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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 171513. February 6, 2012]

ARNOLD JAMES M. YSIDORO, *petitioner, vs.* **HON. TERESITA J. LEONARDO-DE CASTRO, HON. DIOSDADO M. PERALTA and HON. EFREN N. DE LA CRUZ, in their official capacities as Presiding Justice and Associate Justices, respectively, of the First Division of the Sandiganbayan, and NIERNA S. DOLLER,** *respondents.*

[G.R. No. 190963. February 6, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **FIRST DIVISION OF THE SANDIGANBAYAN and ARNOLD JAMES M. YSIDORO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* TIMELINESS OF THE PETITION, UPHELD IN THE CASE AT BAR. — We first resolve the preliminary issue raised by Ysidoro on the timeliness of the People's petition for *certiorari*. The records show that the motion for reconsideration was filed by the People before the Sandiganbayan on the last day of the 15-day reglementary period to file the motion which fell on October 16, 2009, a Friday. Although the date originally appearing in the notice of hearing on the motion was

September 22, 2009 (which later on was corrected to October 22, 2009), the error in designating the month was unmistakably obvious considering the date when the motion was filed. In any case, the error cannot detract from the circumstance that the motion for reconsideration was filed within the 15-day reglementary period. We consider, too, that Ysidoro was not deprived of due process and was given the opportunity to be heard on the motion. Accordingly, the above error cannot be considered fatal to the right of the People to file its motion for reconsideration. The counting of the 60-day reglementary period within which to file the petition for *certiorari* will be reckoned from the receipt of the People of the denial of its motion for reconsideration, or on December 10, 2009. As the last day of the 60-day reglementary period fell on February 8, 2010, the petition — which was filed on February 5, 2010 — was filed on time.

2. ID.; RULES OF COURT; REVIEW OF JUDGMENT IN A CRIMINAL CASE; THREE PROCEDURAL REMEDIES; ELUCIDATED. — Generally, the Rules provides three (3) procedural remedies in order for a party to appeal a decision of a trial court in a criminal case before this Court. The first is by ordinary appeal under Section 3, Rule 122 of the 2000 Revised Rules on Criminal Procedure. The second is by a petition for review on *certiorari* under Rule 45 of the Rules. And the third is by filing a special civil action for *certiorari* under Rule 65. Each procedural remedy is unique and provides for a different mode of review. In addition, each procedural remedy may only be availed of depending on the nature of the judgment sought to be reviewed. A review by ordinary appeal resolves factual and legal issues. Issues which have not been properly raised by the parties but are, nevertheless, material in the resolution of the case are also resolved in this mode of review. In contrast, a review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. Under this mode, the Court determines whether a proper application of the law was made in a given set of facts. A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of

its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. While an assailed judgment elevated by way of ordinary appeal or a Rule 45 petition is considered an intrinsically valid, albeit erroneous, judgment, a judgment assailed under Rule 65 is characterized as an invalid judgment because of defect in the trial court's authority to rule. Also, an ordinary appeal and a Rule 45 petition tackle errors committed by the trial court in the appreciation of the evidence and/or the application of law. In contrast, a Rule 65 petition resolves jurisdictional errors committed in the proceedings in the principal case. In other words, errors of judgment are the proper subjects of an ordinary appeal and in a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.

3. ID.; ID.; JUDGMENTS; ONLY JUDGMENTS OF CONVICTION CAN BE REVIEWED IN AN ORDINARY APPEAL OR A RULE 45 PETITION; RATIONALE. — As applied to judgments rendered in criminal cases, unlike a review *via* a Rule 65 petition, only judgments of conviction can be reviewed in an ordinary appeal or a Rule 45 petition. As we explained in *People v. Nazareno*, the constitutional right of the accused against double jeopardy proscribes appeals of judgments of acquittal through the remedies of ordinary appeal and a Rule 45 petition, thus: The Constitution has expressly adopted the double jeopardy policy and thus **bars multiple criminal trials**, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. **Further prosecution *via* an appeal** from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier

of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes *via* an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE AGAINST DOUBLE JEOPARDY CANNOT BE PROPERLY INVOKED IN A RULE 65 PETITION; CASE AT BAR. — [T]he rule against double jeopardy cannot be properly invoked in a Rule 65 petition, predicated on two (2) exceptional grounds, namely: in a judgment of acquittal rendered with grave abuse of discretion by the court; and where the prosecution had been deprived of due process. The rule against double jeopardy does not apply in these instances because a Rule 65 petition does not involve a review of facts and law on the merits in the manner done in an appeal. In *certiorari* proceedings, judicial review does not examine and assess the evidence of the parties nor weigh the probative value of the evidence. It does not include an inquiry on the correctness of the evaluation of the evidence. A review under Rule 65 only asks the question of whether there has been a validly rendered decision, not the question of whether the decision is legally correct. In other words, the focus of the review is to determine whether the judgment is *per se* void on jurisdictional grounds. Applying these legal concepts to this case, we find that while the People was procedurally correct in filing its petition for *certiorari* under Rule 65, the petition does not raise any jurisdictional error committed by the Sandiganbayan. On the contrary, what is clear is the obvious attempt by the People to have the evidence in the case reviewed by the Court under the guise of a Rule 65 petition. This much can be deduced by examining the petition itself which does not allege any bias, partiality or bad faith committed by the Sandiganbayan in its proceedings. The petition does not also raise any denial of the People's due process in the proceedings before the Sandiganbayan.

5. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; DEFINED; NOT ESTABLISHED IN THE CASE AT BAR. — Our consideration of the imputed errors fails to establish grave abuse of discretion amounting to lack or excess of jurisdiction

committed by the Sandiganbayan. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected. We have previously held that the mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction. Jurisprudence has defined grave abuse of discretion amounting to lack or excess of jurisdiction in this wise: Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be 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 and hostility. Under this definition, the People bears the burden of convincingly demonstrating that the Sandiganbayan gravely abused its discretion in the appreciation of the evidence. We find that the People failed in this regard.

