring.

[2] *Id.*, pp. 54-57.

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

the title and other related documents.[4] The property consisted of four parcels of land located in Malabon City, Metro Manila with a total area of 6,080 square meters and covered by Transfer Certificate of Title (TCT) No. M-16751.[5] Based on the financial statements submitted by Tobias, METROBANK approved a credit line for ₱40,000,000.00. On August 15, 1997, Joselito Bermeo Moreno, Lead Internal Affairs Investigator of METROBANK, proceeded to the Registry of Deeds of Malabon to cause the annotation of the deed of real estate mortgage on TCT No. M-16751. The annotation was Entry No. 26897.[6]

Thereafter, Tobias initially availed himself of ₱20,000,000, but took out the balance within six months.[7] He paid the interest on the loan for about a year before defaulting. His loan was restructured to 5-years upon his request. Yet, after two months, he again defaulted. Thus, the mortgage was foreclosed, and the property was sold to METROBANK as the lone bidder.[8] On June 11, 1999, the certificate of sale was issued in favor of METROBANK.[9]

When the certificate of sale was presented for registration to the Registry of Deeds of Malabon, no corresponding original copy of TCT No. M-16751 was found in the registry vault. Atty. Sarah Principe-Bido, Deputy Register of Deeds of Malabon, went on to verify TCT No. M-16751 and learned that Serial No. 4348590 appearing therein had been issued for TCT No. M-15363 in the name of one Alberto Cruz; while TCT No. 16751 (now TCT No. 390146) appeared to have been issued in the name of Eugenio S. Cruz and Co. for a parcel of land located in Navotas.[10]

---

[4] *Id.*, p. 79.

[5] *Id.*, pp. 61-64.

[6] *Id.*, p. 71.

[7] *Id.*, p. 80.

[8] *Id.*, p. 80.

[9] *Id.*, pp. 65-67.

[10] *Id.*, pp. 72-73.

Given such findings, METROBANK requested the Presidential Anti-Organized Crime Task Force (PAOCTF) to investigate.[11] In its report dated May 29, 2000,[12] PAOCTF concluded that TCT No. M-16751 and the tax declarations submitted by Tobias were fictitious. PAOCTF recommended the filing against Tobias of a criminal complaint for *estafa through falsification of public documents* under paragraph 2 (a) of Article 315, in relation to Articles 172(1) and 171(7) of the *Revised Penal Code*.[13]

The Office of the City Prosecutor of Malabon ultimately charged Tobias with *estafa through falsification of public documents* through the following information,[14] *viz*:

x x x x x x x x x

That on or about the 15th day of August, 1997 in the Municipality of Malabon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, false pretense, fraudulent acts and misrepresentation executed prior to or simultaneous with the commission of fraud, represented to METROBANK, as represented by MS. ROSELLA S. SANTIAGO, that he is the registered owner of a parcel of land covered by TCT No. M-16751 which he represented to be true and genuine when he knew the Certificate of Title No. M-16751 is fake and spurious and executed a Real Estate Mortgage in favor of Metrobank and offered the same as collateral for a loan and Rosella S. Santiago relying on said misrepresentation gave to accused, the amount of ₱20,000,000.00 and once in possession of the amount, with intent to defraud, willfully, unlawfully and feloniously failed to deliver the land covered by spurious title and misappropriate, misapply and converted the said amount of ₱20,000,000.00 to his own personal use and benefit and despite repeated demands accused failed and refused and still fails and refuses to return the amount to complainant METROBANK, and/or delivered the land covered in the spurious title in the aforementioned amount of ₱20,000,000.00.

---

[11] *Id.*, pp. 79-81.

[12] *Id.*, pp. 68-78.

[13] *Id.*, p. 76.

[14] *Id.*, pp. 85-86.

CONTRARY TO LAW.[15]

Tobias filed a motion for re-investigation,[16] which was granted.

In his counter-affidavit submitted during the re-investigation,[17] Tobias averred that he had bought the property from one Leonardo Fajardo through real estate brokers Augusto Munsuyac and Carmelito Pilapil; that Natalio Bartolome, his financial consultant from Carwin International, had convinced him to purchase the property due to its being an ideal site for his meat processing plant and cold storage business; that the actual inspection of the property as well as the verification made in the Registry of Deeds of Malabon City had ascertained the veracity of TCT No. 106083 under the name of Leonardo Fajardo; that he had applied for the loan from METROBANK to pay the purchase price by offering the property as collateral; that in order for the final application to be processed and the loan proceeds to be released, METROBANK had advised him to have the title first transferred to his name; that he had executed a deed of absolute sale with Fajardo covering the property, and that said instrument had been properly registered in the Registry of Deeds; that the transfer of the title, being under the account of the seller, had been processed by seller Fajardo and his brokers Munsuyac and Pilapil; that his title and the property had been inspected and verified by METROBANK's personnel; and that he did not have any intention to defraud METROBANK.

Nonetheless, on December 27, 2002, the City Prosecutor of Malabon still found probable cause against Tobias, and recommended his being charged with *estafa through falsification of public document*.[18]

Tobias appealed to the Department of Justice (DOJ).

---

[15] *Id.*, p. 85.

[16] *Id.*, pp. 87-88.

[17] *Id.*, pp. 89-93.

[18] *Id.*, p. 60.

On July 20, 2004, then Acting Secretary of Justice Ma. Merceditas N. Gutierrez issued a resolution directing the withdrawal of the information filed against Tobias,[19] to wit:

> WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Malabon City is directed to cause the withdrawal of the Information in Crim. Case No. 27020 against respondent Antonino O. Tobias III, and report the action taken thereon within ten (10) days from receipt hereof.
>
> SO ORDERED.

Acting Secretary of Justice Gutierrez opined that Tobias had sufficiently established his good faith in purchasing the property; that he had even used part of the proceeds of the loan to pay the seller; that it was METROBANK that had caused the annotation of the mortgage on the TCT, thereby creating an impression that the title had been existing in the Registry of Deeds at that time; that, accordingly, the presumption that the possessor of a falsified document was the author of the falsification did not apply because it was always subject to the qualification or reference as to the approximate time of the commission of the falsification.

METROBANK moved to reconsider,[20] arguing that Tobias had employed deceit or false pretense in offering the property as collateral by using a fake title; and that the presumption that the possessor of the document was the author of the falsification applied because no other person could have falsified the TCT and would have benefitted therefrom except Tobias himself.

On November 18, 2005, Secretary of Justice Raul M. Gonzalez denied METROBANK's motion for reconsideration.[21]

Ruling of the CA

METROBANK challenged the adverse resolutions through *certiorari*.

---

[19] *Id.,* pp. 54-57.

[20] *Id.,* pp. 106-125.

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

On December 29, 2006, the CA promulgated its decision,[22] dismissing METROBANK's petition for *certiorari* by holding that the presumption of authorship might be disputed through a satisfactory explanation, *viz*:

> We are not unaware of the established presumption and rule that when it is proved that a person has in his possession a falsified document and makes use of the same, the presumption or inference is that such person is the forger (*Serrano vs. Court of Appeals*, 404 SCRA 639, 651 [2003]), citing *Koh Tieck Heng vs. People*, 192 SCRA 533, 546-547 [1990]). Yet, the Supreme Court declared that in the absence of satisfactory explanation, one who is found in possession of a forged document and who used it is presumed to be the forger (citing *People vs. Sendaydiego*, 81 SCRA 120, 141 [1978]). Very clearly then, a satisfactory explanation could render ineffective the presumption which, after all, is merely a disputable one.
>
> It is in this score that We affirm the resolution of the Department of Justice finding no probable cause against private respondent Tobias for estafa thru falsification of public document. The record speaks well of Tobias' good faith and lack of criminal intention and liability. Consider:
>
> (a) Tobias has in his favor a similar presumption that good faith is always presumed. Therefore, he who claims bad faith must prove it (*Prinsipio vs. The Honorable Oscar Barrientos*, G.R. 167025, December 19, 2005). No such evidence of bad faith of Tobias appears on record;
>
> (b) Tobias' actuation in securing the loan belies any criminal intent on his part to deceive petitioner Bank. He was not in a hurry to obtain the loan. He had to undergo the usual process of the investigative arm or machine of the Bank not only on the location and the physical appearance of the property but likewise the veracity of its title. Out of the approved ₱40,000,000.00 loan he only availed of ₱20,000,000.00, for his frozen meat business which upon investigation of the Bank failed to give negative results;
>
> (c) Tobias paid the necessary interests for one (1) year on the loan and two (2) installments on the restructured loan; and

[22] *Id.*, pp. 40-51.

(d) More importantly, the loan was not released to him until after the mortgage was duly registered with the Registry of Deeds of Malabon City and even paid the amount of ₱90,000.00 for the registration fees therefor.

These actuations, for sure, can only foretell that Tobias has the least intention to deceive the Bank in obtaining the loan. It may not be surprising to find that Tobias could even be a victim himself by another person in purchasing the properties he offered as security for the loan.[23]

The CA stressed that the determination of probable cause was an executive function within the discretion of the public prosecutor and, ultimately, of the Secretary of Justice, and the courts of law could not interfere with such determination;[24] that the private complainant in a criminal action was only concerned with its civil aspect; that should the State choose not to file the criminal action, the private complainant might initiate a civil action based on Article 35 of the *Civil Code*, to wit:

In the eventuality that the Secretary of Justice refuses to file the criminal complaint, the complainant, whose only interest is the civil aspect of the case and not the criminal aspect thereof, is not left without a remedy. In *Vda. De Jacob vs. Puno*, 131 SCRA 144, 149 [1984], the Supreme Court has this for an answer:

"The remedy of complainant in a case where the Minister of Justice would not allow the filing of a criminal complaint against an accused because it is his opinion that the evidence is not sufficient to sustain an information for the complaint with which the respondents are charged of, is to file a civil action as indicated in Article 35 of the Civil Code, which provides:

'Art. 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been

---

[23] *Id.*, pp. 45-47.

[24] *Id.*, pp. 47-49.

> committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complainant should be found to be malicious.
>
> 'If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.'"[25]

METROBANK sought reconsideration, but the CA denied its motion for that purpose, emphasizing that the presumption that METROBANK firmly relied upon was overcome by Tobias sufficiently establishing his good faith and lack of criminal intent. The CA relevantly held:

> Petitioner should be minded that the subject presumption that the possessor and user of a forged or falsified document is presumed to be the falsifier or forger is a mere disputable presumption and not a conclusive one. Under the law on evidence, presumptions are divided into two (2) classes: conclusive and rebuttable. Conclusive or absolute presumptions are rules determining the quantity of evidence requisite for the support of any particular averment which is not permitted to be overcome by any proof that the fact is otherwise, if the basis facts are established (1 Greenleaf, Ev 44; 29 Am Jur 2d, Evidence 164; 1 Jones on Evidence 6 ed, page 132). Upon the other hand, a disputable presumption has been defined as species of evidence that may be accepted and acted on when there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence (31A C.J.S., p. 197; *People v. de Guzman*, G.R. No. 106025, Feb. 9, 1994; Herrera, *Remedial Law*, Vol. VI, 1999 Edition, pp. 40-41). In fact, Section 3 of Rule 131 provides that the disputable presumptions therein enumerated are satisfactory if uncontradicted but may be contradicted and overcome by other evidence. Thus, as declared in Our decision in this case, private respondent had shown evidence of good faith and lack of criminal

[25] *Id.*, pp. 50-51.

intention and liability that can overthrow the controversial disputable presumption.[26]

Issue

In this appeal, METROBANK raises the lone issue of—

WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT AND THUS, COMMITTED PATENT ERROR IN RENDERING THE ASSAILED DECISION DATED 29 DECEMBER 2006, DISMISSING METROBANK'S PETITION FOR CERTIORARI AND AFFIRMING THE RESOLUTIONS DATED 20 JULY 2004 AND 18 NOVEMBER 2005 OF THE HON. SECRETARY OF JUDTICE AND IN DENYING METROBANK'S MOTION FOR RECONSIDERATION.

METROBANK submits that the presumption of authorship was sufficient to establish probable cause to hold Tobias for trial; that the presumption applies when a person is found in possession of the forged instrument, makes use of it, and benefits from it; that contrary to the ruling of the CA, there is no requirement that the legal presumption shall only apply in the absence of a valid explanation from the person found to have possessed, used and benefited from the forged document; that the CA erred in declaring that Tobias was in good faith, because good faith was merely evidentiary and best raised in the trial on the merits; and that Tobias was heavily involved in a *modus operandi* of using fake titles because he was also being tried for a similar crime in the RTC, Branch 133, in Makati City.

METROBANK maintains that what the Secretary of Justice did was to determine the innocence of the accused, which should not be done during the preliminary investigation; and that the CA disregarded such lapse.

On the other hand, Tobias posits that the core function of the Department of Justice is to prosecute the guilty in criminal cases, not to persecute; that although the prosecutors are given

[26] *Id.*, p. 53.

latitude to determine the existence of probable cause, the review power of the Secretary of Justice prevents overzealous prosecutors from persecuting the innocent; that in reversing the resolution of Malabon City Assistant Prosecutor Ojer Pacis, the Secretary of Justice only acted within his authority; that, indeed, the Secretary of Justice was correct in finding that there was lack of evidence to prove that the purported fake title was the very cause that had induced the petitioner to grant the loan; and that the Secretary likewise appropriately found that Tobias dealt with the petitioner in good faith because of lack of proof that he had employed fraud and deceit in securing the loan.

Lastly, Tobias argues that the presumption of forgery could not be applied in his case because it was METROBANK, through a representative, who had annotated the real estate mortgage with the Registry of Deeds; and that he had no access to and contact with the Registry of Deeds, and whatever went wrong after the annotation was beyond his control.

Ruling

The appeal has no merit.

Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government,[27] or to substitute their own judgments for that of the Executive Branch,[28] represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion.[29] That abuse of discretion must be so patent and

---

[27] *Public Utilities Department, Olongapo City v. Guingona, Jr.*, G.R. No. 130399, September 20, 2001, 365 SCRA 467, 474.

[28] *Alcaraz v. Gonzalez,* G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[29] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 535; *Insular Life Assurance Company, Limited v. Serrano,* G.R. No. 163255, June 22, 2007, 525 SCRA 400, 410.

gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[30] For instance, in *Balanganan v. Court of Appeals, Special Nineteenth Division, Cebu City*,[31] the Court ruled that the Secretary of Justice exceeded his jurisdiction when he required "hard facts and solid evidence" in order to hold the defendant liable for criminal prosecution when such requirement should have been left to the court after the conduct of a trial.

In this regard, we stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial.[32] At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged.[33] Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.[34] There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason.[35]

---

[30] *Galario v. Office of the Ombudsman (Mindanao)*, G.R. No. 166797, July 10, 2007, 527 SCRA 190, 204, 205; *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777-778.

[31] G.R. No. 174350, August 13, 2008, 562 SCRA 184.

[32] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88.

[33] *Id.*, p. 103; also, *Villanueva v. Secretary of Justice*, G.R. No. 162187, November 18, 2005, 475 SCRA 495, 511.

[34] *Osorio v. Desierto*, G.R. No. 156652, October 13, 2005, 472 SCRA 559, 573; *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 470.

[35] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 347.

Tobias was charged with *estafa through falsification of public document* the elements of which are: (*a*) the accused uses a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or employs other similar deceits; (*b*) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (*c*) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (*d*) as a result thereof, the offended party suffered damage.[36] It is required that the false statement or fraudulent representation constitutes the very cause or the only motive that induced the complainant to part with the thing.[37]

METROBANK urges the application of the presumption of authorship against Tobias based on his having offered the duplicate copy of the spurious title to secure the loan; and posits that there is no requirement that the presumption shall apply only when there is absence of a valid explanation from the person found to have possessed, used and benefited from the forged document.

We cannot sustain METROBANK's urging.

Firstly, a presumption affects the burden of proof that is normally lodged in the State.[38] The effect is to create the need of presenting evidence to overcome the *prima facie* case that shall prevail in the absence of proof to the contrary.[39] As such, a presumption of law is material during the actual trial of the

---

[36] *Ambito v. People*, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 97; *Flores v. Layosa*, G.R. No. 154714, August 12, 2004, 436 SCRA 337, 347.

[37] Reyes, *The Revised Penal Code*, Book II (2006), p. 773.

[38] *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 438.

[39] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 342-342; *Salonga v. Paño*, G.R. No. 59524, February 18, 1985, 134 SCRA 438, 450.

criminal case where in the establishment thereof the party against whom the inference is made should adduce evidence to rebut the presumption and demolish the *prima facie* case.[40] This is not so in a preliminary investigation, where the investigating prosecutor only determines the existence of a *prima facie* case that warrants the prosecution of a criminal case in court.[41]

Secondly, the presumption of authorship, being disputable, may be accepted and acted upon where no evidence upholds the contention for which it stands.[42] It is not correct to say, consequently, that the investigating prosecutor will try to determine the existence of the presumption during preliminary investigation, and then to disregard the evidence offered by the respondent. The fact that the finding of probable cause during a preliminary investigation is an executive function does not excuse the investigating prosecutor or the Secretary of Justice from discharging the duty to weigh the evidence submitted by the parties. Towards that end, the investigating prosecutor, and, ultimately, the Secretary of Justice have ample discretion to determine the existence of probable cause,[43] a discretion that must be used to file only a criminal charge that the evidence and inferences can properly warrant.

The presumption that whoever possesses or uses a spurious document is its forger applies only in the absence of a satisfactory explanation.[44] Accordingly, we cannot hold that the Secretary of Justice erred in dismissing the information in the face of the

---

[40] *Wa-acon v. People*, *supra*, note 38.

[41] *Alonzo v. Concepcion*, A.M. No. RTJ-04-1879, January 17, 2005, 448 SCRA 329, 337.

[42] *Sevilla v. Cardenas*, G.R. No. 167684, July 31, 2006, 497 SCRA 428, 442-443; citing *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 795, 798-799.

[43] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007; *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[44] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 342; *People v. Enfermo*, G.R. Nos. 148682-85, November 30, 2005, 476 SCRA 515, 532.

controverting explanation by Tobias showing how he came to possess the spurious document. Much less can we consider the dismissal as done with abuse of discretion, least of all grave. We concur with the erudite exposition of the CA on the matter, to wit:

> It would seem that under the above proposition of the petitioner, the moment a person has in his possession a falsified document and has made use of it, probable cause or *prima facie* is already established and that no amount of satisfactory explanation will prevent the filing of the case in court by the investigating officer, for any such good explanation or defense can only be threshed out in the trial on the merit. We are not to be persuaded. To give meaning to such argumentation will surely defeat the very purpose for which preliminary investigation is required in this jurisdiction.
>
> A preliminary investigation is designed to secure the respondent involved against hasty, malicious and oppressive prosecution. A preliminary investigation is an inquiry to determine whether (a) a crime has been committed, and (b) whether there is probable cause to believe that the accused is guilty thereof (*De Ocampo vs. Secretary of Justice*, 480 SCRA 71 [2006]). It is a means of discovering the person or persons who may be reasonably charged with a crime (*Preferred Home Specialties, Inc. vs. Court of Appeals*, 478 SCRA 387, 410 [2005]). Prescindingly, under Section 3 of Rule 112 of the Rules of Criminal Procedure, the respondent must be informed of the accusation against him and shall have the right to examine the evidence against him and submit his counter-affidavit to disprove criminal liability. By far, respondent in a criminal preliminary investigation is legally entitled to explain his side of the accusation.
>
> We are not unaware of the established presumption and rule that when it is proved that a person has in his possession a falsified document and makes use of the same the presumption or inference is that such person is the forger (*Serrano vs. Court of Appeals*, 404 SCRA 639, 651 [2003]), citing *Koh Tieck Heng vs. People*, 192 SCRA 533, 546-547 [1990]). Yet, the Supreme Court declared that in the absence of satisfactory explanation, one who is found in possession of a forged document and who used it is presumed to be the forger (citing *People vs. Sendaydiego*, 81 SCRA 120, 141 [1978]). Very clearly then, a satisfactory explanation could render ineffective the presumption which, after all, is merely a disputable one.[45]

---

[45] *Rollo*, pp. 44-45.

We do not lose sight of the fact that METROBANK, a commercial bank dealing in real property, had the duty to observe due diligence to ascertain the existence and condition of the realty as well as the validity and integrity of the documents bearing on the realty.[46] Its duty included the responsibility of dispatching its competent and experience representatives to the realty to assess its actual location and condition, and of investigating who was its real owner.[47] Yet, it is evident that METROBANK did not diligently perform a thorough check on Tobias and the circumstances surrounding the realty he had offered as collateral. As such, it had no one to blame but itself. Verily, banks are expected to exercise greater care and prudence than others in their dealings because their business is impressed with public interest.[48] Their failure to do so constitutes negligence on its part.[49]

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*, and **AFFIRMS** the decision of the Court of Appeals promulgated on December 29, 2006. The petitioner shall pay the costs of suit.

SO ORDERED.

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

---

[46] *Cruz v. Bancom*, G.R. No. 147788, March 19, 2002, 379 SCRA 490, 505.

[47] *Rural Bank of Siaton (Negros Oriental), Inc. v. Macajilos*, G.R. No. 152483, July 14, 2006, 495 SCRA 127; *Rural Bank of Sta. Ignacia, Inc. v. Dimatulac*, G.R. No. 142015, April 29, 2003, 401 SCRA 742.

[48] *Cavite Development Bank v. Sps. Lim*, G.R. No. 131679, February 1, 2000, 324 SCRA 346, 359; *Rural Bank of Siaton (Negros Oriental), Inc. v. Macajilos*, G.R. No. 152483, July 14, 2006, 495 SCRA 127, 140.

[49] *Rural Bank of Sta. Ignacia, Inc. v. Dimatulac*, *supra*, note 47, at p. 752.

[*] Vice Associate Justice Mariano C. Del Castillo, who took part in the proceedings in the Court of Appeals, per raffle of October 19, 2011.

FIRST DIVISION

[G.R. No. 179497. January 25, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RENANDANG MAMARUNCAS, Piagapo, Lanao del Sur; PENDATUM AMPUAN, Piagapo, Lanao del Sur;** *appellants,* **BAGINDA PALAO (at large)** ***Alias*** **"Abdul Wahid Sultan",** *accused.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ALTHOUGH THERE MAY BE INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES ON MINOR DETAILS, THEY DO NOT IMPAIR THEIR CREDIBILITY WHERE THERE IS CONSISTENCY IN RELATING THE PRINCIPAL OCCURRENCE AND POSITIVE IDENTIFICATION OF THE ASSAILANT. — The perceived inconsistency on whether Gepayo knows Ampuan even before the incident is inconsequential as to discredit the credibility of Gepayo's testimony. The inconsistency pointed out by appellants pertains only to collateral or trivial matters and has no substantial effect on the nature of the offense. In fact, it even signifies that the witness was neither coached nor was lying on the witness stand. What matters is that there is no inconsistency in Gepayo's complete and vivid narration as far as the principal occurrence and the positive identification of Ampuan as one of the principal assailants are concerned. "The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant."

2. ID.; ID.; ID.; WITNESSING A CRIME IS AN UNUSUAL EXPERIENCE WHICH ELICITS DIFFERENT REACTIONS FROM THE WITNESSES AND FOR WHICH NO CLEAR-CUT STANDARD FORM OF BEHAVIOR CAN BE DRAWN. — It could be true that Gepayo did not retreat to a safer place during the shooting incident and did not render assistance to his wounded employer. To appellants, this reaction is contrary to human nature. We believe otherwise. This imputed omission, to our mind, does not necessarily diminish the plausibility of

Gepayo's story let alone destroy his credibility. To us, his reaction is within the bounds of expected human behavior. Surely, he was afraid that they might kill him because the malefactors were then armed with guns. Thus, he would not dare attempt to stop them and stake his life in the process. At any rate, it is settled "that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience. Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn."

3. ID.; ID.; ID.; DISCREPANCIES BETWEEN A SWORN STATEMENT AND TESTIMONY IN COURT DO NOT OUTRIGHTLY JUSTIFY THE ACQUITTAL OF AN ACCUSED; AS BETWEEN AN AFFIDAVIT EXECUTED OUTSIDE THE COURT AND A TESTIMONY GIVEN IN OPEN COURT, THE LATTER ALMOST ALWAYS PREVAILS. — As to the contention that Gepayo referred to Abdul Wahid Sultan and Pendatum Ampuan as one and the same person in his affidavit and yet later on testified to the contrary, this Court finds the same inconsequential and will not outrightly justify the acquittal of an accused. In a very recent case, this Court reiterated that as between an affidavit executed outside the court and a testimony given in open court, the latter almost always prevails. It emphasized therein that: Discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant. Thus, our rulings generally consider sworn statements taken out of court to be inferior to in court testimony. The evidence at hand, moreover, clearly points out that it was the police officers who supplied the names of the suspects in Gepayo's affidavit.

4. ID.; CRIMINAL PROCEDURE; INFORMATION; FAILURE TO OBJECT TO THE ALLEGED DEFECT IN THE INFORMATION BEFORE ENTERING THE PLEA OF NOT GUILTY AMOUNTED TO A WAIVER OF THE SAID DEFECT; OBJECTIONS AS TO MATTERS OF FORM

OR SUBSTANCE IN THE INFORMATION CANNOT BE MADE FOR THE FIRST TIME ON APPEAL. — [A]ppellants aver that the Information filed before the trial court was substantially defective considering that it accuses Abdul and Ampuan as one and the same person when in fact they were identified as different persons. As such, Ampuan was not able to comprehend the Information read to him. The Court cannot accord merit to this argument. It is well to note that appellants failed to raise the issue of the defective Information before the trial court through a motion for bill of particulars or a motion to quash the information. Their failure to object to the alleged defect before entering their pleas of not guilty amounted to a waiver of the defect in the Information. "Objections as to matters of form or substance in the [I]nformation cannot be made for the first time on appeal." Records even show that the Information was accordingly amended during trial to rectify this alleged defect but appellants did not comment thereon.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED WHERE THE ATTACK WAS SO SWIFT AND UNEXPECTED, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO OPPORTUNITY TO RESIST OR DEFEND HIMSELF. — From the evidence and as found by the trial court and affirmed by the appellate court, the facts sufficiently prove that treachery was employed by appellants. The attack on Baudelio was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. x x x. Hence, both lower courts correctly found appellants guilty of murder in view of the presence of treachery.

6. ID.; CONSPIRACY; EXISTS WHERE THE THREE ACCUSED PERFORMED SPECIFIC ACTS WITH SUCH CLOSENESS AND COORDINATION AS TO UNMISTAKABLY INDICATE A COMMON PURPOSE AND DESIGN IN THE COMMISSION OF THE CRIME. — Conspiracy exists "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary x x x [as it] may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action

and community of interest." In this case, conspiracy was clearly established. All three accused entered the shop of Baudelio at the same time. Ampuan shot Baudelio from behind, hitting the latter at his left armpit while Mamaruncas shot Baudelio on the thigh. When Baudelio fell to the ground face down, Abdul shot him at the back. These consecutive acts undoubtedly showed appellants' unanimity in design, intent and execution. They performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose and design in the commission of the crime.

7. REMEDIAL LAW; EVIDENCE; 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 FINDINGS, ARE TO BE GIVEN HIGHEST RESPECT. — The Court sees no cogent reason to disturb the findings of the RTC and the CA considering that they are based on existing evidence and reasonable conclusions drawn therefrom. It has been held time and again that 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. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA. Though the rule is subject to exceptions, no such exceptional grounds obtain in this case.

8. ID.; ID.; DENIAL; AS BETWEEN THE CATEGORICAL TESTIMONY THAT RINGS OF TRUTH ON ONE HAND, AND A BARE DENIAL ON THE OTHER, THE FORMER IS GENERALLY HELD TO PREVAIL. — Against the damning evidence adduced by the prosecution, appellants could only muster mere denial. As ruled in various cases by the Court, denial, if unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving. "As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail."

9. CRIMINAL LAW; MURDER; DEFINED; PROPER PENALTY. — Undoubtedly, the crime committed is murder in view of the attending aggravating circumstance of treachery. Murder, as defined under Article 248 of the Revised Penal Code as

amended, is the unlawful killing of a person which is not parricide or infanticide, provided that treachery, *inter alia*, attended the killing. The presence of any one of the enumerated circumstances under the aforesaid Article is enough to qualify a killing as murder punishable by *reclusion perpetua* to death. Since only the qualifying circumstance of treachery is found to be present, both the RTC and the CA properly imposed the penalty of *reclusion perpetua* pursuant to Article 63 of the Revised Penal Code. Moreover, Section 3 of Republic Act No. 9346 provides: Section 3. Persons convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended. Pursuant to the above provision, appellants are therefore not eligible for parole.

10. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARD THEREOF IS MANDATORY WITHOUT NEED OF ALLEGATION AND PROOF OTHER THAN THE DEATH OF THE VICTIM, OWING TO THE FACT OF THE COMMISSION OF MURDER OR HOMICIDE. — The Court modifies the award of civil indemnity in the amount of ₱50,000.00. In line with prevailing jurisprudence, said award is increased to ₱75,000.00. Anent the award of moral damages, the CA correctly imposed the amount of ₱50,000.00. These "awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide."

11. ID.; ID.; ACTUAL DAMAGES; TO BE ENTITLED TO AN AWARD THEREOF, IT IS NECESSARY TO PROVE THE ACTUAL AMOUNT OF LOSS WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE; TEMPERATE DAMAGES IN THE AMOUNT OF ₱25,000.00 AWARDED IN LIEU OF ACTUAL DAMAGES. — Anent the award of actual damages, the victim's widow testified that the family spent a total of ₱66,904.00 relative to the wake and burial of the victim. However, the claim for said amount is supported merely by a list of expenses personally prepared by the widow instead of official receipts. To be entitled to an award of actual damages, "it is necessary to prove the actual amount of loss with a

reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable x x x." "A list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions." Thus the Court deletes the lower courts' award of actual damages. Nonetheless, since entitlement of the same is shown under the facts of the case, temperate damages in the amount of ₱25,000.00 should be awarded in lieu of actual damages to the heirs of the victim pursuant to Article 2224 of the Civil Code which provides that temperate damages "may be recovered when the court finds that pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

12. ID.; ID.; INDEMNITY FOR LOSS OF EARNING CAPACITY; CANNOT BE AWARDED IN THE ABSENCE OF DOCUMENTARY EVIDENCE EXCEPT WHERE THE VICTIM WAS EITHER SELF-EMPLOYED OR A DAILY WAGE WORKER EARNING LESS THAN THE MINIMUM WAGE UNDER CURRENT LABOR LAWS. — The CA correctly deleted the indemnity for loss of earning capacity awarded by the trial court. Such indemnity cannot be awarded in the absence of documentary evidence except where the victim was either self-employed or a daily wage worker earning less than the minimum wage under current labor laws. As testified to by the widow, Florenda Batoon, the victim was earning a monthly income of ₱20,000.00 and ₱90,000.00 as an auto repair shop and a six-wheeler truck operator, respectively. The trial court made a conservative estimate of ₱500.00 a day as the net income from the truck alone after making reasonable deductions from its operation. Thus, ranged against the daily minimum wage then prevailing in Region X which is ₱137.00 per day pursuant to Wage Order No. RX-03, this case undoubtedly does not fall under the exceptions where indemnity for loss of earning capacity can be given despite the lack of documentary evidence.

13. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF INCREASED TO ₱30,000.00. — The Court sustains the award of exemplary damages in view of the proven qualifying circumstance of treachery. The CA however awarded exemplary damages to the heirs of the victim in the amount of ₱25,000.00. To conform with prevailing jurisprudence, the Court increases this amount to ₱30,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Pubic Attorney's Office for appellants.

D E C I S I O N

DEL CASTILLO, *J.*:

The assessment of the credibility of witnesses by the trial court is the center of this controversy. The well-known rule, though subject to certain recognized exceptions, is that findings of facts and assessment of credibility of witnesses are matters best left to the trial court. Hence, "[u]nless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected."[1]

Assailed in the present appeal is the June 30, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00196 which affirmed with modification the July 19, 1999 Decision[3] of the Regional Trial Court (RTC) of Iligan City, Branch 06 in Criminal Case No. 06-6150 convicting Renandang Mamaruncas (Mamaruncas) and Pendatum Ampuan (Ampuan) (appellants) of the crime of murder.

On February 9, 1996, the following Information[4] for murder was filed against Mamaruncas, Baginda Palao (Palao) *alias* Abdul Wahid Sultan and Ampuan.[5]

---

[1] *People v. Castel*, G.R. No. 171164, November 28, 2008, 572 SCRA 642, 668.

[2] CA *rollo*, pp. 250-273; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Romulo V. Borja and Sixto C. Marella, Jr.

[3] Records, pp. 162-171; penned by Judge Valerio M. Salazar.

[4] *Id.* at 1.

[5] Initially, the names of the accused were indicated as "Romandang Mamaruncas, Baginda Palao and Abdul Wahid Sultan alias Pendatum Ampuan. (*Id.*) Later, the names of the accused were properly corrected in the Information

That on or about February 1, 1996, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, except for others whose cases are still under preliminary investigation, conspiring with and confederating together and mutually helping each other, armed with deadly weapon, to wit: a caliber .45 pistol, by means of treachery and evident premeditation, and with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot and wound one Baudelio R. Batoon, thereby inflicting upon him the following physical injuries, to wit:

– Cardio respiratory arrest
– Hypovolemic shock
– Multiple gunshot wound

which caused his death.

Contrary to and in violation of Article 248 of the Revised Penal Code with the aggravating circumstances of treachery and evident premeditation.

Only Mamaruncas and Ampuan appeared at the scheduled arraignment on May 20, 1996. Their co-accused, Palao *alias* Abdul Wahid Sultan (Abdul), remains at large. Appellants pleaded not guilty[6] and trial proceeded against them.

Factual Antecedents

The facts of the case, as summarized by the Office of the Solicitor General (OSG) in its brief and substantiated by the transcripts of stenographic notes of the proceedings, are as follows:

Around noontime on February 1, 1996, Baudelio Batoon, Richard Batoon, Juanito Gepayo and a certain "Nito" were working on vehicles inside Baudelio Batoon's auto repair shop situated along the highway in Tubod, Baraas, Iligan City.

Baginda Palao then entered the shop accompanied by appellants Renandang Mamaruncas and Pendatum Ampuan. Baginda Palao wore desert camouflage fatigues; while his two (2) companions wore Philippine Army tropical green fatigues. Baginda Palao showed

---

as Renandang Mamaruncas, Baginda Palao *alias* Abdul Wahid Sultan and Pendatum Ampuan, *id.*; TSN, September 7, 1998, p. 18.

[6] Records, p. 34.

Baudelio Batoon an arrest warrant and told the latter he was serving it against Batoon.

The arrival of Baginda Palao's group prompted Juanito Gepayo and Richard Batoon to stop their work and observe what was happening.

Baudelio Batoon told Baginda Palao to just wait awhile, as they would settle the matter after he [Batoon] [finishes] tuning-up an engine he had been working on.

Baginda Palao reacted by slapping the victim's stomach and pointing a .45 caliber pistol at him. Baudelio Batoon then tried to grab Palao's gun, causing the two of them to grapple for the same. As these two wrestled for control of the gun, Renandang Mamaruncas, who was behind Baudelio Batoon, shot from behind Batoon's right thigh with a .38 cal. homemade gun. Pendatum Ampuan, who was also standing behind Baudelio Batoon, followed up by shooting Batoon's left arm pit with a .45 cal. [homemade] pistol. Baudelio Batoon fell to the ground and Baginda Palao finished [him off] with a single .45 cal. shot to the back. Juanito Gepayo and Richard Batoon saw the entire scene, stunned and unable to do anything. From their vantage points three (3) to four (4) meters away, these witnesses had a clear and unobstructed view of the entire incident.

Meanwhile, Police Inspector Graciano Mijares, then Commanding Officer of the Iligan City PNP Mobile Force Company, was riding a civilian car along the highway, heading towards Iligan City proper. He was accompanied by his driver, SPO3 William Yee, and SPO3 George Alejo. They heard the gunshots emanating from the auto repair shop at Baraas, prompting Inspector Mijares to order his driver to stop the car. They alighted and proceeded to the source of the gunshots. At the repair shop, they saw three (3) men in camouflage gear with guns drawn and pointed at a person already lying on the ground. Inspector Mijares' group shouted at the camouflaged gunmen to stop what they were doing and to drop their firearms, at the same time announcing that they (Mijares' group) were policemen.

The camouflaged gunmen reacted by firing at the policemen. The latter fired back. During the exchange of gunfire, Baginda Palao ran behind the Batoon house, while Renandang Mamaruncas and Pendatum Ampuan ran towards the road and a nearby car. Inspector Mijares was able to hit Mamaruncas and Ampuan, while SPO3 Yee likewise hit Ampuan. Mamaruncas, who managed to get inside the car, and Ampuan were then captured by the policemen. The lawmen also gave chase to Baginda Palao; but he escaped.

Other responding policemen brought Mamaruncas and Ampuan to the hospital for treatment and they were eventually placed under detention. Baudelio Batoon was brought to the hospital by his wife; but he was pronounced dead on arrival.

Based on the necropsy examination of the victim's body, Dr. Leonardo Labanen established that the three (3) gunshot wounds found on the body of Baudelio Batoon (*i.e.*, at the right thigh, left armpit and back) were inflicted at close range due to the presence, or at least traces, of gunpowder burns.[7]

Only appellants testified for their defense. Their testimonies, as narrated by the trial court, are as follows:

Accused Renandang Mamaruncas testified that he is 34 years old, married, carpenter and a resident of Piagapo, Lanao del Sur. On the morning of February 1, 1996, he was in Marawi City. He decided to come down to Iligan City to see a movie. He left Marawi at 7:00 a.m. and upon arrival at the Tambacan terminal in Iligan City, he went to the house of his cousin. Later, he changed his mind about going to a movie and returned to the Tambacan terminal in order to go back to Marawi City. At about 11:30 a.m., Abdul Wahid Sultan arrived with Pendatum Ampuan on board a car driven by Aminola. Abdul Wahid invited him to go with them because he will collect some money and afterwards they will have some enjoyment. He agreed and sat at the rear seat behind the driver. Abdul Wahid was at the front seat with Pendatum behind at the back seat. They drove to Baraas. They stopped at a crossing and Abdul Wahid and Pendatum Ampuan alighted. Before walking away, Abdul Wahid handed to Renandang a .38 cal[.] revolver with instructions to remain in the car and [keep] watch. At first he refused but Abdul Wahid insisted so he accepted the gun. Abdul Wahid and Pendatum walked to the shop leaving the rear right door open. About ten minutes later, he heard three gunshots. He moved to the rear seat where the door was open and saw policemen, who arrived and surrounded the car. He placed the gun on the seat and raised his hands as a sign of surrender. Then with his right hand, he closed the car door. Just as the door closed, the policemen shot him on the forearm and chest below the right nipple. He lost consciousness and regained it only at the hospital.

---

[7] CA *rollo*, pp. 185-189. Citations omitted.

He further testified that Abdul Wahid Sultan is an old friend. He is also known as Baginda Palao. Pendatum Ampuan is not known as Abdul Wahid Sultan.

He also declared that the statement of Juanito Gepayo that only Abdul Wahid Sultan and Pendatum Ampuan entered the shop and shot Baudelio Batoon is true and that the testimony of P/Insp. Mijares that he also shot the victim is not true. He denied any part in the shooting to death of Baudelio Batoon.

Accused Pendatum Ampuan testified that he is 20 years old, single, student and a resident of Piagapo, Lanao del Sur. On January 31, 1996 at about 6:00 a.m., he left Marawi City for Iligan City on board a passenger Armak jeepney. He alighted at the terminal behind the Gaisano Superstore and at exactly 7:00 a.m., he entered the store and went to the upper storey to shop. When he came out, he met a friend name[d] Bessah. Together they walked to the Maharlika Theater but then Bessah expressed the intention to go home to Marawi City. He accompanied Bessah to the Tambacan terminal. Then he proceeded to the house of his Uncle Ali in Cabaro. (This is a place North of the city and at the opposite side from Tambacan which is South of the city). He arrived there at noon. He stayed overnight at his Uncle Ali's house. At about 9:00 a.m., the following day, February 1, 1996, he left the house of his uncle. Outside, he met Baginda Palao, who was looking for a certain Baser, a policeman. He wanted the latter to help him collect a debt. They went to the terminal at the back of Gaisano store but did not find Baser. Baginda told him to wait while he will look for Baser inside the Gaisano store. Baginda returned without having found Baser and once again he told him to wait while Baginda will look for a car. A little later, Baginda returned on board a car driven by one Aminola Basar. They went to the Tambacan terminal but again did not find Baser. Instead, they saw Renandang Mamaruncas. Baginda invited the latter to go with them to Baraas to collect a debt. Renandang entered the car and they proceeded to Baraas. The car stopped at a place near a shop. Baginda instructed him and Renandang to remain in the car because he was going out to collect the debt. Baginda left the car and entered the shop. About ten minutes later, he heard shouting followed by gunfire. He stepped out of the car to verify and saw Baginda Palao [shoot] the victim. He retreated to the car as the police led by Capt. Mijares arrived. They confiscated the car key and arrested them except Baginda Palao who escaped. They were taken to the hospital due to injuries. In his case, the sustained wounds when mauled by the children of

the victim but in another breath he admitted that his injury was a gunshot wound when he was caught in the cross fire as the police shot Renandang Mamaruncas. He was inside the car when he was hit. He further admitted that Baginda Palao is known as Abdul Wahid Sultan. He denied shooting Baudelio Batoon.[8]

Ruling of the Regional Trial Court

The RTC debunked appellants' defense of denial and held them guilty as principals by direct participation in the killing of Baudelio Batoon (Baudelio). It gave full faith and credence to the evidence of the prosecution especially on the presence of conspiracy among the malefactors and rendered a verdict of conviction, thus:

> WHEREFORE, the court finds the accused Renandang Mamaruncas and Pendatum Ampuan GUILTY beyond reasonable doubt as principals of the crime of murder qualified by treachery defined and penalized in Art. 248 of the Revised Penal Code as amended, without the presence of any other aggravating circumstances and hereby sentences each of them to suffer the penalty of *RECLUSION PERPETUA* with the corresponding accessory penalties attached thereto by law and to indemnify the Heirs of Baudelio Batoon the sums of:
>
> 1. ₱10,200,000.00 for and as loss of support;
> 2. ₱66,904.00 for and as actual damages;
> 3. ₱50,000.00 as death indemnity and
> 4. ₱100,000.00 for and as moral damages
>
> without subsidiary imprisonment in case of insolvency.
>
> Cost against the accused.
>
> Having been under preventive detention since February 1, 1996, the period of such detention shall be credited in full in favor of said accused in the service of their respective sentences.
>
> SO ORDERED.[9]

In view of the Notice of Appeal[10] filed by the appellants, the RTC forwarded the records of the case to this Court. By

---

[8] Records, pp. 165-166.

[9] *Id.* at 171.

[10] *Id.* at 173-175.

Resolution[11] dated January 31, 2000, the Court resolved to accept the appeal. In view thereof, appellants were required to file their brief.[12] Appellants thus filed their brief on November 20, 2000[13] while the OSG submitted the Brief for the Plaintiff-Appellee[14] on May 2, 2001. Later, however, consonant with this Court's pronouncement in *People v. Mateo*[15] the case was transferred to the CA for appropriate action and disposition.[16]

Ruling of the Court of Appeals

By Decision[17] promulgated on June 30, 2006, the appeals court affirmed with modification the RTC Decision. Said court ruled that the inconsistencies in the prosecution witnesses' testimonies pointed out by the appellants pertain only to minor and collateral matters which do not dilute the probative weight of said testimonies. Regarding the erroneous designation of appellant Ampuan's name in the Information, the court went on to hold that such error was only a formal defect and the proper correction of which was duly made without any objection on the part of the defense. The CA likewise held that treachery attended the commission of the crime.

The decretal portion of the Decision reads:

WHEREFORE, premises considered, the Appeal is hereby DISMISSED and the questioned Judgment dated July 19, 1999 of the Regional Trial Court is AFFIRMED with MODIFICATION. Appellants Renandang Mamaruncas and Pendatum Ampuan are found GUILTY beyond reasonable doubt of murder as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 and are hereby sentenced to suffer the penalty of *reclusion*

---

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

[12] See Notice to File Appellant Brief dated March 6, 2000, *id.* at 45.

[13] *Id.* at 64-77.

[14] *Id.* at 179-208.

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

[16] See Minute Resolution dated September 13, 2004, CA *rollo*, p. 245.

[17] *Supra* note 2.

perpetua. The appellants are to pay, jointly and severally, the heirs of Baudelio Batoon the amount of ₱50,000.00 by way of civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages and ₱66,904.00 as actual damages.

SO ORDERED.[18]

Disgruntled, appellants are now again before this Court in view of their Notice of Appeal[19] from the Decision of the CA.

By Resolution[20] dated November 19, 2007, this Court notified the parties that they may file their respective supplemental briefs within 30 days from notice. In their respective manifestations, the parties opted to adopt the briefs they earlier filed as their supplemental briefs.[21]

In their brief, appellants assign the following errors:

I. THAT THE TRIAL COURT ERRED IN CONVICTING [THEM] WHEN THEY SHOULD HAVE BEEN ACQUITTED FOR FAILURE OF THE PROSECUTION TO PROVE ITS CASE BEYOND REASONABLE DOUBT; AND

II. THE INFORMATION FILED BEFORE THE TRIAL COURT WAS SUBSTANTIALLY DEFECTIVE.[22]

The basic thrust of appellants' first assignment of error is the credibility of the prosecution witnesses. Appellants contend that the trial court anchored its finding and conclusion on the testimonies of witnesses Juanito Gepayo (Gepayo), Richard Batoon (Batoon) and P/Sr. Insp. Graciano Mijares (Mijares), who appear to be inconsistent in their stand and whose credibility is therefore assailable. They question the prosecution witnesses'

---

[18] CA *rollo*, p. 272.

[19] *Id.* at 281-284.

[20] *Rollo*, p. 32.

[21] See the OSG's Manifestation and Motion for Leave to Adopt Brief as Supplemental Brief, *id.* at 33-36, and appellants' Manifestation and Motion (In Lieu of Supplemental Brief), *id.* at 37-40.

[22] CA *rollo*, p. 65.

identification of Abdul and Ampuan as one and the same person and aver that the same only leads to the logical conclusion that said witnesses were perjured witnesses. They argue that Ampuan failed to grasp the information read to him as he was arraigned as "Abdul Wahid Sultan alias Pendatum Ampuan."

On the other hand, the OSG in praying for the affirmance of the appealed Decision, opines that inconsistencies on minor and collateral matters in the testimony of a prosecution eyewitness do not affect his credibility. It also contends that whatever defect the information subject of appellant Ampuan's arraignment has had been cured with the latter's consent during the trial.

Our Ruling

The appeal lacks merit.

In support of their quest for acquittal, appellants tried to cast doubt on the credibility of witness Gepayo anchored on the following grounds: (1) there was serious inconsistency in his testimony on whether he knew Ampuan before the incident; (2) his actuation of just watching the incident without giving any assistance to his fallen employer as well as his immediate return to work thereafter is contrary to human nature and experience; (3) while he testified that appellant Mamaruncas was one of the wounded suspects during the encounter, he failed to identify him in court; and, (4) in his affidavit, he identified Abdul and Ampuan as one and the same person but later on testified to the contrary.

Credibility of witnesses not affected by minor inconsistencies.

The perceived inconsistency on whether Gepayo knows Ampuan even before the incident is inconsequential as to discredit the credibility of Gepayo's testimony. The inconsistency pointed out by appellants pertains only to collateral or trivial matters and has no substantial effect on the nature of the offense. In fact, it even signifies that the witness was neither coached nor was lying on the witness stand. What matters is that there is no inconsistency in Gepayo's complete and vivid narration as far as the principal occurrence and the positive identification of

Ampuan as one of the principal assailants are concerned.[23] "The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant."[24]

It could be true that Gepayo did not retreat to a safer place during the shooting incident and did not render assistance to his wounded employer. To appellants, this reaction is contrary to human nature. We believe otherwise. This imputed omission, to our mind, does not necessarily diminish the plausibility of Gepayo's story let alone destroy his credibility. To us, his reaction is within the bounds of expected human behavior. Surely, he was afraid that they might kill him because the malefactors were then armed with guns.[25] Thus, he would not dare attempt to stop them and stake his life in the process. At any rate, it is settled "that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience. Witnessing a crime is an unusual experience which elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn."[26]

The failure of Gepayo to identify Mamaruncas in court does not bolster appellants' cause. As the CA correctly pointed out:

> x x x We agree with the prosecution's observation that although he did not positively identify appellant Mamaruncas as one of the shooters, he was however, able to point out that there was a third person who accompanied assailants Palao and Ampuan in approaching the victim during the incident. This is also bolstered by Insp. Mijares[']s testimony that he saw three assailants pointing their guns at the victim who was already lying prostrate on the ground.[27]

---

[23] See TSN, May 20, 1996, pp. 18 and 77.

[24] *People v. Bernabe*, G.R. No. 185726, October 16, 2009, 604 SCRA 216, 231.

[25] TSN, May 20, 1996, p. 47.

[26] *People v. Diaz*, G.R. No. 185841, August 4, 2009, 595 SCRA 379,403.

[27] CA *rollo*, p. 265.

In any event, even without Gepayo's identification of Mamaruncas, the unrebutted testimony of another prosecution eyewitness, Batoon, clearly points to Mamaruncas as one of the assailants. Thus:

Q: After these three persons rather Abdul Wahid together with two companions, presented the warrant of arrest to your father, what happened thereafter?
A: They pulled their guns and pointed [them at] my father.

Q: Who pulled out .45 caliber gun [and pointed it at] your father?
A: Abdul Wahid, Sir

Q: And what happened after the .45 pistol [was] pointed [at] your father?
A: My father tried to [grab] the .45 caliber from Abdul Wahid, Sir.

Q: What happened after?
A: My father was shot by one of his companion[s], Sir.

Q: Who [first shot] your father?

A: (Witness pointing to a person. [W]hen he was asked x x x his name[,] he answered that he is Renandang Mamaruncas)

x x x x x x x x x

Q: After this Renandang Mamaruncas shot your father, what happened thereafter?
A: The other companion fired the next shot (witness pointing to a person sitting at the bench inside the Courtroom and when he was asked x x x his name, he answered that he is Pendatum [Ampuan].)[28]

Undoubtedly, the testimonies of eyewitnesses Gepayo and Batoon on material details are straightforward and consistent with each other. They personally saw appellants at the scene of the crime at the time it was committed. Their combined declarations established beyond reasonable doubt the identities of both appellants, along with their co-accused Abdul, as the perpetrators of the crime.

[28] Direct Testimony of Richard Batoon, TSN, September 18, 1996, pp. 15-19.

As to the contention that Gepayo referred to Abdul Wahid Sultan and Pendatum Ampuan as one and the same person in his affidavit[29] and yet later on testified to the contrary, this Court finds the same inconsequential and will not outrightly justify the acquittal of an accused. In a very recent case,[30] this Court reiterated that as between an affidavit executed outside the court and a testimony given in open court, the latter almost always prevails. It emphasized therein that:

> Discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are often incomplete. They do not purport to contain a complete compendium of the details of the event narrated by the affiant. Thus, our rulings generally consider sworn statements taken out of court to be inferior to in court testimony (citation omitted).

The evidence at hand, moreover, clearly points out that it was the police officers who supplied the names of the suspects in Gepayo's affidavit.[31]

Any alleged defect in the Information deemed waived.

Anent the second assigned error, appellants aver that the Information filed before the trial court was substantially defective considering that it accuses Abdul and Ampuan as one and the same person when in fact they were identified as different persons. As such, Ampuan was not able to comprehend the Information read to him.

The Court cannot accord merit to this argument. It is well to note that appellants failed to raise the issue of the defective Information before the trial court through a motion for bill of particulars or a motion to quash the information. Their failure to object to the alleged defect before entering their pleas of not

---

[29] Exhibit "1", records, p. 6.

[30] *Gemma Ong a.k.a Maria Teresa Gemma Catacutan v. People*, G.R. No. 169440, November 23, 2011.

[31] TSN, May 20, 1996, p. 88.

guilty amounted to a waiver of the defect in the Information. "Objections as to matters of form or substance in the [I]nformation cannot be made for the first time on appeal."[32] Records even show that the Information was accordingly amended during trial to rectify this alleged defect but appellants did not comment thereon, *viz*:

> FISCAL ROBERTO ALBULARIO:
>
> Per manifestation and admission of this witness, the Information be amended from [Renandang] Mamaruncas and the word and, it should be Bagindo [sic] Palao alias Abdul Wahid Sultan and the alias Pendatum Ampuan be erased as corrected.
>
> COURT:
>
> Any comment from the accused.
>
> ATTY. FIDEL MACAUYAG:
>
> No comment, Your Honor.[33]

Treachery correctly appreciated.

From the evidence and as found by the trial court and affirmed by the appellate court, the facts sufficiently prove that treachery was employed by appellants. The attack on Baudelio was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. As ruled by the trial court:

> In the above situation, treachery was considered to exist. More so in this case when the victim was completely without any weapon from the inception of the assault. At the moment when Pendatum Ampuan and Renandang Mamaruncas shot him, Baudelio Batoon was not in any position to defend himself. And when Abdul Wahid shot him while lying wounded on the ground, he was utterly defenseless.[34]

Hence, both lower courts correctly found appellants guilty of murder in view of the presence of treachery.

---

[32] *Panuncio v. People*, G.R. No. 165678, July 17, 2009, 593 SCRA 180, 188.

[33] TSN, September 7, 1998, p. 29.

[34] Records, p. 169.

Conspiracy was duly proven.

We also sustain the finding of conspiracy. Conspiracy exists "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary x x x [as it] may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action and community of interest."[35]

In this case, conspiracy was clearly established. All three accused entered the shop of Baudelio at the same time. Ampuan shot Baudelio from behind, hitting the latter at his left armpit while Mamaruncas shot Baudelio on the thigh. When Baudelio fell to the ground face down, Abdul shot him at the back. These consecutive acts undoubtedly showed appellants' unanimity in design, intent and execution. They performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose and design in the commission of the crime.

The Court thus sees no cogent reason to disturb the findings of the RTC and the CA considering that they are based on existing evidence and reasonable conclusions drawn therefrom. It has been held time and again that 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. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA.[36] Though the rule is subject to exceptions, no such exceptional grounds obtain in this case.

---

[35] *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51, 66.

[36] *Chua v. People*, G.R. Nos. 150926 and 30, March 6, 2006, 484 SCRA 161, 167.

Against the damning evidence adduced by the prosecution, appellants could only muster mere denial. As ruled in various cases by the Court, denial, if unsubstantiated by clear and convincing evidence is inherently a weak defense as it is negative and self-serving. "As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail."[37]

The Penalty

Undoubtedly, the crime committed is murder in view of the attending aggravating circumstance of treachery. Murder, as defined under Article 248[38] of the Revised Penal Code as amended, is the unlawful killing of a person which is not parricide or infanticide, provided that treachery, *inter alia*, attended the killing. The presence of any one of the enumerated circumstances under the aforesaid Article is enough to qualify a killing as murder punishable by *reclusion perpetua* to death. Since only the qualifying circumstance of treachery is found to be present, both the RTC and the CA properly imposed the penalty of

---

[37] *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 769.

[38] Art. 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

reclusion perpetua pursuant to Article 63 of the Revised Penal Code. Moreover, Section 3 of Republic Act No. 9346[39] provides:

> Section 3. Persons convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

Pursuant to the above provision, appellants are therefore not eligible for parole.

Awards of Damages

The Court modifies the award of civil indemnity in the amount of ₱50,000.00. In line with prevailing jurisprudence,[40] said award is increased to ₱75,000.00. Anent the award of moral damages, the CA correctly imposed the amount of ₱50,000.00.[41] These "awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide."[42]

Anent the award of actual damages, the victim's widow testified that the family spent a total of ₱66,904.00 relative to the wake and burial of the victim. However, the claim for said amount is supported merely by a list of expenses[43] personally prepared by the widow instead of official receipts. To be entitled to an award of actual damages, "it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable x x x."[44] "A list of expenses cannot replace receipts when the latter should have

---

[39] An Act Prohibiting the Imposition of Death Penalty in the Philippines. Took effect on June 24, 2006.

[40] *People v. Agacer*, G.R. No. 177751, December 14, 2011.

[41] *Id.*

[42] *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 437-438.

[43] Exhibit "D", records, p. 72.

[44] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 446-447.

been issued as a matter of course in business transactions."[45] Thus the Court deletes the lower courts' award of actual damages. Nonetheless, since entitlement of the same is shown under the facts of the case, temperate damages in the amount of ₱25,000.00[46] should be awarded in lieu of actual damages to the heirs of the victim pursuant to Article 2224 of the Civil Code which provides that temperate damages "may be recovered when the court finds that pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

The CA correctly deleted the indemnity for loss of earning capacity awarded by the trial court. Such indemnity cannot be awarded in the absence of documentary evidence except where the victim was either self-employed or a daily wage worker earning less than the minimum wage under current labor laws.

As testified to by the widow, Florenda Batoon, the victim was earning a monthly income of ₱20,000.00 and ₱90,000.00 as an auto repair shop and a six-wheeler truck operator, respectively. The trial court made a conservative estimate of ₱500.00 a day as the net income from the truck alone after making reasonable deductions from its operation. Thus, ranged against the daily minimum wage then prevailing in Region X which is ₱137.00 per day pursuant to Wage Order No. RX-03, this case undoubtedly does not fall under the exceptions where indemnity for loss of earning capacity can be given despite the lack of documentary evidence.

The Court sustains the award of exemplary damages in view of the proven qualifying circumstance of treachery. The CA however awarded exemplary damages to the heirs of the victim in the amount of ₱25,000.00. To conform with prevailing jurisprudence, the Court increases this amount to ₱30,000.00.[47]

---

[45] *People v. Guillera*, G.R. No. 175829, March 20, 2009, 582 SCRA 160, 171.

[46] *People v. Agacer, supra* note 40.

[47] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 531.

WHEREFORE, premises considered, the June 30, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00196 which found appellants Renandang Mamaruncas and Pendatum Ampuan **GUILTY** beyond reasonable doubt of murder is **AFFIRMED with further MODIFICATIONS** as follows:

1. Appellants are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;

2. The award of civil indemnity is increased to ₱75,000.00;

3. The award of ₱66,904.00 as actual damages is deleted;

4. ₱25,000.00 as temperate damages is awarded in lieu of actual damages;

5. The award of exemplary damages is increased to ₱30,000.00; and

6. Appellants are further ordered to pay the heirs of the victim interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 179884. January 25, 2012]

DURAWOOD CONSTRUCTION AND LUMBER SUPPLY, INC., *petitioner, vs.* **CANDICE S. BONA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTION; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED. — "Grave abuse of discretion" signifies "such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

2. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD No. 1529), SECTION 56 THEREOF; THE ANNOTATION IN THE CERTIFICATE OF TITLE IS NOT DETERMINATIVE OF THE EFFECTIVITY OF THE REGISTRATION OF THE SUBJECT INSTRUMENT. — The Court of Appeals, in considering the date of entry in the day book of the Registry of Deeds as controlling over the presentation of the entries in TCT No. R-17571, relied on Section 56 of Presidential Decree No. 1529 which provides that: SEC. 56. *Primary Entry Book; fees; certified copies*. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date** x x x. The consequence of the highlighted portion of the above section is two-fold: (1) in determining the date in which an instrument is considered registered, the reckoning point is the *time of the reception of such instrument as noted in the Primary Entry Book*; and (2) when the memorandum of the instrument is later made on the certificate of title to which it refers, such memorandum shall bear the *same date as that of the reception of the instrument as noted in the Primary Entry Book.* Pursuant to the second consequence stated above, the Court of Appeals

held that Atty. Rutaquio correctly placed the date of entry in the Primary Entry Book as the date of the memorandum of the registration of the deed of sale in TCT No. R-17571. As regards the first consequence, this Court has applied the same in several cases. Thus, in the old cases of *Levin v. Bass*, *Potenciano v. Dineros*, x x x as well as in the fairly recent cases of *Autocorp Group v. Court of Appeals*, *Armed Forces and Police Mutual Benefit Association, Inc. v. Santiago*, x x x we upheld the entry of instruments in the Primary Entry Book to be equivalent to registration despite even the failure to annotate said instruments in the corresponding certificates of title. Based on this alone, it appears that the RTC was in error when it considered the registration of the Absolute Deed of Sale on June 16, 2004 inferior to the registration of the Notice of Levy on Attachment on June 17, 2004 on the ground that the Attachment was annotated on TCT No. R-17571 earlier than the Deed of Sale. As discussed in the above-mentioned cases, the annotation in the certificate of title is not determinative of the effectivity of the registration of the subject instrument.

3. ID.; ID.; ID.; FOR THE ENTRY TO BE CONSIDERED TO HAVE THE EFFECT OF REGISTRATION, THERE IS STILL A NEED TO COMPLY WITH ALL THAT IS REQUIRED FOR ENTRY AND REGISTRATION, INCLUDING THE PAYMENT OF THE PRESCRIBED FEES; CASE AT BAR. — In *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*, this Court applied the provisions of Presidential Decree No. 1529 and modified the doctrine as follows: Current doctrine thus seems to be that entry alone produces the effect of registration, whether the transaction entered is a voluntary or an involuntary one, **so long as the registrant has complied with all that is required of him for purposes of entry and annotation, and nothing more remains to be done but a duty incumbent solely on the register of deeds**. This pronouncement, which was reiterated in *National Housing Authority v. Basa, Jr.*, shows that for the entry to be considered to have the effect of registration, there is still a need to comply with all that is required for entry and registration, including the payment of the prescribed fees. x x x. Records in the case at bar reveal that **as of June 25, 2004**, the date of the letter of Atty. Santos seeking the opinion of the LRA as regards the registration of the Deed of Sale and the Notice of Levy on Attachment, the

> required registration fees for the Deed of Sale has not yet been paid: x x x. Since there was still no compliance of "all that is required x x x for purposes of entry and annotation" of the Deed of Sale as of **June 25, 2004**, we are constrained to rule that the registration of the Notice of Levy on Attachment on **June 17, 2004** should take precedence over the former. Considering that the Notice of Levy on Attachment was deemed registered earlier than the Deed of Sale, the TCT issued pursuant to the latter should contain the annotation of the Attachment.

APPEARANCES OF COUNSEL

Rene Antonio R. Cirio for petitioner.
Hernando U. Salvador and *Sillano and Associates* for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 94479 dated April 18, 2007 and its Resolution[2] dated September 18, 2007.

On June 3, 2004, petitioner Durawood Construction and Lumber Supply, Inc. (Durawood) filed an action for sum of money plus damages with a prayer for the issuance of a writ of preliminary attachment against LBB Construction and Development Corporation (LBB Construction) and its president Leticia Barber (Barber) before the Regional Trial Court (RTC) of Antipolo. In said suit, which was docketed as Civil Case No. 04-7240, Durawood prayed for the sum of ₱665,385.50 as payment for construction materials delivered to LBB Construction.

---

[1] *Rollo*, pp. 17-27; penned by Associate Justice Rodrigo V. Cosico with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo, concurring.

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

On June 14, 2004, the RTC issued an Order granting Durawood's prayer for the issuance of a writ of attachment. On June 16, 2004, the corresponding writ was issued.

On June 17, 2004, Sheriff Rolando C. Leyva (Sheriff Leyva) levied on a 344-square meter parcel of land in Richdale Subdivision, Antipolo City covered by Transfer Certificate of Title (TCT) No. R-17571 in the name of LBB Construction. A Notice of Levy on Attachment was annotated in TCT No. R-17571's Memorandum of Encumbrances on the same day, June 17, 2004.

On July 13, 2004, respondent Candice S. Bona (Candice) filed a Motion seeking leave to intervene in Civil Case No. 04-7240. Attached to said Motion was Candice's Answer in Intervention, her Third Party Claim addressed to Sheriff Leyva, and a copy of TCT No. R-17571. Candice claimed therein that she is a co-owner of the property covered by TCT No. R-17571. She alleged that LBB Construction had sold the property to her and her siblings, Michael Angelo S. Bona, Diane Sheila S. Bona, Glenda May S. Bona and Johann Louie Sebastian S. Bona, through a Deed of Absolute Sale dated June 2, 2004. Candice asserted that the **sale** is the subject of **Entry No. 30549** dated **June 16, 2004** in the books of the Registry of Deeds of Antipolo City, while the **levy on attachment** is only **Entry No. 30590** dated **June 17, 2004**. What was attached to the Motion was a copy of TCT No. R-17571, and not a title in Candice and her co-owners' names.

On August 11, 2004, the RTC issued an Order granting Candice's Motion to Intervene.

LBB Construction and Barber filed their Answer in Civil Case No. 04-7240, but failed to attend the scheduled hearings, including the pre-trial. Consequently, Durawood was allowed to present its evidence *ex parte*.

On July 21, 2005, the RTC rendered its Decision[3] in Civil Case No. 04-7240 in favor of Durawood. The dispositive portion of the Decision reads:

---

[3] CA *rollo*, pp. 75-78.

WHEREFORE, in view of the foregoing consideration, judgment is rendered in favor of the plaintiff and against the defendants, *viz*:

1. Ordering the defendants to pay plaintiff the sum of Six Hundred Sixty[-]Five Thousand Three Hundred Eighty[-]Five Pesos and Fifty Centavos (₱665,385.50) plus two percent (2%) interest per month from May 11, 2004 up to the present;

2. Ordering the defendants to pay plaintiff twenty-five percent (25%) of the amount due to the plaintiff by way of attorney's fees; and

3. To pay the costs of suit.[4]

The Decision became final and executory. On September 12, 2005, Durawood filed a Motion for the Issuance of a Writ of Execution. On November 15, 2005, the RTC issued a Writ of Execution. It was when this Writ was about to be enforced that Durawood discovered the cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 in the name of Candice and her siblings.

It would appear from the records that on **June 16, 2004**, the supposed Register of Deeds of Antipolo City, Atty. Randy A. Rutaquio (Atty. Rutaquio), cancelled TCT No. R-17571 and issued TCT No. R-22522 in the name of Candice and her co-owners. The parties, however, do not dispute that said cancellation of the old TCT and issuance of the new one was **antedated**, since Atty. Rutaquio was still the Register of Deeds of Malabon on said date.[5] According to a certification of the Land Registration Authority,[6] it was a certain Atty. Edgar D. Santos (Atty. Santos) who was the Acting Register of Deeds of Antipolo City on June 16, 2004.

Durawood filed a Motion to Reinstate Notice of Levy on Attachment in TCT No. R-22522 and Cite Atty. Randy A. Rutaquio for Contempt[7] on the following grounds:

---

[4] *Id.* at 78.

[5] *Rollo*, p. 62.

[6] *Id.* at 252.

[7] CA *rollo*, pp. 82-85.

5. The cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 was made by Atty. Randy A. Rutaquio who, on June 2004, was not the Register of Deeds of Antipolo City. As evidence of such fact, plaintiff corporation was issued a certification by LRA Human Resource Management Officer IV Loreto I. Orense that Atty. Edgar D. Santos was the Acting Register of Deeds of Antipolo City from June 1-30, 2004.

6. While the Deed of Sale annotated in TCT No. R-17571 appears to have been made on June 16, 2004, the fact of its inscription was made after that of the levy on attachment as it obviously appears below and next to it.

7. The records of this case reveal that in the Third Party Claim filed by Candice Bona sometime in July 2004, there was never any mention of any recording about a Deed of Absolute Sale in the Memorandum of Encumbrances in TCT No. R-17571. It is difficult to comprehend that Atty. Hernando U. Salvador, Bona's lawyer, would miss mentioning that a Deed of Absolute Sale was inscribed ahead of the notice of levy on attachment if ever such sale was made on June 16, 2004.

8. Thus, under the circumstances, plaintiff corporation cannot help speculate that [the] Deed of Sale between LBB Construction and the Bonas was made to appear to have been recorded a day before the attachment.

9. While the Notice of Levy on Attachment was inscribed in TCT No. R-17571 ahead and before of the Deed of Sale between LBB Construction Co., Inc. and the Bonas, the said notice was not carried over in TCT No. R-22522 despite the fact that there was no order coming from this Honorable Court dissolving the Writ of Preliminary Attachment dated June 16, 2004.

10. Randy Rutaquio's unauthorized acts of cancelling TCT No. R-17571 and issuing TCT No. R-22522 without inscribing the Notice of Levy on Attachment despite the absence of a court order dissolving the writ of Preliminary Attachment constitute improper conduct tending to directly or indirectly to impede, obstruct or degrade the administration of justice.[8]

Atty. Rutaquio filed a Manifestation alleging that the sale was entered in the Primary Entry Book prior to the Levy on

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

Attachment. The two transactions were assigned to different examiners and it just so happened that the examiner to whom the levy on attachment was assigned was able to inscribe the memorandum ahead of the sale, although the inscription of the sale was entered ahead of the levy. The levy on attachment was not inscribed on TCT No. R-22522 because allegedly the sale should have priority and preference. The cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 was already completed when he took over the position of Atty. Santos as Acting Register of Deeds and was therefore already clothed with the authority to issue and sign TCT No. R-22522.

Atty. Rutaquio also submitted a letter dated June 25, 2004 from Atty. Santos to Land Registration Authority (LRA) Administrator Benedicto B. Ulep (Administrator Ulep) consulting the latter as regards the registration of the Deed of Absolute Sale and the Notice of Levy on Attachment.[9] In said letter received by the LRA on July 1, 2004, Atty. Santos stated that he had not acted on the Deed of Absolute Sale since the required registration fees were not paid therefor.[10] Administrator Ulep was able to reply to said letter on October 6, 2004, when Atty. Rutaquio was already the Acting Register of Deeds. Administrator Ulep stated that since the Deed of Sale was considered registered on June 16, 2004, the same shall take precedence over the Notice of Levy on Attachment registered on June 17, 2004.[11]

Acting on the Motion to Reinstate Notice of Levy on Attachment in TCT No. R-22522 and Cite Atty. Randy A. Rutaquio for Contempt, the RTC issued an Order[12] dated March 2, 2006, ruling in favor of Durawood. The RTC gave great weight to the certification by LRA Human Resource Management Officer IV Loreto I. Orense that Atty. Santos was the Acting Register of Deeds from June 1-30, 2004, and held that this proves the fact

---

[9] *Id.* at 101.

[10] *Id.*

[11] *Id.* at 102-103.

[12] *Rollo*, pp. 62-65.

that Atty. Santos was the only person authorized to sign and approve all the transactions with the Registry of Deeds of Antipolo City at the time. Moreover, according to the RTC, the alienation of LBB Construction in favor of the Bonas without leaving sufficient property to pay its obligation is considered by law in fraud of creditor under Articles 1381[13] and 1387[14] of the Civil Code.

The RTC did not rule on Durawood's prayer to cite Atty. Rutaquio for contempt. The dispositive portion of the March 2, 2006 Order reads:

> WHEREFORE, premises considered, the instant motion to reinstate notice of levy on attachment in TCT No. R-22522 now in the name of the intervenors is hereby GRANTED its non-inscription therein having been made without order of this Court.
>
> The Register of Deeds of Antipolo City is directed to reinstate the notice of levy on attachment in TCT No. R-22522 in the names of intervenors immediately upon receipt of this Order.[15]

Candice filed a Motion for Reconsideration of the above Order. In the meantime, on March 13, 2006, Sheriff Leyva issued a

---

[13] Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claim due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

[14] Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

[15] CA *rollo*, p. 35.

Notice of Sheriff's Sale setting the sale of the property covered by TCT No. R-22522 at public auction on April 11, 2006 at 10:00 a.m., pursuant to the November 15, 2005 Writ of Execution. Candice filed an Urgent *Ex-Parte* Motion to Order the Branch Sheriff to Desist from the Sale of Intervenor's Property for Being Premature, which was granted by the RTC in an Order dated March 29, 2006.

On March 8, 2006, the new Acting Register of Deeds Jose S. Loriega, Jr. complied with the March 6, 2006 Order of the RTC by reinstating in TCT No. R-22522 the Notice of Levy on Attachment in favor of Durawood.

On April 7, 2006, the RTC issued an Order denying Candice's Motion for Reconsideration. In said Order, the RTC highlighted its observation that in TCT No. R-17571, the inscription of the levy on attachment by Atty. Santos dated June 17, 2004 was in page A (the dorsal portion) of the title, while the supposedly earlier inscription of the Deed of Sale by Atty. Rutaquio dated June 16, 2004 was found in page B (a separate page) of the title. The RTC found this fact, as well as the above-mentioned certification that Atty. Santos was the Acting Register of Deeds of Antipolo City from June 1 to 30, 2004, sufficient proof of the irregularity of the June 16, 2004 inscription of the Deed of Sale.

On April 11, 2006, Sheriff Leyva sold the subject property at public auction for ₱1,259,727.90 with Durawood being the lone bidder, and issued the corresponding Certificate of Sale. The sale was inscribed in TCT No. R-22522 on the same date.[16]

Candice filed with the Court of Appeals a Petition for *Certiorari* and Prohibition assailing the March 2, 2006 and April 7, 2006 Orders of the RTC.

On April 18, 2007, the Court of Appeals rendered the assailed Decision in favor of Candice. According to the Court of Appeals, the sequence of presentation of the entries in the TCT cannot control the determination of the rights of the claimants over a

[16] *Rollo*, p. 247.

disputed property. It is the registration in the Primary Entry Book (also referred to in other cases as the *day book*) that establishes the order of reception of instruments affecting registered land. As explained by Atty. Rutaquio, the entry in the day book is only the preliminary step in the registration. The inscription of the levy on attachment on TCT No. R-17571 (which was made before the inscription of the Deed of Sale on said title) retroacts to the date of entry in the Primary Entry Book, which is June 17, 2004. However, the inscription of the Deed of Sale on TCT No. R-17571, although made after the inscription of the levy on attachment, retroacts to the earlier date of entry in the Primary Entry Book, which is June 16, 2004.

As regards the issuance by Atty. Rutaquio of TCT No. R-22522 on June 16, 2004 despite the fact that he was not yet the Register of Deeds of Antipolo City at that time, the Court of Appeals held that there was substantial compliance with the National Land Titles and Deeds Registration Administration (NALTDRA; now the Land Registration Authority [LRA]) Circular No. 94 on "Certificates of title and documents left unsigned by former Register of Deeds," which provides:

> It has been brought to the attention of this Registration that, in some Registries, there are certificates of title with the full transcriptions and inscriptions, including the volume and page numbers, the title number, the date and the name of the former Register of Deeds, already typewritten thereon but which, for some reasons, cannot anymore be signed by the former official. In such cases and to resolve this problem, the present Register of Deeds may, without changing or altering the transcriptions and inscriptions, affix his signature below the name of the former Register of Deeds but placing the actual date and time of signing enclosed in parenthesis below his signature.[17]

The Court of Appeals accepted Atty. Rutaquio's manifestation that he signed TCT No. R-22522 subsequent to June 16, 2004, on a date when he was already the Acting Register of Deeds of Antipolo City. Since the entry in the Primary Entry Book was

---

[17] *Id.* at 26.

made at the time of the incumbency of Atty. Santos, the name of the latter still appears on the document. According to the Court of Appeals, Candice cannot be made to suffer for the failure of Atty. Rutaquio to affix the date when he signed the document. Furthermore, a certificate of title, once registered, cannot be impugned, altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law. Finally, an action for rescission of contracts entered into in fraud of creditors cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.[18]

The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the assailed Orders of public respondent judge ordering the reinstatement of the subject notice of levy on attachment in TCT No. R-22522 are hereby ANNULLED and SET ASIDE. As a result thereof, the public auction sale carried out pursuant to said levy is also declared null and void.[19]

Durawood filed a Motion for Reconsideration, but the same was denied by the Court of Appeals in its Resolution dated September 18, 2007.

Durawood filed the instant Petition for Review, with the following Assignment of Errors:

I.

THE COURT OF APPEALS IGNORED THE FACT THAT NON-PAYMENT OF THE REQUIRED REGISTRATION FEES BY CANDICE S. BONA AND HER SIBLINGS DID NOT COMPLETE THE REGISTRATION OF THE DEED OF ABSOLUTE SALE ON JUNE 16, 2004.

II.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE FACT THAT NALTDRA CIRCULAR NO. 94 WAS NOT COMPLIED WITH BY ATTY. RANDY RUTAQUIO.

---

[18] *Id.* at 25-26.

[19] *Id.* at 27.

III.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT THE ENTRIES IN TCT NO. R-17571 (THE PREDECESSOR OF TCT NO. R-22522) ARE EVIDENCES OF THE FACTS STATED THEREIN.

IV.

THE COURT OF APPEALS OVERLOOKED THE FACT THAT THE REAL PROPERTY COVERED BY TCT NO. R-17571 AND SUBSEQUENTLY BY TCT NO. R-22522 HAS ALREADY BEEN ATTACHED BUT WAS UNILATERALLY RELEASED FROM THE COURT'S JURISDICTION BY A USURPER.[20]

All these allegations are specific matters to be resolved by this Court in determining the overriding issue of the case at bar: whether the Court of Appeals correctly granted Candice's Petition for *Certiorari* and Prohibition on its finding that the RTC committed grave abuse of discretion in issuing its March 2, 2006 and April 7, 2006 Orders. In other words, the main issue to be determined by this Court is *whether or not there was grave abuse of discretion in the RTC's order to reinstate the notice of levy on attachment in TCT No. R-22522*. "Grave abuse of discretion" signifies "such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law."[21]

The Court of Appeals, in considering the date of entry in the day book of the Registry of Deeds as controlling over the presentation of the entries in TCT No. R-17571, relied on Section 56 of Presidential Decree No. 1529 which provides that:

---

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

[21] *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, October 13, 2010, 630 SCRA 94, 102.

SEC. 56. *Primary Entry Book; fees; certified copies*. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (Emphasis supplied.)

The consequence of the highlighted portion of the above section is two-fold: (1) in determining the date in which an instrument is considered registered, the reckoning point is the *time of the reception of such instrument as noted in the Primary Entry Book*; and (2) when the memorandum of the instrument is later made on the certificate of title to which it refers, such memorandum shall bear the *same date as that of the reception of the instrument as noted in the Primary Entry Book*. Pursuant to the second consequence stated above, the Court of Appeals held that Atty. Rutaquio correctly placed the date of entry in the Primary Entry Book as the date of the memorandum of the registration of the deed of sale in TCT No. R-17571.

As regards the first consequence, this Court has applied the same in several cases. Thus, in the old cases of *Levin v. Bass*,[22] *Potenciano v. Dineros*,[23] and *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*,[24] as well as in the fairly recent cases of *Autocorp Group v. Court of Appeals*,[25] *Armed Forces and Police Mutual Benefit Association, Inc. v. Santiago*,[26] and *National Housing Authority*

[22] 91 Phil. 419 (1952).

[23] 97 Phil. 196 (1955).

[24] 245 Phil. 492 (1988).

[25] G.R. No. 157553, September 8, 2004, 437 SCRA 678.

[26] G.R. No. 147559, June 27, 2008, 556 SCRA 46.

v. Basa, Jr.,[27] we upheld the entry of instruments in the Primary Entry Book to be equivalent to registration despite even the failure to annotate said instruments in the corresponding certificates of title.

Based on this alone, it appears that the RTC was in error when it considered the registration of the Absolute Deed of Sale on June 16, 2004 inferior to the registration of the Notice of Levy on Attachment on June 17, 2004 on the ground that the Attachment was annotated on TCT No. R-17571 earlier than the Deed of Sale. As discussed in the above-mentioned cases, the annotation in the certificate of title is not determinative of the effectivity of the registration of the subject instrument.

However, a close reading of the above-mentioned cases reveals that for the entry of instruments in the Primary Entry Book to be equivalent to registration, certain requirements have to be met. Thus, we held in *Levin* that:

> Do the entry in the day book of a deed of sale which was presented and filed together with the owner's duplicate certificate of title with the office of the Registrar of Deeds and full payment of registration fees constitute a complete act of registration which operates to convey and affect the land? In voluntary registration, such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or **if no payment of registration fees be made within 15 days, entry in the day book of the deed of sale does not operate to convey and affect the land sold**. x x x.[28]

Levin, which was decided in 1952, applied Section 56 of the Land Registration Act[29] which provides:

> Sec. 56. Each register of deeds shall keep an entry book in which, upon payment of the filing fee, he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs or other process filed with him relating to registered land. He shall note in such book the year, month, day, hour, and minute

---

[27] G.R. No. 149121, April 20, 2010, 618 SCRA 461.

[28] *Levin v. Bass, supra* note 22 at 436-437.

[29] Act No. 496, as amended by Section 2, Act No. 3300.

of reception of all instruments in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date; ***Provided, however,* That no registration, annotation, or memorandum on a certificate of title shall be made unless the fees prescribed therefor by this Act are paid within fifteen days' time after the date of the registration of the deed, instrument, order or document in the entry book or day book, and in case said fee is not paid within the time above mentioned, such entry shall be null and void**: *Provided further*, That the Insular Government and the provincial and municipal governments need not pay such fees in advance in order to be entitled to entry or registration. (Emphasis supplied.)

This provision is the precursor of the aforequoted Section 56 of Presidential Decree No. 1529, which seems to have dispensed with the provision nullifying the registration if the required fees are not paid:

SEC. 56. *Primary Entry Book; fees; certified copies*. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

In *Development Bank of the Philippines v. Acting Register of Deeds of Nueva Ecija*,[30] this Court applied the provisions of Presidential Decree No. 1529 and modified the doctrine as follows:

Current doctrine thus seems to be that entry alone produces the effect of registration, whether the transaction entered is a voluntary or an involuntary one, **so long as the registrant has complied with all that is required of him for purposes of entry and annotation,**

[30] *Supra* note 24.

and nothing more remains to be done but a duty incumbent solely on the register of deeds.[31]

This pronouncement, which was reiterated in *National Housing Authority v. Basa, Jr.*,[32] shows that for the entry to be considered to have the effect of registration, there is still a need to comply with all that is required for entry and registration, including the payment of the prescribed fees. Thus, in *Autocorp Group v. Court of Appeals*,[33] this Court compared the *date when the required fees were paid* with the therein assailed writ of preliminary injunction:

> Petitioners contend that payment of the entry fee is a condition *sine qua non* before any valid entry can be made in the primary entry book. Allegedly, the Court of Appeals resorted to judicial legislation when it held that the subsequent payment of the entry fee was curative and a substantial compliance with the law. Petitioners claim that the ruling in *DBP vs. Acting Register of Deeds of Nueva Ecija* does not apply to this case. As there was no valid registration, petitioners conclude that the order of the trial court issuing a writ of preliminary injunction was proper, considering the irregularities present in the conduct of the extrajudicial foreclosure x x x.
>
> We find the petition bereft of merit.
>
> *First*. The objection as to the payment of the requisite fees is unavailing. There is no question that the fees were paid, *albeit* belatedly. Respondent bank presented the certificate of sale to the Office of the Register of Deeds of Cebu City for registration on **January 21, 1999** at 4:30 p.m. As the cashier had already left, the Office could not receive the payment for entry and registration fees, but still, the certificate of sale was entered in the primary entry book. The following day, respondent bank paid the requisite entry and registration fees. Given the peculiar facts of the case, we agree with the Court of Appeals that the payment of respondent bank must be deemed to be substantial compliance with the law; and, the entry of the instrument the day before, should not be invalidated. In any case, even if we consider the entry to have been made on

---

[31] *Id.* at 500.

[32] *Supra* note 27 at 480.

[33] *Supra* note 25.

January 22, the important fact is that the entry in the primary entry book was done prior to the issuance of the writ of injunction [on **February 15, 1999;** TRO issued on **January 25, 1999**] by the trial court.[34] (Emphases supplied.)

Records in the case at bar reveal that **as of June 25, 2004**, the date of the letter of Atty. Santos seeking the opinion of the LRA as regards the registration of the Deed of Sale and the Notice of Levy on Attachment, the required registration fees for the Deed of Sale has not yet been paid:

25 June 2004
[received by the LRA: July 01, 2004]

HON. BENEDICTO B. ULEP
Administrator
This Authority

Sir:

This has reference to the TCT No. R-17571/T-87 registered under the name of LBB Construction and Development Corporation relative to the Deed of Absolute Sale with Entry No. 30549, which was sought to be registered on 16 June 2004 at 11:20 a.m. (a photocopy of which is hereto attached as Annex "A").

However, on 17 June 2004 at 11:45 a.m. a Notice of Levy on Attachment (a photocopy of which is hereto attached as Annex "B") with Entry No. 30590 was filed and annotated against TCT No. R-17571/T-87.

In view of the foregoing, we are now in a quandary as to what proper steps should be taken. **It should be noted further that the required registration fees of the abovementioned sale was not paid the reason for which the same was not immediately acted upon by the undersigned**.[35]

Since there was still no compliance of "all that is required x x x for purposes of entry and annotation"[36] of the Deed of Sale

---

[34] *Id.* at 685-686.

[35] CA *rollo*, p. 101.

[36] *See National Housing Authority v. Basa, Jr., supra* note 27 at 480.

as of **June 25, 2004**, we are constrained to rule that the registration of the Notice of Levy on Attachment on **June 17, 2004** should take precedence over the former. Considering that the Notice of Levy on Attachment was deemed registered earlier than the Deed of Sale, the TCT issued pursuant to the latter should contain the annotation of the Attachment.

In view of the foregoing, we find that the RTC was, in fact, acting properly when it ordered the reinstatement of the Notice of Levy on Attachment in TCT No. R-22522. Since the RTC cannot be considered as to have acted in grave abuse of its discretion in issuing such Order, the Petition for *Certiorari* assailing the same should have been dismissed.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 94479 dated April 18, 2007 and its Resolution dated September 18, 2007 are **REVERSED** and **SET ASIDE.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181184. January 25, 2012]

MEL DIMAT, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE 1612 (ANTI-FENCING LAW); VIOLATION THEREOF; ELEMENTS.

— The elements of "fencing" are 1) a robbery or theft has been committed; 2) the accused, who took no part in the robbery or theft, "buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken" during that robbery or theft; (3) the accused knows or should have known that the thing derived from that crime; and (4) he intends by the deal he makes to gain for himself or for another.

2. ID.; ID.; ID.; VIOLATION OF SPECIAL LAW IS *MALUM PROHIBITUM* WHICH REQUIRES NO PROOF OF CRIMINAL INTENT; APPLICATION IN CASE AT BAR. — x x x Presidential Decree 1612 is a special law and, therefore, its violation is regarded as *malum prohibitum*, requiring no proof of criminal intent. Of course, the prosecution must still prove that Dimat knew or should have known that the Nissan Safari he acquired and later sold to Delgado was derived from theft or robbery and that he intended to obtain some gain out of his acts.

APPEARANCES OF COUNSEL

Celso P. Escobio for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need to prove in the crime of "fencing" that the accused knew or ought to have known that the thing he bought or sold was the fruit of theft or robbery.

The Facts and the Case

The government charged the accused Mel Dimat with violation of the Anti-Fencing Law[1] before the Manila Regional Trial Court (RTC), Branch 03, in Criminal Case 02-202338.

Samson Delgado, together with Jose Mantequilla and police officers Danilo Ramirez and Ruben Familara, testified in

[1] Presidential Decree 1612.

substance that in December 2000 Delgado's wife, Sonia, bought from accused Dimat a 1997 Nissan Safari bearing plate number WAH-569 for ₱850,000.00. The deed of sale gave the vehicle's engine number as TD42-126134 and its chassis number as CRGY60-YO3553.

On March 7, 2001 PO Ramirez and fellow officers of the Traffic Management Group (TMG) spotted the Nissan Safari on E. Rodriguez Avenue, Quezon City, bearing a suspicious plate number. After stopping and inspecting the vehicle, they discovered that its engine number was actually TD42-119136 and its chassis number CRGY60-YO3111. They also found the particular Nissan Safari on their list of stolen vehicles. They brought it to their Camp Crame office and there further learned that it had been stolen from its registered owner, Jose Mantequilla.

Mantequilla affirmed that he owned a 1997 Nissan Safari that carried plate number JHM-818, which he mortgaged to Rizal Commercial Banking Corporation. The vehicle was carnapped on May 25, 1998 at Robinsons Galleria's parking area. He reported the carnapping to the TMG.

For his part, Dimat claimed that he did not know Mantequilla. He bought the 1997 Nissan Safari in good faith and for value from a certain Manuel Tolentino under a deed of sale that gave its engine number as TD42-126134 and its chassis number as CRGY60-YO3553. Dimat later sold the vehicle to Delgado. He also claimed that, although the Nissan Safari he sold to Delgado and the one which the police officers took into custody had the same plate number, they were not actually the same vehicle.

On July 20, 2005 the RTC found Dimat guilty of violation of the Anti-Fencing Law and sentenced him to an imprisonment of 10 years, 8 months, and 1 day of *prision mayor* to 20 years of *reclusion temporal*. The court also ordered him to pay ₱850,000.00 as actual damages and ₱50,000.00 as exemplary damages, as well as the costs of suit.

On October 26, 2007 the Court of Appeals (CA) affirmed in CA-G.R. CR 29794[2] the RTC decision but modified the penalty to imprisonment of 8 years and 1 day of *prision mayor* in its medium period, as minimum, to 17 years, 4 months, and 1 day of *reclusion temporal* in its maximum period, as maximum, thus, the present appeal.

The Issue Presented

The sole issue presented in this case is whether or not the CA correctly ruled that accused Dimat knowingly sold to Sonia Delgado for gain the Nissan Safari that was earlier carnapped from Mantequilla.

The Ruling of the Court

The elements of "fencing" are 1) a robbery or theft has been committed; 2) the accused, who took no part in the robbery or theft, "buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article or object taken" during that robbery or theft; (3) the accused knows or should have known that the thing derived from that crime; and (4) he intends by the deal he makes to gain for himself or for another.[3]

Here, someone carnapped Mantequilla's Nissan Safari on May 25, 1998. Two years later in December 2000, Dimat sold it to Delgado for ₱850,000.00. Dimat's defense is that the Nissan Safari he bought from Tolentino and later sold to Delgado had engine number TD42-126134 and chassis number CRGY60-YO3553 as evidenced by the deeds of sale covering those transactions. The Nissan Safari stolen from Mantequilla, on the other hand, had engine number TD42-119136 and chassis number CRGY60-YO3111.

But Dimat's defense is flawed. **First**, the Nissan Safari Delgado bought from him, when stopped on the road and inspected

---

[2] Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose Catral Mendoza (now a member of the Court) and Jose C. Reyes, Jr.

[3] *Tan v. People*, 372 Phil. 93, 103 (1999).

by the police, turned out to have the engine and chassis numbers of the Nissan Safari stolen from Mantequilla. This means that the deeds of sale did not reflect the correct numbers of the vehicle's engine and chassis.

Second. Dimat claims lack of criminal intent as his main defense. But Presidential Decree 1612 is a special law and, therefore, its violation is regarded as *malum prohibitum*, requiring no proof of criminal intent.[4] Of course, the prosecution must still prove that Dimat knew or should have known that the Nissan Safari he acquired and later sold to Delgado was derived from theft or robbery and that he intended to obtain some gain out of his acts.

Dimat testified that he met Tolentino at the Holiday Inn Casino where the latter gave the Nissan Safari to him as collateral for a loan. Tolentino supposedly showed him the old certificate of registration and official receipt of the vehicle and even promised to give him a new certificate of registration and official receipt already in his name. But Tolentino reneged on this promise. Dimat insists that Tolentino's failure to deliver the documents should not prejudice him in any way. Delgado himself could not produce any certificate of registration or official receipt.

Based on the above, evidently, Dimat knew that the Nissan Safari he bought was not properly documented. He said that Tolentino showed him its old certificate of registration and official receipt. But this certainly could not be true because, the vehicle having been carnapped, Tolentino had no documents to show. That Tolentino was unable to make good on his promise to produce new documents undoubtedly confirmed to Dimat that the Nissan Safari came from an illicit source. Still, Dimat sold the same to Sonia Delgado who apparently made no effort to check the papers covering her purchase. That she might herself be liable for fencing is of no moment since she did not stand accused in the case.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals dated October 26, 2007 in CA-G.R. CR 29794.

---

[4] *Mendoza v. People*, G.R. No. 183891, August 3, 2010, 626 SCRA 624, 630.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,[*] and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183050. January 25, 2012]

ADVENT CAPITAL AND FINANCE CORPORATION, *petitioner, vs.* **NICASIO I. ALCANTARA and EDITHA I. ALCANTARA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; REHABILITATION PROCEEDINGS; NATURE THEREOF, EXPLAINED. — Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."

2. ID.; ID.; ID.; ID.; COLLECTION TO RECOVER TRUST FEES IS NOT A PROPER SUBJECT OF A REHABILITATION

---

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated August 8, 2011.

CASE; CASE AT BAR. — Advent Capital must file a separate action for collection to recover the trust fees that it allegedly earned and, with the trial court's authorization if warranted, put the money in escrow for payment to whoever it rightly belongs. Having failed to collect the trust fees at the end of each calendar quarter as stated in the contract, all it had against the Alcantaras was a claim for payment which is a proper subject for an ordinary action for collection. It cannot enforce its money claim by simply filing a motion in the rehabilitation case for delivery of money belonging to the Alcantaras but in the possession of a third party. x x x Here, Advent Capital's claim is disputed and requires a full trial on the merits. It must be resolved in a separate action where the Alcantaras' claim and defenses may also be presented and heard. Advent Capital cannot say that the filing of a separate action would defeat the purpose of corporate rehabilitation. In the first place, the Interim Rules do not exempt a company under rehabilitation from availing of proper legal procedure for collecting debt that may be due it. Secondly, Court records show that Advent Capital had in fact sought to recover one of its assets by filing a separate action for *replevin* involving a car that was registered in its name.

APPEARANCES OF COUNSEL

Jacqueline C.L. Verano for petitioner.
Picazo Buyco Tan Fider Santos for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the validity of a rehabilitation court's order that compelled a third party, in possession of money allegedly belonging to the debtor of a company under rehabilitation, to deliver such money to its court-appointed receiver over the debtor's objection.

The Facts and the Case

On July 16, 2001 petitioner Advent Capital and Finance Corporation (Advent Capital) filed a petition for rehabilitation[1]

[1] *Rollo*, pp. 157-168.

with the Regional Trial Court (RTC) of Makati City.[2] Subsequently, the RTC named Atty. Danilo L. Concepcion as rehabilitation receiver.[3] Upon audit of Advent Capital's books, Atty. Concepcion found that respondents Nicasio and Editha Alcantara (collectively, the Alcantaras) owed Advent Capital ₱27,398,026.59, representing trust fees that it supposedly earned for managing their several trust accounts.[4]

Prompted by this finding, Atty. Concepcion requested Belson Securities, Inc. (Belson) to deliver to him, as Advent Capital's rehabilitation receiver, the ₱7,635,597.50 in cash dividends that Belson held under the Alcantaras' Trust Account 95-013. Atty. Concepcion claimed that the dividends, as trust fees, formed part of Advent Capital's assets. Belson refused, however, citing the Alcantaras' objections as well as the absence of an appropriate order from the rehabilitation court.[5]

Thus, Atty. Concepcion filed a motion before the rehabilitation court to direct Belson to release the money to him. He said that, as rehabilitation receiver, he had the duty to take custody and control of Advent Capital's assets, such as the sum of money that Belson held on behalf of Advent Capital's Trust Department.[6]

The Alcantaras made a special appearance before the rehabilitation court[7] to oppose Atty. Concepcion's motion. They claimed that the money in the trust account belonged to them under their Trust Agreement[8] with Advent Capital. The latter, they said, could not claim any right or interest in the dividends

---

[2] Branch 142.

[3] *Rollo*, pp. 49-50. The RTC was presided by Judge (now Supreme Court Justice) Estela M. Perlas-Bernabe.

[4] *Id.* at 54-55.

[5] *Id.* at 116-117.

[6] *Id.* at 111-112.

[7] *Id.* at 123 & 177.

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

generated by their investments since Advent Capital merely held these in trust for the Alcantaras, the trustors-beneficiaries. For this reason, Atty. Concepcion had no right to compel the delivery of the dividends to him as receiver. The Alcantaras concluded that, under the circumstances, the rehabilitation court had no jurisdiction over the subject dividends.

On February 5, 2007 the rehabilitation court granted Atty. Concepcion's motion.[9] It held that, under Rule 59, Section 6 of the Rules of Court, a receiver has the duty to immediately take possession of all of the corporation's assets and administer the same for the benefit of corporate creditors. He has the duty to collect debts owing to the corporation, which debts form part of its assets. Complying with the rehabilitation court's order and Atty. Concepcion's demand letter, Belson turned over the subject dividends to him.

Meanwhile, the Alcantaras filed a special civil action of *certiorari* before the Court of Appeals (CA), seeking to annul the rehabilitation court's order. On January 30, 2008 the CA rendered a decision,[10] granting the petition and directing Atty. Concepcion to account for the dividends and deliver them to the Alcantaras. The CA ruled that the Alcantaras owned those dividends. They did not form part of Advent Capital's assets as contemplated under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

The CA pointed out that the rehabilitation proceedings in this case referred only to the assets and liabilities of the company proper, not to those of its Trust Department which held assets belonging to other people. Moreover, even if the Trust Agreement provided that Advent Capital, as trustee, shall have first lien on the Alcantara's financial portfolio for the payment of its trust fees, the cash dividends in Belson's care cannot be summarily applied to the payment of such charges. To enforce its lien, Advent Capital has to file a collection suit. The rehabilitation

---

[9] *Id.* at 63-64.

[10] *Id.* at 27.

court cannot simply enforce the latter's claim by ordering Belson to deliver the money to it.[11]

The CA denied Atty. Concepcion and Advent Capital's motion for reconsideration,[12] prompting the filing of the present petition for review under Rule 45.

The Issue Presented

The sole issue in this case is whether or not the cash dividends held by Belson and claimed by both the Alcantaras and Advent Capital constitute corporate assets of the latter that the rehabilitation court may, upon motion, require to be conveyed to the rehabilitation receiver for his disposition.

Ruling of the Court

Advent Capital asserts that the cash dividends in Belson's possession formed part of its assets based on paragraph 9 of its Trust Agreement with the Alcantaras, which states:

9. *Trust Fee: Other Expenses* — As compensation for its services hereunder, the TRUSTEE shall be entitled to a trust or management fee of 1 (one) % per annum based on the quarterly average market value of the Portfolio or a minimum annual fee of ₱5,000.00, whichever is higher. The said trust or management fee shall automatically be deducted from the Portfolio at the end of each calendar quarter. The TRUSTEE shall likewise be reimbursed for all reasonable and necessary expenses incurred by it in the discharge of its powers and duties under this Agreement, and in all cases, the TRUSTEE shall have a first lien on the Portfolio for the payment of the trust fees and other reimbursable expenses.

According to Advent Capital, it could automatically deduct its management fees from the Alcantaras' portfolio that they entrusted to it. Paragraph 9 of the Trust Agreement provides that Advent Capital could automatically deduct its trust fees from the Alcantaras' portfolio, "at the end of each calendar

[11] *Id.* at 31-32.

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

quarter," with the corresponding duty to submit to the Alcantaras a quarterly accounting report within 20 days after.[13]

But the problem is that the trust fees that Advent Capital's receiver was claiming were for past quarters. Based on the stipulation, these should have been deducted as they became due. As it happened, at the time Advent Capital made its move to collect its supposed management fees, it neither had possession nor control of the money it wanted to apply to its claim. Belson, a third party, held the money in the Alcantaras' names. Whether it should deliver the same to Advent Capital or to the Alcantaras is not clear. What is clear is that the issue as to who should get the same has been seriously contested.

The practice in the case of banks is that they automatically collect their management fees from the funds that their clients entrust to them for investment or lending to others. But the banks can freely do this since it holds or has control of their clients' money and since their trust agreement authorized the automatic collection. If the depositor contests the deduction, his remedy is to bring an action to recover the amount he claims to have been illegally deducted from his account.

Here, Advent Capital does not allege that Belson had already deducted the management fees owing to it from the Alcantaras' portfolio at the end of each calendar quarter. Had this been done, it may be said that the money in Belson's possession would technically be that of Advent Capital. Belson would be

---

[13] *Id.* at 53; The provision states:

"8. *Reporting Requirements*. — The TRUSTEE shall prepare and submit to the TRUSTOR within twenty (20) days after the end of each quarter, a quarterly report on the Portfolio in such form and substance as may be required by the Central Bank rules and regulations, unless at the interim the TRUSTEE shall have submitted to the TRUSTOR from time to time a written statement of account on specific and one-time transactions of the portfolio the statement of details of which substantially comply with the Central Bank rules and regulations. The TRUSTOR may, at cost to him, require the preparation and submission to him of reports other than the quarterly reports, on the Portfolio. The accounting reports shall be deemed approved if the TRUSTOR fails to express his objection thereto within thirty (30) days from his receipt thereof or within a specified period otherwise stated in a separate written agreement.

holding such amount in trust for the latter. And it would be for the Alcantaras to institute an action in the proper court against Advent Capital and Belson for misuse of its funds.

But the above did not happen. Advent Capital did not exercise its right to cause the automatic deduction at the end of every quarter of its supposed management fee when it had full control of the dividends. That was its fault. For their part, the Alcantaras had the right to presume that Advent Capital had deducted its fees in the manner stated in the contract. The burden of proving that the fees were not in fact collected lies with Advent Capital.

Further, Advent Capital or its rehabilitation receiver cannot unilaterally decide to apply the entire amount of cash dividends retroactively to cover the accumulated trust fees. Advent Capital merely managed in trust for the benefit of the Alcantaras the latter's portfolio, which under Paragraph 2[14] of the Trust Agreement, includes not only the principal but also its income or proceeds. The trust property is only fictitiously attributed by law to the trustee "to the extent that the rights and powers vested in a nominal owner shall be used by him on behalf of the *real owner*."[15]

The real owner of the trust property is the trustor-beneficiary. In this case, the trustors-beneficiaries are the Alcantaras. Thus, Advent Capital could not dispose of the Alcantaras' portfolio on its own. The income and principal of the portfolio could only be withdrawn upon the Alcantaras' written instruction or

---

[14] "2. *The Portfolio*. — The cash and other assets which the TRUSTOR has delivered or shall from time to time hereafter deliver to the TRUSTEE under this Agreement, the conversions thereof to other forms of assets as well as the proceeds, interests, dividends, accruals and income or profits realized from the management, investment, and reinvestment thereof, less the withdrawals and/or charges thereto which at the time of reference shall have been made, shall constitute the trust of managed funds and shall hereafter be referred to as the "Portfolio". For purposes of this Agreement, the term "securities" shall be deemed to include commercial shares and financial instruments, both debt and equity."

[15] See Hector S. De Leon and Hector M. De Leon, Jr., *COMMENTS AND CASES ON PARTNERSHIP, AGENCY AND TRUSTS*, 4th Ed., 606-607.

order to Advent Capital.[16] The latter could not also assign or encumber the portfolio or its income without the written consent of the Alcantaras.[17] All these are stipulated in the Trust Agreement.

Ultimately, the issue is what court has jurisdiction to hear and adjudicate the conflicting claims of the parties over the dividends that Belson held in trust for their owners. Certainly, not the rehabilitation court which has not been given the power to resolve ownership disputes between Advent Capital and third parties. Neither Belson nor the Alcantaras are its debtors or creditors with interest in the rehabilitation.

Advent Capital must file a separate action for collection to recover the trust fees that it allegedly earned and, with the trial court's authorization if warranted, put the money in escrow for payment to whoever it rightly belongs. Having failed to collect the trust fees at the end of each calendar quarter as stated in the contract, all it had against the Alcantaras was a claim for payment which is a proper subject for an ordinary action for collection. It cannot enforce its money claim by simply filing a motion in the rehabilitation case for delivery of money belonging to the Alcantaras but in the possession of a third party.

Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent

---

[16] Trust Agreement, Paragraph 10 which states:

"10. *Withdrawal of Income and Principal*. — Subject to availability of funds, the TRUSTOR may withdraw the income and principal of the Portfolio or portion thereof upon the TRUSTOR's written instruction or order given to the TRUSTEE. The TRUSTEE is under no duty to see to the application of the income and principal so withdrawn from the Portfolio. Any income of the Portfolio not withdrawn shall be accumulated and added to the Principal of the Portfolio for further investment and reinvestment."

[17] Trust Agreement, Paragraph 11 which states:

"11. *Non-Alienation or Encumbrance of the Portfolio or Income*. — During the effectivity of this Agreement, the TRUSTOR shall not assign or encumber the Portfolio or its income or any portion thereof in any manner whatsoever to any person or entity without the written consent of the TRUSTEE."

with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."[18]

Here, Advent Capital's claim is disputed and requires a full trial on the merits. It must be resolved in a separate action where the Alcantaras' claim and defenses may also be presented and heard. Advent Capital cannot say that the filing of a separate action would defeat the purpose of corporate rehabilitation. In the first place, the Interim Rules do not exempt a company under rehabilitation from availing of proper legal procedure for collecting debt that may be due it. Secondly, Court records show that Advent Capital had in fact sought to recover one of its assets by filing a separate action for *replevin* involving a car that was registered in its name.[19]

WHEREFORE, the petition is **DENIED** for lack of merit and the assailed decision and resolution of the Court of Appeals in CA-G.R. SP 98692 are **AFFIRMED,** without prejudice to any action that petitioner Advent Capital and Finance Corp. or its rehabilitation receiver might institute regarding the trust fees subject of this case.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

---

[18] Dean Cesar Lapuz Villanueva, *PHILIPPINE CORPORATE LAW*, 2010 Ed., 738, citing Committee Memorandum Re: Interim Rules of Procedure on Corporate Rehabilitation dated October 30, 2000.

[19] See *Advent Capital & Finance Corporation v. Roland Young*, G.R. No. 183018, August 3, 2011.

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated January 18, 2012.

SECOND DIVISION

[G.R. No. 185124. January 25, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL IRRIGATION ADMINISTRATION (NIA), *petitioner, vs.* **RURAL BANK OF KABACAN, INC., LITTIE SARAH A. AGDEPPA, LEOSA NANETTE AGDEPPA and MARCELINO VIERNES, MARGARITA TABOADA, PORTIA CHARISMA RUTH ORTIZ, represented by LINA ERLINDA A. ORTIZ and MARIO ORTIZ, JUAN MAMAC and GLORIA MATAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS; GENERALLY BINDING UPON THE SUPREME COURT; EXCEPTIONS. — [F]actual findings of the CA are generally binding on this Court. The rule admits of exceptions, though, such as when the factual findings of the appellate court and the trial court are contradictory, or when the findings are not supported by the evidence on record.

2. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; PAYMENT OF JUST COMPENSATION DOES NOT INCLUDE THE VALUE OF EXCAVATED SOIL. — We also uphold the CA ruling, which deleted the inclusion of the value of the excavated soil in the payment for just compensation. There is no legal basis to separate the value of the excavated soil from that of the expropriated properties, contrary to what the trial court did. In the context of expropriation proceedings, the soil has no value separate from that of the expropriated land. Just compensation ordinarily refers to the value of the land to compensate for what the owner actually loses. Such value could only be that which prevailed at the time of the taking.

3. ID.; ID.; ID.; TRIAL COURTS ARE REQUIRED TO BE MORE CIRCUMSPECT IN THEIR EVALUATION OF JUST COMPENSATION TO BE AWARDED TO THE OWNER OF THE EXPROPRIATED PROPERTY; RATIONALE. —

> It should be noted that eminent domain cases involve the expenditure of public funds. In this kind of proceeding, we require trial courts to be more circumspect in their evaluation of the just compensation to be awarded to the owner of the expropriated property. Thus, it was imprudent for the appellate court to rely on the Rural Bank of Kabacan's mere declaration of non-ownership and non-participation in the expropriation proceeding to validate defendants-intervenors' claim of entitlement to that payment. The law imposes certain legal requirements in order for a conveyance of real property to be valid. It should be noted that Lot No. 3080 is a registered parcel of land covered by TCT No. T-61963. In order for the reconveyance of real property to be valid, the conveyance must be embodied in a public document and registered in the office of the Register of Deeds where the property is situated. x x x The trial court should have nevertheless required the rural bank and the defendants-intervenors to show proof or evidence pertaining to the conveyance of the subject lot. The court cannot rely on mere inference, considering that the payment of just compensation is intended to be awarded solely to the owner based on the latter's proof of ownership. The trial court should have been guided by Rule 67, Section 9 of the 1997 Rules of Court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Littie Sarah A. Agdeppa for Leosa Nanette Agdeppa, *et al.*

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the 12 August 2008 Court of Appeals (CA) Decision and 22 October 2008 Resolution in CA-G.R. CV No. 65196.

The assailed issuances affirmed with modification the 31 August 1999 "Judgment" promulgated by the Regional Trial Court (RTC), Branch 22, Judicial Region, Kabacan, Cotabato. The RTC had

fixed the just compensation for the value of the land and improvements thereon that were expropriated by petitioner, but excluded the value of the excavated soil. Petitioner Republic of the Philippines is represented in this case by the National Irrigation Authority (NIA).

The Facts

NIA is a government-owned-and-controlled corporation created under Republic Act No. (R.A.) 3601 on 22 June 1963. It is primarily responsible for irrigation development and management in the country. Its charter was amended by Presidential Decree (P.D.) 552 on 11 September 1974 and P.D. 1702 on 17 July 1980. To carry out its purpose, NIA was specifically authorized under P.D. 552 to exercise the power of eminent domain.[1]

NIA needed some parcels of land for the purpose of constructing the Malitubog-Marigadao Irrigation Project. On 08 September 1994, it filed with the RTC of Kabacan, Cotabato a Complaint for the expropriation of a portion of three (3) parcels of land covering a total of 14,497.91 square meters.[2] The case was docketed as Special Civil Case No. 61 and was assigned to RTC-Branch 22. The affected parcels of land were the following:

1) Lot No. 3080 – covered by Transfer Certificate of Title (TCT) No. T-61963 and registered under the Rural Bank of Kabacan

---

[1] Presidential Decree No. 552 - Amending Certain Sections of Republic Act Numbered Thirty-Six Hundred and One, Entitled, "An Act Creating the National Irrigation Administration"

SECTION 1. Section 2, Republic Act Numbered Thirty-six Hundred and One, is hereby amended to read as follows:

x x x x x x x x x

(e) To acquire, by any mode of acquisition, real and personal properties, and all appurtenant rights, easements, concessions and privileges, whether the same are already devoted to private or public use in connection with the development of projects by the NIA;

The National Irrigation Administration is empowered to exercise the right of eminent domain in the manner provided by law for the institution of expropriation proceedings.

[2] *Rollo*, p. 67.

2) Lot No. 455 – covered by TCT No. T-74516 and registered under the names of RG May, Ronald and Rolando, all surnamed Lao

3) Lot No. 3039 – registered under the name of Littie Sarah Agdeppa[3]

On 11 July 1995, NIA filed an Amended Complaint to include Leosa Nanette A. Agdeppa and Marcelino Viernes as registered owners of Lot No. 3039.[4]

On 25 September 1995, NIA filed a Second Amended Complaint to allege properly the area sought to be expropriated, the exact address of the expropriated properties and the owners thereof. NIA further prayed that it be authorized to take immediate possession of the properties after depositing with the Philippine National Bank the amount of ₱19,246.58 representing the provisional value thereof.[5]

On 31 October 1995, respondents filed their Answer with Affirmative and Special Defenses and Counterclaim.[6] They alleged, *inter alia*, that NIA had no authority to expropriate portions of their land, because it was not a sovereign political entity; that it was not necessary to expropriate their properties, because there was an abandoned government property adjacent to theirs, where the project could pass through; that Lot No. 3080 was no longer owned by the Rural Bank of Kabacan; that NIA's valuation of their expropriated properties was inaccurate because of the improvements on the land that should have placed its value at ₱5 million; and that NIA never negotiated with the landowners before taking their properties for the project, causing permanent and irreparable damages to their properties valued at ₱250,000.[7]

---

[3] *Rollo*, p. 50.

[4] *Id.* at 72-74.

[5] *Id.* at 83.

[6] *Id.* at 86.

[7] *Id.* at 88-98.

On 11 September 1996, the RTC issued an Order forming a committee tasked to determine the fair market value of the expropriated properties to establish the just compensation to be paid to the owners. The committee was composed of the Clerk of Court of RTC Branch 22 as chairperson and two (2) members of the parties to the case.[8]

On 20 September 1996, in response to the expropriation Complaint, respondents-intervenors Margarita Tabaoda, Portia Charisma Ruth Ortiz, Lina Erlinda Ortiz, Mario Ortiz, Juan Mamac and Gloria Matas filed their Answer-in-Intervention with Affirmative and Special Defenses and Counter-Claim. They essentially adopted the allegations in the Answer of the other respondents and pointed out that Margarita Tabaoda and Portia Charisma Ruth Ortiz were the new owners of Lot No. 3080, which the two acquired from the Rural Bank of Kabacan. They further alleged that the four other respondents-intervenors were joint tenants-cultivators of Lot Nos. 3080 and 3039.[9]

On 10 October 1996, the lower court issued an Order stating it would issue a writ of possession in favor of NIA upon the determination of the fair market value of the properties, subject of the expropriation proceedings.[10] The lower court later amended its ruling and, on 21 October 1996, issued a Writ of Possession in favor of NIA.[11]

On 15 October 1996, the committee submitted a Commissioners' Report[12] to the RTC stating the following observations:

In the process of ocular inspection, the following were jointly observed:

---

[8] *Id.* at 104.

[9] *Id.* at 52.

[10] *Id.*

[11] *Id.* at 53.

[12] *Id.* at 102-103. The Commission was composed of Atty. Hermenegildo Marasigan, Branch Clerk of Court, RTC-Br. 22 of Kabacan, Cotabato as chairperson; and members Atty. Littie Sarah Agdeppa (respondent) for the landowners and Engr. Abdulasis Mabang for NIA (petitioner).

1) The area that was already occupied is 6x200 meters which is equivalent to 1,200 square meters;

2) The area which is to be occupied is 18,930 square meters, more or less;

3) That the area to be occupied is fully planted by gmelina trees with a spacing of 1x1 meters;

4) That the gmelina tress found in the area already occupied and used for [the] road is planted with gmelina with spacing of 2x2 and more or less one (1) year old;

5) That the gmelina trees found in the area to be occupied are already four (4) years old;

6) That the number of banana clumps (is) two hundred twenty (220);

7) That the number of coco trees found (is) fifteen (15).[13]

The report, however, stated that the committee members could not agree on the market value of the subject properties and recommended the appointment of new independent commissioners to replace the ones coming from the parties only.[14] On 22 October 1996, the RTC issued an Order[15] revoking the appointments of Atty. Agdeppa and Engr. Mabang as members of the committee and, in their stead, appointed Renato Sambrano, Assistant Provincial Assessor of the Province of Cotabato; and Jack Tumacmol, Division Chief of the Land Bank of the Philippines–Kidapawan Branch.[16]

On 25 November 1996, the new committee submitted its Commissioners' Report to the lower court. The committee had agreed that the fair market value of the land to be expropriated should be ₱65 per square meter based on the zonal valuation of the Bureau of Internal Revenue (BIR). As regards the improvement

---

[13] *Rollo*, p. 103.

[14] *Id.*

[15] *Id.* at 177.

[16] *Id.* at 54.

on the properties, the report recommended the following compensation:

a. ₱200 for each gmelina tree that are more than four (4) years old

b. ₱150 for each gmelina tree that are more than one (1) year old

c. ₱164 for each coco tree

d. ₱270 for each banana clump[17]

On 03 December 1997, the committee submitted to the RTC another report, which had adopted the first Committee Report, as well as the former's 25 November 1996 report. However, the committee added to its computation the value of the earthfill excavated from portions of Lot Nos. 3039 and 3080.[18] Petitioner objected to the inclusion of the value of the excavated soil in the computation of the value of the land.[19]

The Ruling of the Trial Court

On 31 August 1999, the RTC promulgated its "Judgment,"[20] the dispositive portion of which reads:

WHEREFORE, IN VIEW of all the foregoing considerations, the court finds and so holds that the commissioners have arrived at and were able to determine the fair market value of the properties. The court adopts their findings, and orders:

1. That 18,930 square meters of the lands owned by the defendants is hereby expropriated in favor of the Republic of the Philippines through the National Irrigation Administration;

2. That the NIA shall pay to the defendants the amount of ₱1,230,450 for the 18,930 square meters expropriated in proportion to the areas so expropriated;

---

[17] *Id.* at 105-106.

[18] *Id.* at 107-108.

[19] *Id.* at 17.

[20] *Id.* at 109.

3. That the NIA shall pay to the defendant-intervenors, owners of Lot No. 3080, the sum of ₱5,128,375.50, representing removed earthfill;

4. That the NIA shall pay to the defendants, owners of Lot No. 3039, the sum of ₱1,929,611.30 representing earthfill;

5. To pay to the defendants the sum of ₱60,000 for the destroyed G-melina trees (1 year old);

6. To pay to the defendants the sum of ₱3,786,000.00 for the 4-year old G-melina trees;

7. That NIA shall pay to the defendants the sum of ₱2,460.00 for the coconut trees;

8. That all payments intended for the defendant Rural Bank of Kabacan shall be given to the defendants and intervenors who have already acquired ownership over the land titled in the name of the Bank.[21]

NIA, through the Office of the Solicitor General (OSG), appealed the Decision of the RTC to the CA, which docketed the case as CA-G.R. CV No. 65196. NIA assailed the trial court's adoption of the Commissioners' Report, which had determined the just compensation to be awarded to the owners of the lands expropriated. NIA also impugned as error the RTC's inclusion for compensation of the excavated soil from the expropriated properties. Finally, it disputed the trial court's Order to deliver the payment intended for the Rural Bank of Kabacan to defendants-intervenors, who allegedly acquired ownership of the land still titled in the name of the said rural bank.[22]

The Ruling of the Court of Appeals

On 12 August 2008, the CA through its Twenty-First (21st) Division, promulgated a Decision[23] affirming with modification

---

[21] *Id.* at 114-115.

[22] *Rollo*, p. 56.

[23] CA Decision in CA-G.R. CV No. 65196 dated 12 August 2008, penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Mario V. Lopez.

the RTC Decision. It ruled that the committee tasked to determine the fair market value of the properties and improvements for the purpose of arriving at the just compensation, properly performed its function. The appellate court noted that the committee members had conducted ocular inspections of the area surrounding the expropriated properties and made their recommendations based on official documents from the BIR with regard to the zonal valuations of the affected properties.[24] The CA observed that, as far as the valuation of the improvements on the properties was concerned, the committee members took into consideration the provincial assessor's appraisal of the age of the trees, their productivity and the inputs made.[25] The appellate court further noted that despite the Manifestation of NIA that it be allowed to present evidence to rebut the recommendation of the committee on the valuations of the expropriated properties, NIA failed to do so.[26]

The assailed CA Decision, however, deleted the inclusion of the value of the soil excavated from the properties in the just compensation. It ruled that the property owner was entitled to compensation only for the value of the property at the time of the taking.[27] In the construction of irrigation projects, excavations are necessary to build the canals, and the excavated soil cannot be valued separately from the land expropriated. Thus, it concluded that NIA, as the new owner of the affected properties, had the right to enjoy and make use of the property, including the excavated soil, pursuant to the latter's objectives.[28]

Finally, the CA affirmed the trial court's ruling that recognized defendants-intervenors Margarita Tabaoda and Portia Charisma Ruth Ortiz as the new owners of Lot No. 3080 and held that they were thus entitled to just compensation. The appellate court based its conclusion on the non-participation by the Rural Bank

---

[24] *Rollo*, p. 58.

[25] *Id.* at 59.

[26] *Id.*

[27] *Id.* at 61.