6. ID.; ID.; ID.; ID.; BAD FAITH; NOT PROVEN IN THE CASE AT BAR. — As bad faith is a state of mind, the prosecution must present evidence of the *overt acts* or *omissions* committed by Ysidoro showing that he deliberately intended to do wrong or cause damage to Doller by withholding her RATA. However, save from the testimony of Doller of the strained relationship between her and Ysidoro, no other evidence was presented to support Ysidoro's bad faith against her. We note that Doller even disproved Ysidoro's bad faith when she admitted that several cases had been actually filed against her before the Office of the Ombudsman. It bears stressing that these purported anomalies were allegedly committed in office which Ysidoro cited to justify the withholding of Doller's RATA. x x x As we have held before, bad faith does not simply connote bad judgment or negligence but imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong or a breach of a sworn duty through some motive or intent, or ill-will to partake the nature of fraud. An erroneous interpretation of a provision of law, absent any showing of some dishonest or wrongful purpose, does not constitute and does not necessarily amount to bad faith. Similarly, we find no inference of bad

faith when Doller failed to receive the productivity bonus. Doller does not dispute that the receipt of the productivity bonus was premised on the submission by the employee of his/her Performance Evaluation Report. In this case, Doller admitted that she did not submit her Performance Evaluation Report; hence, she could not have reasonably expected to receive any productivity bonus. Further, we cannot agree with her self-serving claim that it was Ysidoro's refusal that led to her failure to receive her productivity bonus given that no other hard evidence supported this claim. We certainly cannot rely on Doller's assertion of the alleged statement made by one Leo Apacible (Ysidoro's secretary) who was not presented in court. The alleged statement made by Leo Apacible that "*the mayor will get angry with him and he might be laid off*," in addition to being hearsay, did not even establish the actual existence of an order from Ysidoro or of his alleged maneuverings to deprive Doller of her RATA and productivity bonus.

APPEARANCES OF COUNSEL

Galang Jorvina Muñez & Associates Law Office for Arnold James M. Ysidoro.

D E C I S I O N

BRION, *J.*:

Before us are consolidated petitions assailing the rulings of the Sandiganbayan in Criminal Case No. 27963, entitled "*People of the Philippines v. Arnold James M. Ysidoro*."

G.R. No. 171513 is a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court (*Rules*) filed by petitioner Arnold James M. Ysidoro to annul the resolutions, dated July 6, 2005[1] and January 25, 2006,[2] of the Sandiganbayan granting the "Motion to Suspend Accused *Pendente Lite*."

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[1] *Rollo,* G.R. No. 171513, pp. 14-16.

[2] *Id.* at 17-18.

G.R. No. 190963, on the other hand, is a petition for *certiorari* under Rule 65 filed by the People of the Philippines through the Office of the Special Prosecutor (*People*) to annul and set aside the decision,[3] dated October 1, 2009, and the resolution,[4] dated December 9, 2009, of the Sandiganbayan which acquitted Ysidoro for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019 (Anti-Graft and Corrupt Practices Acts), as amended.

The Antecedents

Ysidoro, as Municipal Mayor of Leyte, Leyte, was charged before the Sandiganbayan, with the following information:

> That during the period from June 2001 to December 2001 or for sometime prior or subsequent thereto, at the Municipality of Leyte, Province of Leyte, Philippines, and within the jurisdiction of [the] Honorable Court, above-named accused, ARNOLD JAMES M. YSIDORO, a public officer, being the Municipal Mayor of Leyte, Leyte, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and criminally, withhold and fail to give to Nierna S. Doller, Municipal Social Welfare and Development Officer (MSWDO) of Leyte, Leyte, without any legal basis, her RATA for the months of August, September, October, November and December, all in the year 2001, in the total amount of TWENTY-TWO THOUSAND ONE HUNDRED TWENTY-FIVE PESOS (₱22,125.00), Philippine Currency, and her Productivity Pay in the year 2000, in the amount of TWO THOUSAND PESOS (₱2,000.00), Philippine Currency, and despite demands made upon accused to release and pay her the amount of ₱22,125.00 and ₱2,000.00, accused failed to do so, thus accused in the course of the performance of his official functions had deprived the complainant of her RATA and Productivity Pay, to the damage and injury of Nierna S. Doller and detriment of public service.[5]

Ysidoro filed an omnibus motion to quash the information and, in the alternative, for judicial determination of probable

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[3] *Rollo*, G.R. No. 190963, pp. 42-50.

[4] *Id.* at 57-60.

[5] *Rollo*, G.R. No. 171513, p. 20.

cause,[6] which were both denied by the Sandiganbayan. In due course, Ysidoro was arraigned and he pleaded not guilty.

The Sandiganbayan Preventively Suspends Ysidoro

On motion of the prosecution,[7] the Sandiganbayan preventively suspended Ysidoro for ninety (90) days in accordance with Section 13 of R.A. No. 3019, which states:

> Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office.

Ysidoro filed a motion for reconsideration, and questioned the necessity and the duration of the preventive suspension. However, the Sandiganbayan denied the motion for reconsideration, ruling that —

> Clearly, by well established jurisprudence, the provision of Section 13, Republic Act 3019 make[s] it mandatory for the Sandiganbayan to suspend, for a period not exceeding ninety (90) days, any public officer who has been validly charged with a violation of Republic Act 3019, as amended or Title 7, Book II of the Revised Penal Code or any offense involving fraud upon government of public funds or property.[8]

Ysidoro assailed the validity of these Sandiganbayan rulings in his petition (G.R. No. 171513) before the Court. Meanwhile, trial on the merits in the principal case continued before the Sandiganbayan. The prosecution and the defense presented their respective evidence.

The prosecution presented Nierna S. Doller as its sole witness. According to Doller, she is the Municipal Social Welfare

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[6] *Id.* at 33-45.

[7] *Id.* at 59-60.

[8] *Supra* note 2, at 18.

Development Officer of Leyte. She claimed that Ysidoro ordered her name to be deleted in the payroll because her husband transferred his political affiliation and sided with Ysidoro's opponent. After her name was deleted from the payroll, Doller did not receive her representation and transportation allowance (*RATA*) for the period of August 2001 to December 2001. Doller also related that she failed to receive her productivity bonus for the year 2000 (notwithstanding her performance rating of "VS") because Ysidoro failed to sign her Performance Evaluation Report. Doller asserted that she made several attempts to claim her RATA and productivity bonus, and made representations with Ysidoro, but he did not act on her requests. Doller related that her family failed to meet their financial obligations as a result of Ysidoro's actions.