[28] *Id.* at 62.

of Kabacan in the expropriation proceedings and the latter's Manifestation that it no longer owned Lot No. 3080.[29]

On 11 September 2008, the NIA through the OSG filed a Motion for Reconsideration of the 12 August 2008 Decision, but that motion was denied.[30]

Aggrieved by the appellate court's Decision, NIA now comes to this Court via a Petition for Review on *Certiorari* under Rule 45.

The Issues

The following are the issues proffered by petitioner:

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING OF JUST COMPENSATION OF THE LAND AND THE IMPROVEMENTS THEREON BASED ON THE REPORT OF THE COMMISSIONERS.

THE COURT OF APPEALS ERRED IN RULING THAT THE PAYMENT OF JUST COMPENSATION FOR LOT NO. 3080 SHOULD BE MADE TO RESPONDENTS MARGARITA TABOADA AND PORTIA CHARISMA RUTH ORTIZ.[31]

The Court's Ruling

On the first issue, the Petition is not meritorious.

In expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[32] The

---

[29] *Id.*

[30] *Id.* at 64-65.

[31] *Rollo*, p. 20.

[32] *National Power Corporation v. Teresita Diato-Bernal*, G.R. No. 180979, 15 December 2010, 638 SCRA 660, citing *Republic v. Libunao*, 594 SCRA 363(2009).

constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[33]

In the instant case, we affirm the appellate court's ruling that the commissioners properly determined the just compensation to be awarded to the landowners whose properties were expropriated by petitioner.

The records show that the trial court dutifully followed the procedure under Rule 67 of the 1997 Rules of Civil Procedure when it formed a committee that was tasked to determine the just compensation for the expropriated properties. The first set of committee members made an ocular inspection of the properties, subject of the expropriation. They also determined the exact areas affected, as well as the kinds and the number of improvements on the properties.[34] When the members were unable to agree on the valuation of the land and the improvements thereon, the trial court selected another batch of disinterested members to carry out the task of determining the value of the land and the improvements.

The new committee members even made a second ocular inspection of the expropriated areas. They also obtained data from the BIR to determine the zonal valuation of the expropriated properties, interviewed the adjacent property owners, and considered other factors such as distance from the highway and the nearby town center.[35] Further, the committee members also considered Provincial Ordinance No. 173, which was promulgated by the Province of Cotabato on 15 June 1999, and which provide

---

[33] OSWALDO D. AGCAOILI, *PROPERTY REGISTRATION DECREE AND RELATED LAWS (LAND TITLES AND DEEDS)* 581 (2000).

[34] *Rollo*, p. 58.

[35] *Id.*

for the value of the properties and the improvements for taxation purposes.[36]

We can readily deduce from these established facts that the committee members endeavored a rigorous process to determine the just compensation to be awarded to the owners of the expropriated properties. We cannot, as petitioner would want us to, oversimplify the process undertaken by the committee in arriving at its recommendations, because these were not based on mere conjectures and unreliable data.

In *National Power Corporation v. Diato-Bernal*,[37] this Court emphasized that the "just"-ness of the compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. The reliable and actual data we referred to in that case were the sworn declarations of realtors in the area, as well as tax declarations and zonal valuation from the BIR. In disregarding the Committee Report assailed by the National Power Corporation in the said case, we ruled thus:

> It is evident that the above conclusions are highly speculative and devoid of any actual and reliable basis. First, the market values of the subject property's neighboring lots were mere estimates and unsupported by any corroborative documents, such as sworn declarations of realtors in the area concerned, tax declarations or zonal valuation from the Bureau of Internal Revenue for the contiguous residential dwellings and commercial establishments. The report also failed to elaborate on how and by how much the community centers and convenience facilities enhanced the value of respondent's property. Finally, the market sales data and price listings alluded to in the report were not even appended thereto.
>
> As correctly invoked by NAPOCOR, a commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.
>
> The trial court adopted the flawed findings of the commissioners hook, line, and sinker. It did not even bother to require the submission of the alleged "market sales data" and "price listings." Further, the

---

[36] *Id.*

[37] *Supra* note 32.

RTC overlooked the fact that the recommended just compensation was gauged as of September 10, 1999 or more than two years after the complaint was filed on January 8, 1997. It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint. Clearly, the recommended just compensation in the commissioners' report is unacceptable.[38]

In the instant case, the committee members based their recommendations on reliable data and, as aptly noted by the appellate court, considered various factors that affected the value of the land and the improvements.[39]

Petitioner, however, strongly objects to the CA's affirmation of the trial court's adoption of Provincial Ordinance No. 173. The OSG, on behalf of petitioner, strongly argues that the recommendations of the committee formed by the trial court were inaccurate. The OSG contends that the ordinance reflects the 1999 market values of real properties in the Province of Cotabato, while the actual taking was made in 1996.[40]

We are not persuaded.

We note that petitioner had ample opportunity to rebut the testimonial, as well as documentary evidence presented by respondents when the case was still on trial. It failed to do so, however. The issue raised by petitioner was adequately addresses by the CA's assailed Decision in this wise:

A thorough scrutiny of the records reveals that the second set of Commissioners, with Atty. Marasigan still being the Chairperson and Mr. Zambrano and Mr. Tomacmol as members, was not arbitrary and capricious in performing the task assigned to them. We note that these Commissioners were competent and disinterested persons who were handpicked by the court *a quo* due to their expertise in

---

[38] *Id.* at 668-669.

[39] *Rollo*, p. 60.

[40] *Id.* at 24-26.

appraising the value of the land and the improvements thereon in the province of Cotabato. They made a careful study of the area affected by the expropriation, mindful of the fact that the value of the land and its may be affected by many factors. The duly appointed Commissioners made a second ocular inspection of the subject area on 4 September 1997; went to the BIR office in order to get the BIR zonal valuation of the properties located in Carmen, Cotabato; interviewed adjacent property owners; and took into consideration various factors such as the location of the land which is just less than a kilometer away from the Poblacion and half a kilometer away from the highway and the fact that it is near a military reservation. With regard to the improvements, the Commissioners took into consideration the valuation of the Provincial Assessor, the age of the trees, and the inputs and their productivity.

Thus, it could not be said that the schedule of market values in Ordinance No. 173 was the sole basis of the Commissioners in arriving at their valuation. Said ordinance merely gave credence to their valuation which is comparable to the current price at that time. Besides, Mr. Zambrano testified that the date used as bases for Ordinance No. 173 were taken from 1995 to 1996.[41]

Moreover, factual findings of the CA are generally binding on this Court. The rule admits of exceptions, though, such as when the factual findings of the appellate court and the trial court are contradictory, or when the findings are not supported by the evidence on record.[42] These exceptions, however, are not present in the instant case.

Thus, in the absence of contrary evidence, we affirm the findings of the CA, which sustained the trial court's Decision adopting the committee's recommendations on the just compensation to be awarded to herein respondents.

We also uphold the CA ruling, which deleted the inclusion of the value of the excavated soil in the payment for just compensation. There is no legal basis to separate the value of the excavated

---

[41] *Id.* at 58-59.

[42] *The Republic of the Philippines represented by the National Irrigation Administration v. Court of Appeals*, G.R. No. 147245, 31 March 2005, 454 SCRA 516.

soil from that of the expropriated properties, contrary to what the trial court did. In the context of expropriation proceedings, the soil has no value separate from that of the expropriated land. Just compensation ordinarily refers to the value of the land to compensate for what the owner actually loses. Such value could only be that which prevailed at the time of the taking.

In *National Power Corporation v. Ibrahim, et al.*,[43] we held that rights over lands are indivisible, *viz*:

> [C]onsequently, the CA's findings which upheld those of the trial court that respondents owned and possessed the property and that its substrata was possessed by petitioner since 1978 for the underground tunnels, cannot be disturbed. Moreover, the Court sustains the finding of the lower courts that the sub-terrain portion of the property similarly belongs to respondents. This conclusion is drawn from Article 437 of the Civil Code which provides:
>
> > ART. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.
>
> Thus, the ownership of land extends to the surface as well as to the subsoil under it.
>
> x x x x x x x x x
>
> Registered landowners may even be ousted of ownership and possession of their properties in the event the latter are reclassified as mineral lands because real properties are characteristically indivisible. For the loss sustained by such owners, they are entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.
>
> Moreover, petitioner's argument that the landowners' right extends to the sub-soil insofar as necessary for their practical interests serves only to further weaken its case. The theory would limit the right to the sub-soil upon the economic utility which such area offers to

---

[43] *National Power Corporation v. Ibrahim*, G.R. No. 168732, 29 June 2007, 526 SCRA 149, 159-160.

the surface owners. Presumably, the landowners' right extends to such height or depth where it is possible for them to obtain some benefit or enjoyment, and it is extinguished beyond such limit as there would be no more interest protected by law.

Hence, the CA correctly modified the trial court's Decision when it ruled thus:

> We agree with the OSG that NIA, in the construction of irrigation projects, must necessarily make excavations in order to build the canals. Indeed it is preposterous that NIA will be made to pay not only for the value of the land but also for the soil excavated from such land when such excavation is a necessary phase in the building of irrigation projects. That NIA will make use of the excavated soil is of no moment and is of no concern to the landowner who has been paid the fair market value of his land. As pointed out by the OSG, the law does not limit the use of the expropriated land to the surface area only. Further, NIA, now being the owner of the expropriated property, has the right to enjoy and make use of the property in accordance with its mandate and objectives as provided by law. To sanction the payment of the excavated soil is to allow the landowners to recover more than the value of the land at the time when it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements.[44]

On the second issue, the Petition is meritorious.

The CA affirmed the ruling of the trial court, which had awarded the payment of just compensation — intended for Lot No. 3080 registered in the name of the Rural Bank of Kabacan — to the defendants-intervenors on the basis of the non-participation of the rural bank in the proceedings and the latter's subsequent Manifestation that it was no longer the owner of that lot. The appellate court erred on this matter.

It should be noted that eminent domain cases involve the expenditure of public funds.[45] In this kind of proceeding, we

---

[44] *Rollo*, pp. 61-62.

[45] *National Power Corporation v. Spouses Dela Cruz*, G.R. No. 156093, 02 February 2007, 514 SCRA 56.

require trial courts to be more circumspect in their evaluation of the just compensation to be awarded to the owner of the expropriated property.[46] Thus, it was imprudent for the appellate court to rely on the Rural Bank of Kabacan's mere declaration of non-ownership and non-participation in the expropriation proceeding to validate defendants-intervenors' claim of entitlement to that payment.

The law imposes certain legal requirements in order for a conveyance of real property to be valid. It should be noted that Lot No. 3080 is a registered parcel of land covered by TCT No. T-61963. In order for the reconveyance of real property to be valid, the conveyance must be embodied in a public document[47] and registered in the office of the Register of Deeds where the property is situated.[48]

---

[46] *Supra*, note 38.

[47] Civil Code of the Philippines:

Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein a governed by Articles 1403, No. 2, and 1405;

[48] P.D. 1529:

CHAPTER XII

Forms Used in Land Registration and Conveyancing

SECTION 112. Forms in Conveyancing. — The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registrable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall be acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be

We have scrupulously examined the records of the case and found no proof of conveyance or evidence of transfer of ownership of Lot No. 3080 from its registered owner, the Rural Bank of Kabacan, to defendants-intervenors. As it is, the TCT is still registered in the name of the said rural bank. It is not disputed that the bank did not participate in the expropriation proceedings, and that it manifested that it no longer owned Lot No. 3080. The trial court should have nevertheless required the rural bank and the defendants-intervenors to show proof or evidence pertaining to the conveyance of the subject lot. The court cannot rely on mere inference, considering that the payment of just compensation is intended to be awarded solely owner based on the latter's proof of ownership.

The trial court should have been guided by Rule 67, Section 9 of the 1997 Rules of Court, which provides thus:

> SEC. 9. Uncertain ownership; conflicting claims. — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

Hence, the appellate court erred in affirming the trial court's Order to award payment of just compensation to the defendants-intervenors. There is doubt as to the real owner of Lot No. 3080. Despite the fact that the lot was covered by TCT No. T-61963 and was registered under its name, the Rural Bank of

---

registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.

Kabacan manifested that the owner of the lot was no longer the bank, but the defendants-intervenors; however, it presented no proof as to the conveyance thereof. In this regard, we deem it proper to remand this case to the trial court for the reception of evidence to establish the present owner of Lot No. 3080 who will be entitled to receive the payment of just compensation.

WHEREFORE, the Petition is **PARTLY GRANTED.** The 12 August 2008 CA Decision in CA-G.R. CV No. 65196, awarding just compensation to the defendants as owners of the expropriated properties and deleting the inclusion of the value of the excavated soil, is hereby **AFFIRMED** with **MODIFICATION.** The case is hereby **REMANDED** to the trial court for the reception of evidence to establish the present owner of Lot No. 3080. No pronouncements as to cost.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185960. January 25, 2012]

MARINO B. ICDANG, *petitioner, vs.* **SANDIGANBAYAN (Second Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DECISIONS AND FINAL ORDERS OF THE SANDIGANBAYAN SHALL BE

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

APPEALABLE TO THE SUPREME COURT; SUSTAINED. — Pursuant to Section 7 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. Section 1 of Rule 45 of the Rules of Court provides that "[a] party desiring to appeal by *certiorari* from a judgment, final order or resolution of the x x x Sandiganbayan x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition x x x shall raise only questions of law, which must be distinctly set forth." Section 2 of Rule 45 likewise provides that the petition should be filed within the fifteen-day period from notice of the judgment or final order or resolution, or of the denial of petitioner's motion for reconsideration filed in due time after notice of judgment.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* THE REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE. — This Court has often enough reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Appeals though filed late were allowed in some rare cases, but there must be exceptional circumstances to justify the relaxation of the rules. x x x There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Under the facts on record, we find no grave abuse of discretion on the part of the SB when it submitted the case for decision and rendered the judgment of conviction on the basis of the prosecution evidence after the defense failed to present its evidence despite ample opportunity to do so.

3. ID.; CRIMINAL PROCEDURE; PROMULGATION OF JUDGMENT; THE ABSENCE OF COUNSEL DURING THE PROMULGATION OF JUDGMENT DOES NOT AFFECT THE VALIDITY OF THE PROMULGATION. — There is nothing in the rules that requires the presence of counsel for the promulgation of the judgment of conviction to be valid. While notice must be served on both accused and his counsel, the latter's absence during the promulgation of judgment would not affect the validity of the promulgation. Indeed, no substantial right of the accused on the merits was prejudiced by such absence of his counsel when the sentence was pronounced. It is worth mentioning that petitioner never raised issue on the fact that his counsel was not around during the promulgation of the judgment in his motion for reconsideration which merely prayed for reopening of the case to enable him to present liquidation documents and receipts, citing financial constraints as the reason for his failure to attend the scheduled hearings. Before this Court he now submits that the gross negligence of his counsel deprived him of the opportunity to present defense evidence.

4. CRIMINAL LAW; REVISED PENAL CODE; MALVERSATION OF PUBLIC FUNDS; ELEMENTS. — The elements of malversation of public funds are: 1. that the offender is a public officer; 2. that he had the custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

APPEARANCES OF COUNSEL

Edilberto B. Cosca for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for *certiorari* under Rule 65 seeking to reverse and set aside the Decision[1] dated May 26, 2008 and Resolution[2] dated November 18, 2008 of the Sandiganbayan (SB) (Second Division) which convicted petitioner of the crime of malversation of public funds.

The factual antecedents:

Petitioner Marino B. Icdang, at the time of the transactions subject of this controversy, was the Regional Director of the Office for Southern Cultural Communities (OSCC) Region XII in Cotabato City.

On January 19, 1998, a Special Audit Team was formed by the Commission on Audit (COA) Regional Office XII, Cotabato City pursuant to COA Regional Office Order No. 98-10[3] to conduct comprehensive audit on the 1996 funds for livelihood projects of the OSCC-Region XII. Hadji Rashid A. Mudag was designated as team leader, with Jose Mercado, Myrla Fermin and Evelyn Macala as members.

In its report submitted to the COA Regional Director, the audit team noted that petitioner was granted cash advances which remained unliquidated. In the cash examination conducted by the team on March 10, 1998, it was discovered that petitioner had a shortage of ₱219,392.75. Out of the total amount of ₱920,933.00 released in September 1996 to their office under sub-allotment advice No. COT-043, to cover the implementation of various socio-economic projects for the cultural communities of the region, cash advances amounting to ₱407,000.00 were granted from October 1, 1996 to February 5, 1997 to officials

---

[1] *Rollo*, pp. 48-63. Penned by Associate Justice Edilberto G. Sandoval with Associate Justices Teresita V. Diaz-Baldos and Samuel R. Martires concurring.

[2] *Id.* at 64.

[3] *Id.* at 77.

and employees including petitioner. Per records, it was noted that ₱297,392.75 of these cash advances remained unliquidated as of December 31, 1997.[4]

Petitioner never denied that he received a total of ₱196,000.00 evidenced by disbursement vouchers and checks payable to him, as follows:

DV No.	Check No.	Date	Purpose	Amount
0988	893433	10/01/96	Initial funding for the Ancestral Domain Development Program	₱50,000.00
0989	893432	10/01/96	Establishment of ICC-IAD	50,000.00
1150	916539	11/05/96	Support to Cooperative	6,000.00
0987	893429	10/01/96	Adult Literacy Program	60,000.00
0986	893430	10/01/96	Child Care Development Program	30,000.00[5]

In addition, per the Schedule of Cash Advance Intended for Livelihood Projects,[6] the following amounts were also for petitioner's account:

Check No.	Date	Purpose	Amount
x x x x			
893633	11/15/96	Operationalization of Tribal Cooperative	11,000.00
893768	12/13/96	Fishpen Development Program	10,000.00
893788	12/20/96	Operationalization of Tribal Cooperative	5,000.00
916634	02/05/97	Ancestral Domain Development Program	10,000.00
		[TOTAL CASH ADVANCES — ₱]	**232,000.00**

[4] *Id.* at 84-85, 91 and 95; Exhibits "A", "B", "M" to "M-2", "N", Formal Offer of Evidence (Prosecution).

[5] *Id.* at 95-97, 102-103, 105-106, 108-109 and 111-112.

[6] *Id.* at 95.

In the Audit Observation Memorandum No. 97-001 (March 18, 1998) sent by the COA Region XII to the OSCC-Region XII reflecting the findings of the Special Audit Team, it was also disclosed that: (1) Funds intended for programs for Ancestral Domain Claim Development and to support tribal cooperatives, were cash advanced, but the proposed projects were not implemented by the OSCC-Region XII; (2) No official cashbooks are maintained to record cash advances and disbursements from the 1996 funds allocated for livelihood projects; and (3) Out of the total ₱920,933.00 allocated for 1996 livelihood projects, the amount of ₱445,892.80 was disbursed leaving a balance of ₱475,040.20; however, final trial balance as of December 31, 1996 showed that the office has exhausted the allocated funds for the whole year; the utilization of the ₱475,040.20 could not be explained by the Accountant so that it may be concluded that such was misappropriated. Petitioner indicated his comments on the said memorandum by requesting for extension to restitute the amount of ₱306,412.75 (which included the ₱67,000.00 cash shortage of another OSCC-Region XII official, Ma. Teresa A. Somorostro), and explaining that the ₱475,040.20 was not misappropriated as evidenced by their own financial report and re-statement of allotment and obligation for the month ending December 31, 1996.[7]

From the field interviews conducted by the audit team, it was also gathered that the intended projects covered by the cash advances were never implemented, such as the proposed Children Development Project in Bgy. Matila; adult literacy program in Cotabato; operationalization of tribal cooperative in Bgy. Bantagan, Sultan Kudarat; and establishment of ICC-IAD in Magpet, Cotabato where a complaint was made to the effect that the OSCC-Region XII office allegedly upon receipt of funds prepares a project for implementation which is different from that project proposal submitted by the project officer. Supposedly, there was likewise no support or assistance given by the OSCC-Region XII to the activities of the Provincial Special Task Force on Ancestral Domain for the indigenous people of Columbio,

[7] Exhibits "K" and "L", Formal Offer of Evidence (Prosecution).

Sultan Kudarat, and to Bgys. Salumping, Municipality of Esperanza, President Roxas, and Matrilala.[8] And as already mentioned, the audit team discovered that the accountable officers of OSCC-Region XII failed to maintain the official cashbook so that there were no recording of transactions whenever a cash advance was granted; only subsidiary ledgers were used by the accounting section.

From the ₱232,000.00 accountabilities of petitioner, the COA deducted the following: ₱10,000.00 covered by acknowledgment receipt by A. Anas; various cash invoices in the amount of ₱2,197.25; and Reimbursement Expense Receipts (RERs) in the amount of ₱410.00. After the cash examination, petitioner was still found short of ₱219,392.75.[9] Consequently, a demand letter was sent by the COA for petitioner to immediately produce the missing funds. In his letter-reply dated March 19, 1998, petitioner requested for one-week extension to comply with the directive.[10]

However, the one-week period lapsed without compliance having been made by petitioner. Hence, the audit team recommended the initiation of administrative and criminal charges against him, as well as Ms. Somorostro, Chief of the Socio-Cultural Development Concerns Division of OSCC-Region XII.

On September 21, 2000, the Office of the Ombudsman found probable cause against petitioner and Ms. Somorostro for violation of Art. 217 of the Revised Penal Code, as amended, and Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

The Amended Information charging petitioner with the crime of Malversation of Public Funds (Criminal Case No. 26327) reads:

That during the period from October 1996 to February 1997 in Cotabato City, Philippines and within the jurisdiction of this Honorable

---

[8] Exhibits "D-2" to "D-5", "E-2", "F-2", "G-2" and "H-2", *id.*

[9] Exhibit "C", *id.*

[10] Exhibits "I" and "J", *id.*

Court, accused Marino B. Icdang, a public officer being then the Regional Director of the Office for Southern Communities (OSCC), Region XII, Cotabato City and as such is accountable officer for the public fund received by him that were intended for the socio-economic and cultural development projects of the OSCC Region XII, did then and there willfully, unlawfully and feloniously take[,] misappropriate, embezzle and convert for his own personal use and benefit from the said fund the aggregate amount of TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY-TWO PESOS AND 75/100 (₱219,392.75) to the damage and prejudice of the government in the aforesaid sum.

CONTRARY TO LAW.[11]

Petitioner was likewise charged with violation of Section 3(e) of R.A. No. 3019 (Criminal Case No. 26328).

The lone witness for the prosecution was Hadji Rashid A. Mudag, State Auditor IV of COA Region XII. He presented vouchers which they were able to gather during the cash examination conducted on March 10, 1998, which showed cash advances granted to petitioner, and in addition other cash advances also received by petitioner for which he remained accountable, duly certified by the Accountant of OSCC-Region XII. Petitioner was notified of the cash shortage through the Audit Observation Memorandum No. 97-001 dated March 18, 1998 and was sent a demand letter after failing to account for the missing funds totalling ₱219,392.75.[12]

On cross-examination, witness Mudag admitted that while they secured written and signed certifications from project officers and other individuals during the field interviews, these were not made under oath. The reports from Sultan Kudarat were just submitted to him by his team members as he was not present during the actual interviews; he had gone only to Kidapawan, Cotabato and only prepared the audit report. He also admitted that they no longer visited the project sites after being told by

---

[11] *Rollo,* p. 70.

[12] TSN, May 22, 2002, pp. 5-19.

the project officers that there was nothing to be inspected because no project was implemented.[13]

On May 26, 2008, the SB's Second Division rendered its decision convicting petitioner of malversation and acquitting him from violation of Section 3(e) of R.A. No. 3019. The dispositive portion reads:

> WHEREFORE, premises considered judgment is hereby rendered finding accused MARINO B. ICDANG Guilty beyond reasonable doubt of Malversation of Public Funds or Property in Criminal Case No. 26327 and finding in his favor the mitigating circumstance of voluntary surrender, is hereby sentenced to an indeterminate penalty of, considering the amount involved, TEN (10) YEARS and ONE (1) DAY of *PRISION MAYOR* as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *Reclusion Temporal* as maximum, to suffer the penalty of perpetual special disqualification, and to pay a fine of ₱196,000.00 without subsidiary imprisonment in case of insolvency.
>
> He is also ordered to reimburse the government of the said amount.
>
> In Criminal Case No. 26328, he is hereby ACQUITTED on the basis of reasonable doubt.
>
> With cost against accused.
>
> SO ORDERED.[14]

The SB ruled that the prosecution has established the guilt of petitioner beyond reasonable doubt for the crime of malversation of public funds, the presumption from his failure to account for the cash shortage in the amount of ₱232,000.00 remains unrebutted. As to the reasons given by petitioner for non-compliance with the COA demand, the SB held:

> A careful perusal of Mr. Icdang's Letter-Answer dated 19 March 1998 (Exh. "J") to the demand letter and directive issued by the COA clearly shows he was just asking for extension of time to comply with the demand letter. There was virtually no denial on his part

---

[13] TSN, July 4, 2002, pp. 30-34.

[14] *Rollo,* pp. 60-61.

that he received the ₱232,000.00 amount earmarked for the various government projects. His reasons were *first*, the committee tasked to prepare the liquidation of the cash advances are still in the process of collecting all the documents pertinent to the disbursement of the project funds; and *second*, the payees to the disbursements were still to be notified so that they will have to come to the office to affix their signatures as payees to the liquidation vouchers.

This response is queer because as he gave the money to the supposed payees, he should have kept a ledger to keep track of the same, considering that these are public funds. More importantly, Mr. Icdang was given ample opportunity to dispute the COA findings that there was indeed a shortage. Instead of doing so, Mr. Icdang never presented the promised proof of his innocence before this Court during the trial of this case. Thus, the *prima facie* presumption under Article 217 of the Revised Penal Code, that the failure of a public officer to have duly forthcoming the public funds with which he is chargeable, upon demand, shall be evidence that he put the missing funds for personal uses, arises because *first*, there was no issue as to the accuracy, correctness and regularity of the audit findings and *second*, the funds are missing.[15]

Petitioner filed a motion for reconsideration requesting that he be given another chance to present his evidence, stating that his inability to attend the trial were due to financial constraints such that even when some of the scheduled hearings were sometimes held in Davao City and Cebu City, he still failed to attend the same. However, the SB denied the motion noting that the decision has become final and executory on June 10, 2008 for failure of petitioner to file a motion for reconsideration, or new trial, or appeal before that date.

Hence, this petition anchored on the following grounds:

I. THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT RENDERED ITS JUDGMENT OF CONVICTION AGAINST PETITIONER DESPITE ITS KNOWLEDGE THAT PETITIONER WAS NOT ABLE TO ADDUCE HIS EVIDENCE DUE TO VARIOUS CIRCUMSTANCES, THAT

[15] *Id.* at 58-59.

HE WAS NOT ASSISTED BY COUNSEL DURING THE PROMULGATION OF JUDGMENT; THE GROSS AND RECKLESS NEGLIGENCE OF HIS FORMER COUNSEL IN FAILING TO ASSIST HIM DURING THE PROMULGATION; HIS FINANCIAL AND ECONOMIC DISLOCATION WHICH MADE HIM UNABLE TO ATTEND THE SCHEDULED TRIALS IN MANILA, DAVAO CITY AND CEBU CITY, HIS RESIDENCE BEING IN COTABATO, WHICH ALL CONSTITUTE A DENIAL OF HIS RIGHT TO BE HEARD AND TO DUE PROCESS.

II. PETITIONER WAS LIKEWISE CLEARLY DENIED OF HIS RIGHT TO DUE PROCESS WHEN DUE TO THE RECKLESS AND GROSS NEGLIGENCE OF HIS FORMER COUNSEL, THE LATTER FAILED TO FILE A MOTION FOR NEW TRIAL TO REVERSE THE JUDGMENT OF CONVICTION BEFORE THE SANDIGANBAYAN OR TO FILE AN APPEAL TO THE SUPREME COURT FROM THE ADVERSE JUDGMENT OF CONVICTION.

III. IT IS HIGHLY UNJUST, INEQUITABLE AND UNCONSCIONABLE FOR PETITIONER TO BE PRESENTLY LANGUISHING IN JAIL WITHOUT HIS DEFENSE AGAINST THE CRIME CHARGED HAVING BEEN PRESENTED BEFORE THE HONORABLE SANDIGANBAYAN AND APPRECIATED BY THE SAID COURT, AND BY THIS HONORABLE SUPREME COURT IN CASE OF APPEAL FROM AN ADVERSE DECISION.

IV. REMAND OF THE INSTANT CASE TO THE COURT OF ORIGIN, OR TO THE HONORABLE SANDIGANBAYAN SO THAT PETITIONER CAN PRESENT HIS EVIDENCE BEFORE SAID COURT, ASSISTED BY NEW COUNSEL, IS PROPER AND JUSTIFIED, ESPECIALLY CONSIDERING THAT THE INSTANT CASE INVOLVES A CRIME OF ALLEGED MALVERSATION OF PUBLIC FUNDS WHICH HE NEVER COMMITTED, AND INVOLVES A HIGHER PENALTY OR TERM OF IMPRISONMENT.[16]

The petition must fail.

At the outset it must be emphasized that the special civil action of *certiorari* is not the proper remedy to challenge a judgment conviction rendered by the SB. Petitioner should have filed a petition for review on *certiorari* under Rule 45.

---

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

Pursuant to Section 7 of Presidential Decree No. 1606,[17] as amended by Republic Act No. 8249, decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. Section 1 of Rule 45 of the Rules of Court provides that "[a] party desiring to appeal by *certiorari* from a judgment, final order or resolution of the x x x Sandiganbayan x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition x x x shall raise only questions of law, which must be distinctly set forth." Section 2 of Rule 45 likewise provides that the petition should be filed within the fifteen-day period from notice of the judgment or final order or resolution, or of the denial of petitioner's motion for reconsideration filed in due time after notice of judgment.

As observed by the SB, the 15-day period of appeal, counted from the date of the promulgation of its decision on May 26, 2008, lapsed on June 10, 2008, which rendered the same final and executory. Petitioner's motion for reconsideration was thus filed **6 days late**. Petitioner's resort to the present special civil action after failing to appeal within the fifteen-day reglementary period, cannot be done. The special civil action of *certiorari* cannot be used as a substitute for an appeal which the petitioner already lost.[18]

This Court has often enough reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[19] Appeals though filed late were allowed in some

[17] REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS "SANDIGANBAYAN" AND FOR OTHER PURPOSES.

[18] *People v. Sandiganbayan,* G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216.

[19] *Id.*

rare cases, but there must be exceptional circumstances to justify the relaxation of the rules.

Petitioner claims that his right to due process was violated when his counsel failed to assist him during the promulgation of the judgment. He faults the Sandiganbayan for proceeding with the promulgation despite the petitioner not then being assisted by his counsel, and being a layman he is not familiar with court processes and procedure.

Section 6, Rule 120 of the Revised Rules of Criminal Procedure, as amended, provides:

SEC. 6. *Promulgation of judgment.* — The judgment is promulgated by reading it **in the presence of the accused and any judge of the court in which it was rendered.** However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give **notice to the accused** personally or through his bondsman or warden **and counsel, requiring him to be present at the promulgation of the decision.** If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Emphasis supplied.)

There is nothing in the rules that requires the presence of counsel for the promulgation of the judgment of conviction to be valid. While notice must be served on both accused and his counsel, the latter's absence during the promulgation of judgment would not affect the validity of the promulgation. Indeed, no substantial right of the accused on the merits was prejudiced by such absence of his counsel when the sentence was pronounced.[20]

It is worth mentioning that petitioner never raised issue on the fact that his counsel was not around during the promulgation of the judgment in his motion for reconsideration which merely prayed for reopening of the case to enable him to present liquidation documents and receipts, citing financial constraints as the reason for his failure to attend the scheduled hearings. Before this Court he now submits that the gross negligence of his counsel deprived him of the opportunity to present defense evidence.

Perusing the records, we find that the prosecution made a formal offer of evidence on August 30, 2002. At the scheduled presentation of defense evidence on September 4, 2002, petitioner's counsel, Atty. Manuel E. Iral, called the attention of the SB to the fact that he had just received a copy of said formal offer, and requested for 15 days to submit his comment thereon. The SB granted his request and set the case for hearing on December 2 and 3, 2002.[21] No such comment had been filed

---

[20] See *Jamilano v. Cuevas*, No. L-33654, July 23, 1987, 152 SCRA 158, 161-162, citing *U.S. v. Gimeno*, 3 Phil. 233, 234.

[21] SB records (Crim. Case No. 26327), p. 242.

by Atty. Iral. On November 18, 2002, due to difficulty in securing a quorum with five existing vacancies in the court, the SB thus reset the hearing to April 21 and 22, 2003.[22] On January 14, 2003, the SB's Second Division issued a resolution admitting Exhibits "A" to "N" after the defense failed to submit any comment to the formal offer of the prosecution, and stating that the previously scheduled hearings on April 21 and 22, 2003 shall proceed.[23] On April 11, 2003, the SB for the same reason again reset the hearing dates to August 11 and 12, 2003.[24]

At the scheduled initial presentation of defense evidence on August 11, 2003, only petitioner appeared informing that when he passed by that morning to his counsel's residence, the latter was ill and thus requested for postponement. Without objection from the prosecution and on condition that Atty. Iral will present a medical certificate within five days, the SB reset the hearing to October 16 and 17, 2003. The SB also said that if by the next hearing petitioner is not yet represented by his counsel, said court shall appoint a counsel *de oficio* in the person of Atty. Wilfredo C. Andres of the Public Attorney's Office.[25] However, on October 16, 2003, the SB received a letter from petitioner requesting for postponement citing the untimely death of his nephew and swelling of his feet due to arthritis. He assured the court of his attendance in the next hearing it will set at a later date.[26] Accordingly, the SB reset the hearings to February 12 and 13, 2004.[27] On February 4, 2004, the SB again received a letter from petitioner requesting another postponement for medical (arthritis) and financial (lack of funds for attorney's/ appearance fee) reasons. He assured the court of his availability after the May 10, 2004 elections.[28] This time, the SB did not

---

[22] *Id.* at 250.

[23] *Id.* at 259.

[24] *Id.* at 265.

[25] *Id.* at 273.

[26] *Id.* at 282-287.

[27] *Id.* at 294-296.

[28] *Id.* at 297.

grant the request and declared the case submitted for decision on the basis of the evidence on record.[29]

On March 30, 2004, Atty. Iral filed an Urgent Motion for Reconsideration of the February 12, 2004 order submitting the case for decision, citing circumstances beyond his control — the fact that he had no means to come to Manila from Kidapawan, North Cotabato, he being jobless for the past four years. He thus prayed to be allowed to present his evidence on May 17 and 18, 2004.[30] The prosecution opposed said motion, citing two postponements in which petitioner's counsel have not submitted the required medical certificate and explanation and failure to be present on October 16, 2003.[31]

In the interest of justice, the SB reconsidered its earlier order submitting the case for decision and gave the petitioner a last chance to present his evidence on August 17 to 18, 2004.[32] On August 17, 2004, Atty. Iral appeared but requested that presentation of evidence be postponed to the following day, which request was granted by the SB.[33] The next day, however, only petitioner appeared saying that his lawyer is indisposed. Over the objection of the prosecution and in the supreme interest of justice, the SB cancelled the hearing and rescheduled it to November 15 and 16, 2004. Atty. Iral was directed to submit a verified medical certificate within 10 days under pain of contempt, and the SB likewise appointed a counsel *de oficio* in the person of Atty. Roberto C. Omandam who was directed to be ready at the scheduled hearing in case petitioner's counsel is not ready, stressing that the court will no longer grant any postponement. Still, petitioner was directed to secure the services of another counsel if Atty. Iral is not available.[34] With the

---

[29] *Id.* at 298.

[30] *Id.* at 304.

[31] *Id.* at 309-311.

[32] *Id.* at 313.

[33] *Id.* at 320.

[34] *Id.* at 322.

declaration by Malacañang that November 15, 2004 is a special non-working holiday, the hearing was reset to November 16, 2004 as previously scheduled.[35]

On November 16, 2004, Atty. Iral appeared but manifested that he has no witness available. Over the objection of the prosecution, hearing was reset to March 14 and 15, 2005. Atty. Iral agreed to submit the case for decision on the basis of prosecution evidence in the event that he is unable to present any witness on the aforesaid dates.[36] On March 14, 2005, the SB again reset the hearing dates to May 26 and 27, 2005 for lack of material time.[37] However, at the scheduled hearing on May 26, 2005, petitioner manifested to the court that Atty. Iral was rushed to the hospital having suffered a stroke, thereupon the hearing was rescheduled for September 21 and 22, 2005 with a directive for Atty. Iral to submit a verified medical certificate.[38] On September 22, 2005, Atty. Iral appeared but again manifested that he has no witness present in court. On the commitment of Atty. Iral that if by the next hearing he still fails to present their evidence the court shall consider them to have waived such right, the hearing was reset to February 8 and 9, 2006.[39] However, on February 9, 2006, the defense counsel manifested that he has some other commitment in another division of the SB and hence he is constrained to seek cancellation of the hearing. Without objection from the prosecution and considering that the intended witness was petitioner himself, the SB reset the hearing to April 17 and 18, 2006, which dates were later moved to August 7 and 8, 2006.[40] On August 7, 2006, over the objection of the prosecution, the SB granted the motion for postponement by the defense on the ground of lack

---

[35] *Id.* at 328.

[36] *Id.* at 330.

[37] *Id.* at 340.

[38] *Id.* at 346-A.

[39] *Id.* at 362.

[40] *Id.* at 370, 377.

of financial capacity. The hearing was for the last time reset to October 17 and 18, 2006, which date was later changed to October 11 and 12, 2006.[41]

On October 11, 2006, on motion of the prosecution, the SB resolved that the cases be submitted for decision for failure of the defense to appear and present their evidence, and directed the parties to present their respective memoranda within 30 days.[42] As only the prosecution submitted a memorandum, the SB declared the cases submitted for decision on August 24, 2007.[43] Petitioner and his counsel were duly notified of the promulgation of decision, originally scheduled on February 28, 2008 but was moved to March 27, 2008 in view of the absence of petitioner and the Handling Prosecutor.[44] On that date, however, on motion of Atty. Iral, the promulgation was postponed to April 14, 2008.[45] On April 14, 2008, both petitioner and his counsel failed to appear, but since the notice to petitioner was sent only on April 3, 2008, the SB finally reset the promulgation of judgment to May 26, 2008.[46] While supposedly absent during the promulgation, records showed that Atty. Iral personally received on the same date a copy of the decision.[47]

The foregoing shows that the defense was granted ample opportunity to present their evidence as in fact several postponements were made on account of Atty. Iral's health condition and petitioner's lack of financial resources to cover transportation costs. The SB exercised utmost leniency and compassion and even appointed a counsel *de oficio* when petitioner cited lack of money to pay for attorney's fee. In those instances when either petitioner or his counsel was present in court, the

---

[41] *Id.* at 382, 386.

[42] *Id.* at 391.

[43] *Id.* at 441.

[44] *Id.* at 450.

[45] *Id.* at 458.

[46] *Id.* at 466.

[47] *Id.* at 489 (back).

following documentary evidence listed during the pre-trial, allegedly in the possession of petitioner, and which he undertook to present at the trial, were never produced in court at any time: (1) Liquidation Report by petitioner; (2) Certification of Accountant Zamba Lajaratu of the National Commission on Indigenous People, Region XII, Cotabato City; and (3) Different Certifications by project officers and barangay captains.[48] If indeed these documents existed, petitioner could have readily submitted them to the court considering the length of time he was given to do so. The fact that not a single document was produced and no witness was produced by the defense in a span of **4 years** afforded them by the SB, it can be reasonably inferred that petitioner did not have those evidence in the first place.

The elements of malversation of public funds are:

1. that the offender is a public officer;

2. that he had the custody or control of funds or property by reason of the duties of his office;

3. that those funds or property were public funds or property for which he was accountable; and

4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[49]

There is no dispute on the existence of the first three elements; petitioner admitted having received the cash advances for which he is accountable. As to the element of misappropriation, indeed petitioner failed to rebut the *legal presumption* that he had misappropriated the said public funds to his personal use, notwithstanding his unsubstantiated claim that he has in his possession liquidation documents. The SB therefore committed neither reversible error nor grave abuse of discretion in convicting the petitioner of malversation for failure to explain or account

---

[48] *Rollo,* p. 75.

[49] *Ocampo III v. People,* G.R. Nos. 156547-51, February 4, 2008, 543 SCRA 487, 505-506.

for his cash shortage by any liquidation or supporting documents. As this Court similarly ruled in one case[50]:

> In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.
>
> In convicting petitioner, the Sandiganbayan cites the presumption in Article 217, *supra,* of the Revised Penal Code, *i.e.*, the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is *prima facie* evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if the accused is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated. This Court has repeatedly said that when the absence of funds is not due to the personal use thereof by the accused, the presumption is completely destroyed; in fact, the presumption is never deemed to have existed at all. In this case, however, petitioner failed to overcome this *prima facie* evidence of guilt.

There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[51] Under the facts on record, we find no grave abuse of discretion on the part of the SB when it submitted the case for decision

---

[50] *Davalos, Sr. v. People,* G.R. No. 145229, April 24, 2006, 488 SCRA 84, 92-93.

[51] *People v. Sandiganbayan, supra* note 18, at 218.

and rendered the judgment of conviction on the basis of the prosecution evidence after the defense failed to present its evidence despite ample opportunity to do so.

WHEREFORE, the petition is *D***ISMISSED.** The Decision promulgated on May 26, 2008 and Resolution issued on November 18, 2008 by the Sandiganbayan in Criminal Case No. 26327 are **AFFIRMED.**

With costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186235. January 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANIEL ORTEGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING AN APPEAL FROM A CONVICTION OF RAPE; ENUMERATION. — We reiterate the following standard in reviewing an appeal from a conviction for rape: In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot

be allowed to draw strength from the weakness of the evidence for the defense. Yet, we have also held that an accused may be convicted solely on the basis of the victim's testimony, provided that such testimony is logical, credible, consistent, and convincing.

2. ID.; ID.; ELEMENTS; IN INCESTUOUS RAPE OF MINOR, THE MORAL ASCENDANCY OF THE APPELLANT OVER THE VICTIM RENDERS IT UNNECESSARY TO SHOW PHYSICAL FORCE AND INTIMIDATION; PRESENT IN CASE AT BAR. — In incestuous rape of a minor, it is not necessary that actual force and intimidation be employed. The moral ascendancy of appellant over the victim, his daughter, renders it unnecessary to show physical force and intimidation. x x x In this case, Ortega took advantage of his overpowering moral and physical ascendancy over AAA, which was reinforced even further by the fact that having been separated from AAA's mother, Ortega alone exercised parental authority over AAA. Indeed, in rape committed by a father, his moral ascendancy and influence over the victim substitute for the requisite force, threat, and intimidation, and strengthen the fear which compels the victim to conceal her dishonor. AAA was sufficiently cowed into silence by the physical superiority and moral influence which her father exercised over her even though he may have been unarmed when the rape incidents took place. Thus, contrary to Ortega's argument, evidence of force and intimidation is not necessary for his conviction for two counts of rape.

3. ID.; ID.; ID.; THE PRECISE TIME OF THE COMMISSION OF THE CRIME IS NOT AN ESSENTIAL ELEMENT OF RAPE. — We have repeatedly held that "the precise time of the commission of the crime is not an essential element of rape and it has no bearing on its commission." Despite her failure to give the exact time and date of the two rape incidents, AAA was able to recall in detail how the sexual assault was committed against her by Ortega.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES REFERRING TO MINOR DETAILS DO NOT IMPAIR THE CREDIBILITY OF WITNESSES. — Time and again, we have held that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses.

Instead of weakening their testimonies, such inconsistencies tend to strengthen the witnesses' credibility because they discount the possibility of their being rehearsed."

5. CRIMINAL LAW; RAPE; CONVICTION; TESTIMONY OF A RAPE VICTIM ALONE IF CREDIBLE IS SUFFICIENT TO CONVICT THE ACCUSED. — At any rate, "in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime as her testimony alone, if credible, is sufficient to convict the accused thereof, as in this case."

6. ID.; ID.; DEFENSES OF ALIBI AND DENIAL CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED. — As correctly held by the RTC, Ortega's defense of alibi and denial cannot prevail over the clear, positive and convincing testimony of AAA. AAA positively identified his father Ortega as the one who raped her. "Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law."

7. ID.; ID.; IMPOSABLE PENALTY. — In Criminal Case No. 586, the rape was committed sometime in 1990, that is, prior to the effectivity of Republic Act No. 7659 (the Death Penalty Law) on December 31, 1993. Prior to its amendment, Article 335 of the Revised Penal Code imposed the penalty of *reclusion perpetua* for the crime of rape. In Criminal Case No. 585, the rape was committed in 1995, thus, Article 335, as amended by Republic Act No. 7659, already applies.

8. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP MUST BE SPECIFICALLY ALLEGED AND PROVED WITH CERTAINTY. — Under Article 335, as amended, the twin circumstances of minority and relationship are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically pleaded or alleged and proved with certainty in the information, otherwise, the death penalty cannot be imposed.

9. ID.; ID.; PROPER AWARD OF DAMAGES. — As to the award of damages, the victim in a simple rape case is entitled to

₱50,000.00 civil indemnity and ₱50,000.00 moral damages, without need for proof. An award for exemplary damages is also proper to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughter. In line with our prevailing jurisprudence, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00 for each of the two counts of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated January 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00136, affirming *in toto* the Decision[2] dated May 9, 2005 of the Regional Trial Court (RTC), Branch 39 of Polomolok, South Cotabato, in Criminal Case Nos. 585 and 586, which found accused-appellant Daniel Ortega (Ortega) guilty of two counts of rape committed against his daughter AAA.[3] The RTC sentenced Ortega to *reclusion perpetua* for each count of rape, and ordered him to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages for each count of rape.

The two Informations filed before the RTC against Ortega read:

---

[1] *Rollo*, pp. 4-23; penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring.

[2] CA *rollo*, pp. 31-45; penned by Judge Eddie R. Rojas.

[3] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Criminal Case No. 585:

That sometime in 1995, in the residence of the accused and complainant, at Barangay [x x x], Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA], a sixteen (16)[-]year[-]old girl and daughter of said accused Daniel Ortega.[4]

Criminal Case No. 586:

That sometime in 1990, in the residence of the accused and complainant, at Barangay [x x x], Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA], an eleven[-]year[-]old girl and daughter of said accused Daniel Ortega.[5]

At his arraignment, Ortega pleaded "not guilty" to both charges.

The prosecution called to the witness stand AAA, the victim, and Dr. Porfirio P. Pasuelo, Jr. (Dr. Pasuelo), the physician who conducted the physical examination of AAA; while the defense presented Ortega, the accused, as its lone witness.

The prosecution's version of events is as follows:

Private-complainant [AAA] is the daughter of accused-appellant. [AAA] lived with accused-appellant and her step-mother in X X X.

In 1990, then 11 year old [AAA] was at home, when accused-appellant suddenly dragged her from the kitchen to her bedroom. [AAA], with all her strength, resisted and cried. She then tried to cling on a wooden wall but it did not help her in any way. When inside the room, accused-appellant forcibly undressed [AAA]. [AAA] tried to cover her body but her effort proved futile. Accused-appellant succeeded in overpowering her and laid her down on the bed. Accused-appellant, thereafter, mounted and inserted his penis to [AAA]'s vagina, and made pumping motions. [AAA] cried for help but to no avail.

---

[4] Records, p. 1.

[5] *Id.* at 3.

After raping his daughter, accused-appellant threatened [AAA] not to tell the incident to anyone.

In 1995, [AAA] who was then 16-years old, would again suffer the same harrowing ordeal in the hands of her own father.

It happened when accused-appellant and [AAA] were at home. Accused-appellant removed her shorts, shirt and underwear and laid her down on the bed. Accused-appellant then undressed himself, mounted and inserted his penis into [AAA]'s vagina. During the sexual act, [AAA] felt pain in her vagina.

As a result of the incident, [AAA] got pregnant but had a miscarriage thereafter. Later on, she ran away from home and reported the incidents to the police.

On May 9, 2006, Dr. Porfirio Pasuelo, Jr., the Municipal Health Office of Polomolok, South Cotabato, conducted a medical examination on [AAA]. The medical examination revealed that [AAA] has a loose vaginal opening as it easily admitted a forefinger, an indication that there was already a prior intrusion in [AAA]'s genitalia. Dr. Pasuelo did not find lacerations on [AAA]'s vagina.[6]

Ortega relied on denial and alibi. Below is the gist of his testimony:

Appellant admitted that he had maltreated the complainant in trying to discipline her, but he vehemently denied that he raped her in both incidents. He testified that he never stayed at Polomolok in 1990. He, who was a sergeant, was assigned at Lebak, Sultan Kudarat, and only his son Roldan lived with him in the camp. In December 1990, his wife lived with him at Alabel, Sarangani Province, where he was "held up" by his battalion for having lost a firearm.

Appellant stated that complainant had run away from home many times when he was still attending military operations. He admitted that he was never close to the complainant and that latter was jealous of his children from his second wife. He surmised that because of this jealousy, the complainant fabricated these rape charges against him. His friend Nonoy Somito intimated to him that complainant was sexually molested thrice by the latter's admirer in 1995.[7]

---

[6] CA *rollo*, pp. 58-60.

[7] *Id.* at 20-21.

On May 9, 2005, the RTC rendered its Decision finding Ortega guilty beyond reasonable doubt of two counts of rape and sentencing him thus:

> WHEREFORE, finding the guilt of the accused DANIEL ORTEGA, beyond reasonable doubt of the crime of **TWO (2) COUNTS OF RAPE,** defined and penalized under Article 335, of the Revised Penal Code, the other defined and penalized under Article 335, of the Revised Penal Code, as amended by R.A. No. 7659.
>
> The Court hereby sentenced the accused to suffer the penalty of imprisonment of ***reclusion perpetua*** **for each count of rape** and he shall pay private complainant ₱50,000.00 as civil indemnity for every rape committed, ₱50,000.00 as moral damages and the amount of ₱25,000.00 as exemplary damages and to pay the cost.
>
> Upon finality of Decision, the Branch Clerk of Court is hereby directed to forward the complete records of this case to the Clerk of Court of the Court of Appeals, Cagayan de Oro City for its intermediate review pursuant to the OCA Circular No. 57-2005 dated 12 May 2005 and Supreme Court Administrative Circular No. 20-2005 dated 19 May 2005.[8]

In accordance with the Office of the Court Administrator Circular No. 57-2005 dated May 12, 2005 and Supreme Court Administrative Circular No. 20-2005 dated May 19, 2005, the RTC forwarded the complete records of the case to the Court of Appeals, Cagayan de Oro City, for its immediate review.

After Ortega filed his Accused-Appellant's Brief[9] on October 18, 2006 and the People, through the Office of the Solicitor General, submitted its Appellee's Brief[10] on March 2, 2007, the Court of Appeals promulgated its Decision on January 30, 2008, denying Ortega's appeal and affirming *in toto* the assailed RTC judgment.

Ortega filed on March 14, 2008 with the Court of Appeals a Notice of Appeal.[11]

---

[8] *Id.* at 45.

[9] *Id.* at 15-30.

[10] *Id.* at 51-81.

[11] *Id.* at 109.

In a Resolution dated March 16, 2009, we accepted Ortega's appeal and required the parties to file their respective supplemental briefs, if they so desire. We also required the Provincial Jail Warden of South Cotabato Rehabilitation and Detention Center to confirm the commitment of Ortega to prison and to submit to us a report thereon.[12]

Both Ortega[13] and the People[14] waived the filing of supplemental briefs and, instead, opted to stand by the briefs they filed before the Court of Appeals.

On May 14, 2009, this Court received a letter from Provincial Warden Jesus S. Sta. Cruz of the Provincial Jail Management Division, Koronadal City, South Cotabato, with the information that Ortega was already transferred/committed to the custody of the Penal Superintendent of the Davao Prison and Penal Farm, Panabo, Davao del Norte on June 22, 2008.[15]

We now consider the same assignment of error raised by Ortega before the Court of Appeals:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[16]

Ortega averred that the RTC ignored or overlooked facts or circumstances which cast serious doubt on AAA's credibility and claims of rape, particularly: (1) AAA did not mention at all in her testimony that Ortega succeeded in having carnal knowledge of her in 1995 with the use of force and intimidation, a vital element of the crime of rape; (2) the incident in 1990 cannot be considered rape because as AAA testified, Ortega only threatened her after he had carnal knowledge of her; (3) AAA did not struggle

---

[12] *Rollo*, pp. 29-30.

[13] *Id.* at 31-34.

[14] *Id.* at 35-37.

[15] *Id.* at 40.

[16] CA *rollo*, p. 17.

or exert real resistance to protect her chastity against an unarmed Ortega or to attract attention from neighbors, casting doubt on whether the carnal act was committed without her consent; (4) AAA could not remember the date or even just the month when the two alleged rape incidents occurred and not mentioning at all the time (whether day or night) of the alleged second rape incident; (5) AAA testified that she became pregnant as a result of the alleged second rape incident in 1995, contradicting her statement in her Affidavit that she was only three months pregnant as of May 9, 1996, meaning, she conceived the baby only in 1996; (6) the RTC erroneously ruled that AAA's declaration of defloration was corroborated by Dr. Pasuelo's finding that AAA's vaginal opening admitted a forefinger, when the very same physician admitted that such finding is not conclusive proof that a woman already experienced sexual intercourse; (7) AAA's claims that she was pregnant by May 9, 1996 and she eventually had a miscarriage were not supported by independent evidence, such as by a doctor's finding; (8) AAA stated in her sworn statement that she was 11 years old when she was first raped by Ortega in 1990, but she testified during trial that she was born on August 11, 1980 and was raped before her birthday in 1990, which would mean she was just 10 years old at the time of the alleged first rape incident; and (9) although not mentioned in her Affidavit nor her testimony during direct examination, AAA would claim during her cross examination that Ortega bathed her before raping her.

Ortega's arguments boil down to the insufficiency of the evidence for the prosecution to support his conviction for two counts of rape, especially considering the doubtful credibility of AAA.

We reiterate the following standard in reviewing an appeal from a conviction for rape:

> In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand

or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[17]

Yet, we have also held that an accused may be convicted solely on the basis of the victim's testimony, provided that such testimony is logical, credible, consistent, and convincing. At the witness stand, AAA related her painful ordeal in 1990, to wit:

Q Now, sometime in 1990 in the house where you are staying, do you remember if there is something that happened to you and your father?
A Yes, sir.

Q What was that incident?
A He placed himself on top of me and undressed me.

COURT:

Q Which comes first, his putting himself on top of you or undressing?
A The undressing.

x x x x x x x x x

PROS. MADURAMENTE:

Q What part of the house did this take place?
A Inside the room.

Q Were there other people other than your father and you?
A None, sir?

Q What time of the day was that?
A Morning.

Q Have you already eaten your breakfast?
A Yes, sir.

Q Now, how did he do it?
A He undressed me and afterwards he put himself on top of me.

Q Now, after placing himself on top of you, what did he do?
A He made a pumping motion.

---

[17] *People v. Rapisora*, G.R. No. 147855, May 28, 2004, 430 SCRA 237, 248-249.

Q Now, were you completely naked?
A Yes, sir.

Q And where did you lay if any?
A In the bed.

Q Did he place you in bed or did you go there by yourself?
A He placed me there.

x x x x x x x x x

PROS. MADURAMENTE:

Q After lying naked on bed, what happened next?
A He abused me.

Q How did he abuse you?

x x x x x x x x x

COURT:

Q What do you mean when you said you were abused by him?
A I asked for help.

x x x x x x x x x

PROS. MADURAMENTE:

Q When did you ask for help?
A Me.

Q Why were you asking for help?
A Because I was raped.

COURT:

Q When you said you were raped, can you tell us how did your father raped you?
A He inserted his into mine.

x x x x x x x x x

PROS. MADURAMENTE:

Q So his penis penetrated your vagina?
A Yes, sir.[18]

---

[18] TSN, November 18, 1997, pp. 7-11.

AAA also recounted the second rape incident in 1995, as follows:

Q Now, in 1995, do you remember if there was any unusual incident that happened between you and your father?
A Yes, sir.

Q What was that incident about?
A I was raped.

Q Who raped you?
A My father.

Q Where?
A Still at the house.

x x x x x x x x x

PROS. MADURAMENTE:

Q How did he raped you?
A He undressed me, he removed my t-shirt and short pant[s].

Q In the same room where you were raped?
A Yes, sir.

Q After removing your clothings, your short pants and underwear, what happened?
A He made me lay down.

COURT:

Q Where?
A In the bed.

COURT:

Q Alright, proceed.

PROS. MADURAMENTE:

Q As you were already lying down, what happened?
A He undressed himself and rode on me.

Q When he was already on top of you, what happened next?
A He inserted his penis into my vagina.

Q Did his penis really penetrated your vagina?
A Yes, sir.

COURT:

Q What did you feel?
A It was painful.[19]

The RTC gave AAA's testimony great weight and credibility, considering that it was clear and untainted and could only have been given by one who was subjected to such a harrowing experience. There is no compelling reason for us to disturb these RTC findings.

In *People v. Velasco*,[20] we declared that:

> We therefore see no cogent reason to doubt the complainant's credibility. It has long been established that the testimony of a rape victim, especially a child of tender years, is given full weight and credit. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness. Furthermore, this Court has repeatedly ruled that matters affecting credibility are best left to the trial court because of its unique opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, an opportunity denied the appellate courts which usually rely only on the cold pages of the mute records of the case.[21]

Ortega's insistence on the lack of evidence proving that he used force and intimidation during both incidents of rape does little to change our mind. In incestuous rape of a minor, it is not necessary that actual force and intimidation be employed. The moral ascendancy of appellant over the victim, his daughter, renders it unnecessary to show physical force and intimidation. Our following observations in *People v. Chua*[22] are enlightening:

> In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of

---

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

[20] 405 Phil. 588 (2001).

[21] *Id.* at 604.

[22] 418 Phil. 565 (2001).

marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.[23]

In this case, Ortega took advantage of his overpowering moral and physical ascendancy over AAA, which was reinforced even further by the fact that having been separated from AAA's mother, Ortega alone exercised parental authority over AAA. Indeed, in rape committed by a father, his moral ascendancy and influence over the victim substitute for the requisite force, threat, and intimidation, and strengthen the fear which compels the victim to conceal her dishonor. AAA was sufficiently cowed into silence by the physical superiority and moral influence which her father exercised over her even though he may have been unarmed when the rape incidents took place. Thus, contrary to Ortega's argument, evidence of force and intimidation is not necessary for his conviction for two counts of rape.

The purported inconsistencies or contradictions in AAA's testimony *vis-a-vis* her sworn statement do not adversely affect her credibility. AAA was a minor at the time she was first raped by her father, Ortega. Her painful experience, followed by the police investigation, medical examination, and court trial in full view of the public, surely placed her under a lot of pressure and caused her confusion, given her tender age. We have repeatedly held that "the precise time of the commission of the crime is not an essential element of rape and it has no bearing

[23] *Id.* at 582.

on its commission."[24] Despite her failure to give the exact time and date of the two rape incidents, AAA was able to recall in detail how the sexual assault was committed against her by Ortega.

AAA's credibility is also not impaired by her unsubstantiated claim of pregnancy and miscarriage as a result of the 1995 rape and her allegation, made for the first time during cross examination, that Ortega had bathed her prior to the 1990 rape. These matters have no significant effect on AAA's testimony that Ortega had carnal knowledge of her against her will. Time and again, we have held that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen the witnesses' credibility because they discount the possibility of their being rehearsed."[25]

We give scant consideration to Ortega's assertion that AAA only charged him with rape because she was jealous of her half-siblings. Such a reason is too flimsy and insignificant for a daughter to falsely charge her father with so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial. As we ratiocinated in *People v. Ponsica*[26]:

> It bears emphasis that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true. It is instinctive for a young, unmarried woman to protect her honor and it is thus difficult to believe that she would fabricate a tale of defloration, allow the examination of her private parts, reveal her shame to

---

[24] *People v. Cabigting*, 397 Phil. 944, 951 (2000).

[25] *People v. Pascua*, 462 Phil. 245, 254 (2003).

[26] *People v. Ponsica*, 433 Phil. 365 (2002).

the small town where she grew up, and permit herself to be subject of a public trial had she not really been ravished.[27]

We further ruled in *People v. Surilla*[28]:

> [I]t [is] most unnatural for a fourteen (14) year old to concoct a tale of defloration against her very own father just to get back at him for having physically manhandled her. Certainly, an unmarried teenage lass would not ordinarily file a complaint for rape against anyone, much less, her own father, undergo a medical examination of her private parts, submit herself to public trial and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her.[29]

AAA's testimony was corroborated by the medical findings of Dr. Pasuelo, the examining physician. In his report, Dr. Pasuelo stated that although AAA's hymen was still intact and no laceration or healed laceration was seen, her genital organ admitted a forefinger. He explained during trial that a woman's hymen may remain intact even if the woman had already experienced several sexual intrusions because a hymen is elastic. Our following ruling in *People v. Dy*[30] finds application in the case at bar:

> Further, lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not negate rape. As explained by Dr. Maximo Reyes, medico-legal officer of the NBI, there are hymens that may admit without necessarily producing laceration and there are hymens that may admit injuries that will produce such laceration.[31]

At any rate, "in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime as her testimony alone,

---

[27] *Id.* at 378.

[28] 391 Phil. 257 (2000).

[29] *Id.* at 267.

[30] 425 Phil. 608 (2002).

[31] *Id.* at 638.

if credible, is sufficient to convict the accused thereof, as in this case."[32]

As correctly held by the RTC, Ortega's defense of alibi and denial cannot prevail over the clear, positive and convincing testimony of AAA. AAA positively identified his father Ortega as the one who raped her. "Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law."[33]

The RTC correctly imposed upon Ortega the penalty of *reclusion perpetua* for each count of rape.

In Criminal Case No. 586, the rape was committed sometime in 1990, that is, prior to the effectivity of Republic Act No. 7659 (the Death Penalty Law) on December 31, 1993. Prior to its amendment, Article 335 of the Revised Penal Code imposed the penalty of *reclusion perpetua* for the crime of rape.

In Criminal Case No. 585, the rape was committed in 1995, thus, Article 335, as amended by Republic Act No. 7659, already applies. It provides:

> Art. 335. *When and how rape is committed* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation.
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x

---

[32] *People v. San Juan*, 337 Phil. 375, 389-390 (1997).

[33] *People v. Enriquez*, G.R. No. 124833, July 20, 1998, 292 SCRA 656, 661.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Under Article 335, as amended, the twin circumstances of minority and relationship are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically pleaded or alleged and proved with certainty in the information, otherwise, the death penalty cannot be imposed.

In this case, AAA's relationship with Ortega was properly indicated in the Information and proven in the course of the trial. The Information clearly stated that Ortega had carnal knowledge with his daughter AAA and Ortega admitted in open court that AAA is his daughter. However, AAA's minority, although alleged in the Information, was not sufficiently proven by the prosecution. Minority as a qualifying circumstance must be proved with equal certainty and clearness as the crime itself. Here, the Information stated and AAA herself averred in her sworn statement[34] that she was 11 years of age when she was first raped by her father in 1990. However, AAA later testified before the RTC that she was born on August 11, 1990[35] and her father raped her for the first time before her birthday on August 11, 1990, making her less than 10 years of age. While Ortega confirmed that AAA is his daughter, he could not remember AAA's exact date of birth. When questioned further during trial, he only said that AAA was born in 1979.[36] No other evidence was presented to prove AAA's exact age. Given the doubt as to AAA's exact age, the RTC properly convicted Ortega only of simple rape punishable by *reclusion perpetua*.

---

[34] Records, p. 5.

[35] TSN, June 9, 1998, p. 38.

[36] TSN, November 23, 2000, p. 121.

In *People v. Alvarado*,[37] we did not apply the death penalty because the victim's age was not satisfactorily established, thus:

> We agree, however, that accused-appellant should not have been meted the death penalty on the ground that the age of complainant was not proven beyond reasonable doubt. The information alleged that, on July 26, 1997, the date of the rape, Arlene was 14 years old. In her testimony, Arlene stated that she was 14 years old at the time of the incident. Accused-appellant confirmed this during the presentation of the defense evidence, but Lonelisa Alvarado, complainant's mother, testified that Arlene was born on November 23, 1983, which would mean she was only 13 years old on the date of the commission of the crime. No other evidence was ever presented, such as her certificate of live birth or any other document, to prove Arlene's exact age at the time of the crime. As minority is a qualifying circumstance, it must be proved with equal certainty and clearness as the crime itself. There must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by accused-appellant. Since there is doubt as to Arlene's exact age, accused-appellant must be held guilty of simple rape only and sentenced to *reclusion perpetua*.[38]

We similarly ruled in *People v. Gavino*[39] that:

> In the case at bar, no birth certificate or similar authentic document was offered by the prosecution to prove Wenna's minority. Neither was it shown that they were lost, destroyed or unavailable at the time of the trial. The testimony of the mother or the victim relative to the latter's age cannot be accepted as adequate proof thereof. In addition, we note that the prosecution failed to adduce independent proof to establish appellant's relationship with the victim. Although Wenna's filiation to appellant and minority was neither refuted nor contested by the defense, proof thereof is critical considering the penalty of death imposed for qualified rape. Thus, the prosecution's failure to sufficiently establish Wenna's minority and relationship to appellant bars the latter's conviction for qualified rape and the imposition of the extreme penalty of death.[40]

---

[37] 429 Phil. 208 (2002).

[38] *Id.* at 224.

[39] 447 Phil. 395 (2003).

[40] *Id.* at 406-407.

We further stressed in *People v. Villarama*[41] that:

> Court decisions on the rape of minors invariably state that, in order to justify the imposition of the death penalty, there must be independent evidence showing the age of the victim. Testimonies on the victim's age given by the prosecution witnesses or the lack of denial of the accused or even his admission thereof on the witness stand is not sufficient. This Court has held that, to justify the imposition of the death penalty for rape committed against a child below 7, the minority of the victim must be proved with equal certainty and clarity as the crime itself. The failure to sufficiently establish the victim's age with factual certainty and beyond reasonable doubt is fatal and consequently bars conviction for rape in its qualified form.[42]

As to the award of damages, the victim in a simple rape case is entitled to ₱50,000.00 civil indemnity and ₱50,000.00 moral damages, without need for proof. An award for exemplary damages is also proper to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughter. In line with our prevailing jurisprudence, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00 for each of the two counts of rape.[43]

WHEREOF, the instant appeal is **DENIED.** The Decision dated January 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00136, affirming *in toto* the Decision dated May 9, 2005 of the Regional Trial Court, Branch 39 of Polomolok, South Cotabato, in Criminal Case Nos. 585 and 586, which found accused-appellant Daniel Ortega **GUILTY** beyond reasonable doubt of two counts of rape, is **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages in favor of AAA is increased to ₱30,000.00 for each count of rape.

SO ORDERED.

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

---

[41] 445 Phil. 323 (2003).

[42] *Id.* at 341-342.

[43] *People v. Manjarez*, G.R. No. 185844, November 23, 2011.

THIRD DIVISION

[G.R. No. 187021. January 25, 2012]

DOUGLAS F. ANAMA, *petitioner, vs.* **COURT OF APPEALS, PHILIPPINE SAVINGS BANK, SPOUSES SATURNINA BARIA & TOMAS CO and THE REGISTER OF DEEDS, METRO MANILA, DISTRICT II,** *respondents.*

SYLLABUS

REMEDIAL LAW; MOTIONS; REQUIREMENT OF NOTICE AND HEARING AND PROOF OF SERVICE THEREOF; PRESENT IN CASE AT BAR. — On the subject procedural question, the Court finds no compelling reason to stay the execution of the judgment because the Spouses Co complied with the notice and hearing requirements under Sections 4, 5 and 6 of Rule 15. x x x Elementary is the rule that every motion must contain the mandatory requirements of notice and hearing and that there must be proof of service thereof. The Court has consistently held that a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon. The rule, however, is not absolute. There are motions that can be acted upon by the court *ex parte* if these would not cause prejudice to the other party. They are not strictly covered by the rigid requirement of the rules on notice and hearing of motions. The motion for execution of the Spouses Co is such kind of motion. It cannot be denied that the judgment sought to be executed in this case had already become final and executory. As such, the Spouses Co have every right to the issuance of a writ of execution and the RTC has the ministerial duty to enforce the same. This right on the part of the Spouses Co and duty on the part of the RTC are based on Section 1 and Section 2 of Rule 39 of the 1997 Revised Rules of Civil Procedure. x x x At any rate, it is not true that the petitioner was not notified of the motion for execution of the Spouses Co. The records clearly show that the motion for execution was duly served upon, and received by, petitioner's counsel-of-record, the Quasha Ancheta Pena Nolasco Law Offices, as evidenced by a "signed stamped received

mark" appearing on said pleading. The records are bereft of proof showing any written denial from petitioner's counsel of its valid receipt on behalf of its client. Neither is there proof that the Quasha Ancheta Pena Nolasco Law Offices has formally withdrawn its appearance as petitioner's counsel-of-record. Considering that there is enough proof shown on record of personal delivery in serving the subject motion for execution, there was a valid compliance with the Rules, thus, no persuasive reason to stay the execution of the subject final and executory judgment.

APPEARANCES OF COUNSEL

Gertrudo A. De Leon for petitioner.
Paolo Manuel S. Sison, Jr. for PS Bank.
Neofito C. Perilla for Spouses Co.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 assailing the March 31, 2008 Decision[1] of the Court of Appeals *(CA)* and its February 27, 2009 Resolution,[2] in CA G.R. No. SP-94771, which affirmed the November 25, 2005 Order of the Regional Trial Court, Branch 167, Pasig City *(RTC)*, granting the motion for issuance of a writ of execution of respondents.

The Facts

The factual and procedural backgrounds of this case were succinctly recited by the CA in its decision as follows:

Sometime in 1973, the Petitioner, Douglas F. Anama (Anama), and the Respondent, Philippine Savings Bank (PSB), entered into a "Contract to Buy," on installment basis, the real property owned

---

[1] *Rollo*, pp. 103-113. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Magdangal M. De Leon.

[2] *Id.* at 115-117.

and covered by Transfer Certificate of Title (TCT) No. 301276 in the latter's name. However, Anama defaulted in paying his obligations thereunder, thus, PSB rescinded the said contract and title to the property remained with the latter. Subsequently, the property was sold by PSB to the Spouses Saturnina Baria and Tomas Co (Co Spouses) who, after paying the purchase price in full, caused the registration of the same in their names and were, thus, issued TCT No. 14239.

Resultantly, Anama filed before the Respondent Court a complaint for declaration of nullity of the deed of sale, cancellation of transfer certificate of title, and specific performance with damages against PSB, the Co Spouses, and the Register of Deeds of Metro Manila, District II.

On August 21, 1991 and after trial on the merits, the Respondent Court dismissed Anama's complaint and upheld the validity of the sale between PSB and the Co Spouses. Undaunted, Anama appealed, at first, to this Court, and after failing to obtain a favorable decision, to the Supreme Court.

On January 29, 2004, the Supreme Court rendered judgment denying Anama's petition and sustaining the validity of the sale between PSB and the Co Spouses. Its decision became final and executory on July 12, 2004. Pursuant thereto, the Co Spouses moved for execution, which was granted by the Respondent Court per its Order, dated November 25, 2005.

Aggrieved, Anama twice moved for the reconsideration of the Respondent Court's November 25, 2005 Order arguing that the Co Spouses' motion for execution is fatally defective. He averred that the Spouses' motion was *pro forma* because it lacked the required affidavit of service and has a defective notice of hearing, hence, a mere scrap of paper. The Respondent Court, however, denied Anama's motion(s) for reconsideration.

Dissatisfied, the petitioner questioned the RTC Order before the CA for taking judicial cognizance of the motion for execution filed by spouses Tomas Co and Saturnina Baria *(Spouses Co)* which was (1) not in accord with Section 4 and Section 15 of the Rules of Court because it was without a notice of hearing addressed to the parties; and (2) not in accord with Section 6,

Rule 15 in conjunction with Section 13, Rule 13 of the Rules of Court because it lacks the mandatory affidavit of service.

On March 31, 2008, the CA rendered a decision dismissing the petition. It reasoned out, among others, that the issue on the validity of the deed of sale between respondents, Philippine Savings Bank *(PSB)* and the Spouses Co, had long been laid to rest considering that the January 29, 2004 Decision of this Court became final and executory on July 12, 2004. Hence, execution was already a matter of right on the part of the respondents and the RTC had the ministerial duty to issue a writ of execution enforcing a final and executory decision.

The CA also stated that although a notice of hearing and affidavit of service in a motion are mandatory requirements, the Spouses Co's motion for execution of a final and executory judgment could be acted upon by the RTC *ex parte*, and therefore, excused from the mandatory requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court.

The CA was of the view that petitioner was not denied due process because he was properly notified of the motion for execution of the Spouses Co. It stated that the act of the Spouses Co in resorting to personal delivery in serving their motion for execution did not render the motion *pro forma*. It refused to apply a rigid application of the rules because it would result in a manifest failure of justice considering that petitioner's position was nothing but an obvious dilatory tactic designed to prevent the final disposition of Civil Case No. 44940.

Not satisfied with the CA's unfavorable disposition, petitioner filed this petition praying for the reversal thereof presenting the following

ARGUMENTS:

THE RESPONDENT APPELLATE COURT DID NOT TAKE INTO CONSIDERATION THE CLEAR TEACHING OF THE HONORABLE COURT WITH REGARD TO THE REQUISITE NOTICE OF HEARING — IT SHOULD BE ADDRESSED TO THE PARTIES NOT TO THE CLERK OF COURT, THE LATEST (THEN) BEING *GARCIA V. SANDIGANBAYAN*, G.R.

NO. 167103, AUGUST 31, 2006, 500 SCRA 361; *DE JESUS V. JUDGE DILAG*, A.M. NO. RTJ-05-1921, SEPTEMBER 30, 2005, 471 SCRA 176; *LAND BANK OF THE PHILIPPINES V. NATIVIDAD*, G.R. NO. 127198, MAY 16, 2005, 458 SCRA 441; *ATTY. JULIUS NERI V. JUDGE JESUS S. DE LA PEÑA*, A.M. NO. RTJ-05-1896, APRIL 29, 2005, 457 SCRA 538; AND *ALVAREZ V. DIAZ*, A.M. NO. MTJ-00-1283, MARCH 3, 2004, 424 SCRA 213;

THE RESPONDENT APPELLATE COURT DID NOT TAKE INTO CONSIDERATION THE CLEAR TEACHING OF THE HONORABLE COURT WITH REGARD TO THE REQUISITE AFFIDAVIT OF SERVICE — IT SHOULD BE IN THE PROPER FORM AS PRESCRIBED IN THE RULES AND IT SHOULD BE ATTACHED TO THE MOTION, THE LATEST (THEN) BEING *ELLO V. COURT OF APPEALS*, G.R. NO. 141255, JUNE 21, 2005, 460 SCRA 406; *LOPEZ DELA ROSA DEVELOPMENT CORPORATION V. COURT OF APPEALS*, G.R. NO. 148470, APRIL 29, 2005, 457 SCRA 614; *ALVAREZ V. DIAZ*, A.M. NO. MTJ-00-1283, MARCH 3, 2004, 424 SCRA 213; *EL REYNO HOMES, INC. V. ERNESTO ONG*, 397 SCRA 563; CRUZ *V.* COURT OF APPEALS, 388 SCRA 72, 80-81; AND *MERIS V. OFILADA*, 293 SCRA 606;

THE RESPONDENT APPELLATE COURT DID NOT TAKE APPROPRIATE ACTION ON THE "FRAUD PERPETRATED UPON THE COURT" BY RESPONDENT-SPOUSES AND THEIR LEAD COUNSEL.

SINCE THE RESPONDENT APPELLATE COURT REFUSED TO TAKE INTO CONSIDERATION THE RESPONDENT BANK'S ACTION — THAT OF:

ENGAGING IN A *DAGDAG-BAWAS* (LEGALLY "INTERCALATION") OPERATION OF A PORTION OF THE TRANSCRIPT OF STENOGRAPHIC NOTES (TSN), OCTOBER 12, 1984, OF THE REGIONAL TRIAL COURT, BRANCH 167, PASIG CITY, IN CIVIL CASE NO. 44940, PAGES 54-55, AND

PRESENTING IT IN ITS APPELLEE'S BRIEF (IN THE OWNERSHIP CASE, CA-G.R. NO. CV-42663, LIKEWISE, BEFORE THE RESPONDENT APPELLATE COURT) BY CITING IT ON PAGE 14 OF SAID BRIEF, AS IMPLIEDLY COMING FROM THE TSN OF THE TRIAL COURT.

THINKING THAT THEIR FALSIFIED APPELLEE'S BRIEF WAS MATERIAL IN SAID CA-G.R. NO. CV-42663.

IT COULD NOT RULE THAT THE SAME HAS BROUGHT ABOUT A CRUCIAL MATERIAL CHANGE IN THE SITUATION OF THE PARTIES WHICH MAKES EXECUTION INEQUITABLE (*PUNCIA V. GERONA*, 252 SCRA 424, 430-431), OR, IN THE WORDS OF *DEVELOPMENT BANK OF RIZAL V. CA*, G.R. NO. 75964, DECEMBER 1, 1987, 156 SCRA 84, 90, "THERE EXISTS A COMPELLING REASON FOR STAYING THE EXECUTION OF JUDGMENT."

Basically, petitioner argues that the respondents failed to substantially comply with the rule on notice and hearing when they filed their motion for the issuance of a writ of execution with the RTC. He claims that the notice of hearing in the motion for execution filed by the Spouses Co was a mere scrap of paper because it was addressed to the Clerk of Court and not to the parties. Thus, the motion for execution did not contain the required proof of service to the adverse party. He adds that the Spouses Co and their counsel deliberately "misserved" the copy of their motion for execution, thus, committing fraud upon the trial court.

Additionally, he claims that PSB falsified its appellee's brief by engaging in a "*dagdag-bawas*" ("intercalation") operation in pages 54 to 55 of the TSN, dated October 12, 1984.

Position of the Spouses Co

The Spouses Co counter that the petition should be dismissed outright for raising both questions of facts and law in violation of Section 1, Rule 45 of the Rules of Court. The Spouses Co aver that petitioner attempts to resurrect the issue that PSB cheated him in their transaction and that the RTC committed a "*dagdag-bawas*." According to the Spouses Co, these issues had long been threshed out by this Court.

At any rate, they assert that they have substantially complied with the requirements of notice and hearing provided under Sections 4 and 5 of Rule 15 and Section 13, Rule 13 of the Rules of Court. Contrary to petitioner's allegations, a copy of the motion for the issuance of a writ of execution was given to

petitioner through his principal counsel, the Quasha Law Offices. At that time, the said law office had not formally withdrawn its appearance as counsel for petitioner. Spouses Co argue that what they sought to be executed was the final judgment of the RTC duly affirmed by the CA and this Court, thus, putting the issues on the merits to rest. The issuance of a writ of execution then becomes a matter of right and the court's duty to issue the writ becomes ministerial.

Position of respondent PSB

PSB argues that the decision rendered by the RTC in Civil Case No. 44940 entitled "*Douglas F. Anama v. Philippine Savings Bank, et al.*"[3] had long become final and executory as shown by the Entry of Judgment made by the Court on July 12, 2004. The finality of the said decision entitles the respondents, by law, to the issuance of a writ of execution. PSB laments that petitioner relies more on technicalities to frustrate the ends of justice and to delay the enforcement of a final and executory decision.

As to the principal issue, PSB points out that the notice of hearing appended to the motion for execution filed by the Spouses Co substantially complied with the requirements of the Rules since petitioner's then counsel of record was duly notified and furnished a copy of the questioned motion for execution. Also, the motion for execution filed by the Spouses Co was served upon and personally received by said counsel.

The Court's Ruling

The Court agrees with the Spouses Co that petitioner's allegations on the "*dagdag-bawas* operation of the Transcript of Stenographic Notes," the "fraud perpetuated upon the Court by said spouses and their lead counsel," the "ownership," and "falsification" had long been laid to rest in the case of "*Douglas F. Anama v. Philippine Savings Bank, et al.*"[4] For said reason,

---

[3] G.R. No. 128609, January 29, 2004, 421 SCRA 338.

[4] *Id.*

the Court cannot review those final pronouncements. To do so would violate the rules as it would open a final judgment to another reconsideration which is a prohibited procedure.

On the subject procedural question, the Court finds no compelling reason to stay the execution of the judgment because the Spouses Co complied with the notice and hearing requirements under Sections 4, 5 and 6 of Rule 15. Said sections, as amended, provide:

SECTION 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SECTION 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Pertinently, Section 13 of Rule 13 of the 1997 Rules of Civil Procedure, as amended, provides:

SEC. 13. *Proof of service*. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place, and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Elementary is the rule that every motion must contain the mandatory requirements of notice and hearing and that there must be proof of service thereof. The Court has consistently held that a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon. The rule, however, is not absolute. There are motions that can be acted upon by the court *ex parte* if these would not cause prejudice to the other party. They are not strictly covered by the rigid requirement of the rules on notice and hearing of motions.

The motion for execution of the Spouses Co is such kind of motion. It cannot be denied that the judgment sought to be executed in this case had already become final and executory. As such, the Spouses Co have every right to the issuance of a writ of execution and the RTC has the ministerial duty to enforce the same. This right on the part of the Spouses Co and duty on the part of the RTC are based on Section 1 and Section 2 of Rule 39 of the 1997 Revised Rules of Civil Procedure provides, as follows:

Section 1. *Execution upon judgments or final orders*. — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, **with notice to the adverse party.**

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

SEC. 2. *Discretionary execution.* —

(a) Execution of a judgment or final order pending appeal. — On motion of the prevailing party **with notice to the adverse party** filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal,

as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

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

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

(b) Execution of several, separate or partial judgments. — A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal. (2a) [Emphases and underscoring supplied]

As can be gleaned therefrom, under Paragraph 1 of Section 1 of Rule 39 of the 1997 Revised Rules of Civil Procedure, the Spouses Co can have their motion for execution executed as a matter of right without the needed notice and hearing requirement to petitioner. This is in contrast to the provision of Paragraph 2 of Section 1 and Section 2 where there must be notice to the adverse party. In the case of *Far Eastern Surety and Insurance Company, Inc. v. Virginia D. Vda. De Hernandez*,[5] it was written:

It is evident that Section 1 of Rule 39 of the Revised Rules of Court does not prescribe that a copy of the motion for the execution of a final and executory judgment be served on the defeated party, like litigated motions such as a motion to dismiss (Section 3, Rule 16), or motion for new trial (Section 2, Rule 37), or a motion for execution of judgment pending appeal (Section 2, Rule 39), in all of which instances a written notice thereof is required to be served by the movant on the adverse party in order to afford the latter an opportunity to resist the application.

It is not disputed that the judgment sought to be executed in the case at bar had already become final and executory. It is fundamental that the prevailing party in a litigation may, at any time within five (5) years after the entry thereof, have a writ of execution issued for its enforcement and the court not only has the power and authority to order its execution but it is its ministerial duty to do so. It has also been held that the court cannot refuse to issue a writ of execution

---

[5] G.R. No. L-30359, October 3, 1975, 67 SCRA 256, 260-261.

upon a final and executory judgment, or quash it, or order its stay, for, as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law, except when there had been a change in the situation of the parties which makes such execution inequitable or when it appears that the controversy has ever been submitted to the judgment of the court; or when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that judgment debt has been paid or otherwise satisfied; or when the writ has been issued without authority. Defendant-appellant has not shown that she falls in any of the situations afore-mentioned. Ordinarily, an order of execution of a final judgment is not appealable**.** Otherwise, as was said by this Court in *Molina v. de la Riva*, a case could never end. Once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial function as regards any matter related to the controversy litigated comes to an end. **The execution of its judgment is purely a ministerial phase of adjudication**. The nature of its duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the loser is generally ministerial.

In *Pamintuan v. Muñoz*, We ruled that once a judgment becomes final and executory, **the prevailing party can have it executed as a matter of right, and the judgment debtor need not be given advance notice of the application for execution**.

Also of the same stature is the rule that once a judgment becomes final and executory, the prevailing party can have it executed as a *matter of right* and the granting of execution becomes a *ministerial duty* of the court. Otherwise stated, once sought by the prevailing party, execution of a final judgment will just follow as a matter of course. **Hence, the judgment debtor need not be given advance notice of the application for execution nor he afforded prior hearing.**

Absence of such advance notice to the judgment debtor does not constitute an infringement of the constitutional guarantee of due process.

However, the established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court should, after a judgment has been rendered against him, have a further notice and hearing

before supplemental proceedings are taken to reach his property in satisfaction of the judgment. *Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property*; after the rendition of the judgment he must take "notice of what will follow," *no further notice* being "necessary to advance justice." [Emphases and underscoring supplied]

Likewise, in the case of *Leonardo Lim De Mesa v. Hon. Court of Appeals*,[6] it was stated:

In the present case, the decision ordering partition and the rendition of accounting had already become final and executory. The execution thereof thus became a matter of right on the part of the plaintiffs, herein private respondents, and is a mandatory and ministerial duty on the part of the court. **Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearings thereon.**

On the bases of the foregoing considerations, therefore, the Court of Appeals acted correctly in holding that the failure to serve a copy of the motion for execution on petitioner is not a fatal defect. In fact, there was no necessity for such service. [Emphases and underscoring supplied]

At any rate, it is not true that the petitioner was not notified of the motion for execution of the Spouses Co. The records clearly show that the motion for execution was duly served upon, and received by, petitioner's counsel-of-record, the Quasha Ancheta Pena Nolasco Law Offices, as evidenced by a "signed stamped received mark" appearing on said pleading.[7] The records are bereft of proof showing any written denial from petitioner's counsel of its valid receipt on behalf of its client. Neither is there proof that the Quasha Ancheta Pena Nolasco Law Offices has formally withdrawn its appearance as petitioner's counsel-of-record. Considering that there is enough proof shown on record

---

[6] G.R. No. 109387, April 25, 1994, 231 SCRA 773, 781.

[7] *Rollo*, p. 143.

of personal delivery in serving the subject motion for execution, there was a valid compliance with the Rules, thus, no persuasive reason to stay the execution of the subject final and executory judgment.

Moreover, this Court takes note that petitioner was particularly silent on the ruling of the CA that he was notified, through his counsel, of the motion for execution of the Spouses Co when he filed a motion for reconsideration of the RTC's order dated June 28, 2005, holding in abeyance said motion pending the resolution of petitioner's pleading filed before this Court. He did not dispute the ruling of the CA either that the alleged defect in the Spouses Co's motion was cured when his new counsel was served a copy of said motion for reconsideration of the RTC's June 28, 2005 Order.[8]

The **three-day notice rule is not absolute**. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority. Indeed, Section 6, Rule 1 of the Rules of Court provides that the Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice.

In *Somera Vda. De Navarro v. Navarro*, the Court held that there was substantial compliance of the rule on notice of motions even if the first notice was irregular because no prejudice was caused the adverse party since the motion was not considered and resolved until after several postponements of which the parties were duly notified.

Likewise, in *Jehan Shipping Corporation v. National Food Authority*, the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:

---

[8] *Id.* at 110.

This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.

As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[9] [Emphases and underscoring supplied]

Likewise, in the case of *KKK Foundation, Inc. v. Hon. Adelina Calderon-Bargas*,[10] this Court stated:

Anent the *second* issue, we have consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper, which the Clerk of Court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, **there are exceptions to the strict application of this rule.** These exceptions are: (1) where a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served;

---

[9] *Fausto R. Preysler, Jr. v. Manila South Coast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

[10] G.R. No. 163785, December 27, 2007, 541 SCRA 432, 440-441.

(3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

A notice of hearing is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion. Records show that while Angeles's Motion for Issuance of Writ of Execution contained a notice of hearing, it did not particularly state the date and time of the hearing. However, we still find that petitioner was not denied procedural due process. Upon receiving the Motion for Issuance of Writ of Execution, the trial court issued an Order dated September 9, 2002 giving petitioner ten (10) days to file its comment. The trial court ruled on the motion only after the reglementary period to file comment lapsed. **Clearly, petitioner was given time to study and comment on the motion for which reason, the very purpose of a notice of hearing had been achieved**.

The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding. [Emphases supplied]

At any rate, it is undisputed that the August 21, 1991 RTC Decision[11] in Civil Case No. 44940 is already final and executory. Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty.[12]

The Court agrees with the respondents that petitioner mainly relies on mere technicalities to frustrate the ends of justice and further delay the execution process and enforcement of the RTC

---

[11] *Rollo*, pp. 122-136.

[12] *National Power Corporation v. Spouses Lorenzo L. Laohoo*, G.R. 151973, July 23, 2009, 593 SCRA 564, 580.

Decision that has been affirmed by the CA and this Court. The record shows that the case has been dragging on for almost 30 years since petitioner filed an action for annulment of sale in 1982. From the time the Spouses Co bought the house from PSB in 1978, they have yet to set foot on the subject house and lot.

To remand the case back to the lower court would further prolong the agony of the Spouses Co. The Court should not allow this to happen. The Spouses Co should not be prevented from enjoying the fruits of the final judgment in their favor. In another protracted case, the Court wrote:

> As a final note, it bears to point out that this case has been dragging for more than 15 years and the execution of this Court's judgment in *PEA v. CA* has been delayed for almost ten years now simply because De Leon filed a frivolous appeal against the RTC's order of execution based on arguments that cannot hold water. As a consequence, PEA is prevented from enjoying the fruits of the final judgment in its favor. The Court agrees with the Office of the Solicitor General in its contention that every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that this Court should write finis to this litigation.[13]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

---

[13] *Bernardo De Leon v. Public Estates Authority*, G.R. No. 181970, August 3, 2010, 626 SCRA 547, 565-566.

SECOND DIVISION

[G.R. No. 188726. January 25, 2012]

CRESENCIO C. MILLA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and MARKET PURSUITS, INC. represented by CARLO V. LOPEZ,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE GENERAL RULE IS THAT THE MISTAKE OF A COUNSEL BINDS THE CLIENT; EXCEPTION; NOT PRESENT IN CASE AT BAR. — The general rule is that the mistake of a counsel binds the client, and it is only in instances wherein the negligence is so gross or palpable that courts must step in to grant relief to the aggrieved client. In this case, Milla was able to file a Demurrer to Evidence, and upon the trial court's denial thereof, was allowed to present evidence. Because of his failure to do so, RTC Br. 146 was justified in considering that he had waived his right thereto. Nevertheless, the trial court still allowed him to submit a memorandum in the interest of justice. Further, contrary to his assertion that RTC Br. 146 denied the Motion to Recall Warrant of Arrest thereafter filed by his former counsel, a reading of the 2 August 2007 Order of RTC Br. 146 reveals that it partially denied the Omnibus Motion for New Trial and Recall of Warrant of Arrest, but granted the Motion for Leave of Court to Avail of Remedies under the Rules of Court, allowing him to file an appeal and lifting his warrant of arrest. It can be gleaned from the foregoing circumstances that Milla was given opportunities to defend his case and was granted concomitant reliefs. Thus, it cannot be said that the mistake and negligence of his former counsel were so gross and palpable to have deprived him of due process.

2. CRIMINAL LAW; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS; THE LIABILITY CANNOT BE EXTINGUISHED BY NOVATION; APPLICATION IN CASE AT BAR. — The principles of novation cannot apply to the present case as to extinguish his criminal liability. Milla cites *People v. Nery* to support his contention that his issuance of the Equitable PCI checks prior to the filing of the criminal

complaint averted his incipient criminal liability. However, it must be clarified that mere payment of an obligation before the institution of a criminal complaint does not, on its own, constitute novation that may prevent criminal liability. x x x In the case at bar, the acceptance by MPI of the Equitable PCI checks tendered by Milla could not have novated the original transaction, as the checks were only intended to secure the return of the ₱2 million the former had already given him. Even then, these checks bounced and were thus unable to satisfy his liability. Moreover, the *estafa* involved here was not for simple misappropriation or conversion, but was committed through Milla's falsification of public documents, the liability for which cannot be extinguished by mere novation.

3. ID.; ID.; PRESENT WHEN IT WAS PROVEN DURING TRIAL THAT THE ACCUSED MISREPRESENTED HIMSELF TO HAVE THE AUTHORITY TO SELL THE SUBJECT PROPERTY WHICH PROMPTED THE PARTY TO PURCHASE IT; CASE AT BAR. — There was no reversible error on the part of the Court of Appeals when it affirmed the finding of the trial court that Milla was guilty beyond reasonable doubt of the offense of *estafa* through falsification of public documents. The prosecution was able to prove the existence of all the elements of the crime charged. x x x It was proven during trial that Milla misrepresented himself to have the authority to sell the subject property, and it was precisely this misrepresentation that prompted MPI to purchase it. Because of its reliance on his authority and on the falsified Deed of Absolute Sale and TCT No. 218777, MPI parted with its money in the amount of ₱2 million, which has not been returned until now despite Milla's allegation of novation. Clearly, he is guilty beyond reasonable doubt of *estafa* through falsification of public documents.

APPEARANCES OF COUNSEL

Ruga & Caringal Law Offices for petitioner.
The Solicitor General for pubic respondent.
Melamarisa L. Mauricio-Panotes for private respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* assailing the 22 April 2009 Decision[1] and 8 July 2009 Resolution[2] of the Court of Appeals, affirming the Decision of the trial court finding petitioner Cresencio C. Milla (Milla) guilty of two counts of *estafa* through falsification of public documents.

Respondent Carlo Lopez (Lopez) was the Financial Officer of private respondent, Market Pursuits, Inc. (MPI). In March 2003, Milla represented himself as a real estate developer from Ines Anderson Development Corporation, which was engaged in selling business properties in Makati, and offered to sell MPI a property therein located. For this purpose, he showed Lopez a photocopy of Transfer Certificate of Title (TCT) No. 216445 registered in the name of spouses Farley and Jocelyn Handog (Sps. Handog), as well as a Special Power of Attorney purportedly executed by the spouses in favor of Milla.[3] Lopez verified with the Registry of Deeds of Makati and confirmed that the property was indeed registered under the names of Sps. Handog. Since Lopez was convinced by Milla's authority, MPI purchased the property for ₱2 million, issuing Security Bank and Trust Co. (SBTC) Check No. 154670 in the amount of ₱1.6 million. After receiving the check, Milla gave Lopez (1) a notarized Deed of Absolute Sale dated 25 March 2003 executed by Sps. Handog in favor of MPI and (2) an original Owner's Duplicate Copy of TCT No. 216445.[4]

Milla then gave Regino Acosta (Acosta), Lopez's partner, a copy of the new Certificate of Title to the property, TCT No.

---

[1] *Rollo*, pp. 47-60; penned by Court of Appeals Associate Justice Juan Enriquez, Jr. and concurred in by Associate Justices Monina Arevalo Zenarosa and Myrna Dimaranan Vidal.

[2] *Rollo*, pp. 62-63.

[3] Court of Appeals Decision dated 22 April 2009 ("*CA Decision*"); *rollo*, p. 50.

[4] *Id.* at 51.

218777, registered in the name of MPI. Thereafter, it tendered in favor of Milla SBTC Check No. 15467111 in the amount of ₱400,000 as payment for the balance.[5]

Milla turned over TCT No. 218777 to Acosta, but did not furnish the latter with the receipts for the transfer taxes and other costs incurred in the transfer of the property. This failure to turn over the receipts prompted Lopez to check with the Register of Deeds, where he discovered that (1) the Certificate of Title given to them by Milla could not be found therein; (2) there was no transfer of the property from Sps. Handog to MPI; and (3) TCT No. 218777 was registered in the name of a certain Matilde M. Tolentino.[6]

Consequently, Lopez demanded the return of the amount of ₱2 million from Milla, who then issued Equitable PCI Check Nos. 188954 and 188955 dated 20 and 23 May 2003, respectively, in the amount of ₱1 million each. However, these checks were dishonored for having been drawn against insufficient funds. When Milla ignored the demand letter sent by Lopez, the latter, by virtue of the authority vested in him by the MPI Board of Directors, filed a Complaint against the former on 4 August 2003. On 27 and 29 October 2003, two Informations for *Estafa* Thru Falsification of Public Documents were filed against Milla and were raffled to the Regional Trial Court, National Capital Judicial Region, Makati City, Branch 146 (RTC Br. 146).[7] Milla was accused of having committed *estafa* through the falsification of the notarized Deed of Absolute Sale and TCT No. 218777 purportedly issued by the Register of Deeds of Makati, *viz*:

CRIMINAL CASE NO. 034167

That on or about the 25th day of March 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there, wilfully, unlawfully and feloniously falsify a document denomindated as "Deed

---

[5] *Id.*

[6] *Id.*

[7] *Id.* at 52.

of Absolute Sale," duly notarized by Atty. Lope M. Velasco, a Notary Public for and in the City of Makati, denominated as Doc. No. 297, Page No. 61, Book No. 69, Series of 2003 in his Notarial Register, hence, a public document, by causing it to appear that the registered owners of the property covered by TCT No. 216445 have sold their land to complainant Market Pursuits, Inc. when in truth and in fact the said Deed of Absolute Sale was not executed by the owners thereof and after the document was falsified, accused, with intent to defraud complainant Market Pursuits, Inc. presented the falsified Deed of Sale to complainant, herein represented by Carlo V. Lopez, and complainant believing in the genuineness of the Deed of Absolute Sale paid accused the amount of ₱1,600,000.00 as partial payment for the property, to the damage and prejudice of complainant in the aforementioned amount of ₱1,600,000.00

CONTRARY TO LAW.

CRIMINAL CASE NO. 034168

That on or about the 3rd day of April 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there wilfully, unlawfully and feloniously falsify a document denominated as Transfer Certificate of Title No. 218777 purportedly issued by the Register of Deeds of Makati City, hence, a public document, by causing it to appear that the lot covered by TCT No. 218777 was already registered in the name of complainant Market Pursuits, Inc., herein represented by Carlo V. Lopez, when in truth and in fact, as said accused well knew that the Register of Deeds of Makati did not issue TCT No. 218777 in the name of Market Pursuits Inc., and after the document was falsified, accused with intent to defraud complainant and complainant believing in the genuineness of Transfer Certificate of Title No. 218777 paid accused the amount of ₱400,000.00, to the damage and prejudice of complainant in the aforementioned amount of ₱4000,000.00 (*sic*).

CONTRARY TO LAW.[8]

After the prosecution rested its case, Milla filed, with leave of court, his Demurrer to Evidence.[9] In its Order dated 26 January

[8] *Id.* at 48-50.

[9] Joint Decision dated 28 November 2006 ("*Joint Decision*"); *rollo*, pp. 39-45.

2006, RTC Br. 146 denied the demurrer and ordered him to present evidence, but he failed to do so despite having been granted ample opportunity.[10] Though the court considered his right to present evidence to have been consequently waived, it nevertheless allowed him to file a memorandum.[11]

In its Joint Decision dated 28 November 2006,[12] RTC Br. 146 found Milla guilty beyond reasonable doubt of two counts of *estafa* through falsification of public documents, thus:

> WHEREFORE, judgment is rendered finding the accused Cresencio Milla guilty beyond reasonable doubt of two (2) counts of estafa through falsification of public documents. Applying the indeterminate sentence law and considering that the amount involved is more than ₱22,000,00 this Court should apply the provision that an additional one (1) year should be imposed for every ten thousand (₱10,000.00) pesos in excess of ₱22,000.00, thus, this Court is constrained to impose the Indeterminate (sic) penalty of four (4) years, two (2) months one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum for each count.
>
> Accused is adjudged to be civilly liable to the private complainant and is ordered pay (sic) complainant the total amount of TWO MILLION (₱2,000,000.00) PESOS with legal rate of interest from the filing of the Information until the same is fully paid and to pay the costs. He is further ordered to pay attorney's fees equivalent to ten (10%) of the total amount due as and for attorney's fees. A lien on the monetary award is constituted in favor of the government, the private complainant not having paid the required docket fee prior to the filing of the Information.
>
> SO ORDERED.[13]

On appeal, the Court of Appeals, in the assailed Decision dated 22 April 2009, affirmed the findings of the trial court.[14]

---

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 45.

[14] CA Decision, *rollo*, pp. 47-60.

In its assailed Resolution dated 8 July 2009, it also denied Milla's subsequent Motion for Reconsideration.[15]

In the instant Petition, Milla alleges that the Decision and the Resolution of the Court of Appeals were not in accordance with law and jurisprudence. He raises the following issues:

I. Whether the case should be reopened on the ground of negligence of counsel;

II. Whether the principle of novation is applicable;

III. Whether the principle of simple loan is applicable;

IV. Whether the Secretary's Certificate presented by the prosecution is admissible in evidence;

V. Whether the supposed inconsistent statements of prosecution witnesses cast a doubt on the guilt of petitioner.[16]

In its Comment, MPI argues that (1) Milla was not deprived of due process on the ground of gross negligence of counsel; (2) under the Revised Penal Code, novation is not one of the grounds for the extinction of criminal liability for *estafa*; and (3) factual findings of the trial court, when affirmed by the Court of Appeals, are final and conclusive.[17]

On the other hand, in its Comment, the Office of the Solicitor General contends that (1) Milla was accorded due process of law; (2) the elements of the crime charged against him were established during trial; (3) novation is not a ground for extinction of criminal liability for *estafa*; (4) the money received by Milla from Lopez was not in the nature of a simple loan or cash advance; and (5) Lopez was duly authorized by MPI to institute the action.[18]

---

[15] Court of Appeals Resolution dated 8 July 2009, *rollo,* pp. 62-63.

[16] Petition dated 11 August 2009 ("*Petition*"), pp. 9-10; *rollo,* pp. 20-21.

[17] Comment dated 16 November 2009, *rollo,* pp. 119-133.

[18] Comment dated 22 January 2010, *rollo,* pp. 137-156.

In his Consolidated Reply, Milla reiterates that the negligence of his former counsel warrants a reopening of the case, wherein he can present evidence to prove that his transaction with MPI was in the nature of a simple loan.[19]

In the disposition of this case, the following issues must be resolved:

I. Whether the negligence of counsel deprived Milla of due process of law

II. Whether the principle of novation can exculpate Milla from criminal liability

III. Whether the factual findings of the trial court, as affirmed by the appellate court, should be reviewed on appeal

We resolve to deny the Petition.

Milla was not deprived of due process.

Milla argues that the negligence of his former counsel, Atty. Manuel V. Mendoza (Atty. Mendoza), deprived him of due process. Specifically, he states that after the prosecution had rested its case, Atty. Mendoza filed a Demurrer to Evidence, and that the former was never advised by the latter of the demurrer. Thus, Milla was purportedly surprised to discover that RTC Br. 146 had already rendered judgment finding him guilty, and that it had issued a warrant for his arrest. Atty. Mendoza filed an Omnibus Motion for Leave to File Motion for New Trial, which Milla claims to have been denied by the trial court for being an inappropriate remedy, thus, demonstrating his counsel's negligence. These contentions cannot be given any merit.

The general rule is that the mistake of a counsel binds the client, and it is only in instances wherein the negligence is so gross or palpable that courts must step in to grant relief to the aggrieved client.[20] In this case, Milla was able to file a Demurrer

---

[19] Consolidated Reply dated 6 October 2010, *rollo*, pp. 179-184.

[20] *Torres v. China Banking Corporation*, G.R. No. 165408, 15 January 2010, 610 SCRA 134, 145.

to Evidence, and upon the trial court's denial thereof, was allowed to present evidence.[21] Because of his failure to do so, RTC Br. 146 was justified in considering that he had waived his right thereto. Nevertheless, the trial court still allowed him to submit a memorandum in the interest of justice. Further, contrary to his assertion that RTC Br. 146 denied the Motion to Recall Warrant of Arrest thereafter filed by his former counsel, a reading of the 2 August 2007 Order of RTC Br. 146 reveals that it partially denied the Omnibus Motion for New Trial and Recall of Warrant of Arrest, but granted the Motion for Leave of Court to Avail of Remedies under the Rules of Court, allowing him to file an appeal and lifting his warrant of arrest.[22]

It can be gleaned from the foregoing circumstances that Milla was given opportunities to defend his case and was granted concomitant reliefs. Thus, it cannot be said that the mistake and negligence of his former counsel were so gross and palpable to have deprived him of due process.

The principle of novation cannot be applied to the case at bar.

Milla contends that his issuance of Equitable PCI Check Nos. 188954 and 188955 before the institution of the criminal complaint against him novated his obligation to MPI, thereby enabling him to avoid any incipient criminal liability and converting his obligation into a purely civil one. This argument does not persuade.

The principles of novation cannot apply to the present case as to extinguish his criminal liability. Milla cites *People v. Nery*[23] to support his contention that his issuance of the Equitable PCI checks prior to the filing of the criminal complaint averted his incipient criminal liability. However, it must be clarified that mere payment of an obligation before the institution of a criminal complaint does not, on its own, constitute novation that may prevent criminal liability. This Court's ruling in *Nery* in fact warned:

---

[21] Petition, p. 6; *rollo*, p. 17.

[22] *Rollo*, pp. 106-108.

[23] 119 Phil. 505 (1964).

It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original petition, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil. 581; Villareal, 27 Phil. 481).

Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, can not produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent can not be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can effect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that **the offended party's acceptance of a promissory note for all or part of the amount misapplied does not obliterate the criminal offense** (*Camus vs. Court of Appeals*, 48 Off. Gaz. 3898).[24] (Emphasis supplied.)

Further, in *Quinto v. People*,[25] this Court exhaustively explained the concept of novation in relation to incipient criminal liability, *viz*:

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.

The extinguishment of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly. The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. **While there is really no hard and fast rule to determine what might**

---

[24] *Id.* 247-248.

[25] 365 Phil. 259 (1999).

constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The first is when novation has been explicitly stated and declared in unequivocal terms. The second is when the old and the new obligations are incompatible on every point. **The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.**

The changes alluded to by petitioner consists only in the manner of payment. There was really no substitution of debtors since private complainant merely acquiesced to the payment but did not give her consent to enter into a new contract. The appellate court observed:

x x x x x x x x x

> **The acceptance by complainant of partial payment tendered by the buyer, Leonor Camacho, does not evince the intention of the complainant to have their agreement novated. It was simply necessitated by the fact that, at that time, Camacho had substantial accounts payable to complainant, and because of the fact that appellant made herself scarce to complainant. (TSN, April 15, 1981, 31-32) Thus, to obviate the situation where complainant would end up with nothing, she was forced to receive the tender of Camacho.** Moreover, it is to be noted that the aforesaid payment was for the purchase, not of the jewelry subject of this case, but of some other jewelry subject of a previous transaction. (*Ibid*. June 8, 1981, 10-11)

x x x x x x x x x

Art. 315 of the Revised Penal Code defines estafa and penalizes any person who shall defraud another by "misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. It is axiomatic that the gravamen of the offense is the appropriation or conversion of money or property received to the prejudice of the owner. The terms "convert" and "misappropriate" have been held to connote "an act of using or disposing of another's property as if it were one's own or devoting it to a purpose or use different from that agreed upon." The phrase, "to misappropriate to one's own use" has been said to include "not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. Verily, the sale of the pieces of jewelry on installments (sic) in contravention of the explicit terms of the authority granted to her in Exhibit "A" (*supra*) is deemed to be one of conversion. Thus, neither the theory of "delay in the fulfillment of commission" nor that of novation posed by petitioner, can avoid the incipient criminal liability. In *People vs. Nery*, this Court held:

x x x x x x x x x

The criminal liability for estafa already committed is then not affected by the subsequent novation of contract, for it is a public offense which must be prosecuted and punished by the State in its own conation. (Emphasis supplied.)[26]

In the case at bar, the acceptance by MPI of the Equitable PCI checks tendered by Milla could not have novated the original transaction, as the checks were only intended to secure the return of the ₱2 million the former had already given him. Even then, these checks bounced and were thus unable to satisfy his liability. Moreover, the *estafa* involved here was not for simple misappropriation or conversion, but was committed through Milla's falsification of public documents, the liability for which cannot be extinguished by mere novation.

---

[26] *Id.* at 267-268, 270-271.

The Court of Appeals was correct in affirming the trial court's finding of guilt.

Finally, Milla assails the factual findings of the trial court. Suffice it to say that factual findings of the trial court, especially when affirmed by the appellate court, are binding on and accorded great respect by this Court.[27]

There was no reversible error on the part of the Court of Appeals when it affirmed the finding of the trial court that Milla was guilty beyond reasonable doubt of the offense of *estafa* through falsification of public documents. The prosecution was able to prove the existence of all the elements of the crime charged. The relevant provisions of the Revised Penal Code read:

Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 shall be imposed upon:

1. Any private individual who shall commit any of the falsification enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document

x x x x x x x x x

Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

x x x x x x x x x

---

[27] *People v. Obina,* G.R. No. 186540, 14 April 2010, 618 SCRA 276, 280-28.

It was proven during trial that Milla misrepresented himself to have the authority to sell the subject property, and it was precisely this misrepresentation that prompted MPI to purchase it. Because of its reliance on his authority and on the falsified Deed of Absolute Sale and TCT No. 218777, MPI parted with its money in the amount of ₱2 million, which has not been returned until now despite Milla's allegation of novation. Clearly, he is guilty beyond reasonable doubt of *estafa* through falsification of public documents.

WHEREFORE, we resolve to **DENY** the Petition. The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189151. January 25, 2012]

SPOUSES DAVID BERGONIA and LUZVIMINDA CASTILLO, *petitioners, vs.* **COURT OF APPEALS (4th DIVISION) and AMADO BRAVO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* WILL PROSPER ONLY IF GRAVE ABUSE OF DISCRETION IS ALLEGED AND

---

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

PROVED TO EXIST. — It bears stressing that the extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. On the other hand, Section 1, Rule 41 of the Rules of Court states that an appeal may be taken from a judgment or final order that completely disposes of the case or a particular matter therein. Concomitant to the foregoing, the remedy of a party against an adverse disposition of the CA would depend on whether the same is a final order or merely an interlocutory order. If the Order or Resolution issued by the CA is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65. x x x A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

2. ID.; APPEALS; THE COURT OF APPEAL'S AUTHORITY TO DISMISS AN APPEAL FOR FAILURE TO FILE THE APPELLANT'S BRIEF IS A MATTER OF JUDICIAL DISCRETION. — In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion. Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.

3. ID.; RULES OF COURT; PROCEDURAL RULES ARE REQUIRED TO BE FOLLOWED EXCEPT ONLY FOR THE MOST PERSUASIVE OF REASONS WHEN THEY MAY BE RELAXED; SUSTAINED. — Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with

the procedure prescribed. In *Asian Spirit Airlines v. Spouses Bautista*, this Court clarified that procedural rules are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

APPEARANCES OF COUNSEL

Law Firm of Lapeña & Associates for petitioners.
Alfredo Remigio for private respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by the spouses David Bergonia and Luzviminda Castillo (petitioners) assailing the Resolutions issued by the Court of Appeals (CA) on May 18, 2009[1] and June 29, 2009[2] in CA-G.R. CV No. 91665.

The petitioners were the plaintiffs in Civil Case No. Br. 23-749-03 entitled *"Spouses David Bergonia and Luzviminda Castillo v. Amado Bravo, Jr."* in the Regional Trial Court (RTC), Branch 23, Roxas, Isabela. On January 21, 2008, the RTC rendered a decision adverse to the petitioners. The petitioners consequently sought a reconsideration of the said decision but the same was denied by the RTC in an Order dated April 25, 2008 which was received on May 6, 2008. On May 7, 2008, the petitioners filed a Notice of Appeal.[3]

In January 2009, the Law Firm of Lapeña & Associates filed with the CA its formal entry of appearance as counsel for the

---

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fernanda Lampas-Peralta and Apolinario D. Bruselas, Jr., concurring; *rollo*, p. 14.

[2] *Id.* at 15-16.

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

petitioners, in view of the withdrawal of the former counsel, Atty. Panfilo Soriano. The substitution of lawyers was noted in the Resolution[4] dated January 20, 2009. In the same resolution, the CA further directed the appellants therein to remit the deficient amount of ₱20.00 within 5 days from notice. Thereafter, the CA issued a Resolution on January 30, 2009 requiring the filing of the Appellant's Brief within 45 days from receipt.

On April 8, 2009, respondent Amado Bravo, Jr. (the defendant-appellee therein), filed a Motion to Dismiss Appeal[5] dated April 2, 2009 stating that the petitioners failed to file their Appellant's Brief within the 45-day period granted to them by the CA in the Resolution dated January 30, 2009. Citing Section 1 (e), Rule 50 of the Rules of Court, respondent prayed for the dismissal of the petitioners' appeal.

In an Opposition/Comment promptly filed on April 8, 2009,[6] the petitioners alleged that the Motion to Dismiss filed by the respondent had no basis considering that they or their counsel did not receive any resolution from the CA requiring them to file their Appellants' Brief within 45 days.[7]

On May 18, 2009, the CA issued the assailed resolution[8] which reads:

> For failure of the plaintiffs-appellants to file the required appellant's brief within the reglementary period which expired on 22 March 2009, as per Judicial Records Division Report dated 05 May 2009, the appeal is hereby considered **ABANDONED** and is hereby **DISMISSED** pursuant to Section 1 (e), Rule 50, 1997 Rules of Civil Procedure.
>
> **SO ORDERED**. (citation omitted)

---

[4] *Id.* at 20.

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

[6] *Id.* at 23-24.

[7] *Id.* at 24.

[8] *Supra* note 1.

On May 25, 2009, the CA issued a Resolution[9] which stated, among others, that the January 30, 2009 notice to file brief addressed to petitioners' counsel was received by a certain Ruel de Tomas on February 5, 2009.

On June 5, 2009, the petitioners filed a Compliance and Motion for Reconsideration[10] praying that the dismissal of their appeal be set aside in the interest of justice and equity. The petitioners claimed that their failure to file their brief was due to the fact that they were never furnished a copy of the said January 30, 2009 Resolution of the CA directing them to file their brief.

Subsequently, in a Manifestation[11] filed on June 16, 2009, the petitioners asserted that their counsel — the Law Firm of Lapeña and Associates — has no employee in the name of Ruel de Tomas. However, they explained that Atty. Torenio C. Cabacungan, Jr., an associate of the law firm personally knows a person named "Ruel" who sometimes visits their office and who may have accidentally received the said January 30, 2009 Resolution of the CA. In such a case, the same should not be considered officially served upon them as the latter was not connected with nor authorized to perform any act for and in behalf of counsel.

On June 29, 2009, the CA denied the motion for reconsideration.[12]

Undaunted, the petitioners instituted the instant petition for *certiorari* before this Court asserting the following arguments: (1) their failure to file their appellants' brief was merely due to the fact that they were never properly served with a copy of the January 30, 2009 Resolution of the CA; (2) Ruel de Tomas, the person who apparently received the copy of the January 30, 2009 Resolution of the CA, was not their employee; and (3) the CA, in the interest of justice and equity, should have decided

---

[9] *Rollo*, p. 31.

[10] *Id.* at 26-30.

[11] *Id.* at 32-34.

[12] *Supra* note 2.

their appeal on the merits instead of dismissing the same purely on technical grounds.

The sole issue for resolution is the propriety of the dismissal of the petitioners' appeal for their failure to file the appellants' brief within the reglementary period.

The petition is denied.

At the outset, this Court notes that the petitioners' resort to a petition for *certiorari* under Rule 65 of the Rules of Court is not the proper remedy to assail the May 18, 2009 and June 29, 2009 Resolutions issued by the CA. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[13]

It bears stressing that the extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[14] On the other hand, Section 1, Rule 41 of the Rules of Court states that an appeal may be taken from a judgment or final order that completely disposes of the case or a particular matter therein.

Concomitant to the foregoing, the remedy of a party against an adverse disposition of the CA would depend on whether the same is a final order or merely an interlocutory order. If the Order or Resolution issued by the CA is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65.

In *Republic v. Sandiganbayan (Fourth Division)*,[15] this Court laid down the following rules to determine whether a court's

---

[13] See *Raymundo v. Isagon Vda. de Suarez*, G.R. No. 149017, November 28, 2008, 572 SCRA 384, 404.

[14] RULES OF COURT, Rule 65, Section I.

[15] G.R. No. 152375, December 16, 2011.

disposition is already a final order or merely an interlocutory order and the respective remedies that may be availed in each case, thus:

> Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory and the aggrieved party's remedy is a petition for *certiorari* under Rule 65. Jurisprudence pointedly holds that:
>
> > As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term "final" judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.
> >
> > On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically **provisional in its application**. (citations omitted)

Here, the assailed May 18, 2009 and June 29, 2009 Resolutions issued by the CA had considered the petitioners' appeal below as having been abandoned and, accordingly, dismissed. Thus, the assailed Resolutions are in the nature of a final order as the same completely disposed of the petitioners' appeal with the CA. Thus, the remedy available to the petitioners is to file a petition for review on *certiorari* under Rule 45 with this court and not a petition for *certiorari* under Rule 65.

Even if we are to assume *arguendo* that the petitioners' resort to the extraordinary remedy of *certiorari* is proper, the instant petition would still be denied. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.[16] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[17] Here, there was no hint of whimsicality or gross and patent abuse of discretion on the part of the CA when it dismissed the appeal of the petitioners for the failure of the latter to file their appellants' brief.

Section 1 (e), Rule 50 of the Rules of Court succinctly provides that:

> Section 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
>
> x x x x x x x x x
>
> (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules; x x x

In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion. Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.[18]

---

[16] *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[17] *Estrada v. Hon. Desierto*, 487 Phil. 169, 182 (2004), citing *Duero v. CA*, 424 Phil. 12, 20 (2002).

[18] *Bachrach Corporation v. Philippine Ports Authority*, G.R. No. 159915, March 12, 2009, 580 SCRA 659, 664, citing *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733 (2002); *Aguam v. Court of Appeals*, 388 Phil. 587 (2000); *Catindig v. Court of Appeals*, 177 Phil. 624 (1979).

Having in mind the peculiar circumstances of the instant case, we find that the petitioners' excuse for their failure to file their brief was flimsy and discreditable and, thus, the propriety of the dismissal of their appeal. Indeed, as aptly ruled by the CA, the records of the case clearly showed that the petitioners, through their counsel, received the January 30, 2009 Resolution which required them to file their appellants' brief. Thus:

> The records of this case are clear that the Resolution of 30 January 2009 requiring the [petitioners] to file the required brief was received by a certain Ruel de Tomas for [petitioners'] counsel on 05 February 2009. Hence, mere denial by [petitioners'] counsel of the receipt of his copy of the Resolution cannot be given weight in the absence of any proof that the said person is neither an employee at his law office nor someone unknown to him. Likewise, it is highly implausible that any person in the building where [petitioners'] counsel holds office would simply receive a correspondence delivered by a postman.[19]

Verily, the petitioners were only able to offer their bare assertion that they and their counsel did not actually receive a copy of the January 30, 2009 Resolution and that the person who apparently received the same was not in any way connected with their counsel. There was no other credible evidence adduced by the petitioners which would persuade us to exculpate them from the effects of their failure to file their brief.

The Court notes that, in concluding that the petitioners indeed received a copy of the January 30, 2009 Resolution, the CA was guided by the Report of the Judicial Records Division of the CA and by the certification issued by the Postmaster of Quezon City. Indubitably, the petitioners' bare assertions could not overcome the presumption of regularity in the preparation of the records of the Post Office and that of the CA.[20]

Nonetheless, the petitioners cite a cacophony of cases decided by this Court which, in essence, declared that dismissal of an

---

[19] *Rollo*, p. 16.

[20] *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 741 (2002).

appeal on purely technical ground is frowned upon and that, as much as possible, appeals ought to be decided on the merits in the interest of justice and equity.