To corroborate Doller's testimony, the prosecution presented documentary evidence in the form of disbursement vouchers, request for obligation of allotment, letters, excerpts from the police blotter, memorandum, telegram, certification, order, resolution, and the decision of the Office of the Deputy Ombudsman absolving her of the charges.[9]

On the other hand, the defense presented seven (7) witnesses,[10] including Ysidoro, and documentary evidence. The defense showed that the withholding of Doller's RATA was due to the investigation conducted by the Office of the Mayor on the anomalies allegedly committed by Doller. For this reason, Ysidoro ordered the padlocking of Doller's office, and ordered Doller and her staff to hold office at the Office of the Mayor for the close monitoring and evaluation of their functions. Doller was also prohibited from outside travel without Ysidoro's approval.

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[9] *Rollo,* G.R. No. 190963, p. 43.

[10] They are: (1) Lolita Retorbar, Welfare Aide assigned at the Department of Social Welfare and Development, Leyte, Leyte; (2) Cristina Polinio, Youth Development Officer II, Municipal Social Welfare Office, Leyte, Leyte; (3) Dennis Q. Abellar, Human Resource Management Officer IV, Leyte, Leyte; (4) Ethel G. Mercolita, Municipal Accountant for the year 2000-2001, Leyte, Leyte; (5) Elsie M. Retorbar, *Barangay* Daycare worker, Leyte, Leyte; and (6) Domingo M. Elises, former Municipal Budget Officer, Leyte, Leyte.

The Sandiganbayan Acquits Ysidoro

In a decision dated October 1, 2009,[11] the Sandiganbayan acquitted Ysidoro and held that the second element of the offense — that there be malice, ill-motive or bad faith — was not present. The Sandiganbayan pronounced:

> This Court acknowledges the fact that Doller was entitled to RATA. However, the antecedent facts and circumstances did not show any indicia of bad faith on the part of [Ysidoro] in withholding the release of Doller's RATA.
>
> In fact, this Court believes that [Ysidoro] acted in good faith and in honest belief that Doller was not entitled to her RATA based on the opinion of the COA resident Auditor and Section 317 of the Government Accounting and Auditing Manual.
>
> It may be an erroneous interpretation of the law, nonetheless, [Ysidoro's] reliance to the same was a clear basis of good faith on his part in withholding Doller's RATA.
>
> With regard to the Productivity Incentive Bonus, Doller was aware that the non-submission of the Performance Evaluation Form is a ground for an employee's non-eligibility to receive the Productivity Incentive Bonus:
>
> > a) *Employees' disqualification for performance-based personnel actions which would require the rating for the given period such as promotion, training or scholarship grants, and productivity incentive bonus if the failure of the submission of the report form is the fault of the employees.*
>
> Doller even admitted in her testimonies that she failed to submit her Performance Evaluation Report to [Ysidoro] for signature.
>
> There being no malice, ill-motive or taint of bad faith, [Ysidoro] had the legal basis to withhold Doller's RATA and Productivity pay.[12] (italics supplied)

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[11] *Supra* note 3.

[12] *Id.* at 47-48.

In a resolution dated December 9, 2009,[13] the Sandiganbayan denied the prosecution's motion for reconsideration, reasoning that —

> It must be stressed that this Court acquitted [Ysidoro] for two reasons: firstly, the prosecution failed to discharge its burden of proving that accused Ysidoro acted in bad faith as stated in paragraph 1 above; and secondly, the exculpatory proof of good faith xxx.
>
> Needless to state, paragraph 1 alone would be enough ground for the acquittal of accused Ysidoro. Hence, the COA Resident Auditor need not be presented in court to prove that [Ysidoro] acted in good faith. This is based on the legal precept that "*when the prosecution fails to discharge its burden, an accused need not even offer evidence in his behalf.*" [14] (italics supplied)

Supervening events occurred after the filing of Ysidoro's petition which rendered the issue in G.R. No. 171513 — *i.e.*, the propriety of his preventive suspension — moot and academic. *First*, Ysidoro is no longer the incumbent Municipal Mayor of Leyte, Leyte as his term of office expired in 2007. *Second*, the prosecution completed its presentation of evidence and had rested its case before the Sandiganbayan. And *third*, the Sandiganbayan issued its decision acquitting Ysidoro of the crime charged.

In light of these events, what is left to resolve is the petition for *certiorari* filed by the People on the validity of the judgment acquitting Ysidoro of the criminal charge.

The People's Petition

The People posits that the elements of Section 3(e) of R.A. No. 3019 have been duly established by the evidence, in that:

> **First.** [Ysidoro] was the Municipal Mayor of Leyte, Leyte when he ordered the deletion of private complainant's name in the payroll for RATA and productivity pay.
>
> **Second.** He caused undue injury to [Doller] when he ordered the withholding of her RATA and productivity pay. It is noteworthy that

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[13] *Supra* note 4.

[14] *Id.* at 58.

complainant was the only official in the municipality who did not receive her RATA and productivity pay even if the same were already included in the budget for that year. x x x

Consequently, [Doller] testified that her family suffered actual and moral damages due to the withholding of her benefits namely: a) the disconnection of electricity in their residence; x x x b) demand letters from their creditors; x x x c) her son was dropped from school because they were not able to pay for his final exams; x x x d) [h]er children did not want to go to school anymore because they were embarrassed that collectors were running after them.

Third. Accused clearly acted in evident bad faith as he used his position to deprive [Doller] of her RATA and productivity pay for the period mentioned to harass her due to the transfer of political affiliation of her husband.[15] (emphasis supplied)

The People argues[16] that the Sandiganbayan gravely abused its discretion, and exceeded its, or acted without, jurisdiction in not finding Ysidoro in bad faith when he withheld Doller's RATA and deprived her of her productivity bonus. The Sandiganbayan failed to take into account that: first, the Commission on Audit (COA) resident auditor was never presented in court; second, the documentary evidence showed that Doller continuously discharged the functions of her office even if she had been prevented from outside travel by Ysidoro; third, Ysidoro refused to release Doller's RATA and productivity bonus notwithstanding the dismissal by the Ombudsman of the cases against her for alleged anomalies committed in office; and fourth, Ysidoro caused Doller's name to be dropped from the payroll without justifiable cause, and he refused to sign the disbursement vouchers and the request for obligation of allotment so that Doller could claim her RATA and her productivity bonus.

In the same manner, the People asserts that the Sandiganbayan gravely abused its discretion when it ruled that Doller was not eligible to receive the productivity bonus for her failure to submit her Performance Evaluation Report. The Sandiganbayan

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[15] *Rollo,* G.R. No. 190963, pp. 20-24.

[16] *Id.* at 16-33.

disregarded the evidence showing the strained relationship and the maneuverings made by Ysidoro so that he could deny her this incentive.

In his Comment,[17] Ysidoro prays for the dismissal of the petition for procedural and substantive infirmities. *First*, he claims that the petition was filed out of time considering the belated filing of the People's motion for reconsideration before the Sandiganbayan. He argues that by reason of the late filing of the motion for reconsideration, the present petition was filed beyond the 60-day reglementary period. Ysidoro also argues that the 60-day reglementary period should have been counted from the People's receipt of the Sandiganbayan's decision since no motion for reconsideration was seasonably filed. *Second*, Ysidoro claims that the Sandiganbayan's ruling was in accord with the evidence and the prosecution was not denied due process to properly avail of the remedy of a writ of *certiorari*. And *third*, Ysidoro insists that he can no longer be prosecuted for the same criminal charge without violating the rule against double jeopardy.

The Issue Raised

The ultimate issue to be resolved is whether the Sandiganbayan gravely abused its discretion and exceeded its, or acted without, jurisdiction when it acquitted Ysidoro of the crime charged.

The Court's Ruling

We first resolve the preliminary issue raised by Ysidoro on the timeliness of the People's petition for *certiorari*. The records show that the motion for reconsideration was filed by the People before the Sandiganbayan on the last day of the 15-day reglementary period to file the motion which fell on October 16, 2009, a Friday. Although the date originally appearing in the notice of hearing on the motion was September 22, 2009 (which later on was corrected to October 22, 2009), the error in designating the month was unmistakably obvious considering

[17] *Id.* at 78-85.

the date when the motion was filed. In any case, the error cannot detract from the circumstance that the motion for reconsideration was filed within the 15-day reglementary period. We consider, too, that Ysidoro was not deprived of due process and was given the opportunity to be heard on the motion. Accordingly, the above error cannot be considered fatal to the right of the People to file its motion for reconsideration. The counting of the 60-day reglementary period within which to file the petition for *certiorari* will be reckoned from the receipt of the People of the denial of its motion for reconsideration, or on December 10, 2009. As the last day of the 60-day reglementary period fell on February 8, 2010, the petition — which was filed on February 5, 2010 — was filed on time.

Nevertheless, we dismiss the petitions for being procedurally and substantially infirm.

A Review of a Judgment of Acquittal

Generally, the Rules provides three (3) procedural remedies in order for a party to appeal a decision of a trial court in a criminal case before this Court. The first is by ordinary appeal under Section 3, Rule 122 of the 2000 Revised Rules on Criminal Procedure. The second is by a petition for review on *certiorari* under Rule 45 of the Rules. And the third is by filing a special civil action for *certiorari* under Rule 65. Each procedural remedy is unique and provides for a different mode of review. In addition, each procedural remedy may only be availed of depending on the nature of the judgment sought to be reviewed.

A review by ordinary appeal resolves factual and legal issues. Issues which have not been properly raised by the parties but are, nevertheless, material in the resolution of the case are also resolved in this mode of review. In contrast, a review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. Under this mode, the Court determines whether a proper application of the law was made in a given set of facts. A Rule 65 review, on the other hand, is strictly confined

to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.

While an assailed judgment elevated by way of ordinary appeal or a Rule 45 petition is considered an intrinsically valid, albeit erroneous, judgment, a judgment assailed under Rule 65 is characterized as an invalid judgment because of defect in the trial court's authority to rule. Also, an ordinary appeal and a Rule 45 petition tackle errors committed by the trial court in the appreciation of the evidence and/or the application of law. In contrast, a Rule 65 petition resolves jurisdictional errors committed in the proceedings in the principal case. In other words, errors of judgment are the proper subjects of an ordinary appeal and in a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.

As applied to judgments rendered in criminal cases, unlike a review *via* a Rule 65 petition, only judgments of conviction can be reviewed in an ordinary appeal or a Rule 45 petition. As we explained in *People v. Nazareno*,[18] the constitutional right of the accused against double jeopardy proscribes appeals of judgments of acquittal through the remedies of ordinary appeal and a Rule 45 petition, thus:

> The Constitution has expressly adopted the double jeopardy policy and thus **bars multiple criminal trials**, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. **Further prosecution *via* an appeal** from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward

[18] G.R. No. 168982, August 5, 2009, 595 SCRA 438.

and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes *via* an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.[19] (emphases supplied)

However, the rule against double jeopardy cannot be properly invoked in a Rule 65 petition, predicated on two (2) exceptional grounds, namely: in a judgment of acquittal rendered with grave abuse of discretion by the court; and where the prosecution had been deprived of due process.[20] The rule against double jeopardy does not apply in these instances because a Rule 65 petition does not involve a review of facts and law on the merits in the manner done in an appeal. In *certiorari* proceedings, judicial review does not examine and assess the evidence of the parties nor weigh the probative value of the evidence.[21] It does not include an inquiry on the correctness of the evaluation of the evidence.[22] A review under Rule 65 only asks the question of whether there has been a validly rendered decision, not the question of whether the decision is legally correct.[23] In other words, the focus of the review is to determine whether the judgment is *per se* void on jurisdictional grounds.[24]

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[19] *Id.* at 450.

[20] *Galman v. Sandiganbayan*, 228 Phil. 42, 87 (1986).

[21] *People v. Sandiganbayan (First Division)*, G.R. No. 173396, September 22, 2010, 631 SCRA 128, 133, citing *First Corporation v. Former Sixth Division of the Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564.

[22] *Id.* at 133.

[23] *People v. Nazareno, supra* note 18, at 451.

[24] *Ibid.*

Applying these legal concepts to this case, we find that while the People was procedurally correct in filing its petition for *certiorari* under Rule 65, the petition does not raise any jurisdictional error committed by the Sandiganbayan. On the contrary, what is clear is the obvious attempt by the People to have the evidence in the case reviewed by the Court under the guise of a Rule 65 petition. This much can be deduced by examining the petition itself which does not allege any bias, partiality or bad faith committed by the Sandiganbayan in its proceedings. The petition does not also raise any denial of the People's due process in the proceedings before the Sandiganbayan.

We observe, too, that the grounds relied in the petition relate to factual errors of judgment which are more appropriate in an ordinary appeal rather than in a Rule 65 petition. The grounds cited in the petition call for the Court's own appreciation of the factual findings of the Sandiganbayan on the sufficiency of the People's evidence in proving the element of bad faith, and the sufficiency of the evidence denying productivity bonus to Doller.