The petitioners' plea for the application of the principles of substantial justice in their favor deserves scant consideration. The petitioners should be reminded that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.[21] While the petitioners adverted to several jurisprudential rulings of this Court which set aside procedural rules, it is noted that there were underlying considerations in those cases which warranted a disregard of procedural technicalities to favor substantial justice. Here, there exists no such consideration.

The petitioners ought to be reminded that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[22]

In *Asian Spirit Airlines v. Spouses Bautista*,[23] this Court clarified that procedural rules are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed:

---

[21] *Barangay Dasmariñas v. Creative Play Corner School*, G.R. No. 169942, January 24, 2011, 640 SCRA 294, 306, citing *Alfonso v. Sps. Andres*, G.R. No. 166236, July 29, 2010, 626 SCRA 149.

[22] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000), citing *Galang v. CA*, G.R. No. 76221, July 29, 1991, 199 SCRA 683.

[23] 491 Phil. 476 (2005).

We agree with the petitioner's contention that the rules of procedure may be relaxed for the most persuasive reasons. But as this Court held in *Galang v. Court of Appeals*:

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

In an avuncular case, we emphasized that:

> Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are, thus, enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true tha0t every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The instant case is no exception to this rule.

In the present case, we find no cogent reason to exempt the petitioner from the effects of its failure to comply with the Rules of Court.

The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. More so, as in this case, where petitioner not only neglected to file its brief within the stipulated time but also failed to seek an extension of time for a cogent ground before the expiration of the time sought to be extended.

In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of

decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice. In this case, however, such *liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice*. It is equally settled that, save for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.[24] (citations omitted)

Reiterating the foregoing in *Dimarucot v. People of the Philippines*,[25] this Court stated that:

> The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.
>
> Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.[26] (citations omitted)

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DISMISSED**. The assailed Resolutions dated May 18, 2009 and June 29, 2009 issued by the Court of Appeals in CA-G.R. CV No. 91665 dismissing the petitioners' appeal are **AFFIRMED.**

SO ORDERED.

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

---

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

[25] G.R. No. 183975, September 20, 2010, 630 SCRA 659.

[26] *Id.* at 668-669.

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

SECOND DIVISION

[G.R. No. 189947. January 25, 2012]

MANILA PAVILION HOTEL, owned and operated by ACESITE (PHILS.) HOTEL CORPORATION, *petitioner, vs.* **HENRY DELADA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR DISPUTE; VOLUNTARY ARBITRATION; PANEL OF VOLUNTARY ARBITRATORS (PVA); PLENARY JURISDICTION AND AUTHORITY TO INTERPRET THE AGREEMENT, SUSTAINED. — In *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*, we ruled that the voluntary arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority — subject only, in a proper case, to the certiorari jurisdiction of this Court. x x x A more recent case is *Ludo & Luym Corporation v. Saornido*. In that case, we recognized that voluntary arbitrators are generally expected to decide only those questions expressly delineated by the submission agreement; that, nevertheless, they can assume that they have the necessary power to make a final settlement on the related issues, since arbitration is the final resort for the adjudication of disputes. Thus, we ruled that even if the specific issue brought before the arbitrators merely mentioned the question of "whether an employee was discharged for just cause," they could reasonably assume that their powers extended beyond the determination thereof to include the power to reinstate the employee or to grant back wages. In the same vein, if the specific issue brought before the arbitrators referred to the date of regularization of the employee, law and jurisprudence gave them enough leeway as well as adequate prerogative to determine the entitlement of the employees to higher benefits in accordance with the finding of regularization. Indeed, to require the parties to file another action for payment of those benefits would certainly undermine labor proceedings and contravene the constitutional mandate providing full protection to labor and speedy labor justice. Pursuant to the doctrines in *Sime Darby Pilipinas* and

Ludo & Luym Corporation, the PVA was authorized to assume jurisdiction over the related issue of insubordination and willful disobedience of the transfer order.

2. ID.; ID.; PREVENTIVE SUSPENSION; DISTINGUISHED FROM PENALTY OF SUSPENSION. — *Preventive* suspension is a disciplinary measure resorted to by the employer *pending investigation* of an alleged malfeasance or misfeasance committed by an employee. The employer temporarily bars the employee from working if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers. On the other hand, the *penalty* of suspension refers to the disciplinary action imposed on the employee *after* an official investigation or administrative hearing is conducted. The employer exercises its right to discipline erring employees pursuant to company rules and regulations. Thus, a finding of validity of the *penalty* of 90-day suspension will not embrace the issue of the validity of the 30-day *preventive* suspension.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for petitioner.
Ruscius G. Zaragoza for respondent.

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Revised Rules of Court, assailing the 27 July 2009 Decision and 12 October 2009 Resolution of the Court of Appeals (CA).[1]

Facts

The present Petition stems from a grievance filed by respondent Henry Delada against petitioner Manila Pavilion Hotel (MPH).

[1] Both the Decision and the Resolution in CA-G.R. SP No. 101931 were penned by Associate Justice Sixto C. Marella Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Japar B. Dimaampao.

Delada was the Union President of the Manila Pavilion Supervisors Association at MPH. He was originally assigned as Head Waiter of *Rotisserie*, a fine-dining restaurant operated by petitioner. Pursuant to a supervisory personnel reorganization program, MPH reassigned him as Head Waiter of *Seasons Coffee Shop*, another restaurant operated by petitioner at the same hotel. Respondent declined the inter-outlet transfer and instead asked for a grievance meeting on the matter, pursuant to their Collective Bargaining Agreement (CBA). He also requested his retention as Head Waiter of *Rotisserie* while the grievance procedure was ongoing.

MPH replied and told respondent to report to his new assignment for the time being, without prejudice to the resolution of the grievance involving the transfer. He adamantly refused to assume his new post at the *Seasons Coffee Shop* and instead continued to report to his previous assignment at *Rotisserie*. Thus, MPH sent him several memoranda on various dates, requiring him to explain in writing why he should not be penalized for the following offenses: serious misconduct; willful disobedience of the lawful orders of the employer; gross insubordination; gross and habitual neglect of duties; and willful breach of trust.

Despite the notices from MPH, Delada persistently rebuffed orders for him to report to his new assignment. According to him, since the grievance machinery under their CBA had already been initiated, his transfer must be held in abeyance. Thus, on 9 May 2007, MPH initiated administrative proceedings against him. He attended the hearings together with union representatives.

Meanwhile, the parties failed to reach a settlement during the grievance meeting concerning the validity of MPH's transfer order. Respondent then elevated his grievance to the Peers Resources Development Director. Still, no settlement between the parties was reached. Respondent appealed the matter to the Grievance Committee level. The committee recommended that he proceed to the next level of the grievance procedure, as it was unable to reach a decision on the matter. Consequently, on 20 April 2007, Delada lodged a Complaint before the National

Conciliation and Mediation Board. On 25 May 2007, the parties agreed to submit the following issues for voluntary arbitration:

I. WHETHER OR NOT THE TRANSFER OF THE UNION PRESIDENT FROM HEAD WAITER AT ROTISSERIE TO HEAD WAITER AT SEASONS RESTAURANT IS VALID AND JUSTIFIED;

II. WHETHER OR NOT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT IS VALID AND JUSTIFIED;

III. WHETHER OR NOT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT IS A VALID GROUND TO STRIKE;

IV. WHETHER OR NOT THE RESPONDENT MAY BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AND

V. WHETHER OR NOT THE COMPLAINANT MAY BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[2]

While respondent's Complaint concerning the validity of his transfer was pending before the Panel of Voluntary Arbitrators (PVA), MPH continued with the disciplinary action against him for his refusal to report to his new post at *Seasons Coffee Shop*. Citing security and safety reasons, petitioner also placed respondent on a 30-day preventive suspension. On 8 June 2007, MPH issued a Decision, which found him guilty of insubordination based on his repeated and willful disobedience of the transfer order. The Decision imposed on Delada the penalty of 90-day suspension. He opposed the Decision, arguing that MPH had lost its authority to proceed with the disciplinary action against him, since the matter had already been included in the voluntary arbitration.

On 14 December 2007, the PVA issued a Decision and ruled that the transfer of Delada was a valid exercise of management prerogative. According to the panel, the transfer order was done in the interest of the efficient and economic operations of MPH, and that there was no malice, bad faith, or improper motive

[2] Decision of PVA, pp. 1-2; *rollo*, pp. 66-67.

attendant upon the transfer of Delada to *Seasons Coffee Shop*. They found that the mere fact that he was the Union President did not "put color or ill motive and purpose" to his transfer. On the contrary, the PVA found that the real reason why he refused to obey the transfer order was that he asked for additional monetary benefits as a condition for his transfer. Furthermore, the panel ruled that his transfer from *Rotisserie* to *Seasons Coffee Shop* did not prejudice or inconvenience him. Neither did it result in diminution of salaries or demotion in rank. The PVA thus pronounced that Delada had no valid and justifiable reason to refuse or even to delay compliance with the management's directive.

The PVA also ruled that there was no legal and factual basis to support petitioner's imposition of preventive suspension on Delada. According to the panel, the mere assertion of MPH that "it is not far-fetched for Henry Delada to sabotage the food to be prepared and served to the respondent's dining guest and employees because of the hostile relationship then existing" was more imagined than real. It also found that MPH went beyond the 30-day period of preventive suspension prescribed by the Implementing Rules of the Labor Code when petitioner proceeded to impose a separate penalty of 90-day suspension on him. Furthermore, the PVA ruled that MPH lost its authority to continue with the administrative proceedings for insubordination and willful disobedience of the transfer order and to impose the penalty of 90-day suspension on respondent. According to the panel, it acquired exclusive jurisdiction over the issue when the parties submitted the aforementioned issues before it. The panel reasoned that the joint submission to it of the issue on the validity of the transfer order encompassed, by necessary implication, the issue of respondent's insubordination and willful disobedience of the transfer order. Thus, MPH effectively relinquished its power to impose disciplinary action on Delada.[3]

As to the other issues, the panel found that there was no valid justification to conduct any strike or concerted action as

---

[3] Decision of PVA, p. 13; *rollo* p. 78.

a result of Delada's preventive suspension. It also ruled that since the 30-day preventive suspension and the penalty of 90-day suspension was invalid, then MPH was liable to pay back wages and other benefits.

The CA affirmed the Decision of the PVA and denied petitioner's Motion for Reconsideration. Consequently, MPH filed the instant Petition.

Issue

Despite the various issues surrounding the case, MPH limited its appeal to the following:

I. Whether MPH retained the authority to continue with the administrative case against Delada for insubordination and willful disobedience of the transfer order.

II. Whether MPH is liable to pay back wages.

Discussion

Petitioner argues that it did not lose its authority to discipline Delada notwithstanding the joint submission to the PVA of the issue of the validity of the transfer order. According to petitioner, the specific issue of whether respondent could be held liable for his refusal to assume the new assignment was not raised before the PVA, and that the panel's ruling was limited to the validity of the transfer order. Thus, petitioner maintains that it cannot be deemed to have surrendered its authority to impose the penalty of suspension.

In *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*,[4] we ruled that the voluntary arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority — subject only, in a proper case, to the certiorari jurisdiction of this Court. In that case, the specific issue presented was "the issue of performance bonus." We then held that the arbitrator had the authority to determine not only the issue of whether or not a

[4] *Sime Darby Pilipinas, Inc. v. Deputy Administrator Magsalin*, 259 Phil. 658 (1989).

performance bonus was to be granted, but also the related question of the amount of bonus, were it to be granted. We then said that there was no indication at all that the parties to the arbitration agreement had regarded "the issue of performance bonus" as a two-tiered issue, only one aspect of which was being submitted to arbitration; thus, we held that the failure of the parties to specifically limit the issues to that which was stated allowed the arbitrator to assume jurisdiction over the related issue.

A more recent case is *Ludo & Luym Corporation v. Saornido*.[5] In that case, we recognized that voluntary arbitrators are generally expected to decide only those questions expressly delineated by the submission agreement; that, nevertheless, they can assume that they have the necessary power to make a final settlement on the related issues, since arbitration is the final resort for the adjudication of disputes. Thus, we ruled that even if the specific issue brought before the arbitrators merely mentioned the question of "whether an employee was discharged for just cause," they could reasonably assume that their powers extended beyond the determination thereof to include the power to reinstate the employee or to grant back wages. In the same vein, if the specific issue brought before the arbitrators referred to the date of regularization of the employee, law and jurisprudence gave them enough leeway as well as adequate prerogative to determine the entitlement of the employees to higher benefits in accordance with the finding of regularization. Indeed, to require the parties to file another action for payment of those benefits would certainly undermine labor proceedings and contravene the constitutional mandate providing full protection to labor and speedy labor justice.

Consequently, could the PVA herein view that the issue presented before it — the question of the validity of the transfer order — necessarily included the question of respondent Delada's insubordination and willful disobedience of the transfer order?

Pursuant to the doctrines in *Sime Darby Pilipinas* and *Ludo & Luym Corporation*, the PVA was authorized to assume

[5] 443 Phil. 554 (2003).

jurisdiction over the related issue of insubordination and willful disobedience of the transfer order. Nevertheless, the doctrine in the aforementioned cases is inapplicable to the present Petition. In those cases, the voluntary arbitrators did in fact assume jurisdiction over the related issues and made rulings on the matter. In the present case, however, the PVA did not make a ruling on the specific issue of insubordination and willful disobedience of the transfer order. The PVA merely said that its disagreement with the 90-day *penalty* of suspension stemmed from the fact that the penalty went beyond the 30-day limit for *preventive* suspension:

> But to us, what militates against the validity of Delada's preventive suspension is the fact that it went beyond the 30-day period prescribed by the Implementing Rules of the Labor Code (Section 4, Rules XIV, Book V). The preventive suspension of Delada is supposed to expire on 09 June 2007, but without notifying Delada, the MPH proceeded to impose a separate penalty of 90-days suspension to him which took effect only on 18 June 2007, or way beyond the 30-day rule mandated by the Rules. While the intention of the MPH is to impose the 90-day suspension as a separate penalty against Delada, the former is already proscribed from doing so because as of 05 June 2007, the dispute at hand is now under the exclusive jurisdiction of the panel of arbitrators. In fact, by its own admission, the MPH categorically stated in its Position Paper that as of 25 May 2007, or before the suspension order was issued, MPH and Delada had already formulated and submitted the issues for arbitration. For all legal intents and purposes, therefore, the MPH has now relinquished its authority to suspend Delada because the issue at this juncture is now within the Panel's ambit of jurisdiction. MPH's authority to impose disciplinary action to Delada must now give way to the jurisdiction of this panel of arbitrators to rule on the issues at hand. By necessary implication, this Panel is thus constrained to declare both the preventive suspension and the separate suspension of 90-days meted to Delada to be not valid and justified.[6]

First, it must be pointed out that the basis of the 30-day *preventive* suspension imposed on Delada was different from that of the 90-day *penalty* of suspension. The 30-day *preventive*

---

[6] Decision of PVA, p. 13; *rollo*, p. 78.

suspension was imposed by MPH on the assertion that Delada might sabotage hotel operations if preventive suspension would not be imposed on him. On the other hand, the *penalty* of 90-day suspension was imposed on respondent as a form of disciplinary action. It was the outcome of the administrative proceedings conducted against him. *Preventive* suspension is a disciplinary measure resorted to by the employer *pending investigation* of an alleged malfeasance or misfeasance committed by an employee.[7] The employer temporarily bars the employee from working if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.[8] On the other hand, the *penalty* of suspension refers to the disciplinary action imposed on the employee *after* an official investigation or administrative hearing is conducted.[9] The employer exercises its right to discipline erring employees pursuant to company rules and regulations.[10] Thus, a finding of validity of the *penalty* of 90-day suspension will not embrace the issue of the validity of the 30-day *preventive* suspension. In any event, petitioner no longer assails the ruling of the CA on the illegality of the 30-day *preventive* suspension.[11]

It can be seen that, unlike in *Sime Darby Pilipinas* and *Ludo & Luym Corporation*, the PVA herein did not make a definitive ruling on the merits of the validity of the 90-day suspension. The panel only held that MPH lost its jurisdiction to impose disciplinary action on respondent. Accordingly, we rule in this case that MPH did not lose its authority to discipline respondent for his continued refusal to report to his new assignment. In relation to this point, we recall our Decision in *Allied Banking Corporation v. Court of Appeals*.[12]

---

[7] *Gatbonton v. National Labor Relations Commission*, 515 Phil. 387 (2006).

[8] *Id.*

[9] *See Deles v. National Labor Relations Commission*, 384 Phil. 271 (2000).

[10] *Id.*

[11] Petition of MPH, p. 21; *rollo*, p. 34.

[12] 461 Phil. 517 (2003).

In *Allied Banking Corporation*,[13] employer Allied Bank reassigned respondent Galanida from its Cebu City branch to its Bacolod and Tagbilaran branches. He refused to follow the transfer order and instead filed a Complaint before the Labor Arbiter for constructive dismissal. While the case was pending, Allied Bank insisted that he report to his new assignment. When he continued to refuse, it directed him to explain in writing why no disciplinary action should be meted out to him. Due to his continued refusal to report to his new assignment, Allied Bank eventually terminated his services. When the issue of whether he could validly refuse to obey the transfer orders was brought before this Court, we ruled thus:

> The refusal to obey a valid transfer order constitutes willful disobedience of a lawful order of an employer. **Employees may object to, negotiate and seek redress against employers for rules or orders that they regard as unjust or illegal. However, until and unless these rules or orders are declared illegal or improper by competent authority, the employees ignore or disobey them at their peril.** For Galanida's continued refusal to obey Allied Bank's transfer orders, we hold that the bank dismissed Galanida for just cause in accordance with Article 282(a) of the Labor Code. Galanida is thus not entitled to reinstatement or to separation pay. (Emphasis supplied, citations omitted).[14]

It is important to note what the PVA said on Delada's defiance of the transfer order:

> In fact, Delada cannot hide under the legal cloak of the grievance machinery of the CBA or the voluntary arbitration proceedings to disobey a valid order of transfer from the management of the hotel. While it is true that Delada's transfer to Seasons is the subject of the grievance machinery in accordance with the provisions of their CBA, Delada is expected to comply first with the said lawful directive while awaiting the results of the decision in the grievance proceedings. This issue falls squarely in the case of Allied Banking Corporation *vs.* Court of Appeals x x x.[15]

---

[13] *Id.*

[14] *Id.*

[15] Decision of PVA, p. 11; *rollo*, p. 76.

Pursuant to *Allied Banking*, unless the order of MPH is rendered invalid, there is a presumption of the validity of that order. Since the PVA eventually ruled that the transfer order was a valid exercise of management prerogative, we hereby reverse the Decision and the Resolution of the CA affirming the Decision of the PVA in this respect. MPH had the authority to continue with the administrative proceedings for insubordination and willful disobedience against Delada and to impose on him the penalty of suspension. As a consequence, petitioner is not liable to pay back wages and other benefits for the period corresponding to the penalty of 90-day suspension.

WHEREFORE, the Petition is **GRANTED.** The Decision and the Resolution of the Court of Appeals are hereby **MODIFIED.** We rule that petitioner Manila Pavilion Hotel had the authority to continue with the administrative proceedings for insubordination and willful disobedience against Delada and to impose on him the penalty of suspension. Consequently, petitioner is not liable to pay back wages and other benefits for the period corresponding to the penalty of 90-day suspension.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191336. January 25, 2012]

CRISANTA ALCARAZ MIGUEL, *petitioner, vs.* **JERRY D. MONTANEZ,** *respondent.*

---

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

SYLLABUS

1. CIVIL LAW; CONTRACTS; COMPROMISES; AMICABLE SETTLEMENT; MODE OF ENFORCEMENT, EXPLAINED. — It is true that an amicable settlement reached at the *barangay* conciliation proceedings, like the *Kasunduang Pag-aayos* in this case, is binding between the contracting parties and, upon its perfection, is immediately executory insofar as it is not contrary to law, good morals, good customs, public order and public policy. This is in accord with the broad precept of Article 2037 of the Civil Code. Being a by-product of mutual concessions and good faith of the parties, an amicable settlement has the force and effect of *res judicata* even if not judicially approved. It transcends being a mere contract binding only upon the parties thereto, and is akin to a judgment that is subject to execution in accordance with the Rules. Thus, under Section 417 of the Local Government Code, such amicable settlement or arbitration award may be enforced by execution by the *Barangay Lupon* within six (6) months from the date of settlement, or by filing an action to enforce such settlement in the appropriate city or municipal court, if beyond the six-month period. Under the first remedy, the proceedings are covered by the Local Government Code and the *Katarungang Pambarangay* Implementing Rules and Regulations. The *Punong Barangay* is called upon during the hearing to determine solely the fact of non-compliance of the terms of the settlement and to give the defaulting party another chance at voluntarily complying with his obligation under the settlement. Under the second remedy, the proceedings are governed by the Rules of Court, as amended. The cause of action is the amicable settlement itself, which, by operation of law, has the force and effect of a final judgment. It must be emphasized, however, that enforcement by execution of the amicable settlement, either under the first or the second remedy, is only applicable if the contracting parties have not repudiated such settlement within ten (10) days from the date thereof in accordance with Section 416 of the Local Government Code.

2. ID.; ID.; ID.; ID.; IF REPUDIATED BY ONE OF PARTIES; REMEDIES AVAILABLE TO THE OTHER PARTY, ILLUCIDATED. — If the amicable settlement is repudiated by one party, either expressly or impliedly, the other party has two options, namely, to enforce the compromise in

accordance with the Local Government Code or Rules of Court as the case may be, or to consider it rescinded and insist upon his original demand. This is in accord with Article 2041 of the Civil Code, which qualifies the broad application of Article 2037. In the case of *Leonor v. Sycip*, the Supreme Court (SC) had the occasion to explain this provision of law. It ruled that Article 2041 does not require an action for rescission, and the aggrieved party, by the breach of compromise agreement, may just consider it already rescinded. As so well stated in the case of *Chavez v. Court of Appeals*, a party's non-compliance with the amicable settlement paved the way for the application of Article 2041 under which the other party may either enforce the compromise, following the procedure laid out in the *Revised Katarungang Pambarangay Law*, or consider it as rescinded and insist upon his original demand.

3. ID.; ID.; ID.; ID.; ID.; REMAND OF THE CASE TO THE LOWER COURT FOR THE ENFORCEMENT OF THE *KASUNDUANG PAG-AAYOS* IS NOT WARRANTED; CASE AT BAR. — The CA took off on the wrong premise that enforcement of the *Kasunduang Pag-aayos* is the proper remedy, and therefore erred in its conclusion that the case should be remanded to the trial court. The fact that the petitioner opted to rescind the *Kasunduang Pag-aayos* means that she is insisting upon the undertaking of the respondent under the original loan contract. Thus, the CA should have decided the case on the merits, as an appeal before it, and not prolong the determination of the issues by remanding it to the trial court. Pertinently, evidence abounds that the respondent has failed to comply with his loan obligation. In fact, the *Kasunduang Pag-aayos* is the well nigh incontrovertible proof of the respondent's indebtedness with the petitioner as it was executed precisely to give the respondent a second chance to make good on his undertaking. And since the respondent still reneged in paying his indebtedness, justice demands that he must be held answerable therefor.

APPEARANCES OF COUNSEL

Arellano Law Firm for petitioner.
Calberito M. Caballero for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner Crisanta Alcaraz Miguel (Miguel) seeks the reversal and setting aside of the September 17, 2009 Decision[1] and February 11, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 100544, entitled *"Jerry D. Montanez v. Crisanta Alcaraz Miguel."*

Antecedent Facts

On February 1, 2001, respondent Jerry Montanez (Montanez) secured a loan of One Hundred Forty-Three Thousand Eight Hundred Sixty-Four Pesos (₱143,864.00), payable in one (1) year, or until February 1, 2002, from the petitioner. The respondent gave as collateral therefor his house and lot located at Block 39 Lot 39 Phase 3, Palmera Spring, Bagumbong, Caloocan City.

Due to the respondent's failure to pay the loan, the petitioner filed a complaint against the respondent before the *Lupong Tagapamayapa* of *Barangay* San Jose, Rodriguez, Rizal. The parties entered into a *Kasunduang Pag-aayos* wherein the respondent agreed to pay his loan in installments in the amount of Two Thousand Pesos (₱2,000.00) per month, and in the event the house and lot given as collateral is sold, the respondent would settle the balance of the loan in full. However, the respondent still failed to pay, and on December 13, 2004, the *Lupong Tagapamayapa* issued a certification to file action in court in favor of the petitioner.

On April 7, 2005, the petitioner filed before the Metropolitan Trial Court (MeTC) of Makati City, Branch 66, a complaint for Collection of Sum of Money. In his Answer with Counterclaim,[3]

---

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring; *rollo*, pp. 37-45.

[2] *Id.* at 34-35.

[3] *Id.* at 63-69.

the respondent raised the defense of improper venue considering that the petitioner was a resident of Bagumbong, Caloocan City while he lived in San Mateo, Rizal.

After trial, on August 16, 2006, the MeTC rendered a Decision,[4] which disposes as follows:

> **WHEREFORE**, premises considered[,] judgment is hereby rendered ordering defendant **Jerry D. Montanez** to pay plaintiff the following:
>
> 1. The amount of [Php147,893.00] representing the obligation with legal rate of interest from February 1, 2002 which was the date of the loan maturity until the account is fully paid;
>
> 2. The amount of Php10,000.00 as and by way of attorney's fees; and the costs.
>
> SO ORDERED.[5]

On appeal to the Regional Trial Court (RTC) of Makati City, Branch 146, the respondent raised the same issues cited in his Answer. In its March 14, 2007 Decision,[6] the RTC affirmed the MeTC Decision, disposing as follows:

> WHEREFORE, finding no cogent reason to disturb the findings of the court *a quo*, the appeal is hereby DISMISSED, and the DECISION appealed from is hereby AFFIRMED in its entirety for being in accordance with law and evidence.
>
> SO ORDERED.[7]

Dissatisfied, the respondent appealed to the CA raising two issues, namely, (1) whether or not venue was improperly laid, and (2) whether or not the *Kasunduang Pag-aayos* effectively novated the loan agreement. On September 17, 2009, the CA rendered the assailed Decision, disposing as follows:

---

[4] *Id.* at 70-74.

[5] *Id.* at 73.

[6] *Id.* at 75-77.

[7] *Id.* at 77.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The appealed Decision dated March 14, 2007 of the Regional Trial Court (RTC) of Makati City, Branch 146, is **REVERSED and SET ASIDE**. A new judgment is entered dismissing respondent's complaint for collection of sum of money, without prejudice to her right to file the necessary action to enforce the *Kasunduang Pag-aayos*.

SO ORDERED.[8]

Anent the issue of whether or not there is novation of the loan contract, the CA ruled in the negative. It ratiocinated as follows:

Judging from the terms of the *Kasunduang Pag-aayos*, it is clear that no novation of the old obligation has taken place. Contrary to petitioner's assertion, there was no reduction of the term or period originally stipulated. The original period in the first agreement is one (1) year to be counted from February 1, 2001, or until January 31, 2002. When the complaint was filed before the *barangay* on February 2003, the period of the original agreement had long expired without compliance on the part of petitioner. Hence, there was nothing to reduce or extend. There was only a change in the terms of payment which is not incompatible with the old agreement. In other words, the *Kasunduang Pag-aayos* merely supplemented the old agreement.[9]

The CA went on saying that since the parties entered into a *Kasunduang Pag-aayos* before the *Lupon ng Barangay*, such settlement has the force and effect of a court judgment, which may be enforced by execution within six (6) months from the date of settlement by the *Lupon ng Barangay*, or by court action after the lapse of such time.[10] Considering that more than six (6) months had elapsed from the date of settlement, the CA ruled that the remedy of the petitioner was to file an action for the execution of the *Kasunduang Pag-aayos* in court and not

---

[8] *Id.* at 45.

[9] *Id.* at 41.

[10] *Id.* at 42.

for collection of sum of money.[11] Consequently, the CA deemed it unnecessary to resolve the issue on venue.[12]

The petitioner now comes to this Court.

Issues

(1) Whether or not a complaint for sum of money is the proper remedy for the petitioner, notwithstanding the *Kasunduang Pag-aayos*;[13] and

(2) Whether or not the CA should have decided the case in the merits rather than remand the case for the enforcement of the *Kasunduang Pag-aayos.*[14]

Our Ruling

Because the respondent failed to comply with the terms of the *Kasunduang Pag-aayos*, said agreement is deemed rescinded pursuant to Article 2041 of the New Civil Code and the petitioner can insist on his original demand. Perforce, the complaint for collection of sum of money is the proper remedy.

The petitioner contends that the CA erred in ruling that she should have followed the procedure for enforcement of the amicable settlement as provided in the *Revised Katarungang Pambarangay Law*, instead of filing a collection case. The petitioner points out that the cause of action did not arise from the *Kasunduang Pag-aayos* but on the respondent's breach of the original loan agreement.[15]

---

[11] *Id.* at 43.

[12] *Id.* at 44.

[13] *Id.* at 13.

[14] *Id.* at 14.

[15] *Id.* at 20.

This Court agrees with the petitioner.

It is true that an amicable settlement reached at the *barangay* conciliation proceedings, like the *Kasunduang Pag-aayos* in this case, is binding between the contracting parties and, upon its perfection, is immediately executory insofar as it is not contrary to law, good morals, good customs, public order and public policy.[16] This is in accord with the broad precept of Article 2037 of the Civil Code, *viz*:

> A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

Being a by-product of mutual concessions and good faith of the parties, an amicable settlement has the force and effect of *res judicata* even if not judicially approved.[17] It transcends being a mere contract binding only upon the parties thereto, and is akin to a judgment that is subject to execution in accordance with the Rules.[18] Thus, under Section 417 of the Local Government Code,[19] such amicable settlement or arbitration award may be enforced by execution by the *Barangay Lupon* within six (6) months from the date of settlement, or by filing an action to enforce such settlement in the appropriate city or municipal court, if beyond the six-month period.

Under the first remedy, the proceedings are covered by the Local Government Code and the *Katarungang Pambarangay* Implementing Rules and Regulations. The *Punong Barangay*

---

[16] New Civil Code, Article 1306.

[17] *Republic v. Sandiganbayan*, G.R. No.108292, September 10, 1993, 226 SCRA 314; 468 Phil 1000 (2004).

[18] *Manila International Airport Authority (MIAA) v. ALA Industries Corporation*, G.R. No. 147349, February 13, 2004, 422 SCRA 603, 611.

[19] R.A. No. 7160, Book III, Title One, Chapter VII, Section, 417. Execution. — The amicable settlement or arbitration award may be enforced by execution by the [L]upon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the proper city or municipal court.

is called upon during the hearing to determine solely the fact of non-compliance of the terms of the settlement and to give the defaulting party another chance at voluntarily complying with his obligation under the settlement. Under the second remedy, the proceedings are governed by the Rules of Court, as amended. The cause of action is the amicable settlement itself, which, by operation of law, has the force and effect of a final judgment.[20]

It must be emphasized, however, that enforcement by execution of the amicable settlement, either under the first or the second remedy, is only applicable if the contracting parties have not repudiated such settlement within ten (10) days from the date thereof in accordance with Section 416 of the Local Government Code. If the amicable settlement is repudiated by one party, either expressly or impliedly, the other party has two options, namely, to enforce the compromise in accordance with the Local Government Code or Rules of Court as the case may be, or to consider it rescinded and insist upon his original demand. This is in accord with Article 2041 of the Civil Code, which qualifies the broad application of Article 2037, *viz*:

If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

In the case of *Leonor v. Sycip*,[21] the Supreme Court (SC) had the occasion to explain this provision of law. It ruled that Article 2041 does not require an action for rescission, and the aggrieved party, by the breach of compromise agreement, may just consider it already rescinded, to wit:

It is worthy of notice, in this connection, that, unlike Article 2039 of the same Code, which speaks of "*a cause* of annulment or rescission of the compromise" and provides that "the compromise may *be annulled or rescinded*" for the cause therein specified, thus suggesting an action for annulment or rescission, said Article 2041 confers upon the party concerned, not a "cause" for rescission, or the right to "demand" the rescission of a compromise, but the authority,

---

[20] *Vidal v. Escueta*, 463 Phil. 314 (2003).

[21] 111 Phil. 859 (1961).

not only to "regard it as rescinded", but, also, to "insist upon his original demand." **The language of this Article 2041, particularly when contrasted with that of Article 2039, denotes that no action for rescission is required in said Article 2041, and that the party aggrieved by the breach of a compromise agreement may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission thereof. He need not seek a judicial declaration of rescission, for he may "regard" the compromise agreement already "rescinded."**[22] (emphasis supplied)

As so well stated in the case of *Chavez v. Court of Appeals*,[23] a party's non-compliance with the amicable settlement paved the way for the application of Article 2041 under which the other party may either enforce the compromise, following the procedure laid out in the *Revised Katarungang Pambarangay Law*, or consider it as rescinded and insist upon his original demand. To quote:

In the case at bar, the *Revised Katarungang Pambarangay Law* provides for a two-tiered mode of enforcement of an amicable settlement, to wit: (a) by execution by the *Punong Barangay* which is quasi-judicial and summary in nature on mere motion of the party entitled thereto; and (b) an action in regular form, which remedy is judicial. However, the mode of enforcement does not rule out the right of rescission under Art. 2041 of the *Civil Code*. The availability of the right of rescission is apparent from the wording of Sec. 417 itself which provides that the amicable settlement "*may*" be enforced by execution by the *lupon* within six (6) months from its date or by action in the appropriate city or municipal court, if beyond that period. The use of the word "*may*" clearly makes the procedure provided in the *Revised Katarungang Pambarangay Law* directory or merely optional in nature.

Thus, although the "*Kasunduan*" executed by petitioner and respondent before the Office of the *Barangay* Captain had the force and effect of a final judgment of a court, petitioner's non-compliance paved the way for the application of Art. 2041 under

---

[22] *Id.* at 865.

[23] 493 Phil. 945 (2005).

which respondent may either enforce the compromise, following the procedure laid out in the *Revised Katarungang Pambarangay Law*, or regard it as rescinded and insist upon his original demand. Respondent chose the latter option when he instituted Civil Case No. 5139-V-97 for recovery of unrealized profits and reimbursement of advance rentals, moral and exemplary damages, and attorney's fees. Respondent was not limited to claiming ₱150,000.00 because although he agreed to the amount in the "*Kasunduan*," it is axiomatic that a compromise settlement is not an admission of liability but merely a recognition that there is a dispute and an impending litigation which the parties hope to prevent by making reciprocal concessions, adjusting their respective positions in the hope of gaining balanced by the danger of losing. Under the "*Kasunduan*," respondent was only required to execute a waiver of all possible claims arising from the lease contract if petitioner fully complies with his obligations thereunder. It is undisputed that herein petitioner did not.[24] (emphasis supplied and citations omitted)

In the instant case, the respondent did not comply with the terms and conditions of the *Kasunduang Pag-aayos*. Such non-compliance may be construed as repudiation because it denotes that the respondent did not intend to be bound by the terms thereof, thereby negating the very purpose for which it was executed. Perforce, the petitioner has the option either to enforce the *Kasunduang Pag-aayos,* or to regard it as rescinded and insist upon his original demand, in accordance with the provision of Article 2041 of the Civil Code. Having instituted an action for collection of sum of money, the petitioner obviously chose to rescind the *Kasunduang Pag-aayos.* As such, it is error on the part of the CA to rule that enforcement by execution of said agreement is the appropriate remedy under the circumstances.

Considering that the *Kasunduang Pag-aayos* is deemed rescinded by the non-compliance of the respondent of the terms thereof, remanding the case to the trial court for the enforcement of said agreement is clearly unwarranted.

[24] *Id.* at 954-955.

The petitioner avers that the CA erred in remanding the case to the trial court for the enforcement of the *Kasunduang Pag-aayos* as it prolonged the process, "thereby putting off the case in an indefinite pendency."[25] Thus, the petitioner insists that she should be allowed to ventilate her rights before this Court and not to repeat the same proceedings just to comply with the enforcement of the *Kasunduang Pag-aayos*, in order to finally enforce her right to payment.[26]

The CA took off on the wrong premise that enforcement of the *Kasunduang Pag-aayos* is the proper remedy, and therefore erred in its conclusion that the case should be remanded to the trial court. The fact that the petitioner opted to rescind the *Kasunduang Pag-aayos* means that she is insisting upon the undertaking of the respondent under the original loan contract. Thus, the CA should have decided the case on the merits, as an appeal before it, and not prolong the determination of the issues by remanding it to the trial court. Pertinently, evidence abounds that the respondent has failed to comply with his loan obligation. In fact, the *Kasunduang Pag-aayos* is the well nigh incontrovertible proof of the respondent's indebtedness with the petitioner as it was executed precisely to give the respondent a second chance to make good on his undertaking. And since the respondent still reneged in paying his indebtedness, justice demands that he must be held answerable therefor.

WHEREFORE, the petition is **GRANTED**. The assailed decision of the Court of Appeals is **SET ASIDE** and the Decision of the Regional Trial Court, Branch 146, Makati City, dated March 14, 2007 is **REINSTATED**.

SO ORDERED.

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

---

[25] *Rollo,* p. 26.

[26] *Id.* at 27.

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

SECOND DIVISION

[G.R. No. 195002. January 25, 2012]

HECTOR TREÑAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS. — While the Petition raises questions of law, the resolution of the Petition requires a review of the factual findings of the lower courts and the evidence upon which they are based. As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. In many instances, however, this Court has laid down exceptions to this general rule, as follows: (1) When the factual findings of the Court of Appeals and the trial court are contradictory; (2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) When there is grave abuse of discretion in the appreciation of facts; (5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) When the judgment of the Court of Appeals is premised on misapprehension of facts; (7)When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) When the findings of fact are themselves conflicting; (9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10)When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. ID.; ID.; ID.; ID.; ID.; PRESENT CASE AS AN EXCEPTION ALLOWING A REVIEW OF THE FACTUAL FINDINGS OF THE LOWER COURTS. — In this case, the findings of fact of the trial court and the CA on the issue of the place of

commission of the offense are conclusions without any citation of the specific evidence on which they are based; they are grounded on conclusions and conjectures. The trial court, in its Decision, ruled on the commission of the offense without any finding as to where it was committed x x x: In his Motion for Reconsideration before the RTC, petitioner raised the argument that it had no jurisdiction over the offense charged. The trial court denied the motion, without citing any specific evidence upon which its findings were based, and by relying on conjecture x x x. The instant case is thus an exception allowing a review of the factual findings of the lower courts.

3. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; VENUE IS JURISDICTIONAL IN CRIMINAL CASES; EXPLAINED. — The overarching consideration in this case is the principle that, in criminal cases, venue is jurisdictional. A court cannot exercise jurisdiction over a person charged with an offense committed outside its limited territory. In *Isip v. People*, this Court explained: **The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction**. It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information**. And once it is so shown, the court may validly take cognizance of the case. **However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction**. In a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court.

4. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ESTAFA UNDER ARTICLE 315, PARAGRAPH 1 (B) OF THE REVISED PENAL CODE; ELEMENTS. — Under Article

315, par. 1 (b) of the RPC, the elements of *estafa* are as follows: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; CRIMINAL ACTION SHALL BE INSTITUTED AND TRIED IN THE COURT OF THE MUNICIPALITY OR TERRITORY WHERE THE OFFENSE WAS COMMITTED OR WHERE ANY OF ITS ESSENTIAL INGREDIENTS OCCURRED; RATIONALE; LACK OF JURISDICTION OF THE REGIONAL TRIAL COURT OF MAKATI, UPHELD IN THE CASE AT BAR. — There is nothing in the documentary evidence offered by the prosecution that points to where the offense, or any of its elements, was committed. A review of the testimony of Elizabeth also shows that there was no mention of the place where the offense was allegedly committed x x x: Although the prosecution alleged that the check issued by petitioner was dishonored in a bank in Makati, such dishonor is not an element of the offense of *estafa* under Article 315, par. 1 (b) of the RPC. Indeed, other than the lone allegation in the information, there is nothing in the prosecution evidence which even mentions that any of the elements of the offense were committed in Makati. The rule is settled that an objection may be raised based on the ground that the court lacks jurisdiction over the offense charged, or it may be considered *motu proprio* by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise. That jurisdiction is conferred by the sovereign authority that organized the court and is given only by law in the manner and form prescribed by law. It has been consistently held by this Court that it is unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue. Section 15 (a) of Rule 110 of the Revised Rules on Criminal Procedure of 2000 provides that "[s]ubject to existing

laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred." This fundamental principle is to ensure that the defendant is not compelled to move to, and appear in, a different court from that of the province where the crime was committed as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. This principle echoes more strongly in this case, where, due to distance constraints, coupled with his advanced age and failing health, petitioner was unable to present his defense in the charges against him. There being no showing that the offense was committed within Makati, the RTC of that city has no jurisdiction over the case.

6. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULES 16.01 AND 16.02, VIOLATED IN THE CASE AT BAR. — [T]he Code of Professional Responsibility strongly militates against the petitioner's conduct in handling the funds of his client. Rules 16.01 and 16.02 of the Code provides: Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client. Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him. When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility. Moreover, a lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand. His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.

7. ID.; ID.; REFERRAL OF THE PRESENT CASE TO THE INTEGRATED BAR OF THE PHILIPPINES FOR THE INITIATION OF DISCIPLINARY PROCEEDINGS,

WARRANTED. — In *Cuizon v. Macalino,* this Court ruled that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action. This case is thus referred to the Integrated Bar of the Philippines (IBP) for the initiation of disciplinary proceedings against petitioner. In any case, should there be a finding that petitioner has failed to account for the funds received by him in trust, the recommendation should include an order to immediately return the amount of ₱130,000 to his client, with the appropriate rate of interest from the time of demand until full payment.

APPEARANCES OF COUNSEL

L.M. Gangoso Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

Where life or liberty is affected by its proceedings, courts must keep strictly within the limits of the law authorizing them to take jurisdiction and to try the case and render judgment thereon.[1]

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, seeking to annul and set aside the Court of Appeals (CA) Decision dated 9 July 2010[2] and Resolution dated 4 January 2011.

Statement of the Facts and of the Case

The pertinent facts, as found by the CA, are as follows:

---

[1] *Fukuzume v. People*, G.R. No. 143647, 11 November 2005, 474 SCRA 570, citing *Pangilinan v. Court of Appeals*, 321 SCRA 51 (1999).

[2] Penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario.

Sometime in December 1999, Margarita Alocilja (Margarita) wanted to buy a house-and-lot in Iloilo City covered by TCT No. 109266. It was then mortgaged with Maybank. The bank manager Joselito Palma recommended the appellant Hector Treñas (Hector) to private complainant Elizabeth, who was an employee and niece of Margarita, for advice regarding the transfer of the title in the latter's name. Hector informed Elizabeth that for the titling of the property in the name of her aunt Margarita, the following expenses would be incurred:

₱20,000.00	-	Attorney's fees,
₱90,000.00	-	Capital Gains Tax,
₱24,000.00	-	Documentary Stamp,
₱10,000.00	-	Miscellaneous Expenses.

Thereafter, Elizabeth gave ₱150,000.00 to Hector who issued a corresponding receipt dated December 22, 1999 and prepared [a] Deed of Sale with Assumption of Mortgage. Subsequently, Hector gave Elizabeth Revenue Official Receipt Nos. 00084370 for ₱96,000.00 and 00084369 for ₱24,000.00. However, when she consulted with the BIR, she was informed that the receipts were fake. When confronted, Hector admitted to her that the receipts were fake and that he used the ₱120,000.00 for his other transactions. Elizabeth demanded the return of the money.

To settle his accounts, appellant Hector issued in favor of Elizabeth a Bank of Commerce check No. 0042856 dated November 10, 2000 in the amount of ₱120,000.00, deducting from ₱150,000.00 the ₱30,000.00 as attorney's fees. When the check was deposited with the PCIBank, Makati Branch, the same was dishonored for the reason that the account was closed. Notwithstanding repeated formal and verbal demands, appellant failed to pay. Thus, the instant case of Estafa was filed against him.[3]

On 29 October 2001, an Information was filed by the Office of the City Prosecutor before the Regional Trial Court (RTC), both of Makati City. The Information reads as follows:

That on or about the 23rd day of December, 1999, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from ELIZABETH LUCIAJA the amount of ₱150,000.00 which money was given to her by her aunt Margarita Alocilja, with the express

[3] *Rollo*, p. 33; original citations omitted.

obligation on the part of the accused to use the said amount for expenses and fees in connection with the purchase of a parcel of land covered by TCT No. T-109266, but the said accused, once in possession of the said amount, with the intent to gain and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the amount of ₱130,000.00 less attorney's fees and the said accused failed and refused and still fails and refuses to do so, to the damage and prejudice of complainant Elizabeth Luciaja and Margarita Alocilja in the aforementioned amount of ₱130,000.00.

CONTRARY TO LAW.[4]

During arraignment on 26 April 2002, petitioner, acting as his own counsel, entered a plea of "Not Guilty." Allegedly due to old age and poor health, and the fact that he lives in Iloilo City, petitioner was unable to attend the pre-trial and trial of the case.

On 8 January 2007, the RTC rendered a Decision[5] finding petitioner guilty of the crime of Estafa under section 1, paragraph (b), of Article 315 of the Revised Penal Code (RPC), with the dispositive portion as follows:

WHEREFORE, in view of the foregoing, judgment is rendered finding accused Hector Trenas guilty of the crime of Estafa with abuse of confidence as penalized under Article 315 of the Revised Penal Code, and which offense was committed in the manner described in the aforementioned information. As a consequence of this judgment, accused Hector Trenas is sentenced to suffer a penalty of Ten (10) Years and One (1) Day of *Prision Mayor* to Seventeen (17) Years and Four (4) Months of *Reclusion Temporal*. Moreover, he is ordered to indemnify private complainant Elizabeth Luciaja the amount of ₱130,000.00 with interest at the legal rate of 12% per annum, reckoned from the date this case was filed until the amount is fully paid.

SO ORDERED.[6]

We note at this point that petitioner has been variably called Treñas and Trenas in the pleadings and court issuances, but

[4] *Id.* at 40.

[5] *Id.* at 52-58.

[6] *Id.* at 58.

for consistency, we use the name "Treñas", under which he was accused in the Information.

On 24 August 2007, petitioner filed a Motion for Reconsideration,[7] which was denied by the RTC in a Resolution dated 2 July 2008.[8]

On 25 September 2008, petitioner filed a Notice of Appeal before the RTC.[9] The appeal was docketed as CA-G.R. CR No. 32177. On 9 July 2010, the CA rendered a Decision[10] affirming that of the RTC. On 4 August 2010, petitioner filed a Motion for Reconsideration, which was denied by the CA in a Resolution dated 4 January 2011.[11]

On 25 January 2011, petitioner filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[12] before this Court. He asked for a period of 15 days within which to file a petition for review, and the Court granted his motion in a Resolution dated 9 February 2011.

On 3 February 2011, petitioner filed his Petition for Review on *Certiorari* before this Court, with the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN RULING THAT AN ACCUSED HAS TO PRESENT EVIDENCE IN SUPPORT OF THE DEFENSE OF LACK OF JURISDICTION EVEN IF SUCH LACK OF JURISDICTION APPEARS IN THE EVIDENCE OF THE PROSECUTION;

2. THE COURT OF APPEALS ERRED IN RULING THAT DEMAND MADE BY A PERSON OTHER THAN THE AGGRIEVED PARTY SATISFIES THE REQUIREMENT OF DEMAND TO CONSTITUTE THE OFFENSE OF ESTAFA;[13]

---

[7] *Id.* at 59-66.

[8] *Id.* at 67-72.

[9] *Id.* at 73-74.

[10] *Id.* at 31-38.

[11] *Id.* at 39-40.

[12] *Id.* at 3-6.

[13] *Id.* at 14.

On the first issue, petitioner asserts that nowhere in the evidence presented by the prosecution does it show that ₱150,000 was given to and received by petitioner in Makati City. Instead, the evidence shows that the Receipt issued by petitioner for the money was dated 22 December 1999, without any indication of the place where it was issued. Meanwhile, the Deed of Sale with Assumption of Mortgage prepared by petitioner was signed and notarized in Iloilo City, also on 22 December 1999. Petitioner claims that the only logical conclusion is that the money was actually delivered to him in Iloilo City, especially since his residence and office were situated there as well. Absent any direct proof as to the place of delivery, one must rely on the disputable presumption that things happened according to the ordinary course of nature and the ordinary habits of life. The only time Makati City was mentioned was with respect to the time when the check provided by petitioner was dishonored by Equitable-PCI Bank in its De la Rosa-Rada Branch in Makati. Petitioner asserts that the prosecution witness failed to allege that any of the acts material to the crime of *estafa* had occurred in Makati City. Thus, the trial court failed to acquire jurisdiction over the case.

Petitioner thus argues that an accused is not required to present evidence to prove lack of jurisdiction, when such lack is already indicated in the prosecution evidence.

As to the second issue, petitioner claims that the amount of ₱150,000 actually belongs to Margarita. Assuming there was misappropriation, it was actually she — not Elizabeth — who was the offended party. Thus, the latter's demand does not satisfy the requirement of prior demand by the offended party in the offense of *estafa*. Even assuming that the demand could have been properly made by Elizabeth, the demand referred to the amount of ₱120,000, instead of ₱150,000. Finally, there is no showing that the demand was actually received by petitioner. The signature on the Registry Return Receipt was not proven to be that of petitioner's.

On 30 May 2011, this Court issued a Resolution directing the Office of the Solicitor General (OSG) to file the latter's

Comment on the Petition. On 27 July 2011, the OSG filed a Motion for Extension, praying for an additional period of 60 days within which to submit its Comment. This motion was granted in a Resolution dated 12 September 2011. On 23 September 2011, the OSG filed a Motion for Special Extension, requesting an additional period of five days. On 29 September 2011, it filed its Comment on the Petition.

In its Comment, the OSG asserts that the RTC did not err in convicting petitioner as charged. The OSG notes that petitioner does not dispute the factual findings of the trial court with respect to the delivery of ₱150,000 to him, and that there was a relationship of trust and confidence between him and Elizabeth. With respect to his claim that the Complaint should have been filed in Iloilo City, his claim was not supported by any piece of evidence, as he did not present any. Further, petitioner is, in effect, asking the Court to weigh the credibility of the prosecution witness, Elizabeth. However, the trial court's assessment of the credibility of a witness is entitled to great weight, unless tainted with arbitrariness or oversight of some fact or circumstance, which is not the case here.

With respect to the second issue, the OSG stresses that the defense of "no valid demand" was not raised in the lower court. Nevertheless, the demand letter sent to Elizabeth suffices, as she is also one of the complainants alleged in the Information, as an agent of Margarita. Moreover, no proof was adduced as to the genuineness of petitioner's signature in the Registry Return Receipt of the demand letter.

The OSG, however, submits that the Court may recommend petitioner for executive clemency, in view of his advanced age and failing health.

The Court's Ruling

The Petition is impressed with merit.

Review of Factual Findings

While the Petition raises questions of law, the resolution of the Petition requires a review of the factual findings of the lower courts and the evidence upon which they are based.

As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. In many instances, however, this Court has laid down exceptions to this general rule, as follows:

(1) When the factual findings of the Court of Appeals and the trial court are contradictory;
(2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
(3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;
(4) When there is grave abuse of discretion in the appreciation of facts;
(5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
(6) When the judgment of the Court of Appeals is premised on misapprehension of facts;
(7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
(8) When the findings of fact are themselves conflicting;
(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and
(10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[14]

In this case, the findings of fact of the trial court and the CA on the issue of the place of commission of the offense are conclusions without any citation of the specific evidence on which they are based; they are grounded on conclusions and conjectures.

The trial court, in its Decision, ruled on the commission of the offense without any finding as to where it was committed:

Based on the evidence presented by the prosecution through private complainant Elizabeth Luciaja, the Court is convinced that accused Trenas had committed the offense of Estafa by taking advantage of her trust so that he could misappropriate for his own personal benefit

[14] *Salcedo v. People*, G.R. No. 137143, 8 December 2000, 347 SCRA 499.

the amount entrusted to him for payment of the capital gains tax and documentary stamp tax.

As clearly narrated by private complainant Luciaja, after accused Trenas had obtained the amount of ₱150,000.00 from her, he gave her two receipts purportedly issued by the Bureau of Internal Revenue, for the fraudulent purpose of fooling her and making her believe that he had complied with his duty to pay the aforementioned taxes. Eventually, private complainant Luciaja discovered that said receipts were fabricated documents.[15]

In his Motion for Reconsideration before the RTC, petitioner raised the argument that it had no jurisdiction over the offense charged. The trial court denied the motion, without citing any specific evidence upon which its findings were based, and by relying on conjecture, thus:

That the said amount was given to [Treñas] in Makati City was incontrovertibly established by the prosecution. Accused Treñas, on the other hand, never appeared in Court to present countervailing evidence. It is only now that he is suggesting another possible scenario, not based on the evidence, but on mere "what ifs". x x x

Besides, if this Court were to seriously assay his assertions, the same would still not warrant a reversal of the assailed judgment. Even if the Deed of Sale with Assumption of Mortgage was executed on 22 December 999 in Iloilo City, it cannot preclude the fact that the ₱150,000.00 was delivered to him by private complainant Luciaja in Makati City the following day. His reasoning the money must have been delivered to him in Iloilo City because it was to be used for paying the taxes with the BIR office in that city does not inspire concurrence. The records show that he did not even pay the taxes because the BIR receipts he gave to private complainant were fake documents. Thus, his argumentation in this regard is too specious to consider favorably.[16]

For its part, the CA ruled on the issue of the trial court's jurisdiction in this wise:

It is a settled jurisprudence that the court will not entertain evidence unless it is offered in evidence. It bears emphasis that Hector did

---

[15] *Rollo*, pp. 55-56.

[16] *Id.* at 71.

not comment on the formal offer of prosecution's evidence nor present any evidence on his behalf. He failed to substantiate his allegations that he had received the amount of ₱150,000.00 in Iloilo City. Hence, Hector's allegations cannot be given evidentiary weight.

Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on appellate tribunal. They are entitled to great weight and respect and will not be disturbed on review.[17]

The instant case is thus an exception allowing a review of the factual findings of the lower courts.

Jurisdiction of the Trial Court

The overarching consideration in this case is the principle that, in criminal cases, venue is jurisdictional. A court cannot exercise jurisdiction over a person charged with an offense committed outside its limited territory. In *Isip v. People*,[18] this Court explained:

The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information**. And once it is so shown, the court may validly take cognizance of the case. **However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction**. (Emphasis supplied.)

---

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

[18] G.R. No. 170298, 26 June 2007, 525 SCRA 735.

In a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court.

In *Fukuzume v. People*,[19] this Court dismissed a Complaint for *estafa*, wherein the prosecution failed to prove that the essential elements of the offense took place within the trial court's jurisdiction. The Court ruled:

> More importantly, we find nothing in the direct or cross-examination of Yu to establish that he gave any money to Fukuzume or transacted business with him with respect to the subject aluminum scrap wires inside or within the premises of the Intercontinental Hotel in Makati, or anywhere in Makati for that matter. Venue in criminal cases is an essential element of jurisdiction. x x x
>
> In the present case, the criminal information against Fukuzume was filed with and tried by the RTC of Makati. He was charged with estafa as defined under Article 315, paragraph 2(a) of the Revised Penal Code, the elements of which are as follows: x x x
>
> **The crime was alleged in the Information as having been committed in Makati**. **However, aside from the sworn statement** executed by Yu on April 19, 1994, **the prosecution presented no other evidence, testimonial or documentary, to corroborate Yu's sworn statement or to prove that any of the above-enumerated elements of the offense charged was committed in Makati**. Indeed, the prosecution failed to establish that any of the subsequent payments made by Yu in the amounts of ₱50,000.00 on July 12, 1991, ₱20,000.00 on July 22, 1991, ₱50,000.00 on October 14, 1991 and ₱170,000.00 on October 18, 1991 was given in Makati. Neither was there proof to show that the certifications purporting to prove that NAPOCOR has in its custody the subject aluminum scrap wires and that Fukuzume is authorized by Furukawa to sell the same were given by Fukuzume to Yu in Makati. On the contrary, the testimony of Yu established that all the elements of the offense charged had been committed in Parañaque, to wit: that on July 12, 1991, Yu went to the house of Fukuzume in Parañaque; that with the intention of selling the subject aluminum scrap wires, the latter pretended that he is a representative of Furukawa who is authorized to sell the said scrap wires; that

[19] *Supra* note 1.

based on the false pretense of Fukuzume, Yu agreed to buy the subject aluminum scrap wires; that Yu paid Fukuzume the initial amount of ₱50,000.00; that as a result, Yu suffered damage. Stated differently, the crime of estafa, as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, was consummated when Yu and Fukuzume met at the latter's house in Parañaque and, by falsely pretending to sell aluminum scrap wires, Fukuzume was able to induce Yu to part with his money.

x x x x x x x x x

From the foregoing, it is evident that **the prosecution failed to prove that Fukuzume committed the crime of estafa in Makati or that any of the essential ingredients of the offense took place in the said city**. **Hence, the judgment of the trial court convicting Fukuzume of the crime of estafa should be set aside for want of jurisdiction**, without prejudice, however, to the filing of appropriate charges with the court of competent jurisdiction. (Emphasis supplied)

In this case, the prosecution failed to show that the offense of *estafa* under Section 1, paragraph (b) of Article 315 of the RPC was committed within the jurisdiction of the RTC of Makati City.

That the offense was committed in Makati City was alleged in the information as follows:

That on or about the 23rd day of December, 1999, **in the City of Makati**, Metro Manila, Philippines and **within the jurisdiction of this Honorable Court**, the above-named accused, received in trust from ELIZABETH LUCIAJA the amount of ₱150,000.00 x x x. (Emphasis supplied.)[20]

Ordinarily, this statement would have been sufficient to vest jurisdiction in the RTC of Makati. However, the Affidavit of Complaint executed by Elizabeth does not contain any allegation as to where the offense was committed. It provides in part:

4. THAT on 23 December 1999, [Elizabeth] personally entrusted to ATTY. HECTOR TREÑAS the sum of ₱150,000.00 to

---

[20] *Rollo*, p. 40.

be expended as agreed and ATTY. HECTOR TREÑAS issued to me a receipt, a photo copy of which is hereto attached as Annex "B",

5. THAT despite my several follow-ups with ATTY. HECTOR TREÑAS, the latter failed to transfer the title of aforesaid property to MRS. MARGARITA ALOCILJA. He also failed to pay the capital gains tax, documentary stamps and BIR-related expenses. What ATTY. HECTOR TREÑAS accomplished was only the preparation of the Deed of Sale covering aforesaid property. A copy of said Deed of Sale is hereto attached as Annex "C",

6. THAT in view of my persistent follow-ups, ATTY. HECTOR TREÑAS issued to me a check for refund of the sum given to him less the attorney's fee of ₱20,000.00 and the sum of ₱10,000.00 allegedly paid to BIR or in the net sum of ₱120,000.00. x x x

7. THAT when said check was deposited at EQUITABLE PCI BANK dela Rosa-Rada Branch at Makati City, the same was dishonored by the drawee bank for the reason: ACCOUNT CLOSED. x x x[21]

Aside from the lone allegation in the Information, no other evidence was presented by the prosecution to prove that the offense or any of its elements was committed in Makati City.

Under Article 315, par. 1 (b) of the RPC, the elements of *estafa* are as follows: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender.[22]

---

[21] *Id.* at 41-42.

[22] *Salazar v. People of the Philippines*, 480 Phil. 444 (2004).

There is nothing in the documentary evidence offered by the prosecution[23] that points to where the offense, or any of its elements, was committed. A review of the testimony of Elizabeth also shows that there was no mention of the place where the offense was allegedly committed:

Q After the manager of Maybank referred Atty. Treñas to you, what happened next?
A We have met and he explained to the expenses and what we will have to… and she will work for the Deed of Sale.
Q And did he quote any amount when you got to the expenses?
A Yes. I gave him ONE HUNDRED FIFTY THOUSAND.
Q What was the amount quoted to you?
A ONE HUNDRED FIFTY THOUSAND.
Q Did he give a breakdown of this ONE HUNDRED FIFTY THOUSAND?
A Yes, sir.
Q And what is the breakdown of this ONE HUNDRED FIFTY THOUSAND?
A TWENTY THOUSAND is for his Attorney's fee, NINETY THOUSAND is for the capital gain tax TWENTY FOUR THOUSAND is intended for documentary sum (*sic*) and TEN THOUSAND PESOS is for other expenses for BIR.
Q And did you give him this ONE HUNDRED FIFTY THOUSAND?
A Yes, sir.
Q Did he issue a receipt?
A Yes, sir.
Q If shown to you a receipt issued by Atty. Treñas for this ONE HUNDRED FIFTY THOUSAND, will you be able to identify it?
A Yes, sir.
Q I am showing to you a document, madam witness, already identified during the pre-trial as exhibit "B". This appears to be a receipt dated December 22, 1999. Will you please go over this document and inform this court what relation has this to the receipt which you said Atty. Treñas issued to you?
A This is the receipt issued by Atty. Hector Treñas.

---

[23] Records, pp. 260-262.

Q Now, after the amount of ONE HUNDRED FIFTY THOUSAND was given to Atty. Treñas by you, what happened next?
A We made several follow-ups but he failed to do his job.[24]

Although the prosecution alleged that the check issued by petitioner was dishonored in a bank in Makati, such dishonor is not an element of the offense of *estafa* under Article 315, par. 1 (b) of the RPC.

Indeed, other than the lone allegation in the information, there is nothing in the prosecution evidence which even mentions that any of the elements of the offense were committed in Makati. The rule is settled that an objection may be raised based on the ground that the court lacks jurisdiction over the offense charged, or it may be considered *motu proprio* by the court at any stage of the proceedings or on appeal.[25] Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise. That jurisdiction is conferred by the sovereign authority that organized the court and is given only by law in the manner and form prescribed by law.[26]

It has been consistently held by this Court that it is unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue.[27] Section 15 (a) of Rule 110 of the Revised Rules on Criminal Procedure of 2000 provides that "[s]ubject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred." This fundamental principle is to ensure that the defendant is not compelled to move to, and appear in, a different court from that of the province where the crime was committed as it would cause him great inconvenience

---

[24] Records, pp. 352-353.

[25] *Supra*; *see also* RULES OF COURT, Rule 118, Sec. 9 in relation to Sec. 3(b).

[26] *Id.*

[27] *Buaya v. Polo*, 251 Phil. 422 (1989); *Javier v. Sandiganbayan*, G.R. Nos. 147026-27, 11 September 2009, 599 SCRA 324.

in looking for his witnesses and other evidence in another place.[28] This principle echoes more strongly in this case, where, due to distance constraints, coupled with his advanced age and failing health, petitioner was unable to present his defense in the charges against him.

There being no showing that the offense was committed within Makati, the RTC of that city has no jurisdiction over the case.[29]

As such, there is no more need to discuss the other issue raised by petitioner.

At this juncture, this Court sees it fit to note that the Code of Professional Responsibility strongly militates against the petitioner's conduct in handling the funds of his client. Rules 16.01 and 16.02 of the Code provides:

> Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent.[30] If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.[31]

Moreover, a lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand.[32] His failure to

---

[28] *Campanano v. Datuin*, G.R. No. 172142, 17 October 2007, 536 SCRA 471.

[29] *See Uy v. Court of Appeals*, G.R. No. 119000, 28 July 1997, 276 SCRA 367.

[30] *Belleza v. Macasa*, A.C. No. 7815, 23 July 2009, 593 SCRA 549.

[31] *Id*.

[32] Code of Professional Responsibility, Rule 16.03; *Barnachea v. Quiocho*, A.C. No. 5925, 11March 2003, 399 SCRA 1.

return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.[33] It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[34]

In *Cuizon v. Macalino*,[35] this Court ruled that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.

This case is thus referred to the Integrated Bar of the Philippines (IBP) for the initiation of disciplinary proceedings against petitioner. In any case, should there be a finding that petitioner has failed to account for the funds received by him in trust, the recommendation should include an order to immediately return the amount of ₱130,000 to his client, with the appropriate rate of interest from the time of demand until full payment.

WHEREFORE, the Petition is **GRANTED**. The Decision dated 9 July 2010 and the Resolution dated 4 January 2011 issued by the Court of Appeals in CA-G.R. CR No. 32177 are SET ASIDE on the ground of lack of jurisdiction on the part of the Regional Trial Court, Branch 137, Makati City. Criminal Case No. 01-2409 is **DISMISSED** without prejudice. This case is **REFERRED** to the IBP Board of Governors for investigation and recommendation pursuant to Section 1 of Rule 139-B of the Rules of Court.

SO ORDERED.

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

---

[33] *Pentecostes v. Ibañez*, 363 Phil. 624 (1999).

[34] *Supra* note 30.

[35] A.C. No. 4334, 7 July 2004, 433 SCRA 484.

THIRD DIVISION

[A.M. No. P-12-3027. January 30, 2012]
(Formerly OCA I.P.I. No. 11-3584-P)

LUIS P. PINEDA, *complainant, vs.* **NEIL T. TORRES, Sheriff III, Municipal Trial Court in Cities, Branch 2, Angeles City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; A SHERIFF PERFORMS A VERY SENSITIVE FUNCTION IN THE DISPENSATION OF JUSTICE. — By the very nature of his duties, a sheriff performs a very sensitive function in the dispensation of justice. He is duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of his duties. The sheriff is the front-line representative of the justice system in this country, and if he loses the trust reposed in him, he inevitably diminishes, likewise, the faith of the people in the judiciary.

2. ID.; ID.; ID.; ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 12; RULES IN THE IMPLEMENTATION OF WRITS; VIOLATED IN THE CASE AT BAR. — Administrative Circular No. 12 is explicit as to the rules to be followed in the implementation of writs. Paragraph 2 thereof states: x x x 2. All Clerks of Court of the Metropolitan Trial Court and Municipal Trial Courts in Cities, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts ***within their territorial jurisdiction*****;** x x x Paragraph 5 of the same circular is likewise clear and self-explanatory. 5. No sheriff or deputy sheriff shall execute a court writ outside his territorial jurisdiction without first notifying ***in writing,*** and seeking the assistance of, the sheriff of the place where the execution shall take place; Guided by the above-mentioned Circular, it is clear that respondent's act of implementing the subject writs in San Fernando City, when his territorial jurisdiction is confined only to Angeles City, is a violation of the Circular and tantamount to abuse of authority.

While respondent claimed that he personally informed the OCC of San Fernando City, he, however, failed to prove that he made written notice as required by Administrative Circular No. 12. A mere submission of the copies of the court processes to the OCC will not suffice as to the written notice requirement.

3. ID.; ID.; ID.; ID.; ID.; ID.; OBJECTIVES. — Precisely, Administrative Circular No. 12 was promulgated in order to streamline the service and execution of court writs and processes in courts and to better serve the public good and facilitate the administration of justice. The requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. An immediate enforcement of a writ does not mean the abdication of the notification requirement.

D E C I S I O N

PERALTA, *J.*:

Before us is an administrative complaint filed by Luis P. Pineda (complainant) against Neil T. Torres (respondent), Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 2, Angeles City, Pampanga, for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service in relation to his implementation of the writs of replevin issued in Civil Case Nos. 10-845 and 10-848.

Complainant Luis Pineda is the owner of a business enterprise under the business name, Victorious Bakeshop, located at Km 72, McArthur Highway, San Isidro, San Fernando City, Pampanga.

Complainant alleged that on October 7, 2010, the MTCC, Branch 2, Angeles City, Pampanga issued writs of *replevin* in Civil Case Nos. 10-845 and 10-848. In Civil Case No. 10-845, respondent was directed to take possession of a Mitsubishi L-300 van with plate number CRK-401.[1] While in Civil Case

[1] *Rollo*, p. 2.

No. 10-848, respondent was directed to take possession of another Mitsubishi L-300 van with plate number CRK-128.[2]

Complainant narrated that on October 28, 2010, by virtue of said writ of *replevin*, respondent proceeded to the premises of Victorious Bakeshop at Km 72, McArthur Highway, San Isidro, San Fernando City, Pampanga, and unlawfully took possession of a Mitsubishi L-300 van with plate number CRK-128.

Likewise, on November 22, 2010, respondent, again, proceeded to the premises of Victorious Bakeshop and forcibly took a Mitsubishi L-300 van with plate number CRK-401.

Complainant claimed that in both instances respondent served and implemented the writs of *replevin* without notifying in writing the sheriff- in-charge in San Fernando City, Pampanga, where the vehicles were located. Consequently, complainant argued that respondent not only abused his authority but he is also liable for violation of paragraph 5 of Supreme Court Administrative Circular No. 12.

To prove his allegations, complainant submitted a Certification[3] dated December 6, 2010, issued by Juanita M. Flores, Clerk of Court IV of the MTCC of San Fernando City, Pampanga, which stated that respondent did not request for assistance regarding the implementation of the subject writs.

Finally, complainant further narrated that respondent Sheriff also rudely threatened Edilberto Jimenez (Jimenez), the security guard who was watching over the vehicles at the time the writs were being implemented.

In his *Sinumpaang Salaysay*, Jimenez quoted respondent saying in the vernacular, "*Nung bisa kung iyabe daka keni pota galang ali naka agyung ipagtanggol ning amu mu.*" (*Kung gusto mo idadawit kita baka hindi ka kayang ipagtanggol ng amo mo.*). Jimenez claimed that he was embarrassed and felt humiliated as respondent seemed to belittle his position as security guard.

---

[2] *Id*.

[3] *Id*. at 10.

On January 12, 2011, the Office of the Court Administrator (OCA), directed respondent to file his Comment on the charges against him.[4]

In his Comment[5] dated February 18, 2011, respondent claimed that he seized the subject vehicles in his capacity as Sheriff of the MTCC, Angeles City, and pursuant to the writs issued by the court. He claimed that the Mitsubishi L-300 with plate number CRK-128 was voluntarily and peacefully surrendered to him. Likewise, respondent claimed that he also exerted reasonable and lawful force in taking possession of the Mitsubishi L-300 van with plate number CRK-401 even though defendant Orlando David was able to instruct Jimenez to padlock the gate leading to the van.

Respondent sheriff denied uttering threatening words to Jimenez. He claimed that he merely tried to explain to Jimenez that he could end up being implicated in the case if he will prevent him from implementing a lawful order of the court.

With regard to the alleged violation of Administrative Circular No. 12, respondent claimed that he went to the Office of the Clerk of Court (OCC), MTCC, San Fernando City, Pampanga, to coordinate with the sheriff of the said court in the implementation of the writs. However, respondent alleged that the OCC-MTCC merely received the court processes he had in possession.

In his Reply[6] dated April 5, 2011, complainant pointed out that respondent could not have complied with Administrative Circular No. 12[7] and notified in writing the OCC-MTCC, San Fernando City, Pampanga. Complainant presented a copy of

---

[4] *Id*. at 11.

[5] *Id*. at 12-19.

[6] *Id*. at 25-28.

[7] **ADMINISTRATIVE CIRCULAR NO. 12**

SUPREME COURT CIRCULARS AND ORDERS

TO: ALL JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, AND MUNICIPAL TRIAL COURTS IN CITIES

the security guard's logbook where it was shown that respondent arrived at Victorious Bakeshop around 10:08 in the morning to

---

SUBJECT: GUIDELINES AND PROCEDURE IN THE SERVICE AND EXECUTION OF COURT WRITS AND PROCESSES IN THE REORGANIZED COURTS

For the purpose of streamlining the service and execution of court writs and processes in the reorganized courts under Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980", and to better serve the public good and facilitate the administration of justice, the Court set forth hereunder the following guidelines:

1. All Clerks of Court, who are also *ex-officio* sheriffs, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts within their territorial jurisdiction;

2. All Clerks of Court of the Metropolitan Trial Court and Municipal Trial Courts in Cities, and/or their deputy sheriffs shall serve all court processes and execute all writs of their respective courts within their territorial jurisdiction;

3. The judge of the Regional Trial Court, Metropolitan Trial Court, and the Municipal Trial Court in Cities, in the absence of the deputy sheriff appointed and assigned in his sala, may at any time designate any of the deputy sheriffs in the office of the Clerk of Court. However, the said judge shall not be allowed to designate the deputy sheriff of another branch without first securing the consent of the Presiding Judge thereof;

4. All sheriffs and deputy sheriffs shall submit a report to the judge concerned on the action taken on all writs and processes assigned to them within ten (10) days from receipt of said process or writ. Said Report shall form part of the records of the case;

5. No sheriff or deputy sheriff shall execute a court writ outside his territorial jurisdiction without first notifying in writing, and seeking the assistance of, the sheriff of the place where the execution shall take place;

6. No sheriff or deputy sheriff shall act as special deputy sheriff of any party litigant;

7. The judge may be allowed to designate or deputize any person to serve court processes and writs in remote areas in the absence of the regular sheriff thereat;

8. The sheriff is primarily responsible for the speedy and efficient service of all court processes and writs originating from his court and the branches thereof, and those that may be delegated to him from other courts. He shall submit to the Office of the Court Administrator, Supreme Court, a monthly report which shall indicate therein the number of writs and processes issued and served, as well as the number of writs and processes unserved, during the month, and the names of deputy sheriffs who executed each writ. Unserved writs and processes shall be explained in the report.

implement the writ on October 28, 2010, while the certified true copies of the writs which respondent presented indicated rubber-stamp marks on the upper right hand corner that the OCC-MTCC of San Fernando City received said copies much later or at 11:50 in the morning.

Complainant maintained that respondent merely submitted copies of the writs and made no notice in writing in seeking the assistance of the sheriff of the place where the execution shall take place. He asserted that respondent should not have proceeded with the execution of the writ unless and until the assistance of the Sheriff of San Fernando City is provided.

In a Memorandum[8] dated November 9, 2011, the OCA found respondent sheriff guilty of Grave Abuse of Authority and Violation of Administrative Circular No. 12. Thus, it recommended that the instant complaint be re-docketed as a regular administrative matter and that respondent be fined in the amount of ₱5,000.00.

We agree with the findings and recommendation of the OCA.

By the very nature of his duties, a sheriff performs a very sensitive function in the dispensation of justice. He is duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of his duties. The sheriff is the front-line representative of the justice system in this country, and if he loses the trust reposed in him, he inevitably diminishes, likewise, the faith of the people in the judiciary.[9]

Indeed, Administrative Circular No. 12 is explicit as to the rules to be followed in the implementation of writs. Paragraph 2 thereof states:

x x x x x x x x x

2. All Clerks of Court of the Metropolitan Trial Court and Municipal Trial Courts in Cities, and/or their deputy sheriffs shall

---

[8] *Rollo*, pp. 32-35.

[9] *Reyes v. Cabusao*, A.M. No. P-03-1676, July 15, 2005, 463 SCRA 433, 437-438.

serve all court processes and execute all writs of their respective courts ***within their territorial jurisdiction;***

x x x x x x x x x

Paragraph 5 of the same circular is likewise clear and self-explanatory.

5. No sheriff or deputy sheriff shall execute a court writ outside his territorial jurisdiction without first notifying ***in writing,*** and seeking the assistance of, the sheriff of the place where the execution shall take place;

Guided by the above-mentioned Circular, it is clear that respondent's act of implementing the subject writs in San Fernando City, when his territorial jurisdiction is confined only to Angeles City, is a violation of the Circular and tantamount to abuse of authority. While respondent claimed that he personally informed the OCC of San Fernando City, he, however, failed to prove that he made written notice as required by Administrative Circular No. 12. A mere submission of the copies of the court processes to the OCC will not suffice as to the written notice requirement.

Precisely, Administrative Circular No. 12 was promulgated in order to streamline the service and execution of court writs and processes in courts and to better serve the public good and facilitate the administration of justice.[10] The requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[11] An immediate enforcement of a writ does not mean the abdication of the notification requirement.[12]

---

[10] *Torres v. Cabesuela*, 418 Phil. 45, 450 (2001).

[11] *Raymundo v. Calaguas*, A.M. No. P-01-1496, January 28, 2005, 449 SCRA 437, 443.

[12] *Manuel v. Escalante*, G.R. No. 134141, August 13, 2002, 387 SCRA 239, 246.

We have consistently stressed that officers of the court and all court personnel are exhorted to be vigilant in the execution of the law. Sheriffs, as agents of the law, are therefore called upon to discharge their duties with due care and utmost diligence. They cannot afford to err in serving court writs and processes and in implementing court orders lest they undermine the integrity of their office and the efficient administration of justice.[13]

WHEREFORE, the Court finds Neil T. Torres, Sheriff III, Municipal Trial Court in Cities, Branch 2, Angeles City, Pampanga, **GUILTY of ABUSE OF AUTHORITY** and Violation of Administrative Circular No. 12. He is **ORDERED** to pay a **FINE** in the amount of **FIVE THOUSAND PESOS (₱5,000.00),**[14] with a stern warning that a repetition of similar acts shall be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154670. January 30, 2012]

FONTANA RESORT AND COUNTRY CLUB, INC. AND RN DEVELOPMENT CORP., *petitioners, vs.* **SPOUSES ROY S. TAN AND SUSAN C. TAN,** *respondents.*

---

[13] *Torres v. Cabesuela, supra* note 10.

[14] Following *Raymundo v. Calaguas, supra* note 11, at 445.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1178 dated January 26, 2012.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ALLEGATIONS IN THE COMPLAINT DETERMINE THE NATURE OF THE ACTION INSTITUTED; CASE AT BAR. — Well-settled is the rule that the allegations in the complaint determine the nature of the action instituted. x x x The x x x allegations in respondents' Complaint sufficiently state a cause of action for the annulment of a voidable contract of sale based on fraud under Article 1390, in relation to Article 1398, of the Civil Code, and/or rescission of a reciprocal obligation under Article 1191, in relation to Article 1385, of the same Code. x x x It does not matter that respondents, in their Complaint, simply prayed for refund of the purchase price they had paid for their FRCCI shares, without specifically mentioning the annulment or rescission of the sale of said shares. The Court of Appeals treated respondents' Complaint as one for annulment/rescission of contract and, accordingly, it did not simply order petitioners to refund to respondents the purchase price of the FRCCI shares, but also directed respondents to comply with their correlative obligation of surrendering their certificates of shares of stock to petitioners.

2. ID.; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; CONTEMPLATES ONLY QUESTIONS OF LAW; AN EXCEPTION IS WHEN THE FACTUAL FINDINGS OF THE ADMINISTRATIVE AGENCY AND THE COURT OF APPEALS ARE CONTRADICTORY. — As a general rule, "the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law and not issues of fact. This rule, however, is inapplicable in cases x x x where the factual findings complained of are absolutely devoid of support in the records or the assailed judgment of the appellate court is based on a misapprehension of facts." Another well-recognized exception to the general rule is when the factual findings of the administrative agency and the Court of Appeals are contradictory. The said exceptions are applicable to the case at bar. There are contradictory findings below as to the existence of fraud: while Hearing Officer Bacalla and the SEC *en banc* found that there is fraud on the part of petitioners in selling the FRCCI shares to respondents, the Court of Appeals found none.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; CONSENT; FRAUD; EXPLAINED. — There is fraud when one party is induced by the other to enter into a contract, through and solely because of the latter's insidious words or machinations. But not all forms of fraud can vitiate consent. "Under Article 1330, fraud refers to *dolo causante* or causal fraud, in which, prior to or simultaneous with the execution of a contract, one party secures the consent of the other by using deception, without which such consent would not have been given." "Simply stated, the fraud must be the determining cause of the contract, or must have caused the consent to be given."

4. ID.; ID.; ID.; ID.; ID.; ONE WHO ALLEGES DEFECT OR LACK OF VALID CONSENT TO A CONTRACT BY REASON OF FRAUD OR UNDUE INFLUENCE MUST ESTABLISH BY FULL, CLEAR AND CONVINCING EVIDENCE SUCH SPECIFIC ACTS THAT VITIATED A PARTY'S CONSENT, OTHERWISE, THE LATTER'S PRESUMED CONSENT TO THE CONTRACT PREVAILS; FRAUD, NOT PROVEN IN THE CASE AT BAR. — "[T]he general rule is that he who alleges fraud or mistake in a transaction must substantiate his allegation as the presumption is that a person takes ordinary care for his concerns and that private dealings have been entered into fairly and regularly." One who alleges defect or lack of valid consent to a contract by reason of fraud or undue influence must establish by full, clear and convincing evidence such specific acts that vitiated a party's consent, otherwise, the latter's presumed consent to the contract prevails. In this case, respondents have miserably failed to prove how petitioners employed fraud to induce respondents to buy FRCCI shares. It can only be expected that petitioners presented the FLP and the country club in the most positive light in order to attract investor-members. There is no showing that in their sales talk to respondents, petitioners actually used insidious words or machinations, without which, respondents would not have bought the FRCCI shares. Respondents appear to be literate and of above-average means, who may not be so easily deceived into parting with a substantial amount of money. What is apparent to us is that respondents knowingly and willingly consented to buying FRCCI shares, but were later on disappointed with the actual FLP facilities and club membership benefits.

5. ID.; ID.; ID.; RIGHT TO RESCIND A CONTRACT ARISES ONCE THE OTHER PARTY DEFAULTS IN THE PERFORMANCE OF HIS OBLIGATION; RESCISSION, NOT PROPER IN THE CASE AT BAR. — [W]e find no evidence on record that petitioners defaulted on any of their obligations that would have called for the rescission of the sale of the FRCCI shares to respondents. "The right to rescind a contract arises once the other party defaults in the performance of his obligation." "Rescission of a contract will not be permitted for a slight or casual breach, but only such substantial and fundamental breach as would defeat the very object of the parties in making the agreement." In the same case as fraud, the burden of establishing the default of petitioners lies upon respondents, but respondents once more failed to discharge the same.

6. ID.; ID.; ID.; NEGLIGENCE; ESTABLISHED IN THE CASE AT BAR. — Respondents additionally alleged the unreasonable cancellation of their confirmed reservation for the free use of an FLP villa on April 1, 1999. According to respondents, their reservation was confirmed by a Mr. Murphy Magtoto, only to be cancelled later on by a certain Shaye. Petitioners countered that April 1, 1999 was a Holy Thursday and FLP was already fully-booked. Petitioners, however, do not deny that Murphy Magtoto and Shaye are FLP employees who dealt with respondents. The absence of any confirmation number issued to respondents does not also discount the possibility that the latter's reservation was mistakenly confirmed by Murphy Magtoto despite FLP being fully-booked. At most, we perceive a mix-up in the reservation process of petitioners. This demonstrates a mere negligence on the part of petitioners, but not willful intention to deprive respondents of their membership benefits. It does not constitute default that would call for rescission of the sale of FRCCI shares by petitioners to respondents. For the negligence of petitioners as regards respondents' reservation for April 1, 1999, respondents are at least entitled to nominal damages in accordance with Articles 2221 and 2222 of the Civil Code.

7. ID.; ID.; DAMAGES; NOMINAL DAMAGES; PROPRIETY OF GRANTING NOMINAL DAMAGES; EXPOUNDED; AWARDED IN THE CASE AT BAR. — In *Almeda v. Cariño*, we have expounded on the propriety of granting nominal damages as follows: [N]ominal damages may be awarded to a

> plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper. It is also settled that "the amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances." In this case, we deem that the respondents are entitled to an award of ₱5,000.00 as nominal damages in recognition of their confirmed reservation for the free use of an FLP villa on April 1, 1999 which was inexcusably cancelled by petitioner on March 3, 1999.

APPEARANCES OF COUNSEL

Jose S. Santos, Jr., Andres S. Santos & Associates for petitioners.

Ang & Associates for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review under Rule 45 of the Rules of Court is the Decision[1] dated May 30, 2002 and Resolution[2] dated August 12, 2002 of the Court Appeals in CA-G.R. SP No. 67816. The appellate court affirmed with modification the Decision[3] dated July 6, 2001 of the Securities and Exchange Commission (SEC) *En*

---

[1] *Rollo*, pp. 28-36; penned by Associate Justice Eliezer R. de los Santos with Associate Justices Cancio C. Garcia and Marina L. Buzon, concurring.

[2] *Id.* at 38.

[3] *Id.* at 83-85.

Banc in SEC AC Case No. 788 which, in turn, affirmed the Decision[4] dated April 28, 2000 of Hearing Officer Marciano S. Bacalla, Jr. (Bacalla) of the SEC Securities Investigation and Clearing Department (SICD) in SEC Case No. 04-99-6264.

Sometime in March 1997, respondent spouses Roy S. Tan and Susana C. Tan bought from petitioner RN Development Corporation (RNDC) two class "D" shares of stock in petitioner Fontana Resort and Country Club, Inc. (FRCCI), worth ₱387,300.00, enticed by the promises of petitioners' sales agents that petitioner FRCCI would construct a park with first-class leisure facilities in Clark Field, Pampanga, to be called Fontana Leisure Park (FLP); that FLP would be fully developed and operational by the first quarter of 1998; and that FRCCI class "D" shareholders would be admitted to one membership in the country club, which entitled them to use park facilities and stay at a two-bedroom villa for "five (5) ordinary weekdays and two (2) weekends every year for free."[5]

Two years later, in March 1999, respondents filed before the SEC a Complaint[6] for refund of the ₱387,300.00 they spent to purchase FRCCI shares of stock from petitioners. Respondents alleged that they had been deceived into buying FRCCI shares because of petitioners' fraudulent misrepresentations. Construction of FLP turned out to be still unfinished and the policies, rules, and regulations of the country club were obscure.

Respondents narrated that they were able to book and avail themselves of free accommodations at an FLP villa on September 5, 1998, a Saturday. They requested that an FLP villa again be reserved for their free use on October 17, 1998, another Saturday, for the celebration of their daughter's 18th birthday, but were refused by petitioners. Petitioners clarified that respondents were only entitled to free accommodations at FLP for "one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday[,]" and that respondents had already exhausted

[4] *Id.* at 66-69.

[5] Records, SEC Case No. 04-99-6264, p. 16.

[6] *Id.* at 1-17.

their free Saturday pass for the year. According to respondents, they were not informed of said rule regarding their free accommodations at FLP, and had they known about it, they would not have availed themselves of the free accommodations on September 5, 1998. In January 1999, respondents attempted once more to book and reserve an FLP villa for their free use on April 1, 1999, a Thursday. Their reservation was confirmed by a certain Murphy Magtoto. However, on March 3, 1999, another country club employee named Shaye called respondents to say that their reservation for April 1, 1999 was cancelled because the FLP was already fully booked.

Petitioners filed their Answer[7] in which they asserted that respondents had been duly informed of the privileges given to them as shareholders of FRCCI class "D" shares of stock since these were all explicitly provided in the promotional materials for the country club, the Articles of Incorporation, and the By-Laws of FRCCI. Petitioners called attention to the following paragraph in their ads:

> GUEST ROOMS
>
> As a member of the Fontana Resort and Country Club, you are entitled to 7 days stay consisting of 5 weekdays, one Saturday and one Sunday. A total of 544 elegantly furnished villas available in two and three bedroom units.[8]

Petitioners also cited provisions of the FRCCI Articles of Incorporation and the By-Laws on class "D" shares of stock, to wit:

> Class D shares may be sold to any person, irrespective of nationality or Citizenship. Every registered owner of a class D share may be admitted to one (1) Membership in the Club and subject to the Club's rules and regulations, shall be entitled to use a Two (2) Bedroom Multiplex Model Unit in the residential villas provided by the Club for one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday. (Article Seventh, Articles of Incorporation)

---

[7] *Id.* at 32-41.

[8] *Id.* at 37.

Class D shares – which may be sold to any person, irrespective of nationality or Citizenship. Every registered owner of a class D share may be admitted to one (1) Membership in the Club and subject to the Club's rules and regulations, shall be entitled to use a Two (2) Bedroom Multiplex Model Unit in the residential villas provided by the Club for one week annually consisting of five (5) ordinary days, one (1) Saturday and one (1) Sunday. [Section 2(a), Article II of the By-Laws.][9]

Petitioners further denied that they unjustly cancelled respondents' reservation for an FLP villa on April 1, 1999, explaining that:

6. There is also no truth to the claim of [herein respondents] that they were given and had confirmed reservations for April 1, 1998. There was no reservation to cancel since there was no confirmed reservations to speak of for the reason that April 1, 1999, being Holy Thursday, all reservations for the Holy Week were fully booked as early as the start of the current year. The Holy Week being a peak season for accommodations, all reservations had to be made on a priority basis; and as admitted by [respondents], they tried to make their reservation only on January 4, 1999, a time when all reservations have been fully booked. The fact of [respondents'] non-reservation can be attested by the fact that no confirmation number was issued in their favor.

If at all, [respondents] were "wait-listed" as of January 4, 1999, meaning, they would be given preference in the reservation in the event that any of the confirmed members/guests were to cancel. The diligence on the part of the [herein petitioners] to inform [respondents] of the status of their reservation can be manifested by the act of the Club's personnel when it advised [respondents] on March 3, 1999 that there were still no available villas for their use because of full bookings.[10]

Lastly, petitioners averred that when respondents were first accommodated at FLP, only minor or finishing construction works were left to be done and that facilities of the country club were already operational.

---

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

[10] *Id.* at 36.

SEC-SICD Hearing Officer Bacalla conducted preliminary hearings and trial proper in the case. Respondents filed separate sworn Question and Answer depositions.[11] Esther U. Lacuna, a witness for respondents, also filed a sworn Question and Answer deposition.[12] When petitioners twice defaulted, without any valid excuse, to present evidence on the scheduled hearing dates, Hearing Officer Bacalla deemed petitioners to have waived their right to present evidence and considered the case submitted for resolution.[13]

Based on the evidence presented by respondents, Hearing Officer Bacalla made the following findings in his Decision dated April 28, 2000:

> To prove the merits of their case, both [herein respondents] testified. Ms. Esther U. Lacuna likewise testified in favor of [respondents].
>
> As established by the testimonies of [respondents'] witnesses, Ms. Esther U. Lacuna, a duly accredited sales agent of [herein petitioners] who went to see [respondents] for the purpose of inducing them to buy membership shares of Fontana Resort and Country Club, Inc. with promises that the park will provide its shareholders with first class leisure facilities, showing them brochures (Exhibits "V", "V-1" and "V-2") of the future development of the park.
>
> Indeed [respondents] bought two (2) class "D" shares in Fontana Resort and Country Club, Inc. paying ₱387,000.00 to [petitioners] as evidenced by provisional and official receipts (Exhibits "A" to "S"), and signing two (2) documents designated as Agreement to Sell and Purchase Shares of Stock (Exhibits "T" to "U-2").
>
> It is undisputed that many of the facilities promised were not completed within the specified date. Ms. Lacuna even testified that less than 50% of what was promised were actually delivered.
>
> What was really frustrating on the part of [respondents] was when they made reservations for the use of the Club's facilities on the occasion of their daughter's 18th birthday on October 17, 1998 where they were deprived of the club's premises alleging that the two (2)

---

[11] *Id.* at 102-109, 117-124.

[12] *Id.* at 111-115.

[13] *Id.* at 127.

weekend stay which class "D" shareholders are entitled should be on a Saturday and on a Sunday. Since [respondents] have already availed of one (1) weekend stay which was a Saturday, they could no longer have the second weekend stay also on a Saturday.

Another occasion was when [respondents] were again denied the use of the club's facilities because they did not have a confirmation number although their reservation was confirmed.

All these rules were never communicated to [respondents] when they bought their membership shares.

It would seem that [petitioners], through their officers, would make up rules as they go along. A clever ploy for [petitioners] to hide the lack of club facilities to accommodate the needs of their members.

[Petitioners'] failure to finish the development works at the Fontana Leisure Park within the period they promised and their failure or refusal to accommodate [respondents] for a reservation on October 17, 1998 and April 1, 1999, constitute gross misrepresentation detrimental not only to the [respondents] but to the general public as well.

All these empty promises of [petitioners] may well be part of a scheme to attract, and induce [respondents] to buy shares because surely if [petitioners] had told the truth about these matters, [respondents] would never have bought shares in their project in the first place.[14]

Consequently, Hearing Officer Bacalla adjudged:

WHEREFORE, premises considered, judgment is hereby rendered directing [herein petitioners] to jointly and severally pay [herein respondents]:

> 1) The amount of ₱387,000.00 plus interest at the rate of 21% per annum computed from August 28, 1998 when demand was first made, until such time as payment is actually made.[15]

Petitioners appealed the above-quoted ruling of Hearing Officer Bacalla before the SEC *en banc*. In its Decision dated July 6, 2001, the SEC *en banc* held:

---

[14] *Rollo*, pp. 68-69.

[15] *Id.* at 69.

WHEREFORE, the instant appeal is hereby DENIED and the Decision of Hearing Officer Marciano S. Bacalla, Jr. dated April 28, 2000 is hereby AFFIRMED.[16]

In an Order[17] dated September 19, 2001, the SEC *en banc* denied petitioners' Motion for Reconsideration for being a prohibited pleading under the SEC Rules of Procedure.

Petitioners filed before the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court. Petitioners contend that even on the sole basis of respondents' evidence, the appealed decisions of Hearing Officer Bacalla and the SEC *en banc* are contrary to law and jurisprudence.

The Court of Appeals rendered a Decision on March 30, 2002, finding petitioners' appeal to be partly meritorious.

The Court of Appeals brushed aside the finding of the SEC that petitioners were guilty of fraudulent misrepresentation in inducing respondents to buy FRCCI shares of stock. Instead, the appellate court declared that:

> What seems clear rather is that in "inducing" the respondents to buy the Fontana shares, RN Development Corporation merely repeated to the spouses the benefits promised to all holders of Fontana Class "D" shares. These inducements were in fact contained in Fontana's promotion brochures to prospective subscribers which the spouses must obviously have read.[18]

Nonetheless, the Court of Appeals agreed with the SEC that the sale of the two FRCCI class "D" shares of stock by petitioners to respondents should be rescinded. Petitioners defaulted on their promises to respondents that FLP would be fully developed and operational by the first quarter of 1998 and that as shareholders of said shares, respondents were entitled to the free use of first-class leisure facilities at FLP and free

---

[16] *Id.* at 85.

[17] *Id.* at 87-88.

[18] *Id.* at 34.

accommodations at a two-bedroom villa for "five (5) ordinary weekdays and two (2) weekends every year."

The Court of Appeals modified the appealed SEC judgment by ordering respondents to return their certificates of shares of stock to petitioners upon the latter's refund of the price of said shares since "[t]he essence of the questioned [SEC] judgment was really to declare as rescinded or annulled the sale or transfer of the shares to the respondents."[19] The appellate court additionally clarified that the sale of the FRCCI shares of stock by petitioners to respondents partakes the nature of a forbearance of money, since the amount paid by respondents for the shares was used by petitioners to defray the construction of FLP; hence, the interest rate of 12% per annum should be imposed on said amount from the date of extrajudicial demand until its return to respondents. The dispositive portion of the Court of Appeals judgment reads:

> WHEREFORE, premises considered, the appealed judgment is MODIFIED: a) petitioner Fontana Resort and Country Club is hereby ordered to refund and pay to the respondents Spouses Roy S. Tan and Susana C. Tan the amount of ₱387,000.00, Philippine Currency, representing the price of two of its Class "D" shares of stock, plus simple interest at the rate of 12% per annum computed from August 28, 1998 when demand was first made, until payment is completed; b) the respondent spouses are ordered to surrender to petitioner Fontana Resort and Country Club their two (2) Class "D" shares issued by said petitioner upon receipt of the full refund with interest as herein ordered.[20]

Petitioners filed a Motion for Reconsideration, but it was denied by the Court of Appeals in its Resolution dated August 12, 2002.

Hence, the instant Petition for Review.

Petitioners, in their Memorandum,[21] submit for our consideration the following issues:

---

[19] *Id.* at 35.

[20] *Id.* at 35-36.

[21] *Id.* at 191-212.

a. Was the essence of the judgment of the SEC — which ordered the return of the purchase price but not of the thing sold — a declaration of rescission or annulment of the contract of sale between RNDC and respondents?

b. Was the order of the Court of Appeals to FRCCI — which was not the seller of the thing sold (the seller was RNDC) — to return the purchase price to the buyers (the respondents) in accordance with law?

c. Was the imposition of 12% interest per annum from the date of extra-judicial demand on an obligation which is not a loan or forbearance of money in accordance with law?[22]

Petitioners averred that the ruling of the Court of Appeals that the essence of the SEC judgment is the rescission or annulment of the contract of sale of the FRCCI shares of stock between petitioners and respondents is inconsistent with Articles 1385 and 1398 of the Civil Code. The said SEC judgment did not contain an express declaration that it involved the rescission or annulment of contract or an explicit order for respondents to return the thing sold. Petitioners also assert that respondents' claim for refund based on fraud or misrepresentation should have been directed only against petitioner RNDC, the registered owner and seller of the FRCCI class "D" shares of stock. Petitioner FRCCI was merely the issuer of the shares sold to respondents. Petitioners lastly question the order of the Court of Appeals for petitioners to pay 12% interest per annum, the same being devoid of legal basis since their obligation does not constitute a loan or forbearance of money.

In their Memorandum,[23] respondents chiefly argue that petitioners have posited mere questions of fact and none of law, precluding this Court to take cognizance of the instant Petition under Rule 45 of the Rules of Court. Even so, respondents maintain that the Court of Appeals did not err in ordering them to return the certificates of shares of stock to petitioners upon

---

[22] *Id.* at 200.

[23] *Id.* at 178-190.

the latter's refund of the price thereof as the essence of respondents' claim for refund is to rescind the sale of said shares. Furthermore, both petitioners should be held liable since they are the owners and developers of FLP. Petitioner FRCCI is primarily liable for respondents' claim for refund, and petitioner RNDC, at most, is only subsidiarily liable considering that petitioner RNDC is a mere agent of petitioner FRCCI. Respondents finally insist that the imposition of the interest rate at 12% per annum, computed from the date of the extrajudicial demand, is correct since the obligation of petitioners is in the nature of a forbearance of money.

We find merit in the Petition.

We address the preliminary matter of the nature of respondents' Complaint against petitioners. Well-settled is the rule that the allegations in the complaint determine the nature of the action instituted.[24]

Respondents alleged in their Complaint that:

> 16. [Herein petitioners'] failure to finish the development works at the Fontana Leisure Park within the time frame that they promised, and [petitioners'] failure/refusal to accom[m]odate [herein respondents'] request for reservations on 17 October 1998 and 1 April 1999, constitute gross misrepresentation and a form of deception, not only to the [respondents], but the general public as well.
>
> 17. [Petitioners'] deliberately and maliciously misrepresented that development works will be completed when they knew fully well that it was impossible to complete the development works by the deadline. [Petitioners] also deliberately and maliciously deceived [respondents] into believing that they have the privilege to utilize Club facilities, only for [respondents] to be later on denied such use of Club facilities. All these acts are part of [petitioners'] scheme to attract, induce and convince [respondents] to buy shares, knowing that had they told the truth about these matters, [respondents] would never have bought shares in their project.

---

[24] *Bulao v. Court of Appeals*, G.R. No. 101983, February 1, 1993, 218 SCRA 321.

18. On 28 August 1998, [respondents] requested their lawyer to write [petitioner] Fontana Resort and Country Club, Inc. a letter demanding for the return of their payment. x x x.

19. [Petitioner] Fontana Resort and Country Club, Inc. responded to this letter, with a letter of its own dated 10 September 1998, denying [respondents'] request for a refund. x x x.

20. [Respondents] replied to [petitioner] Fontana Resort and Country Club's letter with a letter dated 13 October 1998, x x x. But despite receipt of this letter, [petitioners] failed/refused and continue to fail /refuse to refund/return [respondents'] payments.

x x x x x x x x x

22. [Petitioners] acted in bad faith when it sold membership shares to [respondents], promising development work will be completed by the first quarter of 1998 when [petitioners] knew fully well that they were in no position and had no intention to complete development work within the time they promised. [Petitioners] also were maliciously motivated when they promised [respondents] use of Club facilities only to deny [respondents] such use later on.

23. It is detrimental to the interest of [respondents] and quite unfair that they will be made to suffer from the delay in the completion of the development work, while [petitioners] are already enjoying the purchase price paid by [respondents].

x x x x x x x x x

26. Apart from the refund of the amount of ₱387,300.00, [respondents] are also entitled to be paid reasonable interest from their money. Afterall, [petitioners] have already benefitted from this money, having been able to use it, if not for the Fontana Leisure Park project, for their other projects as well. And had [respondents] been able to deposit the money in the bank, or invested it in some worthwhile undertaking, they would have earned interest on the money at the rate of at least 21% per annum.[25]

The aforequoted allegations in respondents' Complaint sufficiently state a cause of action for the annulment of a voidable contract of sale based on fraud under Article 1390, in relation to Article 1398, of the Civil Code, and/or rescission of a reciprocal

[25] Records, SEC Case No. 04-99-6264, pp. 12-14.

obligation under Article 1191, in relation to Article 1385, of the same Code. Said provisions of the Civil Code are reproduced below:

Article 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

1. Those where one of the parties is incapable of giving consent to a contract;

2. Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Article 1398. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages.

Article 1191. 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.

The injured party may choose between the fulfillment 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.

Article 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to return.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

It does not matter that respondents, in their Complaint, simply prayed for refund of the purchase price they had paid for their FRCCI shares,[26] without specifically mentioning the annulment or rescission of the sale of said shares. The Court of Appeals treated respondents' Complaint as one for annulment/rescission of contract and, accordingly, it did not simply order petitioners to refund to respondents the purchase price of the FRCCI shares, but also directed respondents to comply with their correlative obligation of surrendering their certificates of shares of stock to petitioners.

Now the only issue left for us to determine — whether or not petitioners committed fraud or defaulted on their promises as would justify the annulment or rescission of their contract of sale with respondents — requires us to reexamine evidence submitted by the parties and review the factual findings by the SEC and the Court of Appeals.

As a general rule, "the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of

---

[26] The Prayer in respondents' Complaint reads:

WHEREFORE, premises considered, it is respectfully prayed that after trial and hearing, judgment be rendered in favor of the [herein respondents] and against the [herein petitioners], ordering the latter, jointly and severally, to pay the former:

1. The amount of ₱387,300.00 as refund for the money which [respondents] paid to [petitioners] for its Fontana Leisure Park project;

2. Reasonable interest for the money to be refunded, at the rate of at least 21% per annum, computed beginning the time formal demand was received by [petitioners] on 4 September 1998 until such time as the amount is actually paid;

3. The amount of ₱100,000.00 by way of attorney's fees;

4. The costs of the suit.

[Respondents] pray for such other reliefs and remedies just and equitable under the premises. (*Id.* at 11.)

law and not issues of fact. This rule, however, is inapplicable in cases x x x where the factual findings complained of are absolutely devoid of support in the records or the assailed judgment of the appellate court is based on a misapprehension of facts."[27] Another well-recognized exception to the general rule is when the factual findings of the administrative agency and the Court of Appeals are contradictory.[28] The said exceptions are applicable to the case at bar.

There are contradictory findings below as to the existence of fraud: while Hearing Officer Bacalla and the SEC *en banc* found that there is fraud on the part of petitioners in selling the FRCCI shares to respondents, the Court of Appeals found none.

There is fraud when one party is induced by the other to enter into a contract, through and solely because of the latter's insidious words or machinations. But not all forms of fraud can vitiate consent. "Under Article 1330, fraud refers to *dolo causante* or causal fraud, in which, prior to or simultaneous with the execution of a contract, one party secures the consent of the other by using deception, without which such consent would not have been given."[29] "Simply stated, the fraud must be the determining cause of the contract, or must have caused the consent to be given."[30]

"[T]he general rule is that he who alleges fraud or mistake in a transaction must substantiate his allegation as the presumption is that a person takes ordinary care for his concerns and that private dealings have been entered into fairly and regularly."[31] One who alleges defect or lack of valid consent to a contract

---

[27] *Leonardo v. Court of Appeals*, G.R. No. 125485, September 13, 2004, 438 SCRA 201, 213.

[28] *Tiu v. Pasaol, Sr.*, 450 Phil. 370, 379 (2003).

[29] *Archipelago Management and Marketing Corporation v. Court of Appeals*, 359 Phil. 363, 374 (1998).

[30] *Rural Bank of Sta. Maria Pangasinan v. Court of Appeals*, 373 Phil. 27, 42 (1999).

[31] *Perpetua Vda. de Ape v. Court of Appeals*, 496 Phil. 97, 116 (2005).

by reason of fraud or undue influence must establish by full, clear and convincing evidence such specific acts that vitiated a party's consent, otherwise, the latter's presumed consent to the contract prevails.[32]

In this case, respondents have miserably failed to prove how petitioners employed fraud to induce respondents to buy FRCCI shares. It can only be expected that petitioners presented the FLP and the country club in the most positive light in order to attract investor-members. There is no showing that in their sales talk to respondents, petitioners actually used insidious words or machinations, without which, respondents would not have bought the FRCCI shares. Respondents appear to be literate and of above-average means, who may not be so easily deceived into parting with a substantial amount of money. What is apparent to us is that respondents knowingly and willingly consented to buying FRCCI shares, but were later on disappointed with the actual FLP facilities and club membership benefits.

Similarly, we find no evidence on record that petitioners defaulted on any of their obligations that would have called for the rescission of the sale of the FRCCI shares to respondents.

"The right to rescind a contract arises once the other party defaults in the performance of his obligation."[33] "Rescission of a contract will not be permitted for a slight or casual breach, but only such substantial and fundamental breach as would defeat the very object of the parties in making the agreement."[34] In the same case as fraud, the burden of establishing the default of petitioners lies upon respondents, but respondents once more failed to discharge the same.

Respondents decry the alleged arbitrary and unreasonable denial of their request for reservation at FLP and the obscure

---

[32] *Heirs of William Sevilla v. Sevilla,* 450 Phil. 598, 612 (2003).

[33] *Solar Harvest, Inc. v. Davao Corrugated Carton Corporation*, G.R. No. 176868, July 26, 2010, 625 SCRA 448, 455.

[34] *Development Bank of the Philippines v. Court of Appeals*, 398 Phil. 413, 430 (2000).

and ever-changing rules of the country club as regards free accommodations for FRCCI class "D" shareholders.

Yet, petitioners were able to satisfactorily explain, based on clear policies, rules, and regulations governing FLP club memberships, why they rejected respondents' request for reservation on October 17, 1998. Respondents do not dispute that the Articles of Incorporation and the By-Laws of FRCCI, as well as the promotional materials distributed by petitioners to the public (copies of which respondents admitted receiving), expressly stated that the subscribers of FRCCI class "D" shares of stock are entitled free accommodation at an FLP two-bedroom villa only for "one week annually consisting of five (5) ordinary days, **one (1) Saturday** and **one (1) Sunday**." Thus, respondents cannot claim that they were totally ignorant of such rule or that petitioners have been changing the rules as they go along. Respondents had already availed themselves of free accommodations at an FLP villa on September 5, 1998, a Saturday, so that there was basis for petitioners to deny respondents' subsequent request for reservation of an FLP villa for their free use on October 17, 1998, another Saturday.

Neither can we rescind the contract because construction of FLP facilities were still unfinished by 1998. Indeed, respondents' allegation of unfinished FLP facilities was not disputed by petitioners, but respondents themselves were not able to present competent proof of the extent of such incompleteness. Without any idea of how much of FLP and which particular FLP facilities remain unfinished, there is no way for us to determine whether petitioners were actually unable to deliver on their promise of a first class leisure park and whether there is sufficient reason for us to grant rescission or annulment of the sale of FRCCI shares. Apparently, respondents were still able to enjoy their stay at FLP despite the still ongoing construction works, enough for them to wish to return and again reserve accommodations at the park.

Respondents additionally alleged the unreasonable cancellation of their confirmed reservation for the free use of an FLP villa on April 1, 1999. According to respondents, their reservation

was confirmed by a Mr. Murphy Magtoto, only to be cancelled later on by a certain Shaye. Petitioners countered that April 1, 1999 was a Holy Thursday and FLP was already fully-booked. Petitioners, however, do not deny that Murphy Magtoto and Shaye are FLP employees who dealt with respondents. The absence of any confirmation number issued to respondents does not also discount the possibility that the latter's reservation was mistakenly confirmed by Murphy Magtoto despite FLP being fully-booked. At most, we perceive a mix-up in the reservation process of petitioners. This demonstrates a mere negligence on the part of petitioners, but not willful intention to deprive respondents of their membership benefits. It does not constitute default that would call for rescission of the sale of FRCCI shares by petitioners to respondents. For the negligence of petitioners as regards respondents' reservation for April 1, 1999, respondents are at least entitled to nominal damages in accordance with Articles 2221 and 2222 of the Civil Code.[35]

In *Almeda v. Cariño*,[36] we have expounded on the propriety of granting nominal damages as follows:

> [N]ominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of

---

[35] Article 2221. Nominal damages are 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.

Article 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

[36] 443 Phil. 182 (2003).

nominal damages. Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper.[37]

It is also settled that "the amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances."[38]

In this case, we deem that the respondents are entitled to an award of ₱5,000.00 as nominal damages in recognition of their confirmed reservation for the free use of an FLP villa on April 1, 1999 which was inexcusably cancelled by petitioner on March 3, 1999.

In sum, the respondents' Complaint sufficiently alleged a cause of action for the annulment or rescission of the contract of sale of FRCCI class "D" shares by petitioners to respondents; however, respondents were unable to establish by preponderance of evidence that they are entitled to said annulment or rescission.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated May 30, 2002 and Resolution dated August 12, 2002 of the Court Appeals in CA-G.R. SP No. 67816 are **REVERSED** and **SET ASIDE**. Petitioners are **ORDERED** to pay respondents the amount of ₱5,000.00 as nominal damages for their negligence as regards respondents' cancelled reservation for April 1, 1999, but respondents' Complaint, in so far as the annulment or rescission of the contract of sale of the FRCCI class "D" shares of stock is concerned, is **DISMISSED** for lack of merit.

SO ORDERED.

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

---

[37] *Id.* at 191.

[38] *Savellano v. Northwest Airlines*, 453 Phil. 342, 360 (2003).

FIRST DIVISION

[G.R. No. 173774. January 30, 2012]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **MA. LUISA BELTRAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS. — For loss of trust and confidence to be a valid ground for dismissal, it must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. In addition, loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion.

2. ID.; ID.; ID.; ID.; THE BURDEN OF PROVING THE LEGALITY OF AN EMPLOYEE'S DISMISSAL LIES WITH THE EMPLOYER; CASE AT BAR. — [T]he burden of proving the legality of an employee's dismissal lies with the employer. "Unsubstantiated suspicions, accusations, and conclusions of employers do not provide legal justification for dismissing employees." "[M]ere conjectures cannot work to deprive employees of their means of livelihood." To begin with, MERALCO cannot claim or conclude that Beltran misappropriated the money based on mere suspicion. The NLRC thus erred in concluding that Beltran made use of the money from the mere fact that she took a leave of absence after having been reminded of the unremitted funds. And even if Beltran delayed handing over the funds to the company, MERALCO still has the burden of proof to show clearly that such act of negligence is sufficient to justify termination from employment. Moreover, we find that Beltran's delay does not clearly and convincingly establish a willful breach on her part, that is,

which is done "intentionally, knowingly and purposely, without any justifiable excuse." True, the reasons Beltran proffered for her delay in remitting the cash payment are mere allegations without any concrete proof. Nonetheless, we emphasize that as the employer, the burden still lies on MERALCO to provide clear and convincing facts upon which the alleged loss of confidence is to be made to rest.

3. ID.; ID.; ID.; ID.; ID.; NEGLIGENCE; SHOULD BE GROSS AND HABITUAL TO JUSTIFY REMOVAL FROM SERVICE; ELUCIDATED. — Undoubtedly, Beltran was remiss in her duties for her failure to immediately turn over Chang's payment to the company. Such negligence, however, is not sufficient to warrant separation from employment. To justify removal from service, the negligence should be gross and habitual. "Gross negligence x x x is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected." Habitual neglect, on the other hand, connotes repeated failure to perform one's duties for a period of time, depending upon the circumstances. No concrete evidence was presented by MERALCO to show that Beltran's delay in remitting the funds was done intentionally. Neither was it shown that same is willful, unlawful and felonious contrary to MERALCO's finging as stated in the letter of termination it sent to Beltran. Surely, Beltran's single and isolated act of negligence cannot justify her dismissal from service.

4. ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL, NOT A COMMENSURATE PENALTY FOR THE INADVERTENT ACT COMMITTED; REINSTATEMENT WITHOUT BACKWAGES, UPHELD IN THE CASE AT BAR. — Under the circumstances, MERALCO's sanction of dismissal will not be commensurate to Beltran's inadvertence not only because there was no clear showing of bad faith and malice but also in consideration of her untainted record of long and dedicated service to MERALCO. In the similar case of *Philippine Long Distance Telephone Company v. Berbano, Jr.*, we held that: The magnitude of the infraction committed by an employee must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. The

> employer should bear in mind that in termination cases, what is at stake is not simply the employee's job or position but [her] very livelihood. Where a penalty less punitive would suffice, whatever missteps may be committed by an employee ought not to be visited with a consequence so severe such as dismissal from employment. Hence, we find no reversible error or any grave abuse of discretion on the part of the CA in ordering Beltran's reinstatement without backwages. The forfeiture of her salary is an equitable punishment for the simple negligence committed.

APPEARANCES OF COUNSEL

Angelito F. Aguila for petitioner.
Conrado P. Parras for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

As the law regards workers with compassion, an employer's right to discipline them should be tempered with compassion as well. In line with this, the imposition of the supreme penalty of dismissal is justified only when there are sufficient grounds as supported by substantial evidence.

This Petition for Review on *Certiorari*[1] assails the November 25, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 67960, which granted the petition filed therewith, reversed the May 30, 2001 Decision[3] of the National Labor Relations Commission (NLRC), and accordingly affirmed the July 16, 1999 Decision[4] of the Labor Arbiter ordering petitioner Manila Electric

---

[1] *Rollo*, pp. 9-21.

[2] CA *rollo*, pp. 122-132; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang.

[3] *Id.* at 19-27; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[4] *Id.* at 68-73; penned by Labor Arbiter Manuel P. Asuncion.

Company (MERALCO) to reinstate respondent Ma. Luisa Beltran (Beltran) to her former position but without payment of backwages. Likewise assailed is the CA Resolution[5] dated July 19, 2006 which denied the Motion for Reconsideration thereto.

Factual Antecedents

Beltran was employed by MERALCO on December 16, 1987. At the time material to this case, she was holding the position of Senior Branch Clerk at MERALCO's Pasig branch. While rendering overtime work on September 28, 1996, a Saturday, Beltran accepted ₱15,164.48 from Collection Route Supervisor Berlin Marcos (Marcos), which the latter received from customer Andy Chang (Chang). The cash payment was being made in lieu of a returned check earlier issued as payment for Chang's electric bill. Beltran was at first hesitant as it was not part of her regular duties to accept payments from customers but was later on persuaded by Marcos' persistence. Hence, Beltran received the payment and issued Auxiliary Receipt No. 87964[6] which she dated September 30, 1996, a Monday, instead of September 28, 1996. This was done to show that it was an accommodation, an accepted practice in the office. She thereafter placed the money and the original auxiliary receipt and other documents pertinent to the returned check underneath her other files inside the drawer of her table.

Beltran, however, was only able to remit Chang's payment on January 13, 1997. Thus, in a Memorandum[7] dated January 16, 1997, she was placed under preventive suspension effective January 20, 1997 pending completion of an investigation. MERALCO considered as misappropriation or withholding of company funds her failure to immediately remit said payment in violation of its Code on Employee Discipline. Investigation thereafter ensued.[8]

---

[5] *Id.* at 142-143.

[6] *Id.* at 43.

[7] *Id.* at 42.

[8] See Notice of Investigation dated January 20, 1997, *id.* at 47.

In her *Sinumpaang Salaysay*,[9] Beltran admitted receipt of Chang's payment of ₱15,164.48 on September 28, 1996. She also admitted having issued an Auxiliary Receipt dated September 30, 1996 and having remitted the amount only on January 13, 1997, after her immediate supervisor, Elenita L. Garcia (Garcia), called her attention about the payment and its non-remittance. Beltran nevertheless explained the circumstances which caused the delay of the turn-over of Chang's payment. She recounted that on the day following her receipt of the money, she had a huge fight with her husband which led to their separation; that on September 30, 1996, she reported at MERALCO's Taguig branch where she worked until 8:30 p.m.; and, that subsequent marital woes coupled with her worries for her ailing child distracted her into forgetting Chang's payment. Beltran claimed that after Garcia approached her regarding the unremitted payment of Chang, she immediately looked for the money in her drawer and right there and then handed it over to Garcia together with the other pertinent documents. Beltran denied having personally used the money.

Garcia, the Administrative Supervisor of MERALCO's Pasig branch, on the other hand, testified that while doing an accounting of all outstanding returned checks sometime in December 1996, she noticed that Chang's returned check was missing. Upon further inquiry, she discovered that Chang had already redeemed the returned check after paying ₱15,164.48 to Beltran, who in turn issued an Auxiliary Receipt dated September 30, 1996. It was also discovered that the payment has not yet been remitted. This prompted her to inquire from Beltran on January 7, 1997 about the supposed payment and immediately ordered the remittance of the same. Beltran, however, failed to do so on that day and even on the next day when she reported for work. Beltran subsequently went on leave of absence on January 9 and 10, 1997. It was only on January 13, 1997 that the money with the pertinent documents were handed over.[10]

---

[9] *Id.* at 48-49.

[10] See Garcia's *Malayang Salaysay* given on February 18, 1997, *id.* at 44-46.

In a memorandum[11] dated February 25, 1997, the investigator found Beltran guilty of misappropriating and withholding Chang's payment of ₱15,164.48 and recommended her dismissal from service thus:

> For **wil[l]fully, unlawfully and feloniously** withholding and/or misappropriating for your personal purposes or benefit electric bill payment of a Meralco customer, you have thereby violated Section 7 par. (1) of the Company Code on Employee Discipline which proscribes "(m)isappropriating, or withholding, Company funds: penalized therein with dismissal from the service. Because of this act of fraud and dishonesty, you have wil[l]fully breached the trust and confidence reposed in you by your employer.
>
> x x x x x x x x x
>
> Accordingly, Management is constrained to dismiss you for cause from the service and employ of the Company, as you are hereby so dismissed effective 13 March 1997, with forfeiture of all rights and privileges.[12] (Emphasis supplied.)

By virtue thereof, Beltran was terminated effective March 13, 1997.[13]

Beltran filed a complaint for illegal dismissal[14] against MERALCO. She argued that she had no intention to withhold company funds. Besides, it was not her customary duty to collect and remit payments from customers. She claimed good faith, believing that her acceptance of Chang's payment is considered goodwill in favor of both MERALCO and its customer. If at all, her only violation was a simple delay in remitting the payment, which caused no considerable harm to the company. Further, her nine years of unblemished service to the company should be taken into account such that the penalty of dismissal is not a commensurate penalty for the unintentional act committed.

---

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

[12] See Letter of Termination dated March 13, 1997, *rollo*, p. 68.

[13] *Id.*

[14] CA *rollo*, p. 30.

MERALCO, on the other hand, maintained that under company policy, Beltran had the duty to remit payment for electric bills by any customer on the day the same was received. It opined that if indeed the money was kept intact inside the drawer and was not put to personal use, Beltran could have easily turned over the same when Garcia instructed her to do so on January 7, 1997. However, Beltran failed to remit the money on said date and even on the following day, January 8, when she reported for work. Worse, in the two succeeding days, she went on leave. Thus, there was a clear sign of misappropriation of company funds, considered a serious misconduct and punishable by dismissal from the service. Further, Beltran's reason for her failure to perform such obligation on account of family problems deserves scant consideration. MERALCO insisted that Beltran's act renders her unworthy of the trust and confidence demanded of her position.