The Merits of the Case

Our consideration of the imputed errors fails to establish grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Sandiganbayan. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[25] That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[26] We have previously held that the mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction. [27]

Jurisprudence has defined grave abuse of discretion amounting to lack or excess of jurisdiction in this wise:

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[25] *Id.* at 452.

[26] *Id.* at 452-453.

[27] *Id.* at 453.

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be 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 and hostility.[28]

Under this definition, the People bears the burden of convincingly demonstrating that the Sandiganbayan gravely abused its discretion in the appreciation of the evidence. We find that the People failed in this regard.

We find no indication from the records that the Sandiganbayan acted arbitrarily, capriciously and whimsically in arriving at its verdict of acquittal. The settled rule is that conviction ensues only if every element of the crime was alleged and proved.[29] In this case, Ysidoro was acquitted by the Sandiganbayan for two reasons: *first*, his bad faith (an element of the crime charged) was not sufficiently proven by the prosecution evidence; and *second*, there was exculpatory evidence of his good faith.

As bad faith is a state of mind, the prosecution must present evidence of the *overt acts* or *omissions* committed by Ysidoro showing that he deliberately intended to do wrong or cause damage to Doller by withholding her RATA. However, save from the testimony of Doller of the strained relationship between her and Ysidoro, no other evidence was presented to support Ysidoro's bad faith against her. We note that Doller even disproved Ysidoro's bad faith when she admitted that several cases had been actually filed against her before the Office of the Ombudsman. It bears stressing that these purported anomalies were allegedly committed in office which Ysidoro cited to justify the withholding of Doller's RATA.

The records also show other acts that tend to negate Ysidoro's bad faith under the circumstances. **First,** the investigation of

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[28] *Marcelo G. Ganaden, et al. v. The Hon. Court of Appeals, et al.,* G.R. Nos. 170500 and 170510-11, June 1, 2011.

[29] *Aisporna v. CA, et al.,* 198 Phil. 838, 848 (1982).

the alleged anomalies by Ysidoro was corroborated by the physical transfer of Doller and her subordinates to the Office of the Mayor and the prohibition against outside travel imposed on Doller. **Second,** the existence of the Ombudsman's cases against Doller. And **third**, Ysidoro's act of seeking an opinion from the COA Auditor on the proper interpretation of Section 317 of the Government Accounting and Auditing Manual before he withheld the RATA. This section provides:

> An official/employee who was wrongly removed or prevented from performing his duties is entitled to back salaries but not RATA. The rationale for the grant of RATA is to provide the official concerned additional fund to meet necessary expenses incidental to and connected with the exercise or the discharge of the functions of an office. If he is out of office, [voluntarily] or involuntarily, it necessarily follows that the functions of the office remain undischarged (COA, Dec. 1602, October 23, 1990). And if the duties of the office are not discharged, the official does not and is not supposed to incur expenses. There being no expenses incurred[,] there is nothing to be reimbursed (COA, Dec. 2121 dated June 28, 1979).[30]

Although the above provision was erroneously interpreted by Ysidoro and the COA Auditor, the totality of the evidence, to our mind, provides sufficient grounds to create reasonable doubt on Ysidoro's bad faith. As we have held before, bad faith does not simply connote bad judgment or negligence but imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong or a breach of a sworn duty through some motive or intent, or ill-will to partake the nature of fraud.[31] An erroneous interpretation of a provision of law, absent any showing of some dishonest or wrongful purpose, does not constitute and does not necessarily amount to bad faith.[32]

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[30] *Rollo*, G.R. No. 190963, p. 47.

[31] *Sampiano v. Indar*, A.M. No. RTJ-05-1953, December 21, 2009, 608 SCRA 597, 613.

[32] *Cabungcal, et al. v. Cordova, et al.*, 120 Phil. 567, 572-573, (1964) insofar as it applies *mutatis mutandis.*

Similarly, we find no inference of bad faith when Doller failed to receive the productivity bonus. Doller does not dispute that the receipt of the productivity bonus was premised on the submission by the employee of his/her Performance Evaluation Report. In this case, Doller admitted that she did not submit her Performance Evaluation Report; hence, she could not have reasonably expected to receive any productivity bonus. Further, we cannot agree with her self-serving claim that it was Ysidoro's refusal that led to her failure to receive her productivity bonus given that no other hard evidence supported this claim. We certainly cannot rely on Doller's assertion of the alleged statement made by one Leo Apacible (Ysidoro's secretary) who was not presented in court. The alleged statement made by Leo Apacible that "*the mayor will get angry with him and he might be laid off,*"[33] in addition to being hearsay, did not even establish the actual existence of an order from Ysidoro or of his alleged maneuverings to deprive Doller of her RATA and productivity bonus.

In light of these considerations, we resolve to dismiss the People's petition. We cannot review a verdict of acquittal which does not impute or show any jurisdictional error committed by the Sandiganbayan.

WHEREFORE, premises considered, the Court hereby resolves to:

1. **DISMISS** the petition for *certiorari* and prohibition, docketed as G.R. No. 171513, filed by Arnold James M. Ysidoro for being moot and academic.
2. **DISMISS** the petition for *certiorari,* docketed as G.R. No. 190963, filed by the People of the Philippines, through the Office of the Special Prosecutor, for lack of merit.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[33] *Rollo,* G.R. No. 190963, p. 26.

SECOND DIVISION

[G.R. No. 172223. February 6, 2012]

CANADIAN OPPORTUNITIES UNLIMITED, INC., *petitioner, vs.* **BART Q. DALANGIN, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT; RULE; EXCEPTIONS; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE AT VARIANCE WITH THOSE OF THE COURT OF APPEALS NECESSITATING REVIEW OF THE CASE. — As a rule, the Court is not a trier of facts, the resolution of factual issues being the function of lower courts whose findings are received with respect and are binding on the Court subject to certain exceptions. A recognized exception to the rule is the circumstance in which there are conflicting findings of fact by the CA, on the one hand, and the trial court or government agency concerned, on the other, as in the present case. The factual findings of the NLRC on the dispute between Dalangin and the company are at variance with those of the CA, thus necessitating our review of the case, especially the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; NATURE. — In *International Catholic Migration Commission v. NLRC,* the Court explained that a probationary employee, as understood under Article 281 of the Labor Code, is one who is on trial by an employer, during which, the latter determines whether or not he is qualified for permanent employment. A probationary appointment gives the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he would be a proper and efficient employee.

3. ID.; ID.; ID.; ID.; THE WORD "PROBATIONARY" AS USED TO DESCRIBE THE PERIOD OF EMPLOYMENT, IMPLIES THE PURPOSE OF THE TERM OR PERIOD, BUT NOT ITS LENGTH; FACT THAT RESPONDENT WAS

SEPARATED FROM THE SERVICE AFTER ONLY ABOUT FOUR WEEKS DOES NOT NECESSARILY MEAN THAT HIS SEPARATION IS WITHOUT BASIS. — The essence of a probationary period of employment fundamentally lies in the purpose or objective of both the employer and the employee during the period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the latter seeks to prove to the former that he has the qualifications to meet the reasonable standards for permanent employment. The "trial period" or the length of time the probationary employee remains on probation depends on the parties' agreement, but it shall not exceed six (6) months under Article 281 of the Labor Code, unless it is covered by an apprenticeship agreement stipulating a longer period. As the Court explained in *International Catholic Migration Commission*, "the word 'probationary,' as used to describe the period of employment, implies the purpose of the term or period, but not its length." Thus, the fact that Dalangin was separated from the service after only about four weeks does not necessarily mean that his separation from the service is without basis.

4. ID.; ID.; ID.; ID.; RESPONDENT OVERLOOKS THE FACT, WITTINGLY OR UNWITTINGLY, THAT HE OFFERED GLIMPSES OF HIS OWN BEHAVIOR AND ACTUATIONS DURING HIS FOUR-WEEK STAY WITH THE COMPANY; HE BETRAYED HIS NEGATIVE ATTITUDE AND REGARD FOR THE COMPANY, HIS CO-EMPLOYEES AND HIS WORK. — Contrary to the CA's conclusions, we find substantial evidence indicating that the company was justified in terminating Dalangin's employment, however brief it had been. Time and again, we have emphasized that substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Dalangin overlooks the fact, wittingly or unwittingly, that he offered glimpses of his own behavior and actuations during his four-week stay with the company; he betrayed his negative attitude and regard for the company, his co-employees and his work. The "Values Formation Seminar" incident is an eye-opener on the kind of person and employee Dalangin was. His refusal to attend the seminar brings into focus and validates what was wrong with him, as Abad narrated in her affidavit and as reflected in the termination of

employment memorandum. It highlights his lack of interest in familiarizing himself with the company's objectives and policies. Significantly, the seminar involved acquainting and updating the employees with the company's policies and objectives. Had he attended the seminar, Dalangin could have broadened his awareness of the company's policies, in addition to Abad's briefing him about the company's policies on punctuality and attendance, and the procedures to be followed in handling the clients' applications. No wonder the company charged him with obstinacy. The incident also reveals Dalangin's lack of interest in establishing good working relationship with his co-employees, especially the rank and file; he did not want to join them because of his view that the seminar was not relevant to his position and duties. It also betrays an arrogant and condescending attitude on his part towards his co-employees, and a lack of support for the company objective that company managers be examples to the rank and file employees.

5. ID.; ID.; ID.; ID.; RESPONDENT EXHIBITED NEGATIVE WORKING HABITS VERY EARLY IN HIS EMPLOYMENT. — Additionally, very early in his employment, Dalangin exhibited negative working habits, particularly with respect to the one hour lunch break policy of the company and the observance of the company's working hours. Thus, Abad stated that Dalangin would take prolonged lunch breaks or would go out of the office — without leave of the company — only to call the personnel manager later to inform the latter that he would be unable to return as he had to attend to personal matters. Without expressly countering or denying Abad's statement, Dalangin dismissed the charge for the company's failure to produce his daily time record. The same thing is true with Dalangin's handling of Tecson's application for immigration to Canada, especially his failure to find ways to appeal the denial of Tecson's application, as Abad stated in her affidavit. Again, without expressly denying Abad's statement or explaining exactly what he did with Tecson's application, Dalangin brushes aside Abad's insinuation that he was not doing his job well, with the ready argument that the company did not even bother to present Tecson's testimony.

6. ID.; ID.; ID.; ID.; FOUR WEEKS WAS ENOUGH FOR THE COMPANY TO ASSESS RESPONDENT'S FITNESS FOR THE JOB AND HE WAS FOUND WANTING. — We,

therefore, disagree with the CA that the company could not have fully determined Dalangin's performance barely one month into his employment. As we said in *International Catholic Migration Commission*, the probationary term or period denotes its purpose but not its length. To our mind, four weeks was enough for the company to assess Dalangin's fitness for the job and he was found wanting. **In separating Dalangin from the service before the situation got worse, we find the company not liable for illegal dismissal**.

7. ID.; ID.; ID.; DUE PROCESS IN TERMINATION CASES; NOT COMPLIED WITH; NON-COMPLIANCE ENTITLES DISMISSED EMPLOYEE TO INDEMNITY IN THE FORM OF NOMINAL DAMAGES. — The company contends that it complied with the above rule when it asked Dalangin, through Abad's Memorandum dated October 26, 2001, to explain why he could not attend the seminar scheduled for October 27, 2001. When he failed to submit his explanation, the company, again through Abad, served him a notice the following day, October 27, 2001, terminating his employment. Dalangin takes strong exception to the company's submission. He insists that the company failed to comply with the rules as he was not afforded a reasonable time to defend himself before he was dismissed. The records support Dalangin's contention. The notice served on him did not give him a reasonable time, from the effective date of his separation, as required by the rules. He was dismissed on the very day the notice was given to him, or, on October 27, 2001. Although we cannot invalidate his dismissal in light of the valid cause for his separation, the company's non-compliance with the notice requirement entitles Dalangin to indemnity, in the form of nominal damages in an amount subject to our discretion. Under the circumstances, we consider appropriate an award of nominal damages of ₱10,000.00 to Dalangin. *Damages and attorney's fees* Finally, given the valid reason for Dalangin's dismissal, the claim for moral and exemplary damages, as well as attorney's fees, must necessarily fail.

APPEARANCES OF COUNSEL

Ligon Solis Corpus Mejia Law Firm for petitioner.
Federico C. Leynes for respondent.

D E C I S I O N

BRION, *J.*:

For resolution is the petition for review on *certiorari*[1] to nullify the decision dated December 19, 2005[2] and the resolution dated March 30, 2006[3] of the Court of Appeals (CA) rendered in CA-G.R. SP No. 84907.