Ruling of the Labor Arbiter

In a Decision[15] dated June 16, 1999, the Labor Arbiter regarded the penalty of dismissal as not commensurate to the degree of infraction committed as there was no adequate proof of misappropriation on the part of Beltran. If there was delay in Beltran's remittance of Chang's payment, it was unintentional and same cannot serve as sufficient basis to conclude that there was misappropriation of company funds. In fact, Beltran did not even attempt to deny possession of, or refuse to hand in, the money. The Labor Arbiter thus gave compassionate consideration for the neglect to remit the money promptly, stating that it is excusable for Beltran to commit lapses in her work due to serious family difficulties. While the Labor Arbiter commiserated with Beltran's circumstances and took into account her long and untainted service, he nonetheless imposed disciplinary action in the form of forfeiture of salary for her neglect in remitting the funds at once. The dispositive portion of his Decision reads as follows:

IN THE LIGHT OF THE FOREGOING, the respondent is hereby ordered to reinstate the complainant to her former position without

[15] *Supra* note 4.

backwages. The forfeiture of backwages should be an equitable penalty for the delay in the remittance of company funds.

SO ORDERED.[16]

Ruling of the National Labor Relations Commission

Upon appeal, the NLRC reversed the Labor Arbiter's Decision and dismissed Beltran's complaint against MERALCO in its Decision[17] dated May 30, 2001. It found that Beltran withheld company funds by failing to remit it for almost four months. It disregarded Beltran's assertion of family problems as the same cannot be used as an excuse for committing a serious misconduct in violation of the trust reposed on her as a Senior Branch Clerk. The NLRC was convinced that Beltran used the money for her personal needs since her act of taking a leave of absence right after her confrontation with Garcia suggested that she needed time to produce it. The NLRC thus ruled that MERALCO validly dismissed Beltran from the service in the exercise of its inherent right to discipline its employees.

In her Motion for Reconsideration,[18] Beltran attributed grave abuse of discretion on the part of the NLRC in basing its conclusions on mere inferences and presumptions. Beltran argued that she could not be guilty of withholding Chang's payment, much more, misappropriating it. She alleged that Garcia did not order her to remit the money on January 7, 1997 or on the following day. Further, records reveal that she was on leave from January 9 to 10 to attend to her child who was suffering from asthma. And since January 11 and 12 are Saturday and Sunday, she deemed it appropriate to make the remittance on the following Monday, January 13, 1997. Garcia, however, refused to accept the money, saying that she already committed withholding of company funds.

The NLRC denied Beltran's Motion for Reconsideration.[19]

---

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

[17] *Supra* note 3.

[18] CA *rollo*, pp. 86-92.

[19] *Id.* at 29.

Ruling of the Court of Appeals

When Beltran brought the case to the CA *via* a Petition for *Certiorari*,[20] the NLRC's ruling was reversed. The CA instead agreed with the findings of the Labor Arbiter that there were no serious grounds to warrant Beltran's dismissal. The CA held that the penalty of dismissal is harsh considering the infraction committed and Beltran's nine years of unblemished service with MERALCO. It held that Beltran's mere failure to remit the payment was unintentional and not attended by any ill motive and that her excuse for the inadvertence was reasonable. As such, the CA affirmed the ruling of the Labor Arbiter ordering MERALCO to reinstate Beltran to her former position but with the forfeiture of her salary as an equitable penalty for her negligence. Thus, in its Decision[21] dated November 25, 2005, the petition was resolved as follows:

> **WHEREFORE,** premises considered, the instant petition is hereby **GRANTED**. The x x x Decision dated May 30, 2001 and the Resolution dated August 22, 2001 of the National Labor Relations Commission are hereby **REVERSED. ACCORDINGLY**, the Decision of the Labor Arbiter dated June 16, 1999, is hereby **AFFIRMED.**
>
> **SO ORDERED.**[22]

In a Resolution[23] dated July 19, 2006, MERALCO's Motion for Reconsideration was denied by the CA. Hence, MERALCO filed this present Petition for Review on *Certiorari,* raising the lone issue of whether —

Issue

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING THE REINSTATEMENT OF [BELTRAN]

---

[20] *Id.* at 8-18.

[21] *Supra* note 2.

[22] CA *rollo,* p. 131.

[23] *Supra* note 5.

DESPITE THE UNDISPUTED FINDING THAT SHE IS GUILTY OF WITHHOLDING x x x COMPANY FUNDS.[24]

Our Ruling

MERALCO insists that there was convincing basis to dismiss Beltran from employment. While there was no concrete proof of misappropriation, the fact that there was withholding of company funds remains undisputed. This act of negligence by Beltran in the performance of her duties has resulted to the loss of trust and confidence reposed on her, notwithstanding her self-serving allegations of marital woes and family difficulties, which were not even corroborated by any clear evidence.

We do not agree. On the contrary, we support the CA's finding that there are no sufficient grounds to warrant Beltran's dismissal.

For loss of trust and confidence to be a valid ground for dismissal, it must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. In addition, loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion.[25]

In the case at bench, Beltran attributed her delay in turning over Chang's payment to her difficult family situation as she and her husband were having marital problems and her child was suffering from an illness. Admittedly, she was reminded of Chang's payment by her supervisor on January 7, 1997 but denied having been ordered to remit the money on that day. She then reasoned that her continued delay was caused by an inevitable need to take a leave of absence for her to attend to the needs of her child who was suffering from asthma.

---

[24] *Rollo*, p. 16.

[25] *Eastern Telecommunications Phils., Inc. v. Diamse*, 524 Phil. 549, 556 (2006).

It should be emphasized at this point that the burden of proving the legality of an employee's dismissal lies with the employer.[26] "Unsubstantiated suspicions, accusations, and conclusions of employers do not provide legal justification for dismissing employees."[27] "[M]ere conjectures cannot work to deprive employees of their means of livelihood."[28] To begin with, MERALCO cannot claim or conclude that Beltran misappropriated the money based on mere suspicion. The NLRC thus erred in concluding that Beltran made use of the money from the mere fact that she took a leave of absence after having been reminded of the unremitted funds. And even if Beltran delayed handing over the funds to the company, MERALCO still has the burden of proof to show clearly that such act of negligence is sufficient to justify termination from employment. Moreover, we find that Beltran's delay does not clearly and convincingly establish a willful breach on her part, that is, which is done "intentionally, knowingly and purposely, without any justifiable excuse." True, the reasons Beltran proffered for her delay in remitting the cash payment are mere allegations without any concrete proof. Nonetheless, we emphasize that as the employer, the burden still lies on MERALCO to provide clear and convincing facts upon which the alleged loss of confidence is to be made to rest.

Undoubtedly, Beltran was remiss in her duties for her failure to immediately turn over Chang's payment to the company. Such negligence, however, is not sufficient to warrant separation from employment. To justify removal from service, the negligence should be gross and habitual.[29] "Gross negligence x x x is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences

---

[26] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 692.

[27] *Id.*

[28] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, G.R. No. 167622, November 7, 2008, 570 SCRA 503, 526.

[29] LABOR CODE, Article 282(b).

insofar as other persons may be affected."[30] Habitual neglect, on the other hand, connotes repeated failure to perform one's duties for a period of time, depending upon the circumstances.[31] No concrete evidence was presented by MERALCO to show that Beltran's delay in remitting the funds was done intentionally. Neither was it shown that same is willful, unlawful and felonious contrary to MERALCO's finging as stated in the letter of termination it sent to Beltran.[32] Surely, Beltran's single and isolated act of negligence cannot justify her dismissal from service.

Moreover, Beltran's simple negligence did not result in any loss. From the time she received the payment on September 28, 1996 until January 7, 1997 when she was apprised by her supervisor about Chang's payment, no harm or damage to the company or to its customers attributable to Beltran's negligence was alleged by MERALCO. Also, from the time she was apprised of the non-remittance by her superior on January 7, 1997, until the turn-over of the amount on January 13, 1997, no such harm or damage was ever claimed by MERALCO.

Under the circumstances, MERALCO's sanction of dismissal will not be commensurate to Beltran's inadvertence not only because there was no clear showing of bad faith and malice but also in consideration of her untainted record of long and dedicated service to MERALCO.[33] In the similar case of *Philippine Long Distance Telephone Company v. Berbano, Jr.*,[34] we held that:

> The magnitude of the infraction committed by an employee must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. The employer should bear in mind

---

[30] *Sanchez v. Republic*, G.R. No. 172885, October 9, 2009, 603 SCRA 229, 237.

[31] *Abel v. Philex Mining Corporation*, *supra* note 26 at 696-697.

[32] *Supra* note 12.

[33] *Philippine Long Distance Telephone Company v. Tolentino*, 482 Phil. 34, 43 (2004).

[34] G.R. No. 165199, November 27, 2009, 606 SCRA 81, 98.

that in termination cases, what is at stake is not simply the employee's job or position but [her] very livelihood.

Where a penalty less punitive would suffice, whatever missteps may be committed by an employee ought not to be visited with a consequence so severe such as dismissal from employment.[35] Hence, we find no reversible error or any grave abuse of discretion on the part of the CA in ordering Beltran's reinstatement without backwages. The forfeiture of her salary is an equitable punishment for the simple negligence committed.

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated November 25, 2005 and Resolution dated July 19, 2006 in CA-G.R. SP No. 67960 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184219. January 30, 2012]

SAMUEL B. ONG, *petitioner, vs.* **OFFICE OF THE PRESIDENT,** ***ET AL.,*** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE APPOINTING AUTHORITY HAS THE POWER TO REMOVE A TEMPORARY AND CO-TERMINOUS EMPLOYEE; CASE

---

[35] *Solvic Industrial Corporation v. National Labor Relations Commission,* 357 Phil. 430, 437-438 (1998).

AT BAR. — This Court notes that MC No. 02-S.2004 did not in effect remove Ong from his post. It merely informed Ong that records of the NBI showed that his co-terminous appointment had lapsed into a *de facto*/hold-over status. It likewise apprised him of the consequences of the said status. Be that as it may, if we were to assume for argument's sake that Wycoco removed Ong from his position as Director III by virtue of the former's issuance of MC No. 02-S.2004, still, the defect was cured when the President herself issued Bessat's appointment on December 1, 2004. The appointing authority, who in this case was the President, had effectively revoked Ong's appointment.

2. ID.; CONSTITUTIONAL LAW; CIVIL SERVICE COMMISSION; RIGHT TO SECURITY OF TENURE; NOT AVAILABLE TO EMPLOYEES WHOSE APPOINTMENTS ARE CONTRACTUAL AND CO-TERMINOUS IN NATURE. — This Court likewise finds no error in the CA's ruling that since Ong held a co-terminous appointment, he was removable at the pleasure of the appointing authority. It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and co-terminous in nature. In the case at bar, Ong's appointment as Director III falls under the classifications provided in (a) Section 14(2) of the Omnibus Rules Implementing Book V of the Administrative Code, to wit, that which is "co-existent with the tenure of the appointing authority or at his pleasure"; and (b) Sections 13(b) and 14(2) of Rule V, CSC Resolution No. 91-1631, or that which is both a temporary and a co-terminous appointment. The appointment is temporary as Ong did not have the required CES eligibility.

3. ID.; ID.; ID.; ID.; NATURE OF TEMPORARY APPOINTMENTS IN THE CARRER EXECUTIVE SERVICE; ELUCIDATED. — The case of *Amores v. Civil Service Commission*, is instructive anent the nature of temporary appointments in the CES to which the position of Director III held by Ong belonged. The Court declared: x x x Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is

at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. x x x The Court is categorical in the *Amores* case that an appointee without the requisite CES eligibility cannot hold the position in a permanent capacity. Temporary appointments are made if only to prevent hiatus in the government's rendition of public service. However, a temporary appointee can be removed even without cause and at a moment's notice. As to those with eligibilities, their rights to security of tenure pertain to ranks but not to the positions to which they were appointed. Ong never alleged that at any time during which he held the Director III position, he had acquired the requisite eligibility. Thus, the right to security of tenure did not pertain to him at least relative to the Director III position.

4. ID.; ID.; ID.; CO-TERMINOUS APPOINTMENT; DEFINED; CASE AT BAR. — Both Section 14 of the Omnibus Rules Rules Implementing Book V of the Administrative Code and Section 14 (2) of Rule V, CSC Resolution No. 91-1631 define a co-terminous appointment as one co-existent with the tenure of the appointing authority or at his pleasure. In *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.* cited by the CA in its decision, we sustained the replacement of an incumbent, who held an appointment at the pleasure of the appointing authority. Such appointment was in essence temporary in nature. We categorized the incumbent's replacement not as removal but rather as an expiration of term and no prior notice, due hearing or cause were necessary to effect the same. In *Decano v. Edu*, we ruled that the acceptance of a temporary appointment divests an appointee of the right to security of tenure against removal without cause. Further, in *Carillo vs. CA*, we stated that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing authority, there being no need to show that the termination is for cause." In Ong's case, his appointment was temporary and co-terminous. The doctrines enunciated in the cases of *Mita Pardo de Tavera, Decano, and Carillo* apply. Hence, no legal challenge can be properly posed against the President's appointment of Bessat as Ong's replacement. The CA correctly ruled that in *quo warranto* proceedings, the petitioner must show that he has a clear right to the office allegedly held unlawfully by another and in the

absence of the said right, the lack of qualification or eligibility of the supposed usurper is immaterial. Stated differently, where a non-eligible holds a temporary appointment, his replacement by another non-eligible is not prohibited.

5. ID.; ID.; ID.; ID.; DISTINCTIONS BETWEEN TERM AND TENURE ARE IMMATERIAL IN THE PRESENT PETITION. — We note that Ong's counsel had painstakingly drawn distinctions between a term and a tenure. It is argued that since Ong's appointment was co-terminous with the appointing authority, it should not had lapsed into a *de facto* status but continued until the end of the President's tenure on June 30, 2010. Under the Omnibus Rules Implementing the Revised Administrative Code and CSC Resolution No. 91-1631, a co-terminous appointment is defined as one "co-existing with the tenure of the appointing authority or at his pleasure." Neither law nor jurisprudence draws distinctions between appointments "co-existing with the term of the appointing authority" on one hand, and one "co-existing with the appointing authority's tenure" on the other. In the contrary, under the aforecited rules, tenure and term are used rather loosely and interchangeably. In Ong's case, the issues needed to be disposed of revolve around the concepts of temporary and co-terminous appointments. The distinctions between term and tenure find no materiality in the instant petition. Besides, whether or not the President's term ended on June 30, 2004 or her tenure ceased on June 30, 2010, the fact remains that she appointed Bessat as Director III, in effect revoking Ong's temporary and co-terminous appointment.

APPEARANCES OF COUNSEL

Saguisag Carao & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

REYES, *J.*:

The Case

Before us is a petition for review[1] on c*ertiorari* under Rule 45 of the Rules of Court filed by Samuel B. Ong (Ong) to assail the Decision[2] rendered by the Court of Appeals (CA) on August 5, 2008 in CA-G.R. SP No. 88673, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the petition for *quo warranto* filed in this case is hereby **DENIED**.

SO ORDERED.[3]

Ong died on May 22, 2009 during the pendency of the instant petition.[4] Admittedly, Ong's death rendered the prayer for reinstatement in the petition for *quo warranto* as moot and academic. However, substitution[5] was sought because in the event that the Court would rule that Ong was indeed entitled to the position he claimed, backwages pertaining to him can still be paid to his legal heirs. Per Resolution[6] issued on January 10, 2011, we granted the motion for substitution. The deceased petitioner is now herein substituted by his wife Elizabeth, and children, Samuel Jr., Elizabeth and Carolyn, all surnamed Ong.

Antecedents Facts

The CA aptly summarized the facts of the case before the filing of the petition for *quo warranto* as follows:

---

[1] *Rollo*, pp. 8-22.

[2] Penned by Associate Justice Isaias Dicdican, with Associate Justice Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *id.* at 24-32.

[3] *Id.* at 31.

[4] *Id.* at 107-108.

[5] *Id.* at 99-102.

[6] *Id.* at 114.

The petitioner [Ong] joined the National Bureau of Investigation (NBI) as a career employee in 1978. He held the position of NBI Director I from July 14, 1998 to February 23, 1999 and NBI Director II from February 24, 1998 to September 5, 2001. On September 6, 2001, petitioner was appointed Director III by the President. His appointment paper pertinently reads:

"x x x x x x x x x

Pursuant to the provisions of existing laws, the following are hereby appointed to the **NATIONAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE** co-terminus with the appointing authority:

x x x	x x x	x x x
SAMUEL B. ONG (vice Carlos S. Caabay)	—	DIRECTOR III [DEPUTY DIRECTOR]
x x x	x x x	x x x"

On June 3, 2004, the petitioner received from respondent Reynaldo Wycoco Memorandum Circular No. 02-S.2004 informing him that his appointment, being co-terminus with the appointing authority's tenure, would end effectively at midnight on June 30, 2004 and, unless a new appointment would be issued in his favor by the President consistent with her new tenure effective July 1, 2004, he would be occcupying his position in a *de facto*/hold[-]over status until his replacement would be appointed.

On December 01, 2004, the President appointed respondent Victor A. Bessat as NBI Director III as replacement of the petitioner. Consequently, respondent Wycoco notified the petitioner that, effective on December 17, 2004, the latter should cease and desist from performing his functions as NBI Director III in view of the presidential appointment of respondent Bessat as petitioner's replacement. The petitioner received the aforementioned notice only on January 27, 2005.[7] (underscoring supplied and citations omitted)

On February 22, 2005, Ong filed before the CA a petition for *quo warranto*. He sought for the declaration as null and void of (a) his removal from the position of NBI Director III;

[7] *Id.* at 25-26.

and (b) his replacement by respondent Victor Bessat (Bessat). Ong likewise prayed for reinstatement and backwages.

The CA denied Ong's petition on grounds:

A petition for *quo warranto* is a proceeding to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege.[8] Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.[9]

Section 27 of the Administrative Code of 1987, as amended, classifies the appointment status of public officers and employees in the career service into permanent and temporary. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

x x x In *Cuadra v. Cordova*,[10] temporary appointment is defined as "one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power." Thus, the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. The termination of a temporary appointment may be with or without a cause since the appointee serves merely at the pleasure of the appointing authority.

In the career executive service, the acquisition of security of tenure presupposes a permanent appointment. As held in *General*

---

[8] *Mendoza v. Allas*, 362 Phil. 238, 244 (1999).

[9] *Id.*

[10] 103 Phil. 391 (1958).

v. Roco,[11] two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit: 1) CES eligibility[;] and 2) appointment to the appropriate CES rank.

In the present case, it is undisputed that the petitioner is a non-CESO eligible. At best, therefore, his appointment could be regarded only as temporary and, hence, he has no security of tenure. Such being the case, his appointment can be withdrawn at will by the President, who is the appointing authority in this case, and "at a moment's notice."[12]

Moreover, a perusal of the petitioner's appointment will reveal that his appointment as NBI Director III is co-terminous with the appointing authority. Correlatively, his appointment falls under Section 14 of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987 which provides that:[13]

> "Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds."
>
> The co-terminous status may thus be classified as follows:
>
> x x x x x x x x x
>
> (2) Co-terminous with the appointing authority — when appointment is co-existent with the tenure of the appointing authority or at his pleasure; x x x
>
> x x x x x x x x x

Thus, although petitioner's appointment is co-terminous with the tenure of the President, he nevertheless serves at the pleasure of the President and his appointment may be recalled anytime. The case of *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc*.[14] delineated the nature of an appointment held "at the pleasure of the appointing power" in this wise:

---

[11] 403 Phil. 455, 462 (2001).

[12] *Caringal v. PCSO*, 509 Phil. 557 (2005).

[13] Cited in *Paloma v. Mora*, 507 Phil. 697, 708 (2005).

[14] 197 Phil. 919, 931 (1982).

> *An appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office. The protection afforded by Section 7.04 of the Code of By-Laws on Removal [o]f Officers and Employees, therefore, cannot be claimed by petitioner.*

All told, petitioner's appointment as well as its consequent termination falls within the ambit of the discretion bestowed on the appointing authority, the President. Simply put, his appointment can be terminated at any time for any cause and without the need of prior notice or hearing since he can be removed from his office anytime. His termination cannot be said to be violative of Section 2(3), Article IX-B of the 1987 Constitution. When a temporary appointee is required to relinquish his office, he is being separated from office because his term has expired.[15] Starkly put, upon the appointment of respondent Bessat as his replacement, his term of office had already expired.

Likewise, it is inconsequential that the petitioner was replaced by another non-CESO eligible, respondent [Bessat]. In a *quo warranto* proceeding[,] the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial.[16]

Indeed, appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.[17]

---

[15] *Achacoso v. Macaraig*, G.R. No. 93023, March 13, 1991, 195 SCRA 235, 240.

[16] *Carillo v. Court of Appeals*, No. L-24554, May 31, 1967, 77 SCRA 170, 177. (citations omitted)

[17] *Rimonte v. Civil Service Commission*, 314 Phil. 421, 430 (1995).

In sum, *quo warranto* is unavailing in the instant case, as the public office in question has not been usurped, intruded into or unlawfully held by respondent Bessat. The petitioner had no legal right over the disputed office and his cessation from office involves no removal but an expiration of his term of office.[18]

Hence, the instant petition ascribing to the CA the following errors:

I.

THE CA ERRED WHEN IT SUSTAINED THE VALIDITY OF THE PETITIONER'S REMOVAL BY RESPONDENT WYCOCO AS NBI DIRECTOR III (DEPUTY DIRECTOR).[19]

II.

THE CA ERRED IN HOLDING THAT SINCE THE PETITIONER HELD A CO-TERMINOUS APPOINTMENT, HE IS TERMINABLE AT THE PLEASURE OF THE APPOINTING POWER.[20]

Citing *Ambas v. Buenaseda*[21] and *Decano v. Edu*,[22] the instant petition emphasizes that the power of removal is lodged in the appointing authority. Wycoco, and not the President, issued Memorandum Circular (MC) No. 02-S.2004 informing Ong that his co-terminous appointment as Director III ended effectively on June 30, 2004. The issuance of MC No. 02-S.2004 was allegedly motivated by malice and revenge since Ong led the NBI employees in holding rallies in July 2003 to publicly denounce Wycoco. Hence, Bessat's assumption of the position was null and void since it was technically still occupied by Ong at the time of the former's appointment.

It is further alleged that it was erroneous for the CA to equate "an appointment co-terminous with the tenure of the appointing

---

[18] *Supra* note 2, at 27-31

[19] *Rollo*, p. 11.

[20] *Id.* at 13.

[21] G.R. No. 95244, September 4, 1991, 201 SCRA 308.

[22] 187 Phil. 754 (1980).

authority with one that is at the pleasure of such appointing authority."[23] Citing *Alba, etc. v. Evangelista, et al.*,[24] Ong's counsel distinguished a "term" as "the time during which the officer may claim to hold office as of right" from a "tenure" which "represents the term during which the incumbent actually holds the office". Ong's appointment, from which he cannot be removed without just cause, was co-terminous with the President's tenure which ended not on June 30, 2004, but only on June 30, 2010.

Section 2(b), Article IX-G of the 1987 Constitution and *Jocom v. Regalado*[25] are likewise cited to stress that government employees, holding both career and non-career service positions, are entitled to protection from arbitrary removal or suspension. In the case of Ong, who started his employment in 1978 and rose from the ranks, it is allegedly improper for the CA to impliedly infer that the President acted in bad faith by converting his supposed promotional appointment to one removable at the pleasure of the appointing authority.

In its Comment[26] to the petition, the Office of the Solicitor General (OSG) maintains that the replacement of Ong by Bessat was fair, just and in accord with the doctrine enunciated in *Aklan College v. Guarino*,[27] and with Sections 13[28] and

---

[23] *Rollo*, p. 14.

[24] 100 Phil. 683 (1957).

[25] G.R. No. 77373, August 22, 1991, 201 SCRA 73.

[26] *Rollo*, pp. 53-68.

[27] G.R. No. 152949, August 14, 2007, 530 SCRA 40.

[28] Section 13. Appointment in the career service shall be permanent or temporary.

(a) Permanent Status. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed/promoted, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

x x x x x x x x x

(b) Temporary Status. In the absence of appropriate eligibles in the area willing and able to assume the position, as certified by the CSRO Regional

14,[29] Rule V, Civil Service Commission (CSC) Resolution No. 91-1631 issued on December 27, 1991. Section 13 substantially provides that only a temporary appointment can be issued to a person who does not have the appropriate civil service eligibility. Section 14(2), on the other hand, defines a co-terminous appointment as one co-existent with the tenure of the appointing authority or at his pleasure. The last paragraph of Section 14 states that appointments which are co-terminous with the appointing authority shall not be considered as permanent.

The OSG also points out that in issuing MC No. 02-S.2004, Wycoco did not remove Ong as Director III but merely reminded the latter that after June 30, 2004, his appointment shall lapse into a *de facto*/hold-over status unless he was re-appointed. Ong's colleagues applied for re-appointment. Bessat was in fact re-appointed as Director II on August 13, 2004. Subsequently, on December 1, 2004, the President appointed Bessat as Director III, effectively replacing Ong.

Director concerned, and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: provided, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

x x x x x x x x x

[29] Section 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The *co-terminous* status may be further classified into the following:

x x x x x x x x x

(2) Co-terminous with the appointing authority – when appointment is co-existent with the tenure of the appointing authority or at his pleasure;

x x x x x x x x x

For purposes of coverage or membership with the GSIS, or their right to security of tenure, co-terminous appointees, except those who are co-terminous with the appointing authority, shall be considered permanent. (underscoring supplied)

Further, the OSG claims that when Ong accepted promotional appointments in the Career Executive Service (CES) for which he did not have the required eligibility, he became a temporary employee and had impliedly abandoned his right to security of tenure.

Our Ruling

The petition is bereft of merit.

MC No. 02-S.2004 did not remove Ong from the position of Director III. Assuming *arguendo* that it did, the defect was cured when the President, who was the appointing authority herself, in whose hands were lodged the power to remove, appointed Bessat, effectively revoking Ong's appointment.

MC No. 02-S.2004,[30] addressed to Ong, Bessat, Deputy Director Nestor Mantaring, and Regional Director Edward Villarta, in part reads:

> Records indicate your appointment status as "co-terminus" with the appointing power's tenure which ends effectively at midnight of this day, 30 June 2004.
>
> Unless, therefore, a new appointment is extended to you by Her Excellency GLORIA MACAPAGAL-ARROYO, consistent with her new tenure effective 01 July 2004, your services shall lapse into a *de facto*/hold[-]over status, to ensure continuity of service, until your replacements are appointed in your stead.[31]

On December 1, 2004, the President appointed Bessat as Ong's replacement.[32] Bessat was notified on December 17, 2004. Wycoco furnished Ong with a Notice,[33] dated December 20,

---

[30] *Rollo*, p. 36.

[31] *Id.*

[32] *Id.* at 37.

[33] *Id.* at 38.

2004, informing the latter that he should cease from performing the functions of Director III, effective December 17, 2004.

It is argued that in the hands of the appointing authority are lodged the power to remove. Hence, Wycoco allegedly acted beyond the scope of his authority when he issued MC No. 02-S.2004.

This Court notes that MC No. 02-S.2004 did not in effect remove Ong from his post. It merely informed Ong that records of the NBI showed that his co-terminous appointment had lapsed into a *de facto*/hold-over status. It likewise apprised him of the consequences of the said status.

Be that as it may, if we were to assume for argument's sake that Wycoco removed Ong from his position as Director III by virtue of the former's issuance of MC No. 02-S.2004, still, the defect was cured when the President herself issued Bessat's appointment on December 1, 2004. The appointing authority, who in this case was the President, had effectively revoked Ong's appointment.

Ong lacked the CES eligibility required for the position of Director III and his appointment was "co-terminus with the appointing authority." His appointment being both temporary and co-terminous in nature, it can be revoked by the President even without cause and at a short notice.

This Court likewise finds no error in the CA's ruling that since Ong held a co-terminous appointment, he was removable at the pleasure of the appointing authority.

It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law.[34] However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those

[34] *Supra* note 14.

employees whose appointments are contractual and co-terminous in nature.[35]

In the case at bar, Ong's appointment as Director III falls under the classifications provided in (a) Section 14(2) of the Omnibus Rules Implementing Book V of the Administrative Code, to wit, that which is "co-existent with the tenure of the appointing authority or at his pleasure"; and (b) Sections 13(b)[36] and 14(2)[37] of Rule V, CSC Resolution No. 91-1631, or that which is both a temporary and a *co-terminous* appointment. The appointment is temporary as Ong did not have the required CES eligibility.

The case of *Amores v. Civil Service Commission, et al*.[38] is instructive anent the nature of temporary appointments in the CES to which the position of Director III held by Ong belonged. The Court declared:

> An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.
>
> x x x x x x x x x
>
> x x x Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. x x x
>
> Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said

---

[35] *Civil Service Commission v. Magnaye, Jr.*, G.R. No. 183337, April 23, 2010, 619 SCRA 347, 357.

[36] *Supra* note 28.

[37] *Supra* note 29.

[38] G.R. No. 170093, April 29, 2009, 587 SCRA 160.

to be conditioned on the subsequent obtention of the required CES eligibility. x x x

x x x x x x x x x

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. x x x

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the subject office in a permanent capacity, there could not have been any violation of petitioner's supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moment's notice. Not even his own self-serving claim that he was competent to continue serving as Deputy Director may actually and legally give even the slightest semblance of authority to his thesis that he should remain in office. Be that as it may, it bears emphasis that, in any case, the mere fact that an employee is a CES eligible does not automatically operate to vest security of tenure on the appointee inasmuch as the security of tenure of employees in the career executive service, except first and second-level employees, pertains only to rank and not to the office or position to which they may be appointed.[39] (underscoring supplied and citations omitted)

The Court is categorical in the *Amores* case that an appointee without the requisite CES eligibility cannot hold the position in a permanent capacity. Temporary appointments are made if only to prevent hiatus in the government's rendition of public service. However, a temporary appointee can be removed even without cause and at a moment's notice. As to those with eligibilities, their rights to security of tenure pertain to ranks but not to the positions to which they were appointed.

Ong never alleged that at any time during which he held the Director III position, he had acquired the requisite eligibility. Thus, the right to security of tenure did not pertain to him at least relative to the Director III position.

---

[39] *Id.* at 167-170.

The next logical query to be resolved then is whether or not Ong, as an appointee holding a position "co-terminus with the appointing authority," was entitled to remain as Director III until the end of the President's tenure on June 30, 2010.

We likewise rule in the negative.

Both Section 14 of the Omnibus Rules Rules Implementing Book V of the Administrative Code and Section 14 (2) of Rule V, CSC Resolution No. 91-1631 define a co-terminous appointment as one co-existent with the tenure of the appointing authority or at his pleasure.

In *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.*[40] cited by the CA in its decision, we sustained the replacement of an incumbent, who held an appointment at the pleasure of the appointing authority. Such appointment was in essence temporary in nature. We categorized the incumbent's replacement not as removal but rather as an expiration of term and no prior notice, due hearing or cause were necessary to effect the same. In *Decano v. Edu*,[41] we ruled that the acceptance of a temporary appointment divests an appointee of the right to security of tenure against removal without cause. Further, in *Carillo vs. CA*,[42] we stated that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing authority, there being no need to show that the termination is for cause."

In Ong's case, his appointment was temporary and co-terminous. The doctrines enunciated in the cases of *Mita Pardo de Tavera, Decano, and Carillo* apply. Hence, no legal challenge can be properly posed against the President's appointment of Bessat as Ong's replacement. The CA correctly ruled that in *quo warranto* proceedings, the petitioner must show that he has a clear right to the office allegedly held unlawfully by another and in the absence of the said right, the lack of qualification or

---

[40] *Supra* note 14.

[41] *Supra* note 22.

[42] *Supra* note 16.

eligibility of the supposed usurper is immaterial. Stated differently, where a non-eligible holds a temporary appointment, his replacement by another non-eligible is not prohibited.[43]

We note that Ong's counsel had painstakingly drawn distinctions between a term and a tenure. It is argued that since Ong's appointment was co-terminous with the appointing authority, it should not had lapsed into a *de facto* status but continued until the end of the President's tenure on June 30, 2010.

Under the Omnibus Rules Implementing the Revised Administrative Code and CSC Resolution No. 91-1631, a co-terminous appointment is defined as one "co-existing with the tenure of the appointing authority or at his pleasure." Neither law nor jurisprudence draws distinctions between appointments "co-existing with the term of the appointing authority" on one hand, and one "co-existing with the appointing authority's tenure" on the other. In the contrary, under the aforecited rules, tenure and term are used rather loosely and interchangeably.

In Ong's case, the issues needed to be disposed of revolve around the concepts of temporary and co-terminous appointments. The distinctions between term and tenure find no materiality in the instant petition. Besides, whether or not the President's term ended on June 30, 2004 or her tenure ceased on June 30, 2010, the fact remains that she appointed Bessat as Director III, in effect revoking Ong's temporary and co-terminous appointment.

This Court recognizes Ong's lengthy service rendered to the government and deeply commisserates with his earlier plight. However, we cannot grant Ong the reliefs he sought as law and jurisprudence clearly dictate that being a temporary and co-terminous appointee, he had no vested rights over the position of Director III.

IN VIEW OF THE FOREGOING, the petition is **DENIED.** The Decision rendered by the Court of Appeals on August 5, 2008 in CA-G.R. SP No. 88673 is **AFFIRMED.**

---

[43] *Civil Service Commission v. Engineer Ali Darangina*, G.R. No. 167472, January 31, 2007, 513 SCRA 654.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185128. January 30, 2012]
(Formerly UDK No. 13980)

RUBEN DEL CASTILLO @ BOY CASTILLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; REQUISITES FOR THE ISSUANCE OF A SEARCH WARRANT. — The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.

2. ID.; ID.; ID.; ID.; ID.; PROBABLE CAUSE; ELUCIDATED. — Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than

---

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

not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible, totality of the circumstances standard. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. This Court, therefore, is in no position to disturb the factual findings of the judge which led to the issuance of the search warrant. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination.

3. ID.; ID.; ID.; ID.; ID.; ID.; SUBSTANTIAL BASIS; DEFINED; ESTABLISHED IN THE CASE AT BAR. — Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched. A review of the records shows that in the present case, a substantial basis exists.

4. ID.; ID.; ID.; ID.; ID.; DEFINITENESS OF THE PLACE TO BE SEARCHED; NOT SATISFIED IN THE CASE AT BAR. — A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness. In the present case, Search Warrant No. 570-9-1197-24 specifically designates or describes the residence of the petitioner as the place to be searched. Incidentally, the items were seized by a *barangay tanod* in a nipa hut, 20 meters away from the residence of the petitioner. The confiscated items, having been found in a place other than the one described in the search warrant, can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of petitioner's constitutional guaranty against unreasonable searches and seizure.

5. CRIMINAL LAW; REVISED PENAL CODE; AGENTS OF PERSONS IN AUTHORITY; DEFINED. — Article 152 of the Revised Penal Code defines x x x agents of persons in authority as: x x x A person who, by direct provision of law

or by election or by appointment by competent authority, is **charged with the maintenance of public order and the protection and security of life and property, such as *barrio* councilman, *barrio* policeman and *barangay* leader, and any person who comes to the aid of persons in authority, shall be deemed an agent of a person in authority**.

6. POLITICAL LAW; LOCAL GOVERNMENT CODE; AGENTS OF PERSONS IN AUTHORITY; FUNCTION OF A *BARANGAY TANOD* AS AN AGENT OF PERSONS IN AUTHORITY; ILLUSTRATED. — The Local Government Code also contains a provision which describes the function of a *barangay tanod* as an agent of persons in authority. Section 388 of the Local Government Code reads: SEC. 388. *Persons in Authority*. — For purposes of the Revised Penal Code, the *punong barangay*, *sangguniang barangay* members, and members of the *lupong tagapamayapa* in each *barangay* shall be deemed as persons in authority in their jurisdictions, while **other *barangay* officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment, and any *barangay* member who comes to the aid of persons in authority, shall be deemed agents of persons in authority**.

7. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED THE HIGHEST DEGREE OF RESPECT ON APPEAL. — Appellate courts will generally not disturb the factual findings of the trial court since the latter has the unique opportunity to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless attended with arbitrariness or plain disregard of pertinent facts or circumstances, the factual findings are accorded the highest degree of respect on appeal, as in the present case.

8. CRIMINAL LAW; REPUBLIC ACT NO. 6425; ILLEGAL POSSESSION OF *SHABU*; ELEMENTS. — In every prosecution for the illegal possession of *shabu*, the following essential elements must be established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.

9. ID.; ID.; ID.; ID.; CONCEPT OF POSSESSION OF REGULATED DRUGS, EXPLAINED; CONSTRUCTIVE POSSESSION, NOT ESTABLISHED IN THE CASE AT BAR. — In *People v. Tira*, this Court explained the concept of possession of regulated drugs, to wit: This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another. While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, there must be sufficient showing that the property is under appellant's control or possession. The CA, in its Decision, referred to the possession of regulated drugs by the petitioner as a constructive one. Constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. The records are void of any evidence to show that petitioner owns the nipa hut in question nor was it established that he used the said structure as a shop.

10. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; INDISPENSABLE TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE. — The prosecution must prove that the petitioner had knowledge of the existence and presence of the drugs in the place under his control and dominion and the character of the drugs. With the prosecution's failure to prove that the nipa hut was under petitioner's control and dominion, there casts a reasonable doubt as to his guilt. In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused — in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond

reasonable doubt. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.

APPEARANCES OF COUNSEL

Remegio C. Dayandayan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review[1] on *Certiorari* under Rule 45 of Ruben del Castillo assailing the Decision[2] dated July 31, 2006 and Resolution[3] dated December 13, 2007 of the Court of Appeals (CA) in CA-G.R. CR No. 27819, which affirmed the Decision[4] dated March 14, 2003 of the Regional Trial Court (RTC), Branch 12, Cebu, in Criminal Case No. CBU-46291, finding petitioner guilty beyond reasonable doubt of violation of Section 16, Article III of Republic Act (R.A.) 6425.

The facts, as culled from the records, are the following:

Pursuant to a confidential information that petitioner was engaged in selling *shabu*, police officers headed by SPO3 Bienvenido Masnayon, after conducting surveillance and test-buy operation at the house of petitioner, secured a search warrant from the RTC and around 3 o'clock in the afternoon of September

---

[1] Dated August 23, 2008, *rollo*, pp. 32-44.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring; *id.* at 54-70.

[3] Dated August 23, 2008, *id.* at 71-72.

[4] Penned by Presiding Judge Aproniano B. Taypin; *id.* at 45-53.

13, 1997, the same police operatives went to Gil Tudtud St., Mabolo, Cebu City to serve the search warrant to petitioner.

Upon arrival, somebody shouted "*raid*," which prompted them to immediately disembark from the jeep they were riding and went directly to petitioner's house and cordoned it. The structure of the petitioner's residence is a two-storey house and the petitioner was staying in the second floor. When they went upstairs, they met petitioner's wife and informed her that they will implement the search warrant. But before they can search the area, SPO3 Masnayon claimed that he saw petitioner run towards a small structure, a nipa hut, in front of his house. Masnayon chased him but to no avail, because he and his men were not familiar with the entrances and exits of the place.

They all went back to the residence of the petitioner and closely guarded the place where the subject ran for cover. SPO3 Masnayon requested his men to get a *barangay tanod* and a few minutes thereafter, his men returned with two *barangay tanods*.

In the presence of the *barangay tanod*, Nelson Gonzalado, and the elder sister of petitioner named Dolly del Castillo, searched the house of petitioner including the nipa hut where the petitioner allegedly ran for cover. His men who searched the residence of the petitioner found nothing, but one of the *barangay tanods* was able to confiscate from the nipa hut several articles, including four (4) plastic packs containing white crystalline substance. Consequently, the articles that were confiscated were sent to the PNP Crime Laboratory for examination. The contents of the four (4) heat- sealed transparent plastic packs were subjected to laboratory examination, the result of which proved positive for the presence of *methamphetamine hydrochloride*, or *shabu*.

Thus, an Information was filed before the RTC against petitioner, charging him with violation of Section 16, Article III of R.A. 6425, as amended. The Information[5] reads:

---

[5] Records, pp. 1-2.

That on or about the 13th day of September 1997, at about 3:00 p.m. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control four (4) packs of white crystalline powder, having a total weight of 0.31 gram, locally known as "*shabu*," all containing methamphetamine hydrochloride, a regulated drug, without license or prescription from any competent authority.

CONTRARY TO LAW.[6]

During arraignment, petitioner, with the assistance of his counsel, pleaded not guilty.[7] Subsequently, trial on the merits ensued.

To prove the earlier mentioned incident, the prosecution presented the testimonies of SPO3 Bienvenido Masnayon, PO2 Milo Arriola, and Forensic Analyst, Police Inspector Mutchit Salinas.

The defense, on the other hand, presented the testimonies of petitioner, Jesusa del Castillo, Dalisay del Castillo and Herbert Aclan, which can be summarized as follows:

On September 13, 1997, around 3 o'clock in the afternoon, petitioner was installing the electrical wirings and airconditioning units of the Four Seasons Canteen and Beauty Parlor at Wacky Bldg., Cabancalan, Cebu. He was able to finish his job around 6 o'clock in the evening, but he was engaged by the owner of the establishment in a conversation. He was able to go home around 8:30-9 o'clock in the evening. It was then that he learned from his wife that police operatives searched his house and found nothing. According to him, the small structure, 20 meters away from his house where they found the confiscated items, was owned by his older brother and was used as a storage place by his father.

After trial, the RTC found petitioner guilty beyond reasonable of the charge against him in the Information. The dispositive portion of the Decision reads:

---

[6] *Id.* at 1.

[7] *Id.* at 57.

WHEREFORE, premises considered, this Court finds the accused Ruben del Castillo "*alyas* Boy Castillo," GUILTY of violating Section 16, Article III, Republic Act No. 6425, as amended. There being no mitigating nor aggravating circumstances proven before this Court, and applying the Indeterminate Sentence Law, he is sentenced to suffer the penalty of Six (6) Months and One (1) Day as Minimum and Four (4) Years and Two (2) Months as Maximum of *Prision Correccional*.

The four (4) small plastic packets of white crystalline substance having a total weight of 0.31 gram, positive for the presence of methamphetamine hydrochloride, are ordered confiscated and shall be destroyed in accordance with the law.

SO ORDERED.[8]

Aggrieved, petitioner appealed his case with the CA, but the latter affirmed the decision of the RTC, thus:

WHEREFORE, the challenged Decision is AFFIRMED *in toto* and the appeal is DISMISSED, with costs against accused-appellant.

SO ORDERED.[9]

After the motion for reconsideration of petitioner was denied by the CA, petitioner filed with this Court the present petition for *certiorari* under Rule 45 of the Rules of Court with the following arguments raised:

1. THE COURT OF APPEALS ERRED IN ITS APPLICATION OF THE PROVISIONS OF THE CONSTITUTION, THE RULES OF COURT AND ESTABLISHED JURISPRUDENCE *VIS-A-VIS* VALIDITY OF SEARCH WARRANT NO. 570-9-1197-24;

2. THE COURT OF APPEALS ERRED IN RULING THAT THE FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER ALLEGEDLY FOUND ON THE FLOOR OF THE NIPA HUT OR STRUCTURE ARE ADMISSIBLE IN EVIDENCE AGAINST THE PETITIONER, NOT ONLY BECAUSE THE SAID COURT SIMPLY PRESUMED THAT IT WAS USED BY THE PETITIONER OR THAT THE PETITIONER RAN TO IT FOR COVER WHEN THE

---

[8] *Id.* at 254.

[9] *Rollo*, p. 70.

SEARCHING TEAM ARRIVED AT HIS RESIDENCE, BUT ALSO, PRESUMING THAT THE SAID NIPA HUT OR STRUCTURE WAS INDEED USED BY THE PETITIONER AND THE FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER WERE FOUND THEREAT. THE SUBJECT FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER ARE FRUITS OF THE POISONOUS TREE; and

3. THE COURT OF APPEALS ERRED IN ITS APPLICATION OF THE ELEMENT OF "POSSESSION" AS AGAINST THE PETITIONER, AS IT WAS IN VIOLATION OF THE ESTABLISHED JURISPRUDENCE ON THE MATTER. HAD THE SAID COURT PROPERLY APPLIED THE ELEMENT IN QUESTION, IT COULD HAVE BEEN ASSAYED THAT THE SAME HAD NOT BEEN PROVEN.[10]

The Office of the Solicitor General (OSG), in its Comment dated February 10, 2009, enumerated the following counter-arguments:

I

SEARCH WARRANT No. 570-9-11-97-24 issued by Executive Judge Priscilla S. Agana of Branch 24, Regional Trial Court of Cebu City is valid.

II

The four (4) packs of *shabu* seized inside the shop of petitioner are admissible in evidence against him.

III

The Court of Appeals did not err in finding him guilty of illegal possession of prohibited drugs.[11]

Petitioner insists that there was no probable cause to issue the search warrant, considering that SPO1 Reynaldo Matillano, the police officer who applied for it, had no personal knowledge of the alleged illegal sale of drugs during a test-buy operation conducted prior to the application of the same search warrant. The OSG, however, maintains that the petitioner, aside from failing to file the necessary motion to quash the search warrant

---

[10] *Id.* at 37.

[11] *Id.* at 98-103.

pursuant to Section 14, Rule 127 of the Revised Rules on Criminal Procedure, did not introduce clear and convincing evidence to show that Masnayon was conscious of the falsity of his assertion or representation.

Anent the second argument, petitioner asserts that the nipa hut located about 20 meters away from his house is no longer within the "permissible area" that may be searched by the police officers due to the distance and that the search warrant did not include the same nipa hut as one of the places to be searched. The OSG, on the other hand, argues that the constitutional guaranty against unreasonable searches and seizure is applicable only against government authorities and not to private individuals such as the *barangay tanod* who found the folded paper containing packs of *shabu* inside the nipa hut.

As to the third argument raised, petitioner claims that the CA erred in finding him guilty beyond reasonable doubt of illegal possession of prohibited drugs, because he could not be presumed to be in possession of the same just because they were found inside the nipa hut. Nevertheless, the OSG dismissed the argument of the petitioner, stating that, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict.

This Court finds no merit on the first argument of petitioner.

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[12] According to petitioner, there was

---

[12] *Abuan v. People*, G.R. No. 168773, October 27, 2006, 505 SCRA 799, 822, citing *People v. Francisco*, G.R. No. 129035, August 22, 2002, 387 SCRA 569, 575.

no probable cause. Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[13] A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[14] The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula,[15] and must employ a flexible, totality of the circumstances standard.[16] The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. This Court, therefore, is in no position to disturb the factual findings of the judge which led to the issuance of the search warrant. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination.[17] Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.[18] A review of the records shows that in the present case, a substantial basis exists.

---

[13] *Santos v. Pryce Gases, Inc.*, G.R. No. 165122, November 23, 2007, 538 SCRA 474, 484, citing *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 903 (1996).

[14] *Id.*, citing *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 550.

[15] *Abuan v. People, supra* note 12, citing *People v. Tampis*, 467 Phil. 582, 590 (2003); *Massachusetts v. Upton*, 466 US 727, 104 S.Ct. 2085 (1984).

[16] *Id.* citing *US v. Canan*, 48 F.3d 954 (1995).

[17] *People v. Estela Tuan*, G.R. No. 176066, August 11, 2011.

[18] *Id.* citing *People v. Tee*, 443 Phil. 521, 540 (2003).

With regard to the second argument of petitioner, it must be remembered that the warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[19] In the present case, Search Warrant No. 570-9-1197-24[20] specifically designates or describes the residence of the petitioner as the place to be searched. Incidentally, the items were seized by a *barangay tanod* in a nipa hut, 20 meters away from the residence of the petitioner. The confiscated items, having been found in a place other than the one described in the search warrant, can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of petitioner's constitutional guaranty against unreasonable searches and seizure. The OSG argues that, assuming that the items seized were found in another place not designated in the search warrant, the same items should still be admissible as evidence because the one who discovered them was a *barangay tanod* who is a private individual, the constitutional guaranty against unreasonable searches and seizure being applicable only against government authorities. The contention is devoid of merit.

It was testified to during trial by the police officers who effected the search warrant that they asked the assistance of the *barangay tanods*, thus, in the testimony of SPO3 Masnayon:

Fiscal Centino:

Q For how long did the chase take place?
A Just a very few moments.

Q After that, what did you [do] when you were not able to reach him?
A I watched his shop and then I requested my men to get a *barangay tanod*.

---

[19] *People v. Tee, supra*.

[20] Records, p. 114.

Q Were you able to get a *barangay tanod*?
A Yes.

Q Can you tell us what is the name of the *barangay tanod*?
A Nelson Gonzalado.

Q For point of clarification, how many *barangay tanod* [did] your driver get?
A Two.

Q What happened after that?
A We searched the house, but we found negative.

Q Who proceeded to the second floor of the house?
A SPO1 Cirilo Pogoso and Milo Areola went upstairs and found nothing.

Q What about you, where were you?
A I [was] watching his shop and I was with Matillano.

Q What about the *barangay tanod*?
A Together with Milo and Pogoso.

Q When the search at the second floor of the house yielded negative what did you do?
A They went downstairs because I was suspicious of his shop because he ran from his shop, so we searched his shop.

Q Who were with you when you searched the shop?
A The *barangay tanod* Nilo Gonzalado, the elder sister of Ruben del Castillo named Dolly del Castillo.

Q You mean to say, that when (*sic*) SPO1 Reynaldo Matillano, Barangay Tanod Nilo Gonzalado and the elder sister of Ruben del Castillo were together in the shop?
A Yes.

Q What happened at the shop?
A One of the *barangay tanods* was able to pick up white folded paper.

Q What [were] the contents of that white folded paper?
A A plastic pack containing white crystalline.

Q Was that the only item?
A There are others like the foil, scissor.

Q Were you present when those persons found those tin foil and others inside the electric shop?
A Yes.[21]

The fact that no items were seized in the residence of petitioner and that the items that were actually seized were found in another structure by a *barangay tanod*, was corroborated by PO2 Arriola, thus:

FISCAL:

Q So, upon arriving at the house of Ruben del Castillo *alias* Boy, can you still recall what took place?
A We cordoned the area.

Q And after you cordoned the area, did anything happen?
A We waited for the *barangay tanod*.

Q And did the *barangay tanod* eventually appear?
A Yes. And then we started our search in the presence of Ruben del Castillo's wife.

Q What is the name of the wife of Ruben del Castillo?
A I cannot recall her name, but if I see her I can recall [her] face.

Q What about Ruben del Castillo, was she around when [you] conducted the search?
A No. Ruben was not in the house. But our team leader, team mate Bienvenido Masnayon saw that Ruben ran away from his adjacent electronic shop near his house, in front of his house.

Q Did you find anything during the search in the house of Ruben del Castillo?
A After our search in the house, we did not see anything. The house was clean.

Q What did you do afterwards, if any?
A We left (*sic*) out of the house and proceeded to his electronic shop.

Q Do you know the reason why you proceeded to his electronic shop?

[21] TSN, July 16, 1998, pp. 8-9. (Emphasis supplied.)

A Yes. Because our team leader Bienvenido Masnayon saw that (*sic*) Ruben run from that store and furthermore the door was open.

Q How far is the electronic shop from the house of Ruben del Castillo?
A More or less, 5 to 6 meters in front of his house.

x x x x x x x x x

Q So, who entered inside the electronic shop?
A The one who first entered the electronic shop is our team leader Bienvenido Masnayon.

Q You mentioned that Masnayon entered first. Do you mean to say that there were other persons or other person that followed after Masnayon?
A Then we followed suit.

Q All of your police officers and the *barangay tanod* followed suit?
A I led Otadoy and the *barangay tanod*.

Q What about you?
A I also followed suit.

Q And did anything happen inside the shop of Ruben del Castillo?
A It was the *barangay tanod* who saw the folded paper and I saw him open the folded paper which contained four *shabu* deck.

Q How far were you when you saw the folded paper and the *tanod* open the folded paper?
A We were side by side because the shop was very small.[22]

SPO1 Pogoso also testified on the same matter, thus:

FISCAL CENTINO:

Q And where did you conduct the search, Mr. Witness?
A At his residence, the two-storey house.

Q Among the three policemen, who were with you in conducting the search at the residence of the accused?

---

[22] TSN, February 4, 1999, pp. 4-6. (Emphasis supplied.)

A I, Bienvenido Masnayon.

Q And what transpired after you searched the house of Ruben del Castillo?
A Negative, no *shabu*.

Q And what happened afterwards, if any?
A We went downstairs and proceeded to the small house.

Q Can you please describe to this Honorable Court, what was that small house which you proceeded to?
A It is a nipa hut.

Q And more or less, how far or near was it from the house of Ruben del Castillo?
A 5 to 10 meters.

Q And could you tell Mr. Witness, what was that nipa hut supposed to be?
A That was the electronic shop of Ruben del Castillo.

Q And what happened when your team proceeded to the nipa hut?
A I was just outside the nipa hut.

Q And who among the team went inside?
A PO2 Milo Areola and the *Barangay Tanod*.[23]

Having been established that the assistance of the *barangay tanods* was sought by the police authorities who effected the searched warrant, the same *barangay tanods* therefore acted as agents of persons in authority. Article 152 of the Revised Penal Code defines persons in authority and agents of persons in authority as:

> x x x any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority. A *barangay* captain and a *barangay* chairman shall also be deemed a person in authority.
>
> A person who, by direct provision of law or by election or by appointment by competent authority, is **charged with the maintenance of public order and the protection and security of**

[23] TSN, May 12, 1999, pp. 3-4. (Emphasis supplied.)

life and property, such as *barrio* councilman, *barrio* policeman and *barangay* leader, and any person who comes to the aid of persons in authority, shall be deemed an agent of a person in authority.

The Local Government Code also contains a provision which describes the function of a *barangay tanod* as an agent of persons in authority. Section 388 of the Local Government Code reads:

SEC. 388. *Persons in Authority*. — For purposes of the Revised Penal Code, the *punong barangay, sangguniang barangay* members, and members of the *lupong tagapamayapa* in each *barangay* shall be deemed as persons in authority in their jurisdictions, while **other *barangay* officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment, and any *barangay* member who comes to the aid of persons in authority, shall be deemed agents of persons in authority**.

By virtue of the above provisions, the police officers, as well as the *barangay tanods* were acting as agents of a person in authority during the conduct of the search. Thus, the search conducted was unreasonable and the confiscated items are inadmissible in evidence. Assuming *ex gratia argumenti* that the *barangay tanod* who found the confiscated items is considered a private individual, thus, making the same items admissible in evidence, petitioner's third argument that the prosecution failed to establish constructive possession of the regulated drugs seized, would still be meritorious.

Appellate courts will generally not disturb the factual findings of the trial court since the latter has the unique opportunity to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying,[24] unless attended with arbitrariness or plain disregard of pertinent facts or circumstances, the factual findings are accorded the highest degree of respect on appeal[25] as in the present case.

---

[24] *People v. Baygar*, 376 Phil. 466, 473 (1999).

[25] *People v. Matito*, 468 Phil. 14, 24 (2004).

It must be put into emphasis that this present case is about the violation of Section 16 of R.A. 6425. In every prosecution for the illegal possession of *shabu*, the following essential elements must be established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[26]

In *People v. Tira*,[27] this Court explained the concept of possession of regulated drugs, to wit:

> This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[28]

While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, there must be sufficient showing that the property is under appellant's control or possession.[29] The CA, in its Decision, referred to the possession of regulated drugs by the petitioner as a constructive one. Constructive possession exists when the drug is under the dominion and control of the

---

[26] *Quelnan v. People*, G.R. No. 166061, July 6, 2007, 526 SCRA 653, 662, citing *Abuan v. People*, *supra* note 12, and *People v. Torres*, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 610.

[27] G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[28] *Id.* at 151-152.

[29] *People v. Del Castillo*, G.R. No. 153254, September 30, 2004, 439 SCRA 601, 613-614, citing *People v. Dichoso*, G.R. Nos. 101216-18, June 4, 1993, 223 SCRA 174, 191, citing *Burgos v. Chief of Staff*, 133 SCRA 800 (1984).

accused or when he has the right to exercise dominion and control over the place where it is found.[30] The records are void of any evidence to show that petitioner owns the nipa hut in question nor was it established that he used the said structure as a shop. The RTC, as well as the CA, merely presumed that petitioner used the said structure due to the presence of electrical materials, the petitioner being an electrician by profession. The CA, in its Decision, noted a resolution by the investigating prosecutor, thus:

> x x x As admitted by respondent's wife, her husband is an electrician by occupation. As such, conclusion could be arrived at that the structure, which housed the electrical equipments is actually used by the respondent. Being the case, he has control of the things found in said structure.[31]

In addition, the testimonies of the witnesses for the prosecution do not also provide proof as to the ownership of the structure where the seized articles were found. During their direct testimonies, they just said, without stating their basis, that the same structure was the shop of petitioner.[32] During the direct testimony of SPO1 Pogoso, he even outrightly concluded that the electrical shop/nipa hut was owned by petitioner, thus:

FISCAL CENTINO:

Q Can you please describe to this Honorable Court, what was that small house which you proceeded to?
A It is a nipa hut.

Q And more or less, how far or near was it from the house of Ruben del Castillo?
A 5 to 10 meters.

Q And could you tell Mr. Witness, what was that nipa hut supposed to be?
A That was the electronic shop of Ruben del Castillo.

Q And what happened when your team proceeded to the nipa hut?

---

[30] *People v. Tira, supra* note 27.

[31] *Rollo*, p. 65.

[32] TSN, July 16, 1998, pp. 7-9; TSN, February 4, 1999, pp. 5-6.

A I was just outside the nipa hut.[33]

However, during cross-examination, SPO3 Masnayon admitted that there was an electrical shop but denied what he said in his earlier testimony that it was owned by petitioner, thus:

ATTY. DAYANDAYAN:

Q You testified that Ruben del Castillo has an electrical shop, is that correct?
A He came out of an electrical shop. I did not say that he owns the shop.

Q Now, this shop is within a structure?
A Yes.

Q How big is the structure?
A It is quite a big structure, because at the other side is a mahjong den and at the other side is a structure rented by a couple.[34]

The prosecution must prove that the petitioner had knowledge of the existence and presence of the drugs in the place under his control and dominion and the character of the drugs.[35] With the prosecution's failure to prove that the nipa hut was under petitioner's control and dominion, there casts a reasonable doubt as to his guilt. In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused — in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.[36] Proof beyond reasonable doubt, or that quantum of

---

[33] TSN, May 12, 1999, pp. 3-4.

[34] TSN, July 16, 1998, p. 15.

[35] See *People v. Tira, supra* note 27.

[36] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 207, citing Article III (Bill of Rights), Section 14(2) of the 1987 Constitution which reads: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and production of evidence in his behalf. However, after arraignment, trial may

proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[37]

WHEREFORE, the Decision dated July 31, 2006 of the Court of Appeals in CA-G. R. No. 27819, which affirmed the Decision dated March 14, 2003 of the Regional Trial Court, Branch 12, Cebu, in Criminal Case No. CBU-46291 is hereby **REVERSED** and **SET ASIDE**. Petitioner Ruben del Castillo is **ACQUITTED** on reasonable doubt.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[A.M. OCA IPI No. 11-184-CA-J. January 31, 2012]

RE: VERIFIED COMPLAINT OF ENGR. OSCAR L. ONGJOCO, CHAIRMAN OF THE BOARD/CEO OF FH-GYMN MULTI-PURPOSE AND TRANSPORT SERVICE COOPERATIVE, AGAINST HON. JUAN Q. ENRIQUEZ, JR., HON. RAMON M. BATO, JR. AND HON. FLORITO S. MACALINO, ASSOCIATE JUSTICES, COURT OF APPEALS

---

proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[37] *People v. Villanueva*, G.R. No. 131773, February 13, 2002, 376 SCRA 615, 637, citing *People v. Gomez*, G.R. No. 101817, March 26, 1997, 270 SCRA 432, 444.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1178 dated January 26, 2012.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SECTION 14, ARTICLE VIII OF THE CONSTITUTION; THE ESSENTIAL PURPOSE OF THE CONSTITUTIONAL PROVISION IS TO REQUIRE THAT A JUDICIAL DECISION BE CLEAR ON WHY A PARTY HAS PREVAILED UNDER THE LAW AS APPLIED TO THE FACTS AS PROVED; COMPLIED WITH IN THE CASE AT BAR. — The essential purpose of the constitutional provision is to require that a judicial decision be clear on why a party has prevailed under the law as applied to the facts as proved; the provision nowhere demands that a point-by-point consideration and resolution of the issues raised by the parties are necessary. Cogently, the Court has said in *Tichangco v. Enriquez*, to wit: This constitutional provision deals with the disposition of petitions for review and of motions for reconsideration. **In appellate courts, the rule does not require any comprehensive statement of facts or mention of the applicable law, but merely a statement of the "legal basis" for denying due course. Thus, there is sufficient compliance with the constitutional requirement when a collegiate appellate court, after deliberation, decides to deny a motion; states that the questions raised are factual or have already been passed upon; or cites some other legal basis. There is no need to explain fully the court's denial, since the facts and the law have already been laid out in the assailed Decision**. Its decision shows that the CA's Sixth Division complied with the requirements of the constitutional provision x x x. Indeed, the definitive pronouncement of the CA's Sixth Division that "the Deputy Ombudsman found no substantial evidence to prove that there was interference in the internal affairs of FH-GYMN nor was there a violation of the law by the respondents" met the constitutional demand for a clear and distinct statement of the facts and the law on which the decision was based. The CA's Sixth Division did not have to point out and discuss the flaws of FH-GYMN's petition considering that the decision of the Deputy Ombudsman sufficiently detailed the factual and legal bases for the denial of the petition.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; IN

ADMINISTRATIVE CASES INVOLVING JUDICIAL OFFICERS, THE STANDARD OF SUBSTANTIAL EVIDENCE IS SATISFIED ONLY WHEN THERE IS REASONABLE GROUND TO BELIEVE THAT THE RESPONDENT IS RESPONSIBLE FOR THE MISCONDUCT COMPLAINED OF. — In administrative cases involving judicial officers, the complainants always carried on their shoulders the burden of proof to substantiate their allegations through substantial evidence. That standard of substantial evidence is satisfied only when there is reasonable ground to believe that the respondent is responsible for the misconduct complained of although such evidence may not be overwhelming or even preponderant.

3. JUDICIAL ETHICS; JUDGES; DISCIPLINARY PROCEEDINGS AND CRIMINAL ACTIONS BROUGHT AGAINST ANY JUDGE IN RELATION TO THE PERFORMANCE OF HIS OFFICIAL FUNCTIONS ARE NEITHER COMPLEMENTARY TO NOR SUPPLETORY OF APPROPRIATE JUDICIAL REMEDIES, NOR A SUBSTITUTE FOR SUCH REMEDIES. — [D]isciplinary proceedings and criminal actions brought against any judge in relation to the performance of his official functions are neither complementary to nor suppletory of appropriate judicial remedies, nor a substitute for such remedies. Any party who may feel aggrieved should resort to these remedies, and exhaust them, instead of resorting to disciplinary proceedings and criminal actions. We explained why in *In Re: Joaquin T. Borromeo*: Given the nature of the judicial function, the power vested by the Constitution in the Supreme Court and the lower courts established by law, the question submits to only one answer: the administrative or criminal remedies are neither alternative or cumulative to judicial review where such review is available, and must wait on the result thereof. Simple reflection will make this proposition amply clear, and demonstrate that any contrary postulation can have only intolerable legal implications. Allowing a party who feels aggrieved by a judicial order or decision not yet final and executory to mount an administrative, civil or criminal prosecution for unjust judgment against the issuing judge would, at a minimum and as an indispensable first step, confer the prosecutor (Ombudsman) with an incongruous function pertaining, not to him, but to the courts: the determination of whether the questioned disposition

is erroneous in its findings of fact or conclusions of law, or both. If he does proceed despite that impediment, whatever determination he makes could well set off a proliferation of administrative or criminal litigation, a possibility hereafter more fully explored. Such actions are impermissible and cannot prosper. It is not, as already pointed out, within the power of public prosecutors, or the Ombudsman or his Deputies, directly or vicariously, to review judgments or final orders or resolutions of the Courts of the land. The power of review—by appeal or special civil action—is not only lodged exclusively in the Courts themselves but must be exercised in accordance with a well-defined and long established hierarchy, and long standing processes and procedures. No other review is allowed; otherwise litigation would be interminable, and vexatiously repetitive.

4. ID.; ID.; ADMINISTRATIVE SANCTION AND CRIMINAL LIABILITY, WHEN PROPER. — [W]e reiterate that a judge's failure to correctly interpret the law or to properly appreciate the evidence presented does not necessarily incur administrative liability, for to hold him administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, will be nothing short of harassment and will make his position doubly unbearable. His judicial office will then be rendered untenable, because no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment. Administrative sanction and criminal liability should be visited on him only when the error is so gross, deliberate and malicious, or is committed with evident bad faith, or only in clear cases of violations by him of the standards and norms of propriety and good behavior prescribed by law and the rules of procedure, or fixed and defined by pertinent jurisprudence.

R E S O L U T I O N

BERSAMIN, *J.*:

Judicial officers do not have to suffer the brunt of unsuccessful or dissatisfied litigants' baseless and false imputations of their violating the Constitution in resolving their cases and of harboring bias and partiality towards the adverse parties. The litigant who baselessly accuses them of such violations is not immune from

appropriate sanctions if he thereby affronts the administration of justice and manifests a disrespect towards the judicial office.

Antecedents

On June 7, 2011, the Court received a letter from Engr. Oscar L. Ongjoco, claiming himself to be the Chairman of the Board and Chief Executive Officer (CEO) of the FH-GYMN Multi-Purpose and Transport Service Cooperative (FH-GYMN).[1] The letter included a complaint-affidavit,[2] whereby Ongjoco charged the CA's Sixth Division composed of Associate Justice Juan Q. Enriquez, Jr. (as Chairman), Associate Justice Ramon M. Bato, Jr., and Associate Justice Florito S. Macalino as Members for rendering an arbitrary and baseless decision in CA-G.R. SP No. 102289 entitled *FH-GYMN Multi-Purpose and Transport Service Cooperative v. Allan Ray A. Baluyut, et al.*[3]

The genesis of CA-G.R. SP No. 102289 started on July 26, 2004 when FH-GYMN requested the amendment of *Kautusang Bayan Blg*. 37-02-97 of the City of San Jose del Monte, Bulacan through the Committee on Transportation and Communications (Committee) of the *Sangguniang Panlungsod* (*Sanggunian*) in order to include the authorization of FH-GYMN's Chairman to issue motorized tricycle operators permit (MTOP) to its members.[4] During the ensuing scheduled public hearings, City Councilors Allan Ray A. Baluyut and Nolly Concepcion, together with ABC President Bartolome B. Aguirre and one Noel Mendoza (an employee of the *Sanggunian*), were alleged to have uttered statements exhibiting their bias against FH-GYMN, giving FH-GYMN reason to believe that the Committee members were favoring the existing franchisees Francisco Homes Tricycle Operators and Drivers Association (FRAHTODA) and Barangay

---

[1] *Rollo*, p. 2.

[2] *Id.*, pp. 3-11.

[3] *Id.*, pp. 12-20.

[4] *Id.*, pp. 34-35 (the other amendment was to implement a color-coding scheme for the tricycles belonging to the two existing operators/drivers associations and the complainant cooperative).

Mulawin Tricycle Operators and Drivers Association (BMTODA).[5] Indeed, later on, the *Sanggunian*, acting upon the recommendation of the Committee, denied the request of FH-GYMN.[6]

On July 15, 2005, FH-GYMN brought a complaint in the Office of the Deputy Ombudsman for Luzon charging Baluyut, Concepcion, Aguirre, Mendoza with violations of Article 124(2)(d) of the *Cooperative Code*, Section 3(e) and (f) of the Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*), and Section 5(a) of Republic Act No. 6713 (*Code of Conduct for Public Officials and Employees*). The complaint also charged Eduardo de Guzman (FRAHTODA President) and Wilson de Guzman (BMTODA President). Eventually, the complaint of FH-GYMN was dismissed for insufficiency of evidence as to the public officials, and for lack of merit and lack of jurisdiction as to the private respondents. FH-GYMN sought reconsideration, but its motion to that effect was denied.[7]

FH-GYMN timely filed a petition for review in the CA.

In the meanwhile, FH-GYMN filed in the Office of the President a complaint accusing Overall Deputy Ombudsman Orlando C. Casimiro, Deputy Ombudsman Emilio A. Gonzales III, and Graft Investigator and Prosecution Officer Robert C. Renido with a violation of Section 3(i) of Republic Act No. 3019 arising from the dismissal of its complaint.[8]

On January 31, 2011, the CA's Sixth Division denied the petition for review.[9]

FH-GYMN, through Ongjoco, moved for the reconsideration of the denial of the petition for review, with prayer for inhibition,[10] but the CA's Sixth Division denied the motion.

---

[5] *Id.,* pp. 34-36.

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

[7] *Id.,* pp. 37-38.

[8] *Id.,* pp. 61-71.

[9] *Id.,* pp. 12-20.

[10] *Id.,* pp. 21-31.

Thereafter, Ongjoco initiated this administrative case against the aforenamed member of the CA's Sixth Division.

In the complaint, Ongjoco maintained that respondent members of the CA's Sixth Division violated Section 14, Article VIII of the 1987 Constitution by not specifically stating the facts and the law on which the denial of the petition for review was based; that they summarily denied the petition for review without setting forth the basis for denying the five issues FH-GYMN's petition for review raised; that the denial was "unjust, unfair and partial," and heavily favored the other party; that the denial of the petition warranted the presumption of "directly or indirectly becoming interested for personal gain" under Section 3(i) of Republic Act No. 3019; and that the Ombudsman officials who were probably respondent Justices' schoolmates or associates persuaded, induced or influenced said Justices to dismiss the petition for review and to manipulate the delivery of the copy of the decision to FH-GYMN to prevent it from timely filing a motion for reconsideration.[11]

Ruling

We find the administrative complaint against respondent Justices of the Court of Appeals baseless and utterly devoid of legal and factual merit, and outrightly dismiss it.

Firstly, Ongjoco insists that the decision promulgated on January 31, 2011 by the CA's Sixth Division had no legal foundation and did not even address the five issues presented in the petition for review; and that the respondents as members of the CA's Sixth Division thereby violated Section 14, Article VIII of the Constitution, which provides as follows:

> Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without starting the legal basis therefor.

[11] *Id.,* pp. 9-10.

The insistence of Ongjoco is unfounded. The essential purpose of the constitutional provision is to require that a judicial decision be clear on why a party has prevailed under the law as applied to the facts as proved; the provision nowhere demands that a point-by-point consideration and resolution of the issues raised by the parties are necessary.[12] Cogently, the Court has said in *Tichangco v. Enriquez*,[13] to wit:

> This constitutional provision deals with the disposition of petitions for review and of motions for reconsideration. **In appellate courts, the rule does not require any comprehensive statement of facts or mention of the applicable law, but merely a statement of the "legal basis" for denying due course.**
>
> **Thus, there is sufficient compliance with the constitutional requirement when a collegiate appellate court, after deliberation, decides to deny a motion; states that the questions raised are factual or have already been passed upon; or cites some other legal basis. There is no need to explain fully the court's denial, since the facts and the law have already been laid out in the assailed Decision**. (Emphasis supplied)

Its decision shows that the CA's Sixth Division complied with the requirements of the constitutional provision,[14] *viz*:

> *The petition is without merit.*
>
> Petitioner alleged that the Ombudsman erred in not finding respondents liable for violation of the Cooperative Code of the Philippines considering that their actuations constituted acts of direct or indirect interference or intervention with the internal affairs of FH-GYMN and that recommendation to deny FH-GYMN's application was tantamount to "any other act inimical or adverse to its autonomy and independence."
>
> *We disagree.*
>
> It is well settled that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations

---

[12] *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 602.

[13] G.R. No. 150629, June 30, 2004, 433 SCRA 325, 341.

[14] *Rollo*, pp. 17-20.

in his complaint. Section 27 of the Ombudsman Act is unequivocal. Findings of fact by the Office of the Ombudsman, when supported by substantial evidence, are conclusive. Conversely, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts (*Marcelo vs. Bungubung, 552 SCRA 589*).

In the present case, the Deputy Ombudsman found no substantial evidence to prove that there was interference in the internal affairs of FH-GYMN nor was there a violation of the law by the respondents. As aptly ruled by the Ombudsman:

> "While the utterances made by respondents Baluyot, Aguirre and Mendoza in the course of public hearings earlier mentioned indeed demonstrate exaltation of FRAHTODA and BMTODA, to the apparent disadvantage of FH-GYMN, the same does not imply or suggest interference in the internal affairs of the latter considering that said remarks or comments were made precisely in the lawful exercise of the mandate of the Sangguniang Panlungsod of the locality concerned through the Committee on Transporation and Communication. It is worthy to emphasize that were it not for the complainant's letter-request dated July 23, 2004, the committee concerned would not have conducted the aforementioned public hearings, thus, there would have been no occasion for the subject unfavorable remarks to unleash. Thus, it would be irrational to conclude that simply because the questioned utterances were unfavorable to FH-GYMN, the same constitutes interference or intervention in the internal affairs of the said cooperative.
>
> In the same vein, while respondents Baluyot, Concepcion and Aguirre rendered an adverse recommendation as against complaint's letter-request earlier mentioned, the same does not signify giving of undue favors to FRAHTODA or BMTODA, or causing of undue injury to FH-GYMN, inasmuch as said recommendation or decision, as the records vividly show, was arrived at by the said respondents in honest exercise of their sound judgment based on their interpretation of the applicable ordinance governing the operation of tricycles within their area of jurisdiction. Evidence on record no doubt failed to sufficiently establish that, in so making the questioned recommendation, respondents Baluyot, Concepcion and Aguirre acted with manifest partiality, evident bad faith or gross inexcusable negligence. It is likewise worthy to note that,

> contrary to complainant's insinuation, the letter-request adverted to was acted upon by respondents Baluyot, Concepcion and Aguirre within a reasonable time and, as a matter of fact, complainant had been notified of the action taken by the former relative to his letter-request or proposals.
>
> Time and again, it has been held, no less than by the Supreme Court, that mere suspicions and speculations can never be the basis of conviction in a criminal case. Guided by the same doctrinal rule, this Office is not duty-bound to proceed with the indictment of the public respondents as charged. Indeed well entrenched is the rule that "(t)he purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials (*Joint Resolution, October 17, 2005, Rollo pp. 142-143*).

Moreover, petitioners failed to rebut the presumption of regularity in the performance of the official duties of respondents by affirmative evidence of irregularity or failure to perform a duty. The presumption prevails and becomes conclusive until it is overcome by no less than clear and convincing evidence to the contrary. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness (*Bustillo vs. People of the Philippines, G.R. No. 160718, May 12, 2010*).

There being no substantial evidence to reverse the findings of the Ombudsman, the instant petition is denied.

WHEREFORE, premises considered the Petition for Review is DENIED for lack of merit. The Joint Resolution dated October 17, 2005 and Joint Order dated April 25, 2006 of the Deputy Ombudsman of Luzon are AFFIRMED.

SO ORDERED.

Indeed, the definitive pronouncement of the CA's Sixth Division that "the Deputy Ombudsman found no substantial evidence to prove that there was interference in the internal affairs of FH-GYMN nor was there a violation of the law by

the respondents"[15] met the constitutional demand for a clear and distinct statement of the facts and the law on which the decision was based. The CA's Sixth Division did not have to point out and discuss the flaws of FH-GYMN's petition considering that the decision of the Deputy Ombudsman sufficiently detailed the factual and legal bases for the denial of the petition.

Moreover, the CA's Sixth Division expressly found that FH-GYMN had not discharged its burden as the petitioner of proving its allegations with substantial evidence.[16] In administrative cases involving judicial officers, the complainants always carried on their shoulders the burden of proof to substantiate their allegations through substantial evidence. That standard of substantial evidence is satisfied only when there is reasonable ground to believe that the respondent is responsible for the misconduct complained of although such evidence may not be overwhelming or even preponderant.[17]

Secondly, Ongjoco ought to know, if he genuinely wanted the Court to sustain his allegations of misconduct against respondent Justices, that his administrative complaint must rest on the *quality of the evidence*; and that his basing his plain accusations on hunches and speculations would not suffice to hold them administratively liable for rendering the adverse decision. Nonetheless, he exhibited disrespect for respondent Justices' judicial office by still filing this administrative complaint against them despite conceding in the administrative complaint itself his having no proof of his charges, *viz*:

> 21. The petition to review in determining probable cause in a preliminary investigation had reached this far and may reach the Supreme Court due to corrupt practices and culpable violation of the 1987 Constitution committed by Ombudsman officials and the herein respondents of the Court of Appeals. **A Motion for**

---

[15] *Rollo*, p. 18.

[16] *Rollo*, p. 18.

[17] *Maneja v. de Castro-Panganiban*, A.M. OCA IPI No. 03-1347-MTJ. January 17, 2005.

Reconsideration was submitted with prayer for the respondents to inhibit themselves to act on it. Otherwise, it will add to congest the court docket which this Honorable Court should intercede to look deeper into this matter by exercising its disciplinary functions over herein respondents. The arbitrary denial of the Petition for Review rendered by the herein respondents is meant that there is no sufficient ground out of the five (5) issues raised to engender a well-founded belief that no single offense has been committed.[18]

x x x x x x x x x

24. **Though there was no clear evidence to link Ombudsman officials, they may have persuaded, induced or influenced the herein respondents, who are either their schoolmates or associates, to deny the Petition for Review** in their bid to establish innocence on the related offense charged against them on 18 August 2010 before the Office of the President docketed as OP-DC Case No. 11-C-006. Likewise, they may have manipulated the delivery of a copy of Decision intended for the petitioner in order for the latter to fail in submitting a motion for reconsideration purposely to make the Decision final and executory by which the said Ombudsman officials could use such Decision to attain impunity on complaint against them filed with the Office of the President.[19] (emphasis supplied)

It is evident to us that Ongjoco's objective in filing the administrative complaint was to take respondent Justices to task for the regular performance of their sworn duty of upholding the rule of law. He would thereby lay the groundwork for getting back at them for not favoring his unworthy cause. Such actuations cannot be tolerated at all, for even a mere threat of administrative investigation and prosecution made against a judge to influence or intimidate him in his regular performance of the judicial office always subverts and undermines the independence of the Judiciary.[20]

---

[18] *Rollo*, pp. 8-9 (emphasis supplied).

[19] *Rollo*, pp. 9-10.

[20] *Complaint of Mr. Aurelio Indencia Arrienda* Against SC Justices Puno, Kapunan, Pardo, Ynares-Santiago, *et al.*, A.M. No. 03-11-30-SC, June 9, 2005, 460 SCRA 1.

We seize this occasion, therefore, to stress once again that disciplinary proceedings and criminal actions brought against any judge in relation to the performance of his official functions are neither complementary to nor suppletory of appropriate judicial remedies, nor a substitute for such remedies.[21] Any party who may feel aggrieved should resort to these remedies, and exhaust them, instead of resorting to disciplinary proceedings and criminal actions. We explained why in *In Re: Joaquin T. Borromeo*:[22]

> Given the nature of the judicial function, the power vested by the Constitution in the Supreme Court and the lower courts established by law, the question submits to only one answer: the administrative or criminal remedies are neither alternative or cumulative to judicial review where such review is available, and must wait on the result thereof.
>
> Simple reflection will make this proposition amply clear, and demonstrate that any contrary postulation can have only intolerable legal implications. Allowing a party who feels aggrieved by a judicial order or decision not yet final and executory to mount an administrative, civil or criminal prosecution for unjust judgment against the issuing judge would, at a minimum and as an indispensable first step, confer the prosecutor (Ombudsman) with an incongruous function pertaining, not to him, but to the courts: the determination of whether the questioned disposition is erroneous in its findings of fact or conclusions of law, or both. If he does proceed despite that impediment, whatever determination he makes could well set off a proliferation of administrative or criminal litigation, a possibility hereafter more fully explored.

---

[21] *In Re: Wenceslao Laureta*, March 12, 1987, 148 SCRA 382, 420, where the Court stated:

> To allow litigants to go beyond the Court's resolution and claim that the members acted "with deliberate bad faith" and rendered an "unjust resolution" in disregard or violation of the duty of their high office to act upon their own independent consideration and judgment of the matter at hand would be to destroy the authenticity, integrity and conclusiveness of such collegiate acts and resolutions and to disregard utterly the presumption of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and undermine the role of the Supreme Court as the final arbiter of all judicial disputes.

[22] A.M. No.93-7-696-0, February 21, 1995, 241 SCRA 405.

Such actions are impermissible and cannot prosper. It is not, as already pointed out, within the power of public prosecutors, or the Ombudsman or his Deputies, directly or vicariously, to review judgments or final orders or resolutions of the Courts of the land. The power of review—by appeal or special civil action—is not only lodged exclusively in the Courts themselves but must be exercised in accordance with a well-defined and long established hierarchy, and long standing processes and procedures. No other review is allowed; otherwise litigation would be interminable, and vexatiously repetitive.

In this regard, we reiterate that a judge's failure to correctly interpret the law or to properly appreciate the evidence presented does not necessarily incur administrative liability,[23] for to hold him administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, will be nothing short of harassment and will make his position doubly unbearable. His judicial office will then be rendered untenable, because no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment.[24] Administrative sanction and criminal liability should be visited on him only when the error is so gross, deliberate and malicious, or is committed with evident bad faith, or only in clear cases of violations by him of the standards and norms of propriety and good behavior prescribed by law and the rules of procedure, or fixed and defined by pertinent jurisprudence.[25]

What the Court sees herein is Ongjoco's proclivity to indiscriminately file complaints. His proclivity reminds us now of Joaquin T. Borromeo whom this Court pronounced guilty of indirect contempt of court he "repeatedly committed over time,

---

[23] *Estrada, Jr. v. Himalaloan,* A.M. No. MTJ-05-1617, November 18, 2005, 475 SCRA 353, 360.

[24] *Visitacion v. Libre,* A.M. No. RTJ-05-1918, June 8, 2005, 459 SCRA 398, 407; *Estrada, Jr. v. Himalaloan,* A.M. No. MTJ-05-1617, November 18, 2005, 475 SCRA 353, 360.

[25] *Wong Jan Realty v. Español,* A.M. No. RTJ-01-1647, October 13, 2006, 472 SCRA 496, 503.

despite warnings and instructions given to him."[26] The Court imposed the penalty for contempt of court "to the end that he may ponder his serious errors and grave misconduct and learn due respect for the Courts and their authority."[27]

Having determined that the administrative charge against respondent Justices had no factual and legal bases, we cannot hesitate to shield them by immediately rejecting the charge. We do so because unfounded administrative charges do not contribute anything worthwhile to the orderly administration of justice; instead, they retard it.

Nor should we just let such rejected charge pass and go unchallenged. We recognize that unfounded administrative charges against judges really degrade the judicial office, and interfere with the due performance of their work for the Judiciary. Hence, we deem to be warranted to now direct Ongjoco to fully explain his act of filing an utterly baseless charge against respondent Justices.

ACCORDINGLY, the Court: (*a*) **DISMISSES** the administrative complaint against Associate Justice Juan Q. Enriquez, Jr., Associate Justice Ramon M. Bato, Jr., and Associate Justice Florito S. Macalino for its utter lack of merit; and (*b*) **ORDERS** Engr. Oscar L. Ongjoco to show cause in writing within ten (10) days from notice why he should not be punished for indirect contempt of court for degrading the judicial office of respondent Associate Justices of the Court of Appeals, and for interfering with the due performance of their work for the Judiciary.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Abad and *Sereno, JJ.,* on leave.

---

[26] *Supra,* note 22, p. 466.

[27] *Id.*

EN BANC

[A.M. No. P-11-2907. January 31, 2012]
(Formerly A.M. OCA IPI No. 09-3113-P)

CONCERNED CITIZEN, *complainant, vs.* **DOMINGA NAWEN ABAD, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 35, BONTOC, MOUNTAIN PROVINCE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY, A CASE OF. — We have examined the two documents and we find that indeed somebody impersonated respondent during the examination. We note particularly that respondent's picture on her Personal Data Sheet is different from her picture on the Picture Seat Plan during the examination. The variance in her signatures on the two documents is likewise clearly and undeniably evident. These facts disprove her claim that she personally took the examination. For her to assert that she herself took the examination when in fact somebody else took it for her constitutes dishonesty.

2. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; THE SUPREME COURT BEING THE PROPER DISCIPLINING AUTHORITY HAS JURISDICTION OVER ADMINISTRATIVE PROCEEDINGS AGAINST COURT PERSONNEL. — We cannot grant respondent's prayer to suspend the administrative proceedings against her. We need not belabor the point that the CSC dismissed the complaint against her for lack of jurisdiction and forwarded the records of the case to this Court. This Court, the proper disciplining authority, assumed its jurisdiction and required her to answer the charge of impersonation. She failed to answer the charge squarely and sought instead to delay the case with her feeble claim that we suspend the proceedings and await a proper complaint, as if we failed to see the seriousness of the charge against her when we required her to file her comment. Before us are verifiable proofs of the alleged impersonation.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ENJOINED TO ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY IN THEIR PROFESSIONAL AND PRIVATE CONDUCT. — It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. Respondent failed to meet these stringent standards set for a judicial employee and does not therefore deserve to be part of the Judiciary.

4. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE OFFENSES; DISHONESTY; PENALTY. — Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is a grave offense punishable by dismissal for the first offense. Under Section 58 of the same rules, dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. However, we exclude forfeiture of accrued leave credits pursuant to our ruling in *Civil Service Commission v. Sta. Ana.*

R E S O L U T I O N

***PER CURIAM*:**

For resolution is a complaint[1] filed by a concerned citizen against respondent Dominga Nawen Abad, Court Stenographer III, Regional Trial Court, Branch 35, Bontoc, Mountain Province.

---

[1] *Rollo,* p. 17.

The complainant alleged that Mrs. Erminda D. Nawen[2] took the Civil Service Sub-professional Examination in behalf of respondent Abad. The complaint was filed before the Civil Service Commission-CAR Regional Office, Baguio City (CSC, for brevity).

In her counter-affidavit[3] filed before the CSC, respondent stated that she personally took the examination.

In its decision,[4] the CSC compared respondent's Personal Data Sheet, dated May 4, 2005, with the Picture Seat Plan during the examination on July 26, 1992. The CSC found that respondent's picture and signature on her Personal Data Sheet when compared to her picture and signature on the Picture Seat Plan are different.[5] However, the CSC dismissed the complaint for lack of jurisdiction and forwarded the records of the case to this Court.[6]

Acting on the referral, the Office of the Court Administrator (OCA) required respondent to file her comment. In her comment,[7] respondent did not answer the charge of impersonation. Instead, she assailed the actions of the CSC in entertaining the anonymous and unsubscribed complaint, and rendering a decision despite the absence of jurisdiction.[8] Respondent prayed that the decision of the CSC be disregarded and that the proceedings against her be suspended until a proper complaint is filed against her by the proper disciplining authority.[9]

The OCA, however, found no merit to respondent's contentions and found her guilty of dishonesty. The OCA noted the disparities between respondent's picture on her Personal Data Sheet and

---

[2] The case against Mrs. Erminda D. Nawen is not a part of this case.

[3] *Rollo,* pp. 19-20.

[4] *Id.* at 1-7.

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

[6] *Id.* at 7.

[7] *Id.* at 38-44.

[8] *Id.* 42.

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

her picture on the Picture Seat Plan during the examination. The OCA also found that respondent's signature on her Personal Data Sheet is totally different compared to her signature on the Picture Seat Plan. Thus, the OCA recommends that respondent be dismissed from service.[10]

We adopt the OCA recommendation, which is well taken.

We have examined the two documents and we find that indeed somebody impersonated respondent during the examination. We note particularly that respondent's picture[11] on her Personal Data Sheet is different from her picture[12] on the Picture Seat Plan during the examination. The variance in her signatures[13] on the two documents is likewise clearly and undeniably evident. These facts disprove her claim that she personally took the examination. For her to assert that she herself took the examination when in fact somebody else took it for her constitutes dishonesty.[14]

We cannot grant respondent's prayer to suspend the administrative proceedings against her. We need not belabor the point that the CSC dismissed the complaint against her for lack of jurisdiction and forwarded the records of the case to this Court. This Court, the proper disciplining authority,[15] assumed its jurisdiction and required her to answer the charge of impersonation. She failed to answer the charge squarely and sought instead to delay the case with her feeble claim that we suspend the proceedings and await a proper complaint, as if we failed to see the seriousness of the charge against her when we required her to file her comment. Before us are verifiable proofs

---

[10] *Id.* at 46-48.

[11] *Id.* at 26.

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

[13] *Id.* at 26 (back page), 27-29.

[14] *Civil Service Commission v. Sta. Ana*, A.M. No. P-03-1696, April 30, 2003, 402 SCRA 49, 56.

[15] Constitution, Article VIII, Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

of the alleged impersonation. Respondent even conceded that the CSC acted properly in getting her employment files.[16] Yet, she offered no countervailing evidence. We are left with no choice but consider the evidence at hand. Said evidence debunked her defense that she herself took the examination.

It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice.[17] Respondent failed to meet these stringent standards set for a judicial employee and does not therefore deserve to be part of the Judiciary.

In *Cruz v. Civil Service Commission*[18] and *Civil Service Commission v. Sta. Ana*,[19] we also dismissed the employees found guilty of similar offenses. In *Cruz*, Zenaida Paitim masqueraded as Gilda Cruz and took the Civil Service examination in behalf of Cruz. We said that both Paitim and Cruz merited the penalty of dismissal.[20] In *Civil Service Commission v. Sta. Ana*, somebody else took the Civil Service examination for Sta. Ana. We also dismissed Sta. Ana from the service for dishonesty. We find no reason to deviate from our previous rulings. Under

---

[16] *Rollo*, p. 39.

[17] *Civil Service Commission v. Sta. Ana*, *supra* note 14, at 56-57, citing *Floria v. Sunga*, A.M. No. CA-01-10-P, November 14, 2001, 368 SCRA 551, 560-561.

[18] G.R. No. 144464, November 27, 2001, 370 SCRA 650.

[19] *Civil Service Commission v. Sta. Ana*, *supra* note 14, at 57.

[20] *Cruz v. Civil Service Commission*, *supra* note 18, at 655.

Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is a grave offense punishable by dismissal for the first offense. Under Section 58 of the same rules, dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. However, we exclude forfeiture of accrued leave credits pursuant to our ruling in *Civil Service Commission v. Sta. Ana*.[21]

WHEREFORE, we find respondent Dominga Nawen Abad, Court Stenographer III, Regional Trial Court, Branch 35, Bontoc, Mountain Province, **GUILTY** of dishonesty. She is hereby **DISMISSED** from the service with cancellation of eligibility, forfeiture of all her retirement benefits except her accrued leave credits, and with perpetual disqualification for reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

This Resolution is immediately **EXECUTORY**.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Abad and *Sereno, JJ.,* on leave.

---

[21] *Supra* note 19.

EN BANC

[G.R. No. 178021. January 31, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the CIVIL SERVICE COMMISSION, *petitioner, vs.* **MINERVA M.P. PACHEO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; EXECUTIVE ORDER NO. 292; REASSIGNMENT; INVALIDITY THEREOF, UPHELD. — It appears undisputed that the reassignment of Pacheo was not valid. In its memorandum, the OSG initially argues for the validity of RTAO No. 25-2002 authorizing Pacheo's reassignment from Quezon City to San Fernando, Pampanga. Later, however, it specifically prays for the reinstatement of CSC Resolution Nos. 051697 and 060397, which categorically declared RTAO No. 25-2002 as not valid. In seeking such relief, the OSG has effectively accepted the finding of the CSC, as affirmed by the CA, that Pacheo's reassignment was indeed invalid. Since the issue of Pacheo's reassignment is already settled, the Court finds it futile to pass upon the same at this point.

2. ID.; ID.; ID.; TRANSFER OR ASSIGNMENT OF PERSONNEL IS PERMISSIBLE EVEN WITHOUT THE EMPLOYEE'S CONSENT; EXCEPTIONS. — While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or a scheme to lure him away from his permanent position, or when it is designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service.

3. ID.; ID.; ID.; CIVIL SERVICE COMMISSION (CSC) MEMORANDUM CIRCULAR NO. 40, SERIES OF 1998; CONSTRUCTIVE DISMISSAL; DEFINED. — Section 6, Rule III of CSC Memorandum Circular No. 40, series of 1998,

defines constructive dismissal as a situation when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible. Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from one position of dignity to a more servile or menial job.

4. ID.; ID.; ID.; EXECUTIVE ORDER NO. 292; DETAIL; DEFINED. — A *detail* is defined and governed by Executive Order 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6), thus: (6) *Detail*. A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission.

5. ID.; ID.; ID.; ID.; REASSIGNMENT; DEFINED. — [A] *reassignment* is defined and governed by E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7), thus: (7) *Reassignment*. — An employee may be reassigned from one organizational unit to another in the same agency; *Provided*, That such reassignment shall not involve a reduction in rank, status or salaries.

6. ID.; ID.; ID.; ID.; DETAIL AND REASSIGNMENT, DISTINGUISHED. — The principal distinctions between a detail and reassignment lie in the place where the employee is to be moved and in its effectivity pending appeal with the CSC. Based on the definition, a detail requires a movement from one agency to another while a reassignment requires a movement within the same agency. Moreover, pending appeal with the CSC, an order to detail is immediately executory, whereas a reassignment order does not become immediately effective.

7. ID.; ID.; ID.; ID.; REASSIGNMENT, A CASE OF; DUTY TO FIRST REPORT TO THE NEW PLACE OF ASSIGNMENT PRIOR TO QUESTIONING AN ALLEGED

INVALID REASSIGNMENT IMPOSED UPON AN EMPLOYEE, NOT REQUIRED. — In the case at bench, the lateral movement of Pacheo as Assistant Chief, Legal Division from Quezon City to San Fernando, Pampanga within the same agency is undeniably a reassignment. The OSG posits that she should have first reported to her new place of assignment and then subsequently question her reassignment. It is clear, however, from E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7) that there is no such duty to first report to the new place of assignment prior to questioning an alleged invalid reassignment imposed upon an employee. Pacheo was well within her right not to report immediately to RR4, San Fernando, Pampanga, and to question her reassignment.

8. ID.; ID.; ID.; SECURITY OF TENURE; COVERS NOT ONLY EMPLOYEES REMOVED WITHOUT CAUSE BUT ALSO CASES OF UNCONSENTED TRANSFERS AND REASSIGNMENTS WHICH ARE TANTAMOUNT TO ILLEGAL/CONSTRUCTIVE REMOVAL. — Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations. Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.

9. ID.; ID.; ID.; RIGHTS OF AN ILLEGALLY DISMISSED EMPLOYEE; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AND BACK SALARIES BUT LIMITED ONLY TO A MAXIMUM PERIOD OF FIVE (5) YEARS. — Having ruled that Pacheo was constructively dismissed, is she entitled to reinstatement and back wages? The Court agrees with the CA that she is entitled to reinstatement, but finds Itself unable to sustain the ruling that she is entitled to full back wages and benefits. It is a settled jurisprudence that an illegally dismissed civil service employee is entitled to back salaries but limited only to a maximum period of five (5) years, and not full back salaries from his illegal dismissal up to his reinstatement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Antonio P. Pacheo for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines, represented by the Office of the Solicitor General *(OSG)*, which assails the February 22, 2007 Decision[1] and the May 15, 2007 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 93781. The CA reversed the November 21, 2005 Resolution of the Civil Service Commission *(CSC)* declaring the re-assignment of respondent Minerva M.P. Pacheos *(Pacheo)* not valid and ordering her reinstatement to her original station but without backwages under the principle of "no work, no pay."

The Facts

Pacheo was a Revenue Attorney IV, Assistant Chief of the Legal Division of the Bureau of Internal Revenue *(BIR)* in Revenue Region No. 7 *(RR7)*, Quezon City.

On May 7, 2002, the BIR issued Revenue Travel Assignment Order *(RTAO)* No. 25-2002,[3] ordering the reassignment of Pacheo as Assistant Chief, Legal Division from RR7 in Quezon City to RR4 in San Fernando, Pampanga. The BIR cited exigencies of the revenue service as basis for the issuance of the said RTAO.

Pacheo questioned the reassignment through her Letter dated May 9, 2002[4] addressed to Rene G. Banez, then Commissioner

---

[1] *Rollo*, pp. 59-70. Penned by Associate Justice Magdangal M. De Leon with Associate Justice Rebecca De Guia-Salvador and Associate Justice Ricardo R. Rosario, concurring.

[2] *Id.* at 72-73.

[3] *Id.* at 118.

[4] *Id.* at 119-121.

of Internal Revenue *(CIR)*. She complained that the transfer would mean economic dislocation since she would have to spend ₱200.00 on daily travel expenses or approximately ₱4,000.00 a month. It would also mean physical burden on her part as she would be compelled to wake up early in the morning for her daily travel from Quezon City to San Fernando, Pampanga, and to return home late at night from San Fernando, Pampanga to Quezon City. She was of the view that that her reassignment was merely intended to harass and force her out of the BIR in the guise of exigencies of the revenue service. In sum, she considered her transfer from Quezon City to Pampanga as amounting to a constructive dismissal.

Due to the then inaction of the BIR, Pacheo filed a complaint[5] dated May 30, 2002, before the CSC-National Capital Region *(CSC-NCR)*, praying for the nullification of RTAO No. 25-2002. In its July 22, 2002 Order,[6] the CSC-NCR treated Pacheo's Complaint as an appeal and dismissed the same, without prejudice, for failure to comply with Sections 73 and 74 of Rule V(b) of the Uniform Rules on Administrative Cases in the Civil Service.[7]

In its Letter-reply[8] dated September 13, 2002, the BIR, through its Deputy Commissioner for Legal and Inspection Group, Edmundo P. Guevara *(Guevara)*, denied Pacheo's protest for lack of merit. It contended that her reassignment could not be

---

[5] *Id.* at 122.

[6] *Id.* at 123-124.

[7] Section 73. *Requirement of Filing.* — The appellant shall furnish a copy of his appeal to the head of department or agency concerned who shall submit his comment, together with the records, to the Commission within ten (10) days from receipt thereof. Proof of service of the appeal on the head of department or agency shall be submitted with the Commission.

Section 74. *Grounds for Dismissal.* — An appeal involving non-disciplinary cases shall be dismissed on any of the following grounds:

a. The appeal is filed beyond the reglementary period;

b. The filing fee of Three Hundred (₱300.00) has not been paid, or

c. The appeal does not contain a certification on non-forum shopping.

[8] *Rollo,* p. 125.

considered constructive dismissal as she maintained her position as Revenue Attorney IV and was designated as Assistant Chief of Legal Division. It emphasized that her appointment to the position of Revenue Attorney IV was without a specific station. Consequently, she could properly be reassigned from one organizational unit to another within the BIR. Lastly, she could not validly claim a vested right to any specific station, or a violation of her right to security of tenure.

Not in conformity with the ruling of the BIR, Pacheo appealed her case before the CSC.

On November 21, 2005, the CSC issued **Resolution No. 051697**[9] granting Pacheo's appeal, the dispositive portion of which reads:

> **WHEREFORE,** the instant appeal of Minerva M.P. Pacheo is hereby **GRANTED.** The Bureau of Internal Revenue Revenue Travel Assignment Order No. 25-2002 dated May 7, 2002, on the reassignment of Pacheo to the Legal Division Revenue Region No. 4 San Fernanado, Pampanga, is hereby declared **NOT VALID.** ACCORDINGLY, Pacheo should now be recalled to her original station. This Commission, however rules and so holds that the withholding by the BIR of Pacheo's salary for the period she did not report to work is justified.
>
> The CSCRO No. III is directed to monitor the implementation of this Resolution.

In granting Pacheo's appeal, the CSC explained:

> On the second issue, this Commission finds merit in appellant's contention that her reassignment in not valid.
>
> Of pertinent application thereto is **Rule III, Section 6 of CSC Memorandum Circular No. 40, series of 1998, dated December 14, 1998,** which provides:
>
> > Section 6. Other Personnel Movements. The following personnel movements which will not require issuance of an appointment shall nevertheless require an office order by duly authorized official.

[9] *Id.* at 148-155.

> a. Reassignment — Movement of an employee from one organizational unit to another in the same department or agency which does not involve reduction in rank, status or salary. If reassignment is done without consent of the employee being reassigned it shall be allowed for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or it constitutes constructive dismissal.
>
> No assignment shall be undertaken if done indiscriminately or whimsically because the law is not intended as a convenient shield for the appointing/ disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest.
>
> Reassignment of small salaried employee is not permissible if it causes significant financial dislocation.'

Although reassignment is a management prerogative, the same must be done in the exigency of the service without diminution in rank, status and salary on the part of the officer or employee being temporarily reassigned. Reassignment of '*small salaried*' employees, however is not allowed if it will cause significant financial dislocation to the employee reassigned. Otherwise the Commission will have to intervene.

The primary purpose of emphasizing '*small salaried employees*' in the foregoing rule is to protect the '*rank and file*' employees from possible abuse by the management in the guise of transfer/ reassignment. The Supreme Court in ***Alzate v. Mabutas***, (51 O.G. 2452) ruled:

> ' x x x *[T]he protection against invalid transfer is especially needed by lower ranking employees. The Court emphasized this need when it ruled that officials in the unclassified service, presidential appointees, men in the government set up occupy positions in the higher echelon should be entitled to security of tenure, unquestionable* a lesser *sol[ci]itude cannot be meant for the little men, that great mass of Common underprivileged employees-thousand there are of them in the lower bracket, who generally are without connections and who pin their hopes of advancement on the merit system instituted by our civil service law.'*

In other words, in order to be embraced in the term '*small-salaried employees*', the latter must belong to the '*rank and file*'; and, his/her salary would be significantly reduced by virtue of the transfer/reassignment. '*Rank and file*' was categorized as those occupying the position of Division Chief and below, pursuant to **CSC Resolution No. 1, series of 1991, dated January 28, 1991.**

The facts established on record show that Pacheo belongs to the rank and file receiving an average monthly salary of Twenty Thousand Pesos (₱20,000.00) under the salary standardization law and a monthly take home pay of Fourteen Thousand Pesos (₱14,000.00). She has to spend around Four Thousand Pesos (₱4,000.00) a month for her transportation expenses as a consequence of her reassignment, roughly twenty eight percent (28%) of her monthly take home pay. Clearly, Pacheo's salary shall be significantly reduced as a result of her reassignment.

In **ANORE, Ma. Theresa F.,** this Commission ruled:

> *'Anore, a lowly salaried employee, was reassigned to an isolated island 15 kilometers away from her original place of assignment. She has to travel by boat with only one trip a day to report to her new place of assignment in an office without any facilities, except its bare structure. Worst, the municipality did not provide her with transportation allowance. She was forced to be separated from her family, look for a boarding house where she can stay while in the island and spend for her board and lodging. The circumstances surrounding Anore's reassignment is exactly the kind of reassignment that is being frowned upon by law.'*

This Commission, however, rules and so holds that the withholding by the BIR of her salaries is justified as she is not entitled thereto since she is deemed not to have performed any actual work in the government on the principle of no work no pay.

Accordingly, Pacheo should now be reinstated to her original station without any right to claim back salary as she did not report to work either at her new place of assignment or at her original station.[10] [Emphases in the original]

---

[10] *Id.* at 79-81.

Still not satisfied, Pacheo moved for reconsideration. She argued that the CSC erred in not finding that she was constructively dismissed and, therefore, entitled to back salary.

On March 7, 2006, the CSC issued Resolution No. 060397[11] denying Pacheo's motion for reconsideration.

Undaunted, Pacheo sought recourse before the CA *via* a petition for review.

In its February 22, 2007 Decision, the CA *reversed* the CSC Resolution and ruled in favor of Pacheo, the *fallo* of which states:

WHEREFORE, the petition is **GRANTED.** *Resolution nos. 051697* and *060397* dated November 21, 2005 and March 7, 2006, respectively, of the Civil Service Commission are **REVERSED** and **SET ASIDE.** A new judgment is hereby entered finding petitioner to have been constructively dismissed and ordering her immediate reinstatement with full backwages and benefits.

SO ORDERED.[12]

In setting aside CSC Resolution Nos. 051697 and 060397, the CA held that:

> While this Court agrees that petitioner's reassignment was not valid considering that *a diminution in salary is enough to invalidate such reassignment*, We cannot agree that the latter has not been constructively dismissed as a result thereof.
>
> It is well to remember that constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefits and privileges. For an act of clear discrimination, insensibility, or disdain by an employer may become so unbearable on the part of the employee that it could foreclose any choice by him except to forgo his continued employment.
>
> The management prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. The employer must be able

---

[11] *Id.* at 82-85.

[12] *Id.* at 69.

to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.

In this case, petitioner's reassignment will result in the reduction of her salary, not to mention the physical burden that she would suffer in waking up early in the morning to travel daily from Quezon City to San Fernando, Pampanga and in coming home late at night.

Clearly, the insensibility of the employer is deducible from the foregoing circumstances and petitioner may have no other choice but to forego her continued employment.

Moreover, it would be inconsistent to hold that the reassignment was not valid due to the significant reduction in petitioner's salary and then rule that there is no constructive dismissal just because said reduction in salary will not render petitioner penniless if she will report to her new place of assignment. It must be noted that there is constructive dismissal when the reassignment of an employee involves a diminution in pay.

Having determined that petitioner has been constructively dismissed as a result of her reassignment, We shall resolve whether or not she is entitled to backwages.

In denying petitioner's claim for backwages, the CSC held:

> This Commission, however, rules and so holds that the withholding by the BIR of her salaries is justified as she is not entitled thereto since she is deemed not to have performed any actual work in the government on the principle of no work no pay.
>
> Accordingly, Pacheo should now be reinstated to her original station without any right to claim back salary as she did not report for work either at her new place of assignment or at her original station."
>
> Pacheo, while belonging to the rank-and-file employees, is holding a responsible position as an Assistant Division Chief, who could not just abandon her duties merely because she protested her re-assignment and filed an appeal afterwards.

We do not agree.

If there is no work performed by the employee there can be no wage or pay, unless of course the laborer was able, willing and ready to work but was illegally locked out, *dismissed* or suspended. The

"No work, no pay" principle contemplates a "no work" situation where the employees voluntarily absent themselves.

In this case, petitioner was forced to forego her continued employment and did not just abandon her duties. In fact, she lost no time in protesting her reassignment as a form of constructive dismissal. It is settled that the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment. The filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.

Neither do we agree with the OSG when it opined that:

> No one in the Civil Service should be allowed to decide on whether she is going to accept or not any work dictated upon by the exigency of the service. One should consider that public office is a public trust and that the act of respondent CIR enjoys the presumption of regularity. To uphold the failure of respondent to heed the RTAO would result in chaos. Every employee would put his or her vested interest or personal opinion over and above the smooth functioning of the bureaucracy.

Security of tenure is a right of paramount value as recognized and guaranteed under Sec. 3, Art. XIII of the 1987 Constitution.

> The State shall afford full protection to labor, x x x and promote full employment and equality of employment opportunities for *all*. It shall guarantee the rights of *all* workers to x x x security of tenure x x x

Such constitutional right should not be denied on mere speculation of any similar unclear and nebulous basis.

In *Garcia, et al. v. Lejano, et al.*, the Supreme Court rejected the OSG's opinion that *when the transfer is motivated solely by the interest of the service of such act cannot be considered violative of the Constitution,* thus:

> "We do not agree to this view. While temporary transfers or assignments may be made of the personnel of a bureau or department without first obtaining the consent of the employee concerned within the scope of Section 79 (D) of the Administrative Code which party provides that 'The Department Head also may, from time to time, in the interest of the service, change the distribution among the several Bureaus and offices of his Department of the employees or subordinates authorized

> by law,' such cannot be undertaken when the transfer of the employee is with a view to his removal. Such cannot be done without the consent of the employee. And if the transfer is resorted to as a scheme to lure the employee away from his permanent position, such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service. It is not without reason that this Court made the following observation:
>
> To permit circumvention of the constitutional prohibition in question by allowing removal from office without lawful cause, in the form or guise of transfers from one office to another, or from one province to another, without the consent of the transferee, would blast the hopes of these young civil service officials and career men and women, destroy their security and tenure of office and make for a subservient, discontented and inefficient civil service force that sways with every political wind that blows and plays up to whatever political party is in the saddle. That would be far from what the framers of our Constitution contemplated and desired. Neither would that be our concept of a free and efficient Government force, possessed of self-respect and reasonable ambition."

Clearly, the principle of "no work, no pay" does not apply in this case. As held in *Neeland v. Villanueva, Jr*:

> "We also cannot deny back salaries and other economic benefits on the ground that respondent Clerk of Court did not work. For the principle of "no work, no pay" does not apply when the employee himself was forced out of job. Xxx Indeed, it is not always true that back salaries are paid only when work is done. X x x For another, the poor employee could offer no work since he was forced out of work. Thus, to always require complete exoneration or performance of work would ultimately leave the dismissal uncompensated no matter how grossly disproportionate the penalty was. Clearly, it does not serve justice to simply restore the dismissed employee to his position and deny him his claim for back salaries and other economic benefits on these grounds. We would otherwise be serving justice in halves."

An illegally dismissed government employee who is later ordered reinstated is entitled to back wages and other monetary benefits

from the time of his illegal dismissal up to his reinstatement. This is only fair and sensible because an employee who is reinstated after having been illegally dismissed is considered as not having left his office and should be given a comparable compensation at the time of his reinstatement.

When a government official or employee in the classified civil service had been illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held.[13]

The CSC moved for reconsideration but its motion was denied by the CA in its May 15, 2007 Resolution.

Hence, this petition.

THE ISSUES

WHETHER OR NOT THE ASSAILED DECISION IS LEGALLY CORRECT IN DECLARING THAT RESPONDENT WAS CONSTRUCTIVELY DISMISSED AND ENTITLED TO BACK WAGES, NOTWITHSTANDING RESPONDENT'S REFUSAL TO COMPLY WITH BIR RTAO No. 25-2002 WHICH IS IMMEDIATELY EXECUTORY PURSUANT TO SECTION 24 (F) OF P.D. 807.

WHETHER OR NOT RESPONDENT SUFFERED A DIMINUTION IN HER SALARY IN RELATION TO SECTION 6, RULE III OF CSC MEMORANDUM CIRCULAR No. 40, SERIES OF 1998, DATED DECEMBER 14, 1998, AS A RESULT OF THE ISSUANCE [OF] BIR RTAO No. 25-2002 ORDERING HER REASSIGNMENT FROM BIR RR No. 7 IN QUEZON CITY TO BIR RR No. 4 IN SAN FERNANDO, PAMPANGA.[14]

In her Memorandum,[15] Pacheo asserts that RTAO No. 25-2002, on the pretense of the exigencies of the revenue service, was solely meant to harass her and force her to resign. As a result of her invalid reassignment, she was constructively dismissed

---

[13] Citations omitted, *id.* at 64-69.

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

[15] *Id.* at 279-283.

and, therefore, entitled to her back salaries and monetary benefits from the time of her illegal dismissal up to her reinstatement.

In its own Memorandum,[16] the CSC, through the OSG, argues that constructive dismissal is not applicable in this case because it was Pacheo herself who adamantly refused to report for work either in her original station or new place of assignment in clear violation of Section 24 (f) of Presidential Decree *(PD)* No. 807.[17] Citing jurisprudence,[18] the CSC avers that the RTAO is immediately executory, unless otherwise ordered by the CSC. Therefore, Pacheo should have first reported to her new place of assignment and then appealed her case to the CSC if she indeed believed that there was no justification for her reassignment. Since Pacheo did not report for work at all, she is not entitled to backwages following the principle of "no work, no pay."

THE COURT'S RULING

The petition fails to persuade.

It appears undisputed that the reassignment of Pacheo was not valid. In its memorandum, the OSG initially argues for the validity of RTAO No. 25-2002 authorizing Pacheo's reassignment from Quezon City to San Fernando, Pampanga. Later, however, it specifically prays for the reinstatement of CSC Resolution Nos. 051697 and 060397, which categorically declared RTAO No. 25-2002 as not valid. In seeking such relief, the OSG has effectively accepted the finding of the CSC, as affirmed by the CA, that Pacheo's reassignment was indeed invalid. Since the

---

[16] *Id.* at 254-273.

[17] Section 24. *Personnel Actions.*

x x x x x x x x x

(f) Detail. A detail is the movement on an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission.(Underscoring supplied)

[18] *Teotico v. Agda,* 274 Phil. 960 (1991).

issue of Pacheo's reassignment is already settled, the Court finds it futile to pass upon the same at this point.

The question that remains to be resolved is whether or not Pacheo's assignment constitutes constructive dismissal and, thus, entitling her to reinstatement and backwages. Was Pacheo constructively dismissed by reason of her reassignment?

The Court agrees with the CA on this point.

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or a scheme to lure him away from his permanent position, or when it is designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service.[19]

Significantly, Section 6, Rule III of CSC Memorandum Circular No. 40, series of 1998, defines constructive dismissal as a situation when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible. Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from one position of dignity to a more servile or menial job.

The CSC, through the OSG, contends that the deliberate refusal of Pacheo to report for work either in her original station in Quezon City or her new place of assignment in San Fernando, Pampanga negates her claim of constructive dismissal in the present case being in violation of Section 24 (f) of P.D. 807 [now Executive Order *(EO)* 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6)].[20] It further argues that the subject

---

[19] *Bentain v. Court of Appeals*, G.R. No. 89452, June 9, 1992, 209 SCRA 644, 648.

[20] Section 26**.** *Personnel Actions.*

RTAO was immediately executory, unless otherwise ordered by the CSC. It was, therefore, incumbent on Pacheo to have reported to her new place of assignment and then appealed her case to the CSC if she indeed believed that there was no justification for her reassignment.

Anent the first argument of CSC, the Court cannot sustain the proposition. It was legally impossible for Pacheo to report to her original place of assignment in Quezon City considering that the subject RTAO No. 25-2002 also reassigned Amado Rey B. Pagarigan *(Pagarigan)* as Assistant Chief, Legal Division, from RR4, San Fernando, Pampanga to RR7, Quezon City, the very same position Pacheo formerly held. The reassignment of Pagarigan to the same position palpably created an impediment to Pacheo's return to her original station.

The Court finds Itself unable to agree to CSC's argument that the subject RTAO was immediately executory. The Court deems it necessary to distinguish between a detail and reassignment, as they are governed by different rules.

A *detail* is defined and governed by Executive Order 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6), thus:

(6) *Detail*. A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission. [Underscoring supplied]

---

x x x x x x x x x

(6) Detail. A detail is the movement on an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a limited period in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission. (Underscoring supplied)

On the other hand, a *reassignment* is defined and governed by E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7), thus:

(7) *Reassignment*. — An employee may be reassigned from one organizational unit to another in the same agency; *Provided*, That such reassignment shall not involve a reduction in rank, status or salaries. [Underscoring supplied]

The principal distinctions between a detail and reassignment lie in the place where the employee is to be moved and in its effectivity pending appeal with the CSC. Based on the definition, a detail requires a movement from one agency to another while a reassignment requires a movement within the same agency. Moreover, pending appeal with the CSC, an order to detail is immediately executory, whereas a reassignment order does not become immediately effective.

In the case at bench, the lateral movement of Pacheo as Assistant Chief, Legal Division from Quezon City to San Fernando, Pampanga within the same agency is undeniably a reassignment. The OSG posits that she should have first reported to her new place of assignment and then subsequently question her reassignment. It is clear, however, from E.O. 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (7) that there is no such duty to first report to the new place of assignment prior to questioning an alleged invalid reassignment imposed upon an employee. Pacheo was well within her right not to report immediately to RR4, San Fernando, Pampanga, and to question her reassignment.

Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations. Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.[21]

---

[21] *Yenko v. Gungon*, G.R. No. 165450, August 13, 2009, 595 SCRA 562, 576-577.

The Court is not unaware that the BIR is authorized to assign or reassign internal revenue officers and employees as the exigencies of service may require. This authority of the BIR, however, should be prudently exercised in accordance with existing civil service rules.

Having ruled that Pacheo was constructively dismissed, is she entitled to reinstatement and back wages? The Court agrees with the CA that she is entitled to reinstatement, but finds Itself unable to sustain the ruling that she is entitled to full back wages and benefits. It is a settled jurisprudence[22] that an illegally dismissed civil service employee is entitled to back salaries but limited only to a maximum period of five (5) years, and not full back salaries from his illegal dismissal up to his reinstatement.

WHEREFORE, the petition is **DENIED**. The assailed February 22, 2007 Decision and May 15, 2007 Resolution of the Court of Appeals, in CA-G.R. SP No. 93781, are hereby **AFFIRMED** with **MODIFICATION** that respondent Minerva M.P. Pacheo is hereby ordered reinstated without loss of seniority rights but is only entitled to the payment of back salaries corresponding to five (5) years from the date of her invalid reassignment on May 7, 2002.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Abad and *Sereno, JJ., o*n leave.

---

[22] *Id.* at 580, citing *Adiong v. Court of Appeals*, 422 Phil. 713, 721 (2001); *Marohombsar v. Court of Appeals*, 382 Phil. 825, 836 (2000); *San Luis v. Court of Appeals, Tan, Jr. v. Office of the President,* G.R. No. 110936, February 4, 1994, 229 SCRA 677, 679; *Salcedo v. Court of Appeals*, 171 Phil. 368, 375 (1978); *Balquidra v. CFI of Capiz, Branch II*, 170 Phil. 208, 221 (1977); *Cristobal v. Melchor*, 168 Phil. 328, 341 (1977).

EN BANC

[G.R. No. 187107. January 31, 2012]

UNITED CLAIMANTS ASSOCIATION OF NEA (UNICAN), represented by its representative BIENVENIDO R. LEAL, in his official capacity as its President and in his own individual capacity, EDUARDO R. LACSON, ORENCIO F. VENIDA, JR., THELMA V. OGENA, BOBBY M. CARANTO, MARILOU B. DE JESUS, EDNA G. RAÑA, and ZENAIDA P. OLIQUINO, in their own capacities and in behalf of all those similarly situated officials and employees of the National Electrification Administration, *petitioners, vs.* **NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA BOARD OF ADMINISTRATORS (NEA BOARD), ANGELO T. REYES as Chairman of the NEA Board of Administrators, EDITHA S. BUENO, *Ex-Officio* Member and NEA Administrator, and WILFRED L. BILLENA, JOSPEPH D. KHONGHUN, and FR. JOSE VICTOR E. LOBRIGO, Members, NEA Board,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; EXPLAINED; EXCEPTION; APPLICATION IN THE CASE AT BAR. — We explained the principle of hierarchy of courts in *Mendoza v. Villas*, stating: In *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, a petition for *certiorari* filed under Rule 65 was dismissed for having been filed directly with the Court, violating the principle of hierarchy of courts, to wit: Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements:

This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Evidently, the instant petition should have been filed with the RTC. However, as an exception to this general rule, the principle of hierarchy of courts may be set aside for special and important reasons. Such reason exists in the instant case involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke. This to the mind of the Court entails its attention.

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; AVAILABILITY OF THE REMEDY OF INJUNCTION, UPHELD IN THE CASE AT BAR. — In *Funa v. Executive Secretary*, the Court passed upon the seeming moot issue of the appointment of Maria Elena H. Bautista (Bautista) as Officer-in-Charge (OIC) of the Maritime Industry Authority (MARINA) while concurrently serving as Undersecretary of the Department of Transportation and Communications. There, even though Bautista later on was appointed as Administrator of MARINA, the Court ruled that the case was an exception to the principle of mootness and that the remedy of injunction was still available, explaining thus: A moot and academic case is one that ceases

to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, as we held in *Public Interest Center, Inc. v. Elma*, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public. **As a rule, the writ of prohibition will not lie to enjoin acts already done. However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.** Similarly, in the instant case, while the assailed resolutions of the NEA Board may have long been implemented, such acts of the NEA Board may well be repeated by other government agencies in the reorganization of their offices. Petitioners have not lost their remedy of injunction.