The Antecedents

On November 20, 2001, respondent Bart Q. Dalangin, Jr. filed a complaint for illegal dismissal, with prayer for reinstatement and backwages, as well as damages (moral and exemplary) and attorney's fees, against petitioner Canadian Opportunities Unlimited, Inc. (*company*). The company, based in Pasong Tamo, Makati City, provides assistance and related services to applicants for permanent residence in Canada.

Dalangin was hired by the company only in the previous month, or in October 2001, as Immigration and Legal Manager, with a monthly salary of ₱15,000.00. He was placed on probation for six months. He was to report directly to the Chief Operations Officer, Annie Llamanzares Abad. His tasks involved principally the review of the clients' applications for immigration to Canada to ensure that they are in accordance with Canadian and Philippine laws.

Through a memorandum[4] dated October 27, 2001, signed by Abad, the company terminated Dalangin's employment, declaring him "unfit" and "unqualified" to continue as Immigration and Legal Manager, for the following reasons:

a) Obstinacy and utter disregard of company policies. Propensity to take prolonged and extended lunch breaks, shows no

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[1] *Rollo*, pp. 9-28; filed under Rule 45 of the Rules of Court.

[2] *Id.* at 35-53; penned by Associate Justice Regalado E. Maambong, and concurred in by Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle.

[3] *Id.* at 55-55A.

[4] *Id.* at 226.

interest in familiarizing oneself with the policies and objectives.

b) Lack of concern for the company's interest despite having just been employed in the company. (Declined to attend company sponsored activities, seminars intended to familiarize company employees with Management objectives and enhancement of company interest and objectives.)

c) Showed lack of enthusiasm toward work.

d) Showed lack of interest in fostering relationship with his co-employees.[5]

The Compulsory Arbitration Proceedings

Dalangin's submission

Dalangin alleged, in his Position Paper,[6] that the company issued a memorandum requiring its employees to attend a "Values Formation Seminar" scheduled for October 27, 2001 (a Saturday) at 2:00 p.m. onwards. He inquired from Abad about the subject and purpose of the seminar and when he learned that it bore no relation to his duties, he told Abad that he would not attend the seminar. He said that he would have to leave at 2:00 p.m. in order to be with his family in the province. Dalangin claimed that Abad insisted that he attend the seminar so that the other employees would also attend. He replied that he should not be treated similarly with the other employees as there are marked differences between their respective positions and duties. Nonetheless, he signified his willingness to attend the seminar, but requested Abad to have it conducted within office hours to enable everybody to attend.

Dalangin further alleged that Abad refused his request and stressed that all company employees may be required to stay beyond 2:00 p.m. on Saturdays which she considered still part of office hours. Under his employment contract,[7] his work schedule was from 9:00 a.m. to 6:00 p.m., Monday to Friday,

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[5] *Ibid.*

[6] *Id.* at 87-101.

[7] *Id.* at 103-104.

and 9:00 a.m. to 2:00 p.m. on Saturdays. Dalangin argued that it has been an established company practice that on Saturdays, office hours end at 2:00 p.m.; and that an employee cannot be made to stay in the office beyond office hours, except under circumstances provided in Article 89 of the Labor Code.

On October 26, 2001, Dalangin claimed that Abad issued a memorandum[8] requiring him to explain why he could not attend the seminar scheduled for October 27, 2001 and the other forthcoming seminars. The following day, October 27, 2001, Abad informed him that Mr. Yadi N. Sichani, the company's Managing Director, wanted to meet with him regarding the matter. He alleged that at the meeting, he was devastated to hear from Sichani that his services were being terminated because Sichani could not keep in his company "people who are hard-headed and who refuse to follow orders from management."[9] Sichani also told him that since he was a probationary employee, his employment could be terminated at any time and at will. Sichani refused to accept his letter-reply to the company memorandum dated October 26, 2001 and instead told him to just hand it over to Abad.

The company's defense

Through their position paper,[10] the company and its principal officers alleged that at the time of Dalangin's engagement, he was advised that he was under probation for six months and his employment could be terminated should he fail to meet the standards to qualify him as a regular employee. He was informed that he would be evaluated on the basis of the results of his work; on his attitude towards the company, his work and his co-employees, as spelled out in his job description;[11] and on the basis of Abad's affidavit.[12]

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[8] *Supra* note 6, at 89.

[9] *Ibid.*

[10] *Id.* at 79-86.

[11] *Id.* at 105-106.

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

They further alleged that during his brief employment in the company, Dalangin showed lack of enthusiasm towards his work and was indifferent towards his co-employees and the company clients. Dalangin refused to comply with the company's policies and procedures, routinely taking long lunch breaks, exceeding the one hour allotted to employees, and leaving the company premises without informing his immediate superior, only to call the office later and say that he would be unable to return because he had some personal matters to attend to. He also showed lack of interpersonal skills and initiative which he manifested when the immigration application of a company client, Mrs. Jennifer Tecson, was denied by the Canadian Embassy. Dalangin failed to provide counsel to Tecson; he also should have found a way to appeal her denied application, but he did not. As it turned out, the explanation he gave to Tecson led her to believe that the company did not handle her application well. Dalangin's lack of interest in the company was further manifested when he refused to attend company-sponsored seminars designed to acquaint or update the employees with the company's policies and objectives.

The company argued that since Dalangin failed to qualify for the position of Immigration and Legal Manager, the company decided to terminate his services, after duly notifying him of the company's decision and the reason for his separation.

The Compulsory Arbitration Rulings

In his decision dated April 23, 2003,[13] Labor Arbiter Eduardo G. Magno declared Dalangin's dismissal illegal, and awarded him backwages of ₱75,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱50,000.00, plus 10% attorney's fees. The labor arbiter found that the charges against Dalangin, which led to his dismissal, were not established by clear and substantial proof.

On appeal by the company, the National Labor Relations Commission (*NLRC*) rendered a decision on March 26, 2004[14]

[13] *Id.* at 62-78.

[14] *Id.* at 56-60.

granting the appeal, thereby reversing the labor arbiter's ruling. It found Dalangin's dismissal to be a valid exercise of the company's management prerogative because Dalangin failed to meet the standards for regular employment. Dalangin moved for reconsideration, but the NLRC denied the motion, prompting him to go to the CA on a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

In its now assailed decision,[15] the CA held that the NLRC erred when it ruled that Dalangin was not illegally dismissed. As the labor arbiter did, the CA found that the company failed to support, with substantial evidence, its claim that Dalangin failed to meet the standards to qualify as a regular employee.