3. POLITICAL LAW; PRESIDENTIAL DECREE NO. 269; NATIONAL ELECTRIFICATION ADMINISTRATION (NEA); BOARD OF ADMINISTRATORS; POWERS; POWER TO REORGANIZE; INCLUDES THE POWER TO TERMINATE. — Under Rule 33, Section 3(b)(ii) of the Implementing Rules and Regulations of the EPIRA Law, all NEA employees shall be considered legally terminated with the implementation of a reorganization program pursuant to a law enacted by Congress **or** pursuant to Sec. 5(a)(5) of PD 269 through which the reorganization was carried out, *viz*: Section 5. National Electrification Administration; Board of Administrators; Administrator. (a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. x x x The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties. x x x 5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator to **organize or reorganize** NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties. x x x In *Betoy v. The Board of Directors*,

National Power Corporation, the Court upheld the dismissal of all the employees of the NPC pursuant to the EPIRA Law. In ruling that the power of reorganization includes the power of removal, the Court explained: [R]eorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. **It could result in the loss of one's position through removal** or abolition of an office. **However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith**; otherwise, it is void *ab initio*. Evidently, the termination of all the employees of NEA was within the NEA Board's powers and may not successfully be impugned absent proof of bad faith.

4. ID.; REPUBLIC ACT NO. 6656; INDICATORS OF BAD FAITH IN THE REORGANIZATION OF GOVERNMENT OFFICES. — Congress itself laid down the indicators of bad faith in the reorganization of government offices in Sec. 2 of RA 6656, an *Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization*, to wit: Section 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**: (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; **(b) Where an office is abolished and other performing substantially the same functions is created; (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;** (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices; (e) Where the removal violates the order of separation provided in Section 3 hereof.

5. ID.; ID.; ID.; ALLEGATIONS OF BAD FAITH WERE NOT PROVED BY CLEAR AND CONVINCING EVIDENCE IN THE CASE AT BAR. — It must be noted that the burden of proving bad faith rests on the one alleging it. As the Court ruled in *Culili v. Eastern Telecommunications, Inc.*, "According to jurisprudence, 'basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.'" Moreover, in *Spouses Palada v. Solidbank Corporation*, the Court stated, "Allegations of bad faith and fraud must be proved by clear and convincing evidence." Here, petitioners have failed to discharge such burden of proof. In alleging bad faith, petitioners cite RA 6656, particularly its Sec. 2, subparagraphs (b) and (c). Petitioners have the burden to show that: (1) the abolished offices were replaced by substantially the same units performing the same functions; and (2) incumbents are replaced by less qualified personnel. Petitioners failed to prove such facts. Mere allegations without hard evidence cannot be considered as clear and convincing proof.

APPEARANCES OF COUNSEL

V.V. Orocio and associates Law Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an original action for Injunction to restrain and/or prevent the implementation of Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, otherwise known as the National Electrification Administration (NEA) Termination Pay Plan, issued by respondent NEA Board of Administrators (NEA Board).

The Facts

Petitioners are former employees of NEA who were terminated from their employment with the implementation of the assailed resolutions.

Respondent NEA is a government-owned and/or controlled corporation created in accordance with Presidential Decree No. (PD) 269 issued on August 6, 1973. Under PD 269, Section 5(a)(5), the NEA Board is empowered to organize or reorganize NEA's staffing structure, as follows:

> Section 5. National Electrification Administration; Board of Administrators; Administrator.
>
> (a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and exercised by a Board of Administrators, which shall be composed of a Chairman and four (4) members, one of whom shall be the Administrator as *ex-officio* member. The Chairman and the three other members shall be appointed by the President of the Philippines to serve for a term of six years. x x x
>
> x x x x x x x x x
>
> The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.
>
> 1. To implement the provisions and purposes of this Decree;
>
> x x x x x x x x x
>
> 5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator **to organize or reorganize NEA's staffing structure**, to fix the salaries of personnel and to define their powers and duties. (Emphasis supplied.)

Thereafter, in order to enhance and accelerate the electrification of the whole country, including the privatization of the National Power Corporation, Republic Act No. (RA) 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA Law), was enacted, taking effect on June 26, 2001. The law imposed upon NEA additional mandates in relation to the promotion of the role of rural electric cooperatives to achieve national electrification. Correlatively, Sec. 3 of the law provides:

Section 3. Scope. — This Act shall provide a framework for the **restructuring of the electric power industry**, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities. (Emphasis supplied.)

Sec. 77 of RA 9136 also provides:

Section 77. Implementing Rules and Regulations. — The DOE shall, in consultation with the electric power industry participants and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

Thus, the Rules and Regulations to implement RA 9136 were issued on February 27, 2002. Under Sec. 3(b)(ii), Rule 33 of the Rules and Regulations, all the NEA employees and officers are considered terminated and the 965 plantilla positions of NEA vacant, to wit:

Section 3. Separation and Other Benefits.

(a) x x x

(b) The following shall govern the application of Section 3(a) of this Rule:

x x x x x x x x x

(ii) **With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5(a)(5) of Presidential Decree No. 269**. (Emphasis supplied.)

Meanwhile, on August 28, 2002, former President Gloria Macapagal- Arroyo issued Executive Order No. 119 directing the NEA Board to submit a reorganization plan. Thus, the NEA Board issued the assailed resolutions.

On September 17, 2003, the Department of Budget and Management approved the NEA Termination Pay Plan.

Thereafter, the NEA implemented an early retirement program denominated as the "Early Leavers Program," giving incentives to those who availed of it and left NEA before the effectivity of the reorganization plan. The other employees of NEA were terminated effective December 31, 2003.

Hence, We have this petition.

The Issues

Petitioners raise the following issues:

1. The NEA Board has no power to terminate all the NEA employees;

2. Executive Order No. 119 did not grant the NEA Board the power to terminate all NEA employees; and

3. Resolution Nos. 46 and 59 were carried out in bad faith.

On the other hand, respondents argue in their Comment dated August 20, 2009 that:

1. The Court has no jurisdiction over the petition;

2. Injunction is improper in this case given that the assailed resolutions of the NEA Board have long been implemented; and

3. The assailed NEA Board resolutions were issued in good faith.

The Court's Ruling

This petition must be dismissed.

The procedural issues raised by respondents shall first be discussed.

This Court Has Jurisdiction over the Case

Respondents essentially argue that petitioners violated the principle of hierarchy of courts, pursuant to which the instant petition should have been filed with the Regional Trial Court first rather than with this Court directly.

We explained the principle of hierarchy of courts in *Mendoza v. Villas*,[1] stating:

In *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, a petition for *certiorari* filed under Rule 65 was dismissed for having been filed directly with the Court, violating the principle of hierarchy of courts, to wit:

> Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements:
>
> > This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied.)

---

[1] G.R. No. 187256, February 23, 2011.

Evidently, the instant petition should have been filed with the RTC. However, as an exception to this general rule, the principle of hierarchy of courts may be set aside for special and important reasons. Such reason exists in the instant case involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke. This to the mind of the Court entails its attention.

Moreover, the Court has made a similar ruling in *National Power Corporation Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation (NPC)*.[2] In that case, the NPC-DAMA also filed a petition for injunction directly with this Court assailing NPC Board Resolution Nos. 2002-124 and 2002-125, both dated November 18, 2002, directing the termination of all employees of the NPC on January 31, 2003. Despite such apparent disregard of the principle of hierarchy of courts, the petition was given due course. We perceive no compelling reason to treat the instant case differently.

The Remedy of Injunction Is still Available

Respondents allege that the remedy of injunction is no longer available to petitioners inasmuch as the assailed NEA Board resolutions have long been implemented.

Taking respondents' above posture as an argument on the untenability of the petition on the ground of mootness, petitioners contend that the principle of mootness is subject to exceptions, such as when the case is of transcendental importance.

In *Funa v. Executive Secretary*,[3] the Court passed upon the seeming moot issue of the appointment of Maria Elena H. Bautista (Bautista) as Officer-in-Charge (OIC) of the Maritime Industry Authority (MARINA) while concurrently serving as Undersecretary of the Department of Transportation and Communications. There, even though Bautista later on was appointed as Administrator

---

[2] G.R. No. 156208, September 26, 2006, 503 SCRA 138.

[3] G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319; citations omitted.

of MARINA, the Court ruled that the case was an exception to the principle of mootness and that the remedy of injunction was still available, explaining thus:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, as we held in *Public Interest Center, Inc. v. Elma*, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public.
>
> **As a rule, the writ of prohibition will not lie to enjoin acts already done. However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.** (Emphasis supplied.)

Similarly, in the instant case, while the assailed resolutions of the NEA Board may have long been implemented, such acts of the NEA Board may well be repeated by other government agencies in the reorganization of their offices. Petitioners have not lost their remedy of injunction.

The Power to Reorganize Includes the Power to Terminate

The meat of the controversy in the instant case is the issue of whether the NEA Board had the power to pass Resolution Nos. 46 and 59 terminating all of its employees.

This must be answered in the affirmative.

Under Rule 33, Section 3(b)(ii) of the Implementing Rules and Regulations of the EPIRA Law, all NEA employees shall be considered legally terminated with the implementation of a reorganization program pursuant to a law enacted by Congress **or** pursuant to Sec. 5(a)(5) of PD 269 through which the reorganization was carried out, *viz*:

Section 5. National Electrification Administration; Board of Administrators; Administrator.

(a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. x x x

x x x x x x x x x

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

x x x x x x x x x

5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator to **organize or reorganize** NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties. (Emphasis supplied.)

Thus, petitioners argue that the power granted unto the NEA Board to organize or reorganize does not include the power to terminate employees but only to reduce NEA's manpower complement.

Such contention is erroneous.

In *Betoy v. The Board of Directors, National Power Corporation*,[4] the Court upheld the dismissal of all the employees of the NPC pursuant to the EPIRA Law. In ruling that the power of reorganization includes the power of removal, the Court explained:

> [R]eorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. **It could result in the loss of one's position through removal** or abolition of an office. **However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith**; otherwise, it is void *ab initio*. (Emphasis supplied.)

Evidently, the termination of all the employees of NEA was within the NEA Board's powers and may not successfully be impugned absent proof of bad faith.

---

[4] G.R. Nos. 156556-57, October 4, 2011.

Petitioners Failed to Prove that the NEA Board Acted in Bad Faith

Next, petitioners challenge the reorganization claiming bad faith on the part of the NEA Board.

Congress itself laid down the indicators of bad faith in the reorganization of government offices in Sec. 2 of RA 6656, an *Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization*, to wit:

> Section 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:
>
> (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
>
> **(b) Where an office is abolished and other performing substantially the same functions is created;**
>
> **(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;**
>
> (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;
>
> (e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis supplied.)

It must be noted that the burden of proving bad faith rests on the one alleging it. As the Court ruled in *Culili v. Eastern*

Telecommunications, Inc.,[5] "According to jurisprudence, 'basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.' " Moreover, in *Spouses Palada v. Solidbank Corporation*,[6] the Court stated, "Allegations of bad faith and fraud must be proved by clear and convincing evidence."

Here, petitioners have failed to discharge such burden of proof.

In alleging bad faith, petitioners cite RA 6656, particularly its Sec. 2, subparagraphs (b) and (c). Petitioners have the burden to show that: (1) the abolished offices were replaced by substantially the same units performing the same functions; and (2) incumbents are replaced by less qualified personnel.

Petitioners failed to prove such facts. Mere allegations without hard evidence cannot be considered as clear and convincing proof.

Next, petitioners state that the NEA Board should not have abolished all the offices of NEA and instead made a selective termination of its employees while retaining the other employees.

Petitioners argue that for the reorganization to be valid, it is necessary to only abolish the offices or terminate the employees that would not be retained and the retention of the employees that were tasked to carry out the continuing mandate of NEA. Petitioners argue in their Memorandum dated July 27, 2010:

> A valid reorganization, pursued in good faith, would have resulted to: (1) the abolition of old positions in the NEA's table of organization that pertain to the granting of franchises and rate fixing functions as these were all abolished by Congress (2) the creation of new positions that pertain to the additional mandates of the EPIRA Law and (3) maintaining the old positions that were not affected by the EPIRA Law.

The Court already had the occasion to pass upon the validity of the similar reorganization in the NPC. In the aforecited case

---

[5] G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.

[6] G.R. No. 172227, June 29, 2011.

of *Betoy*,[7] the Court upheld the policy of the Executive to terminate all the employees of the office before rehiring those necessary for its operation. We ruled in *Betoy* that such policy is not tainted with bad faith:

> It is undisputed that NPC was in financial distress and the solution found by Congress was to pursue a policy towards its privatization. The privatization of NPC necessarily demanded the restructuring of its operations. **To carry out the purpose, there was a need to terminate employees and re-hire some depending on the manpower requirements of the privatized companies. The privatization and restructuring of the NPC was, therefore, done in good faith as its primary purpose was for economy and to make the bureaucracy more efficient**. (Emphasis supplied.)

Evidently, the fact that the NEA Board resorted to terminating all the incumbent employees of NPC and, later on, rehiring some of them, cannot, on that ground alone, vitiate the bona fides of the reorganization.

WHEREFORE, the instant petition is hereby **DISMISSED**. Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, issued by the NEA Board of Directors are hereby **UPHELD**.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Abad and *Sereno, JJ.,* on leave.

Mendoza, J., no part.

---

[7] *Supra* note 4.

SECOND DIVISION

[A.M. No. P-11-2926. February 1, 2012]

JUDGE LUCINA ALPEZ DAYAON, Presiding Judge, Regional Trial Court of Macabebe, Pampanga, Branch 54, *complainant, vs.* **JESUSA V. DE LEON, Court Stenographer III of the same court,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ADMINISTRATIVE CIRCULAR NO. 14-2002; HABITUAL ABSENTEEISM, A CASE OF; PENALTY. — x x x [Administrative Circular No. 14-2002] provides that an employee is considered habitually absent if the employee incurred unauthorized absences exceeding the 2.5 days allowed per month for three months in a semester or at least three consecutive months during the year. In the present case, De Leon incurred unauthorized absences for three consecutive months in the year 2010: 7 days in April, 14 days in May and 18 days in June. These unauthorized absences, which De Leon admitted and certified to by the OCA in a Report dated 13 August 2010, clearly fall under AC 14-2002. Under AC 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service, the penalty of habitual absenteeism for the first offense is suspension of six (6) months and one (1) day to one (1) year.

2. ID.; ID.; ID.; ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCES APPRECIATED IN THE IMPOSITION OF PENALTY IN THE CASE AT BAR. — [I]n several administrative cases, mitigating circumstances merited the leniency of the Court. The presence of factors such as length of service in the judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, play an important role in the imposition of penalties. Also, in *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, we have ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition,

her family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. Here, we have considered De Leon's length of service, acknowledgment of her infraction and apology to determine the appropriate penalty. Since this is her first infraction, De Leon deserves another chance. However, the circumstances may not be further mitigated since De Leon had previously been issued several memoranda by Judge Dayaon in 2008 for her unauthorized absences, delay and failure to transcribe stenographic notes, and disobedience to lawful orders of the court. Also, in 2009, she reported for work less than her absences and tardiness. Thus, taking into account all the considerations, we adopt the recommendation of the OCA that De Leon be suspended for one month without pay with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative matter refers to the habitual absenteeism of Jesusa V. De Leon (De Leon), Court Stenographer III, Regional Trial Court of Macabebe, Pampanga, Branch 54, in violation of Administrative Circular No. 14-2002.

The Facts

In a letter dated 7 July 2010 sent to the Office of the Court Administrator (OCA), Presiding Judge Lucina Alpez Dayaon (Judge Dayaon) of the Regional Trial Court of Macabebe, Pampanga, Branch 54, reported that De Leon has been absent, without approved leave, for the period 22 April 2010 to 5 May 2010, and 27 May 2010 to 25 June 2010. Judge Dayaon requested that De Leon be dismissed from the service since her habitual absenteeism without leave for prolonged periods of time constitutes conduct prejudicial to the best interest of public service.

Judge Dayaon stated in her letter that she previously issued a Memorandum dated 5 May 2010 directing De Leon to submit

a written explanation why she should not be recommended for dismissal from the service for her unexplained absences and failure to transcribe stenographic notes on time. Despite the receipt of the Memorandum on 6 May 2010, per Server's Report dated 11 May 2010, De Leon failed to submit an explanation and complete the transcription of the stenographic notes.

Judge Dayaon stated that this work attitude of De Leon has been recurring for many years. In 2008, Judge Dayaon issued three memoranda on different dates, 20 June, 3 November and 26 November, directed to De Leon for her absenteeism and failure to transcribe stenographic notes; unauthorized/unexplained absences; and delay in transcribing stenographic notes and disobedience to lawful orders of the court. In 2009, the record of De Leon's absences and tardiness exceeded the number of times she was present at work.

Judge Dayaon declared that De Leon submitted three letters of explanation on different dates, 26 June 2008, 9 December 2008, and 27 March 2009. However, De Leon did not account for her absences without leave during the months of April to June 2010. Judge Dayaon stated that De Leon's habitual absenteeism constitutes conduct prejudicial to the best interest of the service and warrants the penalty of dismissal.

In a Report dated 13 August 2010, the Leave Division of the OCA, issued a Summary of Absences Incurred by Jesusa V. De Leon. The records show that De Leon incurred unauthorized absences for the year 2010: April 22-30 (7 days); May 4-14 and 24-31 (14 days); and June 1-25 (18 days). In the 1st Indorsement dated 22 September 2010, the OCA directed De Leon to file her comment within 10 days from receipt.

In her Comment dated 30 October 2010, De Leon admitted that she was absent during said dates in the months of April to June 2010 because her three children were afflicted with cough, cold and fever. De Leon stated that her husband was out of work, and they had no sufficient money to seek treatment from a doctor, and had resorted to self-medication. Because of her miserable condition, she neglected to file an official leave for her absences. De Leon added that she did not have enough money

to cover her transportation expenses from her residence to the trial court and their daily needs were kindly provided for by concerned neighbors, friends and relatives.

Moreover, De Leon stated that when her children became well she reported for work on 28 June 2010. Thereafter, she had been regularly present and only had three stenographic notes pending to be transcribed. De Leon sought the indulgence of the Court since her work is her only means of livelihood after having served the judiciary for 18 years.

The OCA's Report and Recommendation

In its Report dated 10 February 2011, the OCA found De Leon habitually absent for incurring unauthorized absences for the months of April, May and June 2010. The OCA stated that De Leon's reasons of attending to the needs of her children and financial difficulties are insufficient to justify her absences and exonerate her from administrative liability. However, these circumstances help mitigate the penalty to be imposed.

The OCA made this recommendation:

1. the instant administrative case against Ms. Jesusa V. De Leon, Court Stenographer III, Regional Trial Court, Branch 54, Macabebe, Pampanga, be RE-DOCKETED as a regular administrative matter; and

2. Ms. Jesusa V. De Leon be found GUILTY of Habitual Absenteeism, and, accordingly, be SUSPENDED for ONE (1) MONTH WITHOUT PAY, with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely.

The Court's Ruling

We adopt the findings and recommendation of the OCA.

Administrative Circular No. 14-2002[1] (AC 14-2002) provides:

A. HABITUAL ABSENTEEISM

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the

[1] Reiterating the Civil Service Commission's Policy on Habitual Absenteeism, issued on 18 March 2002 and took effect on 1 April 2002.

allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year; x x x

B. SANCTIONS

The following sanctions shall be imposed for violation of the policy on habitual absenteeism:

1st offense – Suspension for six (6) months and one (1) day to one (1) year.
2nd offense – Dismissal from the service.

The circular provides that an employee is considered habitually absent if the employee incurred unauthorized absences exceeding the 2.5 days allowed per month for three months in a semester or at least three consecutive months during the year.

In the present case, De Leon incurred unauthorized absences for three consecutive months in the year 2010: 7 days in April, 14 days in May and 18 days in June. These unauthorized absences, which De Leon admitted and certified to by the OCA in a Report dated 13 August 2010, clearly fall under AC 14-2002. Under AC 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service,[2] the penalty of habitual absenteeism for the first offense is suspension of six (6) months and one (1) day to one (1) year.

However, in several administrative cases,[3] mitigating circumstances merited the leniency of the Court. The presence of factors such as length of service in the judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, play an important role in the imposition of penalties.[4] Also, in *Re: Habitual Absenteeism*

---

[2] Civil Service Commission Memorandum Circular No. 19, series of 1999, issued on 31 August 1999 and took effect on 15 September 1999.

[3] *Re: Habitual Absenteeism of Mr. Erwin A. Abdon*, A.M. No. 2007-13-SC, 14 April 2008, 551 SCRA 130; *Judge Domingo-Regala v. Sultan*, 492 Phil. 482 (2005).

[4] *Office of the Court Administrator v. De Lemos*, A.M. No. P-11-2953, 7 September 2011.

of Mr. Fernando P. Pascual,[5] we have ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, her family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner.

Here, we have considered De Leon's length of service, acknowledgment of her infraction and apology to determine the appropriate penalty. Since this is her first infraction, De Leon deserves another chance. However, the circumstances may not be further mitigated since De Leon had previously been issued several memoranda by Judge Dayaon in 2008 for her unauthorized absences, delay and failure to transcribe stenographic notes, and disobedience to lawful orders of the court. Also, in 2009, she reported for work less than her absences and tardiness. Thus, taking into account all the considerations, we adopt the recommendation of the OCA that De Leon be suspended for one month without pay with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

WHEREFORE, we find respondent Jesusa V. De Leon, Court Stenographer III, Regional Trial Court of Macabebe, Pampanga, Branch 54, **GUILTY** of **HABITUAL ABSENTEEISM** and impose on her the penalty of **SUSPENSION of ONE (1) MONTH WITHOUT PAY** with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

---

[5] A.M. No. 2005-16-SC, 22 September 2005, 470 SCRA 569, citing *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110 (1974).

SECOND DIVISION

[G.R. No. 151258. February 1, 2012]

ARTEMIO VILLAREAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 154954. February 1, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, ANTONIO MARIANO ALMEDA, DALMACIO LIM, JR., JUNEL ANTHONY AMA, ERNESTO JOSE MONTECILLO, VINCENT TECSON, ANTONIO GENERAL, SANTIAGO RANADA III, NELSON VICTORINO, JAIME MARIA FLORES II, ZOSIMO MENDOZA, MICHAEL MUSNGI, VICENTE VERDADERO, ETIENNE GUERRERO, JUDE FERNANDEZ, AMANTE PURISIMA II, EULOGIO SABBAN, PERCIVAL BRIGOLA, PAUL ANGELO SANTOS, JONAS KARL B. PEREZ, RENATO BANTUG, JR., ADEL ABAS, JOSEPH LLEDO, AND RONAN DE GUZMAN,** *respondents.*

[G.R. No. 155101. February 1, 2012]

FIDELITO DIZON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 178057 & 178080. February 1, 2012]

GERARDA H. VILLA, *petitioner, vs.* **MANUEL LORENZO ESCALONA II, MARCUS JOEL CAPELLAN RAMOS, CRISANTO CRUZ SARUCA, JR., and ANSELMO ADRIANO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; FUNDAMENTAL PRINCIPLE; THAT NO ACT CONSTITUTES A CRIME UNLESS IT IS MADE SO BY LAW. — Although courts must not remain indifferent to public sentiments, in this case the general condemnation of a hazing-related death, they are still bound to observe a fundamental principle in our criminal justice system — "[N]o act constitutes a crime… unless it is made so by law." *Nullum crimen, nulla poena sine lege*.

2. ID.; EXTINCTION OF CRIMINAL LIABILITY; DEATH OF PETITIONER EXTINGUISHED HIS CRIMINAL LIABILITY FOR BOTH PERSONAL AND PECUNIARY PENALTIES INCLUDING CIVIL LIABILITY DIRECTLY ARISING FROM THE DELICT COMPLAINED OF. — According to Article 89(1) of the Revised Penal Code, criminal liability for personal penalties is totally extinguished by the death of the convict. In contrast, criminal liability for pecuniary penalties is extinguished if the offender dies prior to final judgment. The term "personal penalties" refers to the service of personal or imprisonment penalties, while the term "pecuniary penalties" (*las pecuniarias*) refers to fines and costs, including civil liability predicated on the criminal offense complained of (*i.e.*, civil liability *ex delicto*). However, civil liability based on a source of obligation other than the *delict* survives the death of the accused and is recoverable through a separate civil action. Thus, we hold that the death of petitioner Villareal extinguished his criminal liability for both personal and pecuniary penalties, including his civil liability directly arising from the *delict* complained of.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF ACCUSED TO PRESENT EVIDENCE; VIOLATED WHEN ACCUSED STRIPPED OF ALL HIS PRE-ASSIGNED TRIAL DATES; THE SAME, HOWEVER, WILL NOT VACATE A FINDING OF GUILT ESTABLISHED BEYOND REASONABLE DOUBT. — Article III, Section 14(2) [of the Constitution] provides that **"in all criminal prosecutions, the accused … shall enjoy the right to be heard by himself and counsel…"** This constitutional right includes the right to present evidence in one's defense, as well as the right to be present and defend oneself

in person at every stage of the proceedings. x x x Stripping the accused of all his pre-assigned trial dates constitutes a patent denial of the constitutionally guaranteed right to due process. Nevertheless, as in the case of an improvident guilty plea, an invalid waiver of the right to present evidence and be heard does not *per se* work to vacate a finding of guilt in the criminal case or to enforce an automatic remand of the case to the trial court. In *People v. Bodoso*, we ruled that x x x a guilty verdict may nevertheless be upheld if the judgment is supported beyond reasonable doubt by the evidence on record.

4. ID.; ID.; ID.; RIGHT OF ACCUSED TO A SPEEDY TRIAL; DISMISSAL PURSUANT THEREOF IS TANTAMOUNT TO ACQUITTAL AND APPEAL THEREFORE VIOLATES THE PRINCIPLE OF DOUBLE JEOPARDY UNLESS CAPRICIOUS; CASE AT BAR. — The right of the accused to a speedy trial has been enshrined in Sections 14(2) and 16, Article III of the 1987 Constitution. x x x We have consistently ruled in a long line of cases that a dismissal of the case pursuant to the right of the accused to speedy trial is tantamount to acquittal. As a consequence, an appeal or a reconsideration of the dismissal would amount to a violation of the principle of double jeopardy. As we have previously discussed, however, where the dismissal of the case is capricious, *certiorari* lies. x x x We do not see grave abuse of discretion in the CA's dismissal of the case against accused Escalona, [*et al.*] on the basis of the violation of their right to speedy trial. x x x This Court points out that on 10 January 1992, the final amended Information was filed against Escalona, [*et al.*] x x x On 29 November 1993, they were all arraigned. Unfortunately, the initial trial of the case did not commence until 28 March 2005 or almost 12 years after arraignment.

5. ID.; ID.; ID.; RIGHT AGAINST DOUBLE JEOPARDY. — The rule on double jeopardy is one of the pillars of our criminal justice system. It dictates that when a person is charged with an offense, and the case is terminated – either by acquittal or conviction or in any other manner without the consent of the accused — the accused cannot again be charged with the same or an identical offense. x x x Rule 117, Section 7 of the Rules of Court, implements this particular constitutional right. x x x The rule on double jeopardy thus prohibits the state from appealing the judgment in order to reverse the acquittal

or to increase the penalty imposed either through a regular appeal under Rule 41 of the Rules of Court or through an appeal by *certiorari* on pure questions of law under Rule 45 of the same Rules.

6. ID.; ID.; ID.; ID.; FINALITY-OF-ACQUITTAL DOCTRINE; EXCEPTIONS. — As we have reiterated in *People v. Court of Appeals and Galicia*, "[a] verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense. x x x We further stressed that "an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal." This prohibition, however, is not absolute. The state may challenge the lower court's acquittal of the accused or the imposition of a lower penalty on the latter in the following recognized exceptions: (1) where the prosecution is deprived of a fair opportunity to prosecute and prove its case, tantamount to a deprivation of due process; (2) where there is a finding of mistrial; or (3) where there has been a grave abuse of discretion.

7. ID.; ID.; ID.; ID.; ID.; ID.; WHERE THERE HAS BEEN GRAVE ABUSE OF DISCRETION. — The third instance refers to this Court's judicial power under Rule 65 to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice. In such an event, the accused cannot be considered to be at risk of double jeopardy.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PRESENT WHERE THE LOWER COURT ABUSED ITS AUTHORITY TO A POINT SO GRAVE AS TO DEPRIVE IT OF ITS VERY POWER TO DISPENSE JUSTICE. — Indeed, we have ruled in a line of cases that the rule on double jeopardy similarly

applies when the state seeks the imposition of a higher penalty against the accused. We have also recognized, however, that *certiorari* may be used to correct an abusive judgment upon a clear demonstration that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. The present case is one of those instances of grave abuse of discretion.

9. ID.; ID.; ID.; ID.; ID.; ACCUSED CANNOT BE HELD CRIMINALLY LIABLE FOR PHYSICAL INJURIES WHEN ACTUAL DEATH OCCURS. — Article 4(1) of the Revised Penal Code dictates that the perpetrator shall be liable for the consequences of an act, even if its result is different from that intended. Thus, once a person is found to have committed an initial felonious act, such as the unlawful infliction of physical injuries that results in the death of the victim, courts are required to automatically apply the legal framework governing the destruction of life. This rule is mandatory, and not subject to discretion. x x x We emphasize that these two types of felonies are distinct from and legally inconsistent with each other, in that the accused cannot be held criminally liable for physical injuries when actual death occurs.

10. CRIMINAL LAW; INTENTIONAL FELONY; MALICIOUS INTENT MUST BE ESTABLISHED BEYOND REASONABLE DOUBT. — In order for an intentional felony to exist, it is necessary that the act be committed by means of *dolo* or "malice." The term "*dolo*" or "malice" is a complex idea involving the elements of *freedom*, *intelligence*, and *intent*. x x x The last element, *intent*, involves an aim or a determination to do a certain act. The element of *intent* — on which this Court shall focus — is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. It does not refer to mere *will*, for the latter pertains to the act, while *intent* concerns the result of the act. While motive is the "moving power" that impels one to action for a definite result, intent is the "purpose" of using a particular means to produce the result. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. x x x As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.

11. ID.; CONSPIRACY; ABSENT MALICIOUS INTENT, THERE IS NO CONSPIRACY BUT CRIMINAL NEGLIGENCE. — Article 8 of the Revised Penal Code — which provides that "conspiracy exists when two or more persons **come to an agreement concerning the commission of a felony** and decide to commit it" — is to be interpreted to refer only to felonies committed by means of *dolo* or malice. x x x In culpable felonies or criminal negligence, the injury inflicted on another is unintentional. x x x If death resulted from an act executed without malice or criminal intent — but with lack of foresight, carelessness, or negligence — the act must be qualified as reckless or simple negligence or imprudence resulting in homicide.

12. ID.; HOMICIDE; INTENT TO KILL IN THE FRATERNITY INITIATION RITES, NOT ESTABLISHED BEYOND REASONABLE. — As to the existence of *animus interficendi* on the part of Dizon, we refer to the entire factual milieu. x x x At the outset, the neophytes were briefed that they would be subjected to psychological pressure in order to scare them. x x x While beating the neophytes, Dizon accused Marquez of the death of the former's purported NPA brother, and then blamed Lenny Villa's father for stealing the parking space of Dizon's father. According to the Solicitor General, these x x x were all part of the psychological initiation employed by the Aquila Fraternity. x x x Thus, without proof beyond reasonable doubt, Dizon's behavior must not be automatically viewed as evidence of a genuine, evil motivation to kill Lenny Villa. Rather, it must be taken within the context of the fraternity's psychological initiation.

13. ID.; PHYSICAL INJURIES; INTENT TO INJURE; HOW ESTABLISHED. — In order to be found guilty of any of the felonious acts under Articles 262 to 266 of the Revised Penal Code, the employment of physical injuries must be coupled with *dolus malus*. As an act that is *mala in se*, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer — *iniuria ex affectu facientis consistat*. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. x x x In *People v. Regato*, we ruled that malicious intent must be judged by the action, conduct, and external acts of the accused. What persons do is the best index of their intention. We have also ruled that the

method employed, the kind of weapon used, and the parts of the body on which the injury was inflicted may be determinative of the intent of the perpetrator.

14. ID.; ID.; ID.; NOT ESTABLISHED BEYOND REASONABLE DOUBT IN THE FRATERNITY INITIATION RITES. — Lenny died during Aquila's fraternity initiation rites. The night before the commencement of the rites, they were briefed on what to expect. They were told that there would be physical beatings, that the whole event would last for three days, and that they could quit anytime. x x x Even after going through Aquila's grueling traditional rituals during the first day, Lenny continued his participation and finished the second day of initiation. Even if the specific acts of punching, kicking, paddling, and other modes of inflicting physical pain were done voluntarily, freely, and with intelligence, x x x the fundamental ingredient of criminal *intent* was not proven beyond reasonable doubt. On the contrary, all that was proven was that the acts were done pursuant to tradition. x x x Other than the paddle, no other "weapon" was used to inflict injuries on Lenny. The targeted body parts were predominantly the legs and the arms. The designation of roles, including the role of auxiliaries, which were assigned for the specific purpose of lending assistance to and taking care of the neophytes during the initiation rites, further belied the presence of malicious intent. All those who wished to join the fraternity went through the same process of "traditional" initiation; there is no proof that Lenny Villa was specifically targeted or given a different treatment.

15. ID.; FELONIES COMMITTED BY *CULPA*; NEGLIGENCE, HOW DETERMINED. — The Revised Penal Code punishes felonies that are committed by means of fault (*culpa*). According to Article 3 thereof, there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill. x x x The test for determining whether or not a person is negligent in doing an act is as follows: Would a prudent man in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes on the doer the duty to take precaution against the mischievous results of the act. Failure to do so constitutes negligence.

16. ID.; RECKLESS IMPRUDENCE RESULTING IN HOMICIDE; COMMITTED FOR THE DEATH OF A NEOPHYTE IN

THE FRATERNITY INITIATION RITES. — [T]he collective acts of the fraternity members were tantamount to recklessness, which made the resulting death of Lenny a culpable felony. It must be remembered that organizations owe to their initiates a duty of care not to cause them injury in the process. With the foregoing facts, we rule that the accused are guilty of reckless imprudence resulting in homicide. Since the NBI medico-legal officer found that the victim's death was the cumulative effect of the injuries suffered, criminal responsibility redounds to all those who directly participated in and contributed to the infliction of physical injuries.

17. ID.; ID.; PROPER CIVIL DAMAGES. — Civil indemnity *ex delicto* [in the amount of ₱50,000] is automatically awarded for the sole fact of death of the victim. The heirs of the victim are entitled to actual or compensatory damages, including expenses incurred in connection with the death of the victim, so long as the claim is supported by tangible documents. The heirs of the deceased may recover moral damages for the grief suffered on account of the victim's death. This penalty is pursuant to Article 2206(3) of the Civil Code. x x x Thus, we hereby affirm the CA's award of moral damages in the amount of ₱1,000,000.

APPEARANCES OF COUNSEL

Quiason Makalintal Barrot Torres & Ibarra for Artemio Villareal.

Alfredo Tadiar for Gerardo Villa.

The Solicitor General for public respondent.

Augusto S. Jimenez, Sr. for Antonio Mariano Almeda.

Ramon U. Braganza for Junel Anthony Ama.

De Guzman and Celis Law Office for Ronan de Guzman.

Felipe Antonio B. Remolio for Vincent Tecson.

Gonzales Batiller David Leabres and Reyes for Nelson Victorino.

Santiago & Santiago for Anselmo Adriano.

Tagle Chua Cruz & Aquino for Fideito Dizon.

Farcon Gabriel Farcon and Associates for Renato Bantug, Jr. and Joseph Lledo.

Saguisag and Associates for Zosimo Mendoza.

Flores Cabrera Gonzales & Concepcion Law Offices for Jaime Maria Flores II.

Michael Frederick L. Musngi and Abel Abas for themselves and Junel Anthony Ama.

Benjamin C. Santos & Ofelia Calcetas-Santos Law Offices for Paul Angelo santos.

Baterina Baterina Casals Lozada & Tiblani for Gerarda Villa.

Apostol Gumaru & Balgua Law Office for Santiago Ranada III.

Jose Alberto C. Flaminiano for Dalmacio L. Lim, Jr.

Melencio S. Sta. Maria, Jr. for Vicente Verdalero.

Picazo Buyco Tan Fider & Santos for Jonas karl Perez.

Tomas Carmelo T. Araneta for Sabban & Montecillo.

D E C I S I O N

SERENO, *J.*:

The public outrage over the death of Leonardo "Lenny" Villa — the victim in this case — on 10 February 1991 led to a very strong clamor to put an end to hazing.[1] Due in large part to the brave efforts of his mother, petitioner Gerarda Villa, groups were organized, condemning his senseless and tragic death. This widespread condemnation prompted Congress to enact a special law, which became effective in 1995, that would criminalize hazing.[2] The intent of the law was to discourage members from making hazing a requirement for joining their sorority, fraternity, organization, or association.[3] Moreover, the law was meant to counteract the exculpatory implications of "consent" and "initial innocent act" in the conduct of initiation rites by making the mere act of hazing punishable or *mala prohibita*.[4]

---

[1] Sponsorship Speech of former Senator Joey Lina, Senate Transcript of Session Proceedings No. 34 (08 October 1992) 9th Congress, 1st Regular Sess. at 21-22 [hereinafter Senate TSP No. 34].

[2] *Id.*

[3] Senate Transcript of Session Proceedings No. 47 (10 November 1992) 9th Congress, 1st Regular Sess. at 20-21, 24-27 [hereinafter Senate TSP No. 47].

[4] *Id.*; Senate Transcript of Session Proceedings No. 62 (14 December 1992) 9th Congress, 1st Regular Sess. at 15 [hereinafter Senate TSP No. 62].

Sadly, the Lenny Villa tragedy did not discourage hazing activities in the country.[5] Within a year of his death, six more cases of hazing-related deaths emerged — those of Frederick Cahiyang of the University of Visayas in Cebu; Raul Camaligan of San Beda College; Felipe Narne of Pamantasan ng Araullo in Cabanatuan City; Dennis Cenedoza of the Cavite Naval Training Center; Joselito Mangga of the Philippine Merchant Marine Institute; and Joselito Hernandez of the University of the Philippines in Baguio City.[6]

Although courts must not remain indifferent to public sentiments, in this case the general condemnation of a hazing-related death, they are still bound to observe a fundamental principle in our criminal justice system — "[N]o act constitutes a crime… unless it is made so by law."[7] *Nullum crimen, nulla poena sine lege*. Even if an act is viewed by a large section of the populace as immoral or injurious, it cannot be considered a crime, absent any law prohibiting its commission. As interpreters of the law, judges are called upon to set aside emotion, to resist being swayed by strong public sentiments, and to rule strictly based on the elements of the offense and the facts allowed in evidence.

Before the Court are the consolidated cases docketed as G.R. No. 151258 (*Villareal v. People*), G.R. No. 154954 (*People v. Court of Appeals*), G.R. No. 155101 (*Dizon v. People*), and G.R. Nos. 178057 and 178080 (*Villa v. Escalona*).

FACTS

The pertinent facts, as determined by the Court of Appeals (CA)[8] and the trial court,[9] are as follows:

---

[5] Senate TSP No. 34, *supra* note 1.

[6] *Id.*

[7] *U.S. v. Taylor*, 28 Phil. 599 (1914). The Court declared, "In the Philippine Islands there exist no crimes such as are known in the United States and England as common law crimes;" *id.* at 604.

[8] CA Decision (*People v. Dizon*, CA-G.R. CR No. 15520), pp. 1-5; *rollo* (G.R. No. 151258), pp. 62-66.

[9] RTC Decision [*People v. Dizon*, Criminal Case No. C-38340(91)], pp. 1-57; *rollo* (G.R. No. 151258), pp. 109-167.

In February 1991, seven freshmen law students of the Ateneo de Manila University School of Law signified their intention to join the Aquila Legis Juris Fraternity (Aquila Fraternity). They were Caesar "Bogs" Asuncion, Samuel "Sam" Belleza, Bienvenido "Bien" Marquez III, Roberto Francis "Bert" Navera, Geronimo "Randy" Recinto, Felix Sy, Jr., and Leonardo "Lenny" Villa (neophytes).

On the night of 8 February 1991, the neophytes were met by some members of the Aquila Fraternity (Aquilans) at the lobby of the Ateneo Law School. They all proceeded to Rufo's Restaurant to have dinner. Afterwards, they went to the house of Michael Musngi, also an Aquilan, who briefed the neophytes on what to expect during the initiation rites. The latter were informed that there would be physical beatings, and that they could quit at any time. Their initiation rites were scheduled to last for three days. After their "briefing," they were brought to the Almeda Compound in Caloocan City for the commencement of their initiation.

Even before the neophytes got off the van, they had already received threats and insults from the Aquilans. As soon as the neophytes alighted from the van and walked towards the *pelota* court of the Almeda compound, some of the Aquilans delivered physical blows to them. The neophytes were then subjected to traditional forms of Aquilan "initiation rites." These rites included the "Indian Run," which required the neophytes to run a gauntlet of two parallel rows of Aquilans, each row delivering blows to the neophytes; the "Bicol Express," which obliged the neophytes to sit on the floor with their backs against the wall and their legs outstretched while the Aquilans walked, jumped, or ran over their legs; the "Rounds," in which the neophytes were held at the back of their pants by the "auxiliaries" (the Aquilans charged with the duty of lending assistance to neophytes during initiation rites), while the latter were being hit with fist blows on their arms or with knee blows on their thighs by two Aquilans; and the "Auxies' Privilege Round," in which the auxiliaries were given the opportunity to inflict physical pain on the neophytes. During this time, the neophytes were also indoctrinated with the fraternity principles. They survived their first day of initiation.

On the morning of their second day – 9 February 1991 – the neophytes were made to present comic plays and to play rough basketball. They were also required to memorize and recite the Aquila Fraternity's principles. Whenever they would give a wrong answer, they would be hit on their arms or legs. Late in the afternoon, the Aquilans revived the initiation rites proper and proceeded to torment them physically and psychologically. The neophytes were subjected to the same manner of hazing that they endured on the first day of initiation. After a few hours, the initiation for the day officially ended.

After a while, accused non-resident or alumni fraternity members[10] Fidelito Dizon (Dizon) and Artemio Villareal (Villareal) demanded that the rites be reopened. The head of initiation rites, Nelson Victorino (Victorino), initially refused. Upon the insistence of Dizon and Villareal, however, he reopened the initiation rites. The fraternity members, including Dizon and Villareal, then subjected the neophytes to "paddling" and to additional rounds of physical pain. Lenny received several paddle blows, one of which was so strong it sent him sprawling to the ground. The neophytes heard him complaining of intense pain and difficulty in breathing. After their last session of physical beatings, Lenny could no longer walk. He had to be carried by the auxiliaries to the carport. Again, the initiation for the day was officially ended, and the neophytes started eating dinner. They then slept at the carport.

After an hour of sleep, the neophytes were suddenly roused by Lenny's shivering and incoherent mumblings. Initially, Villareal and Dizon dismissed these rumblings, as they thought he was just overacting. When they realized, though, that Lenny was really feeling cold, some of the Aquilans started helping him. They removed his clothes and helped him through a sleeping

---

[10] As explained in the Petition for Review of Villareal, "resident brods" are those fraternity members who are currently students of the Ateneo Law School, while "alumni brods" are those fraternity members who are graduates or former students of the law school; *see* Villareal's Petition for Review (*Villareal v. People*, G.R. No. 151258), pp. 5-7; *rollo* (G.R. No. 151258), pp. 17-19.

bag to keep him warm. When his condition worsened, the Aquilans rushed him to the hospital. Lenny was pronounced dead on arrival.

Consequently, a criminal case for homicide was filed against the following 35 Aquilans:

In Criminal Case No. C-38340(91)

1. Fidelito Dizon (Dizon)
2. Artemio Villareal (Villareal)
3. Efren de Leon (De Leon)
4. Vincent Tecson (Tecson)
5. Junel Anthony Ama (Ama)
6. Antonio Mariano Almeda (Almeda)
7. Renato Bantug, Jr. (Bantug)
8. Nelson Victorino (Victorino)
9. Eulogio Sabban (Sabban)
10. Joseph Lledo (Lledo)
11. Etienne Guerrero (Guerrero)
12. Michael Musngi (Musngi)
13. Jonas Karl Perez (Perez)
14. Paul Angelo Santos (Santos)
15. Ronan de Guzman (De Guzman)
16. Antonio General (General)
17. Jaime Maria Flores II (Flores)
18. Dalmacio Lim, Jr. (Lim)
19. Ernesto Jose Montecillo (Montecillo)
20. Santiago Ranada III (Ranada)
21. Zosimo Mendoza (Mendoza)
22. Vicente Verdadero (Verdadero)
23. Amante Purisima II (Purisima)
24. Jude Fernandez (J. Fernandez)
25. Adel Abas (Abas)
26. Percival Brigola (Brigola)

In Criminal Case No. C-38340

1. Manuel Escalona II (Escalona)
2. Crisanto Saruca, Jr. (Saruca)
3. Anselmo Adriano (Adriano)
4. Marcus Joel Ramos (Ramos)
5. Reynaldo Concepcion (Concepcion)

6. Florentino Ampil (Ampil)
7. Enrico de Vera III (De Vera)
8. Stanley Fernandez (S. Fernandez)
9. Noel Cabangon (Cabangon)

Twenty-six of the accused Aquilans in Criminal Case No. C-38340(91) were jointly tried.[11] On the other hand, the trial against the remaining nine accused in Criminal Case No. C-38340 was held in abeyance due to certain matters that had to be resolved first.[12]

On 8 November 1993, the **trial court** rendered judgment in Criminal Case No. C-38340(91), holding the **26 accused guilty** beyond reasonable doubt of the **crime of homicide**, penalized with *reclusion temporal* under Article 249 of the Revised Penal Code.[13] A few weeks after the trial court rendered its judgment, or on 29 November 1993, Criminal Case No. C-38340 against the remaining nine accused commenced anew.[14]

On 10 January 2002, the **CA** in (CA-G.R. No. 15520)[15] **set aside the finding of conspiracy by the trial court** in Criminal Case No. C-38340(91) and **modified the criminal liability** of each of the accused **according to individual participation**. Accused De Leon had by then passed away, so the following Decision applied only to the remaining 25 accused, *viz*:

1. **Nineteen of the accused-appellants** — Victorino, Sabban, Lledo, Guerrero, Musngi, Perez, De Guzman, Santos, General, Flores, Lim, Montecillo, Ranada, Mendoza, Verdadero, Purisima, Fernandez, Abas, and

---

[11] RTC Decision [Crim. Case No. C-38340(91)], p. 2, *supra* note 9; *rollo*, p. 110.

[12] *Id.*

[13] *Id.* at 66-67; *rollo*, pp. 175-176.

[14] CA Decision (*Escalona v. RTC*, CA-G.R. SP No. 89060), p. 4; *rollo* (G.R. No. 178057), p. 131.

[15] Penned by Associate Justice Eubulo G. Verzola and concurred in by Associate Justices Rodrigo V. Cosico and Eliezer R. de los Santos (with Concurring Opinion).

Brigola (**Victorino *et al.***) — were **acquitted,** as their individual guilt was not established by proof beyond reasonable doubt.

2. **Four of the accused-appellants** — Vincent Tecson, Junel Anthony Ama, Antonio Mariano Almeda, and Renato Bantug, Jr. (**Tecson *et al.***) — were found guilty of the crime of **slight physical injuries** and sentenced to 20 days of *arresto menor*. They were also ordered to jointly pay the heirs of the victim the sum of ₱30,000 as indemnity.

3. **Two of the accused-appellants — Fidelito Dizon** and **Artemio Villareal** — were found guilty beyond reasonable doubt of the crime of **homicide** under Article 249 of the Revised Penal Code. Having found no mitigating or aggravating circumstance, the CA sentenced them to an indeterminate sentence of 10 years of *prision mayor* to 17 years of *reclusion temporal*. They were also ordered to indemnify, jointly and severally, the heirs of Lenny Villa in the sum of ₱50,000 and to pay the additional amount of ₱1,000,000 by way of moral damages.

On 5 August 2002, the trial court in Criminal Case No. 38340 dismissed the charge against accused Concepcion on the ground of violation of his right to speedy trial.[16] Meanwhile, on different dates between the years 2003 and 2005, the trial court denied the respective Motions to Dismiss of accused Escalona, Ramos, Saruca, and Adriano.[17] On 25 October 2006, the CA in CA-G.R. SP Nos. 89060 & 90153[18] reversed the trial court's Orders and dismissed the criminal case against Escalona, Ramos, Saruca, and Adriano on the basis of violation of their right to speedy trial.[19]

---

[16] RTC Decision (*People v. Dizon*, Crim. Case No. 38340), p. 21; *rollo* (G.R. No. 178057), p. 1114.

[17] CA Decision (*Escalona v. RTC*), pp. 12-14, *supra* note 14; *rollo*, pp. 139-141.

[18] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid.

[19] CA Decision (*Escalona v. RTC*), pp. 37-39, *supra* note 14; *rollo*, pp. 166-168.

From the aforementioned Decisions, the five (5) consolidated Petitions were individually brought before this Court.

G.R. No. 151258 — *Villareal v. People*

The instant case refers to accused Villareal's Petition for Review on *Certiorari* under Rule 45. The Petition raises two reversible errors allegedly committed by the CA in its Decision dated 10 January 2002 in CA-G.R. No. 15520 — first, denial of due process; and, second, conviction absent proof beyond reasonable doubt.[20]

While the Petition was pending before this Court, counsel for petitioner Villareal filed a Notice of Death of Party on 10 August 2011. According to the Notice, petitioner Villareal died on 13 March 2011. Counsel thus asserts that the subject matter of the Petition previously filed by petitioner does not survive the death of the accused.

G.R. No. 155101 — *Dizon v. People*

Accused Dizon filed a Rule 45 Petition for Review on *Certiorari*, questioning the CA's Decision dated 10 January 2002 and Resolution dated 30 August 2002 in CA-G.R. No. 15520.[21] Petitioner sets forth two main issues — first, that he was denied due process when the CA sustained the trial court's forfeiture of his right to present evidence; and, second, that he was deprived of due process when the CA did not apply to him the same "*ratio decidendi* that served as basis of acquittal of the other accused."[22]

As regards the first issue, the trial court made a ruling, which forfeited Dizon's right to present evidence during trial. The trial court expected Dizon to present evidence on an earlier date since a co-accused, Antonio General, no longer presented

---

[20] Villareal's Petition for Review (*Villareal v. People*, G.R. No. 151258), p. 13; *rollo*, p. 25.

[21] Dizon's Petition for Review (*Dizon v. People*, G.R. No. 155101), p. 1; *rollo*, p. 3.

[22] *Id.* at 17; *rollo*, p. 19.

separate evidence during trial. According to Dizon, his right should not have been considered as waived because he was justified in asking for a postponement. He argues that he did not ask for a resetting of any of the hearing dates and in fact insisted that he was ready to present evidence on the original pre-assigned schedule, and not on an earlier hearing date.

Regarding the second issue, petitioner contends that he should have likewise been acquitted, like the other accused, since his acts were also part of the traditional initiation rites and were not tainted by evil motives.[23] He claims that the additional paddling session was part of the official activity of the fraternity. He also points out that one of the neophytes admitted that the chairperson of the initiation rites "decided that [Lenny] was fit enough to undergo the initiation so Mr. Villareal proceeded to do the paddling…."[24] Further, petitioner echoes the argument of the Solicitor General that "the individual blows inflicted by Dizon and Villareal could not have resulted in Lenny's death."[25] The Solicitor General purportedly averred that, "on the contrary, Dr. Arizala testified that the injuries suffered by Lenny could not be considered fatal if taken individually, but if taken collectively, the result is the violent death of the victim."[26]

Petitioner then counters the finding of the CA that he was motivated by ill will. He claims that Lenny's father could not have stolen the parking space of Dizon's father, since the latter did not have a car, and their fathers did not work in the same place or office. Revenge for the loss of the parking space was the alleged ill motive of Dizon. According to petitioner, his utterances regarding a stolen parking space were only part of the "psychological initiation." He then cites the testimony of Lenny's co-neophyte — witness Marquez — who admitted knowing "it was not true and that he was just making it up…."[27]

---

[23] *Id.* at 10; *rollo*, p. 12.

[24] *Id.* at 22; *rollo*, p. 24.

[25] *Id.* at 23; *rollo*, p. 25.

[26] *Id.* at 23-24; *rollo*, pp. 25-26.

[27] *Id.* at 26; *rollo*, p. 28.

Further, petitioner argues that his alleged motivation of ill will was negated by his show of concern for Villa after the initiation rites. Dizon alludes to the testimony of one of the neophytes, who mentioned that the former had kicked the leg of the neophyte and told him to switch places with Lenny to prevent the latter's chills. When the chills did not stop, Dizon, together with Victorino, helped Lenny through a sleeping bag and made him sit on a chair. According to petitioner, his alleged ill motivation is contradicted by his manifestation of compassion and concern for the victim's well-being.

G.R. No. 154954 — *People v. Court of Appeals*

This Petition for *Certiorari* under Rule 65 seeks the reversal of the CA's Decision dated 10 January 2002 and Resolution dated 30 August 2002 in CA-G.R. No. 15520, insofar as it acquitted 19 (Victorino *et al.*) and convicted 4 (Tecson *et al.*) of the accused Aquilans of the lesser crime of slight physical injuries.[28] According to the Solicitor General, the CA erred in holding that there could have been no conspiracy to commit hazing, as hazing or fraternity initiation had not yet been criminalized at the time Lenny died.

In the alternative, petitioner claims that the ruling of the trial court should have been upheld, inasmuch as it found that there was conspiracy to inflict physical injuries on Lenny. Since the injuries led to the victim's death, petitioner posits that the accused Aquilans are criminally liable for the resulting crime of homicide, pursuant to Article 4 of the Revised Penal Code.[29] The said article provides: "Criminal liability shall be incurred… [b]y any person committing a felony (*delito*) although the wrongful act done be different from that which he intended."

Petitioner also argues that the rule on double jeopardy is inapplicable. According to the Solicitor General, the CA acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in setting aside the trial court's finding of conspiracy

---

[28] People's Petition for *Certiorari* (*People v. CA*, G.R. No. 154954), p. 2; *rollo*, p. 13.

[29] *Id.* at 167; *rollo*, p. 118.

and in ruling that the criminal liability of all the accused must be based on their individual participation in the commission of the crime.

G.R. Nos. 178057 and 178080 — *Villa v. Escalona*

Petitioner Villa filed the instant Petition for Review on *Certiorari*, praying for the reversal of the CA's Decision dated 25 October 2006 and Resolution dated 17 May 2007 in CA-G.R. S.P. Nos. 89060 and 90153.[30] The Petition involves the dismissal of the criminal charge filed against Escalona, Ramos, Saruca, and Adriano.

Due to "several pending incidents," the trial court ordered a separate trial for accused Escalona, Saruca, Adriano, Ramos, Ampil, Concepcion, De Vera, S. Fernandez, and Cabangon (Criminal Case No. C-38340) to commence after proceedings against the 26 other accused in Criminal Case No. C-38340(91) shall have terminated. On 8 November 1993, the trial court found the 26 accused guilty beyond reasonable doubt. As a result, the proceedings in Criminal Case No. C-38340 involving the nine other co-accused recommenced on 29 November 1993. For "various reasons," the initial trial of the case did not commence until 28 March 2005, or almost 12 years after the arraignment of the nine accused.

Petitioner Villa assails the CA's dismissal of the criminal case involving 4 of the 9 accused, namely, Escalona, Ramos, Saruca, and Adriano. She argues that the accused failed to assert their right to speedy trial within a reasonable period of time. She also points out that the prosecution cannot be faulted for the delay, as the original records and the required evidence were not at its disposal, but were still in the appellate court.

We resolve herein the various issues that we group into five.

ISSUES

1. Whether the forfeiture of petitioner Dizon's right to present evidence constitutes denial of due process;

[30] Villa's Petition for Review on *Certiorari* (*Villa v. Escalona*, G.R. Nos. 178057 and 178080), p. 1; *rollo*, p. 84.

2. Whether the CA committed grave abuse of discretion, amounting to lack or excess of jurisdiction when it dismissed the case against Escalona, Ramos, Saruca, and Adriano for violation of the right of the accused to speedy trial;

3. Whether the CA committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when it set aside the finding of conspiracy by the trial court and adjudicated the liability of each accused according to individual participation;

4. Whether accused Dizon is guilty of homicide; and

5. Whether the CA committed grave abuse of discretion when it pronounced Tecson, Ama, Almeda, and Bantug guilty only of slight physical injuries.

DISCUSSION

Resolution on Preliminary Matters

G.R. No. 151258 — *Villareal v. People*

In a Notice dated 26 September 2011 and while the Petition was pending resolution, this Court took note of counsel for petitioner's Notice of Death of Party.

According to Article 89(1) of the Revised Penal Code, criminal liability for personal penalties is totally extinguished by the death of the convict. In contrast, criminal liability for pecuniary penalties is extinguished if the offender dies prior to final judgment. The term "personal penalties" refers to the service of personal or imprisonment penalties,[31] while the term "pecuniary penalties" (*las pecuniarias*) refers to fines and costs,[32] including civil liability predicated on the criminal offense complained of (*i.e.*, civil liability *ex delicto*).[33] However, civil liability based on a source

---

[31] *Petralba v. Sandiganbayan*, G.R. No. 81337, 16 August 1991, 200 SCRA 644.

[32] *People v. Badeo*, G.R. No. 72990, 21 November 1991, 204 SCRA 122, *citing J.* Aquino's Concurring Opinion in *People v. Satorre*, G.R. No. L-26282, August 27, 1976, 72 SCRA 439.

[33] *People v. Bayotas*, G.R. No. 102007, 2 September 1994, 236 SCRA 239; *People v. Bunay*, G.R. No. 171268, 14 September 2010, 630 SCRA 445.

of obligation other than the *delict* survives the death of the accused and is recoverable through a separate civil action.[34]

Thus, we hold that the death of petitioner Villareal extinguished his criminal liability for both personal and pecuniary penalties, including his civil liability directly arising from the *delict* complained of. Consequently, his Petition is hereby dismissed, and the criminal case against him deemed closed and terminated.

G.R. No. 155101 (*Dizon v. People*)

In an Order dated 28 July 1993, the trial court set the dates for the reception of evidence for accused-petitioner Dizon on the 8th, 15th, and 22nd of September; and the 5th and 12 of October 1993.[35] The Order likewise stated that "it will not entertain any postponement and that all the accused who have not yet presented their respective evidence should be ready at all times down the line, with their evidence on all said dates. Failure on their part to present evidence when required shall therefore be construed as waiver to present evidence."[36]

However, on 19 August 1993, counsel for another accused manifested in open court that his client — Antonio General — would no longer present separate evidence. Instead, the counsel would adopt the testimonial evidence of the other accused who had already testified.[37] Because of this development and pursuant to the trial court's Order that the parties "should be ready at all times down the line," the trial court expected Dizon to present evidence on the next trial date — 25 August 1993 — instead of his originally assigned dates. The original dates were supposed to start two weeks later, or on 8 September 1993.[38] Counsel for accused Dizon was not able to present evidence on the accelerated date. To address the situation, counsel filed a

---

[34] *People v. Bunay*, *supra*, *citing People v. Bayotas*, *supra*.

[35] CA Decision (*People v. Dizon*), p. 7, *supra* note 8; *rollo*, p. 68.

[36] *Id.*

[37] *Id.*

[38] *Id.*

Constancia on 25 August 1993, alleging that he had to appear in a previously scheduled case, and that he would be ready to present evidence on the dates originally assigned to his clients.[39] The trial court denied the Manifestation on the same date and treated the *Constancia* as a motion for postponement, in violation of the three-day-notice rule under the Rules of Court.[40] Consequently, the trial court ruled that the failure of Dizon to present evidence amounted to a waiver of that right.[41]

Accused-petitioner Dizon thus argues that he was deprived of due process of law when the trial court forfeited his right to present evidence. According to him, the postponement of the 25 August 1993 hearing should have been considered justified, since his original pre-assigned trial dates were not supposed to start until 8 September 1993, when he was scheduled to present evidence. He posits that he was ready to present evidence on the dates assigned to him. He also points out that he did not ask for a resetting of any of the said hearing dates; that he in fact insisted on being allowed to present evidence on the dates fixed by the trial court. Thus, he contends that the trial court erred in accelerating the schedule of presentation of evidence, thereby invalidating the finding of his guilt.

The right of the accused to present evidence is guaranteed by no less than the Constitution itself.[42] Article III, Section 14(2) thereof, provides that "**in all criminal prosecutions, the accused** … **shall enjoy the right to be heard by himself and counsel**…" This constitutional right includes the right to present evidence in one's defense,[43] as well as the right to be

---

[39] *Id.* at 7-8; *rollo*, pp. 68-69.

[40] *Id.* at 8; *rollo*, p. 69.

[41] *Id.*

[42] *People v. Banihit*, 393 Phil. 465 (2000); *People v. Hernandez*, 328 Phil. 1123 (1996), *citing People v. Dichoso*, 96 SCRA 957 (1980); and *People v. Angco*, 103 Phil. 33 (1958).

[43] *People v. Hapa*, 413 Phil. 679 (2001), *citing People v. Diaz*, 311 SCRA 585 (1999).

present and defend oneself in person at every stage of the proceedings.[44]

In *Crisostomo v. Sandiganbayan*,[45] the Sandiganbayan set the hearing of the defense's presentation of evidence for 21, 22 and 23 June 1995. The 21 June 1995 hearing was cancelled due to "lack of quorum in the regular membership" of the Sandiganbayan's Second Division and upon the agreement of the parties. The hearing was reset for the next day, 22 June 1995, but Crisostomo and his counsel failed to attend. The Sandiganbayan, on the very same day, issued an Order directing the issuance of a warrant for the arrest of Crisostomo and the confiscation of his surety bond. The Order further declared that he had waived his right to present evidence because of his nonappearance at "yesterday's and today's scheduled hearings." In ruling against the Order, we held thus:

> Under Section 2(c), Rule 114 and Section 1(c), Rule 115 of the Rules of Court, **Crisostomo's non-appearance during the 22 June 1995 trial was merely a waiver of his right to be present for trial on such date only and not for the succeeding trial dates**…
>
> x x x x x x x x x
>
> Moreover, Crisostomo's **absence** on the 22 June 1995 hearing **should not have been deemed as a waiver of his right to present evidence**. While constitutional rights may be waived, such **waiver must be clear and must be coupled with an actual intention to relinquish the right**. Crisostomo did not voluntarily waive in person or even through his counsel the right to present evidence. The Sandiganbayan imposed the waiver due to the agreement of the prosecution, Calingayan, and Calingayan's counsel.
>
> In criminal cases where the imposable penalty may be death, as in the present case, the **court is called upon to see to it that the accused is personally made aware of the consequences of a waiver of the right to present evidence**. In fact, it is **not enough that the accused is simply warned of the consequences of another failure**

---

[44] *People v. Hapa, supra, citing Parada v. Veneracion*, 336 Phil. 354, 360 (1997).

[45] *Crisostomo v. Sandiganbayan*, 495 Phil. 718 (2005).

to attend the succeeding hearings. The court must first explain to the accused personally in clear terms the exact nature and consequences of a waiver. Crisostomo was not even forewarned. The Sandiganbayan simply went ahead to deprive Crisostomo of his right to present evidence without even allowing Crisostomo to explain his absence on the 22 June 1995 hearing.

Clearly, the **waiver of the right to present evidence in a criminal case involving a grave penalty is not assumed and taken lightly**. The presence of the accused and his counsel is indispensable so that the court could personally conduct a searching inquiry into the waiver x x x.[46] (Emphasis supplied)

The trial court should not have deemed the failure of petitioner to present evidence on 25 August 1993 as a waiver of his right to present evidence. On the contrary, it should have considered the excuse of counsel justified, especially since counsel for another accused — General — had made a last-minute adoption of testimonial evidence that freed up the succeeding trial dates; and since Dizon was not scheduled to testify until two weeks later. At any rate, the trial court pre-assigned five hearing dates for the reception of evidence. If it really wanted to impose its Order strictly, the most it could have done was to forfeit one out of the five days set for Dizon's testimonial evidence. Stripping the accused of all his pre-assigned trial dates constitutes a patent denial of the constitutionally guaranteed right to due process.

Nevertheless, as in the case of an improvident guilty plea, an invalid waiver of the right to present evidence and be heard does not *per se* work to vacate a finding of guilt in the criminal case or to enforce an automatic remand of the case to the trial court.[47] In *People v. Bodoso*, we ruled that where facts have adequately been represented in a criminal case, and no procedural unfairness or irregularity has prejudiced either the prosecution or the defense as a result of the invalid waiver, the rule is that a guilty verdict may nevertheless be upheld if the judgment is supported beyond reasonable doubt by the evidence on record.[48]

---

[46] *Id.*

[47] *People v. Bodoso*, 446 Phil. 838 (2003).

[48] *Id.*

We do not see any material inadequacy in the relevant facts on record to resolve the case at bar. Neither can we see any "procedural unfairness or irregularity" that would substantially prejudice either the prosecution or the defense as a result of the invalid waiver. In fact, the arguments set forth by accused Dizon in his Petition corroborate the material facts relevant to decide the matter. Instead, what he is really contesting in his Petition is the application of the law to the facts by the trial court and the CA. Petitioner Dizon admits direct participation in the hazing of Lenny Villa by alleging in his Petition that "all actions of the petitioner were part of the traditional rites," and that "the alleged extension of the initiation rites was not outside the official activity of the fraternity."[49] He even argues that "Dizon did not request for the extension and he participated only after the activity was sanctioned."[50]

For one reason or another, the case has been passed or turned over from one judge or justice to another — at the trial court, at the CA, and even at the Supreme Court. Remanding the case for the reception of the evidence of petitioner Dizon would only inflict further injustice on the parties. This case has been going on for almost two decades. Its resolution is long overdue. Since the key facts necessary to decide the case have already been determined, we shall proceed to decide it.

G.R. Nos. 178057 and 178080 (*Villa v. Escalona*)

Petitioner Villa argues that the case against Escalona, Ramos, Saruca, and Adriano should not have been dismissed, since they failed to assert their right to speedy trial within a reasonable period of time. She points out that the accused failed to raise a protest during the dormancy of the criminal case against them, and that they asserted their right only after the trial court had dismissed the case against their co-accused Concepcion. Petitioner also emphasizes that the trial court denied the respective Motions to Dismiss filed by Saruca, Escalona, Ramos, and Adriano, because it found that "the prosecution could not be faulted for

---

[49] Dizon's Petition for Review, *supra* note 21 at 20; *rollo*, p. 22.

[50] *Id.* at 23; *rollo*, p. 25.

the delay in the movement of this case when the original records and the evidence it may require were not at its disposal as these were in the Court of Appeals."[51]

The right of the accused to a speedy trial has been enshrined in Sections 14(2) and 16, Article III of the 1987 Constitution.[52] This right requires that there be a trial free from vexatious, capricious or oppressive delays.[53] The right is deemed violated when the proceeding is attended with unjustified postponements of trial, or when a long period of time is allowed to elapse without the case being tried and for no cause or justifiable motive.[54] In determining the right of the accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case.[55] The conduct of both the prosecution and the defense must be weighed.[56] Also to be considered are factors such as the length of delay, the assertion or non-assertion of the right, and the prejudice wrought upon the defendant.[57]

We have consistently ruled in a long line of cases that a dismissal of the case pursuant to the right of the accused to speedy trial is tantamount to acquittal.[58] As a consequence, an

---

[51] Villa's Petition for Review on *Certiorari*, *supra* note 30 at 19; *rollo*, p. 102.

[52] *People v. Hernandez*, G.R. Nos. 154218 & 154372, 28 August 2006, 499 SCRA 688.

[53] *People v. Tampal*, 314 Phil. 35 (1995), *citing Gonzales v. Sandiganbayan*, 199 SCRA 298 (1991); *Acebedo v. Sarmiento*, 146 Phil. 820 (1970).

[54] *People v. Tampal*, *supra*; *Acebedo v. Sarmiento*, *supra*.

[55] *People v. Tampal*, *supra*.

[56] *Id.*

[57] *Id.*

[58] *People v. Hernandez*, *supra* note 52, *citing People v. Tampal*, *supra*; *Philippine Savings Bank v. Spouses Bermoy*, 471 SCRA 94, 107 (2005); *People v. Bans*, 239 SCRA 48 (1994); *People v. Declaro*, 170 SCRA 142 (1989); and *People v. Quizada*, 160 SCRA 516 (1988).

appeal or a reconsideration of the dismissal would amount to a violation of the principle of double jeopardy.[59] As we have previously discussed, however, where the dismissal of the case is capricious, *certiorari* lies.[60] The rule on double jeopardy is not triggered when a petition challenges the validity of the order of dismissal instead of the correctness thereof.[61] Rather, grave abuse of discretion amounts to lack of jurisdiction, and lack of jurisdiction prevents double jeopardy from attaching.[62]

We do not see grave abuse of discretion in the CA's dismissal of the case against accused Escalona, Ramos, Saruca, and Adriano on the basis of the violation of their right to speedy trial. The court held thus:

An examination of the procedural history of this case would reveal that the following factors contributed to the slow progress of the proceedings in the case below:

x x x x x x x x x

5) The fact that the records of the case were elevated to the Court of Appeals and the prosecution's failure to comply with the order of the court *a quo* requiring them to secure certified true copies of the same.

x x x x x x x x x

While we are prepared to concede that some of the foregoing factors that contributed to the delay of the trial of the petitioners are justifiable, We nonetheless hold that their right to speedy trial has been utterly violated in this case x x x.

x x x x x x x x x

[T]he **absence of the records in the trial court** [was] due to the fact that the records of the **case were elevated to the Court of Appeals**, and the **prosecution's failure to comply with the order of the court *a quo* requiring it to secure certified true copies of**

---

[59] *See People v. Hernandez*, *supra* note 52.

[60] *Id.*

[61] *Id.*

[62] *Id.*

the same. What is glaring from the records is the fact that as early as September 21, 1995, the court *a quo* already issued an Order requiring the prosecution, through the Department of Justice, to secure the complete records of the case from the Court of Appeals. The prosecution did not comply with the said Order as in fact, the same directive was repeated by the court *a quo* in an Order dated December 27, 1995. Still, there was no compliance on the part of the prosecution. It is not stated when such order was complied with. It appears, however, that **even until August 5, 2002, the said records were still not at the disposal of the trial court** because the lack of it was made the basis of the said court in granting the motion to dismiss filed by co-accused Concepcion x x x.

x x x x x x x x x

It is likewise noticeable that from December 27, 1995, until August 5, 2002, or **for a period of almost seven years, there was no action at all on the part of the court *a quo*. Except for the pleadings filed by both the prosecution and the petitioners**, the latest of which was on January 29, 1996, followed by petitioner Saruca's motion to set case for trial on August 17, 1998 which the court did not act upon, **the case remained dormant for a considerable length of time**. This prolonged inactivity whatsoever is precisely the kind of delay that the constitution frowns upon x x x.[63] (Emphasis supplied)

This Court points out that on 10 January 1992, the final amended Information was filed against Escalona, Ramos, Saruca, Ampil, S. Fernandez, Adriano, Cabangon, Concepcion, and De Vera.[64] On 29 November 1993, they were all arraigned.[65] Unfortunately, the initial trial of the case did not commence until 28 March 2005 or almost 12 years after arraignment.[66]

As illustrated in our ruling in *Abardo v. Sandiganbayan*, the unexplained interval or inactivity of the Sandiganbayan for

---

[63] CA Decision (*Escalona v. RTC*), pp. 24-30, *supra* note 14; *rollo*, pp. 151-157.

[64] *Id.* at 4; *rollo*, p. 131.

[65] *Id.*

[66] *Id.*

close to five years since the arraignment of the accused amounts to an unreasonable delay in the disposition of cases — a clear violation of the right of the accused to a speedy disposition of cases.[67] Thus, we held:

> The delay in this case measures up to the unreasonableness of the delay in the disposition of cases in *Angchangco, Jr. vs. Ombudsman*, where the Court found the **delay of six years by the Ombudsman in resolving the criminal complaints to be violative of the constitutionally guaranteed right to a speedy disposition of cases**; similarly, in *Roque vs. Office of the Ombudsman*, where the Court held that the **delay of almost six years disregarded the Ombudsman's duty to act promptly on complaints before him**; and in *Cervantes vs. Sandiganbayan*, where the Court held that the Sandiganbayan **gravely abused its discretion in not quashing the information which was filed six years after the initiatory complaint was filed and thereby depriving petitioner of his right to a speedy disposition of the case**. **So it must be in the instant case, where the reinvestigation by the Ombudsman has dragged on for a decade already**.[68] (Emphasis supplied)

From the foregoing principles, we affirm the ruling of the CA in CA-G.R. SP No. 89060 that accused Escalona *et al.*'s right to speedy trial was violated. Since there is nothing in the records that would show that the subject of this Petition includes accused Ampil, S. Fernandez, Cabangon, and De Vera, the effects of this ruling shall be limited to accused Escalona, Ramos, Saruca, and Adriano.

G.R. No. 154954 (*People v. Court of Appeals*)

The rule on double jeopardy is one of the pillars of our criminal justice system. It dictates that when a person is charged with an offense, and the case is terminated — either by acquittal or conviction or in any other manner without the consent of the accused —— the accused cannot again be charged with the same or an identical offense.[69] This principle is founded upon the

---

[67] *Abardo v. Sandiganbayan*, 407 Phil. 985 (2001).

[68] *Id.*

[69] *Melo v. People*, 85 Phil. 766 (1950).

law of reason, justice and conscience.[70] It is embodied in the civil law maxim *non bis in idem* found in the common law of England and undoubtedly in every system of jurisprudence.[71] It found expression in the Spanish Law, in the Constitution of the United States, and in our own Constitution as one of the fundamental rights of the citizen,[72] *viz*:

> Article III — Bill of Rights
>
> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Rule 117, Section 7 of the Rules of Court, which implements this particular constitutional right, provides as follows:[73]

> SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

The rule on double jeopardy thus prohibits the state from appealing the judgment in order to reverse the acquittal or to increase the penalty imposed either through a regular appeal under Rule 41 of the Rules of Court or through an appeal by *certiorari* on pure questions of law under Rule 45 of the same Rules.[74]

---

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *People v. Nazareno*, G.R. No. 168982, 5 August 2009, 595 SCRA 438.

[74] *Id.*; *People v. Maquiling*, 368 Phil. 169 (1999).

The requisites for invoking double jeopardy are the following: (a) there is a valid complaint or information; (b) it is filed before a competent court; (c) the defendant pleaded to the charge; and (d) the defendant was acquitted or convicted, or the case against him or her was dismissed or otherwise terminated without the defendant's express consent.[75]

As we have reiterated in *People v. Court of Appeals and Galicia*, "[a] verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense. The finality-of-acquittal doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty."[76] We further stressed that "an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal."[77]

This prohibition, however, is not absolute. The state may challenge the lower court's acquittal of the accused or the imposition of a lower penalty on the latter in the following recognized exceptions: (1) where the prosecution is deprived of a fair opportunity to prosecute and prove its case, tantamount to a deprivation of due process;[78] (2) where there is a finding

---

[75] *People v. Velasco*, 394 Phil. 517 (2000), *citing* Rules on Criminal Procedure, Rule 117, Sec 7; *Paulin v. Gimenez*, G. R. No. 103323, 21 January 1993, 217 SCRA 386; *Comelec v. Court of Appeals*, G. R. No. 108120, 26 January 1994, 229 SCRA 501; *People v. Maquiling*, *supra* note 74.

[76] *People v. Court of Appeals and Galicia*, G.R. No. 159261, 21 February 2007, 516 SCRA 383, 397, *citing People v. Serrano*, 315 SCRA 686, 689 (1999).

[77] *People v. Court of Appeals and Galicia*, *supra*, *citing People v. Velasco*, 340 SCRA 207, 240 (2000).

[78] *Galman v. Sandiganbayan*, 228 Phil. 42 (1986), *citing People v. Bocar*, 138 SCRA 166 (1985); *Combate v. San Jose*, 135 SCRA 693 (1985); *People v. Catolico*, 38 SCRA 389 (1971); and *People v. Navarro*, 63 SCRA 264 (1975).

of mistrial;[79] or (3) where there has been a grave abuse of discretion.[80]

The third instance refers to this Court's judicial power under Rule 65 to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[81] Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility;[82] or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice.[83] In such an event, the accused cannot be considered to be at risk of double jeopardy.[84]

The Solicitor General filed a Rule 65 Petition for *Certiorari*, which seeks the reversal of (1) the acquittal of Victorino *et al.* and (2) the conviction of Tecson *et al.* for the lesser crime of slight physical injuries, both on the basis of a misappreciation of facts and evidence. According to the Petition, "the decision of the Court of Appeals is not in accordance with law because private complainant and petitioner were denied due process of

---

[79] *People v. Court of Appeals and Galicia*, *supra* note 76 [*citing People v. Tria-Tirona*, 463 SCRA 462, 469-470 (2005); and *People v. Velasco*, 340 SCRA 207 (2000)]; *People v. Court of Appeals and Francisco*, 468 Phil. 1 (2004); *Galman v. Sandiganbayan*, *supra*, *citing People v. Bocar*, *supra*.

[80] *People v. Court of Appeals and Galicia*, *supra* note 76, *citing People v. Serrano*, *supra* note 76 at 690; *People v. De Grano*, G.R. No. 167710, 5 June 2009, 588 SCRA 550.

[81] *People v. Nazareno*, *supra* note 73; *De Vera v. De Vera*, G.R. No. 172832, 7 April 2009, 584 SCRA 506.

[82] *People v. Nazareno*, *supra* note 73; *De Vera v. De Vera*, *supra*.

[83] *People v. De Grano*, *supra* note 80, *citing People v. Maquiling*, *supra* note 74 at 704.

[84] *Id.*

law when the public respondent completely ignored the a) Position Paper x x x b) the Motion for Partial Reconsideration x x x and c) the petitioner's Comment x x x."[85] Allegedly, the CA ignored evidence when it adopted the theory of individual responsibility; set aside the finding of conspiracy by the trial court; and failed to apply Article 4 of the Revised Penal Code.[86] The Solicitor General also assails the finding that the physical blows were inflicted only by Dizon and Villareal, as well as the appreciation of Lenny Villa's consent to hazing.[87]

In our view, what the Petition seeks is that we reexamine, reassess, and reweigh the probative value of the evidence presented by the parties.[88] In *People v. Maquiling*, we held that grave abuse of discretion cannot be attributed to a court simply because it allegedly misappreciated the facts and the evidence.[89] Mere errors of judgment are correctible by an appeal or a petition for review under Rule 45 of the Rules of Court, and not by an application for a writ of *certiorari*.[90] Therefore, pursuant to the rule on double jeopardy, we are constrained to deny the Petition *contra* Victorino, *et al.* — the 19 acquitted fraternity members.

We, however, modify the assailed judgment as regards Tecson, Ama, Almeda, and Bantug — the four fraternity members convicted of slight physical injuries.

Indeed, we have ruled in a line of cases that the rule on double jeopardy similarly applies when the state seeks the imposition

---

[85] People's Petition for *Certiorari*, p. 8, *supra* note 28; *rollo*, p. 19.

[86] *Id.* at 80-81; *rollo*, pp. 91-92.

[87] *Id.* at 82-86; *rollo*, pp. 93-97.

[88] *See Francisco v. Desierto*, G.R. No. 154117, 2 October 2009, 602 SCRA 50, *citing First Corporation v. Court of Appeals*, G.R. No. 171989, 4 July 2007, 526 SCRA 564, 578.

[89] *People v. Maquiling*, *supra* note 74, *citing Teknika Skills and Trade Services v. Secretary of Labor and Employment*, 273 SCRA 10 (1997).

[90] *People v. Maquiling*, *supra* note 74, *citing Medina v. City Sheriff of Manila*, 276 SCRA 133, (1997); *Jamer v. National Labor Relations Commission*, 278 SCRA 632 (1997); and *Azores v. Securities and Exchange Commission*, 252 SCRA 387 (1996).

of a higher penalty against the accused.[91] We have also recognized, however, that *certiorari* may be used to correct an abusive judgment upon a clear demonstration that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[92] The present case is one of those instances of grave abuse of discretion.

In imposing the penalty of slight physical injuries on Tecson, Ama, Almeda, and Bantug, the CA reasoned thus:

> Based on the medical findings, it would appear that **with the exclusion of the fatal wounds inflicted by the accused Dizon and Villareal**, the **injuries sustained by the victim as a result of the physical punishment heaped on him were serious in nature**. However, **by reason of the death of the victim**, there can be **no precise means to determine the duration of the incapacity or the medical attendance required**. To do so, at this stage would be merely speculative. In a prosecution for this crime where the category of the offense and the severity of the penalty depend on the period of illness or incapacity for labor, the length of this period must likewise be proved beyond reasonable doubt in much the same manner as the same act charged [*People v. Codilla*, CA-G.R. No. 4079-R, June 26, 1950]. And **when proof of the said period is absent, the crime committed should be deemed only as slight physical injuries** [*People v. De los Santos*, CA, 59 O.G. 4393, citing People v. Penesa, 81 Phil. 398]. As such, this Court is constrained to rule that the injuries inflicted by the appellants, Tecson, Ama, Almeda and Bantug, Jr., are only slight and not serious, in nature.[93] (Emphasis supplied and citations included)

The appellate court relied on our ruling in *People v. Penesa*[94] in finding that the four accused should be held guilty only of

---

[91] *De Vera v. De Vera, supra* note 81; *People v. Dela Torre*, 430 Phil. 420 (2002); *People v. Leones*, 418 Phil. 804 (2001); *People v. Ruiz*, 171 Phil. 400 (1978); *People v. Pomeroy*, 97 Phil. 927 (1955), *citing People v. Ang Cho Kio*, 95 Phil. 475 (1954).

[92] *See generally People v. Court of Appeals and Galicia, supra* note 76; and *People v. Court of Appeals and Francisco, supra* note 79.

[93] CA Decision (*People v. Dizon*), pp. 21-22, *supra* note 8; *rollo*, pp. 82-83.

[94] *People v. Penesa*, 81 Phil. 398 (1948).

slight physical injuries. According to the CA, because of "the death of the victim, there can be no precise means to determine the duration of the incapacity or medical attendance required."[95] The reliance on *Penesa* was utterly misplaced. A review of that case would reveal that the accused therein was guilty merely of slight physical injuries, because the victim's injuries neither caused incapacity for labor nor required medical attendance.[96] Furthermore, he did not die.[97] His injuries were not even serious.[98] Since *Penesa* involved a case in which the victim allegedly suffered physical injuries and not death, the ruling cited by the CA was patently inapplicable.

On the contrary, the CA's ultimate conclusion that Tecson, Ama, Almeda, and Bantug were liable merely for slight physical injuries grossly contradicts its own findings of fact. According to the court, the four accused "were found to have **inflicted more than the usual punishment** undertaken during such initiation rites on the person of Villa."[99] It then adopted the NBI medico-legal officer's findings that the antecedent cause of Lenny Villa's death was the "multiple traumatic injuries" he suffered from the initiation rites.[100] Considering that the CA found that the "**physical punishment heaped on [Lenny Villa was] serious in nature**,"[101] it was patently erroneous for the court to limit the criminal liability to slight physical injuries, which is a light felony.

Article 4(1) of the Revised Penal Code dictates that the perpetrator shall be liable for the consequences of an act, even if its result is different from that intended. Thus, once a person

---

[95] CA Decision (*People v. Dizon*), pp. 21-22, *supra* note 8; *rollo*, pp. 82-83.

[96] *People v. Penesa*, *supra* note 94.

[97] *Id.*

[98] *Id.*

[99] CA Decision (*People v. Dizon*), p. 16, *supra* note 8; *rollo*, p. 77.

[100] *Id.* at 21; *rollo*, p. 82.

[101] *Id.*

is found to have committed an initial felonious act, such as the unlawful infliction of physical injuries that results in the death of the victim, courts are required to automatically apply the legal framework governing the destruction of life. This rule is mandatory, and not subject to discretion.

The CA's application of the legal framework governing physical injuries — punished under Articles 262 to 266 for intentional felonies and Article 365 for culpable felonies — is therefore tantamount to a whimsical, capricious, and abusive exercise of judgment amounting to lack of jurisdiction. According to the Revised Penal Code, the mandatory and legally imposable penalty in case the victim dies should be based on the framework governing the destruction of the life of a person, punished under Articles 246 to 261 for intentional felonies and Article 365 for culpable felonies, and not under the aforementioned provisions. We emphasize that these two types of felonies are distinct from and legally inconsistent with each other, in that the accused cannot be held criminally liable for physical injuries when actual death occurs.[102]

Attributing criminal liability solely to Villareal and Dizon — as if only their acts, in and of themselves, caused the death of Lenny Villa — is contrary to the CA's own findings. From proof that the death of the victim was the cumulative effect of the multiple injuries he suffered,[103] the only logical conclusion is that criminal responsibility should redound to all those who have been proven to have directly participated in the infliction of physical injuries on Lenny. The accumulation of bruising on his body caused him to suffer cardiac arrest. Accordingly, we find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding Tecson, Ama, Almeda, and Bantug criminally liable for slight physical injuries. As an allowable exception to the rule on double jeopardy, we therefore give due course to the Petition in G.R. No. 154954.

---

[102] *See* footnote 1 of *Corpus v. Paje*, 139 Phil. 429 (1969).

[103] RTC Decision [Crim. Case No. C-38340(91)], p. 61, *supra* note 9; *rollo*, p. 170.

Resolution on Ultimate Findings

According to the trial court, although hazing was not (at the time) punishable as a crime, the intentional infliction of physical injuries on Villa was nonetheless a felonious act under Articles 263 to 266 of the Revised Penal Code. Thus, in ruling against the accused, the court *a quo* found that pursuant to Article 4(1) of the Revised Penal Code, the accused fraternity members were guilty of homicide, as it was the direct, natural and logical consequence of the physical injuries they had intentionally inflicted.[104]

The CA modified the trial court's finding of criminal liability. It ruled that there could have been no conspiracy since the neophytes, including Lenny Villa, had knowingly consented to the conduct of hazing during their initiation rites. The accused fraternity members, therefore, were liable only for the consequences of their individual acts. Accordingly, 19 of the accused — Victorino *et al.* — were acquitted; 4 of them — Tecson *et al.* — were found guilty of slight physical injuries; and the remaining 2 — Dizon and Villareal — were found guilty of homicide.

The issue at hand does not concern a typical criminal case wherein the perpetrator clearly commits a felony in order to take revenge upon, to gain advantage over, to harm maliciously, or to get even with, the victim. Rather, the case involves an *ex ante* situation in which a man — driven by his own desire to join a society of men — pledged to go through physically and psychologically strenuous admission rituals, just so he could enter the fraternity. Thus, in order to understand how our criminal laws apply to such situation absent the Anti-Hazing Law, we deem it necessary to make a brief exposition on the underlying concepts shaping intentional felonies, as well as on the nature of physical and psychological initiations widely known as hazing.

---

[104] *Id.* at 58; *rollo*, p. 167.

Intentional Felony and Conspiracy

Our Revised Penal Code belongs to the classical school of thought.[105] The classical theory posits that a human person is essentially a moral creature with an absolute free will to choose between good and evil.[106] It asserts that one should only be adjudged or held accountable for wrongful acts so long as free will appears unimpaired.[107] The basic postulate of the classical penal system is that humans are rational and calculating beings who guide their actions with reference to the principles of pleasure and pain.[108] They refrain from criminal acts if threatened with punishment sufficient to cancel the hope of possible gain or advantage in committing the crime.[109] Here, criminal liability is thus based on the free will and moral blame of the actor.[110] The identity of *mens rea* — defined as a guilty mind, a guilty or wrongful purpose or criminal intent — is the predominant consideration.[111] Thus, it is not enough to do what the law prohibits.[112] In order for an intentional felony to exist, it is necessary that the act be committed by means of *dolo* or "malice."[113]

The term "*dolo*" or "malice" is a complex idea involving the elements of *freedom*, *intelligence*, and *intent*.[114] The first element,

---

[105] RAMON C. AQUINO, *THE REVISED PENAL CODE* – VOLUME ONE 3 (1961); *see People v. Estrada*, 389 Phil. 216 (2000); *People v. Sandiganbayan*, 341 Phil. 503 (1997).

[106] VICENTE J. FRANCISCO, THE REVISED PENAL CODE: ANNOTATED AND COMMENTED – BOOK ONE 4 (3rd ed. 1958); *see People v. Estrada, supra*.

[107] FRANCISCO, *supra* at 4; *People v. Estrada, supra*.

[108] AQUINO, *supra* note 105 at 3.

[109] *Id.*

[110] GUILLERMO B. GUEVARA, *PENAL SCIENCES AND PHILIPPINE CRIMINAL LAW 6* (1974).

[111] *People v. Sandiganbayan*, 341 Phil. 503 (1997).

[112] FRANCISCO, *supra* note 106 at 33.

[113] *Id.* at 33-34.

[114] MARIANO A. ALBERT, *THE REVISED PENAL CODE* (ACT NO. 3815) 21-24 (1946).

freedom, refers to an act done with deliberation and with power to choose between two things.[115] The second element, *intelligence*, concerns the ability to determine the morality of human acts, as well as the capacity to distinguish between a licit and an illicit act.[116] The last element, *intent*, involves an aim or a determination to do a certain act.[117]

The element of *intent* — on which this Court shall focus – is described as the state of mind accompanying an act, especially a forbidden act.[118] It refers to the purpose of the mind and the resolve with which a person proceeds.[119] It does not refer to mere *will*, for the latter pertains to the act, while *intent* concerns the result of the act.[120] While motive is the "moving power" that impels one to action for a definite result, intent is the "purpose" of using a particular means to produce the result.[121] On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose.[122] With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Stated otherwise, intentional felony requires the existence of *dolus malus* — that the act or omission be done "willfully," "maliciously," "with deliberate evil intent," and "with malice aforethought."[123] The maxim is *actus non facit*

---

[115] *Id.* at 21.

[116] *Id.* at 21.

[117] *Guevarra v. Almodovar*, 251 Phil. 427 (1989), *citing* 46 CJS Intent 1103.

[118] *BLACK'S LAW DICTIONARY* 670 (8th abr. ed. 2005); *see People v. Regato*, 212 Phil. 268 (1984).

[119] *Guevarra v. Almodovar*, *supra* note 117.

[120] ALBERT, *supra* note 114 at 23.

[121] *People v. Ballesteros*, 349 Phil. 366 (1998); *Bagajo v. Marave*, 176 Phil. 20 (1978), *citing People v. Molineux*, 168 N.Y. 264, 297; 61 N.E. 286, 296; 62 L.R.A. 193.

[122] *BLACK'S LAW DICTIONARY*, *supra* note 118 at 520.

[123] *See* FRANCISCO, *supra* note 106 at 34; ALBERT, *supra* note 114 at 23-25.

reum, nisi mens sit rea — a crime is not committed if the mind of the person performing the act complained of is innocent.[124] As is required of the other elements of a felony, the existence of malicious intent must be proven beyond reasonable doubt.[125]

In turn, the existence of malicious intent is necessary in order for conspiracy to attach. Article 8 of the Revised Penal Code — which provides that "conspiracy exists when two or more persons **come to an agreement** concerning the **commission of a felony** and decide to commit it" — is to be interpreted to refer only to felonies committed by means of *dolo* or malice. The phrase "coming to an agreement" connotes the existence of a prefaced "intent" to cause injury to another, an element present only in intentional felonies. In culpable felonies or criminal negligence, the injury inflicted on another is unintentional, the wrong done being simply the result of an act performed without malice or criminal design.[126] Here, a person performs an initial lawful deed; however, due to negligence, imprudence, lack of foresight, or lack of skill, the deed results in a wrongful act.[127] Verily, a deliberate intent to do an unlawful act, which is a requisite in conspiracy, is inconsistent with the idea of a felony committed by means of *culpa*.[128]

The presence of an *initial* malicious intent to commit a felony is thus a vital ingredient in establishing the commission of the

---

[124] *U.S. v. Catolico*, 18 Phil. 504 (1911); *U.S. v. Ah Chong*, 15 Phil. 488 (1910).

[125] *U.S. v. Barnes*, 8 Phil. 59 (1907); *Dado v. People*, 440 Phil. 521 (2002), *citing Mondragon v. People*, 17 SCRA 476, 481 (1966); *People v. Villanueva*, 51 Phil. 488 (1928); *U.S. v. Reyes*, 30 Phil. 551 (1915); *U.S. v. Mendoza*, 38 Phil. 691 (1918); *People v. Montes*, 53 Phil. 323 (1929); *People v. Pacusbas*, 64 Phil. 614 (1937); and *People v. Penesa*, *supra* note 94.

[126] *People v. Fallorina*, 468 Phil. 816 (2004), *citing People v. Oanis*, 74 Phil. 257 (1943); FRANCISCO, *supra* note 106 at 51-52, *citing People v. Sara*, 55 Phil. 939 (1931).

[127] *See generally* FRANCISCO, *supra* note 106 at 51.

[128] *Id.* at 52; *People v. Oanis*, 74 Phil. 257 (1943), *citing People v. Nanquil*, 43 Phil. 232 (1922); *People v. Bindoy*, 56 Phil. 15 (1931).

intentional felony of homicide.[129] Being *mala in se*, the felony of homicide requires the existence of malice or *dolo*[130] immediately before or simultaneously with the infliction of injuries.[131] Intent to kill — or *animus interficendi* — cannot and should not be inferred, unless there is proof beyond reasonable doubt of such intent.[132] Furthermore, the victim's death must not have been the product of accident, natural cause, or suicide.[133] If death resulted from an act executed without malice or criminal intent — but with lack of foresight, carelessness, or negligence — the act must be qualified as reckless or simple negligence or imprudence resulting in homicide.[134]

Hazing and other forms of initiation rites

The notion of hazing is not a recent development in our society.[135] It is said that, throughout history, hazing in some form or another has been associated with organizations ranging from military groups to indigenous tribes.[136] Some say that elements of hazing can be traced back to the Middle Ages, during which new students who enrolled in European universities worked as servants for upperclassmen.[137] It is believed that the concept

---

[129] *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 737, *citing Rivera v. People*, G.R. No. 166326, 25 January 2006, 480 SCRA 188, 196-197.

[130] *People v. Quijada*, 328 Phil. 505 (1996).

[131] *Mahawan v. People*, *supra* note 129, *citing Rivera v. People*, *supra* note 129.

[132] *Dado v. People*, *supra* note 125.

[133] *People v. Delim*, 444 Phil. 430, 450 (2003), *citing* WHARTON, CRIMINAL LAW – VOL. 1, 473-474 (12th ED., 1932).

[134] *See People v. Garcia*, 467 Phil. 1102 (2004), *citing People v. Carmen*, G.R. No. 137268, 26 March 2001, 355 SCRA 267; *U.S. v. Tayongtong*, 21 Phil. 476 (1912); *see generally U.S. v. Maleza*, 14 Phil. 468 (1909).

[135] A. Catherine Kendrick, *Ex Parte Barran: In Search of Standard Legislation for Fraternity Hazing Liability*, 24 AM. J. TRIAL ADVOC. 407 (2000).

[136] *Id.*

[137] *In re Khalil H.*, No. 08110, 2010 WL 4540458 (N.Y. App. Div. Nov. 9, 2010) (U.S.) [*citing* Kuzmich, Comment, *In Vino Mortuus: Fraternal*

of hazing is rooted in ancient Greece,[138] where young men recruited into the military were tested with pain or challenged to demonstrate the limits of their loyalty and to prepare the recruits for battle.[139] Modern fraternities and sororities espouse some connection to these values of ancient Greek civilization.[140] According to a scholar, this concept lends historical legitimacy to a "tradition" or "ritual" whereby prospective members are asked to prove their worthiness and loyalty to the organization in which they seek to attain membership through hazing.[141]

Thus, it is said that in the Greek fraternity system, custom requires a student wishing to join an organization to receive an invitation in order to be a neophyte for a particular chapter.[142] The neophyte period is usually one to two semesters long.[143] During the "program," neophytes are required to interview and to get to know the active members of the chapter; to learn chapter history; to understand the principles of the organization; to maintain a specified grade point average; to participate in the organization's activities; and to show dignity and respect for their fellow neophytes, the organization, and its active and alumni members.[144]

Hazing and Alcohol-Related Deaths, 31 McGeorge L Rev. 1087, 1088-1089 (2000); and SYMPOSIUM, THE WORKS OF PLATO (THE MODERN LIBRARY 1956)]; Gregory E. Rutledge, *Hell Night Hath No Fury Like a Pledge Scorned ... and Injured: Hazing Litigation in U.S. Colleges and Universities*, 25 J.C. & U.L. 361, 368-9 (1998); Kendrick, 24 AM. J. TRIAL ADVOC.

[138] *In re Khalil H.*, *supra*; Rutledge, *supra*.

[139] Jamie Ball, *This Will Go Down on Your Permanent Record (But We'll Never Tell): How the Federal Educational Rights and Privacy Act May Help Colleges and Universities Keep Hazing a Secret*, 33 SW. U. L. REV. 477, 480 (2004), *citing* Rutledge, *supra*.

[140] *Id.*

[141] *Id.*

[142] Kendrick, *supra* note 135, *citing* Scott Patrick McBride, Comment, *Freedom of Association in the Public University Setting: How Broad is the Right to Freely Participate in Greek Life?*, 23 U. DAYTON L. REV. 133, 147-8 (1997).

[143] *Id.*

[144] *Id.*

Some chapters require the initiation activities for a recruit to involve hazing acts during the entire neophyte stage.[145]

Hazing, as commonly understood, involves an initiation rite or ritual that serves as prerequisite for admission to an organization.[146] In hazing, the "recruit," "pledge," "neophyte," "initiate," "applicant" — or any other term by which the organization may refer to such a person — is generally placed in embarrassing or humiliating situations, like being forced to do menial, silly, foolish, or other similar tasks or activities.[147] It encompasses different forms of conduct that humiliate, degrade, abuse, or physically endanger those who desire membership in the organization.[148] These acts usually involve physical or psychological suffering or injury.[149]

The concept of initiation rites in the country is nothing new. In fact, more than a century ago, our national hero — Andres Bonifacio — organized a secret society named *Kataastaasan Kagalanggalangang Katipunan ng mga Anak ng Bayan* (The Highest and Most Venerable Association of the Sons and Daughters of the Nation).[150] The *Katipunan*, or KKK, started as a small confraternity believed to be inspired by European Freemasonry, as well as by confraternities or sodalities approved by the Catholic Church.[151] The *Katipunan*'s ideology was brought home to each member through the society's initiation

---

[145] *Id.*, *citing Ex parte Barran*, 730 So.2d 203 (Ala. 1998) (U.S.).

[146] *See generally* Sec. 1, Republic Act No. 8049 (1995), otherwise known as the Anti-Hazing Law.

[147] *Id.*

[148] *In re Khalil H.*, *supra* note 137, *citing* WEBSTER'S *THIRD INTERNATIONAL DICTIONARY*, 1041 (1986); and *People v. Lenti*, 44 Misc.2d 118, 253 N.Y.S.2d 9 (N.Y. Nassau County Ct. 1964) (U.S.).

[149] *See generally* Republic Act No. 8049 (1995), Sec. 1, otherwise known as the Anti-Hazing Law; Susan Lipkins, *Hazing: Defining and Understanding Psychological Damages*, 2 ANN.2007 AAJ-CLE 2481 (2007).

[150] REYNALDO C. ILETO, *THE DIORAMA EXPERIENCE: A VISUAL HISTORY OF THE PHILIPPINES 84* (2004).

[151] *Id.*

ritual.[152] It is said that initiates were brought to a dark room, lit by a single point of illumination, and were asked a series of questions to determine their fitness, loyalty, courage, and resolve.[153] They were made to go through vigorous trials such as "*pagsuot sa isang lungga*" or "[*pagtalon*] *sa balon*."[154] It would seem that they were also made to withstand the blow of "*pangherong bakal sa pisngi*" and to endure a "*matalas na punyal*."[155] As a final step in the ritual, the neophyte *Katipunero* was made to sign membership papers with his own blood.[156]

It is believed that the Greek fraternity system was transported by the Americans to the Philippines in the late 19th century. As can be seen in the following instances, the manner of hazing in the United States was jarringly similar to that inflicted by the Aquila Fraternity on Lenny Villa.

Early in 1865, upperclassmen at West Point Academy forced the fourth classmen to do exhausting physical exercises that sometimes resulted in permanent physical damage; to eat or drink unpalatable foods; and in various ways to humiliate themselves.[157] In 1901, General Douglas MacArthur got involved in a congressional investigation of hazing at the academy during his second year at West Point.[158]

In *Easler v. Hejaz Temple of Greenville*, decided in 1985, the candidate-victim was injured during the shriner's hazing event, which was part of the initiation ceremonies for Hejaz

---

[152] *Id.*

[153] *Id.*; *see* Philippine Insurrection Records, Reel 31, Folder 514/10 — Cartilla del Katipunan, *quoted in* LUIS CAMARA DERY, *ALAY SA INANG BAYAN: PANIBAGONG PAGBIBIGAY KAHULUGAN SA KASAYSAYAN NG HIMAGSIKAN NG 1896,* 16-24 (1999).

[154] Philippine Insurrection Records, *supra*, *quoted in* DERY, *supra* at 17.

[155] Philippine Insurrection Records, *supra*, *quoted in* DERY, *supra* at 18.

[156] ILETO, *supra* note 150.

[157] STEPHEN E. AMBROSE, *DUTY, HONOR, COUNTRY: A HISTORY OF WEST POINT* 222 (1999).

[158] *Id.*

membership.[159] The ritual involved what was known as the "mattress-rotating barrel trick."[160] It required each candidate to slide down an eight to nine-foot-high metal board onto connected mattresses leading to a barrel, over which the candidate was required to climb.[161] Members of Hejaz would stand on each side of the mattresses and barrel and fun-paddle candidates *en route* to the barrel.[162]

In a video footage taken in 1991, U.S. Marine paratroopers in Camp Lejeune, North Carolina, were seen performing a ceremony in which they pinned paratrooper jump wings directly onto the neophyte paratroopers' chests.[163] The victims were shown writhing and crying out in pain as others pounded the spiked medals through the shirts and into the chests of the victims.[164]

In *State v. Allen*, decided in 1995, the Southeast Missouri State University chapter of Kappa Alpha Psi invited male students to enter into a pledgeship program.[165] The fraternity members

---

[159] *Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 329 S.E.2d 753 (S.C. 1985) (U.S.). (The South Carolina Supreme Court held, *inter alia*, that (1) evidence supported the jury finding that the manner in which the association carried out "mattress-rotating barrel trick," a hazing event, was hazardous and constituted actionable negligence; and (2) the candidate was not barred from recovery by the doctrine of assumption of risk. *Id.*)

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] CNN U.S., *Pentagon Brass Disgusted by Marine Hazing Ceremony*, January 31, 1997, *available at*<http://articles.cnn.com/1997-01-31/us/9701_31_hazing_1_hazing-incident-camp-lejeune-marines?_s=PM:US> (visited 3 December 2010); *see also* Gregory E. Rutledge, *Hell Night Hath No Fury Like a Pledge Scorned ... and Injured: Hazing Litigation in U.S. Colleges and Universities*, 25 J.C. & U.L. 361, 364 (1998).

[164] CNN U.S., *supra*; *see also* Rutledge, *supra*.

[165] *State v. Allen*, 905 S.W.2d 874, 875 (Mo. 1995) (U.S.). (One of the pledges — Michael Davis — blacked out and never regained consciousness. He died the following afternoon. The Supreme Court of Missouri affirmed the trial court's conviction of hazing. *Id.*)

subjected the pledges to repeated physical abuse including repeated, open-hand strikes at the nape, the chest, and the back; caning of the bare soles of the feet and buttocks; blows to the back with the use of a heavy book and a cookie sheet while the pledges were on their hands and knees; various kicks and punches to the body; and "body slamming," an activity in which active members of the fraternity lifted pledges up in the air and dropped them to the ground.[166] The fraternity members then put the pledges through a seven-station circle of physical abuse.[167]

In *Ex Parte Barran*, decided in 1998, the pledge-victim went through hazing by fraternity members of the Kappa Alpha Order at the Auburn University in Alabama.[168] The hazing included the following: (1) having to dig a ditch and jump into it after it had been filled with water, urine, feces, dinner leftovers, and vomit; (2) receiving paddlings on the buttocks; (3) being pushed and kicked, often onto walls or into pits and trash cans; (4) eating foods like peppers, hot sauce, butter, and "yerks" (a mixture of hot sauce, mayonnaise, butter, beans, and other items); (5) doing chores for the fraternity and its members, such as cleaning the fraternity house and yard, being designated as driver, and running errands; (6) appearing regularly at 2 a.m. "meetings," during which the pledges would be hazed for a couple of hours; and (7) "running the gauntlet," during which the pledges were pushed, kicked, and hit as they ran down a hallway and descended down a flight of stairs.[169]

In *Lloyd v. Alpha Phi Alpha Fraternity*, decided in 1999, the victim — Sylvester Lloyd — was accepted to pledge at the

---

[166] *Id*.

[167] *Id*.

[168] *Ex parte Barran*, 730 So.2d 203 (Ala. 1998) (U.S.). (The Alabama Supreme Court ruled that the (1) pledge knew and appreciated the risks inherent in hazing; and (2) pledge voluntarily exposed himself to hazing, supporting the fraternity's assumption of the risk defense. Consequently, the Court reversed the judgment of the Court of Civil Appeals and reinstated the ruling of the trial court, which entered the summary judgment in favor of the defendants with respect to the victim's negligence claims. The case was remanded as to the other matters. *Id.*)

[169] *Id*.

Cornell University chapter of the Alpha Phi Alpha Fraternity.[170] He participated in initiation activities, which included various forms of physical beatings and torture, psychological coercion and embarrassment.[171]

In *Kenner v. Kappa Alpha Psi Fraternity*, decided in 2002, the initiate-victim suffered injuries from hazing activities during the fraternity's initiation rites.[172] Kenner and the other initiates went through psychological and physical hazing, including being paddled on the buttocks for more than 200 times.[173]

In *Morton v. State*, Marcus Jones – a university student in Florida – sought initiation into the campus chapter of the Kappa Alpha Psi Fraternity during the 2005-06 academic year.[174] The pledge's efforts to join the fraternity culminated in a series of initiation rituals conducted in four nights. Jones, together with other candidates, was blindfolded, verbally harassed, and caned on his face and buttocks.[175] In these rituals described as "preliminaries," which lasted for two evenings, he received

---

[170] *Lloyd v. Alpha Phi Alpha Fraternity*, No. 96-CV-348, 97-CV-565, 1999 WL 47153 (Dist. Ct., N.D. N.Y., 1999) (U.S.). (The plaintiff filed a law suit against Cornell University for the latter's liability resulting from the injuries the former sustained during the alleged hazing by the fraternity. The New York district court granted defendant Cornell's motion to dismiss the plaintiff's complaint. *Id.*)

[171] *Id.*

[172] *Kenner v. Kappa Alpha Psi Fraternity, Inc.*, 808 A.2d 178 (Pa. Super.Ct. 2002). (The Pennsylvania Superior Court held that: (1) the fraternity owed the duty to protect the initiate from harm; (2) breach of duty by fraternity was not established; (3) individual fraternity members owed the duty to protect the initiate from harm; and (4) the evidence raised the genuine issue of material fact as to whether the fraternity's chapter advisor breached the duty of care to initiate. *Id.*)

[173] *Id.*

[174] *Morton v. State*, 988 So.2d 698 (Flo. Dist. Ct. App. 2008) (U.S.). (The District Court of Appeal of Florida reversed the conviction for felony hazing and remanded the case for a new trial because of erroneous jury instruction. *Id.*)

[175] *Id.*

approximately 60 canings on his buttocks.[176] During the last two days of the hazing, the rituals intensified.[177] The pledges sustained roughly 210 cane strikes during the four-night initiation.[178] Jones and several other candidates passed out.[179]

The purported *raison d'être* behind hazing practices is the proverbial "birth by fire," through which the pledge who has successfully withstood the hazing proves his or her worth.[180] Some organizations even believe that hazing is the path to enlightenment. It is said that this process enables the organization to establish unity among the pledges and, hence, reinforces and ensures the future of the organization.[181] Alleged benefits of joining include leadership opportunities; improved academic performance; higher self-esteem; professional networking opportunities; and the *esprit d'corp* associated with close, almost filial, friendship and common cause.[182]

Anti-Hazing laws in the U.S.

The first hazing statute in the U.S. appeared in 1874 in response to hazing in the military.[183] The hazing of recruits and plebes

---

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *Id.*

[180] Rutledge, *supra* note 137.

[181] Rutledge, *supra* note 137, *citing Fraternity Hazing: Is that Anyway to Treat a Brother?*, TRIAL, September 1991, at 63.

[182] Rutledge, *supra* note 137, [*citing* Robert D. Bickel & Peter F. Lake, *Reconceptualizing the University's Duty to Provide A Safe Learning Environment: A Criticism of the Doctrine of In Loco Parentis and the Restatement (Second) of Torts*, 20 J.C. & U.L. 261 (1994); *Jennifer L. Spaziano, It's All Fun and Games Until Someone Loses an Eye: An Analysis of University Liability for Actions of Student Organizations*, 22 PEPP. L. REV. 213 (1994); *Fraternity Hazing: Is that Anyway to Treat a Brother?*, TRIAL, Sept. 1991, at 63; and Byron L. Leflore, Jr., *Alcohol and Hazing Risks in College Fraternities: Re-evaluating Vicarious and Custodial Liability of National Fraternities*, 7 REV. LITIG. 191, 210 (1988)].

[183] Darryll M. Halcomb Lewis, *The Criminalization of Fraternity, Non-Fraternity and Non-Collegiate Hazing*, 61 Miss. L.J. 111, 117 (1991), *citing*

in the armed services was so prevalent that Congress prohibited all forms of military hazing, harmful or not.[184] It was not until 1901 that Illinois passed the first state anti-hazing law, criminalizing conduct "whereby any one sustains an injury to his [or her] person therefrom."[185]

However, it was not until the 1980s and 1990s, due in large part to the efforts of the *Committee to Halt Useless College Killings* and other similar organizations, that states increasingly began to enact legislation prohibiting and/or criminalizing hazing.[186] As of 2008, all but six states had enacted criminal or civil statutes proscribing hazing.[187] Most anti-hazing laws in the U.S. treat hazing as a misdemeanor and carry relatively light consequences for even the most severe situations.[188] Only a few states with anti-hazing laws consider hazing as a felony in case death or great bodily harm occurs.[189]

Under the laws of Illinois, hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm, which is a Class 4 felony.[190] In a Class 4 felony, a sentence of imprisonment shall be for a term of not less than one year and not more than three years.[191] Indiana criminal law provides that

---

Benjamin, *The Trouble at the Naval Academy*, 60 The Independent 154, 155 (1906). According to Lewis, the 1874 statute outlawing hazing was directed specifically at the United States Naval Academy.

[184] Gregory L. Acquaviva, *Protecting Students from the Wrongs of Hazing Rites: A Proposal for Strengthening New Jersey's Anti-Hazing Act*, 26 QUINNIPIAC L. REV. 305, 311 (2008), *citing* Lewis, *supra* note 183 at 118.

[185] Acquaviva, *supra*, *citing* Lewis, *supra* note 183 at 118-119.

[186] Acquaviva, *supra*, *citing* Lewis, *supra* note 183 at 119.

[187] Acquaviva, *supra* at 313.

[188] Amie Pelletier, Note, *Regulation of Rites: The Effect and Enforcement of Current Anti-Hazing Statutes*, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 377, 377 (2002).

[189] *Id.*

[190] *Id.*, *citing* 720 Ill. Comp. Stat. Ann. 120/10 (1992) (U.S.).

[191] 730 ILCS 5/5-8-2 (West, Westlaw through P.A. 96-1482 of the 2010 Sess.) (U.S.).

a person who recklessly, knowingly, or intentionally performs hazing that results in serious bodily injury to a person commits criminal recklessness, a Class D felony.[192]

The offense becomes a Class C felony if committed by means of a deadly weapon.[193] As an element of a Class C felony – criminal recklessness – resulting in serious bodily injury, death falls under the category of "serious bodily injury."[194] A person who commits a Class C felony is imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.[195] Pursuant to Missouri law, hazing is a Class A misdemeanor, unless the act creates a substantial risk to the life of the student or prospective member, in which case it becomes a Class C felony.[196] A Class C felony provides for an imprisonment term not to exceed seven years.[197]

In Texas, hazing that causes the death of another is a state jail felony.[198] An individual adjudged guilty of a state jail felony is punished by confinement in a state jail for any term of not more than two years or not less than 180 days.[199] Under Utah law, if hazing results in serious bodily injury, the hazer is guilty of a third-degree felony.[200] A person who has been convicted of

---

[192] Pelletier, *supra* note 188, *citing* Ind. Code Ann. § 35-42-2-2 (U.S.).

[193] Pelletier, *supra* note 188, *citing* Ind. Code Ann. § 35-42-2-2 (U.S.).

[194] Ind. Code Ann. § 35-42-2-2 (West, Westlaw through 2010 Sess.) (U.S.) *citing State v. Lewis*, 883 N.E.2d 847 (Ind. App. 2008) (U.S.).

[195] Ind. Code Ann. § 35-50-2-6 (West, Westlaw through 2010 Sess.) (U.S.).

[196] Pelletier, *supra* note 188, *citing* Mo. Rev. Stat. § 578.365 (2001) (U.S.).

[197] Mo. Stat. Ann. § 558.011 (West, Westlaw through 2010 First Extraordinary Gen. Ass. Sess.).

[198] Pelletier, *supra* note 188, *citing* Tex. Educ. Code Ann. § 37.152 (Vernon 1996) (U.S.).

[199] Tex. Stat. Code Ann., Penal Code § 12.35 (Vernon, Westlaw through 2009 Legis. Sess.) (U.S.).

[200] Pelletier, *supra* note 188, *citing* Utah Code Ann. § 76-5-107.5 (1999) (U.S.).

a third-degree felony may be sentenced to imprisonment for a term not to exceed five years.[201] West Virginia law provides that if the act of hazing would otherwise be deemed a felony, the hazer may be found guilty thereof and subject to penalties provided therefor.[202] In Wisconsin, a person is guilty of a Class G felony if hazing results in the death of another.[203] A Class G felony carries a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both.[204]

In certain states in the U.S., victims of hazing were left with limited remedies, as there was no hazing statute.[205] This situation was exemplified in *Ballou v. Sigma Nu General Fraternity*, wherein Barry Ballou's family resorted to a civil action for wrongful death, since there was no anti-hazing statute in South Carolina until 1994.[206]

The existence of *animus interficendi* or intent to kill not proven beyond reasonable doubt

The presence of an *ex ante* situation — in this case, fraternity initiation rites — does not automatically amount to the absence of malicious intent or *dolus malus*. If it is proven beyond reasonable doubt that the perpetrators were equipped with a guilty mind — whether or not there is a contextual background or factual premise — they are still criminally liable for intentional felony.

The trial court, the CA, and the Solicitor General are all in agreement that — with the exception of Villareal and Dizon — accused Tecson, Ama, Almeda, and Bantug did not have the

---

[201] Utah Code Ann. 1953 § 76-3-203 (Westlaw through 2010 Gen. Sess.) (U.S.).

[202] Pelletier, *supra* note 188, *citing* W. Va. Code § 18-16-3 (1999) (U.S.).

[203] *See* Pelletier, *supra* note 188, *citing* Wis. Stat. § 948.51 (1996) (U.S.).

[204] Wis. Stat. Ann. § 939.50 (Westlaw through 2009 Act 406) (U.S.).

[205] Pelletier, *supra* note 188 at 381.

[206] *Id.*

animus interficendi or intent to kill Lenny Villa or the other neophytes. We shall no longer disturb this finding.

As regards Villareal and Dizon, the CA modified the Decision of the trial court and found that the two accused had the *animus interficendi* or intent to kill Lenny Villa, not merely to inflict physical injuries on him. It justified its finding of homicide against Dizon by holding that he had apparently been motivated by ill will while beating up Villa. Dizon kept repeating that his father's parking space had been stolen by the victim's father.[207] As to Villareal, the court said that the accused suspected the family of Bienvenido Marquez, one of the neophytes, to have had a hand in the death of Villareal's brother.[208] The CA then ruled as follows:

> The **two had their own axes to grind against Villa and Marquez**. It was very clear that they acted with evil and criminal intent. The evidence on this matter is unrebutted and so for the death of Villa, **appellants Dizon and Villareal must and should face the consequence of their acts, that is, to be held liable for the crime of homicide.**[209] (Emphasis supplied)

We cannot subscribe to this conclusion.

The appellate court relied mainly on the testimony of Bienvenido Marquez to determine the existence of *animus interficendi*. For a full appreciation of the context in which the supposed utterances were made, the Court deems it necessary to reproduce the relevant portions of witness Marquez's testimony:

> Witness — We were brought up into [Michael Musngi's] room and we were briefed as to what to expect during the next three days and we were told the members of the fraternity and their batch and we were also told about the fraternity song, sir.
>
> x x x x x x x x x

---

[207] CA Decision (*People v. Dizon*), p. 15, *supra* note 8; *rollo*, p. 76.

[208] *Id.*

[209] *Id.*

Witness We were escorted out of [Michael Musngi's] house and we were made to ride a van and we were brought to another place in Kalookan City which I later found to be the place of Mariano Almeda, sir.

x x x x x x x x x

Witness Upon arrival, we were instructed to bow our head down and to link our arms and then the driver of the van and other members of the Aquilans who were inside left us inside the van, sir.

x x x x x x x x x

Witness **We heard voices shouted outside the van to the effect, "Villa *akin ka*," "Asuncion *Patay ka*" and the people outside pound the van, rock the van, sir.**

Atty. Tadiar Will you please recall in what tone of voice and how strong a voice these remarks uttered upon your arrival?

Witness Some were almost shouting, you could feel the sense of excitement in their voices, sir.

x x x x x x x x x

Atty. Tadiar During all these times that the van was being rocked through and through, what were the voices or utterances that you heard?

Witness **"Villa *akin ka*," "Asuncion *patay ka*," "Recinto *patay ka sa amin*," *etc*., sir.**

Atty. Tadiar And those utterances and threats, how long did they continue during the rocking of the van which lasted for 5 minutes?

x x x x x x x x x

Witness **Even after they rocked the van, we still kept on hearing voices, sir.**

x x x x x x x x x

Atty. Tadiar During the time that this rounds [of physical beating] were being inflicted, was there any utterances by anybody?

Witness **Yes sir. Some were piercing, some were discouraging, and some were encouraging others who were pounding and beating us, it was just like a fiesta atmosphere**, actually some of them enjoyed looking us being pounded, sir.

Atty. Tadiar Do you recall what were those voices that you heard?

Witness One particular utterance always said was, they asked us whether "*matigas pa yan, kayang-kaya pa niyan*."

Atty. Tadiar Do you know who in particular uttered those particular words that you quote?

Witness I cannot particularly point to because there were utterances simultaneously, I could not really pin point who uttered those words, sir.

x x x x x x x x x

Atty. Tadiar Were there any utterances that you heard during the conduct of this Bicol Express?

Witness Yes, sir I heard utterances.

Atty. Tadiar Will you please recall to this Honorable Court what were the utterances that you remember?

Witness For example, one person particularly **Boyet Dizon stepped on my thigh, he would say that and I quote *"ito, yung pamilya nito ay pinapatay yung kapatid ko,"*** so that would in turn sort of justifying him in inflicting more serious pain on me. So instead of just walking, he would jump on my thighs and then **after on was Lenny Villa. He was saying to the effect that "this guy, his father stole the parking space of my father,"** sir. So, that's why he inflicted more pain on Villa and that went on, sir.

Atty. Tadiar And you were referring to which particular accused?

Witness **Boyet Dizon**, sir.

Atty. Tadiar When Boyet Dizon at that particular time was accusing you of having your family have his brother killed, what was your response?

Witness **Of course, I knew sir that it was not true and that he was just making it up sir**. So he said that I knew nothing of that incident. However, he just in fact after the Bicol Express, he kept on uttering those words/statements so that it would in turn justify him and to give me harder blows, sir.

x x x x x x x x x

Atty. Tadiar **You mentioned about <u>Dizon</u> in particular mentioning that Lenny Villa's father stole the parking space allotted for his father, do you recall who were within hearing distance when that utterance was made?**

Witness Yes, sir. All of the neophytes heard that utterance, sir.

x x x x x x x x x

Witness There were different times made this accusation so there were different people who heard from time to time, sir.

x x x x x x x x x

Atty. Tadiar Can you tell the Honorable Court when was the next accusation against Lenny Villa's father was made?

Witness When we were line up against the wall, **<u>Boyet Dizon</u> came near to us and when Lenny Villa's turn, I heard him uttered those statements, sir.**

Atty. Tadiar What happened after he made this accusation to Lenny Villa's father?

Witness He continued to inflict blows on Lenny Villa.

Atty. Tadiar How were those blows inflicted?

Witness There were slaps and he knelt on Lenny Villa's thighs and sometime he stand up and he kicked his thighs and sometimes jumped at it, sir.

x x x x x x x x x

Atty. Tadiar We would go on to the second day but not right now. You mentioned also that **accusations made**

by Dizon "you or your family had his brother killed," can you inform this Honorable Court what exactly were the accusations that were charged against you while inflicting blows upon you in particular?

Witness — While he was inflicting blows upon me, he told me in particular if I knew that his family who had his brother killed, and he said that his brother was an NPA, sir so **I knew that it was just a story that he made up and I said that I knew nothing about it and he continued inflicting blows on me, sir.** And another incident was when a talk was being given, Dizon was on another part of the pelota court and I was sort of looking and we saw that he was drinking beer, and he said and I quote: **"Marquez, Marquez*, ano ang tinitingin-tingin mo diyan, ikaw yung pamilya mo ang nagpapatay sa aking kapatid, yari ka sa akin,*" sir.**

Atty. Tadiar — What else?

Witness — That's all, sir.

Atty. Tadiar — And on that first night of February 8, 1991, did ever a doctor or a physician came around as promised to you earlier?

Witness — No, sir.[210] (Emphasis supplied)

On cross-examination, witness Bienvenido Marquez testified thus:

Judge Purisima — When you testified on direct examination Mr. Marquez, have you stated that there was a briefing that was conducted immediately before your initiation as regards to what to expect during the initiation, did I hear you right?

Witness — Yes, sir.

Judge Purisima — Who did the briefing?

---

[210] TSN, 21 April 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 68-72, 90-91, 100-102, 108-109, 127-134.

Witness	Mr. Michael Musngi, sir and Nelson Victorino.
Judge Purisima	Will you kindly tell the Honorable Court what they told you to expect during the initiation?
Witness	They told us at the time we would be brought to a particular place, **we would be mocked at**, sir.
Judge Purisima	So, **you expected to be mocked at, ridiculed, humiliated *etc*., and the likes?**
Witness	**Yes, sir.**
Judge Purisima	You were also told beforehand that there would be physical contact?
Witness	Yes, sir at the briefing.
x x x	x x x x x x
Witness	Yes, sir, because they informed that we could immediately go back to school. All the bruises would be limited to our arms and legs, sir. So, if we wear the regular school uniforms like long sleeves, it would be covered actually so we have no thinking that our face would be slapped, sir.
Judge Purisima	So, you mean to say that beforehand that you would have bruises on your body but that will be covered?
Witness	Yes, sir.
JudgePurisima	So, what kind of physical contact or implements that you expect that would create bruises to your body?
Witness	At that point I am already sure that there would be hitting by a paddling or paddle, sir.
x x x	x x x x x x
Judge Purisima	Now, **will you admit** Mr. Marquez that much of the **initiation procedures is psychological in nature?**
Witness	**Combination**, sir.[211] (Emphasis supplied)

[211] TSN, 26 May 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 29-32, 43.

x x x x x x x x x

Atty. Jimenez The initiation that was conducted did not consist only of physical initiation, meaning body contact, is that correct?

Witness Yes, sir.

Atty. Jimenez **Part of the initiation was the so-called psychological initiation, correct?**

Witness **Yes, sir.**

Atty. Jimenez **And this consisted of making you believe of things calculated to terrify you, scare you, correct?**

Witness **Yes, sir.**

Atty. Jimenez In other words, the **initiating masters made belief situation intended to, I repeat, terrify you, frighten you, scare you into perhaps quitting the initiation, is this correct?**

Witness **Sometimes sir, yes.**

Atty. Jimenez You said on direct that while Mr. Dizon was initiating you, he said or he was supposed to have said according to you that your family were responsible for the killing of his brother who was an NPA, do you remember saying that?

Witness Yes, sir.

Atty. Jimenez You also said in connection with that statement said to you by Dizon that **you did not believe him because that is not true, correct?**

Witness **Yes, sir.**

Atty. Jimenez **In other words, he was only psychologizing you perhaps, the purpose as I have mentioned before, terrifying you, scaring you or frightening you into quitting the initiation, this is correct?**

Witness **No, sir, perhaps it is one but the main reason, I think, why he was saying those things was because he wanted to inflict injury.**

Atty. Jimenez	He did not tell that to you. That is your only perception, correct?
Witness	No, sir, because at one point, while he was telling this to Villareal, he was hitting me.
Atty. Jimenez	But did you not say earlier that you [were] subjected to the same forms of initiation by all the initiating masters? You said that earlier, right?
Witness	Yes, sir.
Atty. Jimenez	Are you saying also that the others who jumped on you or kicked you said something similar as was told to you by Mr. Dizon?
Witness	No, sir.
Atty. Jimenez	But the fact remains that in the Bicol Express for instance, the masters would run on your thighs, right?
Witness	Yes, sir.
Atty. Jimenez	This was the regular procedure that was followed by the initiating masters not only on you but also on the other neophytes?
Witness	Yes, sir.
Atty. Jimenez	**In other words, it is fair to say that whatever forms of initiation was administered by one master, was also administered by one master on a neophyte, was also administered by another master on the other neophyte, this is correct?**
Witness	**Yes, sir.**[212] (Emphasis supplied)

According to the Solicitor General himself, the ill motives attributed by the CA to Dizon and Villareal were "baseless,"[213]

---

[212] TSN, 3 June 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 24-28.

[213] People's Comment (*Dizon v. People*, G.R. No. 155101), p. 131; *rollo*, p. 626; People's Comment (*Villareal v. People*, G.R. No. 151258), pp. 120-3; *rollo*, pp. 727-730.

since the statements of the accused were "just part of the psychological initiation calculated to instill fear on the part of the neophytes"; that "[t]here is no element of truth in it as testified by Bienvenido Marquez"; and that the "harsh words uttered by Petitioner and Villareal are part of 'tradition' concurred and accepted by all the fraternity members during their initiation rites."[214]

We agree with the Solicitor General.

The foregoing testimony of witness Marquez reveals a glaring mistake of substantial proportion on the part of the CA — it mistook the utterances of Dizon for those of Villareal. Such inaccuracy cannot be tolerated, especially because it was the CA's primary basis for finding that Villarreal had the intent to kill Lenny Villa, thereby making Villareal guilty of the intentional felony of homicide. To repeat, according to Bienvenido Marquez's testimony, as reproduced above, it was Dizon who uttered both "accusations" against Villa and Marquez; Villareal had no participation whatsoever in the specific threats referred to by the CA. It was "Boyet Dizon [who] stepped on [Marquez's] thigh"; and who told witness Marquez, "*[I]to, yung pamilya nito ay pinapatay yung kapatid ko*." It was also Dizon who jumped on Villa's thighs while saying, "[T]his guy, his father stole the parking space of my father." With the testimony clarified, we find that the CA had no basis for concluding the existence of intent to kill based solely thereon.

As to the existence of *animus interficendi* on the part of Dizon, we refer to the entire factual milieu and contextual premise of the incident to fully appreciate and understand the testimony of witness Marquez. At the outset, the neophytes were briefed that they would be subjected to psychological pressure in order to scare them. They knew that they would be mocked, ridiculed, and intimidated. They heard fraternity members shout, "*Patay ka*, Recinto," "*Yari ka*, Recinto," "Villa, *akin ka*," "Asuncion,

---

[214] People's Comment (*Dizon v. People*, G.R. No. 155101), pp. 130-131; *rollo*, pp. 625-626; People's Comment (*Villareal v. People*, G.R. No. 151258), pp. 120-123; *rollo*, pp. 727-730.

gulpi ka," "*Putang ina mo*, Asuncion," "*Putang ina nyo, patay kayo sa amin*," or some other words to that effect.[215] While beating the neophytes, Dizon accused Marquez of the death of the former's purported NPA brother, and then blamed Lenny Villa's father for stealing the parking space of Dizon's father. According to the Solicitor General, these statements, including those of the accused Dizon, were all part of the psychological initiation employed by the Aquila Fraternity.[216]

Thus, to our understanding, accused Dizon's way of inflicting psychological pressure was through hurling make-believe accusations at the initiates. He concocted the fictitious stories, so that he could "justify" giving the neophytes harder blows, all in the context of fraternity initiation and role playing. Even one of the neophytes admitted that the accusations were untrue and made-up.

The infliction of psychological pressure is not unusual in the conduct of hazing. In fact, during the Senate deliberations on the then proposed Anti-Hazing Law, former Senator Lina spoke as follows:

> Senator Lina. — so as to capture the intent that we conveyed during the period of interpellations on why we included the phrase "or psychological pain and suffering."
>
> x x x x x x x x x
>
> So that if no direct physical harm is inflicted upon the neophyte or the recruit but the **recruit or neophyte is made to undergo certain acts** which I already described yesterday, like playing the Russian roulette extensively **to test the readiness and the willingness of the neophyte or recruit to continue his desire to be a member of the fraternity, sorority or similar organization** or playing and putting a noose on the neck of the neophyte or recruit, making the recruit or neophyte stand on the ledge of the fourth floor of the

---

[215] RTC Decision [Crim. Case No. C-38340(91)], pp. 18-35, *supra* note 9; *rollo*, pp. 127-144.

[216] People's Comment (*Dizon v. People*, G.R. No. 155101), pp. 130-131; *rollo*, pp. 625-626; People's Comment (*Villareal v. People*, G.R. No. 151258), pp. 120-123; *rollo*, pp. 727-730.

building facing outside, asking him to jump outside after making him turn around several times but the reality is that he will be made to jump towards the inside portion of the building — these are the **mental or psychological tests that are resorted to by these organizations, sororities or fraternities**. The doctors who appeared during the public hearing testified that such acts can result in some mental aberration, that they can even lead to psychosis, neurosis or insanity. This is what we want to prevent.[217] (Emphasis supplied)

Thus, without proof beyond reasonable doubt, Dizon's behavior must not be automatically viewed as evidence of a genuine, evil motivation to kill Lenny Villa. Rather, it must be taken within the context of the fraternity's psychological initiation. This Court points out that it was not even established whether the fathers of Dizon and Villa really had any familiarity with each other as would lend credence to the veracity of Dizon's threats. The testimony of Lenny's co-neophyte, Marquez, only confirmed this view. According to Marquez, he "knew it was not true and that [Dizon] was just making it up…."[218] Even the trial court did not give weight to the utterances of Dizon as constituting intent to kill: "[T]he cumulative acts of all the accused were not directed toward killing Villa, but merely to inflict physical harm as part of the fraternity initiation rites x x x."[219] The Solicitor General shares the same view.

Verily, we cannot sustain the CA in finding the accused Dizon guilty of homicide under Article 249 of the Revised Penal Code on the basis of the existence of intent to kill. *Animus interficendi* cannot and should not be inferred unless there is proof beyond reasonable doubt of such intent.[220] Instead, **we adopt and**

---

[217] Senate TSP No. 51 (17 November 1992) 9th Congress, 1st Regular Sess., pp. 12-13.

[218] TSN, 21 April 1992(*People v. Dizon*, Crim. Case No. C-38340), pp. 68-72, 90-91, 100-102, 108-109, 127-134; *see* TSN, 26 May 1992 (*People v. Dizon*, Crim. Case No.C-38340), pp. 29-32, 43; and TSN, 3 June 1992 (*People v. Dizon*, Crim. Case No.C-38340), pp. 24-28.

[219] RTC Decision [Crim. Case No. C-38340(91)], p. 58, *supra* note 9; *rollo*, p. 167.

[220] *Dado v. People*, *supra* note 125.

reinstate the finding of the trial court in part, insofar as it ruled that none of the fraternity members had the specific intent to kill Lenny Villa.[221]

The existence of *animus iniuriandi* or malicious intent to injure not proven beyond reasonable doubt

The Solicitor General argues, instead, that there was an intent to inflict physical injuries on Lenny Villa. Echoing the Decision of the trial court, the Solicitor General then posits that since all of the accused fraternity members conspired to inflict physical injuries on Lenny Villa and death ensued, all of them should be liable for the crime of homicide pursuant to Article 4(1) of the Revised Penal Code.

In order to be found guilty of any of the felonious acts under Articles 262 to 266 of the Revised Penal Code,[222] the employment of physical injuries must be coupled with *dolus malus*. As an act that is *mala in se*, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer — *iniuria ex affectu facientis consistat*. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. Thus, in case of physical injuries under the Revised Penal Code, there must be a specific *animus iniuriandi* or malicious intention to do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions. Without proof beyond reasonable doubt of the required *animus iniuriandi*, the overt act of inflicting physical injuries *per se* merely satisfies the elements of freedom and intelligence in an intentional felony.

---

[221] RTC Decision [Crim. Case No. C-38340(91)], p. 58, *supra* note 9; *rollo*, p. 167.

[222] The aforementioned articles refer to the Revised Penal Code provisions on Physical Injuries. These are the following: (a) Art. 262 — Mutilation; (b) Art. 263 — Serious Physical Injuries; (c) Art. 264 — Administering Injurious Substances or Beverages; (d) Art. 265 — Less Serious Physical Injuries; and, (e) Art. 266 — Slight Physical Injuries and Maltreatment.

The commission of the act does not, in itself, make a man guilty unless his intentions are.[223]

Thus, we have ruled in a number of instances[224] that the mere infliction of physical injuries, absent malicious intent, does not make a person automatically liable for an intentional felony. In *Bagajo v. People*,[225] the accused teacher, using a bamboo stick, whipped one of her students behind her legs and thighs as a form of discipline. The student suffered lesions and bruises from the corporal punishment. In reversing the trial court's finding of criminal liability for slight physical injuries, this Court stated thus: "Independently of any civil or administrative responsibility … [w]e are persuaded that she did not do what she had done with criminal intent … the means she actually used was moderate and that she was not motivated by ill-will, hatred or any malevolent intent." Considering the applicable laws, we then ruled that "as a matter of law, petitioner did not incur any criminal liability for her act of whipping her pupil." In *People v. Carmen*,[226] the accused members of the religious group known as the Missionaries of Our Lady of Fatima — under the guise of a "ritual or treatment" — plunged the head of the victim into a barrel of water, banged his head against a bench, pounded his chest with fists, and stabbed him on the side with a kitchen knife, in order to cure him of "nervous breakdown" by expelling through those means the bad spirits possessing him. The collective acts of the group caused the death of the victim. Since malicious intent was not proven, we reversed the trial court's finding of liability for murder under Article 4 of the Revised Penal Code and instead ruled that the accused should be held criminally liable for reckless imprudence resulting in homicide under Article 365 thereof.

---

[223] *Cf. United States v. Ah Chong*, 15 Phil. 488 (1910); and *Calimutan v. People*, 517 Phil. 272 (2006).

[224] *Cf. Calimutan v. People*, *supra*, *citing People v. Carmen*, 407 Phil. 564 (2001); *People v. Nocum*, 77 Phil. 1018 (1947); *People v. Sara*, 55 Phil. 939 (1931); and *People v. Ramirez*, 48 Phil. 204 (1925).

[225] 176 Phil. 20 (1978).

[226] *People v. Carmen*, *supra* note 224.

Indeed, the threshold question is whether the accused's initial acts of inflicting physical pain on the neophytes were attended by *animus iniuriandi* amounting to a felonious act punishable under the Revised Penal Code, thereby making it subject to Article 4(1) thereof. In *People v. Regato*, we ruled that malicious intent must be judged by the action, conduct, and external acts of the accused.[227] What persons do is the best index of their intention.[228] We have also ruled that the method employed, the kind of weapon used, and the parts of the body on which the injury was inflicted may be determinative of the intent of the perpetrator.[229] The Court shall thus examine the whole contextual background surrounding the death of Lenny Villa.

Lenny died during Aquila's fraternity initiation rites. The night before the commencement of the rites, they were briefed on what to expect. They were told that there would be physical beatings, that the whole event would last for three days, and that they could quit anytime. On their first night, they were subjected to "traditional" initiation rites, including the "Indian Run," "Bicol Express," "Rounds," and the "Auxies' Privilege Round." The beatings were predominantly directed at the neophytes' arms and legs.

In the morning of their second day of initiation, they were made to present comic plays and to play rough basketball. They were also required to memorize and recite the Aquila Fraternity's principles. Late in the afternoon, they were once again subjected to "traditional" initiation rituals. When the rituals were officially reopened on the insistence of Dizon and Villareal, the neophytes were subjected to another "traditional" ritual — paddling by the fraternity.

During the whole initiation rites, auxiliaries were assigned to the neophytes. The auxiliaries protected the neophytes by functioning as human barriers and shielding them from those

---

[227] *People v. Regato, supra* note 118.

[228] *Id.*

[229] *Cf. People v. Penesa, supra* note 94.

who were designated to inflict physical and psychological pain on the initiates.[230] It was their regular duty to stop foul or excessive physical blows; to help the neophytes to "pump" their legs in order that their blood would circulate; to facilitate a rest interval after every physical activity or "round"; to serve food and water; to tell jokes; to coach the initiates; and to give them whatever they needed.

These rituals were performed with Lenny's consent.[231] A few days before the "rites," he asked both his parents for permission to join the Aquila Fraternity.[232] His father knew that Lenny would go through an initiation process and would be gone for three days.[233] The CA found as follows:

> It is worth pointing out that the **neophytes willingly and voluntarily consented to undergo physical initiation and hazing**. As can be gleaned from the narration of facts, they voluntarily agreed to join the initiation rites to become members of the Aquila Legis Fraternity. Prior to the initiation, they were **given briefings on what to expect**. It is of common knowledge that before admission in a fraternity, the neophytes will undergo a rite of passage. Thus, they were **made aware that traditional methods such as mocking, psychological tests and physical punishment would take place**. They **knew that the initiation would involve beatings and other forms of hazing**. They were also **told of their right and opportunity to quit at any time they wanted to**. In fact, prosecution witness Navera testified that accused Tecson told him that "after a week, you can already play basketball." Prosecution witness **Marquez for his part, admitted that he knew that the initiates would be hit "in the arms and legs," that a wooden paddle would be used to hit them and that**

---

[230] RTC Decision [Crim. Case No. C-38340(91)], pp. 38-44, *supra* note 9; *rollo*, pp. 147-153.

[231] RTC Decision [Crim. Case No. C-38340(91)], pp. 18-35, *supra* note 9; *rollo*, pp. 127-144.

[232] RTC Decision [Crim. Case No. C-38340(91)], p. 38, *supra* note 9; *rollo*, p. 147; TSN, 16 July 1992 (*People v. Dizon*, Crim. Case No. C-38340), p. 108.

[233] RTC Decision [Crim. Case No. C-38340(91)], p. 38, *supra* note 9; *rollo*, p. 147; TSN, 16 July 1992 (*People v. Dizon*, Crim. Case No. C-38340), p. 109.

he expected bruises on his arms and legs.... Indeed, **there can be no fraternity initiation without consenting neophytes**.[234] (Emphasis supplied)

Even after going through Aquila's grueling traditional rituals during the first day, Lenny continued his participation and finished the second day of initiation.

Based on the foregoing contextual background, and absent further proof showing clear malicious intent, we are constrained to rule that the specific *animus iniuriandi* was not present in this case. Even if the specific acts of punching, kicking, paddling, and other modes of inflicting physical pain were done voluntarily, freely, and with intelligence, thereby satisfying the elements of *freedom* and *intelligence* in the felony of physical injuries, the fundamental ingredient of criminal *intent* was not proven beyond reasonable doubt. On the contrary, all that was proven was that the acts were done pursuant to tradition. Although the additional "rounds" on the second night were held upon the insistence of Villareal and Dizon, the initiations were officially reopened with the consent of the head of the initiation rites; and the accused fraternity members still participated in the rituals, including the paddling, which were performed pursuant to tradition. Other than the paddle, no other "weapon" was used to inflict injuries on Lenny. The targeted body parts were predominantly the legs and the arms. The designation of roles, including the role of auxiliaries, which were assigned for the specific purpose of lending assistance to and taking care of the neophytes during the initiation rites, further belied the presence of malicious intent. All those who wished to join the fraternity went through the same process of "traditional" initiation; there is no proof that Lenny Villa was specifically targeted or given a different treatment. We stress that Congress itself recognized that hazing is uniquely different from common crimes.[235] The totality of the circumstances must therefore be taken into consideration.

---

[234] CA Decision (*People v. Dizon*), pp. 13-14, *supra* note 8; *rollo*, pp. 74-75.

[235] Senate TSP No. 47, *supra* note 3.

The underlying context and motive in which the infliction of physical injuries was rooted may also be determined by Lenny's continued participation in the initiation and consent to the method used even after the first day. The following discussion of the framers of the 1995 Anti-Hazing Law is enlightening:

SENATOR GUINGONA. Most of these acts, if not all, are already punished under the Revised Penal Code.

SENATOR LINA. That is correct, Mr. President.

SENATOR GUINGONA. If hazing is done at present and it results in death, the charge would be murder or homicide.

SENATOR LINA. That is correct, Mr. President.

SENATOR GUINGONA. If it does not result in death, it may be frustrated homicide or serious physical injuries.

SENATOR LINA. That is correct, Mr. President.

SENATOR GUINGONA. Or, if the person who commits sexual abuse does so it can be penalized under rape or acts of lasciviousness.

SENATOR LINA. That is correct, Mr. President.

SENATOR GUINGONA. So, what is the rationale for making a new offense under this definition of the crime of hazing?

SENATOR LINA. To discourage persons or group of persons either composing a sorority, fraternity or any association from making this requirement of initiation that has already resulted in these specific acts or results, Mr. President.

That is the main rationale. We want to send a strong signal across the land that no group or association can require the act of physical initiation before a person can become a member without being held criminally liable.

x x x x x x x x x

SENATOR GUINGONA. Yes, but what would be the rationale for that imposition? Because the distinguished Sponsor has said that he is not punishing a mere organization, he is not seeking the punishment of an initiation into a club or organization, he is seeking the punishment of certain acts that resulted in death, *et cetera* as a result of hazing which are already covered crimes.

The penalty is increased in one, because we would like to discourage hazing, abusive hazing, but it may be a legitimate defense for invoking two or more charges or offenses, because these very same acts are already punishable under the Revised Penal Code.

That is my difficulty, Mr. President.

SENATOR LINA. x x x

Another point, Mr. President, is this, and this is a very telling difference: **When a person or group of persons resort to hazing as a requirement for gaining entry into an organization, the intent to commit a wrong is not visible or is not present**, Mr. President. Whereas, in these specific crimes, Mr. President, let us say there is death or there is homicide, mutilation, **if one files a case, then the intention to commit a wrong has to be proven. But if the crime of hazing is the basis, what is important is the result from the act of hazing.**

To me, **that is the basic difference** and that is what will prevent or deter the sororities or fraternities; that they should really shun this activity called "hazing." **Because, initially, these fraternities or sororities do not even consider having a neophyte killed or maimed or that acts of lasciviousness are even committed initially**, Mr. President.

So, what we want to discourage is the so-called **initial innocent act.** That is why there is need to institute this kind of hazing. *Ganiyan po ang nangyari. Ang fraternity o ang sorority ay magre-recruit.* ***Wala talaga silang intensiyong makamatay.*** *Hindi ko na babanggitin at buhay pa iyong kaso. Pero dito sa anim o pito na namatay nitong nakaraang taon, walang intensiyong patayin talaga iyong neophyte. So, kung maghihintay pa tayo, na saka lamang natin isasakdal ng murder kung namatay na, ay after the fact ho iyon. Pero, kung sasabihin natin sa mga kabataan na: "Huwag ninyong gagawin iyong hazing. Iyan ay kasalanan at kung mamatay diyan, mataas ang penalty sa inyo*."

x x x x x x x x x

SENATOR GUINGONA. I join the lofty motives, Mr. President, of the distinguished Sponsor. But **I am again disturbed** by his statement **that the prosecution does not have to prove the intent** that resulted **in the death,** that resulted **in the serious physical injuries,** that resulted **in the acts of lasciviousness or deranged**

mind. We do not have to prove the willful intent of the accused in proving or establishing the crime of hazing. **This seems, to me, a novel situation where we create the special crime without having to go into the intent, which is one of the basic elements of any crime.**

If there is no intent, there is no crime. If the intent were merely to initiate, then there is no offense. And even the distinguished Sponsor admits that the organization, the intent to initiate, the intent to have a new society or a new club is, per se, not punishable at all. What are punishable are the acts that lead to the result. But if these results are not going to be proven by intent, but just because there was hazing, I am afraid that it will disturb the basic concepts of the Revised Penal Code, Mr. President.

SENATOR LINA. Mr. President, the **act of hazing, precisely, is being criminalized because in the context of what is happening in the sororities and fraternities, when they conduct hazing, no one will admit that their intention is to maim or to kill.** So, we are already criminalizing the fact of inflicting physical pain. Mr. President, it is a criminal act and we want it stopped, deterred, discouraged.

If that occurs, under this law, there is no necessity to prove that the masters intended to kill or the masters intended to maim. What is important is the result of the act of hazing. Otherwise, **the masters or those who inflict the physical pain can easily escape responsibility and say, "We did not have the intention to kill. This is part of our initiation rites. This is normal. We do not have any intention to kill or maim."**

This is the *lusot*, Mr. President. **They might as well have been charged therefore with the ordinary crime of homicide, mutilation, *et cetera*, where the prosecution will have a difficulty proving the elements if they are separate offenses.**

x x x x x x x x x

SENATOR GUINGONA. Mr. President, assuming there was a group that initiated and a person died. The charge is murder. My question is: Under this bill if it becomes a law, would the prosecution have to prove conspiracy or not anymore?

SENATOR LINA. Mr. President, if the person is present during hazing x x x

SENATOR GUINGONA. The persons are present. First, would the prosecution have to prove conspiracy? Second, would the prosecution have to prove intent to kill or not?

SENATOR LINA. No more. As to the second question, Mr. President, if that occurs, there is no need to prove intent to kill.

SENATOR GUINGONA. But the charge is murder.

SENATOR LINA. That is why I said that it should not be murder. It should be hazing, Mr. President. [236] (Emphasis supplied)

During a discussion between Senator Biazon and Senator Lina on the issue of whether to include sodomy as a punishable act under the Anti-Hazing Law, Senator Lina further clarified thus:

SENATOR BIAZON. Mr. President, this Representation has no objection to the inclusion of sodomy as one of the conditions resulting from hazing as necessary to be punished. However, the act of sodomy can be committed by two persons with or without consent.

To make it clearer, what is being punished here is the commission of sodomy forced into another individual by another individual. I move, Mr. President, that sodomy be modified by the phrase "without consent" for purposes of this section.

SENATOR LINA. I am afraid, Mr. President, that if we qualify sodomy with the concept that it is only going to aggravate the crime of hazing if it is done without consent will change a lot of concepts here. **Because the results from hazing aggravate the offense with or without consent. In fact, when a person joins a fraternity, sorority, or any association for that matter, it can be with or without the consent of the intended victim. The fact that a person joins a sorority or fraternity with his consent does not negate the crime of hazing.**

This is a proposed law intended to protect the citizens from the malpractices that attend initiation which may have been announced with or without physical infliction of pain or injury, Mr. President. **Regardless of whether there is announcement that there will be physical hazing or whether there is none, and therefore, the**

---

[236] Senate TSP No. 47, *supra* note 3.

neophyte is duped into joining a fraternity is of no moment. What is important is that there is an infliction of physical pain.

The **bottom line of this law** is that a citizen even has to be protected from himself if he joins a fraternity, so that at a certain point in time, **the State, the individual, or the parents of the victim can run after the perpetrators of the crime**, **regardless of whether or not there was consent on the part of the victim.**

x x x x x x x x x

SENATOR LINA. Mr. President, I understand the position taken by the distinguished Gentleman from Cavite and Metro Manila. It is correct that society sometimes adopts new mores, traditions, and practices.

In this bill, we are not going to encroach into the private proclivities of some individuals when they do their acts in private as we do not take a peek into the private rooms of couples. They can do their thing if they want to make love in ways that are not considered acceptable by the mainstream of society. That is not something that the State should prohibit.

But sodomy in this case is connected with hazing, Mr. President. Such that the act may even be entered into with consent. It is not only sodomy. **The infliction of pain may be done with the consent of the neophyte.** ***If the law is passed, that does not make the act of hazing not punishable because the neophyte accepted the infliction of pain upon himself.***

If the victim suffers from serious physical injuries, but the initiator said, "Well, he allowed it upon himself. He consented to it." So, if we allow that reasoning that sodomy was done with the consent of the victim, then we would not have passed any law at all. There will be no significance if we pass this bill, because it will always be a defense that the victim allowed the infliction of pain or suffering. He accepted it as part of the initiation rites.

But precisely, Mr. President **that is one thing that we would want to prohibit.** ***That the defense of consent will not apply because the very act of inflicting physical pain or psychological suffering is, by itself, a punishable act.*** The result of the act of hazing, like death or physical injuries merely aggravates the act with higher

penalties. But **the defense of consent is not going to nullify the criminal nature of the act.**

So, if we accept the amendment that sodomy can only aggravate the offense **if it is committed without consent of the victim, then the whole foundation of this proposed law will collapse.**

SENATOR BIAZON. Thank you, Mr. President.

SENATOR LINA. Thank you very much.

THE PRESIDENT. Is there any objection to the committee amendment? (Silence.) The Chair hears none; the same is approved.[237] (Emphasis supplied)

Realizing the implication of removing the state's burden to prove intent, Senator Lina, the principal author of the Senate Bill, said:

I am very happy that the distinguished Minority Leader brought out the idea of intent or whether there it is *mala in se* or *mala prohibita*. There can be a radical amendment if that is the point that he wants to go to.

If we agree on the concept, then, maybe, we can just make this a special law on hazing. We will not include this anymore under the Revised Penal Code. That is a possibility. I will not foreclose that suggestion, Mr. President.[238] (Emphasis supplied)

Thus, having in mind the potential conflict between the proposed law and the core principle of *mala in se* adhered to under the Revised Penal Code, Congress did not simply enact an amendment thereto. Instead, it created a special law on hazing, founded upon the principle of *mala prohibita*. This dilemma faced by Congress is further proof of how the nature of hazing — unique as against typical crimes — cast a cloud of doubt on whether society considered the act as an inherently wrong conduct or *mala in se* at the time. It is safe to presume that Lenny's parents would not have consented[239] to his participation in Aquila

[237] Senate TSP No. 62, *supra* note 4 at 13-15.

[238] Senate TSP No. 47, *supra* note 3.

[239] RTC Decision [Crim. Case No. C-38340(91)], p. 38, *supra* note 9; *rollo*, p. 147; TSN, 16 July 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 108-109.

Fraternity's initiation rites if the practice of hazing were considered by them as *mala in se*.

Furthermore, in *Vedaña v. Valencia* (1998), we noted through Associate Justice (now retired Chief Justice) Hilario Davide that "in our nation's very recent history, the people have spoken, through Congress, to deem **conduct constitutive of** … **hazing**, [an] **act[] previously considered harmless by custom**, as criminal."[240] Although it may be regarded as a simple *obiter dictum*, the statement nonetheless shows recognition that hazing — or the conduct of initiation rites through physical and/or psychological suffering — has not been traditionally criminalized. Prior to the 1995 Anti-Hazing Law, there was to some extent a lacuna in the law; hazing was not clearly considered an intentional felony. And when there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused. *In dubio pro reo*.

For the foregoing reasons, and as a matter of law, the Court is constrained to rule against the trial court's finding of malicious intent to inflict physical injuries on Lenny Villa, there being no proof beyond reasonable doubt of the existence of malicious intent to inflict physical injuries or *animus iniuriandi* as required in *mala in se* cases, considering the contextual background of his death, the unique nature of hazing, and absent a law prohibiting hazing.

The accused fraternity members guilty of reckless imprudence resulting in homicide

The absence of malicious intent does not automatically mean, however, that the accused fraternity members are ultimately devoid of criminal liability. The Revised Penal Code also punishes felonies that are committed by means of fault (*culpa*). According to Article 3 thereof, there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

Reckless imprudence or *negligence* consists of a voluntary act done without malice, from which an immediate personal harm, injury or material damage results by reason of an

---

[240] *Vedaña v. Valencia*, 356 Phil. 317, 332 (1998).

inexcusable lack of precaution or advertence on the part of the person committing it.[241] In this case, the danger is visible and consciously appreciated by the actor.[242] In contrast, *simple imprudence or negligence* comprises an act done without grave fault, from which an injury or material damage ensues by reason of a mere lack of foresight or skill.[243] Here, the threatened harm is not immediate, and the danger is not openly visible. [244]

The test[245] for determining whether or not a person is negligent in doing an act is as follows: Would a prudent man in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes on the doer the duty to take precaution against the mischievous results of the act. Failure to do so constitutes negligence.[246]

As we held in *Gaid v. People*, for a person to avoid being charged with recklessness, the degree of precaution and diligence required varies with the degree of the danger involved.[247] If, on account of a certain line of conduct, the danger of causing harm to another person is great, the individual who chooses to follow that particular course of conduct is bound to be very careful, in order to prevent or avoid damage or injury.[248] In

---

[241] *Caminos v. People*, 587 SCRA 348 (2009) *citing* LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW – BOOK ONE 995 (15th ed. 2001); *People v. Vistan*, 42 Phil. 107 (1921), *citing U.S. vs. Gomez*, G.R. No. L-14068, 17 January 1919 (unreported); *U.S. v. Manabat*, 28 Phil. 560 (1914).

[242] *People v. Vistan, supra, citing U.S. vs. Gomez, supra*.

[243] *Id.*

[244] *Id.*

[245] *Gaid v. People*, G.R. No. 171636, 7 April 2009, 584 SCRA 489; *Gan v. Court of Appeals*, 247-A Phil. 460 (1988).

[246] *Gaid v. People, supra*; *Gan v. Court of Appeals, supra*.

[247] *Gaid v. People, supra*; *People v. Vistan, supra* note 241, *citing U.S. vs. Gomez, supra* note 241.

[248] *Id.*

contrast, if the danger is minor, not much care is required.[249] It is thus possible that there are countless degrees of precaution or diligence that may be required of an individual, "from a transitory glance of care to the most vigilant effort."[250] The duty of the person to employ more or less degree of care will depend upon the circumstances of each particular case.[251]

There was patent recklessness in the hazing of Lenny Villa.

According to the NBI medico-legal officer, Lenny died of cardiac failure secondary to multiple traumatic injuries.[252] The officer explained that cardiac failure refers to the failure of the heart to work as a pump and as part of the circulatory system due to the lack of blood.[253] In the present case, the victim's heart could no longer work as a pumping organ, because it was deprived of its requisite blood and oxygen.[254] The deprivation was due to the "channeling" of the blood supply from the entire circulatory system — including the heart, arteries, veins, venules, and capillaries — to the thigh, leg, and arm areas of Lenny, thus causing the formation of multiple hematomas or blood clots.[255] The multiple hematomas were wide, thick, and deep,[256] indicating that these could have resulted mainly from injuries sustained by the victim from fist blows, knee blows, paddles, or the like.[257] Repeated blows to those areas caused the blood to gradually ooze out of the capillaries until the circulating blood became

---

[249] *Id.*

[250] *See Gaid v. People*, *supra* note 245, at 503 (Velasco, *J.*, dissenting).

[251] *Id.*

[252] RTC Decision [Crim. Case No. C-38340(91)], p. 37, *supra* note 9; *rollo*, p. 146.

[253] *Id.*

[254] *Id.* at 36; *rollo*, p. 145.

[255] *Id.*; TSN, 24 June 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 52-67.

[256] RTC Decision [Crim. Case No. C-38340(91)], p. 37, *supra* note 9; *rollo*, p. 146.

[257] *Id.*; TSN, 24 June 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 68-69.

so markedly diminished as to produce death.[258] The officer also found that the brain, liver, kidney, pancreas, intestines, and all other organs seen in the abdominals, as well as the thoracic organ in the lungs, were pale due to the lack of blood, which was redirected to the thighs and forearms.[259] It was concluded that there was nothing in the heart that would indicate that the victim suffered from a previous cardiac arrest or disease.[260]

The multiple hematomas or bruises found in Lenny Villa's arms and thighs, resulting from repeated blows to those areas, caused the loss of blood from his vital organs and led to his eventual death. These hematomas must be taken in the light of the hazing activities performed on him by the Aquila Fraternity. According to the testimonies of the co-neophytes of Lenny, they were punched, kicked, elbowed, kneed, stamped on; and hit with different objects on their arms, legs, and thighs.[261] They were also "paddled" at the back of their thighs or legs;[262] and slapped on their faces.[263] They were made to play rough basketball.[264] Witness Marquez testified on Lenny, saying: "*[T]inamaan daw sya sa* spine."[265] The NBI medico-legal officer explained that the death of the victim was the cumulative effect of the multiple injuries suffered by the latter.[266] The relevant portion of the testimony is as follows:

---

[258] RTC Decision [Crim. Case No. C-38340(91)], p. 37, *supra* note 9; *rollo*, p. 146; TSN, 24 June 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 70-71.

[259] RTC Decision [Crim. Case No. C-38340(91)], p. 37, *supra* note 9; *rollo*, p. 146.

[260] TSN, 24 June 1992 (*People v. Dizon*, Crim. Case No. C-38340), p. 50.

[261] RTC Decision [Crim. Case No. C-38340(91)], pp. 18-21, *supra* note 9; *rollo*, pp. 127-130.

[262] *Id.* at 23; *rollo*, p. 132.

[263] *Id.* at 25; *rollo*, p. 134.

[264] *Id.* at 26; *rollo*, p. 135.

[265] TSN, 21 April 1992 (*People v. Dizon*, Crim. Case No. C-38340), pp. 175-176.

[266] RTC Decision [Crim. Case No. C-38340(91)], p. 61, *supra* note 9; *rollo*, p. 170.

Atty. Tadiar Doctor, there was, rather, it was your testimony on various cross examinations of defense counsels that the injuries that you have enumerated on the body of the deceased Lenny Villa previously marked as Exhibit "G-1" to "G-14" individually by themselves would not cause the death of the victim. The question I am going to propound to you is what is the cumulative effect of all of these injuries marked from Exhibit "G-1" to "G-14"?

Witness All together nothing in concert to cause to the demise of the victim. So, it is not fair for us to isolate such injuries here because we are talking of the whole body. At the same manner that as a car would not run minus one (1) wheel. No, the more humane in human approach is to interpret all those injuries in whole and not in part.[267]

There is also evidence to show that some of the accused fraternity members were drinking during the initiation rites.[268]

Consequently, the collective acts of the fraternity members were tantamount to recklessness, which made the resulting death of Lenny a culpable felony. It must be remembered that organizations owe to their initiates a duty of care not to cause them injury in the process.[269] With the foregoing facts, we rule that the accused are guilty of reckless imprudence resulting in homicide. Since the NBI medico-legal officer found that the victim's death was the cumulative effect of the injuries suffered, criminal responsibility redounds to all those who directly participated in and contributed to the infliction of physical injuries.

---

[267] TSN, 16 July 1992 (*People v. Dizon*, Crim. Case No.C-38340), pp. 92-93.

[268] TSN, 21 April 1992 (*People v. Dizon*, Crim. Case No.C-38340), pp. 110-111.

[269] *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (S.C. App. 1986) (U.S.) *citing Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 329 S.E.2d 753 (S.C. 1985) (U.S.).

It appears from the aforementioned facts that the incident may have been prevented, or at least mitigated, had the alumni of Aquila Fraternity — accused Dizon and Villareal — restrained themselves from insisting on reopening the initiation rites. Although this point did not matter in the end, as records would show that the other fraternity members participated in the reopened initiation rites — having in mind the concept of "seniority" in fraternities — the implication of the presence of alumni should be seen as a point of review in future legislation. We further note that some of the fraternity members were intoxicated during Lenny's initiation rites. In this light, the Court submits to Congress, for legislative consideration, the amendment of the Anti-Hazing Law to include the fact of intoxication and the presence of non-resident or alumni fraternity members during hazing as aggravating circumstances that would increase the applicable penalties.

It is truly astonishing how men would wittingly — or unwittingly — impose the misery of hazing and employ appalling rituals in the name of brotherhood. There must be a better way to establish "kinship." A neophyte admitted that he joined the fraternity to have more friends and to avail himself of the benefits it offered, such as tips during bar examinations.[270] Another initiate did not give up, because he feared being looked down upon as a quitter, and because he felt he did not have a choice.[271] Thus, for Lenny Villa and the other neophytes, joining the Aquila Fraternity entailed a leap in the dark. By giving consent under the circumstances, they left their fates in the hands of the fraternity members. Unfortunately, the hands to which lives were entrusted were barbaric as they were reckless.

Our finding of criminal liability for the felony of reckless imprudence resulting in homicide shall cover only accused Tecson, Ama, Almeda, Bantug, and Dizon. Had the Anti-Hazing Law been in effect then, these five accused fraternity members would have all been convicted of the crime of hazing punishable by

---

[270] RTC Decision [Crim. Case No. C-38340(91)], p. 34, *supra* note 9; *rollo*, p. 143.

[271] *Id.* at 27; *rollo*, p. 136.

reclusion perpetua (life imprisonment).[272] Since there was no law prohibiting the act of hazing when Lenny died, we are constrained to rule according to existing laws at the time of his death. The CA found that the prosecution failed to prove, beyond reasonable doubt, Victorino *et al.*'s individual participation in the infliction of physical injuries upon Lenny Villa.[273] As to accused Villareal, his criminal liability was totally extinguished by the fact of his death, pursuant to Article 89 of the Revised Penal Code.

Furthermore, our ruling herein shall be interpreted without prejudice to the applicability of the Anti-Hazing Law to subsequent cases. Furthermore, the modification of criminal liability from **slight physical injuries** to **reckless imprudence resulting in homicide** shall apply only with respect to accused Almeda, Ama, Bantug, and Tecson.

The accused liable to pay damages

The CA awarded damages in favor of the heirs of Lenny Villa in the amounts of ₱50,000 as civil indemnity *ex delicto* and ₱1,000,000 as moral damages, to be jointly and severally paid by accused Dizon and Villareal. It also awarded the amount of ₱30,000 as indemnity to be jointly and severally paid by accused Almeda, Ama, Bantug, and Tecson.

Civil indemnity *ex delicto* is automatically awarded for the sole fact of death of the victim.[274] In accordance with prevailing jurisprudence,[275] we sustain the CA's award of indemnity in the amount of ₱50,000.

---

[272] Republic Act No. 8049 (1995), Sec. 4(1), otherwise known as the Anti-Hazing Law.

[273] CA Decision (*People v. Dizon*), p. 22, *supra* note 8; *rollo*, p. 83.

[274] *Briñas v. People*, 211 Phil. 37 (1983); *see also People v. Yanson*, G.R. No. 179195, 3 October 2011, *citing People v. Del Rosario*, G.R. No. 189580, 9 February 2011.

[275] *People v. Mercado*, G.R. No. 189847, 30 May 2011 [*citing People v. Flores*, G.R. No. 188315, 25 August 2010; *People v. Lindo*, G.R. No. 189818, 9 August 2010; *People v. Ogan*, G.R. No. 186461, 5 July 2010; and *People v. Cadap*, G.R. No. 190633, 5 July 2010].

The heirs of the victim are entitled to actual or compensatory damages, including expenses incurred in connection with the death of the victim, so long as the claim is supported by tangible documents.[276] Though we are prepared to award actual damages, the Court is prevented from granting them, since the records are bereft of any evidence to show that actual expenses were incurred or proven during trial. Furthermore, in the appeal, the Solicitor General does not interpose any claim for actual damages.[277]

The heirs of the deceased may recover moral damages for the grief suffered on account of the victim's death.[278] This penalty is pursuant to Article 2206(3) of the Civil Code, which provides that the "spouse, legitimate and illegitimate descendants and the ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased."[279] Thus, we hereby we affirm the CA's award of moral damages in the amount of ₱1,000,000.

WHEREFORE, the appealed Judgment in G.R. No. 155101 finding petitioner Fidelito Dizon guilty of homicide is hereby **MODIFIED** and **SET ASIDE IN PART**. The appealed Judgment in G.R. No. 154954 — finding Antonio Mariano Almeda, Junel Anthony Ama, Renato Bantug, Jr., and Vincent Tecson guilty of the crime of slight physical injuries — is also **MODIFIED** and **SET ASIDE IN PART**. Instead, Fidelito Dizon, Antonio Mariano Almeda, Junel Anthony Ama, Renato Bantug, Jr., and Vincent Tecson are found **GUILTY** beyond reasonable doubt of reckless imprudence resulting in homicide defined and penalized under Article 365 in relation to Article 249 of the Revised Penal Code. They are hereby sentenced to

---

[276] *Seguritan v. People*, G.R. No. 172896, 19 April 2010, 618 SCRA 406.

[277] People's Consolidated Memoranda (*Dizon v. People*, G.R. No. 155101), p. 144; *rollo*, p. 1709.

[278] *Heirs of Ochoa v. G & S Transport Corporation*, G.R. No. 170071, 9 March 2011, *citing Victory Liner Inc. v. Gammad*, 486 Phil. 574, 592-593 (2004).

[279] *Id.*

suffer an indeterminate prison term of four (4) months and one (1) day of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, accused are **ORDERED** jointly and severally to pay the heirs of Lenny Villa civil indemnity *ex delicto* in the amount of ₱50,000, and moral damages in the amount of ₱1,000,000, plus legal interest on all damages awarded at the rate of 12% from the date of the finality of this Decision until satisfaction.[280] Costs *de oficio*.

The appealed Judgment in G.R. No. 154954, acquitting Victorino *et al.*, is hereby **AFFIRMED**. The appealed Judgments in G.R. Nos. 178057 & 178080, dismissing the criminal case filed against Escalona, Ramos, Saruca, and Adriano, are likewise **AFFIRMED**. Finally, pursuant to Article 89(1) of the Revised Penal Code, the Petition in G.R. No. 151258 is hereby dismissed, and the criminal case against Artemio Villareal deemed **CLOSED** and **TERMINATED**.

Let copies of this Decision be furnished to the Senate President and the Speaker of the House of Representatives for possible consideration of the amendment of the Anti-Hazing Law to include the fact of intoxication and the presence of non-resident or alumni fraternity members during hazing as aggravating circumstances that would increase the applicable penalties.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

---

[280] *Eastern Shipping Lines, Inc. vs. Court of Appeals*, G.R. No. 97412, 17 July 1994, 234 SCRA 78.

THIRD DIVISION

[G.R. No. 167952. February 1, 2012]

GONZALO PUYAT & SONS, INC., *petitioner, vs.* **RUBEN ALCAIDE (deceased), substituted by GLORIA ALCAIDE, representative of the Farmer-Beneficiaries,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; PROPERTY AVAILED OF. — [A]ppeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the CA, under the requirements and conditions set forth in Rule 43. Under the rule, appeals from their judgments and final orders are now brought to the CA on a verified petition for review. This Rule was adopted precisely to provide a uniform rule of appellate procedure from quasi-judicial agencies. In the case at bar, the petition for relief filed by the respondents was treated by the Office of the President as a motion for reconsideration. However, the Office of the President dismissed the petition based on the premise that respondents failed to file a motion for reconsideration or an appeal within the 15-day reglementary period, thereby rendering the August 8, 2003 Decision final and executory. Thus, respondents availed of the proper remedy when it sought recourse to the CA *via* a petition for review.

2. ID.; ID.; APPEALS; RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. — Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.

3. ID.; ID.; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; ORDER OF THE SECRETARY

OF DEPARTMENT OF AGRARIAN REFORM (DAR) HAS NOT ATTAINED FINALITY; DISCUSSED. — Simply put, the resolution of the issues advanced by the parties hinges on whether or not the Order dated June 8, 2001 of the DAR Secretary has become final and executory. A perusal of the pertinent pleadings and documents would reveal that indeed, petitioner was not properly served with a copy of the Order dated June 8, 2001. x x x [I]t was clearly admitted that petitioner was not properly served a copy of the disputed Order and this oversight by the DAR was rectified by subsequently serving a copy of the Order upon petitioner's counsel at his new address. This belated service to petitioner's counsel was coursed through a Letter dated September 4, 2001, from Director Delfin B. Samson of the DAR informing him that the case has already been decided and an order of finality issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in his November 5, 2001 Order, was a manifest indication that petitioner was being served a copy of the June 8, 2001 Order for the first time. Contrary to petitioner's contention, however, that it received a copy of the June 8, 2001 Order only on September 7, 2001 when it received the letter of Director Delfin B. Samson, it appears that the date stamped on the face of the said letter indicates that it was received on September 10, 2001 and not September 7, 2001. Thus, when petitioner filed its motion for reconsideration on September 14, 2001, it was well within the reglementary period to file the motion. Hence, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. The Office of the President, therefore, validly entertained petitioner's appeal when the DAR Secretary denied its motion for reconsideration. With the foregoing disquisition, the CA erred in setting aside the decision of the Office of the President on the mistaken conclusion that the DAR Secretary's Orders had attained finality.

4. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM OF 1988); 2003 RULES GOVERNING ISSUANCE OF NOTICE OF COVERAGE AND ACQUISITION OF AGRICULTURAL LANDS UNDER R.A. 6657; NECESSITY OF A PRELIMINARY OCULAR INSPECTION, EXPLAINED; CASE AT BAR. — DAR Administrative Order No. 01, Series

of 2003, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657, provides: 1. Commencement 1.1 *Commencement by the Municipal Agrarian Reform Officer (MARO)* — After determining that a landholding is coverable under the CARP, and upon accomplishment of the *Pre-Ocular Inspection Report*, the MARO shall prepare the NOC (CARP Form No. 5-1). Corolarilly, Administrative Order No. 01, Series of 1998, which outlines the steps in the acquisition of lands, details that in the 3rd step, the Department of Agrarian Reform Municipal Office (DARMO) should conduct a "preliminary ocular inspection to determine initially whether or not the property maybe covered under the CARP," which findings will be contained in CARP Form No. 3.a, or the Preliminary Ocular Inspection Report. From the foregoing, a preliminary ocular inspection is necessary to determine whether or not a subject landholding may be considered under the coverage of the CARP even before a Notice of Coverage is prepared by the MARO. However, a perusal of the undated CARP Form No. 3.a covering the subject properties would reveal that the appropriate check boxes for "Land Condition/Suitability to Agriculture" on whether the subject properties are "presently being cultivated/suitable to agriculture" or are "presently idle/vacant" were not marked. Also, the MARO failed to mark any of the check boxes for "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land. As aptly found by the Office of the President, the importance of conducting an ocular inspection cannot be understated, since it is one of the steps designed to comply with the requirements of administrative due process.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR REVIEW ON *CERTIORARI*; REVIEW OF FACTUAL MATTERS IS NOT PROPER. — [T]he question of whether or not petitioner's properties could be covered by the CARP has not yet been resolved. Until such determination, it follows that petitioner's landholdings cannot be the proper subject of acquisition and eventual distribution to qualified farmer-beneficiaries. However, these involve factual controversies, which are clearly beyond the ambit of this Court. Verily, the review of factual matters is not the province of this Court.

The Supreme Court is not a trier of facts, and is not the proper forum for the ventilation and substantiation of factual issues. Under the circumstances, the directive of the Office of the President for the DAR to ascertain whether or not petitioner's landholdings may be placed under CARP was proper. To be sure, it is the DAR that is procedurally prepared to handle such controversies and is better suited to resolve such factual issues in the exercise of its mandate to implement the CARP and its vested quasi-judicial powers to determine and adjudicate agrarian reform matters.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Arnel D. Naidas and *J.L. Jorvina, Jr.* for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated February 1, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 86069, and the Resolution[2] dated April 25, 2005 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Petitioner Gonzalo Puyat and Sons, Inc. is the registered owner of 14 parcels of land with an aggregate area of 43.7225 hectares located at Barangays Langkiwa and Timbao, Biñan, Laguna, covered by Transfer Certificate of Title Nos. T-19884, T-19855, T-19856, T-19857, T-19858, T-19859, T-201524, T-202285, T-207476, T-207477, T-207478, T-207479, T-207481, T-208151.[3]

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 30-42.

[2] *Id.* at 44-45.

[3] *Rollo*, p. 31.

On April 14, 1998, the Municipal Agrarian Reform Officer (MARO) issued a Notice of Coverage over the subject landholding informing petitioner that the subject properties were being considered for distribution under the government's agrarian reform program.[4] Thereafter, on November 15, 1998, the corresponding Notice of Valuation and Acquisition[5] was issued informing petitioner that a 37.7353-hectare portion of its property is subject to immediate acquisition and distribution to qualified agrarian reform beneficiaries and that the government is offering ₱7,071,988.80 as compensation for the said property.

Petitioner then filed a Petition[6] before the Department of Agrarian Reform (DAR), wherein it argued that the properties were bought from their previous owners in good faith; that the same remains uncultivated, unoccupied, and untenanted up to the present; and, that the subject landholdings were classified as industrial, thus, exempt from the coverage of the Comprehensive Agrarian Reform Program (CARP). Petitioner prayed, among other things, that the Notice of Coverage and Notice of Acquisition be lifted and that the properties be declared exempt from the coverage of CARP.[7]

Respondents[8] on their part countered, among other things, that the classification of the land as industrial did not exempt it from the coverage of the CARP considering that it was made only in 1997; the HLURB[9] certification that the Municipality of Biñan, Laguna does not have any approved plan/zoning ordinance to date; that they are not among those farmer-beneficiaries who executed the waivers or voluntary surrender; and, that the subject landholdings were planted with *palay*.[10]

---

[4] *Id.*

[5] *Id.* at 66.

[6] *Id.* at 63-65.

[7] *Id.* at 65.

[8] Then represented by a certain Rogelio Mahilum.

[9] Housing and Land Use Regulatory Board.

[10] *Rollo*, pp. 32-33.

On June 8, 2001, then DAR Secretary Hernani A. Braganza, issued an Order[11] in favor of the respondent declaring that the subject properties are agricultural land; thus, falling within the coverage of the CARP, the decretal portion of which reads:

> **WHEREFORE**, premises considered, Order is hereby issued dismissing the petition. The MARO/PARO concerned is directed to immediately proceed with the acquisition of subject landholdings under CARP, identify the farmer-beneficiaries and generate/issue the corresponding Certificates of Land Ownership Awards pursuant to Section 16 of RA 6657.
>
> **SO ORDERED**.[12]

On July 24, 2001, respondents filed a Motion for the Issuance of an Order of Finality of Judgment[13] praying that an Order of Finality be issued for petitioner's failure to interpose a motion for reconsideration or an appeal from the order of the DAR Secretary.

On August 3, 2001, the DAR issued an Order[14] granting the motion and directing that an Order of Finality be issued. Consequently, on August 6, 2001, an Order of Finality[15] quoting the dispositive portion of the June 8, 2001 Order of the DAR Secretary was issued.

On August 17, 2001, petitioner received a copy of the Orders dated August 3 and 6, 2001. Thereafter, on August 20, 2001, petitioner filed a Motion to Lift Order of Finality.[16]

On August 28, 2001, petitioner's counsel filed a Manifestation with Urgent *Ex Parte* Motion for Early Resolution[17] informing

---

[11] *Id.* at 70-72.

[12] *Id.* at 72.

[13] *Id.* at 73-75.

[14] *Id.* at 76-77.

[15] *Id.* at 87.

[16] *Id.* at 81.

[17] *Id.* at 85.

the DAR of his new office address and praying that the petition be resolved at the earliest convenient time and that he be furnished copies of dispositions and notices at his new and present address.

In a Letter[18] sent to the new address of petitioner's counsel, dated September 4, 2001, Director Delfin B. Samson of the DAR informed petitioner's counsel that the case has been decided and an order of finality has already been issued, copies of which were forwarded to his last known address. Nevertheless, Director Samson attached copies of the Order dated June 8, 2001 and the Order of Finality dated August 6, 2001 for his reference.

On September 14, 2001, petitioner filed a Motion for Reconsideration with Manifestation,[19] questioning the Orders dated June 8, 2001 and August 6, 2001 and praying that the said Orders be set aside and a new one issued granting the petition.

On September 21, 2001, the DAR issued an Order[20] directing the parties to submit their respective memoranda.

On November 5, 2001, the DAR issued an Order[21] denying the motion for reconsideration, which was received by petitioner's counsel on November 15, 2001.[22]

Aggrieved, petitioner filed an appeal before the Office of the President which was received by the latter on November 21, 2001.[23] The case was docketed as O.P. Case No. 01-K-184.

On August 8, 2003, the Office of the President rendered a Decision[24] in favor of petitioner, the dispositive portion of which reads:

---

[18] *Id.* at 86.

[19] CA *rollo*, pp. 50-52.

[20] *Rollo*, pp. 92-93.

[21] CA *rollo*, pp. 53-56.

[22] *Rollo*, p. 103.

[23] *Id.*

[24] *Id.* at 117-121.

WHEREFORE, premises considered, the Orders dated 08 June 2001 and 05 November 2001 of the DAR Secretary are hereby **SET ASIDE** and the Notice of Coverage dated April 14, 1998 and Notice of Acquisition dated November 15, 1998 issued over the subject land **LIFTED**, without prejudice to the conduct of an ocular inspection to determine the classification of the land.

Parties are to **INFORM** this Office, within five (5) days from notice, of the dates of their receipt of this Decision.

SO ORDERED.[25]

On March 24, 2004, there being no appeal or motion for reconsideration interposed despite clear showing that both parties had received their copies of the August 8, 2003 Decision, the Office of the President issued an Order[26] declaring that the decision has become final and executory.

Subsequently, respondents[27] filed a Petition for Relief[28] seeking that the above Decision and Order of the Office of the President be set aside and the Orders of the DAR Secretary reinstated.

On July 2, 2004, the Office of the President, treating the Petition for Relief as a motion for reconsideration, issued an Order dismissing the same, to wit:

WHEREFORE, premises considered, the "Petition for Relief" dated 3 May 2004, which is treated herein as a motion for reconsideration, filed by Ruben Alcaide is hereby **DISMISSED**. No further motions for reconsideration or other pleadings of similar import shall be entertained.

SO ORDERED.[29]

Respondents then sought recourse before the CA assailing the Decision dated August 8, 2003 and Order dated July 2,

---

[25] *Id.* at 121.

[26] *Id.* at 122.

[27] Now represented by Ruben Alcaide.

[28] *Rollo*, pp. 123-135.

[29] *Id.* at 137.

2004 of the Office of the President.[30] In support of the petition, respondents raised the following errors:

I. THE HONORABLE OFFICE OF THE PRESIDENT COMMITTED A REVERSIBLE ERROR WHEN IT REVERSED AND/OR SET ASIDE THE ORDERS DATED JUNE 8, AND NOVEMBER 5, 2001 OF THE DAR SECRETARY DESPITE THE FINALITY OF THE SAID ORDERS;

II. THE HONORABLE OFFICE OF THE PRESIDENT ERRED WHEN IT RULED THAT THE SUBJECT PROPERTY IS NOT AGRICULTURAL.[31]

On February 1, 2005, the CA rendered a Decision[32] granting the petition in favor of the respondents, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the petition for review is hereby **GRANTED**. The decision dated August 8, 2003 and the order dated July 2, 2004 of the Office of the President in O.P. CASE No. 01-K-184 are **SET ASIDE** for being null and void. The orders dated June 8 2001 and August 6, 2001 of the DAR Secretary are hereby **REINSTATED**.

SO ORDERED.[33]

Ruling in favor of the respondents, the CA opined that the Order of the DAR Secretary dated June 8, 2001 has become final and executory by petitioner's failure to timely interpose his motion for reconsideration. Consequently, when petitioner filed his motion for reconsideration on September 14, 2001, the order sought to be reconsidered has attained finality. Thus, the Office of the President had no jurisdiction to re-evaluate, more so, reverse the findings of the DAR Secretary in its Order dated June 8, 2001.

---

[30] *Id.* at 138-158.

[31] *Id.* at 145.

[32] *Id.* at 30-42.

[33] *Id.* at 41.

Hence, the petition assigning the following errors:

I

THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE PETITION AS IT IS BASIC IN LAW THAT NO APPEAL MAY BE TAKEN FROM THE DENIAL OF A PETITION FOR RELIEF.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ORDER DATED 8 JUNE 2001 ISSUED BY THE DAR SECRETARY IN ADM CASE NO. A-9999-04-E-01 IS ALREADY FINAL AND EXECUTORY.[34]

Petitioner argues that respondents availed of the wrong mode of recourse to the CA. Petitioner maintains that under Section 1 (b), Rule 41 of the 1997 Rules on Civil Procedure, no appeal may be taken from an order denying a petition for relief. The only remedy available to a party aggrieved by the denial of a petition for relief is a special civil action for *certiorari* under Rule 65 of the Rules. Thus, when respondents appealed the denial by way of a petition for review to the appellate court, the CA should have dismissed the petition outright.

More importantly, petitioner contends that the CA erred when it reversed the findings of the Office of the President and concluded that the Order dated June 8, 2001 has become final and executory thereby rendering the Office of the President without jurisdiction to entertain the appeal filed by the petitioner. Petitioner insists that based on the sequence of events, the Order dated June 8, 2001 never attained finality, since it was only on September 7, 2001 that its counsel received a copy of the said order. Thus, when it filed its motion for reconsideration on September 14, 2001, it was well within the reglementary period to file the same. Hence, petitioner's consequent appeal to the Office of the President upon denial of its motion for reconsideration was also timely filed.

Moreover, petitioner posits that it is the Decision of the Office of the President that has become final and executory by reason

---

[34] *Id.* at 12.

of respondents' failure to file any motion for reconsideration or to perfect an appeal after receiving a copy of the Decision.

On their part, respondents maintain that the Order dated June 8, 2001 has become final and executory thereby binding the petitioner, and that the CA did not err in reversing the Decision of the Office of the President.

The petition is meritorious.

At the outset, appeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the CA, under the requirements and conditions set forth in Rule 43. Under the rule, appeals from their judgments and final orders are now brought to the CA on a verified petition for review. This Rule was adopted precisely to provide a uniform rule of appellate procedure from quasi-judicial agencies.[35]

In the case at bar, the petition for relief filed by the respondents was treated by the Office of the President as a motion for reconsideration. However, the Office of the President dismissed the petition based on the premise that respondents failed to file a motion for reconsideration or an appeal within the 15-day reglementary period, thereby rendering the August 8, 2003 Decision final and executory. Thus, respondents availed of the proper remedy when it sought recourse to the CA *via* a petition for review.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost.[36]

Anent, the main controversy. Simply put, the resolution of the issues advanced by the parties hinges on whether or not the

---

[35] *Carpio v. Sulu Resources Development Corporation*, G.R. No. 148267, August 8, 2002, 387 SCRA 128, 139.

[36] *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission*, G.R. No. 147623, December 13, 2005, 477 SCRA 516, 527.

Order dated June 8, 2001 of the DAR Secretary has become final and executory. A perusal of the pertinent pleadings and documents would reveal that indeed, petitioner was not properly served with a copy of the Order dated June 8, 2001.

Respondents buttressed their claim that petitioner belatedly filed its motion for reconsideration within the period allowed by the Rules on the strength of petitioner's declaration in its Motion to Lift Order of Finality,[37] particularly on the following admission:

> 5. That the undersigned only received said Orders on *17* ***August 2001***.[37-a]

However, analyzing the subject of the said motion, it is clear that petitioner was referring only to the receipt of the Order of Finality dated August 6, 2001[38] and not the Order dated June 8, 2001. Although petitioner cited the dispositive portion of the June 8, 2001 Order, it is apparent that petitioner merely quoted the same from the body of the Order of Finality. Petitioner even erroneously dated the Order to June 2, 2001 instead of June 8, 2001.[39]

Moreover, confirming petitioner's allegation that it did not receive a copy of the June 8, 2001 Order, the DAR Secretary in his Order denying petitioner's motion for reconsideration dated November 5, 2001, categorically stated that petitioner was not furnished a copy of the June 8, 2001 Order, the pertinent part of which reads:

> This Office notes of the Certification of B. De Paz, Officer-in-Charge of this Department's Records Management Division stating that petitioner-movant's counsel was not served a copy of the disputed 8 June 2001 Order due to change in address. In any case, this matter has been addressed with the service of said Order upon petitioner-movant's counsel at his new address.[40]

---

[37] *Rollo*, p. 81.

[37a] *Id.* at 81.

[38] *Id.* at 87.

[39] *Id.* at 81.

[40] CA *rollo*, pp. 54-55.

Based on the foregoing, it was clearly admitted that petitioner was not properly served a copy of the disputed Order and this oversight by the DAR was rectified by subsequently serving a copy of the Order upon petitioner's counsel at his new address. This belated service to petitioner's counsel was coursed through a Letter[41] dated September 4, 2001, from Director Delfin B. Samson of the DAR informing him that the case has already been decided and an order of finality issued. Worthy of note is the statement, "[a]ttached, for reference, are copies thereof being transmitted at your new given address," which, taken together with the statements made by the DAR Secretary in his November 5, 2001 Order, was a manifest indication that petitioner was being served a copy of the June 8, 2001 Order for the first time.

Contrary to petitioner's contention, however, that it received a copy of the June 8, 2001 Order only on September 7, 2001 when it received the letter of Director Delfin B. Samson, it appears that the date stamped on the face of the said letter indicates that it was received on September 10, 2001 and not September 7, 2001. Thus, when petitioner filed its motion for reconsideration on September 14, 2001, it was well within the reglementary period to file the motion.

Hence, contrary to the conclusion of the CA, the June 8, 2001 Order of the DAR Secretary has not attained finality. The Office of the President, therefore, validly entertained petitioner's appeal when the DAR Secretary denied its motion for reconsideration. With the foregoing disquisition, the CA erred in setting aside the decision of the Office of the President on the mistaken conclusion that the DAR Secretary's Orders had attained finality.

Consequently, the determination of whether or not petitioner's landholdings are agricultural land is yet to be determined. As found by the Office of the President in its August 8, 2003 Decision, before the DAR could place a piece of land under

---

[41] *Rollo*, p. 86.

CARP coverage, there must first be a showing that it is an agricultural land, *i.e.*, devoted or suitable for agricultural purposes.

DAR Administrative Order No. 01, Series of 2003, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657,[42] provides:

> 1. Commencement
>
> 1.1 *Commencement by the Municipal Agrarian Reform Officer (MARO)* — After determining that a landholding is coverable under the CARP, and upon accomplishment of the *Pre-Ocular Inspection Report*, the MARO shall prepare the NOC[43] (CARP Form No. 5-1).[44]

Corolarilly, Administrative Order No. 01, Series of 1998,[45] which outlines the steps in the acquisition of lands, details that in the 3rd step, the Department of Agrarian Reform Municipal Office (DARMO) should conduct a "preliminary ocular inspection to determine initially whether or not the property maybe covered under the CARP," which findings will be contained in CARP Form No. 3.a, or the Preliminary Ocular Inspection Report.

From the foregoing, a preliminary ocular inspection is necessary to determine whether or not a subject landholding may be considered under the coverage of the CARP even before a Notice of Coverage is prepared by the MARO.

However, a perusal of the undated CARP Form No. 3.a[46] covering the subject properties would reveal that the appropriate check boxes for "Land Condition/Suitability to Agriculture" on whether the subject properties are "presently being cultivated/

---

[42] Comprehensive Agrarian Reform Law of 1988.

[43] Notice of Coverage.

[44] Emphasis supplied.

[45] Amendments to Administrative Order No. 02, Series of 1996, Entitled, "Revised Rules and Procedures Governing the Acquisition of Agricultural Lands Subject of Voluntary Offer to Sell and Compulsory Acquisition Pursuant to Republic Act No. 6657"

[46] Folder, Office of the President, p. 145.

suitable to agriculture" or are "presently idle/vacant" were not marked. Also, the MARO failed to mark any of the check boxes for "Land Use" to indicate whether the subject properties were sugarland, cornland, un-irrigated riceland, irrigated riceland, or any other classification of agricultural land.

As aptly found by the Office of the President, the importance of conducting an ocular inspection cannot be understated, since it is one of the steps designed to comply with the requirements of administrative due process. The Office of the President stressed this in its Decision, to wit:

> In other words, before the MARO sends a Notice of Coverage to the landowner concerned, he must first conduct a preliminary ocular inspection to determine whether or not the property may be covered under CARP. The foregoing undertaking is reiterated in the latest DAR AO No. 01, s. of 2003, entitled "2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under RA 6657." Section 1 [1.1] thereof provides that:
>
> > "*1.1 Commencement by the Municipal Agrarian Reform Officer (MARO)* — After determining that a landholding is coverable under the CARP, and upon accomplishment of the Pre-Ocular Inspection Report, the MARO shall prepare the NOC (CARP Form No. 5-1)." (NOC stands for Notice of Coverage)

Found on the records of this case is a ready-made form Preliminary Ocular Inspection Report (undated) signed by the concerned MARO. Interestingly, however, the check box allotted for the all-important items "Land Condition/Suitability to Agriculture" and "Land Use' was not filled up. There is no separate report on the record detailing the result of the ocular inspection conducted. These circumstances cast serious doubts on whether the MARO actually conducted an on-site ocular inspection of the subject land. Without an ocular inspection, there is no factual basis for the MARO to declare that the subject land is devoted to or suitable for agricultural purposes, more so, issue Notice of Coverage and Notice of Acquisition.

The importance of conducting an ocular inspection cannot be understated. In the event that a piece of land sought to be placed from CARP coverage is later found unsuitable for agricultural purposes, the landowner concerned is entitled to, and the DAR is

duty bound to issue, a certificate of exemption pursuant to DAR Memorandum Circular No. 34, s. of 1997, entitled "Issuance of Certificate of Exemption for Lands Subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) Found Unsuitable for Agricultural Purposes."

More importantly, the need to conduct ocular inspection to determine initially whether or not the property may be covered under the CARP is one of the steps designed to comply with the requirements of administrative due process. The CARP was not intended to take away property without due process of law (*Development Bank of the Philippines vs. Court of Appeals*, 262 SCRA 245. [1996]). The exercise of the power of eminent domain requires that due process be observed in the taking of private property. In *Roxas & Co., Inc. v. Court of Appeals*, 321 SCRA 106 [1999], the Supreme Court nullified the CARP acquisition proceedings because of the DAR's failure to comply with administrative due process of sending Notice of Coverage and Notice of Acquisition of the landowner concerned.

Considering the claim of appellant that the subject land is not agricultural because it is unoccupied and uncultivated, and no agricultural activity is being undertaken thereon, there is a need for the DAR to ascertain whether or not the same may be placed under CARP coverage.[47]

Thus, the question of whether or not petitioner's properties could be covered by the CARP has not yet been resolved. Until such determination, it follows that petitioner's landholdings cannot be the proper subject of acquisition and eventual distribution to qualified farmer-beneficiaries. However, these involve factual controversies, which are clearly beyond the ambit of this Court. Verily, the review of factual matters is not the province of this Court. The Supreme Court is not a trier of facts, and is not the proper forum for the ventilation and substantiation of factual issues.[48]

Under the circumstances, the directive of the Office of the President for the DAR to ascertain whether or not petitioner's

---

[47] *Rollo*, pp. 120-121.

[48] *Titan Construction Corporation v. David, Sr.*, G.R. No. 169548, March 15, 2010, 615 SCRA 362, 363.

landholdings may be placed under CARP was proper. To be sure, it is the DAR that is procedurally prepared to handle such controversies and is better suited to resolve such factual issues in the exercise of its mandate to implement the CARP and its vested quasi-judicial powers to determine and adjudicate agrarian reform matters.[49]

Consequently, the other issues raised by the parties need not be discussed further.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 86069 are **REVERSED** and **SET ASIDE**. The Decision dated August 8, 2003 and the Order dated July 2, 2004 of the Office of the President are **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172455. February 1, 2012]

ANTONIO CHUA, *petitioner, vs.* **TOTAL OFFICE PRODUCTS AND SERVICES (TOPROS), INC.,** *respondent.*

---

[49] Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1178 dated January 26, 2012.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; GENERALLY, THE CLIENT IS BOUND BY THE MISTAKES OF HIS LAWYER; EXCEPTION; FINDS NO APPLICATION TO THE CASE AT BAR. — It is a well-entrenched rule that generally, the client is bound by the mistakes of his lawyer. To trivialize this rule would bring about a dangerous trend of endless litigation, as parties to a case could simply change counsels and claim that due to some mistake committed by their former counsel, they are entitled to new trial. However, as held in *Hilario v. People*, said general rule admits of certain exceptions, to wit: x x x the exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. x x x If the incompetence, ignorance or inexperience of counsel is so great and **the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court,** the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities. Clearly, for petitioner's case to be considered as an exception to the general rule, it is of utmost importance that the court be convinced that petitioner had a "good cause" in the first place, and it was merely due to his lawyer's gross negligence and incompetence that he was unjustly denied the opportunity to present it. Note, however, that as correctly pointed out by the CA, there is no showing whatsoever that petitioner had such a "good cause."

APPEARANCES OF COUNSEL

Fondevilla Jasarino Young Rondario & Librojo Law Office for petitioner.

Lawyers Advocates Circle for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated December 9, 2005, and the Resolution[2] dated April 6, 2006 denying petitioners' motion for reconsideration, be reversed and set aside.

A close examination of the records would reveal the CA's narration of facts to be accurate, to wit:

As culled from the evidence on records, on December 28, 1999, Total Office Products and Services (TOPROS), Inc. (plaintiff below), through its authorized representative Junnifer A. Ty, filed a complaint for annulment of contract with the court *a quo*. On February 24, 2000, summons was served on Antonio Chua (defendant below). On February 28, 2000, defendant filed a motion to dismiss the complaint, but the same was denied in an order dated August 9, 2000. On September 3, 2000, defendant filed a motion for reconsideration, but the same was denied in an order dated October 6, 2000. [On January 15, 2001, petitioner filed a petition for *certiorari* with the CA assailing the RTC's order denying the motion to dismiss. The CA did not issue a restraining order against the RTC.] Since no answer was filed by defendant, plaintiff filed a motion to declare defendant in default. On April 1, 2001, the court *a quo* issued an order declaring defendant in default and ordering the reception of the plaintiff's evidence *ex-parte*.

Following the presentation of the plaintiff's evidence before a commissioner, the court *a quo* on March 6, 2002 rendered a decision in favor of plaintiff and against defendant, the dispositive portion of which reads, as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:

---

[1] Penned by Court of Appeals Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe (now Supreme Court Associate Justice), concurring.

[2] *Id*.

1. Declaring as null and void and has no legal effect, the loan contract and mortgage contract for being fictitious;

2. Ordering the cancellation of the annotation appearing in TCT Nos. 62352 and 62353 of the Register of Deeds of Quezon City;

3. Ordering the defendant to pay the plaintiff the amount of thirty thousand pesos (₱30,000.00) as reasonable attorney's fees; and

4. Costs of suit.

SO ORDERED.

Defendant filed a motion for reconsideration of the above decision, which the lower court denied in its order dated May 17, 2002. x x x[3]

The afore-quoted judgment was appealed to the CA, but on December 9, 2005, the CA promulgated its Decision dismissing the appeal, thereby affirming the RTC judgment. The CA ruled that the trial court's order declaring herein petitioner in default for failing to file his answer within the time allowed by the rules, is valid and in accordance with Section 3, Rule 9 of the Rules of Court. Petitioner moved for reconsideration of the Decision, but the same was denied per Resolution dated April 6, 2006.

Hence, the present petition before this Court, wherein the main argument is that the CA erred in dismissing the appeal based purely on technical considerations, resulting in petitioner's unjust deprivation of his property without due process of law due to his former counsel's gross negligence.

The petition is devoid of merit.

It is a well-entrenched rule that generally, the client is bound by the mistakes of his lawyer. To trivialize this rule would bring about a dangerous trend of endless litigation, as parties to a case could simply change counsels and claim that due to some mistake committed by their former counsel, they are entitled to new trial.[4]

---

[3] *Rollo,* pp. 19-20.

[4] *Briones v. People*, G.R. No. 156009, June 5, 2009, 588 SCRA 362, 372.

However, as held in *Hilario v. People*,[5] said general rule admits of certain exceptions, to wit:

> x x x the exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. x x x
>
> x x x x x x x x x
>
> If the incompetence, ignorance or inexperience of counsel is so great and **the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court,** the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities.[6] (Emphasis and underscoring supplied)

Clearly, for petitioner's case to be considered as an exception to the general rule, it is of utmost importance that the court be convinced that petitioner had a "good cause" in the first place, and it was merely due to his lawyer's gross negligence and incompetence that he was unjustly denied the opportunity to present it. Note, however, that as correctly pointed out by the CA, there is no showing whatsoever that petitioner had such a "good cause."

Even during proceedings before the trial court, petitioner never presented a strong defense to persuade the court that the interest of justice would be served by the lifting of the default order. On appeal, even if petitioner (appellant below) did not assign errors with regard to the merits of the RTC decision, the CA

---

[5] G.R. No. 161070, April 14, 2008, 551 SCRA 191.

[6] *Id*. at 207-208.

nevertheless painstakingly reviewed the records and came to the conclusion that the evidence sufficiently supported the trial court's judgment in favor of respondent. Finally, in this petition, the arguments revolved mainly around the issue that the trial court should have been more liberal in the application of the rules by lifting the default order. Again, petitioner absolutely failed to show that he had a meritorious defense.

IN VIEW OF THE FOREGOING, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez,[*] *Mendoza* and *Reyes,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 173531. February 1, 2012]

LEONCIO C. OLIVEROS, represented by his heirs,[*] **MOISES DE LA CRUZ,**[**] **and the HEIRS OF LUCIO DELA CRUZ, represented by FELIX DELA CRUZ,** *petitioners, vs.* **SAN MIGUEL CORPORATION, THE REGISTER OF DEEDS OF CALOOCAN CITY, and THE REGISTER OF DEEDS OF VALENZUELA, METRO MANILA,** *respondents.*

---

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per raffle dated January 30, 2012.

[**] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1178 dated January 26, 2012.

[*] Per June 15, 2011 Resolution accepting the heirs' Motion for Substitution of the Deceased Petitioner.

[**] Per the Death Certificate attached to the Petition, Moises Dela Cruz died on March 29, 1997 (*rollo*, p. 45) and is survived by his widow Lucia Dela Cruz and his children Guillermo and Natividad Dela Cruz. The surviving

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; THE PRINCIPLE THAT THE EARLIER TITLE PREVAILS OVER A SUBSEQUENT ONE APPLIES WHEN THERE ARE TWO APPARENTLY VALID TITLES OVER A SINGLE PROPERTY. — The principle that the earlier title prevails over a subsequent one applies when there are two apparently valid titles over a single property. The existence of the earlier valid title renders the subsequent title void because a single property cannot be registered twice. As stated in *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals*, which petitioners themselves cite, "a certificate is not conclusive evidence of title **if it is shown** that the same land had **already been registered** and an earlier certificate for the same **is in existence**." Clearly, a mere allegation of an earlier title will not suffice.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AND APPELLATE COURTS ARE BINDING ON THE SUPREME COURT; CASE AT BAR. — It is elementary that parties have the burden of proving their respective allegations. Since petitioners allege that they have a title which was issued earlier than SMC's title, it was their burden to prove the alleged *existence* and *priority* of their title. The trial and appellate courts' shared conclusion that petitioners' TCT No. T-17186 *does not exist* in the official records is a finding of fact that is binding on this Court. Petitioners have not offered a reason or pointed to evidence that would justify overturning this finding. Neither did they assert that this factual finding is unsubstantiated by the records. Without a title, petitioners cannot assert priority or presumptive conclusiveness.

3. CIVIL LAW; LAND TITLES AND DEEDS; INDEFEASIBILITY OF TITLES; DOES NOT ATTACH TO TITLES SECURED

---

heirs did not move to substitute the deceased petitioner but attached a Special Power of Attorney in favor of their co-heir Guillermo Dela Cruz (Guillermo) to represent them in their appeal (*id.* at 43-44). Their representative Guillermo verified the Petition to this Court thereby voluntarily appearing and submitting himself, on behalf of his co-heirs, to the jurisdiction of the Court (*Spouses De la Cruz v. Joaquin*, 502 Phil. 803, 810 [2005]).

BY FRAUD AND MISREPRESENTATION. — [T]he prohibition against collateral attack does not apply to spurious or non-existent titles, since such titles do not enjoy indefeasibility. "Well-settled is the rule that the indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. In view of these circumstances, it was as if no title was ever issued in this case to the petitioner and therefore this is hardly the occasion to talk of collateral attack against a title."

4. ID.; ID.; ID.; DIRECT ATTACK AND COLLATERAL ATTACK ON TITLES, DISTINGUISHED; A COUNTERCLAIM CAN BE CONSIDERED A DIRECT ATTACK. — "An action or proceeding is deemed an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or to enjoin its enforcement. On the other hand, it is indirect or collateral when, in an action or proceeding to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof." Here, SMC/Ramitex assailed the validity of Oliveros' title as part of its counterclaim in an action to declare SMC/Ramitex's title a nullity. A counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action. Thus, Ramitex's counterclaim can be considered a direct attack on Oliveros' title.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices for petitioners.
Rommel Napoleon M. Lumibao for respondent San Miguel Corp.

D E C I S I O N

DEL CASTILLO, *J.*:

Only holders of valid titles can invoke the principle of indefeasibility of Torrens titles.

Before the Court is a Petition for Review[1] of the April 21, 2006 Decision of the Court of Appeals (CA) in CA-G.R. CV No. 59704, as well as its July 7, 2006 Resolution, denying reconsideration of the assailed Decision. The dispositive portion of the April 21, 2006 Decision reads:

> **WHEREFORE,** the appealed Decision dated August 12, 1997 is affirmed, subject to the modification that the award of attorney's fees is reduced to ₱100,000.00.
>
> **SO ORDERED.**[2]

The CA affirmed the trial court's judgment, which **dismissed** petitioners' complaint for the nullification of the title of San Miguel Corporation's (SMC) predecessor-in-interest, Ramie Textile (Ramitex), Inc., over Lot 1131 of the Malinta Estate and **granted** Ramitex' prayer for the cancellation of petitioner Leoncio C. Oliveros' (Oliveros) title over the subject property.

Factual Antecedents

This case involves a parcel of land known as Lot 1131 (subject property) of the Malinta Estate located in Barrio Bagbaguin of Valenzuela, Metro Manila.

Ramitex bought the subject property from co-owners Tomas Soriano (Soriano) and Concepcion Lozada (Lozada) in 1957. On the basis of such sale, the Register of Deeds of Bulacan (Bulacan RD) cancelled the vendors' Transfer Certificate of Title (TCT) No. 29334[3] and issued TCT No. T-18460 on March 6, 1957 in favor of Ramitex.

Lot 1131 is just one of the 17 lots owned by Ramitex within the Malinta Estate. In 1986, Ramitex consolidated and subdivided its 17 lots within the Malinta Estate into six lots only under Consolidation Subdivision Plan Pcs-13-000535.[4] Lot 1131, which

---

[1] *Rollo,* pp. 11-44.

[2] CA Decision, p. 12; CA *rollo*, p. 237.

[3] Exhibits Folder, pp. 173-175. TCT No. 29334 states that it was entered on February 6, 1947 and cancels TCT No. 29126.

[4] Duly approved by the Bureau of Lands on February 18, 1986 (*Id.* at 176).

contains 8,950 square meters, was consolidated with portions of Lots 1127-A and 1128-B to become consolidated Lot No. 4 (consolidated Lot 4). The consolidated area of Lot 4 is 16,958 square meters. By virtue of this consolidation, the Register of Deeds of Caloocan City (Caloocan RD) cancelled Ramitex' individual title to Lot 1131 (TCT No. T-18460) and issued a new title, TCT No. T-137261, for the consolidated Lot 4.

Troubles began for Ramitex on February 22, 1989, when Oliveros filed a petition[5] in Branch 172 of the Regional Trial Court of Valenzuela (Valenzuela RTC) for the reconstitution of TCT No. T-17186, his alleged title over Lot 1131 of the Malinta Estate (reconstitution case).[6] He claimed that the original copy was destroyed in the fire that gutted the office of the Bulacan RD on March 7, 1987.[7]

Ramitex filed its opposition to Oliveros' petition[8] asserting that TCT No. T-17186 never existed in the records of the Bulacan RD and cannot therefore be reconstituted.[9] The State, through the provincial prosecutor, also opposed on the basis that Oliveros' TCT No. T-17186, which is embodied on a judicial form with Serial Number (Serial No.) 124604, does not come from official sources. The State submitted a certification from the Land Registration Authority (LRA) that its Property Section issued the form with Serial No. 124604 to the Register of Deeds of Davao City (Davao RD), and not to the Bulacan RD, as claimed in Oliveros' alleged title.[10]

In light of Ramitex' opposition and ownership claims over Lot 1131, Oliveros filed a complaint for the declaration of nullity of Ramitex' title over Lot 1131 on November 16, 1990 (nullity case).[11]

---

[5] *Id.* at 12-15.

[6] Docketed as AD 723-V-89.

[7] Complaint in Civil Case No. 3232-V-89 (Records, Vol. I, p. 2).

[8] *Id.*

[9] Exhibits Folder, p. 29.

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

[11] Records, Vol. I, pp. 1-8.

This complaint was docketed as Civil Case No. 3232-V-89 and raffled to Branch 172 of the Valenzuela RTC. Oliveros claimed that he bought the subject property sometime in November 1956 from the spouses Domingo De Leon and Modesta Molina, and pursuant to such sale, the Bulacan RD issued TCT No. T-17186 in his favor on November 14, 1956.

He was joined in the suit by his alleged overseers to Lot 1131, petitioners Moises and Felix Dela Cruz, who were judicially ejected by Ramitex from Lot 1127 two years before.[12]

Oliveros and his co-petitioners alleged that Ramitex did not own Lot 1131 and that its individual title to Lot 1131, TCT No. 18460, was fake and was used by Ramitex to consolidate Lot 1131 with its other properties in the Malinta Estate. They further claimed that the resulting consolidated Lot 4 is not actually a consolidation of several lots but only contains Lot 1131, which belongs to Oliveros. Thus, they asked for the nullification as well of Ramitex' title to consolidated Lot 4,[13] insofar as it unlawfully included Lot 1131.

Given the prejudicial nature of the nullity case on the reconstitution case, the latter was held in abeyance until the resolution of the former.

Ramitex answered that its title over Lot 1131 is valid and claimed continuous possession and ownership of the subject property. It prayed for the dismissal of petitioners' complaint against it for lack of merit.[14] Ramitex counterclaimed that it is Oliveros' title, TCT No. T-17186, that should be cancelled for being spurious and non-existent.

During trial,[15] Oliveros testified that the Bulacan RD lost the original of his alleged title when its office and records were

---

[12] Exhibits Folder, pp. 187-196.

[13] Complaint in Civil Case No. 3232-V-89 (Records, Vol. I, pp. 2-4).

[14] Answer, p. 16; *id.* at 179.

[15] The case was originally resolved in favor of petitioners through a judgment by default. But this judgment was reversed and set aside by the Court of Appeals in CA-G.R. SP No. 20292. The CA ordered the trial court to admit Ramitex' answer and render judgment upon the evidence presented by the parties.

destroyed by fire on March 7, 1987. He presented a certification from the Bulacan RD to the effect that all its records, titles and documents were burned.[16] He also presented a certification from the Caloocan RD to the effect that it did not receive the original certificate of title bearing TCT No. T-17186 from the Bulacan RD, after Presidential Decree No. 824[17] removed jurisdiction over the Municipality of Valenzuela from the Province of Bulacan to Caloocan.[18] The Valenzuela RD likewise certified that it has no record of the original of TCT No. T-17186.[19]

When questioned why the original of his title was not transmitted to the Caloocan RD and the Valenzuela RD when the jurisdiction over the properties of the Malinta Estate was transferred to these offices, Oliveros explained that it was only the titles with new transactions that were transferred. Since his title was dormant, meaning he did not make any transaction on it, it was never trasmitted to the Caloocan or Valenzuela RD.

Notably, Oliveros failed to present his owner's duplicate of TCT No. T-17186 during the entire trial but only presented a machine copy thereof. He claimed that he had already sold Lot 1131 to a certain Nelson Go of DNG Realty and Development Corporation (DNG Realty) in June of 1991,[20] and that the vendee has possession of the owner's duplicate. Oliveros explained that Go would not lend to him the owner's duplicate for presentation to the court because of a pending case for rescission of sale between them.[21] The complaint for rescission alleged that Oliveros deceived and defrauded Nelson Go and DNG Realty by

---

[16] The certification reads: "This is to certify that the Office of the Register of Deeds, Malolos, Bulacan, together with all the titles, documents, officeequipments and supplies have been totally burned during the fire conflagration on March 7, 1987 x x x." (Exhibits Folder, p. 9).

[17] Entitled Creating the Metropolitan Manila and the Metropolitan Manila Commission and for other purposes (Enacted on November 7, 1975).

[18] Exhibits Folder, p. 10.

[19] *Id.* at 11.

[20] *Id.* at 250-252.

[21] Docketed as Civil Case No. 092-13181 (*Id.* at 253-264).

misrepresenting ownership and actual possession of Lot 1131, which turned out to be owned and possessed by Ramitex.[22]

Instead of his owner's duplicate, Oliveros presented a lot data computation[23] from the Land Management Bureau (LMB) as proof that Lot 1131 exists in the public records as comprising 16,958 square meters, not 8,950 as claimed by SMC and Ramitex.[24] He also showed an undated and unapproved survey plan[25] to prove that Lot 1131 was surveyed to contain the said area.[26] As further proof of his ownership, Oliveros presented his tax declarations covering Lot 1131.

With respect to his allegation that Ramitex' title to Lot 1131 is void, Oliveros pointed out that the title does not contain the property's technical description; it was issued on March 6, 1957, the same date that 13 other titles over other lots within the Malinta Estate were issued in favor of Ramitex; and the signatures of the registrar, Soledad B. De Jesus, on the said titles were dubious.[27]

On the other hand, SMC (having substituted[28] Ramitex as party-defendant after buying Ramitex' interests over the subject property[29]) presented officials from various government offices to prove that Oliveros' purported title to Lot 1131 does not actually exist in the official records.

Fortunato T. Pascual (Pascual),[30] who heads the Property Section of the Land Registration Authority,[31] explained that his

---

[22] Complaint in Civil Case No. 092-13181, p. 5; *id.* at 257.

[23] *Id.* at 4-7.

[24] Records, Vol. II, p. 1,314.

[25] Exhibits Folder, p. 8.

[26] Records, Vol. II, p. 1,314.

[27] *Id.* at 1,322.

[28] RTC Order dated October 21, 1994; *id.* at 1,124.

[29] *Id.* at 1,011-1,018.

[30] TSN dated February 22, 1996, p. 3.

[31] Cross examination of Fortunato Pascual, TSN dated March 7, 1996, pp. 7-8.

office supplies all the RDs throughout the country with the blank title forms, called Judicial Form No. 109-D. Starting in 1954, Judicial Forms No. 109-D became accountable forms bearing ***unique*** serial numbers.[32] Once a form is used by a registrar for issuing a land title, the registrar has to account for such forms by submitting a report of consumption (of the title forms) to the LRA.[33] The Property Section of the LRA maintains a record of all the title forms already used by the different registers of deeds.[34] Pascual then testified that, based on the LRA's Record of Consumption of Judical Forms,[35] the LRA issued Judicial Form No. 109-D with Serial No. 124604 to the Davao RD on February 21, 1957, and **not** to the Bulacan RD sometime in 1956, as stated on Oliveros' purported title.[36] As further proof that the Bulacan RD has not been issued a Judicial Form No. 109-D with Serial No. 124604 in November 1956 (as stated in Oliveros' title), Pascual presented the record of consumption that was submitted by the Bulacan RD for the said month and year. The record states that the Bulacan RD consumed or issued 52 pieces of Judicial Form No. 109-D, with serial numbers starting from 113292 up to 113343 only.[37]

Atty. Aludia P. Gadia (Gadia), the Registrar of Davao RD, confirmed Pascual's testimony. She personally conducted the research and verifications from her office records that Judicial Form No. 109-D bearing Serial No. 124604 was used for issuing TCT No. T-7522 on August 8, 1957 in the name of a certain

---

[32] Direct examination of Fortunato Pascual, TSN dated March 7, 1996, pp. 3-5.

[33] Cross examination of Fortunato Pascual, TSN dated March 7, 1996, pp. 6-7.

[34] Direct examination of Fortunato Pascual, TSN dated February 22, 1996, pp. 6-7.

[35] Cross examination of Fortunato Pascual, TSN dated March 7, 1996, pp. 8-9.

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

[37] Re-direct examination of Fortunato Pascual, TSN dated March 7, 1996, pp. 18-19.

Consuelo Javellana, married to Angel Javellana. She presented the cancelled copy of TCT No. T-7522 to the court.[38] Gadia likewise attested to the fact that the serial numbers close to Serial No. 124604 (*e.g.* 124599, 124600, 124601, *etc*.) are all accounted for in Book No. 38 of the Davao RD.[39]

SMC then assailed Oliveros' Tax Declaration (TD) No. B-027-01995 over Lot 1131. It presented Cesar Marquez (Marquez), the municipal assessor of the Municipality of Valenzuela. Marquez testified that TD No. B-027-01995, which on its face states that it covers Lot 1131 with TCT No. T-17186,[40] is actually a revision of TD No. B-027-01170,[41] which covers Lot 1134 of the Malinta Estate with TCT No. T-193116.[42]

Bartolome Garcia, the acting chief of the Realty Tax Division of the Office of the Municipal Treasurer of Valenzuela,[43] corroborated Marquez' testimony that it was only on September 12, 1983[44] that Oliveros started paying real estate taxes, but the said payments were for Lot 1134,[45] not Lot 1131. Per the records of his office, Oliveros began paying taxes for Lot 1131 only on March 12, 1990. On the other hand, Ramitex had been paying realty taxes for Lot 1131 since 1967.[46]

Engineer Ernesto Erive (Engineer Erive), chief of the Surveys Division of the Land Management Sector, testified that the lot data computation and unapproved survey plan presented by

---

[38] Direct examination of Aludia Gadia, TSN dated March 21, 1996, pp. 63-71.

[39] Cross examination of Aludia Gadia, TSN dated March 21, 1996, p. 78.

[40] Exhibits Folder, p. 302.

[41] *Id.* at 301.

[42] *Id.* at 298.

[43] TSN dated March 21, 1996, p. 8.

[44] Direct examination of Bartolome Garcia, TSN dated March 21, 1996, p. 16.

[45] *Id.* at 17.

[46] *Id.* at 13.

Oliveros are used by geodetic engineers for reference purposes only, not for registration purposes.[47]

Engineer Erive also pointed out that Oliveros' title, which describes Lot 1131 as containing 16,958 square meters, is clearly erroneous. According to their office records, Lot 1131 of the Malinta Estate contains 8,950 square meters only. He presented as proof the approved survey plan for Lot 1131, Plan SP-2906. Engineer Erive explained that it was only after the consolidation made by Ramitex that Lot 1131 became a part of consolidated Lot 4 with the consolidated area of 16,958 square meters.[48] Thus, Oliveros' title, unapproved survey plan and lot data computation all contain technical descriptions of the consolidated Lot 4 of Ramitex' Pcs-13-000-535, and not of Lot 1131 of the Malinta Estate.[49]

Engineer Erive dispelled doubts regarding the absence of a technical description on TCT No. (T-18460) T-64433, Ramitex' title over Lot 1131. He explained that such was the usual practice with respect to lots within the Malinta Estate; that titles there usually include only the lot number and the case number.[50]

SMC also debunked the alleged parent title, from which Oliveros' title was derived, TCT No. T-16921. For this purpose, SMC presented Christian Bautista (Bautista), the land registration examiner from the Valenzuela RD, who testified that the only record it has of TCT No. T-16921 pertains to Lot 20-D of the Lolomboy Estate in the name of Beatriz Dela Cruz. It does not pertain to Lot 1131 of the Malinta Estate and is not in the name of Oliveros' alleged transferors, Domingo De Leon and Modesta Molina.[51]

---

[47] Direct examination of Ernesto Erive, TSN dated May 2, 1996, pp. 34-38.

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

[49] Redirect examination of Ernesto Erive, TSN May 16, 1996, pp. 27-32.

[50] Direct examination of Ernesto Erive, TSN dated May 2, 1996, pp. 30-32.

[51] Direct examination of Christian Bautista, TSN dated March 28, 1996, pp. 30-31.

In stark contrast, SMC established its claim to Lot 1131. Bautista presented the original copies of Ramitex' individual titles over the 16 parcels of land within the Malinta Estate, as well as the original titles of the consolidated lots,[52] which are all properly recorded in the Valenzuela RD.[53] Bautista also brought to court TCT No. (T-29334) T-63790, which is the title of Ramitex's alleged predecessors-in-interest to Lot 1131, Soriano and Lozada.[54]

For his rebuttal, Oliveros presented Ramon Vasquez (Vasquez), a record custodian of the LMB assigned to the Escolta Branch.[55] Vasquez testified that their office has a record of an unsigned and undated lot data computation for Lot 1131 of the Malinta Estate in the name of Domingo De Leon.[56] Upon cross examination, however, Vasquez admitted that the Escolta branch had no record of survey plans for the Malinta Estate[57] and that a lot data computation is not used as basis for the registration of land.[58]

Ruling of the Regional Trial Court[59]

The trial court found sufficient evidence to support the conclusion that Oliveros' TCT No. T-17186 does not exist. It gave due credence to the certification of the LRA that Bulacan RD never possessed, hence could never have issued, Judicial Form No. 109-D with Serial No. 124604.[60]

---

[52] *Id.* at 24-32.

[53] *Id.* at 15-22.

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

[55] Cross examination of Ramon Vasquez, TSN dated August 27, 1996, pp. 23 & 27.

[56] Direct examination of Ramon Vasquez, TSN dated August 27, 1996, pp. 14-16.

[57] Cross examination of Ramon Vasquez, TSN dated August 27, 1996, pp. 28-29.

[58] *Id.* at 26.

[59] *Rollo*, pp. 151-162; penned by Judge Floro P. Alejo.

[60] RTC Decision, p. 10, *id.* at 160.

It observed that the certification from the Bulacan RD only proved that its records and documents were destroyed in the fire of March 1987. It did not, in the least, prove that TCT No. T-17186 existed prior to the fire.[61]

Further, Oliveros failed to explain why the parent title of TCT No. T-17186 refers to a lot in the Lolomboy Estate.[62] He did not present the deed of sale allegedly executed in his favor by his vendors Domingo de Leon and Modesta Molina; nor could he produce the correct title, from which his TCT No. T-17186 was derived.[63]

On the other hand, the trial court found overwhelming evidence supporting SMC's claim as to the validity of its title to the subject property. The title from which SMC's predecessor-in-interest Ramitex derived its own title, TCT No. (T-63790) 29334, was in the name of Ramitex' vendors Soriano and Lozada, and was still in existence in the Bulacan RD. Moreover, Entry No. 39069 can be found on the dorsal portion thereof, which corroborates Ramitex' claim that it bought Lot 1131 from the said vendors.[64]

The trial court ruled in favor of SMC, thus:

WHEREFORE, judgment is hereby rendered as follows:

1). Declaring TCT No. T-17186 of Oliveros as not genuine and dismissing the above-entitled case for lack of merit; and

2). Ordering the plaintiffs, jointly and severally, to pay defendant SMC the amount of ₱700,000.00 as attorney's fees, plus the costs of suit.

SO ORDERED.[65]

---

[61] *Id.* at 11; *id.* at 161.

[62] *Id.*; *id.*

[63] *Id.* at 10; *id.* at 160.

[64] *Id.* at 11-12; *id.* at 161-162.

[65] *Id.* at 12; *id.* at 162.

Ruling of the Court of Appeals[66]

Petitioners appealed to the CA. They asked for the reversal of the finding that Oliveros' title over Lot 1131 is spurious and non-existent.[67] Petitioners averred that TCT No. T-17186 was issued earlier than Ramitex' title, contains the technical description for Lot 1131 and is signed by Soledad B. De Jesus, the registrar of the Bulacan RD. Thus, TCT No. T-17186 enjoys the presumption of regularity accorded to every public instrument and thus, cannot be collaterally attacked.[68] Petitioners relied heavily on the alleged conclusiveness of Oliveros' title based on its earlier issuance.[69]

The appellate court affirmed the trial court's Decision.

After reviewing the factual findings of the trial court, the CA agreed that there is no evidence that Oliveros' title came from official sources. On the other hand, SMC adequately established the existence and validity of its title (TCT No. T-18460), as well as those of its predecessors' titles — those of Ramitex (TCT No. T-137261) and Soriano and Lozada (TCT No. 29334).[70] Given that these titles exist in official sources, they are indefeasible unless and until credible evidence is presented to obtain their annulment on grounds of fraud. In this instance, the CA found that Oliveros failed to present such evidence and thus, sustained the validity of SMC's title.

The CA however found the trial court's award of ₱700,000.00 as attorney's fees excessive, and thus reduced the same to ₱100,000.00.[71]

---

[66] CA *rollo*, pp. 226-238; penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon.

[67] Appellants' Brief, p. 25; *id.* at 53.

[68] *Id.* at 27-29; *id.* at 55-57.

[69] *Id.* at 35- 37; *id.* at 63-65.

[70] CA Decision, pp. 11-12; *id.* at 236-237.

[71] *Id.* at 12; *id.* at 237.

Petitioners filed a Motion for Reconsideration,[72] which was denied for lack of merit in the appellate court's July 7, 2006 Resolution.[73]

Hence, this petition.

Petitioners' Arguments[74]

Petitioners insist that the mere existence of Oliveros' earlier title negates the conclusiveness of Ramitex' title.[75] Oliveros' TCT No. T-17186, as the older title, should enjoy presumptive conclusiveness of ownership and indefeasibility of title. Corollarily, Ramitex's title being a later title should have the presumption of invalidity. Thus, SMC has the burden of overcoming this presumption.[76] Oliveros argues that SMC failed to prove the validity of its title, which should be cancelled accordingly.

Petitioners then assail the CA Decision for allowing a collateral attack on Oliveros' title. Since the complaint filed below was for the declaration of nullity of *Ramitex's title*, not Oliveros' title, what occurred below when the trial and appellate courts nullified Oliveros' title was a collateral attack.[77]

Petitioners pray that Oliveros' title over Lot 1131 be declared valid; while that of SMC be declared null and void.

Respondents' Arguments[78]

Respondent SMC argues that the principle of indefeasibility of titles applies only to an existing valid title to the litigated property. In the instant case, SMC showed that Oliveros' title, while claiming priority, is actually spurious; thus, between SMC

---

[72] CA *rollo*, pp. 242-253.

[73] *Id.* at 287.

[74] *Rollo*, pp. 489-527.

[75] Petitioners' Memorandum, 24; *id.* at 512.

[76] *Id.* at 23-24; *id.* at 511-512.

[77] *Id.* at 31-33; *id.* at 519-521.

[78] *Rollo*, pp. 434-486.

and Oliveros, it is only SMC which has a valid title and in whose favor the doctrine of indefeasibility of title applies.

SMC further stresses that Oliveros cannot assert a right by virtue of a title, the existence of which Oliveros cannot establish. By the best evidence rule, the contents of a title can only be proved by presenting the original document. Secondary evidence, such as the ones presented by Oliveros (photocopy of TCT No. T-17186, tax declaration, and unapproved land surveys), are inadmissible until the offeror has laid the predicate for the presentation of secondary evidence. In the instant case, Oliveros failed to lay the predicate for the presentation of secondary evidence. The certifications he presented from the various RDs attest only that their offices do not have a record of TCT No. T-17186. They did not certify that TCT No. T-17186 existed in their records but was destroyed or transferred to another office.

Moreover, Oliveros admits that his owner's duplicate of TCT No. T-17186 is in the possession of his vendee, DNG Realty. Since it is not lost or destroyed, Oliveros is not justified in not presenting it in court. Oliveros' explanation that DNG Realty will not lend him the title is unacceptable because there is legal recourse for such recalcitrance, which is to compel DNG Realty to present the duplicate copy in the instant case through a subpoena *duces tecum*.

Lastly, SMC argues against the validity of Oliveros' title by reiterating the evidence they presented during trial.

Issues

Petitioners present the following issues for this Court's resolution:[79]

1. Whether the CA erred in applying the doctrines of indefeasibility and conclusiveness of title in favor of respondent SMC;

2. Whether the decisions of the CA and the trial court allowed a collateral attack on Oliveros' certificate of title.

---

[79] Petitioner's Memorandum, p. 20; *id.* at 508.

Our Ruling

Petitioners contend that the CA erred in holding that it was their burden to prove the invalidity of SMC's title and that they failed to discharge such burden. They maintain that *the mere existence of a prior title in Oliveros' name* suffices to create the presumption that SMC's title, being the later title, is void.[80] With that presumption, it was incumbent upon SMC to prove the validity of its alleged title.

Petitioners are oversimplifying the rule. The principle that the earlier title prevails over a subsequent one applies when there are two apparently valid titles over a single property. The existence of the earlier valid title renders the subsequent title void because a single property cannot be registered twice. As stated in *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals*,[81] which petitioners themselves cite, "a certificate is not conclusive evidence of title **if it is shown** that the same land had **already been registered** and an earlier certificate for the same **is in existence**." Clearly, a mere allegation of an earlier title will not suffice.

It is elementary that parties have the burden of proving their respective allegations.[82] Since petitioners allege that they have a title which was issued earlier than SMC's title, it was their burden to prove the alleged *existence* and *priority* of their title. The trial and appellate courts' shared conclusion that petitioners' TCT No. T-17186 *does not exist* in the official records is a finding of fact that is binding on this Court. Petitioners have not offered a reason or pointed to evidence that would justify overturning this finding. Neither did they assert that this factual finding is unsubstantiated by the records. Without a title, petitioners cannot assert priority or presumptive conclusiveness.[83]

---

[80] *Id.* at 24; *id.* at 512.

[81] G.R. No. 103558, November 17, 1992, 215 SCRA 783, 788. Emphasis supplied.

[82] RULES ON COURT, Rule 131, Section 1; *Spouses Carpo v. Ayala Land, Incorporated,* G.R. No. 166577, February 3, 2010, 611 SCRA 436, 457.

[83] *De Guzman v. Agbagala,* G.R. No. 163566, February 19, 2008, 546 SCRA 278, 285.

In contrast to petitioners, SMC adequately proved its title to Lot 1131. SMC proved that its and its predecessors' titles to Lot 1131 all exist in the official records, and petitioners failed to present any convincing evidence to cast doubt on such titles. Thus, the CA correctly ruled that SMC's title enjoys presumptive conclusiveness and indefeasibility under the Torrens system.[84]

Petitioners' argument that the ruling of the trial and appellate courts allowed a collateral attack on his title is clearly unmeritorious and easily disposed of.

In the first place, the prohibition against collateral attack does not apply to spurious or non-existent titles, since such titles do not enjoy indefeasibility. "Well-settled is the rule that the indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. In view of these circumstances, it was as if no title was ever issued in this case to the petitioner and therefore this is hardly the occasion to talk of collateral attack against a title."[85]

Moreover, the attack on Oliveros' title was not a collateral attack. "An action or proceeding is deemed an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or to enjoin its enforcement. On the other hand, it is indirect or collateral when, in an action or proceeding to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof."[86]

Here, SMC/Ramitex assailed the validity of Oliveros' title as part of its counterclaim in an action to declare SMC/Ramitex's title a nullity. A counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing

---

[84] *Ramos v. Court of Appeals*, 198 Phil. 263, 269-270 (1982).

[85] *Gregorio Araneta University Foundation v. Regional Trial Court of Kalookan City, Branch 120*, G.R. No. 139672, March 4, 2009, 580 SCRA 532, 541.

[86] *Id.* at 540.

as an independent action.[87] Thus, Ramitex's counterclaim can be considered a direct attack on Oliveros' title.

WHEREFORE, premises considered, the petition is **DENIED**. The April 21, 2006 Decision and the July 7, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 59704 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174941. February 1, 2012]

ANTONIO B. SALENGA and NATIONAL LABOR RELATIONS COMMISSION, *petitioners, vs.* **COURT OF APPEALS and CLARK DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); NLRC RULES OF PROCEDURE; APPEALS MUST BE VERIFIED AND CERTIFIED AGAINST FORUM-SHOPPING BY THE PARTIES-IN-INTEREST THEMSELVES; IN CASE OF CORPORATIONS, A BOARD RESOLUTION IS NECESSARY TO AUTHORIZE ITS OFFICERS AND AGENTS IN FILING AN APPEAL; VIOLATED IN THE CASE AT BAR. — It is clear from the NLRC Rules of Procedure that appeals must be verified and

---

[87] *Agasen v. Court of Appeals*, 382 Phil. 391, 399 (2000).

certified against forum-shopping by the parties-in-interest themselves. x x x A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and have been filed in good faith.

2. ID.; ID.; NLRC RULES OF PROCEDURE; APPEAL; REQUISITES FOR PERFECTION OF AN APPEAL. — Rule VI, Sections 4 to 6 of the NLRC Rules of Procedure, which state: SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; **shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court**, x x x The OGCC failed to produce any valid authorization from the board of directors despite petitioner Salenga's repeated demands. It had been given more than enough opportunity and time to produce the appropriate board resolution, and yet it failed to do so.

3. POLITICAL LAW; ADMINISTRATIVE LAW; NECESSITY FOR GOVERNMENT AGENCIES OR INSTRUMENTALITIES TO EXECUTE THE VERIFICATION AND CERTIFICATE AGAINST FORUM-SHOPPING THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES; EXPLAINED. — In *Constantino-David v. Pangandaman-Gania*, **x x x it becomes necessary to determine whether the petitioning government body has authorized the filing of the petition and is espousing the same stand propounded by the OSG. Verily, it is not improbable for government agencies to adopt a stand different from the position of the OSG since they weigh not just legal considerations but policy repercussions as well. They have their respective mandates for which they are to be held accountable, and the prerogative to determine whether further resort to a higher court is desirable and indispensable under the circumstances. The verification of a pleading, if signed by the proper officials of the client**

agency itself, would fittingly serve the purpose of attesting that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Of course, the OSG may opt to file its own petition as a "People's Tribune" but the representation would not be for a client office but for its own perceived best interest of the State. x x x **The fact that the OSG under the 1987 Administrative Code is the only lawyer for a government agency wanting to file a petition, or complaint for that matter, does not operate *per se* to vest the OSG with the authority to execute in its name the certificate of non-forum shopping for a client office. For, in many instances, client agencies of the OSG have legal departments which at times inadvertently take legal matters requiring court representation into their own hands without the intervention of the OSG. Consequently, the OSG would have no personal knowledge of the history of a particular case so as to adequately execute the certificate of non-forum shopping; and even if the OSG does have the relevant information, the courts on the other hand would have no way of ascertaining the accuracy of the OSG's assertion without precise references in the record of the case. Thus, *unless equitable circumstances which are manifest from the record of a case prevail,* it becomes necessary for the concerned government agency or its authorized representatives to certify for non-forum shopping if only to be sure that no other similar case or incident is pending before any other court.**

4. REMEDIAL LAW; APPEALS; PERFECTION OF AN APPEAL WITHIN THE PERIOD PRESCRIBED BY LAW IS JURISDICTIONAL; THE LAPSE OF THE APPEAL PERIOD DEPRIVES THE COURTS OF JURISDICTION TO ALTER THE FINAL JUDGMENT; CASE AT BAR. — The perfection of an appeal within the period prescribed by law is jurisdictional, and the lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment. Thus, there is no other recourse but to respect the findings and ruling of the labor arbiter. The CA committed grave abuse of discretion in entertaining the Petition filed before it after the NLRC had dismissed the case based on lack of jurisdiction. Thus, LA Darlucio's Decision with respect to the liability of the corporation still stands.

5. MERCANTILE LAW; CORPORATION LAW; GOVERNMENT-OWNED OR-CONTROLLED CORPORATION WITHOUT ORIGINAL CHARTER; CLARK DEVELOPMENT CORPORATION; NOT UNDER THE CIVIL SERVICE LAWS ON RETIREMENT; EXPLAINED. — Respondent CDC owes its existence to Executive Order No. 80 issued by then President Fidel V. Ramos. It was meant to be the implementing and operating arm of the Bases Conversion and Development Authority (BCDA) tasked to manage the Clark Special Economic Zone (CSEZ). Expressly, respondent was formed in accordance with Philippine corporation laws and existing rules and regulations promulgated by the SEC pursuant to Section 16 of Republic Act (R.A.) 7227. CDC, a government-owned or -controlled corporation without an original charter, was incorporated under the Corporation Code. Pursuant to Article IX-B, Sec. 2(1), the civil service embraces only those government-owned or -controlled corporations with original charter. As such, respondent CDC and its employees are covered by the Labor Code and not by the Civil Service Law.

APPEARANCES OF COUNSEL

Defensor Lantion Villamor & Tolentino Law Offices for petitioners.

Jose Cornelio Lukban for respondents.

D E C I S I O N

SERENO, *J.*:

The present Petition for *Certiorari* under Rule 65 assails the Decision[1] of the Court of Appeals (CA) promulgated on 13 September 2005, dismissing the Complaint for illegal dismissal filed by petitioner Antonio B. Salenga against respondent Clark Development Corporation (CDC). The dispositive portion of the assailed Decision states:

---

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Romeo A. Brawner and Jose C. Mendoza concurring; *rollo*, pp. 240-254.

WHEREFORE, premises considered, the original and supplemental petitions are **GRANTED**. The assailed resolutions of the National Labor Relations Commission dated September 10, 2003 and January 21, 2004 are **ANNULLED** and **SET ASIDE**. The complaint filed by Antonio B. Salenga against Clark Development is **DISMISSED**. Consequently, Antonio B. Salenga is ordered to restitute to Clark Development Corporation the amount of ₱3,222,400.00, which was received by him as a consequence of the immediate execution of said resolutions, plus interest thereon at the rate of 6% per annum from date of such receipt until finality of this judgment, after which the interest shall be at the rate of 12% per annum until said amount is fully restituted.

SO ORDERED.[2]

The undisputed facts are as follows:

On 22 September 1998, President/Chief Executive Officer (CEO) Rufo Colayco issued an Order informing petitioner that, pursuant to the decision of the board of directors of respondent CDC, the position of head executive assistant — the position held by petitioner — was declared redundant. Petitioner received a copy of the Order on the same day and immediately went to see Colayco. The latter informed him that the Order had been issued as part of the reorganization scheme approved by the board of directors. Thus, petitioner's employment was to be terminated thirty (30) days from notice of the Order.

On 17 September 1999, petitioner filed a Complaint for illegal dismissal with a claim for reinstatement and payment of back wages, benefits, and moral and exemplary damages against respondent CDC and Colayco. The Complaint was filed with the National Labor Relations Commission-Regional Arbitration Branch (NLRC-RAB) III in San Fernando, Pampanga. In defense, respondents, represented by the Office of the Government Corporate Counsel (OGCC), alleged that the NLRC had no jurisdiction to entertain the case on the ground that petitioner was a corporate officer and, thus, his dismissal was an intra-corporate matter falling properly within the jurisdiction of the Securities and Exchange Commission (SEC).

---

[2] *Id.* at 253.

On 29 February 2000, labor arbiter (LA) Florentino R. Darlucio issued a Decision[3] in favor of petitioner Salenga. First, the LA held that the NLRC had jurisdiction over the Complaint, considering that petitioner was not a corporate officer but a managerial employee. He held the position of head executive assistant, categorized as a Job Level 12 position, not subject to election or appointment by the board of directors.

Second, the LA pointed out that respondent CDC and Colayco failed to establish a valid cause for the termination of petitioner's employment. The evidence presented by respondent CDC failed to show that the position of petitioner was superfluous as to be classified "redundant." The LA further pointed out that respondent corporation had not disputed the argument of petitioner Salenga that his position was that of a regular employee. Moreover, the LA found that petitioner had not been accorded the right to due process. Instead, the latter was dismissed without the benefit of an explanation of the grounds for his termination, or an opportunity to be heard and to defend himself.

Finally, considering petitioner's reputation and contribution as a government employee for 40 years, the LA awarded moral damages amounting to ₱2,000,000 and exemplary damages of ₱500,000. The dispositive portion of the LA's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring respondent Clark Development Corporation and Rufo Colayco guilty of illegal dismissal and for which they are ordered, as follows:

1. To reinstate complainant to his former or equivalent position without loss of seniority rights and privileges;

2. To pay complainant his backwages reckoned from the date of his dismissal on September 22, 1998 until actual reinstatement or merely reinstatement in the payroll which as of this date is in the amount of ₱722,400.00;

3. To pay complainant moral damages in the amount of ₱2,000,000.00; and,

---

[3] *Id.* at 577-604.

4. To pay complainant exemplary damages in the amount of ₱500,000.00.

SO ORDERED.[4]

At the time the above Decision was rendered, respondent CDC was already under the leadership of Sergio T. Naguiat. When he received the Decision on 10 March 2000, he subsequently instructed Atty. Monina C. Pineda, manager of the Corporate and Legal Services Department and concurrent corporate board secretary, not to appeal the Decision and to so inform the OGCC.[5]

Despite these instructions, two separate appeals were filed before LA Darlucio on 20 March 2000. One appeal[6] was from the OGCC on behalf of respondent CDC and Rufo Colayco. The OGCC reiterated its allegation that petitioner was a corporate officer, and that the termination of his employment was an intra-corporate matter. The Memorandum of Appeal was verified and certified by Hilana Timbol-Roman, the executive vice president of respondent CDC. The Memorandum was accompanied by a UCPB General Insurance Co., Inc. *supersedeas* bond covering the amount due to petitioner as adjudged by LA Darlucio. Timbol-Roman and OGCC lawyer Roy Christian Mallari also executed on 17 March 2000 a Joint Affidavit of Declaration wherein they swore that they were the "respective authorized representative and counsel" of respondent corporation. However, **the Memorandum of Appeal and the Joint Affidavit of Declaration were not accompanied by a board resolution from respondent's board of directors authorizing either Timbol-Roman or Atty. Mallari, or both, to pursue the case or to file the appeal on behalf of respondent**.

It is noteworthy that Naguiat, who was president/CEO of respondent CDC from 3 February 2000 to 5 July 2000, executed an Affidavit on 20 March 2002,[7] wherein he stated that without

---

[4] *Id.* at 603-604.

[5] *Id.* at 688.

[6] *Id.* at 647-658.

[7] *Id.* at 606-607.

his knowledge, consent or approval, Timbol-Roman and Atty. Mallari filed the above-mentioned appeal. He further alleged that their statements were false.

The second appeal, meanwhile, was filed by former CDC President/CEO Rufo Colayco. Colayco alleged that petitioner was dismissed not on 22 September 1998, but twice on 9 March 1999 and 23 March 1999. The dismissal was allegedly approved by respondent's CDC board of directors pursuant to a new organizational structure. Colayco likewise stated that he had posted a *supersedeas* bond — the same bond taken out by Timbol-Roman — issued by the UCPB General Insurance Co. dated 17 March 2000 in order to secure the monetary award, exclusive of moral and exemplary damages.

Petitioner thereafter opposed the two appeals on the grounds that both appellants, respondent CDC — as allegedly represented by Timbol-Roman and Atty. Mallari — and Rufo Colayco had failed to observe Rule VI, Sections 4 to 6 of the NLRC Rules of Procedure; and that appellants had not been authorized by respondent's board of directors to represent the corporation and, thus, they were not the "employer" whom the Rules referred to. Petitioner also alleged that appellants failed to refute the findings of LA Darlucio in the previous Decision.

In the meantime, while the appeal was pending, on 19 October 2000, respondent's board chairperson and concurrent President/CEO Rogelio L. Singson ordered the reinstatement of petitioner to the latter's former position as head executive assistant, effective 24 October 2000.[8]

On 28 May 2001, respondent CDC's new President/CEO Emmanuel Y. Angeles issued a Memorandum, which offered all managers of respondent corporation an early separation/redundancy program. Those who wished to avail themselves of the program were to be given the equivalent of their 1.25-month basic salary for every year of service and leave credits computed on the basis of the same 1.25-month equivalent of their basic salary.[9]

---

[8] *Id.* at 739.

[9] *Id.* at 743.

In August 2001, respondent CDC offered another retirement plan granting higher benefits to the managerial employees. Thus, on 12 September 2001, petitioner filed an application for the early retirement program, which Angeles approved on 3 December 2001.

Meanwhile, in the proceedings of the NLRC, petitioner received on 12 September 2001 its 30 July 2001 Decision[10] on the appeal filed by Timbol-Roman and Colayco. It is worthy to note that the said Decision referred to the reports of reviewer arbiters Cristeta D. Tamayo and Thelma M. Concepcion, who in turn found that petitioner Salenga was a corporate officer of CDC. Nevertheless, the First Division of the NLRC upheld LA Darlucio's ruling that petitioner Salenga was indeed a regular employee. It also found that redundancy, as an authorized cause for dismissal, has not been sufficiently proven, rendering the dismissal illegal. However, the NLRC held that the award of exemplary and moral damages were unsubstantiated. Moreover, it also dropped Colayco as a respondent to the case, since LA Darlucio had failed to provide any ground on which to anchor the former's solidary liability.

Petitioner Salenga thereafter moved for a partial reconsideration of the above-mentioned Decision. He sought the reinstatement of the award of exemplary and moral damages. He likewise insisted that the NLRC should not have entertained the appeal on the following grounds: (1) respondent CDC did not file an appeal and did not post the required cash or surety bond; (2) both Timbol-Roman and Colayco were admittedly not real parties-in-interest; (3) they were not the employer or the employer's authorized representative and, thus, had no right to appeal; and (4) both appeals had not been perfected for failure to post the required cash or surety bond. In other words, petitioner's theory revolved on the fact that neither Timbol-Roman nor Colayco was authorized to represent the corporation, so the corporation itself did not appeal LA Darlucio's Decision. As a result, that Decision should be considered as final and executory.

---

[10] Penned by Commissioner Vicente S.E. Veloso, with Commissioners Roy V. Señeres and Alberto R. Quimpo concurring; *id.* at 810-830.

For its part, the OGCC also filed a Motion for Reconsideration[11] of the NLRC's 30 July 2001 Decision insofar as the finding of illegal dismissal was concerned. **It no longer questioned the commission's finding that petitioner was a regular employee**, but instead insisted that he had been dismissed as a consequence of his redundant position. The motion, however, was not verified by the duly authorized representative of respondent CDC.

On 5 December 2002, the NLRC denied petitioner Salenga's Motion for Partial Reconsideration and dismissed the Complaint. The dispositive portion of the Resolution[12] reads as follows:

> **WHEREFORE**, complainant's partial motion for reconsideration is denied. As recommended by Reviewer Arbiters Cristeta D. Tamayo in her August 2, 2000 report and Thelma M. Concepcion in her November 25, 2002 report, the decision of Labor Arbiter Florentino R. Darlucio dated 29 February 2000 is set aside.
>
> The complaint below is dismissed for being without merit.
>
> **SO ORDERED**.[13]

Meanwhile, pending the Motions for Reconsideration of the NLRC's 30 July 2001 Decision, another issue arose with regard to the computation of the retirement benefits of petitioner. Respondent CDC did not immediately give his requested retirement benefits, pending clarification of the computation of these benefits. He claimed that the computation of his retirement benefits should also include the forty (40) years he had been in government service in accordance with Republic Act No. (R.A.) 8291, or the GSIS Act, and should not be limited to the length of his employment with respondent corporation only, as the latter insisted.

In a letter dated 14 March 2003, petitioner Salenga's counsel wrote to the board of directors of respondent to follow up the payment of the retirement benefits allegedly due to petitioner.[14]

---

[11] *Id.* at 1142-1146.

[12] *Id.* at 862-875.

[13] *Id.* at 874.

[14] *Id.* at 955-959.

Pursuant to the NLRC's dismissal of the Complaint of petitioner Salenga, Angeles subsequently denied the former's request for his retirement benefits, to wit:[15]

> Please be informed that we cannot favorably grant your client's claim for retirement benefits considering that Clark Development Corporation's dismissal of Mr. Antonio B. Salenga had been upheld by the National Labor Relations Commission through a Resolution dated December 5, 2002 . . .
>
> x x x x x x x x x
>
> As it is, the said Resolution dismissed the Complaint filed by Mr. Salenga for being without merit. Consequently, he is not entitled to receive any retirement pay from the corporation.

Meanwhile, petitioner Salenga filed a second Motion for Reconsideration of the 5 December 2002 Resolution of the NLRC, reiterating his claim that it should not have entertained the imperfect appeal, absent a proper verification and certification against forum-shopping from the duly authorized representative of respondent CDC. Without that authority, neither could the OGCC act on behalf of the corporation.

The OGCC, meanwhile, resurrected its old defense that the NLRC had no jurisdiction over the case, because petitioner Salenga was a corporate officer.

The parties underwent several hearings before the NLRC First Division. During these times, petitioner Salenga demanded from the OGCC to present a board resolution authorizing it or any other person to represent the corporation in the proceedings. This, the OGCC failed to do.

After giving due course to the Motion for Reconsideration filed by petitioner Salenga, the NLRC issued a Resolution[16] on 10 September 2003, partially granting the motion. This time, the First Division of the NLRC held that, absent a board resolution

---

[15] *Id.* at 961.

[16] Penned by Commissioner Roy V. Señeres, with Commissioners Romeo L. Go and Victoriano R. Calaycay concurring, *id.* at 1162-1174.

authorizing Timbol-Roman to file the appeal on behalf of respondent CDC, the appeal was not perfected and was thus a mere scrap of paper. In other words, the NLRC had no jurisdiction over the appeal filed before it.

The NLRC further held that respondent CDC had failed to show that petitioner Salenga's dismissal was pursuant to a valid corporate reorganization or board resolution. It also deemed respondent estopped from claiming that there was indeed a redundancy, considering that petitioner Salenga had been reinstated to his position as head executive assistant. While it granted the award of moral damages, it nevertheless denied exemplary damages. Thus, the dispositive portion of its Decision reads:

WHEREFORE, premises considered, the complainant's Motion for Reconsideration is GRANTED and We set aside our Resolution of December 5, 2002. The Decision of the Labor Arbiter dated February 29, 2000 is REINSTATED with the MODIFICATION that:

1.) Being a nominal party, respondent Rufo Colayco is declared to be not jointly and severally liable with respondent Clark Development Corporation;

2.) Respondent Clark Development Corporation is ordered to pay the complainant his full backwages and other monetary claims to which he is entitled under the decision of the Labor Arbiter;

3.) Respondent CDC is likewise ordered to pay the complainant moral and exemplary damages as provided under the Labor Arbiter's Decision; and

4.) All other money claims are DENIED for lack of merit.

In the meantime, respondent CDC is ordered to pay the complainant his retirement benefits without further delay.

SO ORDERED.[17]

On 3 October 2003, the OGCC filed a Motion for Reconsideration[18] despite the absence of a verification and the certification against forum shopping.

---

[17] *Id.* at 1173-1174.

[18] *Id.* at 1176-1209.

On 21 January 2004, the motion was denied by the NLRC for lack of merit.[19]

On 5 February 2004, the executive clerk of the NLRC First Division entered the judgment on the foregoing case. Thereafter, on 9 February 2004, the NLRC forwarded the entire records of the case to the NLRC-RAB III Office in San Fernando, Pampanga for appropriate action.

On 4 March 2004, petitioner Salenga filed a Motion for Issuance of Writ of Execution before the NLRC-RAB III, Office of LA Henry D. Isorena. The OGCC opposed the motion on the ground that it had filed with the CA a Petition for *Certiorari* seeking the reversal of the NLRC Decision dated 30 July 2001 and the Resolutions dated 10 September 2003 and 21 January 2004, respectively. It is noteworthy that, again, there was no board resolution attached to the Petition authorizing its filing.

Despite the pending Petition with the CA, LA Isorena issued a Writ of Execution enforcing the 10 September 2003 Resolution of the NLRC. On 1 April 2004, the LA issued an Order[20] to the manager of the Philippine National Bank, Clark Branch, Angeles City, Pampanga, to immediately release in the name of NLRC-RAB III the amount of ₱3,222,400 representing partial satisfaction of the judgment award, including the execution fee of ₱31,720.

Respondent CDC filed with the CA in February 2004 a Petition for *Certiorari* with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. However, the Petition still lacked a board resolution from the board of directors of respondent corporation authorizing its then President Angeles to verify and certify the Petition on behalf of the board. It was only on 16 March 2004 that counsel for respondent filed a Manifestation/Motion[21] with an attached Secretary's Certificate containing the board's Resolution No. 86, Series of 2001. The Resolution authorized Angeles to represent respondent corporation

---

[19] *Id.* at 1212.

[20] *Id.* at 1467.

[21] *Id.* at 1458-1461.

in prosecuting, maintaining, or compromising any lawsuit in connection with its business.

Meanwhile, in the proceedings before LA Isorena, both respondent CDC's legal department and the OGCC on 6 April 2004 filed their respective Motions to Quash Writ of Execution.[22] They both cited the failure to afford to respondent due process in the issuance of the writ. They claimed that the pre-conference hearing on the execution of the judgment had not pushed through. They also reiterated that the Petition for *Certiorari* dated 11 February 2004 was still pending with the CA.

Both motions were denied by LA Isorena for lack of factual and legal bases.

On 6 May 2004, respondent filed with LA Isorena another Motion to Quash Writ of Execution, again reiterating the pending Petition with the CA.

This active exchange of pleadings and motions and the delay in the payment of his money claims eventually led petitioner Salenga to file an Omnibus Motion[23] before LA Isorena. In his motion, he recomputed the amount due him representing back wages, other benefits or allowances, legal interests and attorney's fees. He also prayed for the computation of his retirement benefits plus interests in accordance with R.A. 8291[24] and R.A. 1616.[25] He insisted that since respondent CDC was a government-owned and -controlled corporation (GOCC), his previous government service totalling 40 years must also be credited in the computation of his retirement pay. Thus, he demanded the payment of the total amount of ₱23,920,772.30, broken down as follows:

		(In Philippine peso)
A.	From the illegal dismissal suit:	
	a. Recomputed award	3,758,786
	b. Legal interest	5,089,342.58

[22] *Id.* at 1472.

[23] *Id.* at 1504-1530.

[24] Philippine Government Service Insurance System Act of 1997.

[25] Amending Commonwealth Act No. 186, or the Government Service Insurance Act.

	c. Attorney's fees	1,196,052.80
	d. Litigation expenses	250,000
B.	Retirement pay	
	a. Retirement gratuity	6,987,944
	b. Unused vacation and sick leave	1,440,328
	c. Legal interest	4,050,544.96
	d. Attorney's fees	1,147,781.90

On 11 May 2004, the CA issued a Resolution[26] ordering petitioner Salenga to comment on the Petition and holding in abeyance the issuance of a temporary restraining order.

The parties thereafter filed their respective pleadings.

On 19 July 2004, the CA temporarily restrained the NLRC from enforcing the Decision dated 29 February 2000 for a period of 60 days.[27] After the lapse of the 60 days, LA Isorena issued a Notice of Hearing/Conference scheduled for 1 October 2004 on petitioner's Omnibus Motion dated 7 May 2004.

Meanwhile, on 24 September 2004, the CA issued another Resolution,[28] this time denying the application for the issuance of a writ of preliminary injunction, after finding that the requisites for the issuance of the writ had not been met.

Respondent CDC subsequently filed a Supplemental Petition[29] with the CA, challenging the computation petitioner Salenga made in his Omnibus Motion filed with the NLRC. Respondent alleged that the examiner had erred in including the other years of government service in the computation of retirement benefits. It claimed that, since respondent corporation was created under the Corporation Code, petitioner Salenga was not covered by civil service laws. Hence, his retirement benefits should only be limited to the number of years he had been employed by respondent.

---

[26] *Rollo,* p. 1498.

[27] *Id.* at 1931-1932.

[28] *Id.* at 1975-1976.

[29] *Id.* at 1983-1991.

Subsequently, respondent CDC filed an Omnibus Motion[30] to admit the Supplemental Petition and to reconsider the CA's Resolution denying the issuance of a writ of preliminary injunction. In the motion, respondent alleged that petitioner Salenga had been more than sufficiently paid the amounts allegedly due him, including the award made by LA Darlucio. On 12 March 2002, respondent CDC had issued a check amounting to ₱852,916.29, representing petitioner's retirement pay and terminal pay. Meanwhile, on 2 April 2004, ₱3,254,120 representing the initial award was debited from the account of respondent CDC.

On 7 February 2005, respondent CDC filed a Motion[31] once again asking the CA to issue a writ of preliminary injunction in the light of a scheduled 14 February 2005 conference called by LA Mariano Bactin, who had taken over the case from LA Isorena.

At the 14 February 2005 hearing, the parties failed to reach an amicable settlement and were thus required to submit their relevant pleadings and documents in support of their respective cases.

On 16 February 2005, the CA issued a Resolution[32] admitting the Supplemental Petition filed by respondent, but denying the prayer for the issuance of an injunctive writ.

Thereafter, on 8 March 2005, LA Bactin issued an Order[33] resolving the Omnibus Motion filed by petitioner Salenga for the recomputation of the monetary claims due him. In the Order, LA Bactin denied petitioner's Motion for the recomputation of the award of back wages, benefits, allowances and privileges based on the 29 February 2000 Decision of LA Darlucio. LA Bactin held that since the Decision had become final and executory, he no longer had jurisdiction to amend or to alter the judgment.

---

[30] *Id.* at 1978-1982.

[31] *Id.* at 2154-2155.

[32] *Id.* at 2206-2207.

[33] *Id.* at 2240-2257.

Anent the second issue of the computation of retirement benefits, LA Bactin also denied the claim of petitioner Salenga, considering that the latter's retirement benefits had already been paid. The LA, however, did not rule on whether petitioner was entitled to retirement benefits, either under the Government Service Insurance System (GSIS) or under the Social Security System (SSS), and held that this issue was beyond the expertise and jurisdiction of a LA.

Petitioner Salenga thereafter appealed to the NLRC, which granted the appeal in a Resolution[34] dated 22 July 2005. First, it was asked to resolve the issue of the propriety of having the Laguesma Law Office represent respondent CDC in the proceedings before the LA. The said law firm entered its appearance as counsel for respondent during the pre-execution conference/hearing on 1 October 2004. On this issue, the NLRC held that respondent corporation's legal department, which had previously been representing the corporation, was not validly substituted by the Laguesma Law Office. In addition, the NLRC held that respondent had failed to comply with Memorandum Circular No. 9, Series of 1998, which strictly prohibits the hiring of lawyers of private law firms by GOCCs without the prior written conformity and acquiescence of the Office of Solicitor General, as the case may be, and the prior written concurrence of the Commission on Audit (COA). Thus, the NLRC held that all actions and submissions undertaken by the Laguesma Law Office on behalf of respondent were null and void.

The second issue raised before the NLRC was whether LA Bactin acted without jurisdiction in annulling and setting aside the former's final and executory judgment contained in its 10 September 2003 Resolution, wherein it held that the appeal had not been perfected, absent the necessary board resolution allowing or authorizing Timbol-Roman and Atty. Mallari to file the appeal. On this issue, the NLRC stated:

The final and executory judgment in this case is clearly indicated in the dispositive portion of Our Resolution promulgated on

---

[34] *Id.* at 2260-2275.

September 10, 2003 GRANTING complainant's motion for reconsideration, SETTING ASIDE Our Resolution of December 5, 2002, and REINSTATING the Decision of the Labor Arbiter dated February 29, 2000 with the following modification[s]: (1) declaring respondent Rufo Colayco not jointly and severally liable with respondent Clark Development Corporation; (2) ordering respondent CDC to pay the complainant his full backwages and other monetary claims to which he is entitled under the decision of the Labor Arbiter; (3) ordering respondent CDC to pay complainant moral and exemplary damages as provided under the Labor Arbiter's Decision; and (4) ordering respondent CDC to pay the complainant his retirement benefits without further delay. This was entered in the Book of Entry of Judgment as final and executory effective as of February 2, 2004.

Implementing this final and executory judgment, Arbiter Isorena issued an Order dated May 24, 2004, DENYING respondent's Motion to Quash the Writ of Execution dated March 22, 2004, *correctly* stating thusly:

> "Let it be stressed that once a decision has become final and executory, it becomes the ministerial duty of this Office to issue the corresponding writ of execution. The rationale behind it is based on the fact that the winning party has suffered enough and it is the time for him to enjoy the fruits of his labor with dispatch. The very purpose of the pre-execution conference is to explore the possibility for the parties to arrive at an amicable settlement to satisfy the judgment award speedily, not to delay or prolong its implementation."

Thus, when Arbiter Bactin, who took over from Arbiter Isorena upon the latter's filing for leave of absence due to poor health in January 2005, issued the appealed Order nullifying, instead of implementing, the final and executory judgment of this Commission, the labor arbiter *a quo* acted WITHOUT JURISDICTION.[35]

x x x x x x x x x

WHEREFORE, premises considered, the appeal of herein complainant is hereby GRANTED, and We declare NULL AND VOID the appealed Order of March 8, 2005 and SET ASIDE said Order; We direct the immediate issuance of the corresponding Alias

---

[35] *Id.* at 2264-2265.

Writ of Execution to enforce the final and executory judgment of this Commission as contained in Our September 10, 2003 Resolution.

SO ORDERED.[36]

Unwilling to accept the above Resolution of the NLRC, the Laguesma Law Office filed a Motion for Reconsideration dated 29 August 2005 with the NLRC. Again, the motion lacked proper verification and certification against non-forum shopping.

In the meantime, the OGCC also filed with the CA a Motion for the Issuance of a Writ of Preliminary Injunction dated 30 August 2005[37] against the NLRC's 22 July 2005 Resolution. The OGCC alleged that the issues in the Resolution addressed monetary claims that were raised by petitioner Salenga only in his Omnibus Motion dated 7 May 2004 or after the issuance of the 10 September 2003 Decision of LA Darlucio. Thus, the OGCC insisted that the NLRC had no jurisdiction over the issue, for the matter was still pending with the CA.

The OGCC likewise filed another Motion for Reconsideration[38] dated 31 August 2005 with the NLRC. The OGCC maintained that it was only acting in a collaborative manner with the legal department of respondent CDC, for which the former remained the lead counsel. The OGCC reiterated that, as the statutory counsel of GOCCs, it did not need authorization from them to maintain a case, and thus, LA Bactin had jurisdiction over that case. Finally, it insisted that petitioner Salenga was not covered by civil service laws on retirement, the CDC having been created under the Corporation Code.

On 13 September 2005, the CA promulgated the assailed Decision. Relying heavily on the reports of Reviewer Arbiters Cristeta D. Tamayo and Thelma M. Concepcion, it held that petitioner Salenga was a corporate officer. Thus, the issue before the NLRC was an intra-corporate dispute, which should have

---

[36] *Id.* at 2274.

[37] *Id.* at 2277-2281

[38] *Id.* at 2299-2318.

been lodged with the Securities and Exchange Commission (SEC), which had jurisdiction over the case at the time the issue arose. The CA likewise held that the NLRC committed grave abuse of discretion when it allowed and granted petitioner Salenga's second Motion for Reconsideration, which was a prohibited pleading.

Petitioner subsequently filed a Motion for Reconsideration on 7 October 2005, alleging that the CA committed grave abuse of discretion in reconsidering the findings of fact, which had already been found to be conclusive against respondent; and in taking cognizance of the latter's Petition which had not been properly verified.

The CA, finding no merit in petitioner's allegations, denied the motion in its 17 August 2006 Resolution.

On 4 September 2006, petitioner Salenga filed a Motion for Extension of Time to File a Petition for Review on *Certiorari* under Rule 45, praying for an extension of fifteen (15) days within which to file the Petition. The motion was granted through this Court's Resolution dated 13 September 2006. The case was docketed as G.R. No. 174159.

On 25 September 2006, however, petitioner filed a Manifestation[39] withdrawing the motion. He manifested before us that he would instead file a Petition for *Certiorari* under Rule 65, which was eventually docketed as G.R. No. 174941. On 7 July 2008, this Court, through a Resolution, considered the Petition for Review in G.R. No. 174159 closed and terminated.

Petitioner raises the following issues for our resolution:

I.

The Court of Appeals acted without jurisdiction in reviving and re-litigating the factual issues and matters of petitioner's illegal dismissal and retirement benefits.

---

[39] *Id.* at 30-35.

II.

The Court of Appeals had no jurisdiction to entertain the original Petition as a remedy for an appeal that had actually not been filed, absent a board resolution allowing the appeal.

III.

The Court of Appeals acted with grave abuse of discretion when it did the following:

a. It failed to dismiss the original and supplemental Petitions despite the lack of a board resolution authorizing the filing thereof.

b. It failed to dismiss the Petitions despite the absence of a proper verification and certification against non-forum shopping.

c. It failed to dismiss the Petitions despite respondent's failure to inform it of the pending proceedings before the NLRC involving the same issues.

d. It failed to dismiss the Petitions on the ground of forum shopping.

e. It did not dismiss the Petition when respondent failed to attach to it certified true copies of the assailed NLRC 30 July 2001 Decision; 10 September 2003 Resolution; 21 January 2004 Resolution; copies of material portions of the record as are referred to therein; and copies of pleadings and documents relevant and pertinent thereto.

f. It did not act on respondent's failure to serve on the Office of the Solicitor General a copy of the pleadings, motions and manifestations the latter had filed before the Court of Appeals, as well as copies of pertinent court resolutions and decisions, despite the NLRC being a party to the present case.

g. It disregarded the findings of fact and conclusions of law arrived at by LA Darlucio, subjecting them to a second analysis and evaluation and supplanting them with its own findings.

h. It granted the Petition despite respondent's failure to show that the NLRC committed grave abuse of discretion

in rendering the latter's 30 July 2001 Decision, 10 September 2003 Resolution and 21 January 2004 Resolution.

i. It dismissed the complaint for illegal dismissal and ordered the restitution of the ₱3,222,400 already awarded to petitioner, plus interest thereon.

In its defense, private respondent insists that the present Petition for *Certiorari* under Rule 65 is an improper remedy to question the Decision of the CA, and thus, the case should be dismissed outright. Nevertheless, it reiterates that private petitioner was a corporate officer whose employment was dependent on board action. As such, private petitioner's employment was an intra-corporate controversy cognizable by the SEC, not the NLRC. Private respondent also asserts that it has persistently sought the reversal of LA Darlucio's Decision by referring to the letters sent to the OGCC, as well as Verification and Certificate against forum-shopping. However, these documents were signed only during Angeles' time as private respondent's president/CEO, and not of the former presidents. Moreover, private respondent contends that private petitioner is not covered by civil service laws, thus, his years in government service are not creditable for the purpose of determining the total amount of retirement benefits due him. In relation to this, private respondent enumerates the amounts already paid to private petitioner.

The Court's Ruling

The Petition has merit.

This Court deigns it proper to collapse the issues in this Petition to simplify the matters raised in what appears to be a convoluted case. First, we need to determine whether the NLRC and the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, when they entertained respondent's so-called appeal of the 29 February 2000 Decision rendered by LA Darlucio.

Second, because of the turn of events, a second issue — the computation of retirement benefits — cropped up while the first case for illegal dismissal was still pending. Although the second

issue may be considered as separate and distinct from the illegal dismissal case, the issue of the proper computation of the retirement benefits was nevertheless considered by the relevant administrative bodies, adding more confusion to what should have been a simple case to begin with.

The NLRC had no jurisdiction to entertain the appeal filed by Timbol-Roman and former CDC CEO Colayco.

To recall, on 29 February 2000, LA Darlucio rendered a Decision in favor of petitioner, stating as follows:

> x x x Complainant cannot be considered as a corporate officer because at the time of his termination, he was holding the position of Head Executive Assistant which is categorized as a Job Level 12 position that is not subject to the election or appointment by the Board of Directors. The approval of Board Resolution Nos. 200 and 214 by the Board of Directors in its meeting held on February 11, 1998 and March 25, 1998 clearly refers to the New CDC Salary Structure where the pay adjustment was based and not to complainant's relief as Vice-President, Joint Ventures and Special Projects. While it is true that his previous positions are classified as Job Level 13 which are subject to board confirmation, the status of his appointment was permanent in nature. In fact, he had undergone a six-month probationary period before having acquired the permanency of his appointment. However, due to the refusal of the board under then Chairman Victorino Basco to confirm his appointment, he was demoted to the position of Head Executive Assistant. Thus, complainant correctly postulated that he was not elected to his position and his tenure is not dependent upon the whim of the board x x x
>
> x x x x x x x x x
>
> Anent the second issue, this Office finds and so holds that respondents have miserably failed to show or establish the valid cause in terminating the services of complainant.
>
> x x x x x x x x x
>
> In the case at bar, respondents failed to adduce any evidence showing that the position of Head Executive Assistant is superfluous. In fact, they never disputed the argument advanced by complainant

that the position of Head Executive Assistant was classified as a regular position in the Position Classification Study which is an essential component of the Organizational Study that had been approved by the CDC board of directors in 1995 and still remains intact as of the end of 1998. Likewise, studies made since 1994 by various management consultancy groups have determined the need for the said position in the Office of the President/CEO in relation to the vision, mission, plans, programs and overall corporate goals and objectives of respondent CDC. There is no evidence on record to show that the position of Head Executive Assistant was abolished by the Board of Directors in its meeting held in the morning of September 22, 1998. The minutes of the meeting of the board on said date, as well as its other three meetings held in the month of September 1998 (Annexes "B", "C", "D" and "E", Complainant's Reply), clearly reveal that no abolition or reorganization plan was discussed by the board. Hence, the ground of redundancy is merely a device made by respondent Colayco in order to ease out the complainant from the respondent corporation.

Moreover, the other ground for complainant's dismissal is unclear and unknown to him as respondent did not specify nor inform the complainant of the alleged recent developments x x x

This Office is also of the view that complainant was not accorded his right to due process prior to his termination. The law requires that the employer must furnish the worker sought to be dismissed with two (2) written notices before termination may be validly effected: first, a notice apprising the employee of the particular acts or omissions for which his dismissal is sought and, second, a subsequent notice informing the employee of the decision to dismiss him. In the case at bar, complainant was not apprised of the grounds of his termination. He was not given the opportunity to be heard and defend himself x x x[40]

The OGCC, representing respondent CDC and former CEO Colayco separately appealed from the above Decision. Both alleged that they had filed the proper bond to cover the award granted by LA Darlucio.

It is clear from the NLRC Rules of Procedure that appeals must be verified and certified against forum-shopping by the

[40] *Id.* at 593-598.

parties-in-interest themselves. In the case at bar, the parties-in-interest are petitioner Salenga, as the employee, and respondent Clark Development Corporation as the employer.

A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and have been filed in good faith.[41]

Thus, we agree with petitioner that, absent the requisite board resolution, neither Timbol-Roman nor Atty. Mallari, who signed the Memorandum of Appeal and Joint Affidavit of Declaration allegedly on behalf of respondent corporation, may be considered as the "appellant" and "employer" referred to by Rule VI, Sections 4 to 6 of the NLRC Rules of Procedure, which state:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. — (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; **shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court**, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

(b) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his answer or reply

---

[41] *Firme v. Bukal Enterprises and Development Corp*., 460 Phil. 321 (2003).

to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his answer or reply within the said period may be construed as a waiver on his part to file the same.

(c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding specific issues that were elevated on appeal.

SECTION 5. APPEAL FEE. — **The appellant shall pay an appeal fee** of one hundred fifty pesos (₱150.00) to the Regional Arbitration Branch or Regional Office, and the official receipt of such payment shall be attached to the records of the case.

SECTION 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, **an appeal by the employer may be perfected only upon the posting of a cash or surety bond**. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

(a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

(b) a copy of the indemnity agreement between the employer-appellant and bonding company; and

(c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Emphasis supplied)

The OGCC failed to produce any valid authorization from the board of directors despite petitioner Salenga's repeated demands. It had been given more than enough opportunity and time to produce the appropriate board resolution, and yet it failed to do so. In fact, many of its pleadings, representations, and submissions lacked board authorization.

We cannot agree with the OGCC's attempt to downplay this procedural flaw by claiming that, as the statutorily assigned counsel for GOCCs, it does not need such authorization. In *Constantino-David v. Pangandaman-Gania*,[42] we exhaustively explained why it was necessary for government agencies or instrumentalities to execute the verification and the certification against forum-shopping through their duly authorized representatives. We ruled thereon as follows:

But the rule is different where the OSG is acting as counsel of record for a government agency**. For in such a case it becomes necessary to determine whether the petitioning government body has authorized the filing of the petition and is espousing the same stand propounded by the OSG. Verily, it is not improbable for government agencies to adopt a stand different from the position of the OSG since they weigh not just legal considerations but policy repercussions as well. They have their respective mandates for which they are to be held accountable, and the prerogative to determine whether further resort to a higher court is desirable and indispensable under the circumstances.**

The verification of a pleading, if signed by the proper officials of the client agency itself, would fittingly serve the purpose of attesting that the allegations in the pleading are true and correct

[42] 456 Phil. 273, 294-298 (2003).

and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Of course, the OSG may opt to file its own petition as a "People's Tribune" but the representation would not be for a client office but for its own perceived best interest of the State.

The case of *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc*., is not also a precedent that may be invoked at all times to allow the OSG to sign the certificate of non-forum shopping in place of the real party-in-interest. The ruling therein mentions merely that the certification of non-forum shopping executed by the OSG constitutes *substantial compliance* with the rule since "the OSG is the only lawyer for the petitioner, which is a government agency mandated under Section 35, Chapter 12, Title III, Book IV, of the 1987 Administrative Code (Reiterated under Memorandum Circular No. 152 dated May 17, 1992) to be represented only by the Solicitor General."

By its very nature, "substantial compliance" is actually inadequate observance of the requirements of a rule or regulation which are waived under *equitable circumstances* to facilitate the administration of justice there being *no damage or injury caused by such flawed compliance*. This concept is expressed in the statement "the rigidity of a previous doctrine was thus subjected to an inroad under the concept of substantial compliance." In every inquiry on whether to accept "substantial compliance," the focus is always on the presence of equitable conditions to administer justice effectively and efficiently without damage or injury to the spirit of the legal obligation.

x x x x x x x x x

The fact that the OSG under the 1987 Administrative Code is the only lawyer for a government agency wanting to file a petition, or complaint for that matter, does not operate *per se* to vest the OSG with the authority to execute in its name the certificate of non-forum shopping for a client office. For, in many instances, client agencies of the OSG have legal departments which at times inadvertently take legal matters requiring court representation into their own hands without the intervention of the OSG. Consequently, the OSG would have no personal knowledge of the history of a particular case so as to adequately execute the certificate of non-forum shopping; and even if the OSG does have the relevant information, the courts on the other hand would have no way of ascertaining the accuracy

of the OSG's assertion without precise references in the record of the case. Thus, *unless equitable circumstances which are manifest from the record of a case prevail,* it becomes necessary for the concerned government agency or its authorized representatives to certify for non-forum shopping if only to be sure that no other similar case or incident is pending before any other court.

We recognize the occasions when the OSG has difficulty in securing the attention and signatures of officials in charge of government offices for the verification and certificate of non-forum shopping of an initiatory pleading. This predicament is especially true where the period for filing such pleading is non-extendible or can no longer be further extended for reasons of public interest such as in applications for the writ of *habeas corpus*, in election cases or where sensitive issues are involved. This quandary is more pronounced where public officials have stations outside Metro Manila.

But this difficult fact of life within the OSG, equitable as it may seem, does not excuse it from *wantonly* executing by itself the verification and certificate of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of a client agency, the OSG should at least endeavor to inform the courts of its reasons for doing so, *beyond instinctively* citing *City Warden of the Manila City Jail v. Estrella* and *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc*.

Henceforth, to be able to verify and certify an initiatory pleading for non-forum shopping when acting as counsel of record for a client agency, the OSG must (a) allege under oath the circumstances that make signatures of the concerned officials impossible to obtain within the period for filing the initiatory pleading; (b) append to the petition or complaint such authentic document to prove that the party-petitioner or complainant authorized the filing of the petition or complaint and understood and adopted the allegations set forth therein, and an affirmation that no action or claim involving the same issues has been filed or commenced in any court, tribunal or quasi-judicial agency; and, (c) undertake to inform the court promptly and reasonably of any change in the stance of the client agency.

Anent the document that may be annexed to a petition or complaint under letter (b) hereof, the letter-endorsement of the client agency to the OSG, or other correspondence to prove that

the subject-matter of the initiatory pleading had been previously discussed between the OSG and its client, is satisfactory evidence of the facts under letter (b) above. In this exceptional situation where the OSG signs the verification and certificate of non-forum shopping, the court reserves the authority to determine the sufficiency of the OSG's action as measured by the equitable considerations discussed herein. (Emphasis ours, italics provided)

The ruling cited above may have pertained only to the Office of the Solicitor General's representation of government agencies and instrumentalities, but we see no reason why this doctrine cannot be applied to the case at bar insofar as the OGCC is concerned.

While in previous decisions we have excused transgressions of these rules, it has always been in the context of upholding justice and fairness under exceptional circumstances. In this case, though, respondent failed to provide any iota of rhyme or reason to compel us to relax these requirements. Instead, what is clear to us is that the so-called appeal was done against the instructions of then President/CEO Naguiat not to file an appeal. Timbol-Roman, who signed the Verification and the Certification against forum-shopping, was not even an authorized representative of the corporation. The OGCC was equally remiss in its duty. It ought to have advised respondent corporation, the proper procedure for pursuing an appeal. Instead, it maintained the appeal and failed to present any valid authorization from respondent corporation even after petitioner had questioned OGCC's authority all throughout the proceedings. Thus, it is evident that the appeal was made in bad faith.

The unauthorized and overzealous acts of officials of respondent CDC and the OGCC have led to a waste of the government's time and resources. More alarmingly, they have contributed to the injustice done to petitioner Salenga. By taking matters into their own hands, these officials let the case drag on for years, depriving him of the enjoyment of property rightfully his. What should have been a simple case of illegal dismissal became an endless stream of motions and pleadings.

Time and again, we have said that the perfection of an appeal within the period prescribed by law is jurisdictional, and the lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment.[43] Thus, there is no other recourse but to respect the findings and ruling of the labor arbiter. Clearly, therefore, the CA committed grave abuse of discretion in entertaining the Petition filed before it after the NLRC had dismissed the case based on lack of jurisdiction. The assailed CA Decision did not even resolve petitioner Salenga's consistent and persistent claim that the NLRC should not have taken cognizance of the appeal in the first place, absent a board resolution. Thus, LA Darlucio's Decision with respect to the liability of the corporation still stands.

However, we note from that Decision that Rufo Colayco was made solidarily liable with respondent corporation. Colayco thereafter filed his separate appeal. As to him, the NLRC correctly held in its 30 July 2001 Decision that he may not be held solidarily responsible to petitioner. As a result, it dropped him as respondent. Notably, in the case at bar, petitioner does not question that ruling.

Based on the foregoing, all other subsequent proceedings regarding the issue of petitioner's dismissal are null and void for having been conducted without jurisdiction. Thus, it is no longer incumbent upon us to rule on the other errors assigned in the matter of petitioner Salenga's dismissal.

CDC is not under the civil service laws on retirement.

While the case was still persistently being pursued by the OGCC, a new issue arose when petitioner Salenga reached retirement age: whether his retirement benefits should be computed according to civil service laws.

To recall, the issue of how to compute the retirement benefits of petitioner was raised in his Omnibus Motion dated 7 May 2004 filed before the NLRC after it had reinstated LA Darlucio's original Decision. The issue was not covered by petitioner's Complaint for illegal dismissal, but was a different issue altogether

---

[43] *Galima v. Court of Appeals*, 166 Phil. 1231(1977).

and should have been properly addressed in a separate Complaint. We cannot fault petitioner, though, for raising the issue while the case was still pending with the NLRC. If it were not for the "appeal" undertaken by Timbol-Roman and the OGCC through Atty. Mallari, the issue would have taken its proper course and would have been raised in a more appropriate time and manner. Thus, we deem it proper to resolve the matter at hand to put it to rest after a decade of litigation.

Petitioner Salenga contends that respondent CDC is covered by the GSIS Law. Thus, he says, the computation of his retirement benefits should include all the years of actual government service, starting from the original appointment forty (40) years ago up to his retirement.

Respondent CDC owes its existence to Executive Order No. 80 issued by then President Fidel V. Ramos. It was meant to be the implementing and operating arm of the Bases Conversion and Development Authority (BCDA) tasked to manage the Clark Special Economic Zone (CSEZ). Expressly, respondent was formed in accordance with Philippine corporation laws and existing rules and regulations promulgated by the SEC pursuant to Section 16 of Republic Act (R.A.) 7227.[44] CDC, a government-owned or-controlled corporation without an original charter, was incorporated under the Corporation Code. Pursuant to Article IX-B, Sec. 2(1), the civil service embraces only those government-owned or-controlled corporations with original charter. As such, respondent CDC and its employees are covered by the Labor Code and not by the Civil Service Law, consistent with our ruling in *NASECO v. NLRC*,[45] in which we established this distinction. Thus, in *Gamogamo v. PNOC Shipping and Transport Corp.*,[46] we held:

> Retirement results from a voluntary agreement between the employer and the employee whereby the latter after reaching a certain age agrees to sever his employment with the former.

---

[44] E.O. No. 80, Sec. 1.

[45] 250 Phil. 129 (1988).

[46] 431 Phil. 510, 521-522 (2002).

Since the retirement pay solely comes from Respondent's funds, it is but natural that Respondent shall disregard petitioner's length of service in another company for the computation of his retirement benefits.

Petitioner was absorbed by Respondent from LUSTEVECO on 1 August 1979. Ordinarily, his creditable service shall be reckoned from such date. However, since Respondent took over the shipping business of LUSTEVECO and agreed to assume without interruption all the service credits of petitioner with LUSTEVECO, petitioner's creditable service must start from 9 November 1977 when he started working with LUSTEVECO until his day of retirement on 1 April 1995. Thus, petitioner's creditable service is 17.3333 years.

We cannot uphold petitioner's contention that his fourteen years of service with the DOH should be considered because his last two employers were government-owned and controlled corporations, and fall under the Civil Service Law. Article IX(B), Section 2 paragraph 1 of the 1987 Constitution states —

> Sec. 2. (1)The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

It is not at all disputed that while Respondent and LUSTEVECO are government-owned and controlled corporations, they have no original charters; hence they are not under the Civil Service Law. In *Philippine National Oil Company-Energy Development Corporation v. National Labor Relations Commission*, we ruled:

> x x x "Thus under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law are *[sic]* the manner of its creation, such that government corporations created by special charter(s) are subject to its provisions while those incorporated under the General Corporation Law are not within its coverage." (Emphasis supplied)

Hence, petitioner Salenga is entitled to receive only his retirement benefits based only on the number of years he was employed with the corporation under the conditions provided under its retirement plan, as well as other benefits given to him by existing laws.

WHEREFORE, in view of the foregoing, the Petition in G.R. No. 174941 is partially **GRANTED**. The Decision of LA Darlucio is **REINSTATED** insofar as respondent corporation's liability is concerned. Considering that petitioner did not maintain the action against Rufo Colayco, the latter is not solidarily liable with respondent Clark Development Corporation.

The case is **REMANDED** to the labor arbiter for the computation of petitioner's retirement benefits in accordance with the Social Security Act of 1997 otherwise known as Republic Act No. 8282, deducting therefrom the sums already paid by respondent CDC. If any, the remaining amount shall be subject to the legal interest of 6% per annum from the filing date of petitioner's Omnibus Motion on 11 May 2004 up to the time this judgment becomes final and executory. Henceforth, the rate of legal interest shall be 12% until the satisfaction of judgment.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179579. February 1, 2012]

COMMISSIONER OF CUSTOMS and the DISTRICT COLLECTOR OF THE PORT OF SUBIC, *petitioners, vs.* **HYPERMIX FEEDS CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REQUIREMENTS FOR AN ACTION FOR DECLARATORY RELIEF; ESTABLISHED IN THE CASE AT BAR. — The requirements of an action for declaratory

relief are as follows: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination. We find that the Petition filed by respondent before the lower court meets these requirements.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED ADMINISTRATIVE CODE; ADMINISTRATIVE PROCEDURES TO BE FOLLOWED BEFORE AN ADMINISTRATIVE REGULATION AFFECTING SUBSTANTIVE RIGHTS MUST BE GIVEN THE FORCE AND EFFECT OF LAW; RATIONALE. — Considering that the questioned regulation would affect the substantive rights of respondent as explained above, it therefore follows that petitioners should have applied the pertinent provisions of Book VII, Chapter 2 of the Revised Administrative Code, to wit: Section 3. *Filing*. — (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the bases of any sanction against any party of persons. x x x Section 9. *Public Participation*. — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule. (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon. (3) In case of opposition, the rules on contested cases shall be observed. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law. Likewise, in *Tañada v. Tuvera*, we

held: **The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens.** Without such notice and publication, there would be no basis for the application of the maxim "*ignorantia legis non excusat*." **It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.**

3. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAWS; DEFINED; REQUIREMENTS OF REASONABLE CLASSIFICATION; NOT ESTABLISHED IN THE CASE AT BAR. — Going now to the content of CMO 27-3003, we likewise hold that it is unconstitutional for being violative of the equal protection clause of the Constitution. The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. Thus, the guarantee of the equal protection of laws is not violated if there is a reasonable classification. For a classification to be reasonable, it must be shown that (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class. Unfortunately, CMO 27-2003 does not meet these requirements. We do not see how the quality of wheat is affected by who imports it, where it is discharged, or which country it came from.

4. TAXATION; TARIFF AND CUSTOMS LAW; COMMISSIONER OF CUSTOMS; CUSTOMS MEMORANDUM ORDER (CMO) 23-2007; VIOLATIVE OF SECTION 1403 OF THE TARIFF AND CUSTOMS LAW; DISCUSSED. — x x x [Section 1403 of the Tariff and Customs Law] mandates that the customs officer must first assess and determine the classification of the imported article before tariff may be imposed. Unfortunately, CMO 23-2007 has already classified the article even before the customs officer had the chance to examine it. In effect, petitioner Commissioner of Customs diminished the powers granted by the Tariff and Customs Code with regard to wheat importation when it no longer required the customs officer's **prior** examination and assessment of

the proper classification of the wheat. It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Efren L. Cordero for respondents.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review under Rule 45,[1] assailing the Decision[2] and the Resolution[3] of the Court of Appeals (CA), which nullified the Customs Memorandum Order (CMO) No. 27-2003[4] on the tariff classification of wheat issued by petitioner Commissioner of Customs.

The antecedent facts are as follows:

On 7 November 2003, petitioner Commissioner of Customs issued CMO 27-2003. Under the Memorandum, for tariff purposes, wheat was classified according to the following: (1) importer or consignee; (2) country of origin; and (3) port of discharge.[5]

---

[1] *Rollo*, pp. 124-142.

[2] *Id.* at 33-46.

[3] *Id.* at 47.

[4] Records, pp. 16-18.

[5] SUBJECT: Tariff Classification of Wheat

In order to monitor more closely wheat importations and thus prevent their misclassification, the following are hereby prescribed:

1. For tariff purposes, wheat shall be classified as follows:

The regulation provided an exclusive list of corporations, ports of discharge, commodity descriptions and countries of origin. Depending on these factors, wheat would be classified either as food grade or feed grade. The corresponding tariff for food grade wheat was 3%, for feed grade, 7%.

CMO 27-2003 further provided for the proper procedure for protest or Valuation and Classification Review Committee (VCRC) cases. Under this procedure, the release of the articles that were the subject of protest required the importer to post a cash bond to cover the tariff differential.[6]

1.1 Under HS 1001.9090 (Food Grade) when all the following elements are present:

1.1.1 the importer/consignee of the imported wheat is a flour miller as per attached list (Annex 'A'), which shall form as integral part of this Order

1.1.2 the wheat importation consists of any of those listed in Annex 'A' according to the country of origin indicated therein

1.1.3 the wheat importation is entered/unloaded in the Port of Discharge indicated opposite the name of the flour miller, as per Annex 'A'

1.2 Under HS 1001.9010 (Feed Grade)

1.2.1 When any or all of the elements prescribed under 1.1 above is not present.

1.2.2 All other wheat importations by non-flour millers, *i.e.*, importers/consignees NOT listed in Annex 'A'

[6] SUBJECT: Tariff Classification of Wheat

x x x x x x x x x

2. Any issue arising from this Order shall be resolved in an appropriate protest or VCRC case.

3. In case of a VCRC case, the following applies:

3.1 The shipment may qualify for Tentative Release upon payment of the taxes and duties as per declaration and the posting of cash bond to cover the tariff differential.

3.2 The Tentative Release granted by the VCRC shall, prior to the release of the shipment from Customs custody, be subject to representative. For this purpose, the District/Port Collector concerned shall forward to the Office of the Commissioner the Tentative Release papers, together with all pertinent shipping and supporting documents, including, but not limited to, contract of sale, phytosanitary certificate and certificate of quality.

A month after the issuance of CMO 27-2003, on 19 December 2003, respondent filed a Petition for Declaratory Relief[7] with the Regional Trial Court (RTC) of Las Piñas City. It anticipated the implementation of the regulation on its imported and perishable Chinese milling wheat in transit from China.[8] Respondent contended that CMO 27-2003 was issued without following the mandate of the Revised Administrative Code on public participation, prior notice, and publication or registration with the University of the Philippines Law Center.

Respondent also alleged that the regulation summarily adjudged it to be a feed grade supplier without the benefit of prior assessment and examination; thus, despite having imported food grade wheat, it would be subjected to the 7% tariff upon the arrival of the shipment, forcing them to pay 133% more than was proper.

Furthermore, respondent claimed that the equal protection clause of the Constitution was violated when the regulation treated non-flour millers differently from flour millers for no reason at all.

Lastly, respondent asserted that the retroactive application of the regulation was confiscatory in nature.

On 19 January 2004, the RTC issued a Temporary Restraining Order (TRO) effective for twenty (20) days from notice.[9]

Petitioners thereafter filed a Motion to Dismiss.[10] They alleged that: (1) the RTC did not have jurisdiction over the subject matter of the case, because respondent was asking for a judicial determination of the classification of wheat; (2) an action for declaratory relief was improper; (3) CMO 27-2003 was an internal administrative rule and not legislative in nature; and (4) the claims of respondent were speculative and premature, because

---

[7] *Rollo*, pp. 158-168.

[8] Records, p. 12.

[9] *Rollo*, pp. 58-59.

[10] *Id.* at 60-78.

the Bureau of Customs (BOC) had yet to examine respondent's products. They likewise opposed the application for a writ of preliminary injunction on the ground that they had not inflicted any injury through the issuance of the regulation; and that the action would be contrary to the rule that administrative issuances are assumed valid until declared otherwise.

On 28 February 2005, the parties agreed that the matters raised in the application for preliminary injunction and the Motion to Dismiss would just be resolved together in the main case. Thus, on 10 March 2005, the RTC rendered its Decision[11] without having to resolve the application for preliminary injunction and the Motion to Dismiss.

The trial court ruled in favor of respondent, to wit:

> WHEREFORE, in view of the foregoing, the Petition is GRANTED and the subject Customs Memorandum Order 27-2003 is declared INVALID and OF NO FORCE AND EFFECT. Respondents Commissioner of Customs, the District Collector of Subic or anyone acting in their behalf are to immediately cease and desist from enforcing the said Customs Memorandum Order 27-2003.
>
> SO ORDERED.[12]

The RTC held that it had jurisdiction over the subject matter, given that the issue raised by respondent concerned the quasi-legislative powers of petitioners. It likewise stated that a petition for declaratory relief was the proper remedy, and that respondent was the proper party to file it. The court considered that respondent was a regular importer, and that the latter would be subjected to the application of the regulation in future transactions.

With regard to the validity of the regulation, the trial court found that petitioners had not followed the basic requirements of hearing and publication in the issuance of CMO 27-2003. It likewise held that petitioners had "substituted the quasi-judicial determination of the commodity by a quasi-legislative

---

[11] *Id.* at 108-114; penned by Judge Romeo C. De Leon.

[12] *Id.* at 114.

predetermination."[13] The lower court pointed out that a classification based on importers and ports of discharge were violative of the due process rights of respondent.

Dissatisfied with the Decision of the lower court, petitioners appealed to the CA, raising the same allegations in defense of CMO 27-2003.[14] The appellate court, however, dismissed the appeal. It held that, since the regulation affected substantial rights of petitioners and other importers, petitioners should have observed the requirements of notice, hearing and publication.

Hence, this Petition.

Petitioners raise the following issues for the consideration of this Court:

I. THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH THE LAW AND PREVAILING JURISPRUDENCE.

II. THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THE TRIAL COURT HAS JURISDICTION OVER THE CASE.

The Petition has no merit.

We shall first discuss the propriety of an action for declaratory relief.

Rule 63, Section 1 provides:

Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

The requirements of an action for declaratory relief are as follows: (1) there must be a justiciable controversy; (2) the

[13] *Id.* at 112.

[14] *Id.* at 117-122.

controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[15] We find that the Petition filed by respondent before the lower court meets these requirements.

First, the subject of the controversy is the constitutionality of CMO 27-2003 issued by petitioner Commissioner of Customs. In *Smart Communications v. NTC*,[16] we held:

> The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. **Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.** Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

Meanwhile, in *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*,[17] we said:

> x x x [A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. x x x
>
> In addition such rule must be published. On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.
>
> **Accordingly, in considering a legislative rule a court is free to make three inquiries: *(i)* whether the rule is within the delegated**

---

[15] *Tolentino v. Board of Accountancy*, 90 Phil. 83 (1951).

[16] 456 Phil. 145 (2003).

[17] G.R. No. 108524, 10 November 1994, 238 SCRA 63, 69-70.

authority of the administrative agency; *(ii)* whether it is reasonable; and *(iii)* whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to *(i)* give the force of law to the rule; *(ii)* go to the opposite extreme and substitute its judgment; or *(iii)* give some intermediate degree of authoritative weight to the interpretative rule. (Emphasis supplied)

Second, the controversy is between two parties that have adverse interests. Petitioners are summarily imposing a tariff rate that respondent is refusing to pay.

Third, it is clear that respondent has a legal and substantive interest in the implementation of CMO 27-2003. Respondent has adequately shown that, as a regular importer of wheat, on 14 August 2003, it has actually made shipments of wheat from China to Subic. The shipment was set to arrive in December 2003. Upon its arrival, it would be subjected to the conditions of CMO 27-2003. The regulation calls for the imposition of different tariff rates, depending on the factors enumerated therein. Thus, respondent alleged that it would be made to pay the 7% tariff applied to feed grade wheat, instead of the 3% tariff on food grade wheat. In addition, respondent would have to go through the procedure under CMO 27-2003, which would undoubtedly toll its time and resources. The lower court correctly pointed out as follows:

x x x As noted above, the fact that petitioner is precisely into the business of importing wheat, **each and every importation will be subjected to constant disputes which will result into** (*sic*) **delays in the delivery, setting aside of funds as cash bond required in the CMO as well as the resulting expenses thereof. It is easy to see that business uncertainty will be a constant occurrence for petitioner. That the sums involved are not minimal is shown by the discussions during the hearings conducted as well as in the pleadings filed**. It may be that the petitioner can later on get a refund but such has been foreclosed because the Collector of

Customs and the Commissioner of Customs are bound by their own CMO. Petitioner cannot get its refund with the said agency. We believe and so find that Petitioner has presented such a stake in the outcome of this controversy as to vest it with standing to file this petition.[18] (Emphasis supplied)

Finally, the issue raised by respondent is ripe for judicial determination, because litigation is inevitable[19] for the simple and uncontroverted reason that respondent is not included in the enumeration of flour millers classified as food grade wheat importers. Thus, as the trial court stated, it would have to file a protest case each time it imports food grade wheat and be subjected to the 7% tariff.

It is therefore clear that a petition for declaratory relief is the right remedy given the circumstances of the case.

Considering that the questioned regulation would affect the substantive rights of respondent as explained above, it therefore follows that petitioners should have applied the pertinent provisions of Book VII, Chapter 2 of the Revised Administrative Code, to wit:

Section 3. *Filing*. — (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the bases of any sanction against any party of persons.

x x x x x x x x x

Section 9. *Public Participation*. — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

---

[18] *Rollo*, p. 112.

[19] *Office of the Ombudsman v. Ibay*, 416 Phil. 659 (2001).

(3) In case of opposition, the rules on contested cases shall be observed.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.[20]

Likewise, in *Tañada v. Tuvera*,[21] we held:

The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "*ignorantia legis non excusat*." **It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.**

Perhaps at no time since the establishment of the Philippine Republic has the publication of laws taken so vital significance that at this time when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the *Batasan Pambansa* — and for the diligent ones, ready access to the legislative records — no such publicity accompanies the law-making process of the President. **Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees**. (Emphasis supplied)

---

[20] *CIR v. Michel J. Lhuiller Pawnshop Inc.,* 453 Phil. 1043 (2003).

[21] 220 Phil. 422 (1985).

Because petitioners failed to follow the requirements enumerated by the Revised Administrative Code, the assailed regulation must be struck down.

Going now to the content of CMO 27-3003, we likewise hold that it is unconstitutional for being violative of the equal protection clause of the Constitution.

The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. Thus, the guarantee of the equal protection of laws is not violated if there is a reasonable classification. For a classification to be reasonable, it must be shown that (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[22]

Unfortunately, CMO 27-2003 does not meet these requirements. We do not see how the quality of wheat is affected by who imports it, where it is discharged, or which country it came from.

Thus, on the one hand, even if other millers excluded from CMO 27-2003 have imported food grade wheat, the product would still be declared as feed grade wheat, a classification subjecting them to 7% tariff. On the other hand, even if the importers listed under CMO 27-2003 have imported feed grade wheat, they would only be made to pay 3% tariff, thus depriving the state of the taxes due. The regulation, therefore, does not become disadvantageous to respondent only, but even to the state.

It is also not clear how the regulation intends to "monitor more closely wheat importations and thus prevent their misclassification." A careful study of CMO 27-2003 shows that it not only fails to achieve this end, but results in the opposite. The application of the regulation forecloses the possibility that

---

[22] *Philippine Rural Electric Cooperatives Association, Inc. v. DILG*, 451 Phil. 683 (2003).

other corporations that are excluded from the list import food grade wheat; at the same time, it creates an assumption that those who meet the criteria do not import feed grade wheat. In the first case, importers are unnecessarily burdened to prove the classification of their wheat imports; while in the second, the state carries that burden.

Petitioner Commissioner of Customs also went beyond his powers when the regulation limited the customs officer's duties mandated by Section 1403 of the Tariff and Customs Law, as amended. The law provides:

> *Section 1403. — Duties of Customs Officer Tasked to Examine, Classify, and Appraise Imported Articles.* — The customs officer tasked to examine, classify, and appraise imported articles **shall determine whether the packages designated for examination and their contents are in accordance with the declaration in the entry, invoice and other pertinent documents and shall make return in such a manner as to indicate whether the articles have been truly and correctly declared in the entry as regard their quantity, measurement, weight, and tariff classification and not imported contrary to law.** He shall submit samples to the laboratory for analysis when feasible to do so and when such analysis is necessary for the proper classification, appraisal, and/or admission into the Philippines of imported articles.
>
> Likewise, **the customs officer shall determine the unit of quantity in which they are usually bought and sold, and appraise the imported articles in accordance with Section 201 of this Code.**
>
> Failure on the part of the customs officer to comply with his duties shall subject him to the penalties prescribed under Section 3604 of this Code.

The provision mandates that the customs officer must first assess and determine the classification of the imported article before tariff may be imposed. Unfortunately, CMO 23-2007 has already classified the article even before the customs officer had the chance to examine it. In effect, petitioner Commissioner of Customs diminished the powers granted by the Tariff and Customs Code with regard to wheat importation when it no

longer required the customs officer's **prior** examination and assessment of the proper classification of the wheat.

It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law.[23]

In summary, petitioners violated respondent's right to due process in the issuance of CMO 27-2003 when they failed to observe the requirements under the Revised Administrative Code. Petitioners likewise violated respondent's right to equal protection of laws when they provided for an unreasonable classification in the application of the regulation. Finally, petitioner Commissioner of Customs went beyond his powers of delegated authority when the regulation limited the powers of the customs officer to examine and assess imported articles.

WHEREFORE, in view of the foregoing, the Petition is **DENIED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

---

[23] *Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund*, 389 Phil. 296 (2000).

SECOND DIVISION

[G.R. No. 181974. February 1, 2012]

LYNVIL FISHING ENTERPRISES, INC. and/or ROSENDO S. DE BORJA, *petitioners, vs.* **ANDRES G. ARIOLA, JESSIE D. ALCOVENDAS, JIMMY B. CALINAO AND LEOPOLDO G. SEBULLEN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED. — The Supreme Court is not a trier of facts. Under Rule 45, parties may raise only questions of law. We are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.

2. ID.; EVIDENCE; GENERALLY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS; APPLICATION IN THE CASE AT BAR. — Generally when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; **(5) When the findings of fact are conflicting;** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed

by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. The contrariety of the findings of the Labor Arbiter and the NLRC prevents reliance on the principle of special administrative expertise and provides the reason for judicial review, at first instance by the appellate court, and on final study through the present petition.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYEE-EMPLOYER RELATIONSHIP; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF CONFIDENCE; PROOF BEYOND REASONABLE DOUBT OF AN EMPLOYEE'S MISCONDUCT IS NOT REQUIRED. — x x x [P]roof beyond reasonable doubt of an employee's misconduct is not required when loss of confidence is the ground for dismissal. It is sufficient if the employer has "some basis" to lose confidence or that the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. It added that the dropping of the qualified theft charges against the respondent is not binding upon a labor tribunal.

4. ID.; ID.; ID.; ID.; ID.; FINDING OF PROBABLE CAUSE AS TO THE EXISTENCE OF JUST CAUSE DOES NOT BIND THE LABOR TRIBUNAL. — In *Nicolas v. National Labor Relations Commission,* we held that a criminal conviction is not necessary to find just cause for employment termination. Otherwise stated, an employee's acquittal in a criminal case, especially one that is grounded on the existence of reasonable doubt, will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's interests. In the reverse, the finding of probable cause is not followed by automatic adoption of such finding by the labor tribunals. Thus, Lynvil cannot argue that since the Office of the Prosecutor found probable cause for theft the Labor Arbiter must follow the finding as a valid reason for the termination of respondents' employment. The proof required for purposes that differ from one and the other are likewise different.

5. ID.; ID.; ID.; ID.; ID.; LOSS OF CONFIDENCE; ELUCIDATED; PRESENT IN THE CASE AT BAR. — In illegal dismissal

cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. Just cause is required for a valid dismissal. The Labor Code provides that an employer may terminate an employment based on fraud or willful breach of the trust reposed on the employee. Such breach is considered willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must also be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized. Breach of trust is present in this case.

6. ID.; ID.; ID.; FIXED-CONTRACT AGREEMENT; TWO CONDITIONS. — Jurisprudence, laid two conditions for the validity of a fixed-contract agreement between the employer and employee: *First*, the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or *Second*, it satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

7. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; TWO WRITTEN NOTICES REQUIRED; ABSENCE OF THE SECOND WRITTEN NOTICE, ESTABLISHED IN THE CASE AT BAR. — Having found that respondents are regular employees who may be, however,

dismissed for cause as we have so found in this case, there is a need to look into the procedural requirement of due process in Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) 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. From the records, there was only one written notice which required respondents to explain within five (5) days why they should not be dismissed from the service. Alcovendas was the only one who signed the receipt of the notice. The others, as claimed by Lynvil, refused to sign. The other employees argue that no notice was given to them. Despite the inconsistencies, what is clear is that no final written notice or notices of termination were sent to the employees. The twin requirements of notice and hearing constitute the elements of [due] process in cases of employee's dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal. Upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly, to defend himself therefrom before dismissal is effected. Obviously, the second written notice, as indispensable as the first, is intended to ensure the observance of due process.

8. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; PROPRIETY OF THE AWARD THEREOF, UPHELD IN THE CASE AT BAR. — Applying the rule to the facts at hand, we grant a monetary award of ₱50,000.00 as nominal damages, this, pursuant to the fresh ruling of this Court in *Culili v. Eastern Communication Philippines, Inc.* Due to the failure of Lynvil to follow the procedural requirement of two-notice rule, nominal damages are due to respondents despite their dismissal for just cause.

9. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYEE-EMPLOYER RELATIONSHIP; TERMINATION OF EMPLOYMENT; JUST CAUSES; GRANT OF BACKWAGES AND SEPARATION PAY, NOT PROPER;

GRANT OF THE 13TH MONTH PAY AND SALARY DIFFERENTIAL, WARRANTED. — Given the fact that their dismissal was for just cause, we cannot grant backwages and separation pay to respondents. However, following the findings of the Labor Arbiter who with the expertise presided over the proceedings below, which findings were affirmed by the Court of Appeals, we grant the 13th month pay and salary differential of the dismissed employees.

10. ID.; ID.; ID.; ID.; IN LABOR CASES, THE CORPORATE DIRECTORS AND OFFICERS ARE SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT OF EMPLOYEES DONE WITH MALICE OR IN BAD FAITH; BAD FAITH, NOT ESTABLISHED IN THE CASE AT BAR. — [T]his Court has ruled that in labor cases, the corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.[46] Indeed, moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. x x x The term "bad faith" contemplates a "state of mind affirmatively operating with furtive design or with some motive of self-interest or will or for ulterior purpose." We agree with the ruling of both the NLRC and the Court of Appeals when they pronounced that there was no evidence on record that indicates commission of bad faith on the part of De Borja. He is the general manager of Lynvil, the one tasked with the supervision by the employees and the operation of the business. However, there is no proof that he imposed on the respondents the "*por viaje*" provision for purpose of effecting their summary dismissal.

APPEARANCES OF COUNSEL

De Borja Lamorena & Duano Law Offices for petitioners.
Jose Torregoza for respondents.

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 Fourteenth Division of the Court of Appeals in CA-G.R. SP No. 95094 dated 10 September 2007, granting the Writ of *Certiorari* prayed for under Rule 65 of the 1997 Revised Rules of Civil Procedure by herein respondents Andres G. Ariola, Jessie D. Alcovendas, Jimmy B. Calinao and Leopoldo Sebullen thereby reversing the Resolution of the National Labor Relations Commission (NLRC). The dispositive portion of the assailed decision reads:

> **WHEREFORE,** premises considered, the Decision dated March 31, 2004 rendered by the National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE**. In lieu thereof, the Decision of the Labor Arbiter is hereby **REINSTATED**, except as to the award of attorney's fees, which is ordered **DELETED**.[3]

The version of the petitioners follows:

1. Lynvil Fishing Enterprises, Inc. (Lynvil) is a company engaged in deep-sea fishing, operating along the shores of Palawan and other outlying islands of the Philippines.[4] It is operated and managed by Rosendo S. de Borja.

2. On 1 August 1998, Lynvil received a report from Romanito Clarido, one of its employees, that on 31 July 1998, he witnessed that while on board the company vessel Analyn VIII, Lynvil employees, namely: Andres G. Ariola (Ariola), the captain; Jessie D. Alcovendas (Alcovendas), Chief Mate; Jimmy B. Calinao (Calinao), Chief Engineer; Ismael G. Nubla (Nubla), cook; Elorde

---

[1] *Rollo*, pp. 3-51.

[2] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza concurring. *Id.* at 60-70.

[3] *Id.* at 70.

[4] Position Paper of Lynvil, *id.* at 144.

Bañez (Bañez), oiler; and Leopoldo D. Sebullen (Sebullen), *bodegero*, conspired with one another and stole eight (8) tubs of "*pampano*" and "*tangigue*" fish and delivered them to another vessel, to the prejudice of Lynvil.[5]

3. The said employees were engaged on a per trip basis or "*por viaje*" which terminates at the end of each trip. Ariola, Alcovendas and Calinao were managerial field personnel while the rest of the crew were field personnel.[6]

4. By reason of the report and after initial investigation, Lynvil's General Manager Rosendo S. De Borja (De Borja) summoned respondents to explain within five (5) days why they should not be dismissed from service. However, except for Alcovendas and Bañez,[7] the respondents refused to sign the receipt of the notice.

5. Failing to explain as required, respondents' employment was terminated.

6. Lynvil, through De Borja, filed a criminal complaint against the dismissed employees for violation of P.D. 532, or the Anti-Piracy and Anti-Highway Robbery Law of 1974 before the Office of the City Prosecutor of Malabon City.[8]

7. On 12 November 1998, First Assistant City Prosecutor Rosauro Silverio found probable cause for the indictment of the dismissed employees for the crime of qualified theft[9] under the Revised Penal Code.

---

[5] *Id.* at 144-145.

[6] *Id.* at 145.

[7] *Id.*

[8] *Id.*

[9] Art. 310, Revised Penal Code. Art. 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

On the other hand, the story of the defense is:

1. The private respondents were crew members of Lynvil's vessel named Analyn VIII.[10]

2. On 31 July 1998, they arrived at the Navotas Fishport on board Analyn VIII loaded with 1,241 *bañeras* of different kinds of fishes. These *bañeras* were delivered to a consignee named SAS and Royale.[11]

The following day, the private respondents reported back to Lynvil office to inquire about their new job assignment but were told to wait for further advice. They were not allowed to board any vessel.[12]

3. On 5 August 1998, only Alcovendas and Bañez received a memorandum from De Borja ordering them to explain the incident that happened on 31 July 1998. Upon being informed about this, Ariola, Calinao, Nubla and Sebullen went to the Lynvil office. However, they were told that their employments were already terminated.[13]

Aggrieved, the employees filed with the Arbitration Branch of the National Labor Relations Commission-National Capital Region on 25 August 1998 a complaint for illegal dismissal with claims for backwages, salary differential reinstatement, service incentive leave, holiday pay and its premium and 13th month pay from 1996 to1998. They also claimed for moral, exemplary damages and attorney's fees for their dismissal with bad faith.[14]

They added that the unwarranted accusation of theft stemmed from their oral demand of increase of salaries three months earlier and their request that they should not be required to sign a blank payroll and vouchers.[15]

---

[10] Position Paper of the Private Respondents, *rollo*, p. 124.

[11] *Id.* at 126.

[12] *Id.*

[13] *Id.*

[14] Complaint Forms, *id.* at 119-122.

[15] *Id.* at 126-127.

On 5 June 2002, Labor Arbiter Ramon Valentin C. Reyes found merit in complainants' charge of illegal dismissal.[16] The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered finding that complainants were illegally dismissed, ordering respondents to jointly and severally pay complainants (a) separation pay at one half month pay for every year of service; (b) backwages; (c) salary differential; (d) 13th month pay; and (e) attorney's fees, as follows:

"1) Andres Ariola

Backwages (₱6,500.00 x 36 = ₱234,000.00)	₱234,000.00
Separation Pay – ₱74,650.00	
13th Month Pay – ₱6,500.00	
	₱325,250.00

"2) Jessie Alcovendas

Backwages (₱5,148.00 x 36 = ₱195,328.00)	₱195,328.00
Separation Pay – ₱44,304.00	
13th Month Pay – 5,538.00	
Salary Differential – 1,547.52	
	₱246,717.52

"3) Jimmy Calinao

Backwages (₱6,500.00 x 36 = ₱234,000.00)	₱234,000.00
Separation Pay – 55,250.00	
13th Month Pay – ₱6,500.00	
	₱295,700.00

"4) Leopoldo Sebullen

Backwages (₱4, 290.00 x 36 = ₱154,440.00)	₱154,440.00

[16] *Id.* at 190-203.

Separation Pay – ₱44,073.00	
13th Month Pay – 2,473.12	
Salary Differential – 4,472.00	
	₱208,455.12
"5) Ismael Nubla	
Backwages	₱199,640.12
Separation Pay – ₱58,149.00	
13th Month Pay – 2,473.12	
Salary Differential – ₱5,538.00	
	₱265,28.12
TOTAL	**₱1,341,650.76**

All other claims are dismissed for lack of merit."[17]

The Labor Arbiter found that there was no evidence showing that the private respondents received the 41 *bañeras* of "*pampano*" as alleged by De Borja in his reply-affidavit; and that no proof was presented that the 8 *bañeras* of *pampano* [and *tangigue*] were missing at the place of destination.[18]

The Labor Arbiter disregarded the Resolution of Assistant City Prosecutor Rosauro Silverio on the theft case. He reasoned out that the Labor Office is governed by different rules for the determination of the validity of the dismissal of employees.[19]

The Labor Arbiter also ruled that the contractual provision that the employment terminates upon the end of each trip does not make the respondents' dismissal legal. He pointed out that respondents and Lynvil did not negotiate on equal terms because of the moral dominance of the employer.[20]

---

[17] Decision of the Labor Arbiter, *id.* at 202-203.

[18] *Id.* at 198.

[19] *Id.* at 199.

[20] *Id.* at 763.

The Labor Arbiter found that the procedural due process was not complied with and that the mere notice given to the private respondents fell short of the requirement of "ample opportunity" to present the employees' side.[21]

On appeal before the National Labor Relations Commission, petitioners asserted that private respondents were only contractual employees; that they were not illegally dismissed but were accorded procedural due process and that De Borja did not commit bad faith in dismissing the employees so as to warrant his joint liability with Lynvil.[22]

On 31 March 2004, the NLRC reversed and set aside the Decision of the Labor Arbiter. The dispositive portion reads:

> **WHEREFORE,** judgment is hereby rendered **REVERSING AND SETTING ASIDE** the Decision of the Labor Arbiter *a quo* and a new one entered DISMISSING the present complaints for utter lack of merit;
>
> However as above discussed, an administrative fine of PhP5,000.00 for each complainant, Andres Ariola, Jessie Alcovendas, Jimmy Canilao, Leopoldo Sebullen and Ismael Nobla or a total of PhP25,000.00 is hereby awarded.[23]

The private respondents except Elorde Bañez filed a Petition for *Certiorari*[24] before the Court of Appeals alleging grave abuse of discretion on the part of NLRC.

The Court of Appeals found merit in the petition and reinstated the Decision of the Labor Arbiter except as to the award of attorney's fees. The appellate court held that the allegation of theft did not warrant the dismissal of the employees since there was no evidence to prove the actual quantities of the missing kinds of fish loaded to Analyn VIII.[25] It also reversed the finding

---

[21] *Id.* at 764.

[22] Decision of the NLRC, *id.* at 251.

[23] *Id.* at 264.

[24] *Id.* at 279-297.

[25] Decision of the Court of Appeals, *id.* at 66.

of the NLRC that the dismissed employees were merely contractual employees and added that they were regular ones performing activities which are usually necessary or desirable in the business and trade of Lynvil. Finally, it ruled that the two-notice rule provided by law and jurisprudence is mandatory and non-compliance therewith rendered the dismissal of the employees illegal.

The following are the assignment of errors presented before this Court by Lynvil:

I

THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE ESTABLISHED DOCTRINE LAID DOWN IN *NASIPIT LUMBER COMPANY V. NLRC* HOLDING THAT THE FILING OF A CRIMINAL CASE BEFORE THE PROSECUTOR'S OFFICE CONSTITUTES SUFFICIENT BASIS FOR A VALID TERMINATION OF EMPLOYMENT ON THE GROUNDS OF SERIOUS MISCONDUCT AND/OR LOSS OF TRUST AND CONFIDENCE.

II

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE TERMINATION OF RESPONDENTS' EMPLOYMENT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

III

THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THAT THE RESPONDENTS' EMPLOYMENT, IN ANY EVENT, WERE CONTRACTUAL IN NATURE BEING ON A PER VOYAGE BASIS. THUS, THEIR RESPECTIVE EMPLOYMENT TERMINATED AFTER THE END OF EACH VOYAGE

IV

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENTS WERE NOT ACCORDED PROCEDURAL DUE PROCESS.

V

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENTS ARE ENTITLED TO THE PAYMENT OF THEIR MONEY CLAIMS.

VI

THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THAT PETITIONER ROSENDO S. DE BORJA IS NOT JOINTLY AND SEVERALLY LIABLE FOR THE JUDGMENT WHEN THERE WAS NO FINDING OF BAD FAITH.[26]

The Court's Ruling

The Supreme Court is not a trier of facts. Under Rule 45,[27] parties may raise only questions of law. We are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. Generally when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Emphasis supplied)[28]

---

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

[27] Revised Rules on Civil Procedure.

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

The contrariety of the findings of the Labor Arbiter and the NLRC prevents reliance on the principle of special administrative expertise and provides the reason for judicial review, at first instance by the appellate court, and on final study through the present petition.

In the first assignment of error, Lynvil contends that the filing of a criminal case before the Office of the Prosecutor is sufficient basis for a valid termination of employment based on serious misconduct and/or loss of trust and confidence relying on *Nasipit Lumber Company v. NLRC.*[29]

Nasipit is about a security guard who was charged with qualified theft which charge was dismissed by the Office of the Prosecutor. However, despite the dismissal of the complaint, he was still terminated from his employment on the ground of loss of confidence. We ruled that proof beyond reasonable doubt of an employee's misconduct is not required when loss of confidence is the ground for dismissal. It is sufficient if the employer has "some basis" to lose confidence or that the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[30] It added that the dropping of the qualified theft charges against the respondent is not binding upon a labor tribunal.[31]

In *Nicolas v. National Labor Relations Commission*,[32] we held that a criminal conviction is not necessary to find just cause for employment termination. Otherwise stated, an employee's acquittal in a criminal case, especially one that is grounded on the existence of reasonable doubt, will not preclude a determination in a labor case that he is guilty of acts inimical to the employer's

---

[29] 257 Phil. 937 (*1989).*

[30] *Id.* at 946.

[31] *Id.* at 946-947.

[32] 327 Phil. 883, 886-887 (1996); *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*, G.R. No. 164016, 15 March 2010, 615 SCRA 240.

interests.[33] In the reverse, the finding of probable cause is not followed by automatic adoption of such finding by the labor tribunals.

In other words, whichever way the public prosecutor disposes of a complaint, the finding does not bind the labor tribunal.

Thus, Lynvil cannot argue that since the Office of the Prosecutor found probable cause for theft the Labor Arbiter must follow the finding as a valid reason for the termination of respondents' employment. The proof required for purposes that differ from one and the other are likewise different.

Nonetheless, even without reliance on the prosecutor's finding, we find that there was valid cause for respondents' dismissal.

In illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause.[34]

Just cause is required for a valid dismissal. The Labor Code[35] provides that an employer may terminate an employment based

---

[33] *Reno Foods, Inc. and/or Vicente Khu v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan*, G.R. No. 164016, 15 March 2010, 615 SCRA 240, 248.

[34] Well-entrenched is the principle that in order to establish a case before judicial and quasi-administrative bodies, it is necessary that allegations must be supported by substantial evidence. Substantial evidence is more than a mere scintilla. *Ledesma, Jr. v. NLRC*, G.R. No. 174585, 19 October 2007, 537 SCRA 358, 368; *Philippine Air Lines v. Court of Appeals*, G.R. No. 159556, 26 May 2005, 459 SCRA 236, 251.

It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

[35] Art. 282. **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 representatives; and

on fraud or willful breach of the trust reposed on the employee. Such breach is considered willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must also be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.[36]

Breach of trust is present in this case.

We agree with the ruling of the Labor Arbiter and Court of Appeals that the quantity of tubs expected to be received was the same as that which was loaded. However, what is material is the kind of fish loaded and then unloaded. Sameness is likewise needed.

We cannot close our eyes to the positive and clear narration of facts of the three witnesses to the commission of qualified theft. Jonathan Distajo, a crew member of the Analyn VIII, stated in his letter addressed to De Borja[37] dated 8 August 1998, that while the vessel was traversing San Nicolas, Cavite, he saw a small boat approach them. When the boat was next to

---

(e) Other causes analogous to the foregoing.

[36] *Lopez v. Alturas Group of Companies*, G.R. No. 191008, 11 April 2011. 647 SCRA 568, 573-574.

[37] *Rollo,* p. 338.

their vessel, Alcovendas went inside the stockroom while Sebullen pushed an estimated four tubs of fish away from it. Ariola, on the other hand, served as the lookout and negotiator of the transaction. Finally, Bañez and Calinao helped in putting the tubs in the small boat. He further added that he received ₱800.00 as his share for the transaction. Romanito Clarido, who was also on board the vessel, corroborated the narration of Distajo on all accounts in his 25 August 1998 affidavit.[38] He added that Alcovendas told him to keep silent about what happened on that day. Sealing tight the credibility of the narration of theft is the affidavit[39] executed by Elorde Bañez dated 3 May 1999. Bañez was one of the dismissed employees who actively participated in the taking of the tubs. He clarified in the affidavit that the four tubs taken out of the stockroom in fact contained fish taken from the eight tubs. He further stated that Ariola told everyone in the vessel not to say anything and instead file a labor case against the management. Clearly, we cannot fault Lynvil and De Borja when it dismissed the employees.

The second to the fifth assignment of errors interconnect.

The nature of employment is defined in the Labor Code, thus:

Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to

---

[38] *Id.* at 339.

[39] *Id.* at 341.

the activity in which he is employed and his employment shall continue while such activity exists.

Lynvil contends that it cannot be guilty of illegal dismissal because the private respondents were employed under a fixed-term contract which expired at the end of the voyage. The pertinent provisions of the contract are:

x x x x x x x x x

1. *NA ako ay sumasang-ayon na maglingkod at gumawa ng mga gawain sang-ayon sa patakarang "por viaje" na magmumula sa pagalis sa Navotas papunta sa pangisdaan at pagbabalik sa pondohan ng lantsa sa Navotas, Metro Manila;*

x x x x x x x x x

1. *NA ako ay nakipagkasundo na babayaran ang aking paglilingkod sa paraang "por viaje" sa halagang P_____ isang biyahe ng kabuuang araw* x x x.[40]

Lynvil insists on the applicability of the case of *Brent School*,[41] to wit:

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

---

[40] *Rollo*, pp. 344-347.

[41] *Brent School, Inc. v. Zamora*, *supra* note 19.

Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.

Contrarily, the private respondents contend that they became regular employees by reason of their continuous hiring and performance of tasks necessary and desirable in the usual trade and business of Lynvil.

Jurisprudence,[42] laid two conditions for the validity of a fixed-contract agreement between the employer and employee:

First, the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or

Second, it satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[43]

Textually, the provision that: *"NA ako ay sumasang-ayon na maglingkod at gumawa ng mga gawain sang-ayon sa patakarang "por viaje" na magmumula sa pagalis sa Navotas papunta sa pangisdaan at pagbabalik sa pondohan ng lantsa sa Navotas, Metro Manila"* is for a fixed period of employment. In the context, however, of the facts that: (1) the respondents were doing tasks necessarily to Lynvil's fishing business with positions ranging from captain of the vessel to *bodegero*; (2) after the end of a trip, they will again be hired for another trip with new contracts; and (3) this arrangement continued for more than ten years, the clear intention is to go around the security of tenure of the respondents as regular employees. And respondents are so by the express provisions of the second paragraph of Article 280, thus:

x x x Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall

[42] *Caparoso and Quindipan v. Court of Appeals, et al.*, G.R. No. 155505, 15 February 2007, 516 SCRA 30; *Pure Foods Corp. v. NLRC,* 347 Phil. 434, 443 (1997).

[43] *Id.* at 35.

be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The same set of circumstances indicate clearly enough that it was the need for a continued source of income that forced the employees' acceptance of the "*por viaje*" provision.

Having found that respondents are regular employees who may be, however, dismissed for cause as we have so found in this case, there is a need to look into the procedural requirement of due process in Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) 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.

From the records, there was only one written notice which required respondents to explain within five (5) days why they should not be dismissed from the service. Alcovendas was the only one who signed the receipt of the notice. The others, as claimed by Lynvil, refused to sign. The other employees argue that no notice was given to them. Despite the inconsistencies, what is clear is that no final written notice or notices of termination were sent to the employees.

The twin requirements of notice and hearing constitute the elements of [due] process in cases of employee's dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal. Upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly, to defend himself therefrom before dismissal is effected.[44] Obviously, the second written notice, as

---

[44] *Rubia v. NLRC, Fourth Division, et al.*, G.R. No. 178621, 26 July 2010, 625 SCRA 494, 509.

indispensable as the first, is intended to ensure the observance of due process.

Applying the rule to the facts at hand, we grant a monetary award of ₱50,000.00 as nominal damages, this, pursuant to the fresh ruling of this Court in *Culili v. Eastern Communication Philippines, Inc.*[45] Due to the failure of Lynvil to follow the procedural requirement of two-notice rule, nominal damages are due to respondents despite their dismissal for just cause.

Given the fact that their dismissal was for just cause, we cannot grant backwages and separation pay to respondents. However, following the findings of the Labor Arbiter who with the expertise presided over the proceedings below, which findings were affirmed by the Court of Appeals, we grant the 13th month pay and salary differential of the dismissed employees.

Whether De Borja is jointly and severally liable with Lynvil

As to the last issue, this Court has ruled that in labor cases, the corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.[46] Indeed, moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy.

It has also been discussed in *MAM Realty Development Corporation v. NLRC*[47] that:

x x x A corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

---

[45] G.R. No. 165381, 9 February 2011, 642 SCRA 338.

[46] *Alba v. Yupangco,* G.R. No. 188233, 29 June 2010, 622 SCRA 503, 508.

[47] G.R. No. 114787, 2 June 1995, 244 SCRA 797.

1. When directors and trustees or, in appropriate cases, the officers of a corporation:

x x x x x x x x x

(b) act in bad faith or with gross negligence in directing the corporate affairs;

x x x x x x x x x[48]

The term "bad faith" contemplates a "state of mind affirmatively operating with furtive design or with some motive of self-interest or will or for ulterior purpose."[49]

We agree with the ruling of both the NLRC and the Court of Appeals when they pronounced that there was no evidence on record that indicates commission of bad faith on the part of De Borja. He is the general manager of Lynvil, the one tasked with the supervision by the employees and the operation of the business. However, there is no proof that he imposed on the respondents the "*por viaje*" provision for purpose of effecting their summary dismissal.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The 10 September 2007 Decision of the Court of Appeals in CA-G.R. SP No. 95094 reversing the Resolution dated 31 March 2004 of the National Labor Relations Commission is hereby **MODIFIED**. The Court hereby rules that the employees were dismissed for just cause by Lynvil Fishing Enterprises, Inc. and Rosendo S. De Borja, hence, the reversal of the award for backwages and separation pay. However, we affirm the award for 13th month pay, salary differential and grant an additional ₱50,000.00 in favor of the employees representing nominal damages for petitioners' non-compliance with statutory due process. No cost.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

---

[48] *Id.* at 802.

[49] *Air France v. Carrascoso,* G.R. No. L-21438, 28 September 1966, 18 SCRA 155, 166-167.

FIRST DIVISION

[G.R. No. 182769. February 1, 2012]

BANK OF THE PHILIPPINE ISLANDS, AS SUCCESSOR-IN-INTEREST OF FAR EAST BANK & TRUST COMPANY, *petitioner, vs.* **CYNTHIA L. REYES,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; REAL ESTATE MORTGAGE; EXTRAJUDICIAL FORECLOSURE; A CREDITOR IS NOT PRECLUDED FROM RECOVERING ANY UNPAID BALANCE ON THE PRINCIPAL OBLIGATION IF THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTY SUBJECT OF THE REAL ESTATE MORTGAGE RESULTS IN A DEFICIENCY. — In the recent case of *BPI Family Savings Bank, Inc. v. Avenido,* we reiterated the well-entrenched rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency, to wit: It is settled that if "the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage." Furthermore, we have also ruled in *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals* that, in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at

a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation.

2. ID.; ID.; ID.; INADEQUACY OF THE PRICE AT A FORCED SALE IS IMMATERIAL AND DOES NOT NULLIFY THE SALE. — Throughout a long line of jurisprudence, we have declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier. In the early case of *The National Loan and Investment Board v. Meneses*, we also had the occasion to state that: As to the **inadequacy of the price of the sale**, this court has repeatedly held that the fact that a property is sold at public auction for a price lower than its alleged value, **is not of itself sufficient to annul said sale, where there has been strict compliance with all the requisites marked out by law to obtain the highest possible price, and where there is no showing that a better price is obtainable**. x x x It bears also to stress that the mode of forced sale utilized by petitioner was an extrajudicial foreclosure of real estate mortgage which is governed by Act No. 3135, as amended. An examination of the said law reveals nothing to the effect that there should be a minimum bid price or that the winning bid should be equal to the appraised value of the foreclosed property or to the amount owed by the mortgage debtor. What is clearly provided, however, is that a mortgage debtor is given the opportunity to redeem the foreclosed property "within the term of one year from and after the date of sale." In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances. Thus, even if we assume that the valuation of the property at issue is correct, we still hold that the inadequacy of the price at which it was sold at public auction does not invalidate the foreclosure sale.

3. REMEDIAL LAW; EQUITY; APPLIED ONLY IN THE ABSENCE OF, AND NEVER AGAINST, STATUTORY LAW OR JUDICIAL RULES OF PROCEDURE. — Even if we are so inclined out of sympathy for respondent's plight, neither could we temper respondent's liability to the petitioner

on the ground of equity. We are barred by our own often repeated admonition that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. The law and jurisprudence on the matter is clear enough to close the door on a recourse to equity.

4. ID.; OBLIGATIONS AND CONTRACTS; UNJUST ENRICHMENT; NOT ESTABLISHED IN THE CASE AT BAR. — [W]e fail to see any unjust enrichment resulting from upholding the validity of the foreclosure sale and of the right of the petitioner to collect any deficiency from respondent. Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good governance." As discussed abouve, there is a strong legal basis for petitioner's claim against respondent for the balance of her loan obligation.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Ferrer & Associates Law Offices for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] dated April 30, 2008 of the Court of Appeals in CA-G.R. CV No. 88004, entitled "*Bank of the Philippine Islands, as successor-in-interest of Far East Bank & Trust Company vs. Cynthia L. Reyes*" which reversed the Decision[2] dated November 3, 2005 of the Regional

---

[1] *Rollo*, pp. 9-20; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Rebecca De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 132-137.

Trial Court (RTC) of Makati City, Branch 148 in Civil Case No. 03-180.

The background facts of this case, as summed by the trial court, follow:

> This is an action for sum of money filed [b]y [p]laintiff Bank of the Philippine Islands, hereinafter referred to as BPI, as successor-in-interest of Far East Bank & Trust Company, referred hereto as Far East Bank, against defendant Cynthia L. Reyes, hereinafter referred to as defendant Reyes.
>
> As alleged in the Complaint, defendant Reyes borrowed, renewed and received from Far East Bank the principal of Twenty Million Nine Hundred Thousand Pesos [sic] (₱20,950,000.00). In support of such allegation, four promissory notes were presented during the course of the trial of the case. As security for the obligation, defendant Reyes executed Real Estate Mortgage Agreements involving twenty[-]two (22) parcels of land. When the debt became due and demandable, the defendant failed to settle her obligation and the plaintiff was constrained to foreclose the properties. As alleged, after due publication, the mortgaged properties were sold at public auction on December 20, 2001 by the Office of the Clerk of Court & *Ex-Officio* Sheriff of the Regional Trial Court of Malolos, Bulacan.
>
> At the public auction, the mortgaged properties were awarded to BPI in consideration of its highest bid price amounting to Nine Million Thirty[-]Two Thousand Nine Hundred Sixty Pesos (₱9,032,960.00). On said date, the obligation already reached Thirty Million Forty (sic) Hundred Twenty Thousand Forty[-]One & 67/100 Pesos (₱30,420,041.67), inclusive of interest but excluding attorney's fees, publication and other charges. After applying the proceeds of the public auction to the outstanding obligation, there remains to be a deficiency and defendant Reyes is still indebted, as of January 20, 2003, to the plaintiff in the amount of ₱24,545,094.67, broken down as follows:

Principal	₱19,700,000.00
Unsatisfied Interest	2,244,694.67
Interest	2,383,700.00
Penalty	216,700.00
TOTAL	₱24,545,094.67

Also included in the prayer of the plaintiff is the payment of attorney's fees of at least Five Hundred Thousand Pesos and the cost of suit.

In the Answer, the defendant claims that based on the plaintiff's appraisal of the properties mortgaged to Far East Bank, the twenty[-]two properties fetched a total appraisal value of ₱47,436,000.00 as of January 6, 1998. This appraisal value is evidenced by the Appraisal, which is attached as Annex 1 of the Answer. Considering the appraisal value and the outstanding obligation of the defendant, it appears that the mortgaged properties sold during the public auction are more than enough as payment to the outstanding obligation of the defendant.[3]

Subsequently, upon petitioner's motion, the trial court issued an Order[4] dated October 6, 2005 recognizing Asset Pool A (SPV-AMC), Inc. as substitute plaintiff in lieu of petitioner.

After due trial, the trial court rendered its Decision dated November 3, 2005, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff BANK OF THE PHILIPPINE ISLANDS, as successor-in-interest of Far East Bank & Trust Company, and against defendant CYNTHIA L. REYES. Accordingly, the defendant is ordered:

1. To pay the plaintiff the amount of Php22,083,700.00, representing said defendant's outstanding obligation, plus interest at the rate of twelve percent (12%) per annum, computed from January 20, 2003 until the whole amount is fully paid;

2. To pay plaintiff the amount of Php200,000.00 as attorney's fees;

3. Costs of suit against the defendant.[5]

Respondent filed a motion for reconsideration but the same was denied by the trial court through an Order[6] dated January 9, 2006.

---

[3] *Id.* at 132-133.

[4] *Id.* at 131.

[5] *Id.* at 137.

[6] *Id.* at 138-140.

An appeal with the Court of Appeals was filed by respondent. This resulted in a reversal of the trial court's judgment *via* an April 30, 2008 Decision by the Court of Appeals, the dispositive portion of which states:

> WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated November 3, 2005 is hereby REVERSED AND SET ASIDE.[7]

Aggrieved, petitioner filed the instant petition in which the following issues were put into consideration:

A. WHETHER OR NOT THERE WAS DEFICIENCY WHEN RESPONDENT'S PROPERTY WHICH SHE SUPPOSEDLY VALUED AT ₱47,536,000.00 WAS SOLD AT THE EXTRA-JUDICIAL FORECLOSURE SALE AT ONLY [₱9,032,960.00] BY PETITIONER;

B. WHETHER OR NOT RESPONDENT'S PROPERTY WAS OVERVALUED WHEN IT WAS MORTGAGED TO FEBTC/BPI;

C. WHETHER OR NOT RESPONDENT CAN RAISE THE ISSUE ON THE NULLITY OF THE EXTRA-JUDICIAL FORECLOSURE SALE IN AN ACTION FILED BY THE PETITIONER (CREDITOR-MORTGAGEE) FOR THE RECOVERY OF DEFICIENCY AND FOR THE FIRST TIME ON APPEAL;

D. WHETHER OR NOT THE PRICE OF ₱9,032,960.00 FOR RESPONDENT'S PROPERTY AT THE EXTRAJUDICIAL FORECLOSURE SALE WAS UNCONCIONABLE OR SHOCKING TO THE CONSCIENCE OR GROSSLY INADEQUATE.

E. WHETHER OR NOT THE PETITION RAISES QUESTIONS OF LAW AND THE QUESTIONS OF FACT RAISED FALL WITHIN THE EXCEPTIONS TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE REVIEWED BY THIS HONORABLE COURT UNDER RULE 45 OF THE RULES OF COURT.[8]

---

[7] *Id.* at 19.

[8] *Id.* at 404-405.

On the other hand, respondent submits the following issues:

Whether or not the Court of Appeals erred in ruling that there exists no deficiency owed by mortgagor-debtor as the mortgagee-creditor bank acquired the mortgaged property at the foreclosure sale worth ₱47,536,000 at only ₱9,032,960;

Whether or not the Court of Appeals erred in ruling that the properties of the respondent were not overvalued at ₱47,536,000;

Whether or not the Court of Appeals erred in entertaining the issue that the foreclosure sale was null and void;

Whether or not the Court of Appeals erred in ruling that the purchase price of ₱9,032,000 at the foreclosure sale of respondent's mortgaged properties was unconscionable or grossly inadequate.[9]

After consideration of the issues and arguments raised by the opposing sides, the Court finds the petition meritorious.

Stripped of surplusage, the singular issue in this case is whether or not petitioner is entitled to recover the unpaid balance or deficiency from respondent despite the fact that respondent's property, which were appraised by petitioner's predecessor-in-interest at ₱47,536,000.00, was sold and later bought by petitioner in an extrajudicial foreclosure sale for only ₱9,032,960.00 in order to satisfy respondent's outstanding obligation to petitioner which, at the time of the sale, amounted to ₱30,420,041.67 inclusive of interest but excluding attorney's fees, publication and other charges.

There is no dispute with regard to the total amount of the outstanding loan obligation that respondent owed to petitioner at the time of the extrajudicial foreclosure sale of the property subject of the real estate mortgage. Likewise, it is uncontested that by subtracting the amount obtained at the sale of the property, a loan balance still remains. Petitioner merely contends that, contrary to the ruling of the Court of Appeals, it has the right to collect from the respondent the remainder of her obligation after deducting the amount obtained from the extrajudicial foreclosure sale. On the other hand, respondent avers that since

[9] *Id.* at 372.

petitioner's predecessor's own valuation of the subject property shows that its value is more than the amount of respondent's outstanding obligation, then respondent cannot be held liable for the balance especially because it was petitioner who bought the property at the foreclosure sale.

In the recent case of *BPI Family Savings Bank, Inc. v. Avenido*,[10] we reiterated the well-entrenched rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency, to wit:

> It is settled that if "the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage."[11]

Furthermore, we have also ruled in *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*[12] that, in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation. We quote from the relevant portion of said decision:

---

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

[11] *Id.*

[12] G.R. No. 138145, June 15, 2006, 490 SCRA 560.

Hence, it is wrong for petitioners to conclude that when respondent bank supposedly bought the foreclosed properties at a very low price, the latter effectively prevented the former from satisfying their whole obligation. Petitioners still had the option of either redeeming the properties and, thereafter, selling the same for a price which corresponds to what they claim as the properties' actual market value or by simply selling their right to redeem for a price which is equivalent to the difference between the supposed market value of the said properties and the price obtained during the foreclosure sale**.** In either case, petitioners will be able to recoup the loss they claim to have suffered by reason of the inadequate price obtained at the auction sale and, thus, enable them to settle their obligation with respondent bank. Moreover, petitioners are not justified in concluding that they should be considered as having paid their obligations in full since respondent bank was the one who acquired the mortgaged properties and that the price it paid was very inadequate. The fact that it is respondent bank, as the mortgagee, which eventually acquired the mortgaged properties and that the bid price was low is not a valid reason for petitioners to refuse to pay the remaining balance of their obligation. **Settled is the rule that a mortgage is simply a security and not a satisfaction of indebtedness.**[13] (Emphases supplied.)

We are aware of our earlier pronouncements in *Cometa v. Court of Appeals*[14] and in *Rosales v. Court of Appeals*[15] which were cited by the Court of Appeals in its assailed April 30, 2008 Decision, wherein we declared that a sale price which is equivalent to more or less twelve percent (12%) of the value of the property is shockingly low, unconscionable and grossly inadequate, thus, warranting a nullification of the foreclosure sale. In both cases, we declared that where the inadequacy of the price is purely shocking to the conscience, such that the mind revolts at it and such that a reasonable man would neither directly nor indirectly be likely to consent to it, the sale shall be declared null and void. On the other hand, we are likewise reminded of our ruling in *Cortes v. Intermediate Appellate*

[13] *Id.* at 579-580.

[14] 404 Phil. 107 (2001).

[15] 405 Phil. 638 (2001).

Court[16] and in *Ponce De Leon v. Rehabilitation Finance Corporation*[17] wherein we upheld the validity of foreclosure sales in which the property subject thereof were sold at 11% and 17%, respectively, of their value.

In the case at bar, the winning bid price of ₱9,032,960.00 is nineteen percent (19%) of the appraised value of the property subject of the extrajudicial foreclosure sale that is pegged at ₱47,536,000.00 which amount, notably, is only an arbitrary valuation made by the appraising officers of petitioner's predecessor-in-interest ostensibly for loan purposes only. Unsettled questions arise over the correctness of this valuation in light of conflicting evidence on record.

Notwithstanding the doubtful validity of the valuation of the property at issue, the resolution of which is a question of fact that we are precluded from addressing at this juncture of the litigation, and confronted by the divergent jurisprudential benchmarks which define what can be considered as shockingly or unconscionably low price in a sale of property, we, nevertheless, proceed to adjudicate this case on an aspect in which it is most plain and unambiguous — that it involves a forced sale with a right of redemption.

Throughout a long line of jurisprudence, we have declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.[18]

---

[16] 256 Phil. 979 (1989).

[17] 146 Phil. 862 (1970).

[18] *New Sampaguita Builders Construction Inc. v. Philippine National Bank*, 479 Phil. 483, 514-515 (2004); *The Abaca Corporation of the Phils. v. Garcia*, 338 Phil. 988, 993 (1997); *Gomez v. Gealone*, G.R. No. 58281, November 13, 1991, 203 SCRA 474, 486; *Prudential Bank v. Martinez*, G.R. No. 51768, September 14, 1990, 189 SCRA 612, 617; *Francia v. Intermediate Appellate Court*, 245 Phil. 717, 726 (1988); *Vda. De Gordon v. Court of Appeals*, 196 Phil. 159, 165 (1981).

In the early case of *The National Loan and Investment Board v. Meneses*,[19] we also had the occasion to state that:

> As to the **inadequacy of the price of the sale**, this court has repeatedly held that the fact that a property is sold at public auction for a price lower than its alleged value, **is not of itself sufficient to annul said sale, where there has been strict compliance with all the requisites marked out by law to obtain the highest possible price, and where there is no showing that a better price is obtainable**. (*Government of the Philippines vs. De Asis*, G.R. No. L-45483, April 12, 1939; *Guerrero vs. Guerrero*, 57 Phil. 442; *La Urbana vs. Belando*, 54 Phil. 930; *Bank of the Philippine Islands v . Green*, 52 Phil. 491.)[20] (Emphases supplied.)

In *Hulst v. PR Builders, Inc.*,[21] we further elaborated on this principle:

> [G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. **When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption.** x x x[22] (Emphasis supplied.)

It bears also to stress that the mode of forced sale utilized by petitioner was an extrajudicial foreclosure of real estate mortgage which is governed by Act No. 3135, as amended. An

---

[19] 67 Phil. 498 (1939).

[20] *Id.* at 500.

[21] G.R. No. 156364, September 3, 2007, 532 SCRA 74.

[22] *Id.* at 103-104.

examination of the said law reveals nothing to the effect that there should be a minimum bid price or that the winning bid should be equal to the appraised value of the foreclosed property or to the amount owed by the mortgage debtor. What is clearly provided, however, is that a mortgage debtor is given the opportunity to redeem the foreclosed property "within the term of one year from and after the date of sale."[23] In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances.

Thus, even if we assume that the valuation of the property at issue is correct, we still hold that the inadequacy of the price at which it was sold at public auction does not invalidate the foreclosure sale.

Even if we are so inclined out of sympathy for respondent's plight, neither could we temper respondent's liability to the petitioner on the ground of equity. We are barred by our own often repeated admonition that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[24] The law and jurisprudence on the matter is clear enough to close the door on a recourse to equity.

Moreover, we fail to see any unjust enrichment resulting from upholding the validity of the foreclosure sale and of the right of the petitioner to collect any deficiency from respondent. Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good governance."[25] As discussed above, there is a strong

---

[23] Section 6, Act No. 3135, as amended.

[24] *Cheng v. Donini*, G.R. No. 167017, June 22, 2009, 590 SCRA 406, 414.

[25] *Philippine Realty and Holdings Corporation v. Ley Construction and Development Corporation*, G.R. Nos. 165548 & 167879, June 13, 2011, 651 SCRA 719, 749-750.

legal basis for petitioner's claim against respondent for the balance of her loan obligation.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Decision dated April 30, 2008 of the Court of Appeals in CA-G.R. CV No. 88004 is **REVERSED** and **SET ASIDE**. The RTC's November 3, 2005 Decision in Civil Case No. 03-180 is hereby **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183093. February 1, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIOSDADO TUBAT *Y* VERSOZA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; PRINCIPLES THAT GUIDE THE COURT IN THE DETERMINATION OF THE INNOCENCE OR GUILT OF THE ACCUSED. — In the determination of the innocence or guilt of the accused in rape cases, courts are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE LONE UNCORROBORATED TESTIMONY OF THE OFFENDED VICTIM, SO LONG AS THE TESTIMONY IS CLEAR, POSITIVE, AND PROBABLE, MAY PROVE THE CRIME AS CHARGED. — Inasmuch as only two persons are usually involved in rape cases, the settled rule is that the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged.

3. ID.; ID.; ID.; AS A RULE, FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES DESERVE THE HIGHEST RESPECT. — Once again, we recite the time-honored principle that the findings of the trial court as to the credibility of witnesses and their testimonies deserve the highest respect absent a showing that the court would have ruled otherwise had it not overlooked, misunderstood or misapplied material facts or circumstances. As none of the exceptions is present in this case, there is no reason to overturn the findings of the trial court thereon.

4. ID.; ID.; ID.; CREDIBILITY OF A RAPE VICTIM IS NEITHER DIMINISHED NOR IMPAIRED BY MINOR INCONSISTENCIES IN HER TESTIMONY. — In the case of *People v. Laog*, where the appellant also raised the inconsistencies in the testimony of the victim, this Court declared: Nonetheless, this matter raised by appellant is a minor detail which had nothing to do with the elements of the crime of rape. Discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; WHEN A WOMAN SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO

SHOW THAT RAPE WAS INDEED COMMITTED. — The following pronouncements of the Court, therefore, apply in this case: As it has been repeatedly held, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

6. ID.; ID.; ID.; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED WHEN THREATS AND INTIMIDATION ARE EMPLOYED. — We are also convinced that AAA was not able to fight back not only because appellant was strong but because a knife was poked on her neck. He also threatened to kill her children. These also explained why she did not shout for help. As held in *People v. Fernandez*: Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attackers because of fear. x x x The use of a weapon, by itself, is strongly suggestive of force or at least intimidation, and threatening the victim with a gun is sufficient to bring her into submission. Thus, the law does not impose upon the private complainant the burden of proving resistance.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN THE FILING OF A COMPLAINT, IF SATISFACTORILY EXPLAINED, DOES NOT IMPAIR THE CREDIBILITY OF A WITNESS. — The credibility of a witness, however, is not impaired if the delay in making a criminal accusation has been satisfactory explained. In the instant case such delay is understandable. AAA was afraid of appellant's threats. Since individuals react differently to emotional stress, no standard form of behavior can be expected of them after they have been raped.

8. ID.; ID.; ID.; DENIAL AND ALIBI; CANNOT PROSPER AS DEFENSES IN THE CASE AT BAR; EXPLAINED. — As to appellant's defense of denial and alibi, we completely agree with the ruling of the Court of Appeals, to wit: In rape cases, while denial and alibi are legitimate defenses, bare assertions thereof cannot overcome the categorical testimony of the victim. In particular, the defense of alibi is weak if wanting in material

corroboration, as in this case. In order to merit credibility, denial must be buttressed by strong evidence of non-culpability which herein accused-appellant failed to show. And in order for alibi to prosper, the accused-appellant must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or its immediate vicinity. In the present case, accused-appellant failed to demonstrate this fact.

9. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; IMPOSITION OF THE PENALTY OF *RECLUSION PERPETUA*, UPHELD IN THE CASE AT BAR. — We likewise adopt the Court of Appeals' imposition of the penalty of *reclusion perpetua*. The use of a deadly weapon in the commission of rape, which was alleged in the Information and sufficiently established during trial, carries with it the penalty of *reclusion perpetua* to death. Since no other circumstances attended the commission of the crime, the lesser penalty of *reclusion perpetua* shall be imposed.

10. CIVIL LAW; DAMAGES, CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES, PROPER IN THE CASE AT BAR. — As to the award of damages, the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages are in order. Consistent with prevailing jurisprudence, however, the victim shall likewise be entitled to exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00) and the rate of 6% per annum interest shall be imposed on all damages awarded to be computed from the date of finality of the judgment until fully paid.

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 us for final review is the conviction[1] of appellant Diosdado Tubat for the rape of a married woman.

Accused of the crime of rape,[2] appellant entered a plea of not guilty on 29 July 2004 before the Regional Trial Court.[3]

On trial, complainant AAA[4] testified that, at around 3:00 o'clock in the morning of 10 March 2004, her husband left for the market to sell mussels. Shortly after, appellant, who slept in their house, went out to buy cigarettes. AAA stepped out to

---

[1] *Rollo*, pp. 2-9. Penned by Court of Appeals Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag concurring.

[2] The accusatory portion of the Information dated 29 July 2004 in Criminal Case No. 31344-MN reads:

> That on or about the 10th day of March 2004, in the City of x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, with lewd design and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously sexually abused/molested [AAA], by having carnal knowledge with her against her will and without her consent. Records, p. 1.

[3] *Id.* at 15. Order dated 3 January 2005.

[4] In *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), the real name and the personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members were withheld in order to maintain the confidentiality of information on child abuse cases, and consistent with the application of: (1) the provisions of Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and its implementing rules; (2) Republic Act No. 9262 (*Anti-Violence Against Women and their Children Act of 2004*) and its implementing rules; and (3) this Court's Resolution dated 19 October 2004 in A.M. No. 04-10-11-SC (*Rule on Violence Against Women and their Children*). While it would appear that victims of rape who are already of legal age are not covered by the provisions of Republic Act No. 9262, we deem it best to extend similar protection to them in order to respect their dignity and protect their privacy and that of their families.

fetch a pail of water. While doing so, appellant came back with a bladed weapon and poked it at her neck. Upon reaching the house and still with the knife at her neck, appellant undressed himself, pulled down her shorts and underwear and forced her to lie down. He went on top of her, inserted his organ into hers, and mashed her breast. She pleaded with the appellant but that was all she could do. She could not fight back because he was too strong for her. She could not shout for help because he threatened to kill her four (4) children who were then fast asleep. Moreover, appellant kept the knife at her neck. After a while, she was able to grab a piece of wood and hit him on the neck. Appellant ran away.

AAA could not reveal the incident to her husband because of the appellant's threat against their children. However, six (6) days after the rape was committed, she learned that appellant had been telling her children that he would kill her husband. It was then that she mustered the courage to report the incident to the police authorities.

Appellant, gave a different version of the story. Appellant denied having committed the crime. Instead, he claimed that he could have earned the ire of AAA because he saw her being kissed by one Eddie Malicdem, her alleged lover. This, appellant believed, could have possibly motivated AAA to file the complaint against him. However, on cross examination, the appellant admitted that the rape committed on 10 March 2004 preceded the kissing incident that he allegedly witnessed on 3 April 2004.

On 30 June 2006, the trial court convicted the appellant.[5] The dispositive portion of the decision reads:

> WHEREFORE, in the light of the foregoing, the [c]ourt finds accused DIOSDADO TUBAT *y* VERSOZA GUILTY beyond reasonable doubt of the crime of Rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* [and] to pay the complainant the amount of ₱50,000.00 by way of civil indemnity, plus the costs of suit.[6]

---

[5] Records, pp. 60-62. Decision dated 30 June 2006 penned by Judge Benjamin T. Antonio.

[6] *Id.* at 62.

Appellant filed a Notice of Appeal on 18 September 2006.[7] On 30 January 2008, the Court of Appeals promulgated its decision[8] in CA-G.R. CR HC No. 02517 upholding the conviction of appellant. It reads, in part:

> WHEREFORE, premises considered, the appealed decision dated June 30, 2006 of the Regional Trial Court, Branch x x x, x x x, in Criminal Case No. 31344-MN, is hereby AFFIRMED with MODIFICATION. Accused-appellant DIOSDADO TUBAT is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the complainant in the amount of ₱50,000.00, as civil indemnity and ₱50,000.00 as moral damages, plus costs of suit.[9]

On further appeal to this Court on the repeated ground that the trial court erred in finding appellant guilty of rape, we required the parties to file their respective supplemental briefs[10] but both manifested that they would no longer do so.[11]

Our Ruling

We affirm the appellant's conviction.

In the determination of the innocence or guilt of the accused in rape cases, courts are guided by the following principles:

> (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the

---

[7] *Id.* at 63. Notice of Appeal dated 18 September 2006 filed by appellant with the trial court.

[8] CA *rollo*, p. 68. Notice of Judgment dated 30 January 2008 of the Fourth Division of the Court of Appeals.

[9] *Id.* at 76. Decision dated 30 January 2008 of the Court of Appeals.

[10] *Rollo*, p. 21. Resolution dated 16 July 2008, First Division, Supreme Court.

[11] *Id.* at 28-31. Manifestation (in Lieu of Supplemental Brief) dated 8 October 2008 of the Office of the Solicitor General; *Id.* at 24-27. Manifestation in Lieu of Supplemental Brief dated 22 September 2008 of the Public Attorney's Office.

evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[12]

Inasmuch as only two persons are usually involved in rape cases, the settled rule is that the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged.[13]

In his attempt to destroy the credibility of the testimony of AAA, the appellant touched even the most trivial of the matters testified to. We are compelled to reiterate established jurisprudence on rape.

The trial court's findings on the credibility of witnesses and of their testimonies are accorded the highest respect

Once again, we recite the time-honored principle that the findings of the trial court as to the credibility of witnesses and their testimonies deserve the highest respect absent a showing that the court would have ruled otherwise had it not overlooked, misunderstood or misapplied material facts or circumstances.[14] As none of the exceptions is present in this case, there is no reason to overturn the findings of the trial court thereon.

The credibility of a rape victim is not diminished nor impaired by minor inconsistencies in her testimony

AAA initially testified that, in the early morning of the day she was raped, the appellant asked her husband to get up so that they could go to the market to sell mussels. On cross

---

[12] *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing *People v. Glivano*, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 further citing *People v. Malones*, 425 SCRA 318, 329 (2004).

[13] *People v.* Ogarte, G.R. No. 182690, 30 May 2011citing *People v. Buenviaje*, 408 Phil. 342, 354 (2001).

[14] *People v. Padilla*, G.R. No. 182917, 8 June 2011 citing *People v. Paculba*, G.R. No. 183453, 9 March 2010, 614 SCRA 755, 763-764.

examination, however, it was clarified that it was her mother-in-law who woke her husband up. Appellant, thus, posited that if she could give two (2) inconsistent statements during the examination, it is with more reason that her recollection of the event that transpired years ago would be unreliable.

We are not convinced.

In the case of *People v. Laog*,[15] where the appellant also raised the inconsistencies in the testimony of the victim, this Court declared:

> Nonetheless, this matter raised by appellant is a minor detail which had nothing to do with the elements of the crime of rape. Discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole.[16] For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[17] It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[18]

No woman would go through the process and humiliation of trial had she not been a victim of abuse and her only motive is to seek and obtain justice; When she says she has been raped, she says, in effect, all that is necessary to prove that rape was, indeed, committed

---

[15] G.R. No. 178321, 5 October 2011.

[16] *Id.* citing *People v. Suarez,* G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 345.

[17] *Id.* citing *People v. Villarino,* G.R. No. 185012, 5 March 2010, 614 SCRA 372, 387 further citing *People v. Masapol,* G.R. No. 121997, 10 December 2003, 417 SCRA 371, 377.

[18] *Id.* citing *People v. Wasit,* G.R. No. 182454, 23 July 2009, 593 SCRA 721, 729.

Appellant was given the opportunity to show the court that AAA was driven by some ill motive to falsely testify against him. Evidently, there was none that he could validly impute against her. As it turned out, his allegation that he saw AAA being kissed by the alleged lover in the morning of the rape incident, which, he claimed, would give AAA reason to file the case against him, is not true. He himself admitted on cross examination that he witnessed the kissing incident in April 2004 long after the rape was committed in March of the same year.

The following pronouncements of the Court, therefore, apply in this case:

> As it has been repeatedly held, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.[19]

> It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[20]

Physical resistance need not be established when threats and intimidation are employed

We are also convinced that AAA was not able to fight back not only because appellant was strong but because a knife was poked on her neck. He also threatened to kill her children. These also explained why she did not shout for help. As held in *People v. Fernandez*:[21]

> Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attackers because of fear. x x x The use of a weapon, by itself,

---

[19] *People v. Saludo*, G.R. No. 178406, 6 April 2011 citing *People v. Alcazar*, G.R. No. 186494, 15 September 2010, 630 SCRA 622, 633; *People v. Belga*, G.R. No. 129769, 19 January 2001, 349 SCRA 678.

[20] *People v. Belga*, *id.*, citing *People v. Manuel*, 298 SCRA 184 [1998].

[21] G.R. No. 172118, 24 April 2007, 522 SCRA 189.

is strongly suggestive of force or at least intimidation, and threatening the victim with a gun is sufficient to bring her into submission.[22] Thus, the law does not impose upon the private complainant the burden of proving resistance.[23]

Delay in the filing of a complaint, if satisfactorily explained, does not impair the credibility of a witness

Appellant would have us believe that AAA's testimony is not credible considering that she could have immediately shouted for help if, indeed, appellant fled after he was hit by a piece of wood. Instead, she waited for several days before filing the complaint.

The credibility of a witness, however, is not impaired if the delay in making a criminal accusation has been satisfactory explained.[24] In the instant case such delay is understandable. AAA was afraid of appellant's threats.[25] Since individuals react differently to emotional stress, no standard form of behavior can be expected of them after they have been raped.[26]

Defense of denial and alibi cannot prosper

As to appellant's defense of denial and alibi, we completely agree with the ruling of the Court of Appeals, to wit:

> In rape cases, while denial and alibi are legitimate defenses, bare assertions thereof cannot overcome the categorical testimony of the victim. In particular, the defense of alibi is weak if wanting in material corroboration, as in this case.[27]

---

[22] *Id.* citing *People v. Galido,* G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 515; *People v. David,* 461 Phil. 364, 680-681(2003); *People v. Gutierrez,* 451 Phil. 227, 239-240 (2003).

[23] *Id.*

[24] *People v. Francisco,* G.R. No. 141631, 4 April 2003, 400 SCRA 650, 657 citing *People vs. Tanail,* 323 SCRA 667, 675 [2000]; *People vs. Narido,* 316 SCRA 131 [1999].

[25] *Id.*

[26] *Id.* at 661.

[27] *Rollo,* p. 8 citing *People v. Cachapero,* 428 SCRA 744 (2004).

In order to merit credibility, denial must be buttressed by strong evidence of non-culpability which herein accused-appellant failed to show. And in order for alibi to prosper, the accused-appellant must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or its immediate vicinity. In the present case, accused-appellant failed to demonstrate this fact.[28]

Penalty and Award of Damages

We likewise adopt the Court of Appeals' imposition of the penalty of *reclusion perpetua*.

The use of a deadly weapon in the commission of rape, which was alleged in the Information and sufficiently established during trial, carries with it the penalty of *reclusion perpetua* to death.[29] Since no other circumstances attended the commission of the crime, the lesser penalty of *reclusion perpetua* shall be imposed.[30]

As to the award of damages, the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages are in order.[31] Consistent with prevailing jurisprudence, however, the victim shall likewise be entitled to exemplary damages in the amount of Thirty Thousand

---

[28] *Id.* citing *People v. Arevalo*, 421 SCRA 604 [2004].

[29] See *People v. Bulagao*, G.R. No. 184757, 5 October 2011.

[30] Article 63 of the Revised Penal Code provides, in part:

ART. 63. *Rules for the application of indivisible penalties.* — x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. 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 x x x x x x

See also *People v. Dumadag*, G.R. No. 176740, 22 June 2011.

[31] *People v. Bulagao, supra* note 29 citing *People v. Manulit*, G.R. No. 192581, 17 November 2010, 635 SCRA 426, 439.

Pesos (₱30,000.00)[32] and the rate of 6% per annum interest shall be imposed on all damages awarded to be computed from the date of finality of the judgment until fully paid.[33]

WHEREFORE, the Decision dated 30 January 2008 of the Court of Appeals in CA-G.R. CR HC No. 02517 is **AFFIRMED** with **MODIFICATION**.

Appellant is hereby found **GUILTY** beyond reasonable doubt of the crime of Rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the victim the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral 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), Brion, Sereno, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184109. February 1, 2012]

CELERINO E. MERCADO, *petitioner, vs.* **BELEN[*] ESPINOCILLA[**] AND FERDINAND ESPINOCILLA,** *respondents.*

---

[32] *Id.* citing *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 821; *People v. Dumadag*, *supra* note 30.

[33] *People v. Dumadag*, *supra* note 30 citing *People v. Galvez*, G.R. No. 181827, 2 February 2011, 641 SCRA 472 and *People v. Alverio*, G.R. No. 194259, 16 March 2011.

[*] Avelina in some parts of the records.

[**] This surname is spelled Espenocilla in some parts of the records.

SYLLABUS

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION, DEFINED; ACQUISITIVE PRESCRIPTION, KINDS OF. — Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.

2. ID.; ID.; ID.; ID.; EXTRAORDINARY ACQUISITIVE PRESCRIPTION; ESTABLISHED IN THE CASE AT BAR; DISCUSSED. — Here, petitioner himself admits the adverse nature of respondents' possession with his assertion that Macario's fraudulent acquisition of Dionisia's share created a constructive trust. In a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee (Macario) neither accepts any trust nor intends holding the property for the beneficiary (Salvacion, Aspren, Isabel). The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse. Prescription may supervene even if the trustee does not repudiate the relationship. Then, too, respondents' uninterrupted adverse possession for 55 years of 109 sq. m. of Lot No. 552 was established. Macario occupied Dionisia's share in 1945 although his claim that Dionisia donated it to him in 1945 was only made in a 1948 affidavit. We also agree with the CA that Macario's possession of Dionisia's share was public and adverse since his other co-owners, his three other sisters, also occupied portions of Lot No. 552. Indeed, the 1977 sale made by Macario and his two daughters in favor of his son Roger confirms the adverse nature of Macario's possession because said sale of 225 sq. m. was an act of ownership over Macario's original share and Dionisia's share. In 1985, Roger also exercised an act of ownership when he sold 114 sq. m. to Caridad Atienza. It was only in the year 2000, upon receipt of the summons to

answer petitioner's complaint, that respondents' peaceful possession of the remaining portion (109 sq. m.) was interrupted. By then, however, extraordinary acquisitive prescription has already set in in favor of respondents. That the RTC found Macario's 1948 affidavit void is of no moment. Extraordinary prescription is unconcerned with Macario's title or good faith. Accordingly, the RTC erred in ruling that Macario cannot acquire by prescription the shares of Salvacion, Aspren, and Isabel, in Dionisia's 114-sq. m. share from Lot No. 552.

3. ID.; ID.; ID.; EXTINCTIVE PRESCRIPTION; UPHELD IN THE CASE AT BAR. — Moreover, the CA correctly dismissed petitioner's complaint as an action for reconveyance based on an implied or constructive trust prescribes in 10 years from the time the right of action accrues. This is the other kind of prescription under the Civil Code, called extinctive prescription, where rights and actions are lost by the lapse of time. Petitioner's action for recovery of possession having been filed 55 years after Macario occupied Dionisia's share, it is also barred by extinctive prescription. The CA while condemning Macario's fraudulent act of depriving his three sisters of their shares in Dionisia's share, equally emphasized the fact that Macario's sisters wasted their opportunity to question his acts.

APPEARANCES OF COUNSEL

Juan Sanchez Dealca for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

The case

Petitioner Celerino E. Mercado appeals the Decision[1] dated April 28, 2008 and Resolution[2] dated July 22, 2008 of the Court

[1] *Rollo*, pp. 17-28. Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] *Id.* at 70-71.

of Appeals (CA) in CA-G.R. CV No. 87480. The CA dismissed petitioner's complaint[3] for recovery of possession, quieting of title, partial declaration of nullity of deeds and documents, and damages, on the ground of prescription.

The antecedent facts

Doroteo Espinocilla owned a parcel of land, Lot No. 552, with an area of 570 sq. m., located at Magsaysay Avenue, Zone 5, Bulan, Sorsogon. After he died, his five children, Salvacion, Aspren, Isabel, Macario, and Dionisia divided Lot No. 552 equally among themselves. Later, Dionisia died without issue ahead of her four siblings, and Macario took possession of Dionisia's share. In an affidavit of transfer of real property[4] dated November 1, 1948, Macario claimed that Dionisia had donated her share to him in May 1945.

Thereafter, on August 9, 1977, Macario and his daughters Betty Gullaba and Saida Gabelo sold[5] 225 sq. m. to his son Roger Espinocilla, husband of respondent Belen Espinocilla and father of respondent Ferdinand Espinocilla. On March 8, 1985, Roger Espinocilla sold[6] 114 sq. m. to Caridad Atienza. Per actual survey of Lot No. 552, respondent Belen Espinocilla occupies 109 sq. m., Caridad Atienza occupies 120 sq. m., Caroline Yu occupies 209 sq. m., and petitioner, Salvacion's son, occupies 132 sq. m.[7]

The case for petitioner

Petitioner sued the respondents to recover two portions: an area of 28.5[8] sq. m. which he bought from Aspren and another 28.5 sq. m. which allegedly belonged to him but was occupied

---

[3] Records, pp. 1-7.

[4] Exhibit "4".

[5] Records, p. 10.

[6] Exhibit "8".

[7] Exhibit "I-3".

[8] 28.3 sq. m. in other parts of the records..

by Macario's house.[9] His claim has since been modified to an alleged encroachment of only 39 sq. m. that he claims must be returned to him. He avers that he is entitled to own and possess 171 sq. m. of Lot No. 552, having inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. According to him, his mother's inheritance is 142.5 sq. m., that is, 114 sq. m. from Doroteo plus 28.5 sq. m. from Dionisia. Since the area he occupies is only 132 sq. m.,[10] he claims that respondents encroach on his share by 39 sq. m.[11]

The case for respondents

Respondents agree that Doroteo's five children each inherited 114 sq. m. of Lot No. 552. However, Macario's share increased when he received Dionisia's share. Macario's increased share was then sold to his son Roger, respondents' husband and father. Respondents claim that they rightfully possess the land they occupy by virtue of acquisitive prescription and that there is no basis for petitioner's claim of encroachment.[12]

The trial court's decision

On May 15, 2006, the Regional Trial Court (RTC) ruled in favor of petitioner and held that he is entitled to 171 sq. m. The RTC found that petitioner inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. The RTC computed that Salvacion, Aspren, Isabel and Macario each inherited 142.5 sq. m. of Lot No. 552. Each inherited 114 sq. m. from Doroteo and 28.5 sq. m. from Dionisia. The RTC further ruled that Macario was not entitled to 228 sq. m. Thus, respondents must return 39 sq. m. to petitioner who occupies only 132 sq. m.[13]

There being no public document to prove Dionisia's donation, the RTC also held that Macario's 1948 affidavit is void and is

[9] Records, pp. 2-3.

[10] *Rollo*, p. 155.

[11] *Id.* at 160.

[12] *Id.* at 142, 144-145.

[13] Records, pp. 243-244.

an invalid repudiation of the shares of his sisters Salvacion, Aspren, and Isabel in Dionisia's share. Accordingly, Macario cannot acquire said shares by prescription. The RTC further held that the oral partition of Lot No. 552 by Doroteo's heirs did not include Dionisia's share and that partition should have been the main action. Thus, the RTC ordered partition and deferred the transfer of possession of the 39 sq. m. pending partition.[14] The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing premises, the court issues the following ORDER, thus —

a) Partially declaring the nullity of the Deed of Absolute Sale of Property dated August 9, 1977 x x x executed by Macario Espinocilla, Betty E. Gullaba and Saida E. Gabelo in favor of Roger Espinocilla, insofar as it affects the portion or the share belonging to Salvacion Espinocilla, mother of [petitioner,] relative to the property left by Dionisia Espinocilla, including [Tax Declaration] No. 13667 and other documents of the same nature and character which emanated from the said sale;

b) To leave as is the Deeds of Absolute Sale of May 11, 1983 and March 8, 1985, it having been determined that they did not involve the portion belonging to [petitioner] x x x.

c) To effect an effective and real partition among the heirs for purposes of determining the exact location of the share (114 sq. m.) of the late Dionisia Espinocilla together with the 28.5 sq. m. belonging to [petitioner's] mother Salvacion, as well as, the exact location of the 39 sq. m. portion belonging to the [petitioner] being encroached by the [respondents], with the assistance of the Commissioner (Engr. Fundano) appointed by this court.

d) To hold in abeyance the transfer of possession of the 39 sq. m. portion to the [petitioner] pending the completion of the real partition above-mentioned.[15]

---

[14] *Id.* at 244-247.

[15] *Id.* at 246-247.

The CA decision

On appeal, the CA reversed the RTC decision and dismissed petitioner's complaint on the ground that extraordinary acquisitive prescription has already set in in favor of respondents. The CA found that Doroteo's four remaining children made an oral partition of Lot No. 552 after Dionisia's death in 1945 and occupied specific portions. The oral partition terminated the co-ownership of Lot No. 552 in 1945. Said partition also included Dionisia's share because the lot was divided into four parts only. And since petitioner's complaint was filed only on July 13, 2000, the CA concluded that prescription has set in.[16] The CA disposed the appeal as follows:

> WHEREFORE, the appeal is GRANTED. The assailed May 15, 2006 Decision of the Regional Trial Court (RTC) of Bulan, Sorsogon is hereby REVERSED and SET ASIDE. The Complaint of the [petitioner] is hereby DISMISSED. No costs.[17]

The instant petition

The core issue to be resolved is whether petitioner's action to recover the subject portion is barred by prescription.

Petitioner confirms oral partition of Lot No. 552 by Doroteo's heirs, but claims that his share increased from 114 sq. m. to 171 sq. m. and that respondents encroached on his share by 39 sq. m. Since an oral partition is valid, the corresponding survey ordered by the RTC to identify the 39 sq. m. that must be returned to him could be made.[18] Petitioner also alleges that Macario committed fraud in acquiring his share; hence, any evidence adduced by him to justify such acquisition is inadmissible. Petitioner concludes that if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party.[19]

---

[16] *Rollo*, pp. 23-24.

[17] *Id.* at 28.

[18] *Id.* at 155-160.

[19] *Id.* at 162-163.

The Court's ruling

We affirm the CA ruling dismissing petitioner's complaint on the ground of prescription.

Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.[20]

Here, petitioner himself admits the adverse nature of respondents' possession with his assertion that Macario's fraudulent acquisition of Dionisia's share created a constructive trust. In a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee (Macario) neither accepts any trust nor intends holding the property for the beneficiary (Salvacion, Aspren, Isabel). The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.[21] Prescription may supervene even if the trustee does not repudiate the relationship.[22]

Then, too, respondents' uninterrupted adverse possession for 55 years of 109 sq. m. of Lot No. 552 was established. Macario occupied Dionisia's share in 1945 although his claim that Dionisia donated it to him in 1945 was only made in a 1948

---

[20] *Tan v. Ramirez*, G.R. No. 158929, August 3, 2010, 626 SCRA 327, 335-336; *Heirs of Marcelina Arzadon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 404-405; *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 279.

[21] *Cañezo v. Rojas*, G.R. No. 148788, November 23, 2007, 538 SCRA 242, 258.

[22] *Id*.

affidavit. We also agree with the CA that Macario's possession of Dionisia's share was public and adverse since his other co-owners, his three other sisters, also occupied portions of Lot No. 552. Indeed, the 1977 sale made by Macario and his two daughters in favor of his son Roger confirms the adverse nature of Macario's possession because said sale of 225 sq. m.[23] was an act of ownership over Macario's original share and Dionisia's share. In 1985, Roger also exercised an act of ownership when he sold 114 sq. m. to Caridad Atienza. It was only in the year 2000, upon receipt of the summons to answer petitioner's complaint, that respondents' peaceful possession of the remaining portion (109 sq. m.) was interrupted. By then, however, extraordinary acquisitive prescription has already set in in favor of respondents. That the RTC found Macario's 1948 affidavit void is of no moment. Extraordinary prescription is unconcerned with Macario's title or good faith. Accordingly, the RTC erred in ruling that Macario cannot acquire by prescription the shares of Salvacion, Aspren, and Isabel, in Dionisia's 114-sq. m. share from Lot No. 552.

Moreover, the CA correctly dismissed petitioner's complaint as an action for reconveyance based on an implied or constructive trust prescribes in 10 years from the time the right of action accrues.[24] This is the other kind of prescription under the Civil Code, called extinctive prescription, where rights and actions are lost by the lapse of time.[25] Petitioner's action for recovery of possession having been filed 55 years after Macario occupied Dionisia's share, it is also barred by extinctive prescription. The CA while condemning Macario's fraudulent act of depriving his three sisters of their shares in Dionisia's share, equally emphasized the fact that Macario's sisters wasted their opportunity to question his acts.

---

[23] Should have been 228 sq. m. since 114 sq. m. (Macario's share) + 114 sq. m. (Dionisia's share) = 228 sq. m.

[24] See *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 509-510.

[25] *Morales v. Court of First Instance (Misamis Occidental)*, No. 52278, May 29, 1980, 97 SCRA 872, 874.

WHEREFORE, we **DENY** the petition for review on *certiorari* for lack of merit and **AFFIRM** the assailed Decision dated April 28, 2008 and Resolution dated July 22, 2008 of the Court of Appeals in CA-G.R. CV No. 87480.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185669. February 1, 2012]

JUAN GALOPE, *petitioner, vs.* **CRESENCIA BUGARIN, Represented by CELSO RABANG,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 3844 (AGRICULTURAL LAND REFORM CODE); AGRICULTURAL LEASEHOLD SYSTEM; AGRICULTURAL TENANCY RELATIONSHIP; ELEMENTS; PRESENT IN THE CASE AT BAR. — The essential elements of an agricultural tenancy relationship are: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee. x x x [A]ll the elements of an agricultural tenancy relationship are present. Respondent is the landowner; petitioner is her tenant. The subject matter

of their relationship is agricultural land, a farm land. They mutually agreed to the cultivation of the land by petitioner and share in the harvest. The purpose of their relationship is clearly to bring about agricultural production. After the harvest, petitioner pays rental consisting of *palay* or its equivalent in cash. Respondent's motion to supervise *harvesting and threshing*, processes in *palay* farming, further confirms the purpose of their agreement. Lastly, petitioner's personal cultivation of the land is conceded by respondent who likewise never denied the fact that they share in the harvest.

2. ID.; ID.; ID.; AGRICULTURAL LEASEHOLD RELATION MAY EXIST UPON AN ORAL AGREEMENT. — Contrary also to the CA and DARAB pronouncement, respondent's act of allowing the petitioner to cultivate her land and receiving rentals therefor indubitably show her consent to an unwritten tenancy agreement. An agricultural leasehold relation is not determined by the explicit provisions of a written contract alone. Section 5 of Republic Act (R.A.) No. 3844, otherwise known as the Agricultural Land Reform Code, recognizes that an agricultural leasehold relation may exist upon an oral agreement.

3. ID.; ID.; ID.; BURDEN OF PROOF TO SHOW THE EXISTENCE OF A LAWFUL CAUSE FOR THE EJECTMENT OF AN AGRICULTURAL LESSEE RESTS UPON THE AGRICULTURAL LESSOR. — Respondent, as landowner/agricultural lessor, has the burden to prove the existence of a lawful cause for the ejectment of petitioner, the tenant/agricultural lessee. This rule proceeds from the principle that a tenancy relationship, once established, entitles the tenant to a security of tenure. The tenant can only be ejected from the agricultural landholding on grounds provided by law.

4. ID.; ID.; ID.; EMPLOYMENT OF FARM LABORERS TO PERFORM SOME ASPECTS OF WORK DOES NOT PRECLUDE THE EXISTENCE OF AN AGRICULTURAL LEASEHOLD RELATIONSHIP; EXPLAINED. — That Allingag possesses the land is also based on Andres's hearsay statement. On the contrary, Allingag stated in his affidavit that he is merely petitioner's farm helper. We have held that the employment of farm laborers to perform some aspects of work does not preclude the existence of an agricultural leasehold relationship, provided that an agricultural lessee does not leave the entire process of cultivation in the hands of hired helpers.

Indeed, while the law explicitly requires the agricultural lessee and his immediate family to work on the land, we have nevertheless declared that the hiring of farm laborers by the tenant on a temporary, occasional, or emergency basis does not negate the existence of the element of "personal cultivation" essential in a tenancy or agricultural leasehold relationship. There is no showing that petitioner has left the entire process of cultivating the land to Allingag. In fact, respondent has admitted that petitioner still farms the land.

5. ID.; ID.; ID.; THAT THE AGRICULTURAL LESSOR WILL CULTIVATE THE LAND IS NOT A VALID GROUND TO EJECT AGRICULTURAL LESSEE. — On respondent's claim that she will cultivate the land, it is no longer a valid ground to eject petitioner. The original provision of Section 36 (1) of R.A. No. 3844 has been removed from the statute books after its amendment by Section 7 of R.A. No. 6389 on September 10, 1971, to wit: SEC. 7. Section 36 (1) of the same Code is hereby amended to read as follows: (1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years.

6. ID.; ID.; ID.; PAYMENT OF RENTALS MUST CONTINUE AS LONG AS THE TENANCY RELATIONSHIP SUBSISTS; FOR FAILURE TO PROVE NONPAYMENT OF RENTALS, EJECTMENT IS NOT WARRANTED. — Since respondent failed to prove nonpayment of rentals, petitioner may not be ejected from the landholding. We emphasize, however, that as long as the tenancy relationship subsists, petitioner must continue paying rentals. For the law provides that nonpayment of lease rental, if proven, is a valid ground to dispossess him of respondent's land. Henceforth, petitioner should see to it that his rental payments are properly covered by receipts.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Juan Galope appeals the Decision[1] dated September 26, 2008 and Resolution[2] dated December 12, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97143. The CA ruled that there is no tenancy relationship between petitioner and respondent Cresencia Bugarin.

The facts and antecedent proceedings are as follows:

Respondent owns a parcel of land located in Sto. Domingo, Nueva Ecija, covered by Transfer Certificate of Title No. NT-229582.[3] Petitioner farms the land.[4]

In *Barangay* Case No. 99-6, respondent complained that she lent the land to petitioner in 1992 without an agreement, that what she receives in return from petitioner is insignificant, and that she wants to recover the land to farm it on her own. Petitioner countered that respondent cannot recover the land yet for he had been farming it for a long time and that he pays rent ranging from ₱4,000 to ₱6,000 or 15 cavans of *palay* per harvest. The case was not settled.[5]

Represented by Celso Rabang, respondent filed a petition for recovery of possession, ejectment and payment of rentals before the Department of Agrarian Reform Adjudication Board (DARAB), docketed as DARAB Case No. 9378. Rabang claimed that respondent lent the land to petitioner in 1991 and that the latter gave nothing in return as a sign of gratitude or monetary consideration for the use of the land. Rabang also claimed that

---

[1] *Rollo*, pp. 55-62. Penned by Associate Justice Sesinando E. Villon with the concurrence of Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a Member of this Court).

[2] *Id.* at 71.

[3] Records, p. 7.

[4] *Id.* at 9.

[5] *Id.* at 9-11.

petitioner mortgaged the land to Jose Allingag who allegedly possesses the land.[6]

After due proceedings, the Provincial Adjudicator dismissed the petition and ruled that petitioner is a tenant entitled to security of tenure. The Adjudicator said substantial evidence prove the tenancy relationship between petitioner and respondent. The Adjudicator noted the certification of the Department of Agrarian Reform (DAR) that petitioner is the registered farmer of the land; that *Barangay Tanods* said that petitioner is the tenant of the land; that Jose Allingag affirmed petitioner's possession and cultivation of the land; that Allingag also stated that petitioner hired him only as farm helper; and that respondent's own witness, Cesar Andres, said that petitioner is a farmer of the land.[7]

On appeal, the DARAB disagreed with the Adjudicator and ruled that petitioner is not a *de jure* tenant. The DARAB ordered petitioner to pay rentals and vacate the land, and the Municipal Agrarian Reform Officer to assist in computing the rentals.

The DARAB found no tenancy relationship between the parties and stressed that the elements of consent and sharing are not present. The DARAB noted petitioner's failure to prove his payment of rentals by appropriate receipts, and said that the affidavits of Allingag, Rolando Alejo and Angelito dela Cruz are self-serving and are not concrete proof to rebut the allegation of nonpayment of rentals. The DARAB added that respondent's intention to lend her land to petitioner cannot be taken as implied tenancy for such lending was without consideration.[8]

Petitioner appealed, but the CA affirmed DARAB's ruling that no tenancy relationship exists; that the elements of consent and sharing are not present; that respondent's act of lending her land without consideration cannot be taken as implied tenancy; and that no receipts prove petitioner's payment of rentals.[9]

---

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

[7] *Id.* at 97-98.

[8] *Id.* at 141-143.

[9] *Rollo,* pp. 59-62.

Aggrieved, petitioner filed the instant petition. Petitioner alleges that the CA erred

[I.]

x x x IN AFFIRMING *IN TOTO* THE DECISION OF THE DARAB AND IN FAILING TO CONSIDER THE TOTALITY OF THE EVIDENCE OF THE PETITIONER THAT HE IS INDEED A TENANT[;]

[II.]

x x x IN RELYING MAINLY ON THE ABSENCE OF RECEIPTS OF THE PAYMENTS OF LEASE RENTALS IN DECLARING THE ABSENCE OF CONSENT AND SHARING TO ESTABLISH A TENANCY RELATIONSHIP BETWEEN THE PETITIONER AND THE RESPONDENT[; AND]

[III.]

x x x WHEN IT FOUND THAT THE PETITIONER HAS NOT DISCHARGED THE BURDEN [OF] PROVING BY WAY OF SUBSTANTIAL EVIDENCE HIS ALLEGATIONS OF TENANCY RELATIONSHIP WITH THE RESPONDENT.[10]

The main issue to be resolved is whether there exists a tenancy relationship between the parties.

Petitioner submits that substantial evidence proves the tenancy relationship between him and respondent. Specifically, he points out that (1) his possession of the land is undisputed; (2) the DAR certified that he is the registered farmer of the land; and (3) receipts prove his payment of irrigation fees. On the absence of receipts as proof of rental payments, he urges us to take judicial notice of an alleged practice in the provinces that payments between relatives are not supported by receipts. He also calls our attention to the affidavits of Jose Allingag, Rolando Alejo and Angelito dela Cruz attesting that he pays 15 cavans of *palay* to respondent.[11]

---

[10] *Id.* at 16.

[11] *Id.* at 17-20.

In her comment, respondent says that no new issues and substantial matters are raised in the petition. She thus prays that we deny the petition for lack of merit.[12]

We find the petition impressed with merit and we hold that the CA and DARAB erred in ruling that there is no tenancy relationship between the parties.

The essential elements of an agricultural tenancy relationship are: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee.[13]

The CA and DARAB ruling that there is no sharing of harvest is based on the absence of receipts to show petitioner's payment of rentals. We are constrained to reverse them on this point. The matter of rental receipts is not an issue given respondent's admission that she receives rentals from petitioner. To recall, respondent's complaint in *Barangay* Case No. 99-6 was that the rental or the amount she receives from petitioner is not much.[14] This fact is evident on the record[15] of said case which is signed by respondent and was even attached as Annex "D" of her DARAB petition. Consequently, we are thus unable to agree with DARAB's ruling that the affidavits[16] of witnesses that petitioner pays 15 cavans of *palay* or the equivalent thereof in pesos as rent are not concrete proof to rebut the allegation of nonpayment of rentals. Indeed, respondent's admission confirms

---

[12] *Id.* at 79.

[13] *Granada v. Bormaheco, Inc.*, G.R. No. 154481, July 27, 2007, 528 SCRA 259, 268.

[14] Records, p. 9. Respondent said, "*Na siya ay tumatanggap ngunit kaunti lamang.*"

[15] *Id.* at 9-11.

[16] *Id.* at 48-49.

their statement that rentals are in fact being paid. Such admission belies the claim of respondent's representative, Celso Rabang, that petitioner paid nothing for the use of the land.

Contrary also to the CA and DARAB pronouncement, respondent's act of allowing the petitioner to cultivate her land and receiving rentals therefor indubitably show her consent to an unwritten tenancy agreement. An agricultural leasehold relation is not determined by the explicit provisions of a written contract alone.[17] Section 5[18] of Republic Act (R.A.) No. 3844, otherwise known as the Agricultural Land Reform Code, recognizes that an agricultural leasehold relation may exist upon an oral agreement.

Thus, all the elements of an agricultural tenancy relationship are present. Respondent is the landowner; petitioner is her tenant. The subject matter of their relationship is agricultural land, a farm land.[19] They mutually agreed to the cultivation of the land by petitioner and share in the harvest. The purpose of their relationship is clearly to bring about agricultural production. After the harvest, petitioner pays rental consisting of *palay* or its equivalent in cash. Respondent's motion[20] to supervise *harvesting and threshing*, processes in *palay* farming, further confirms the purpose of their agreement. Lastly, petitioner's personal cultivation of the land[21] is conceded by respondent who likewise never denied the fact that they share in the harvest.

Petitioner's status as a *de jure* tenant having been established, we now address the issue of whether there is a valid ground to eject petitioner from the land.

---

[17] *Supra* note 13, at 271.

[18] SEC. 5. *Establishment of Agricultural Leasehold Relation* — The agricultural leasehold relation shall be established by operation of law in accordance with Section [4] of this Code and, in other cases, either orally or in writing, expressly or impliedly.

[19] Records, p. 20 (*lupang sakahin*).

[20] *Id.* at 67-68.

[21] *Id*. at 9. Respondent said, "*kasalukuyan ay sinasaka ni Juan Galope*."

Respondent, as landowner/agricultural lessor, has the burden to prove the existence of a lawful cause for the ejectment of petitioner, the tenant/agricultural lessee.[22] This rule proceeds from the principle that a tenancy relationship, once established, entitles the tenant to a security of tenure.[23] The tenant can only be ejected from the agricultural landholding on grounds provided by law.[24]

Section 36 of R.A. No. 3844 enumerates these grounds, to wit:

SEC. 36. *Possession of Landholding; Exceptions.*— Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided*; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections [25] and [34], except when the land owned and leased by the agricultural lessor is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advance notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further*, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it

---

[22] R.A. No. 3844, SEC. 37. *Burden of Proof.* — The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

[23] R.A. No. 3844, SEC. 7. *Tenure of Agricultural Leasehold Relation.* — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

[24] *Perez-Rosario v. Court of Appeals*, G.R. No.140796, June 30, 2006, 494 SCRA 66, 82.

shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossession;

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section [29];

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section [27].

Through Rabang, respondent alleged (1) nonpayment of any consideration, (2) lack of tenancy relationship, (3) petitioner mortgaged the land to Allingag who allegedly possesses the land, and (4) she will manage/cultivate the land.[25] None of these grounds were proven by the respondent.

As aforesaid, respondent herself admitted petitioner's payment of rentals. We also found that a tenancy relationship exists between the parties.

On the supposed mortgage, Allingag himself denied it in his affidavit.[26] No such a deed of mortgage was submitted in evidence. Rabang's claim is based on a hearsay statement of Cesar Andres

[25] Records, p. 3.

[26] *Id.* at 48.

that he came to know the mortgage from residents of the place where the land is located.[27]

That Allingag possesses the land is also based on Andres's hearsay statement. On the contrary, Allingag stated in his affidavit that he is merely petitioner's farm helper.[28] We have held that the employment of farm laborers to perform some aspects of work does not preclude the existence of an agricultural leasehold relationship, provided that an agricultural lessee does not leave the entire process of cultivation in the hands of hired helpers. Indeed, while the law explicitly requires the agricultural lessee and his immediate family to work on the land, we have nevertheless declared that the hiring of farm laborers by the tenant on a temporary, occasional, or emergency basis does not negate the existence of the element of "personal cultivation" essential in a tenancy or agricultural leasehold relationship.[29] There is no showing that petitioner has left the entire process of cultivating the land to Allingag. In fact, respondent has admitted that petitioner still farms the land.[30]

On respondent's claim that she will cultivate the land, it is no longer a valid ground to eject petitioner. The original provision of Section 36 (1) of R.A. No. 3844 has been removed from the statute books[31] after its amendment by Section 7 of R.A. No. 6389[32] on September 10, 1971, to wit:

---

[27] *Id.* at 8. Andres said, "*Na aking napagalaman na ang kanyang sinasakang ito ay kanyang naisanla … kay Jose Allingag na siya ngayon ang makikita at lihitimong nagsasaka sa nasabing lupang sakahin; Na ito ay aking napagalaman mula pa noong taong 1997, sa dahilang ako ay madalas sa nasabing lugar at halos lahat ng nakatira doon ay pawang aking mga kaibigan at kamag-anakan;....*"

[28] *Id.* at 48. Allingag said, "*at gumagawa ako sa nasabing saka bilang katulong lamang ni Juan Galope; ….*"

[29] *Supra* note 24, at 84-85.

[30] *Supra* note 21.

[31] See *Balatbat v. Court of Appeals*, G.R. No. 36378, January 27, 1992, 205 SCRA 419, 425.

[32] AN ACT AMENDING REPUBLIC ACT NUMBERED [3844], AS AMENDED, OTHERWISE KNOWN AS THE AGRICULTURAL LAND REFORM CODE, AND FOR OTHER PURPOSES.

SEC. 7. Section 36 (1) of the same Code is hereby amended to read as follows:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years.

Since respondent failed to prove nonpayment of rentals, petitioner may not be ejected from the landholding. We emphasize, however, that as long as the tenancy relationship subsists, petitioner must continue paying rentals. For the law provides that nonpayment of lease rental, if proven, is a valid ground to dispossess him of respondent's land. Henceforth, petitioner should see to it that his rental payments are properly covered by receipts.

Finally, the records show that Allingag, petitioner's co-respondent in DARAB Case No. 9378, did not join petitioner's appeal to the CA. If Allingag did not file a separate appeal, the DARAB decision had become final as to him. We cannot grant him any relief.

WHEREFORE, we **GRANT** the petition and **REVERSE** the Decision dated September 26, 2008 and Resolution dated December 12, 2008 of the Court of Appeals in CA-G.R. SP No. 97143.

The petition filed by respondent Cresencia Bugarin in DARAB Case No. 9378 is hereby **DISMISSED** insofar as petitioner Juan Galope is concerned.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186226. February 1, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **YUSOP TADAH,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT, UPHELD IN THE CASE AT BAR. — We find no reason to reverse the findings of the RTC, as affirmed by the CA. We are convinced that Nicomedes' and Cha-Cha's testimonies have amply established the case for the prosecution. No motive affecting their credibility was ever imputed against them. The appellant's positive identification as the one of the perpetrators of the crime renders his defense of alibi unworthy of credit.

2. CRIMINAL LAW; PENALTIES; APPLICATION OF PENALTIES; AGGRAVATING CIRCUMSTANCE WHICH IS ALLEGED AND PROVEN CANNOT AFFECT THE IMPOSABLE PENALTY; APPLICATION. — Since the prosecution adduced proof beyond reasonable doubt that the accused conspired to kidnap the victims for ransom, and kidnapped and illegally detained them until they were released by the accused after the latter received the ₱2,000,000.00 ransom, the imposable penalty is death as provided for in the second paragraph of Article 267 of the Revised Penal Code. The aggravating circumstance of using a motorized vehicle and motorized watercrafts, while alleged and proven, cannot affect the imposable penalty because Article 63 of the Revised Penal Code states that in all cases in which the law prescribes a single indivisible penalty (like *reclusion perpetua* and death), it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

3. ID.; REPUBLIC ACT NO. 9346; IMPOSITION OF DEATH PENALTY, PROHIBITED. — The CA correctly reduced the appellant's sentence from death penalty to *reclusion perpetua* considering the passage of RA No. 9346, prohibiting the imposition of the death penalty. **To this, we add that the**

appellant shall not be eligible for parole. Under Section 3 of RA No. 9346, "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

4. CIVIL LAW; DAMAGES; MODIFICATION OF CIVIL LIABILITY, PROPER. — We find it necessary to modify the appellant's civil liability. In line with prevailing jurisprudence, the appellant is also liable for ₱75,000.00 as civil indemnity which is awarded if the crime warrants the imposition of the death penalty; ₱75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and ₱30,000.00 as exemplary damages to set an example for the public good, for each count of kidnapping and serious illegal detention.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

BRION, *J.*:

We resolve the appeal, filed by accused Yusop Tadah (*appellant*), from the August 22, 2008 decision of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 00150.[1]

The RTC Ruling

In its April 18, 2005 decision,[2] the Regional Trial Court (*RTC*) of Zamboanga, Branches 15 and 16, convicted the appellant[3]

[1] Penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion; *rollo*, pp. 3-15.

[2] Docketed as Criminal Case Nos. 15671-15675; *CA rollo*, pp. 54-88.

[3] Appellant's co-accused (Ustadz Benjie Alpada a.k.a. "Lamuddin," Abdul Mutalib Totoh, Ustadz Albani, Ismael Kulengleng, Pilih Kahal, Hamid Ali, Pusong

of five counts of kidnapping and serious illegal detention[4] committed against Gina Yang *y* Bersañez, 3-year old Princess Jane "Cha-Cha" Yang, Joy Sagubay, Yang Wang Tao Chiu, and Nicomedes Santa Ana. It gave credence to the straightforward testimonies of the kidnap victims, Nicomedes and Cha-Cha, then 8 years old, pointing to the appellant as one of their kidnappers. Considering the appellant's positive identification, the RTC rejected the former's defenses of denial and alibi. It noted that conspiracy attended the crime due to the concerted acts of the accused in the kidnapping. It sentenced the appellant to the death penalty for each count of kidnapping and serious illegal detention, appreciating that the accused committed the kidnapping to extort ransom, and that the accused used a motorized vehicle and motorized watercrafts to facilitate the commission of the crimes. It also ordered him to pay Bien Yang the amount of ₱2,000,000.00 for the ransom paid.

The CA Ruling

On intermediate appellate review, the CA affirmed the RTC's decision, giving full respect to the RTC's assessment of Nicomedes and Cha-Cha's testimony and credibility. However, pursuant to Republic Act (RA) No. 9346,[5] the CA reduced the appellant's sentence to *reclusion perpetua* in all five cases.[6]

We now rule on the final review of the case.

Our Ruling

We deny the appeal, but modify the penalty and awarded indemnity.

We find no reason to reverse the findings of the RTC, as affirmed by the CA. We are convinced that Nicomedes' and

---

Kamolon, Hadji Bodjang Buros, Bakal Appal a.k.a. "Back to Back Tarsan," and 9 other persons known only by their nicknames or aliases, namely: Israel, Idris, Musa, Majie, Abdullah, Lawin, Lampiao, Jumani and Boy) remain at large.

[4] See REVISED PENAL CODE, Article 267, as amended by Section 8 of RA No. 7659, otherwise known as "The Death Penalty Law."

[5] The Anti-Death Penalty Law, took effect on June 30, 2006.

[6] *Supra* note 1.

Cha-Cha's testimonies have amply established the case for the prosecution. No motive affecting their credibility was ever imputed against them. The appellant's positive identification as the one of the perpetrators of the crime renders his defense of alibi unworthy of credit.

Since the prosecution adduced proof beyond reasonable doubt that the accused conspired to kidnap the victims for ransom, and kidnapped and illegally detained them until they were released by the accused after the latter received the ₱2,000,000.00 ransom,[7] the imposable penalty is death as provided for in the second paragraph of Article 267 of the Revised Penal Code. The aggravating circumstance of using a motorized vehicle and motorized watercrafts, while alleged and proven, cannot affect the imposable penalty because Article 63 of the Revised Penal Code states that in all cases in which the law prescribes a single indivisible penalty (like *reclusion perpetua* and death), it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

The CA correctly reduced the appellant's sentence from death penalty to *reclusion perpetua* considering the passage of RA No. 9346, prohibiting the imposition of the death penalty. **To this, we add that the appellant shall not be eligible for parole**. Under Section 3 of RA No. 9346, "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

We find it necessary to modify the appellant's civil liability. In line with prevailing jurisprudence,[8] the appellant is also liable

---

[7] All the victims were kidnapped on September 9, 1998; Gina, Cha-Cha and Nicomedes were released on November 21, 1998 upon the payment of a ransom of ₱500,000.00, while Joy and Yang Wang Tao Chiu were released sometime in January 1999 upon the payment of a ransom of ₱1,500,000.00.

[8] *People of the Philippines v. PO1 Froilan L. Trestiza*, G.R. No. 193833, November 16, 2011; and *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 546.

for ₱75,000.00 as civil indemnity which is awarded if the crime warrants the imposition of the death penalty; ₱75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and ₱30,000.00 as exemplary damages to set an example for the public good, for each count of kidnapping and serious illegal detention.

WHEREFORE, the August 22, 2008 decision of the Court of Appeals in CA-G.R. CR HC No. 00150 is hereby **AFFIRMED** with **MODIFICATION**. Appellant Yusop Tadah is found guilty beyond reasonable doubt of 5 counts of kidnapping and serious illegal detention, and sentenced to suffer the penalty of *reclusion perpetua,* without eligibility for parole, for each count. In addition to the restitution of ₱2,000,000.00 for the ransom paid, the appellant is ordered to pay each of the victims the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 186541. February 1, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE VILBAR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT WHICH WERE AFFIRMED BY THE APPELLATE COURT ARE ACCORDED HIGH RESPECT AND GENERALLY

BINDING UPON THE SUPREME COURT. — Case laws mandate that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court." There is no compelling reason for us to depart from the general rule in this case.

2. CRIMINAL LAW; CRIMES AGAINST PERSONS; HOMICIDE; CRIME COMMITTED IN THE CASE AT BAR; THE QUALIFYING CIRCUMSTANCE OF TREACHERY IS NOT ESTABLISHED; EXPLAINED. — We agree with the Court of Appeals that accused-appellant is guilty only of homicide in the absence of the qualifying circumstance of treachery. In a number of cases, surveyed in *People v. Rivera*, we ruled that treachery cannot be appreciated simply because the attack was sudden and unexpected: [W]e agree with accused-appellant that the qualifying circumstance of treachery was not established. Surveying the leading decisions on this question, in *People v. Romeo Magaro* we recently stated: In *People v. Magallanes*, this Court held: x x x . . . **where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected**. As has been aptly observed the accused could not have made preparations for the attack, . . .; and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done. **Treachery cannot also be presumed from the mere suddenness of the attack. . . . In point is the following pronouncement we made in *People v. Escoto*: We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. . . .**" x x x Similar to *Rivera* and the cases cited therein, the prosecution in the instant case merely showed that accused-appellant attacked Guilbert suddenly and unexpectedly, but failed to prove that

accused-appellant consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. As aptly observed by the Court of Appeals: x x x In fact, the attack appeared to have been impulsively done, a spur of the moment act in the heat of anger or extreme annoyance. There are no indications that accused-appellant deliberately planned to stab the victim at said time and place. Thus, we can reasonably conclude that accused-appellant, who at that time was languishing in his alcoholic state, acted brashly and impetuously in suddenly stabbing the victim. Treachery just cannot be appreciated.

3. ID.; ID.; ID.; PENALTY IN THE CASE AT BAR. — The penalty prescribed by law for the crime of homicide is *reclusion temporal*. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term which has a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, the imposition of imprisonment from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, is in order.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES, CIVIL INDEMNITY, AND TEMPERATE DAMAGES, AWARDED IN THE CASE AT BAR. — As to the award of damages to Guilbert's heirs, we affirm the amounts of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity. Medical and burial expenses were indisputably incurred by Guilbert's heirs but the exact amounts thereof were not duly proven. So in lieu of actual damages, we award Guilbert's heirs ₱25,000.00 as temperate damages. Article 2224 of the Civil Code provides that "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered

but its amount can not, from the nature of the case, be proved with certainty."

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated February 14, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00270 which modified the Judgment[2] promulgated on August 6, 2001 by the Regional Trial Court (RTC), Branch 35, of Ormoc City, in Criminal Case No. 5876-0. The RTC originally found accused-appellant Vicente Vilbar guilty beyond reasonable doubt of the crime of murder for treacherously stabbing with a knife the deceased Guilbert Patricio (Guilbert), but the Court of Appeals subsequently held accused-appellant liable only for the lesser crime of homicide.

The Information charging accused-appellant with the crime of murder reads:

That on or about the 5th day of May 2000, at around 7:00 o'clock in the evening, at the public market, this city, and within the jurisdiction of this Honorable Court, the above-named accused, VICENTE VILBAR *alias* Dikit, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously stab, hit and wound the victim herein GUILBERT PATRICIO, without giving the latter sufficient time to defend himself, thereby inflicting upon said Guilbert Patricio mortal wound which caused his death. *Post Mortem* Examination Report is hereto attached.

---

[1] *Rollo*, pp. 4-13; penned by Associate Justice Pampio A. Abarintos with Associate Justices Francisco P. Acosta and Amy C. Lazaro-Javier, concurring.

[2] CA *rollo*, pp. 14-18; penned by Judge Fortunito L. Madrona.

In violation of Article 248, Revised Penal Code, as amended by R.A. 7659, Ormoc City, June 13, 2000.[3]

When accused-appellant was arraigned on July 31, 2000, he pleaded not guilty to the criminal charge against him.[4]

During the pre-trial conference, the parties already admitted that Guilbert was stabbed at the Public Market of Ormoc City on May 5, 2000 at around seven o'clock in the evening, and that immediately before the incident, accused-appellant was at the same place having a drinking spree with a certain Arcadio Danieles, Jr. and two other companions. However, accused-appellant denied that it was he who stabbed Guilbert Patricio.[5] Trial then ensued.

The prosecution presented the testimonies of Maria Liza Patricio (Maria Liza),[6] the widow of the deceased, and Pedro Luzon (Pedro),[7] an eyewitness at the scene. The defense offered the testimonies of accused-appellant[8] himself and Cerilo Pelos (Cerilo),[9] another eyewitness. On rebuttal, the prosecution recalled Pedro to the witness stand.[10]

Below is a summary of the testimonies of the witnesses for both sides:

Maria Liza testified that in the evening of May 5, 2000, she was watching her child and at the same time attending to their store located in the Ormoc City public market. It was a small store with open space for tables for drinking being shared by other adjacent stores. At around 7:00 o'clock in the evening, her husband, Guilbert

---

[3] Records, p. 2.

[4] *Id.* at 31.

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

[6] TSN, October 16, 2000.

[7] TSN, November 14, 2000.

[8] TSN, February 6, 2001.

[9] TSN, May 9, 2001.

[10] TSN, July 4, 2001.

Patricio (Guilbert) arrived from work. He was met by their child whom he then carried in his arms. Moments later, Guilbert noticed a man urinating at one of the tables in front of their store. The man urinating was among those engaged in a drinking spree in a nearby store. It appears that the accused was with the same group, seated about two meters away. Guilbert immediately admonished the man urinating but the latter paid no attention and continued relieving himself. Guilbert then put down his child when the accused rose from his seat, approached Guilbert, drew out a knife and stabbed him below his breast. The accused, as well as his companions, scampered away while Guilbert called for help saying "I'm stabbed." At that time, she was getting her child from Guilbert and about two feet away from the accused. She easily recognized the accused because he would sometimes drink at their store. Guilbert was immediately brought to the hospital where he later expired 11:35 of the same evening. She declared that for Guilbert's medical and hospitalization expenses, the family spent about ₱3,000.00. As for the wake and burial expenses, she could no longer estimate the amount because of her sadness.

Pedro, an eyewitness at the scene, corroborated Maria Liza's testimonial account of the events. On that night, he was drinking together with a companion in Maria Liza's store. He recalled Guilbert admonishing a person urinating in one of the tables fronting the store. Thereafter, he saw the accused pass by him, approach Guilbert and then without warning, stab the latter. The accused then ran away and left. Together with his drinking companion, they rushed Guilbert to the hospital. Pedro asserted that the area's illumination was "intense" because of the big white lamp and that he was certain that it was the accused who attacked Guilbert.

Denial was the **accused's** main plea in exculpating himself of the charge that he killed Guilbert. He claimed that in the evening of May 5, 2000, he and his wife went to the public market (new building) to collect receivables out of the sale of meat. Afterwards, they took a short cut passing through the public market where they chanced upon his wife's acquaintances who were engaged in a drinking spree while singing videoke. Among them were Dodong Danieles (Dodong for brevity) and his younger brother. They invited him (the accused) and his wife to join them. While they were drinking, Dodong had an altercation with Guilbert that stemmed from the latter's admonition of Dodong's younger brother who had earlier urinated at the Patricio's store premises. Suddenly, Dodong assaulted Guilbert and stabbed

him. Fearing that he might be implicated in the incident, the accused fled and went to the house of his parents-in-law. Thereafter, he went back to the market for his wife who was no longer there. When he learned that the victim was brought to the Ormoc District Hospital, he went there to verify the victim's condition. He was able to talk with the mother and the wife of Guilbert as well as the police. He was thereafter invited to the precinct so that the police can get his statement. The next day, the parents of Dodong Danieles came to his parents-in-law's house to persuade him not to help the victim's family. He declined. Half a month later, he was arrested and charged for the death of Guilbert Patricio.

The defense also presented one **Cerilo Pelos** ("Cerilo") who claimed to have personally witnessed the stabbing incident because he was also drinking in the public market on that fateful night. He insisted that Guilbert was stabbed by someone wearing a black shirt, whose identity he later on learned to be Dodong Danieles.[11]

On August 6, 2001, the RTC promulgated its Decision finding accused-appellant guilty of murder and decreeing thus:

WHEREFORE, all the foregoing duly considered, the Court finds the accused Vicente Vilbar *alias* Dikit GUILTY beyond reasonable doubt of the crime of murder as charged, and hereby sentences him to imprisonment of *reclusion perpetua*, [and ordered] to pay the offended party the sum of ₱75,000.00 as indemnity, the sum of ₱3,000.00 as medical expenses, the sum of ₱50,000.00 as moral damages.

If the accused is a detainee, his period of detention shall be credited to him in full if he abides by the term for convicted prisoners, otherwise, for only 4/5 thereof.[12]

The foregoing RTC Judgment was directly elevated to us for our review, but in accordance with our ruling in *People v. Mateo*,[13] we issued a Resolution[14] dated December 1, 2004 referring the case to the Court of Appeals for appropriate action.

---

[11] *Rollo,* pp. 5-7; culled from the assailed decision of the Court of Appeals.

[12] *Id.* at 17.

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

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

Accused-appellant, represented by the Public Attorney's Office,[15] and plaintiff-appellee, through the Office of the Solicitor General,[16] filed their Briefs on August 15, 2006 and April 30, 2007, respectively. The Court of Appeals made the following determination of the issues submitted for its resolution:

> On intermediate review, accused (now accused-appellant) seeks the reversal of his conviction for the crime of murder or in the alternative, the imposition of the proper penalty for the crime of homicide. He argues that the trial court erred in giving credence to the inconsistent, irreconcilable, and incredible testimonies of the prosecution witnesses, to wit: (1) the exact number of persons drinking with accused-appellant in the adjacent store; (2) what Maria Liza was doing at the exact time of stabbing; and (3) the accused-appellant's reaction after he stabbed the victim. Moreover, accused-appellant argues that if he was indeed the culprit, why did he approach Guilbert's family in the hospital immediately after the stabbing incident? Granting without admitting that a crime of murder was committed, accused-appellant insists that he could only be held guilty of homicide for it was not proven beyond reasonable doubt that treachery and evident premeditation existed. He specifically directs our attention to the following details: (1) there was a heated argument between the victim and a member or members of his group; (2) the stabbing happened in a spur of the moment; and (3) the victim then was not completely defenseless.
>
> Meanwhile, the OSG stresses that the alleged inconsistencies in the testimonies of the prosecution witnesses are minor and inconsequential given the positive identification of the accused-appellant as the assailant. As to accused-appellant's contention that he is innocent because he even went to the hospital and conferred with Guilbert's relatives immediately after the stabbing incident, the OSG maintains that such actuation is not a conclusive proof of innocence.
>
> The issues for resolution are first, the assessment of credibility of the prosecution witnesses; and second, the propriety of conviction of the accused-appellant for murder.[17]

---

[15] *Id.* at 57-78.

[16] *Id.* at 91-106.

[17] *Rollo*, pp. 8-9.

The Court of Appeals rendered its Decision on February 14, 2008, in which it accorded great respect to the assessment by the RTC of the credibility of the witnesses. The inconsistencies and inaccuracies in the testimonies of the prosecution witnesses are relatively trivial, minor, and do not impeach their credibility. The positive identification and categorical statements of the prosecution witnesses that it was accused-appellant who stabbed Guilbert prevail over accused-appellant's self-serving denial. However, the appellate court did not find that treachery attended the stabbing of Guilbert and, thus, downgraded the crime to homicide. It also reduced the award of civil indemnity. The dispositive portion of the Court of Appeals decision sentenced accused-appellant as follows:

> WHEREFORE, the 1 August 2001 Decision appealed from finding accused-appellant VICENTE VILBAR @ "Dikit" guilty beyond reasonable doubt of murder is MODIFIED. The Court finds the accused appellant GUILTY beyond reasonable doubt of HOMICIDE and is hereby sentenced to suffer the penalty of eight years and one day of *prision mayor* medium, as minimum, to fourteen years and eight months of *reclusion temporal* medium, as maximum. He is also ordered to pay the heirs of Guilbert Patricio the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php3,000.00 as actual damages.[18]

Accused-appellant now comes before us on final appeal.

In our Resolution[19] dated April 15, 2009, we gave the parties the opportunity to file their respective supplemental briefs, but the parties manifested that they had already exhausted their arguments before the Court of Appeals.[20]

After a scrutiny of the records of the case, we find that the submitted evidence and prevailing jurisprudence duly support the findings and conclusion of the Court of Appeals.

---

[18] *Id.* at 13.

[19] *Id.* at 28.

[20] *Id.* at 30-33 and 34-37.

Evidence in this case chiefly consists of testimonial evidence. Both the RTC and the Court of Appeals gave credence and weight to the testimonies of the prosecution witnesses.

Case laws mandate that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court."[21] There is no compelling reason for us to depart from the general rule in this case.

Prosecution witnesses Maria Liza and Pedro both positively and categorically identified accused-appellant as the one who stabbed Guilbert.

Maria Liza vividly recounted her traumatic moment as follows:

Q: Mrs. Patricio, do you know the accused in this case in the person of Vicente Vilbar *alias* "Dikit?"
A: Yes, sir.

Q: Why do you know him?
A: He used to go there for drinking in our store.

Q: How long have you known this person?
A: About three (3) months.

x x x x x x x x x

Q: Mrs. Patricio, can you recall where were you in the evening at about 7:00 o'clock of May 5, 2000?
A: I was at the store.

Q: Where?
A: In the market.

Q: What were you doing in the store?
A: I was watching after my, attending to my child there.

---

[21] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

Q: How old was the child?
A: Two (2) years old.

Q: When you were attending to your child at this particular time, what happened?
A: My child saw my husband arriving.

Q: What happened after your child saw your husband arrived at the store you were tending?
A: He met him.

Q: And what did your husband do when he was met by your child?
A: He cradled the child.

Q: What happened after that?
A: So at 7:00 o'clock that evening there was somebody urinated and my husband told that someone not to urinate that place because that was a table.

Q: Do you know who was this someone admonished by your husband not to urinate because that was a table?
A: No, sir.

Q: Do you know where did he come from?
A: They were drinking.

Q: Do you know who was his companion while they were drinking?
A: No, only that Vicente Vilbar.

Q: From where he came from or from where he was drinking in the group of persons together with the accused Vicente Vilbar, how far was the place wherein they were drinking to where he urinated from where the group was drinking?
A: Just near.

Q: When you said near, can you estimate the distance?

COURT INTERPRETER

The witness estimated a distance at about 2 meters.

x x x x x x x x x

Q: What was the reaction of the person urinating when your husband told him not to urinate?
A: He continue urinating.

Q: What was the reaction of your husband when he did not heed to the advice not to urinate?
A: He put down the child, this Vicente Vilbar rose.

Q: Rose from where?
A: From the table.

Q: And what happened?
A: Without any word stabbed my husband.

Q: What did he use in stabbing your husband, this Vicente Vilbar?
A: Knife.

Q: Do you know, were you able to see where he kept the knife which he used in stabbing your husband?
A: From his waist.

Q: When the said Vicente Vilbar delivered the stabbed thrust to your husband, was your husband hit?
A: He was hit.

Q: On what part of his body was your husband hit?
A: Just below the breast.

x x x x x x x x x

Q: Below the left nipple?
A: Yes, sir.

Q: What happened after your husband was hit below the left nipple?
A: Vicente Vilbar ran away and my husband told me to call for some help and he said, "I'm stab."

x x x x x x x x x

Q: By the way, how far were you to your husband Guilbert Patricio when he was stabbed?
A: I was behind Vicente Vilbar.

Q: When you said you were behind, how far from Vicente Vilbar?
A: Just near, sir, from my husband next was the one who urinated, next Vicente Vilbar and I was behind.[22] (Emphases supplied.)

---

[22] TSN, October 16, 2000, pp. 8-16.

Pedro corroborated Maria Liza's testimony, recalling the same sequence of events the night of May 5, 2000, *viz*:

Q: Who was the companion of Guilbert when he arrived in the vicinity?
A: He was alone.

Q: So what happened after his arrival?
A: When he arrived he was with his child.

Q: And what did he do with the child?
A: He carried his child in his arms.

Q: And then what happened after he carried his child?
A: There was someone who [urinated] somewhere behind us and he was admonished by this Guilbert Patricio by saying, "Bay, don't urinate there it would somehow create a bad smell and considering that this is a drinking area."

Q: Who was that person who relieved himself just nearby?
A: I did not know.

Q: Whose group was he coming from?
A: From Vicente Vilbar's companion.

Q: Did that person who was admonished accede to the request of Guilbert Patricio not to relieve just nearby?
A: He just did not do something, he just relieved.

Q: So that person who was admonished in fact urinated?
A: Yes, sir.

Q: And so what happened?
A: I saw this Vicente Vilbar stood up and pass behind me and went to Guilbert Patricio and just immediately stabbed him.

Q: What was the weapon used in stabbing?
A: It seems like a knife (and the witness demonstrated to the Court the length of the weapon at about 10 inches with the width of about 2 inches).

Q: When this stabbing incident took place, was it in front of you or was it behind?
A: In front of me but I was facing his back.

x x x x x x x x x

Q: Will you please point to us a part of your body that he was hit by the stab thrust?

COURT INTERPRETER

The witness demonstrated below his left nipple and the witness was pointing to the position below his left nipple.

x x x x x x x x x

Q: At the time of that incident which was on the evening of May 5, 2000, did you already know that the person whom you just pointed earlier was Vicente Vilbar?
A: I did not know about his complete name but I know of him as "Dikit" as *alias* and his face.

x x x x x x x x x

Q: Under what circumstance that you learned of his name?
A: Because I ask the victim himself, that Guilbert Patricio by saying, "Who was that person who stabbed you Dong?," and then he said "He is known to be Dikit and his real name is Vicente Vilbar."

Q: Prior to the incident, have you seen this Dikit or Vicente Vilbar?
A: Yes, because after we had our *tuba* drinking spree in that same day they were there also.

Q: Would you recall how many times you have seen Vicente Vilbar prior to the incident?
A: I could not just count how many times but what I'm sure is we know him.

Q: Could it be more than five (5) times?
A: It could be.[23] (Emphases supplied.)

The RTC, assessing the aforequoted testimonies, declared:

Maria Liza Patricio is credible. She recognizes the accused, she was just behind him when he stabbed her husband who was facing the accused. There was proper illumination of the place x x x and her testimony was not destroyed in the cross-examination. Her testimony is positive and spontaneous. The Court notes nothing in

[23] TSN, November 14, 2000, pp. 8-12.

her demeanor and flow of testimony that would indicate some contradiction or incredibility.

The other witness, Pedro Luzon, corroborates the testimony of Maria Liza Patricio. x x x.[24]

The RTC and the Court of Appeals brushed aside the alleged inconsistencies in the testimonies of Maria Liza and Pedro,[25] these being relatively trivial and insignificant, neither pertaining to the act constitutive of the crime committed nor to the identity of the assailant. Also, these minor contradictions were expected from said witnesses as they differ in their impressions of the incident and vantage point in relation to the victim and the accused-appellant.

In contrast, accused-appellant admitted being present at the scene and time of the commission of the crime but asserted that one Dodong Danieles was the perpetrator thereof. Yet, the RTC was unconvinced by the version of events as testified to by accused-appellant himself and Cerilo, because:

In the observation of the Court, the accused is inconsistent and he talked unintelligibly. His testimony is not credible and perceived to be flimsy excuses. If it is true that his wife was with him at the time of the incident and he was not involved in the stabbing, why did he have to leave the place and his wife and go to the house of his parents-in-law rather than their house? The accused should have presented his wife to corroborate his testimony in that regard, and also his parents-in-law so the latter can testify regarding the alleged visitors, the alleged parents of one Dodong Danieles who came to their place when the accused was also there days after the incident, telling him not to help the family of the victim.

The accused's witness, Cerilo Pelos, is the farthest of the expected witnesses for the defense. He and the accused were not acquaintances and they only came to know each other in prison where Pelos is

---

[24] CA *rollo*, p. 16.

[25] These inconsistencies refer to (1) the exact number of persons drinking with accused-appellant at the adjacent store; (2) what Maria Liza was doing at the exact time of the stabbing; and (3) the accused-appellant's reaction after he stabbed the victim.

also detained for another charge. x x x. The testimony of the witness is hazy and full of generalities, even the way he speaks, the Court notes some inconsistency in his voice and incoherence in his testimony.[26]

A closer perusal of the testimony of accused-appellant's corroborating witness, Cerilo, reveals just how incoherent and elusive he was in giving particular details about the stabbing incident:

Q: Now, while you were there, what happened?
A: When I arrived there, I arrived with this people having a drinking spree and I myself went to the other table near this people and this quite thin or slim guy was standing in front of them and one of these people who were having drinking spree seemed to relieve himself not to the C.R. but beside the store.

Q: Now, you said a while ago that there were four (4) companions of the accused. Now, tell us, were all of the four (4) people that you are referring to that exclude the accused?
A: There were four (4) of them including the accused, sir.

Q: Now, you said that there was somebody from the group who relieved himself, is that right?
A: Yes, sir, urinated.

Q: And what happened when he urinated?
A: He was confronted by that slim guy because he did not urinate in the C.R. but just beside the store.

Q: And what happened when the confrontation took place?
A: They exchanged words and after that th[e] slim guy left the one who urinated because it seemed that they were having an argument.

Q: And then, what happened after that?
A: The one who confronted left and this accused stood up went to this slim guy and talked to him.

Q: This slim guy you are referring to is the person who urinated?
A: Yes, sir.

---

[26] CA *rollo*, p. 16.

Q; And so what happened with that meeting between the accused and the slim guy that you are referring to?
A: They were still and they were talking, sir.

Q: Were you able to hear what they were talking about?
A: No, sir, because the place was quite cacophonic.

Q: And what happened after that?
A: They were still talking when the one who urinated went back to the table.

Q: And what happened after this person who urinated went back to the table?
A: They conversed with the one wearing black and after the conversation he stood up and went to the slim guy.

Q: Who stood up?
A: The one named Dodong, the one who was in black and the one who stabbed.

Q: So, you said that this one wearing black approached the slim guy?
A: Yes, sir.

Q: And what happened after that?
A: So then, he stabbed him and the one he stabbed ran away, because he was hit.

Q: How about the accused, where was the accused then when the man in black stabbed the slim guy?
A: There, and they were still convering (sic) with each other with the slim guy, sir.

Q: And what did he do after the man in black stabbed the slim [g]uy?
A: He ran away passing by the Apollo and (while the witness was demonstrating by pressing his hand to his chest) that he was hit.

Q: How about you, what did you do after that?
A: When the commotion of the people subsided, I asked from the people around there about the name of the man in black and after getting the name of the said person, I called up the Police Precinct I to inform them about the incident.

x x x x x x x x x

Q: Now, this person whom you said who stabbed the victim, did you meet him before?

A: Not yet, sir.

x x x x x x x x x

Q: As such a police asset, did you endeavor to know the personalities who were involved in that stabbing incident?
A: Yes, sir.

Q: Now, did you get name?
A: I only got one name only the name of that guy in black, sir.

Q: Why, did you interview the man in black?
A: I asked from those who were there hanging out if ever they know that person.

Q: Did you not follow the assailant after the stabbing incident?
A: No sir, because after I asked about his name from the bystanders, I immediately called up.[27] (Emphases supplied.)

Cerilo failed to mention what weapon was used to stab Guilbert or describe the manner Guilbert was stabbed. Cerilo also appeared to have mixed-up the personalities in his narration. He first identified the "slim guy" to be Guilbert who reprimanded the person who urinated, but he subsequently referred to the "slim guy" as the person who urinated. Moreover, Cerilo's identification of the purported assailant of Guilbert as a certain "Dodong" is highly unreliable, given that Cerilo admitted that he learned of said assailant's name from an unidentified spectator of the stabbing incident.

The fact that it was accused-appellant who stabbed Guilbert to death on the night of May 5, 2000 was already established beyond reasonable doubt. The next question is what crime for which accused-appellant should be held liable: murder as held by the RTC or homicide as adjudged by the Court of Appeals.

We agree with the Court of Appeals that accused-appellant is guilty only of homicide in the absence of the qualifying circumstance of treachery.

---

[27] TSN, May 9, 2001, pp. 10-22.

In a number of cases, surveyed in *People v. Rivera*,[28] we ruled that treachery cannot be appreciated simply because the attack was sudden and unexpected:

[W]e agree with accused-appellant that the qualifying circumstance of treachery was not established. Surveying the leading decisions on this question, in *People v. Romeo Magaro* we recently stated:

In *People v. Magallanes*, this Court held:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Thus, for treachery or alevosia to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. . . .

. . . **where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected**. As has been aptly observed the accused could not have made preparations for the attack, . . .; and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done.

Treachery cannot also be presumed from the mere suddenness of the attack. . . . In point is the following pronouncement we made in *People v. Escoto*:

We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. . . ."

In *People v. Bautista*, it was held:

---

[28] 356 Phil. 409 (1998).

> "**. . . The circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of alevosia necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself. . . .**"

Applying these principles to the case at bar, we hold that the prosecution has not proven that the killing was committed with treachery. Although accused-appellant shot the victim from behind, the fact was that this was done during a heated argument. Accused-appellant, filled with anger and rage, apparently had no time to reflect on his actions. It was not shown that he consciously adopted the mode of attacking the victim from behind to facilitate the killing without risk to himself. Accordingly, we hold that accused-appellant is guilty of homicide only.[29]

Similar to *Rivera* and the cases cited therein, the prosecution in the instant case merely showed that accused-appellant attacked Guilbert suddenly and unexpectedly, but failed to prove that accused-appellant consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. As aptly observed by the Court of Appeals:

> While it appears that the attack upon the victim was sudden, the surrounding circumstances attending the stabbing incident, that is, the open area, the presence of the victim's families and the attending eyewitnesses, works against treachery. If accused-appellant wanted to make certain that no risk would come to him, he could have chosen another time and place to stab the victim. Yet, accused-appellant nonchalantly stabbed the victim in a public market at 7:00 o'clock in the evening. The place was well-lighted and teeming with people. He was indifferent to the presence of the victim's family or of the other people who could easily identify him and point him out as the assailant. He showed no concern that the people in the immediate vicinity might retaliate in behalf of the victim. In fact,

---

[29] *Id.* at 435-436.

the attack appeared to have been impulsively done, a spur of the moment act in the heat of anger or extreme annoyance. There are no indications that accused-appellant deliberately planned to stab the victim at said time and place. Thus, we can reasonably conclude that accused-appellant, who at that time was languishing in his alcoholic state, acted brashly and impetuously in suddenly stabbing the victim. Treachery just cannot be appreciated.[30]

Lastly, we review the penalty and damages imposed by the Court of Appeals upon accused-appellant.

The penalty prescribed by law for the crime of homicide is *reclusion temporal*.[31] Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term which has a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, the imposition of imprisonment from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, is in order.

As to the award of damages to Guilbert's heirs, we affirm the amounts of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity. Medical and burial expenses were indisputably incurred by Guilbert's heirs but the exact amounts thereof were not duly proven. So in lieu of actual damages, we award Guilbert's heirs ₱25,000.00 as temperate damages. Article 2224 of the Civil Code provides that "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages,

---

[30] *Rollo*, p. 12.

[31] Revised Penal Code, Article 249.

may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."[32]

WHEREFORE, the instant appeal of accused-appellant is hereby **DENIED** for lack of merit. The Decision dated February 14, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00270 is hereby **AFFIRMED with MODIFICATION**. Accused-appellant Vicente Vilbar is found **GUILTY** of the crime of **HOMICIDE**, for which he is **SENTENCED** to imprisonment of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and **ORDERED** to pay the heirs of Guilbert Patricio the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱25,000.00 as temperate damages.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 186659-710. February 1, 2012]

ZACARIA A. CANDAO, ABAS A. CANDAO AND ISRAEL B. HARON, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN,** *respondents.*

SYLLABUS

CIVIL LAW; CRIMES COMMITTED BY PUBLIC OFFICERS; MALVERSATION OF PUBLIC FUNDS; CORRECTION

[32] *People v. Sally*, G.R. No. 191254, October 13, 2010, 633 SCRA 293, 306-307.

OF THE MAXIMUM OF THE INDETERMINATE SENTENCE, PROPER. — [T]he suggestion of our esteemed colleague, Justice Lucas P. Bersamin to correct the *maximum* of the indeterminate sentence, which our decision erroneously fixed at 17 years and 4 months of *reclusion temporal* medium, is well-taken. Justice Bersamin explained the matter as follows: The penalty of imprisonment prescribed for malversation when the amount involved exceeds ₱22,000.00 is ***reclusion temporal*** **in its maximum period to *reclusion perpetua.*** Such penalty is *not composed* of three periods. Pursuant to Article 65 of the *Revised Penal Code*, when the penalty prescribed by law is not composed of three periods, the court shall apply the rules contained in the articles of the *Revised Penal Code* preceding Article 65, ***dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.*** Accordingly, *reclusion perpetua* being indivisible, is at once the maximum period, while *reclusion temporal* in its maximum period is divided into two to determine the medium and minimum periods of the penalty. Conformably with Article 65, therefore, the periods of ***reclusion temporal*** **in its maximum period to *reclusion perpetua*** are the following: *Minimum period* — **17 years, 4 months, and 1 day to 18 years, 8 months;** *Medium period* — **18 years, 8 months, and 1 day to 20 years;** M*aximum period* — ***Reclusion perpetua*** With the Court having found no modifying circumstances — whether aggravating or modifying — to be present, the **maximum** of the **indeterminate sentence** should be taken from the **medium period** of the penalty, *i.e.,* **from 18 years, 8 months, and 1 day to 20 years.**

APPEARANCES OF COUNSEL

Dante J. Vargas, Esguerra & Blanco and *Edilberto B. Cosca* for petitioners.

Office of the Special Prosecutor for respondents.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Acting on the motion for reconsideration of our Decision dated October 19, 2011 filed by the petitioners, the Court finds no

compelling reason to warrant reversal of the said decision which affirmed with modifications the conviction of petitioners for malversation of public funds.

However, the suggestion of our esteemed colleague, Justice Lucas P. Bersamin to correct the *maximum* of the indeterminate sentence, which our decision erroneously fixed at 17 years and 4 months of *reclusion temporal* medium, is well-taken. Justice Bersamin explained the matter as follows:

> The penalty of imprisonment prescribed for malversation when the amount involved exceeds ₱22,000.00 is ***reclusion temporal* in its maximum period to *reclusion perpetua.*** Such penalty is *not composed* of three periods. Pursuant to Article 65 of the *Revised Penal Code*, when the penalty prescribed by law is not composed of three periods, the court shall apply the rules contained in the articles of the *Revised Penal Code* preceding Article 65, ***dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.*** Accordingly, *reclusion perpetua* being indivisible, is at once the maximum period, while *reclusion temporal* in its maximum period is divided into two to determine the medium and minimum periods of the penalty.
>
> Conformably with Article 65, therefore, the periods of ***reclusion temporal* in its maximum period to *reclusion perpetua*** are the following:
>
> - *Minimum period* — **17 years, 4 months, and 1 day to 18 years, 8 months;**
> - *Medium period* — **18 years, 8 months, and 1 day to 20 years;**
> - *Maximum period* — ***Reclusion perpetua***
>
> With the Court having found no modifying circumstances — whether aggravating or modifying — to be present, the **maximum** of the **indeterminate sentence** should be taken from the **medium period** of the penalty, *i.e.*, **from 18 years, 8 months, and 1 day to 20 years.**
>
> x x x x x x x x x

WHEREFORE, the motion for reconsideration filed by the petitioners is **DENIED.**

The brief discussion on penalty and the dispositive portion of our October 19, 2011 Decision, are hereby amended to read as follows:

Under Article 217, paragraph 4 of the Revised Penal Code, as amended, the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed if the amount involved exceeds ₱22,000.00, in addition to fine equal to the funds malversed. Considering that neither aggravating nor mitigating circumstance attended the crime charged, the maximum imposable penalty shall be within the range of the medium period of *reclusion temporal* maximum to *reclusion perpetua*, or eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of *prision mayor* maximum to *reclusion temporal* medium, or ten (10) years and one (1) day to seventeen (17) years and four (4) months. **The penalty imposed by the Sandiganbayan was therefore proper and correct.**

WHEREFORE, the petition for review on *certiorari* is DENIED for lack of merit. The Decision dated October 29, 2008 in Criminal Case Nos. 24569 to 24574, 24575, 24576 to 24584, 24585 to 24592, 24593, 24594, 24595 to 24620 finding petitioners guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217, paragraph 4 of the Revised Penal Code, as amended, and the Resolution dated February 20, 2009 of the Sandiganbayan (First Division), denying petitioners' motion for reconsideration are AFFIRMED with **MODIFICATION in that** in addition to the payment of the fine ordered by the Sandiganbayan, and by way of restitution, the petitioners are likewise ordered to pay, jointly and severally, the Republic of the Philippines through the ARMM-Regional Treasurer, the total amount of ₱21,045,570.64 malversed funds as finally determined by the COA.

In the service of their respective sentences, the petitioners shall be entitled to the benefit of the three-fold rule as provided in Article 70 of the Revised Penal Code, as amended.

With costs against the petitioners.

SO ORDERED.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Sereno,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 188722. February 1, 2012]

BANK OF LUBAO, INC., *petitioner, vs.* **ROMMEL J. MANABAT and the NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED RESPECT AND EVEN FINALITY BY THE SUPREME COURT. — This Court notes that the LA, the NLRC and the CA unanimously ruled that the respondent was illegally dismissed. Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA. Such factual findings are given more weight when the same are affirmed by the CA. We find no reason to depart from the foregoing rule.

2. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAYBE ENTERTAINED; CONFLICTING FINDINGS OF FACT AS AN EXCEPTION; CASE AT BAR. — At the outset, it should be stressed that a determination of the applicability of the doctrine of strained relations is essentially a factual question and, thus, not a proper

---

[*] Designated additional member per Raffle dated October 17, 2011 vice Associate Justice Teresita J. Leonardo-De Castro who recused herself from the case due to prior action in the Sandiganbayan.

subject in the instant petition. The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when, *inter alia*, the findings of fact are conflicting. Here, in view of the conflicting findings of the NLRC and the CA, this Court is constrained to pass upon the propriety of the application of the doctrine of strained relations to justify the award of separation pay to the respondent in lieu of reinstatement.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT, PROPRIETY THEREOF UPHELD IN THE CASE AT BAR. — Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been *unduly strained* by reason of their irreconcilable differences, *particularly where the illegally dismissed employee held a managerial or key position in the company*, it would be more prudent to order payment of separation pay instead of reinstatement. Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned. Here, we agree with the CA that the relations between the parties had been already strained thereby justifying the grant of separation pay in lieu of reinstatement in favor of the respondent.

4. ID.; ID.; ID.; PAYMENT OF BACKWAGES; MODIFICATION THEREOF, WARRANTED IN THE CASE AT BAR; EXPLAINED. — [T]he backwages that should be awarded to

the respondent should be modified. Employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Thus, when there is an order of reinstatement, the computation of backwages shall be reckoned from the time of illegal dismissal up to the time that the employee is actually reinstated to his former position. Pursuant to the order of reinstatement rendered by the LA, the petitioner sent the respondent a letter requiring him to report back to work on May 4, 2007. Notwithstanding the said letter, the respondent opted not to report for work. Thus, it is but fair that the backwages that should be awarded to the respondent be computed from the time that the respondent was illegally dismissed until the time when he was required to report for work, *i.e.* from September 1, 2005 until May 4, 2007. It is only during the said period that the respondent is deemed to be entitled to the payment of backwages.

APPEARANCES OF COUNSEL

Roque & Roque Law Firm for petitioner.
Rommel J. Manabat for private respondent.

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 Bank of Lubao, Inc. (petitioner) assailing the Decision[1] dated April 24, 2009 and Resolution[2]

---

[1] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justices Pampio A. Abarintos and Ricardo R. Rosario, concurring; *rollo*, pp. 42-52.

[2] *Rollo*, p. 54.

dated July 7, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 106419.

The Antecedent Facts

Sometime in 2001, Rommel J. Manabat (respondent) was hired by petitioner Bank of Lubao, a rural bank, as a Market Collector. Subsequently, the respondent was assigned as an encoder at the Bank of Lubao's Sta. Cruz Extension Office, which he manned together with two other employees, teller Susan P. Lingad (Lingad) and May O. Manasan. As an encoder, the respondent's primary duty is to encode the clients' deposits on the bank's computer after the same are received by Lingad.

In November 2004, an initial audit on the Bank of Lubao's Sta. Cruz Extension Office conducted by the petitioner revealed that there was a misappropriation of funds in the amount of ₱3,000,000.00, more or less. Apparently, there were transactions entered and posted in the passbooks of the clients but were not entered in the bank's book of accounts. Further audit showed that there were various deposits which were entered in the bank's computer but were subsequently reversed and marked as "error in posting."

On November 17, 2004, the respondent, through a memorandum sent by the petitioner, was asked to explain in writing the discrepancies that were discovered during the audit. On November 19, 2004, the respondent submitted to the petitioner his letter-explanation which, in essence, asserted that there were times when Lingad used the bank's computer while he was out on errands.

On December 11, 2004, an administrative hearing was conducted by the bank's investigating committee where the respondent was further made to explain his side. Subsequently, the investigating committee concluded that the respondent conspired with Lingad in making fraudulent entries disguised as error corrections in the bank's computer.

On August 9, 2005, the petitioner filed several criminal complaints for qualified theft against Lingad and the respondent with the Municipal Trial Court (MTC) of Lubao, Pampanga.

Thereafter, citing serious misconduct tantamount to willful breach of trust as ground, it terminated the respondent's employment effective September 1, 2005.

On September 26, 2005, the respondent filed a Complaint[3] for illegal dismissal with the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in San Fernando City, Pampanga. In the said complaint, the respondent, to bolster his claim that there was no valid ground for his dismissal, averred that the charge against him for qualified theft was dismissed for lack of sufficient basis to conclude that he conspired with Lingad. The respondent sought an award for separation pay, full backwages, 13th month pay for 2004 and moral and exemplary damages.

For its part, the petitioner insists that the dismissal of the respondent is justified, asserting the February 14, 2006 Audit Report which confirmed the participation of the respondent in the alleged misappropriations. Likewise, the petitioner asserted that the dismissal of the qualified theft charge against the respondent is immaterial to the validity of the ground for the latter's dismissal.

The Labor Arbiter's Decision

On February 28, 2007, the Labor Arbiter (LA) rendered a decision[4] sustaining the respondent's claim of illegal dismissal thus ordering the petitioner to reinstate the respondent to his former position and awarding the latter backwages in the amount of ₱111,960.00 and 13th month pay in the amount of ₱6,220.00. The LA opined that the petitioner failed to adduce substantial evidence that there was a valid ground for the respondent's dismissal. Further, the February 14, 2006 Audit Report that was adduced by the petitioner in evidence was disregarded by the LA since it was unsigned.

The petitioner appealed the foregoing disposition to the NLRC, submitting a new audit report dated April 30, 2007. Pending

---

[3] *Id.* at 105.

[4] *Id.* at 56-64.

appeal, the petitioner sent the respondent a letter[5] dated April 30, 2007 requiring him to report for work on May 4, 2007 pursuant to the reinstatement order of the LA. The said letter was served to the respondent on May 3, 2007 but he refused to receive the same.

The NLRC's Decision

On July 21, 2008, the NLRC rendered a Decision[6] affirming the February 28, 2007 Decision of the LA. The NLRC held that it was sufficiently established that only Lingad was the one responsible for the said misappropriations. Further, the NLRC asserted that the February 14, 2006 and April 30, 2007 audit reports presented by the petitioner could not be given evidentiary weight as the same were executed after the respondent had already been dismissed. The petitioner sought reconsideration of the said July 21, 2008 Decision but it was denied by the NLRC in its Resolution[7] dated September 22, 2009.

Subsequently, the petitioner filed a Petition for *Certiorari*[8] with the CA alleging that the NLRC and the LA gravely abused their discretion in ruling that the respondent had been illegally dismissed.

The CA Decision

On April 24, 2009, the CA rendered the herein assailed decision[9] denying the petition for *certiorari* filed by the petitioner. However, the CA held that the respondent is entitled to separation pay equivalent to one-month salary for every year of service in lieu of reinstatement and backwages to be computed from the time of his illegal dismissal until the finality of the said decision.

The CA agreed with the LA and the NLRC that the petitioner failed to establish by substantial evidence that there was indeed a valid ground for the respondent's dismissal. Nevertheless,

---

[5] *Id.* at 65.

[6] *Id.* at 69-77.

[7] *Id.* at 79-80.

[8] *Id.* at 81-96.

[9] *Supra* note 1.

the CA held that the petitioner should pay the respondent separation pay since the latter did not pray for reinstatement before the LA and that the same would be in the best interest of the parties considering the animosity and antagonism that exist between them. The CA stated the following:

> With respect to monetary awards, a finding that an employee has been illegally dismissed ordinarily entitles him to reinstatement to his former position without loss of seniority rights and to the payment of backwages. In this case, however, private respondent did not pray for reinstatement before the Labor Arbiter. This being the case, the employer should pay him separation pay in lieu [of] reinstatement. This is only just and practical because reinstatement of private respondent will no longer be in the best interest of both parties considering the animosity and antagonism that exist between them brought about by the filing of charges in the criminal as well as in the labor proceedings. Consequently, private respondent is entitled to separation pay equivalent to one month pay for every year of service up to the finality of this judgment, as an alternative to reinstatement. With respect to his backwages, where reinstatement is no longer possible, it shall be computed from the time of the employee's illegal termination up to the finality of this decision, without qualification or deduction.[10] (citations omitted)

Hence, the *fallo* of the CA Decision reads:

> **WHEREFORE**, the petition is **DENIED**. The assailed Decision and Resolution of the NLRC are **AFFIRMED** with the **MODIFICATION** that private respondent is entitled to separation pay equivalent to one month salary for every year of service in lieu of reinstatement and backwages to be computed from the time of his illegal dismissal until the finality of this Decision.
>
> **SO ORDERED**.[11]

The petitioner's Motion for Reconsideration[12] was denied by the CA in its Resolution[13] dated July 7, 2009.

---

[10] *Rollo*, p. 51.

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

[12] *Id.* at 97-104.

[13] *Supra* note 2.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court asserting the following arguments: (1) the CA erred in awarding separation pay in favor of the respondent in lieu of reinstatement considering that the appeal before it only involved the issue of the legality or illegality of the respondent's dismissal; (2) an award of separation pay to the respondent is not proper in this case considering that, in his complaint, he merely prayed for reinstatement and not payment of separation pay; and (3) the CA erred in awarding backwages in favor of the respondent since it acted in good faith when it terminated the respondent's employment.

In his Comment,[14] the respondent asserted that the CA did not err in ordering the payment of separation pay in his favor in lieu of reinstatement since there is already a strained relationship between him and the petitioner. He intimated that the petitioner had previously filed various criminal charges against him for qualified theft thus effectively rendering his reinstatement to his former position in the Bank of Lubao impracticable.

Issues

In sum, the issues to be resolved by this Court in the instant case are the following: (1) whether the CA erred in ordering the petitioner to pay the respondent separation pay in lieu of reinstatement; and (2) whether the respondent is entitled to payment of backwages.

The Court's Ruling

This Court notes that the LA, the NLRC and the CA unanimously ruled that the respondent was illegally dismissed. Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the LA. Such factual findings are given more weight when the same are affirmed by the CA. We find no reason to depart from the foregoing rule.

---

[14] *Rollo*, pp. 149-154.

First Issue: Separation Pay in Lieu of Reinstatement

At the outset, it should be stressed that a determination of the applicability of the doctrine of strained relations is essentially a factual question and, thus, not a proper subject in the instant petition.[15]

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when, *inter alia*, the findings of fact are conflicting.[16]

Here, in view of the conflicting findings of the NLRC and the CA, this Court is constrained to pass upon the propriety of the application of the doctrine of strained relations to justify the award of separation pay to the respondent in lieu of reinstatement.

The law on reinstatement is provided for under Article 279 of the Labor Code of the Philippines:

> Article 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. (emphasis supplied)

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement as a matter of right. However, if reinstatement would only exacerbate the tension and strained relations between the parties, or where the relationship between the employer and the employee has been

---

[15] See *Cabigting v. San Miguel Foods, Inc.*, G.R. No. 167706, November 5, 2009, 605 SCRA 14.

[16] *Phil. Charter Insurance Corp. v. Unknown Owner of the Vessel M/V "National Honor,"* 501 Phil. 498, 509 (2005).

unduly strained by reason of their irreconcilable differences, *particularly where the illegally dismissed employee held a managerial or key position in the company*, it would be more prudent to order payment of separation pay instead of reinstatement.[17]

Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[18]

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.[19]

Here, we agree with the CA that the relations between the parties had been already strained thereby justifying the grant of separation pay in lieu of reinstatement in favor of the respondent.

First, it cannot be gainsaid that the petitioner's reinstatement to his former position would only serve to intensify the atmosphere of antipathy and antagonism between the parties. Undoubtedly, the petitioner's filing of various criminal complaints against the respondent for qualified theft and the subsequent filing by the latter of the complaint for illegal dismissal against the latter, taken together with the pendency of the instant case for more than six years, had caused strained relations between the parties.

---

[17] *Quijano v. Mercury Drug Corp.*, 354 Phil. 112, 121-122 (1998). (citations omitted)

[18] *Golden Ace Builders v. Talde,* G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290.

[19] *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

Second, considering that the respondent's former position as bank encoder involves the handling of accounts of the depositors of the Bank of Lubao, it would not be equitable on the part of the petitioner to be ordered to maintain the former in its employ since it may only inspire vindictiveness on the part of the respondent.

Third, the refusal of the respondent to be re-admitted to work is in itself indicative of the existence of strained relations between him and the petitioner. In the case of *Lagniton, Sr. v. National Labor Relations Commission*,[20] the Court held that the refusal of the dismissed employee to be re-admitted is constitutive of strained relations:

> It appears that relations between the petitioner and the complainants have been so strained that the complainants are no longer willing to be reinstated. As such reinstatement would only exacerbate the animosities that have developed between the parties, the public respondents were correct in ordering instead the grant of separation pay to the dismissed employees in the interest of industrial peace.[21]

Time and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties, if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.[22]

Second Issue: Backwages

Anent the *second issue*, the petitioner claimed that the respondent is not entitled to the payment of backwages considering

---

[20] G.R. No. 86339, February 5, 1993, 218 SCRA 456.

[21] *Id.* at 459-460.

[22] *CRC Agricultural Trading v. NLRC*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 151-152.

that there was no bad faith on its part when it terminated the latter's employment. The petitioner insists that it is within its prerogative to dismiss the respondent on the basis of loss of trust and confidence.

We do not agree.

The arguments raised by the petitioner with regard to the issue of backwages, essentially, attacks the factual findings of the CA, the NLRC and the LA. As stated earlier, subject to well-defined exceptions, factual questions may not be raised in a petition for review on *certiorari* under Rule 45 as this Court is not a trier of facts. The petitioner failed to assert any circumstance which would impel this Court to disregard the findings of fact of the lower tribunals on the propriety of the award of backwages in favor of the respondent.

However, the backwages that should be awarded to the respondent should be modified. Employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[23]

Thus, when there is an order of reinstatement, the computation of backwages shall be reckoned from the time of illegal dismissal up to the time that the employee is actually reinstated to his former position.

Pursuant to the order of reinstatement rendered by the LA, the petitioner sent the respondent a letter requiring him to report back to work on May 4, 2007. Notwithstanding the said letter, the respondent opted not to report for work. Thus, it is but fair that the backwages that should be awarded to the respondent be computed from the time that the respondent was illegally

---

[23] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, G.R. No. 163091, October 6, 2010, 632 SCRA 293, 320.

dismissed until the time when he was required to report for work, *i.e.* from September 1, 2005 until May 4, 2007. It is only during the said period that the respondent is deemed to be entitled to the payment of backwages.

The fact that the CA, in its April 4, 2009 decision, ordered the payment of separation pay in lieu of the respondent's reinstatement would not entitle the latter to backwages. It bears stressing that decisions of the CA, unlike that of the LA, are not immediately executory. Accordingly, the petitioner should only pay the respondent backwages from September 1, 2005, the date when the respondent was illegally dismissed, until May 4, 2007, the date when the petitioner required the former to report to work.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **PARTIALLY GRANTED**. The Decision dated April 24, 2009 and Resolution dated July 7, 2009 of the Court of Appeals in CA-G.R. SP No. 106419 are hereby *A***FFIRMED** with **MODIFICATION**. The petitioner is ordered to pay the respondent backwages from September 1, 2005 until May 4, 2007. For this purpose, the case is hereby **REMANDED** to the Labor Arbiter for the computation of the amounts due the respondent.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 189496. February 1, 2012]

D.M. FERRER & ASSOCIATES CORPORATION, *petitioner, vs.* **UNIVERSITY OF SANTO TOMAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO QUESTION THE DISMISSAL OF AN ACTION AGAINST ONE OF THE PARTIES WHILE THE MAIN CASE IS STILL PENDING. — In *Jan-Dec Construction Corp. v. Court of Appeals*, we held that a petition for *certiorari* under Rule 65 is the proper remedy to question the dismissal of an action against one of the parties while the main case is still pending. This is the general rule in accordance with Rule 41, Sec. 1(g). In that case, ruled thus: Evidently, the CA erred in dismissing petitioner's petition for *certiorari* from the Order of the RTC dismissing the complaint against respondent. While Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case, it also provides several exceptions to the rule, to wit: (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; (g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and (h) an order dismissing an action without prejudice. In the foregoing instances, the aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65. **In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and**

herein respondent and the complaint against Intermodal is still pending. Thus, the remedy of a special civil action for *certiorari* availed of by petitioner before the CA was proper and the CA erred in dismissing the petition. Clearly, in the case at bar, the CA also erred when it dismissed the Petition filed before it.

2. ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; LACK OF CAUSE OF ACTION; NOT ESTABLISHED IN THE CASE AT BAR; TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION FOR DISMISSING THE CASE. — Anent the second issue, we also agree with petitioner that the Complaint states a cause of action against respondent UST. In *Abacan v. Northwestern University, Inc.*, we said: It is settled that the existence of a cause of action is determined by the allegations in the complaint. In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. **Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test**. While it is admitted that respondent UST was not a party to the contract, petitioner posits that the former is nevertheless liable for the construction costs. In support of its position, petitioner alleged that (1) UST and USTHI are one and the same corporation; (2) UST stands to benefit from the assets of USTHI by virtue of the latter's Articles of Incorporation; (3) respondent controls the business of USTHI; and (4) UST's officials have performed acts that may be construed as an acknowledgement of respondent's liability to petitioner. Obviously, these issues would have been best resolved during trial. The RTC therefore committed grave abuse of discretion when it dismissed the case against respondent for lack of cause of action. The trial court relied on the contract executed between petitioner and USTHI, when the court should have instead considered merely the allegations stated in the Complaint.

APPEARANCES OF COUNSEL

Padilla Villanueva Marasigan and Associates for petitioner.
Divina & Uy Law Offices for respondent.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. Petitioner assails the Court of Appeals (CA) Resolution[1] promulgated on 26 June 2009 dismissing the former's Petition for *Certiorari*, and the Resolution[2] dated 3 September 2009 denying the subsequent Motion for Reconsideration.

The facts are undisputed:

On 25 November 2005, petitioner and University of Santo Tomas Hospital, Inc. (USTHI) entered into a Project Management Contract for the renovation of the 4th and 5th floors of the Clinical Division Building, Nurse Call Room and Medical Records, Medical Arts Tower, Diagnostic Treatment Building and Pay Division Building.

On various dates, petitioner demanded from USTHI the payment of the construction costs amounting to ₱17,558,479.39. However, on 16 April 2008, the University of Santo Tomas (UST), through its rector, Fr. Rolando V. Dela Rosa, wrote a letter informing petitioner that its claim for payment had been denied, because the Project Management Contract was without the required prior approval of the board of trustees. Thus, on 23 May 2008, petitioner filed a Complaint[3] for sum of money, breach of contract and damages against herein respondent UST

---

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican concurring; *rollo*, pp. 34-36.

[2] *Id.* at 38-39.

[3] *Id.* at 40-51.

and USTHI when the latter failed to pay petitioner despite repeated demands.

In impleading respondent UST, petitioner alleged that the former took complete control over the business and operation of USTHI, as well as the completion of the construction project.

It also pointed out that the Articles of Incorporation of USTHI provided that, upon dissolution, all of the latter's assets shall be transferred without any consideration and shall inure to the benefit of UST. It appears that USTHI passed a Resolution on 10 January 2008 dissolving the corporation by shortening its corporate term of existence from 16 March 2057 to 31 May 2008.

Finally, petitioner alleged that respondent, through its rector, Fr. Dela Rosa, O.P., verbally assured the former of the payment of USTHI's outstanding obligations.

Thus, petitioner posited in part that UST may be impleaded in the case under the doctrine of "piercing the corporate veil," wherein respondent UST and USTHI would be considered to be acting as one corporate entity, and UST may be held liable for the alleged obligations due to petitioner.

Subsequently, respondent filed its Motion to Dismiss dated 12 June 2008.[4] It alleged that the Complaint failed to state a cause of action, and that the claim was unenforceable under the provisions of the Statute of Frauds.

On 4 August 2008, Judge Bernelito R. Fernandez of Branch 97 of the Regional Trial Court (RTC) of Quezon City granted the motion and dismissed the Complaint insofar as respondent UST was concerned.[5]

First, basing its findings on the documents submitted in support of the Complaint, the RTC held that respondent was not a real party-in-interest, and that it was not privy to the contract executed between USTHI and petitioner. Second, the court pointed out

---

[4] *Id.* at 108-115.

[5] *Id.* at 145-147.

that the alleged verbal assurances of Fr. Dela Rosa should have been in writing to make these assurances binding and demandable.

Petitioner sought a reconsideration of the RTC Order and asserted that only allegations of the Complaint, and not the attached documents, should have been the basis of the trial court's ruling, consistent with the rule that the cause of action can be determined only from the facts alleged in the Complaint. It also insisted that the Statute of Frauds was inapplicable, since USTHI's obligation had already been partially executed.[6]

On 5 October 2008, petitioner filed an Urgent Motion for Voluntary Inhibition[7] on the ground that Judge Fernandez was an alumnus of respondent UST.

Thereafter, Judge Fernandez issued an Order[8] inhibiting himself from the case, which was consequently re-raffled to Branch 76 presided by Judge Alexander S. Balut.

On 16 April 2009, Judge Balut dismissed the Motion for Reconsideration filed by petitioner,[9] upholding the initial findings of Judge Fernandez declaring that respondent UST was not a real party-in-interest, and that Fr. Dela Rosa's alleged assurances of payment were unenforceable.

Subsequently, petitioner filed a Petition for *Certiorari* under Rule 65 with the CA.[10] Petitioner alleged that the trial court committed grave abuse of discretion when it granted respondent's Motion to Dismiss on the basis of the documents submitted in support of the Complaint, and not solely on the allegations stated therein. Petitioner pointed out that the allegations raised questions of fact and law, which should have been threshed out during trial, when both parties would have been given the chance to present evidence supporting their respective allegations.

---

[6] *Id.* at 148-155

[7] *Id.* at 178-182.

[8] *Id.* at 183.

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

[10] *Id.* at 199-217.

However, on 26 June 2009, the CA issued the assailed Resolution and dismissed the Petition on the ground that a petition under Rule 65 is the wrong remedy to question the RTC's Order that completely disposes of the case. Instead, petitioner should have availed itself of an appeal under Rule 41 of the Rules of Court.

Petitioner moved for a reconsideration of the Resolution.[11] It pointed out that the present case falls under the enumerated exceptions of Rule 41, in particular, while the main case is still pending, no appeal may be made from a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints.

On 3 September 2009, the CA denied the Motion for Reconsideration through its second assailed Resolution, holding that the motion raised no new issues or substantial grounds that would merit the reconsideration of the court.

Hence this Petition.

Petitioner raises two grounds in the present Petition: first, whether the CA erred in dismissing the Petition for *Certiorari* by failing to consider the exception in Sec. 1(g) of Rule 41 of the Rules of Court; second, whether the trial court committed grave abuse of discretion when it held that the Complaint stated no cause of action.

We rule for petitioner.

Respondent insists that petitioner should have first filed a notice of appeal before the RTC, and the appeal should have been subsequently denied before recourse to the CA was made. This contention holds no water.

In *Jan-Dec Construction Corp. v. Court of Appeals*,[12] we held that a petition for *certiorari* under Rule 65 is the proper remedy to question the dismissal of an action against one of the parties while the main case is still pending. This is the general

---

[11] *Id.* at 223-230.

[12] 517 Phil. 96, 105 (2006).

rule in accordance with Rule 41, Sec. 1(g). In that case, ruled thus:

> Evidently, the CA erred in dismissing petitioner's petition for *certiorari* from the Order of the RTC dismissing the complaint against respondent. While Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case, it also provides several exceptions to the rule, to wit: (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; (g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and (h) an order dismissing an action without prejudice. In the foregoing instances, the aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65.
>
> **In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and herein respondent and the complaint against Intermodal is still pending. Thus, the remedy of a special civil action for *certiorari* availed of by petitioner before the CA was proper and the CA erred in dismissing the petition**. (Emphasis supplied)

Clearly, in the case at bar, the CA also erred when it dismissed the Petition filed before it.

Anent the second issue, we also agree with petitioner that the Complaint states a cause of action against respondent UST. In *Abacan v. Northwestern University, Inc.*,[13] we said:

> It is settled that the existence of a cause of action is determined by the allegations in the complaint. In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged

[13] 495 Phil. 123, 133 (2005).

in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. **Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test**. (Emphasis supplied)

While it is admitted that respondent UST was not a party to the contract, petitioner posits that the former is nevertheless liable for the construction costs. In support of its position, petitioner alleged that (1) UST and USTHI are one and the same corporation; (2) UST stands to benefit from the assets of USTHI by virtue of the latter's Articles of Incorporation; (3) respondent controls the business of USTHI; and (4) UST's officials have performed acts that may be construed as an acknowledgement of respondent's liability to petitioner.

Obviously, these issues would have been best resolved during trial. The RTC therefore committed grave abuse of discretion when it dismissed the case against respondent for lack of cause of action. The trial court relied on the contract executed between petitioner and USTHI, when the court should have instead considered merely the allegations stated in the Complaint.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. Branch 76 of the Regional Trial Court of Quezon City is hereby ordered to **REINSTATE** respondent University of Santo Tomas as a defendant in C.C. No. 0862635.

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *Perez, JJ.*, concur.

---

[*] Additional member in lieu of Associate Justice Bienvenido L. Reyes, who recused himself from the case due to prior action in the Court of Appeals, per Raffle dated 30 January 2012.

THIRD DIVISION

[G.R. No. 194320. February 1, 2012]

MALAYAN INSURANCE CO., INC., *petitioner, vs.* **RODELIO ALBERTO and ENRICO ALBERTO REYES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ADMISSIBILITY; TESTIMONY IS GENERALLY CONFINED TO PERSONAL KNOWLEDGE; HEARSAY, EXCLUDED. — Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal knowledge, that is, which are derived from the witness' own perception. Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters. Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule. As discussed in *D.M. Consunji, Inc. v. CA*, "Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements."

2. ID.; ID.; ID.; ID.; ID.; ENTRIES IN OFFICIAL RECORDS AS AN EXCEPTION TO THE HEARSAY RULE; REQUISITES. — There are several exceptions to the hearsay rule under the Rules of Court, among which are entries in official records. Section 44, Rule 130 provides: Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts therein stated. In *Alvarez v. PICOP Resources*, this Court reiterated the requisites for the admissibility in evidence, as an exception to the hearsay rule of entries in official records, thus: (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his or her duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him

or her stated, which must have been acquired by the public officer or other person personally or through official information.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUASI-DELICTS; NEGLIGENCE; APPLICATION OF THE *RES IPSA LOQUITUR* RULE; REQUISITES; ESTABLISHED IN THE CASE AT BAR. — What is at once evident from the instant case, however, is the presence of all the requisites for the application of the rule of *res ipsa loquitur*. To reiterate, *res ipsa loquitur* is a rule of necessity which applies where evidence is absent or not readily available. As explained in *D.M. Consunji, Inc.*, it is partly based upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and, therefore, is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. As mentioned above, the requisites for the application of the *res ipsa loquitur* rule are the following: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. In the instant case, the Fuzo Cargo Truck would not have had hit the rear end of the Mitsubishi Galant unless someone is negligent. Also, the Fuzo Cargo Truck was under the exclusive control of its driver, Reyes. Even if respondents avert liability by putting the blame on the Nissan Bus driver, still, this allegation was self-serving and totally unfounded. Finally, no contributory negligence was attributed to the driver of the Mitsubishi Galant. Consequently, all the requisites for the application of the doctrine of *res ipsa loquitur* are present, thereby creating a reasonable presumption of negligence on the part of respondents.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF NEGLIGENCE REMAINS WHEN NOT REBUTTED OR OVERCOME BY OTHER EVIDENCE TO THE CONTRARY. — It is worth mentioning that just like any other disputable presumptions or inferences,

the presumption of negligence may be rebutted or overcome by other evidence to the contrary. It is unfortunate, however, that respondents failed to present any evidence before the trial court. Thus, the presumption of negligence remains. Consequently, the CA erred in dismissing the complaint for Malayan Insurance's adverted failure to prove negligence on the part of respondents.

5. ID.; ID.; ADMISSIBILITY; FAILURE TO OBJECT TO THE OFFERED EVIDENCE RENDERS IT ADMISSIBLE. — As noted by Malayan Insurance, respondents had all the opportunity, but failed to object to the presentation of its evidence. Thus, and as We have mentioned earlier, respondents are deemed to have waived their right to make an objection. As this Court held in *Asian Construction and Development Corporation v. COMFAC Corporation*: **The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.** We note that ASIAKONSTRUCT's counsel of record before the trial court, Atty. Bernard Dy, who actively participated in the initial stages of the case stopped attending the hearings when COMFAC was about to end its presentation. Thus, ASIAKONSTRUCT could not object to COMFAC's offer of evidence nor present evidence in its defense; ASIAKONSTRUCT was deemed by the trial court to have waived its chance to do so. **Note also that when a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented**.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; SUBROGATION; ELUCIDATED; VALID SUBROGATION, ESTABLISHED IN THE CASE AT BAR. — Bearing in mind that the claim check voucher and the Release of Claim and Subrogation Receipt presented by Malayan Insurance are already part of the evidence on record, and since it is not disputed that the insurance company, indeed, paid PhP 700,000 to the assured, then there is a valid

subrogation in the case at bar. As explained in *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*: Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment. We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay. Considering the above ruling, it is only but proper that Malayan Insurance be subrogated to the rights of the assured.

APPEARANCES OF COUNSEL

Francisco J. Farolan for petitioner.
Rafael N. Cristobal for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review on *Certiorari* under Rule 45, seeking to reverse and set aside the July 28, 2010 Decision[1] of the Court of Appeals (CA) and its October 29, 2010 Resolution[2] denying the motion for reconsideration filed by petitioner Malayan Insurance Co., Inc. (Malayan Insurance). The July 28, 2010 CA Decision reversed and set aside the Decision[3] dated February 2, 2009 of the Regional Trial Court, Branch 51 in Manila.

The Facts

At around 5 o'clock in the morning of December 17, 1995, an accident occurred at the corner of EDSA and Ayala Avenue, Makati City, involving four (4) vehicles, to wit: (1) a Nissan Bus operated by Aladdin Transit with plate number NYS 381; (2) an Isuzu Tanker with plate number PLR 684; (3) a Fuzo Cargo Truck with plate number PDL 297; and (4) a Mitsubishi Galant with plate number TLM 732.[4]

Based on the Police Report issued by the on-the-spot investigator, Senior Police Officer 1 Alfredo M. Dungga (SPO1 Dungga), the Isuzu Tanker was in front of the Mitsubishi Galant with the Nissan Bus on their right side shortly before the vehicular incident. All three (3) vehicles were at a halt along EDSA facing the south direction when the Fuzo Cargo Truck simultaneously bumped the rear portion of the Mitsubishi Galant and the rear left portion of the Nissan Bus. Due to the strong impact, these two vehicles were shoved forward and the front left portion of

---

[1] *Rollo*, pp. 16-26. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante.

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

[3] *Id.* at 64-70. Penned by Presiding Judge Gregorio B. Clemeña, Jr.

[4] *Id.* at 17.

the Mitsubishi Galant rammed into the rear right portion of the Isuzu Tanker.[5]

Previously, particularly on December 15, 1994, Malayan Insurance issued Car Insurance Policy No. PV-025-00220 in favor of First Malayan Leasing and Finance Corporation (the assured), insuring the aforementioned Mitsubishi Galant against third party liability, own damage and theft, among others. Having insured the vehicle against such risks, Malayan Insurance claimed in its Complaint dated October 18, 1999 that it paid the damages sustained by the assured amounting to PhP 700,000.[6]

Maintaining that it has been subrogated to the rights and interests of the assured by operation of law upon its payment to the latter, Malayan Insurance sent several demand letters to respondents Rodelio Alberto (Alberto) and Enrico Alberto Reyes (Reyes), the registered owner and the driver, respectively, of the Fuzo Cargo Truck, requiring them to pay the amount it had paid to the assured. When respondents refused to settle their liability, Malayan Insurance was constrained to file a complaint for damages for gross negligence against respondents.[7]

In their Answer, respondents asserted that they cannot be held liable for the vehicular accident, since its proximate cause was the reckless driving of the Nissan Bus driver. They alleged that the speeding bus, coming from the service road of EDSA, maneuvered its way towards the middle lane without due regard to Reyes' right of way. When the Nissan Bus abruptly stopped, Reyes stepped hard on the brakes but the braking action could not cope with the inertia and failed to gain sufficient traction. As a consequence, the Fuzo Cargo Truck hit the rear end of the Mitsubishi Galant, which, in turn, hit the rear end of the vehicle in front of it. The Nissan Bus, on the other hand, sideswiped the Fuzo Cargo Truck, causing damage to the latter in the amount of PhP 20,000. Respondents also controverted the results of

---

[5] *Id.* at 17-18

[6] *Id.*

[7] *Id.* at 18.

the Police Report, asserting that it was based solely on the biased narration of the Nissan Bus driver.[8]

After the termination of the pre-trial proceedings, trial ensued. Malayan Insurance presented the testimony of its lone witness, a motor car claim adjuster, who attested that he processed the insurance claim of the assured and verified the documents submitted to him. Respondents, on the other hand, failed to present any evidence.

In its Decision dated February 2, 2009, the trial court, in Civil Case No. 99-95885, ruled in favor of Malayan Insurance and declared respondents liable for damages. The dispositive portion reads:

> **WHEREFORE,** judgment is hereby rendered in favor of the plaintiff against defendants jointly and severally to pay plaintiff the following:
>
> 1. The amount of ₱700,000.00 with legal interest from the time of the filing of the complaint;
> 2. Attorney's fees of ₱10,000.00 and;
> 3. Cost of suit.
>
> **SO ORDERED.**[9]

Dissatisfied, respondents filed an appeal with the CA, docketed as CA-G.R. CV No. 93112. In its Decision dated July 28, 2010, the CA reversed and set aside the Decision of the trial court and ruled in favor of respondents, disposing:

> **WHEREFORE**, the foregoing considered, the instant appeal is hereby **GRANTED** and the assailed Decision dated 2 February 2009 **REVERSED** and **SET ASIDE**. The Complaint dated 18 October 1999 is hereby **DISMISSED** for lack of merit. No costs.
>
> **SO ORDERED.**[10]

---

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

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

[10] *Id.* at 25.

The CA held that the evidence on record has failed to establish not only negligence on the part of respondents, but also compliance with the other requisites and the consequent right of Malayan Insurance to subrogation.[11] It noted that the police report, which has been made part of the records of the trial court, was not properly identified by the police officer who conducted the on-the-spot investigation of the subject collision. It, thus, held that an appellate court, as a reviewing body, cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document, much less accord it evidentiary value.[12]

Subsequently, Malayan Insurance filed its Motion for Reconsideration, arguing that a police report is a *prima facie* evidence of the facts stated in it. And inasmuch as they never questioned the presentation of the report in evidence, respondents are deemed to have waived their right to question its authenticity and due execution.[13]

In its Resolution dated October 29, 2010, the CA denied the motion for reconsideration. Hence, Malayan Insurance filed the instant petition.

The Issues

In its Memorandum[14] dated June 27, 2011, Malayan Insurance raises the following issues for Our consideration:

I

WHETHER THE CA ERRED IN REFUSING ADMISSIBILITY OF THE POLICE REPORT SINCE THE POLICE INVESTIGATOR WHO PREPARED THE SAME DID NOT ACTUALLY TESTIFY IN COURT THEREON.

II

WHETHER THE SUBROGATION OF MALAYAN INSURANCE IS IMPAIRED AND/OR DEFICIENT.

---

[11] *Id.* at 22.

[12] *Id.* at 24.

[13] *Id.* at 88.

[14] *Id.* at 99-107.

On the other hand, respondents submit the following issues in its Memorandum[15] dated July 7, 2011:

I

WHETHER THE CA IS CORRECT IN DISMISSING THE COMPLAINT FOR FAILURE OF MALAYAN INSURANCE TO OVERCOME THE BURDEN OF PROOF REQUIRED TO ESTABLISH THE NEGLIGENCE OF RESPONDENTS.

II

WHETHER THE PIECES OF EVIDENCE PRESENTED BY MALAYAN INSURANCE ARE SUFFICIENT TO CLAIM FOR THE AMOUNT OF DAMAGES.

III

WHETHER THE SUBROGATION OF MALAYAN INSURANCE HAS PASSED COMPLIANCE AND REQUISITES AS PROVIDED UNDER PERTINENT LAWS.

Essentially, the issues boil down to the following: (1) the admissibility of the police report; (2) the sufficiency of the evidence to support a claim for gross negligence; and (3) the validity of subrogation in the instant case.

Our Ruling

The petition has merit.

Admissibility of the Police Report

Malayan Insurance contends that, even without the presentation of the police investigator who prepared the police report, said report is still admissible in evidence, especially since respondents failed to make a timely objection to its presentation in evidence.[16] Respondents counter that since the police report was never confirmed by the investigating police officer, it cannot be considered as part of the evidence on record.[17]

Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal

---

[15] *Id.* at 110-115.

[16] *Id.* at 101.

[17] *Id.* at 113.

knowledge, that is, which are derived from the witness' own perception.[18] Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters.[19] Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule.[20]

As discussed in *D.M. Consunji, Inc. v. CA,*[21] "Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements."

There are several exceptions to the hearsay rule under the Rules of Court, among which are entries in official records.[22] Section 44, Rule 130 provides:

> Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts therein stated.

In *Alvarez v. PICOP Resources,*[23] this Court reiterated the requisites for the admissibility in evidence, as an exception to the hearsay rule of entries in official records, thus: (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his or her duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient

---

[18] RULES OF COURT, Rule 130, Sec. 36.

[19] *D.M. Consunji, Inc. v. CA,* G.R. No. 137873, April 20, 2001, 357 SCRA 249, 253-254.

[20] *Id.* at 254.

[21] *Id.*

[22] *Id.*

[23] G.R. Nos. 162243, 164516 & 171875, December 3, 2009, 606 SCRA 444, 525; citing *Africa v. Caltex,* 123 Phil. 272, 277 (1966).

knowledge of the facts by him or her stated, which must have been acquired by the public officer or other person personally or through official information.

Notably, the presentation of the police report itself is admissible as an exception to the hearsay rule even if the police investigator who prepared it was not presented in court, as long as the above requisites could be adequately proved.[24]

Here, there is no dispute that SPO1 Dungga, the on-the-spot investigator, prepared the report, and he did so in the performance of his duty. However, what is not clear is whether SPO1 Dungga had sufficient personal knowledge of the facts contained in his report. Thus, the third requisite is lacking.

Respondents failed to make a timely objection to the police report's presentation in evidence; thus, they are deemed to have waived their right to do so.[25] As a result, the police report is still admissible in evidence.

Sufficiency of Evidence

Malayan Insurance contends that since Reyes, the driver of the Fuzo Cargo truck, bumped the rear of the Mitsubishi Galant, he is presumed to be negligent unless proved otherwise. It further contends that respondents failed to present any evidence to overturn the presumption of negligence.[26] Contrarily, respondents claim that since Malayan Insurance did not present any witness who shall affirm any negligent act of Reyes in driving the Fuzo Cargo truck before and after the incident, there is no evidence which would show negligence on the part of respondents.[27]

We agree with Malayan Insurance. Even if We consider the inadmissibility of the police report in evidence, still, respondents

---

[24] *Id.* at 525-526.

[25] *Asian Construction and Development Corporation v. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 504 SCRA 519, 524.

[26] *Rollo*, p. 105.

[27] *Id.* at 113.

cannot evade liability by virtue of the *res ipsa loquitur* doctrine. The *D.M. Consunji, Inc.* case is quite elucidating:

> Petitioner's contention, however, loses relevance in the face of the application of *res ipsa loquitur* by the CA. The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.
>
> The concept of *res ipsa loquitur* has been explained in this wise:
>
> > While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
> >
> > x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.
>
> One of the theoretical bases for the doctrine is its necessity, *i.e.*, that necessary evidence is absent or not available.
>
> > The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the

happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.

It has been said that the doctrine of *res ipsa loquitur* furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The *res ipsa loquitur* doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some courts add to the three prerequisites for the application of the *res ipsa loquitur* doctrine the further requirement that for the *res ipsa loquitur* doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.

The CA held that all the requisites of *res ipsa loquitur* are present in the case at bar:

There is no dispute that appellee's husband fell down from the 14th floor of a building to the basement while he was working with appellant's construction project, resulting to his death. The construction site is within the exclusive control and management of appellant. It has a safety engineer, a project superintendent, a carpenter leadman and others who are in complete control of the situation therein. The circumstances of any accident that would occur therein are peculiarly within the knowledge of the appellant or its employees. On the other hand, the appellee is not in a position to know what caused the accident. *Res ipsa loquitur* is a rule of necessity and it applies where evidence is absent or not readily available, provided the following requisites are present: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have

> been due to any voluntary action or contribution on the part of the person injured. x x x.
>
> No worker is going to fall from the 14th floor of a building to the basement while performing work in a construction site unless someone is negligent[;] thus, the first requisite for the application of the rule of *res ipsa loquitur* is present. As explained earlier, the construction site with all its paraphernalia and human resources that likely caused the injury is under the exclusive control and management of appellant[;] thus[,] the second requisite is also present. No contributory negligence was attributed to the appellee's deceased husband[;] thus[,] the last requisite is also present. All the requisites for the application of the rule of *res ipsa loquitur* are present, thus a reasonable presumption or inference of appellant's negligence arises. x x x.

Petitioner does not dispute the existence of the requisites for the application of *res ipsa loquitur*, but argues that the presumption or inference that it was negligent did not arise since it "proved that it exercised due care to avoid the accident which befell respondent's husband."

Petitioner apparently misapprehends the procedural effect of the doctrine. As stated earlier, the defendant's negligence is presumed or inferred when the plaintiff establishes the requisites for the application of *res ipsa loquitur*. Once the plaintiff makes out a *prima facie* case of all the elements, the burden then shifts to defendant to explain. The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances a disputable presumption, such as that of due care or innocence, may outweigh the inference. It is not for the defendant to explain or prove its defense to prevent the presumption or inference from arising. Evidence by the defendant of say, due care, comes into play only after the circumstances for the application of the doctrine has been established.[28]

In the case at bar, aside from the statement in the police report, none of the parties disputes the fact that the Fuzo Cargo Truck hit the rear end of the Mitsubishi Galant, which, in turn, hit the rear end of the vehicle in front of it. Respondents, however, point to the reckless driving of the Nissan Bus driver as the

---

[28] *Supra* note 19, at 257-260; citations omitted.

proximate cause of the collision, which allegation is totally unsupported by any evidence on record. And assuming that this allegation is, indeed, true, it is astonishing that respondents never even bothered to file a cross-claim against the owner or driver of the Nissan Bus.

What is at once evident from the instant case, however, is the presence of all the requisites for the application of the rule of *res ipsa loquitur*. To reiterate, *res ipsa loquitur* is a rule of necessity which applies where evidence is absent or not readily available. As explained in *D.M. Consunji, Inc.*, it is partly based upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and, therefore, is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence.

As mentioned above, the requisites for the application of the *res ipsa loquitur* rule are the following: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.[29]

In the instant case, the Fuzo Cargo Truck would not have had hit the rear end of the Mitsubishi Galant unless someone is negligent. Also, the Fuzo Cargo Truck was under the exclusive control of its driver, Reyes. Even if respondents avert liability by putting the blame on the Nissan Bus driver, still, this allegation was self-serving and totally unfounded. Finally, no contributory negligence was attributed to the driver of the Mitsubishi Galant. Consequently, all the requisites for the application of the doctrine of *res ipsa loquitur* are present, thereby creating a reasonable presumption of negligence on the part of respondents.

---

[29] *Id.* at 259.

It is worth mentioning that just like any other disputable presumptions or inferences, the presumption of negligence may be rebutted or overcome by other evidence to the contrary. It is unfortunate, however, that respondents failed to present any evidence before the trial court. Thus, the presumption of negligence remains. Consequently, the CA erred in dismissing the complaint for Malayan Insurance's adverted failure to prove negligence on the part of respondents.

Validity of Subrogation

Malayan Insurance contends that there was a valid subrogation in the instant case, as evidenced by the claim check voucher[30] and the Release of Claim and Subrogation Receipt[31] presented by it before the trial court. Respondents, however, claim that the documents presented by Malayan Insurance do not indicate certain important details that would show proper subrogation.

As noted by Malayan Insurance, respondents had all the opportunity, but failed to object to the presentation of its evidence. Thus, and as We have mentioned earlier, respondents are deemed to have waived their right to make an objection. As this Court held in *Asian Construction and Development Corporation v. COMFAC Corporation*:

> **The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.** We note that ASIAKONSTRUCT's counsel of record before the trial court, Atty. Bernard Dy, who actively participated in the initial stages of the case stopped attending the hearings when COMFAC was about to end its presentation. Thus, ASIAKONSTRUCT could not object to COMFAC's offer of evidence nor present evidence in its defense; ASIAKONSTRUCT was deemed by the trial court to have waived its chance to do so.
>
> **Note also that when a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first**

---

[30] *Rollo*, p. 106, Exhibit "D".

[31] *Id.*, Exhibit "E".

time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[32] (Emphasis supplied.)

Bearing in mind that the claim check voucher and the Release of Claim and Subrogation Receipt presented by Malayan Insurance are already part of the evidence on record, and since it is not disputed that the insurance company, indeed, paid PhP 700,000 to the assured, then there is a valid subrogation in the case at bar. As explained in *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*:

> Subrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. The principle covers a situation wherein an insurer has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy. It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the creditor could employ to enforce payment.
>
> We have held that payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies that the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity of contract. It accrues simply upon payment by the insurance company of the insurance claim. The doctrine of subrogation has its roots in equity. It is designed to promote and to accomplish justice; and is the mode that equity adopts to compel the ultimate payment of a debt by one who, in justice, equity, and good conscience, ought to pay.[33]

Considering the above ruling, it is only but proper that Malayan Insurance be subrogated to the rights of the assured.

---

[32] *Supra* note 25.

[33] G.R. Nos. 180880-81 & 180896-97, September 25, 2009, 601 SCRA 96, 141-142.

WHEREFORE, the petition is hereby **GRANTED**. The CA's July 28, 2010 Decision and October 29, 2010 Resolution in CA-G.R. CV No. 93112 are hereby **REVERSED** and **SET ASIDE**. The Decision dated February 2, 2009 issued by the trial court in Civil Case No. 99-95885 is hereby **REINSTATED**.

No pronouncement as to cost.

SO ORDERED.

Peralta, Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.*, concur.

---

[*] Additional member per Special Order No. 1178 dated January 26, 2012.

INDEX

INDEX

— Presidential Decree 1612 is a special law and, therefore, its violation is regarded as malum prohibitum, requiring no proof of criminal intent. *(Id.)*

APPEALS

Appeals in labor cases —Must be verified and certified against forum-shopping by the parties-in-interest themselves; in case of corporations, a board resolution is necessary to authorize its officers and agents in filing an appeal. (Salenga *vs*. CA, G.R. No. 174941, Feb. 01, 2012) p. 648

Court of Appeals — The Court of Appeal's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion. (Sps. David Bergonia and Luzviminda Castillo *vs*. CA [4th Div.], G.R. No. 189151, Jan. 25, 2012) p. 334

Decisions and final orders of the Sandiganbayan — Shall be appealable to the Supreme Court. (Icdang *vs*. Sandiganbayan [2nd Div.], G.R. No. 185960, Jan. 25, 2012) p. 265

Factual findings of quasi-judicial bodies — If supported by substantial evidence, are accorded respect and even finality by the Supreme Court. (Bank of Lubao, Inc. *vs*. Manabat, G.R. No. 188722, Feb. 01, 2012) p. 792

Factual findings of the Court of Appeals — Generally binding upon the Supreme Court; exceptions. (Lynvil Fishing Enterprises, Inc. and/or Rosendo S. De Borja *vs*. Ariola, G.R. No. 181974, Feb. 01, 2012) p. 696

(Rep. of the Phils. *vs*. Rural Bank of Kabacan, Inc., G.R. No. 185124, Jan. 25, 2012) p. 247

Factual findings of the trial and appellate courts — Binding on the Supreme Court. (Oliveros *vs*. San Miguel Corp., G.R. No. 173531, Feb. 01, 2012) p. 630

Factual findings of the trial court — Accorded the highest degree of respect on appeal. (Del Castillo *vs*. People of the Phils., G.R. No. 185128, Jan. 30, 2012) p. 447

— Elements that must be present are, to wit: 1. that the offender is a public officer; 2. that he had custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. (Icdang *vs*. Sandiganbayan [2nd Div.], G.R. No. 185960, Jan. 25, 2012) p. 265

MORTGAGES

Extrajudicial foreclosure — A creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency. (BPI *vs*. Reyes, G.R. No. 182769, Feb. 01, 2012) p. 718

— Inadequacy of the price at a forced sale is immaterial and does not nullify the sale. *(Id.)*

MOTION TO DISMISS

Denial of — Denial of motion for reconsideration of an order granting a motion to dismiss is a final order, subject to appeal within the fresh period of 15 days from notice of denial. (Alma Jose *vs*. Javellana, G.R. No. 158239, Jan. 25, 2012) p. 10

MOTIONS

Mandatory requirements — Every motion must contain the requirements of notice and hearing and that there must be proof of service thereof; a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon; the rule, however, is not absolute. (Anama *vs*. CA, G.R. No. 187021, Jan. 25, 2012) p. 305

Three-day notice requirement — Not a hard and fast rule and substantial compliance is allowed; the purpose of the three (3)-day notice requirement is to avoid surprises and to grant a party sufficient time to study the motion and

SECURITIES REGULATION CODE (R.A. NO. 8799)

Investment contracts — Elucidated. (Securities and Exchange Commission *vs*. Prosperity Com, Inc., G.R. No. 164197, Jan. 25, 2012) p. 28

SHERIFFS

Duties — A sheriff performs a very sensitive function in the dispensation of justice. (Pineda *vs*. Torres, A.M. No. P-12-3027, Jan. 30, 2012) p. 388

Execution of writs — Administrative Circular No. 12 was promulgated in order to streamline the service and execution of court writs and processes in courts and to better serve the public good and facilitate the administration of justice. *(Id.)*

TAXES

Excise tax — As an indirect tax, the proper party to assail the same is the statutory taxpayer; elucidated. (Silkair [Singapore] PTE, Ltd. *vs.* Commissioner of Internal Revenue, G.R. No. 166482, Jan. 25, 2012) p. 33

WITNESSES

Credibility —Credibility of a rape victim is neither diminished nor impaired by minor inconsistencies in her testimony. (People of the Phils. *vs*. Tubat *y* Versoza, G.R. No. 183093, Feb. 01, 2012) p. 730

— Delay in the filing of a complaint, if satisfactorily explained, does not impair the credibility of a witness. *(Id.)*

— 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.* Vilbar, G.R. No. 186541, Feb. 01, 2012) p. 767

(People of the Phils. *vs*. Tubat *y* Versoza, G.R. No. 183093, Feb. 01, 2012) p. 730

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

BOOKS