Citing a ruling of the Court in an earlier case,[16] the CA pointed out that the company did not allow Dalangin to prove that he possessed the qualifications to meet the reasonable standards for his regular employment; instead, it dismissed Dalangin peremptorily from the service. It opined that it was quite improbable that the company could fully determine Dalangin's performance barely one month into his employment.[17]

The CA denied the company's subsequent motion for reconsideration in its resolution of March 30, 2006.[18] Hence, this appeal.

The Company's Case

Through its submissions — the Petition,[19] the Reply[20] and the Memorandum[21] — the company seeks a reversal of the CA

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[15] *Supra* note 2.

[16] *Cebu Marine Beach Resort v. National Labor Relations Commission,* 460 Phil. 301 (2003).

[17] *Miranda v. Carreon,* 449 Phil. 285 (2003).

[18] *Supra* note 3.

[19] *Supra* note 1.

[20] *Rollo,* pp. 255-268.

[21] *Id.* at 272-298.

rulings, raising the following issues: (1) whether the requirements of notice and hearing in employee dismissals are applicable to Dalangin's case; and (2) whether Dalangin is entitled to moral and exemplary damages, and attorney's fees.

On the first issue, the company argues that the notice and hearing requirements are to be observed only in termination of employment based on just causes as defined in Article 282 of the Labor Code. Dalangin's dismissal, it maintains, was not based on a just cause under Article 282, but was due to his failure to meet the company's standards for regular employment. It contends that under the Labor Code's Implementing Rules and Regulations, "*[i]f the termination is brought about x x x by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.*"[22] It points out that it properly observed the notice requirement when it notified Dalangin of his dismissal on October 27, 2001,[23] after it asked him to explain (memorandum of October 26, 2001) why he could not attend the seminar scheduled for October 27, 2001; Dalangin failed to submit his explanation. It posits that contrary to the CA's conclusion, the company's finding that Dalangin failed to meet its standards for regular employment was supported by substantial evidence.

With respect to the second issue, the company submits that Dalangin is not entitled to moral and exemplary damages, and attorney's fees. It maintains that Dalangin failed to present convincing evidence establishing bad faith or ill-motive on its part. It insists that it dismissed Dalangin in good faith with the belief that he would not contribute any good to the company, as manifested by his behavior towards his work and co-employees.

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[22] Book VI, Rule 1, Section 2, not Book V, Rule XXIII, III (2) as cited.

[23] *Supra* note 4.

The Case for Dalangin

Through his Comment[24] and Memorandum,[25] Dalangin asks the Court to deny the petition. He argues that (1) probationary employees, under existing laws and jurisprudence, are entitled to notice and hearing prior to the termination of their employment; and (2) he is entitled to moral and exemplary damages, and attorney's fees.

Dalangin disputes the company's submission that under the Labor Code's implementing rules, only a written notice is required for the dismissal of probationary employees. He argues that the rules cited by the company clearly mandate the employer to (1) serve the employee a written notice and (2) within a reasonable time before effecting the dismissal. He stresses that for the dismissal to be valid, these requirements must go hand in hand.

He explains that in the present case, the company did not observe the above two requirements as he was dismissed the day after he was asked, by way of a memorandum dated October 26, 2001,[26] to explain within twenty-four hours why he could not attend the October 27, 2001 seminar. He adds that on the assumption that the termination letter dated October 27, 2001 refers to the written notice contemplated under the rules, still the company did not observe the second requirement of providing him a reasonable time before he was dismissed. He posits that the company disregarded the security of tenure guarantee under the Constitution which makes no distinction between regular and probationary employees.

On the company's claim that he failed to perform in accordance with its standards, Dalangin argues that a perusal of the "grounds" in support of his dismissal reveals that none of the charges leveled against him is supported by concrete and tangible evidence. He maintains that the company miserably failed to cite a single

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[24] *Rollo,* pp. 228-252; dated September 21, 2006.

[25] *Id.* at 300-322; dated March 28, 2007.

[26] *Supra* note 8.

company policy which he allegedly violated and defied. He refutes the company's claim that his job description and his employment contract apprise him of the company policy that he is to observe for the duration of his employment. He, thus, maintains that he had not been previously informed of the company standards he was supposed to satisfy. He stresses that the CA did not err in holding that the company's general averments regarding his failure to meet its standards for regular employment were not corroborated by any other evidence and, therefore, are insufficient to justify his dismissal.

Dalangin insists that he is entitled to backwages, moral and exemplary damages, as well as attorney's fees, claiming that his dismissal was unjust, oppressive, tainted with bad faith, and contrary to existing morals, good customs and public policy. There was bad faith, he argues, because he was dismissed without the requisite notice and hearing required under the law; and merely on the basis of the company's bare, sweeping and general allegations that he is difficult to deal with and that he might cause problems to the company's future business operations. He is entitled to attorney's fees, he submits, because he was forced to litigate and vindicate his rights.

He bewails what he considers as "a pre-conceived plan and determined design"[27] on the part of Sichani and Abad to immediately terminate his employment. Elaborating, he points out that the company, through Abad, prepared two memoranda, both dated October 26, 2001, one is the memo to him requiring his written explanation[28] and the other, addressed to Sichani, recommending his dismissal.[29] He was surprised that Sichani did not bother to ask Abad why she gave him two conflicting memos on the same day; neither did Sichani or Abad investigate the surrounding circumstances on the matter nor did they give him the opportunity to explain his side.

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[27] *Supra* note 25, at 317.

[28] *Supra* note 8.

[29] *Supra* note 25, at 305.

The Court's Ruling

As a rule, the Court is not a trier of facts, the resolution of factual issues being the function of lower courts whose findings are received with respect and are binding on the Court subject to certain exceptions.[30] A recognized exception to the rule is the circumstance in which there are conflicting findings of fact by the CA, on the one hand, and the trial court or government agency concerned, on the other, as in the present case. The factual findings of the NLRC on the dispute between Dalangin and the company are at variance with those of the CA, thus necessitating our review of the case, especially the evidence on record.[31]

We now resolve the core issue of whether Dalangin, a probationary employee, was validly dismissed.

In *International Catholic Migration Commission v. NLRC,*[32] the Court explained that a probationary employee, as understood under Article 281 of the Labor Code, is one who is on trial by an employer, during which, the latter determines whether or not he is qualified for permanent employment. A probationary appointment gives the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he would be a proper and efficient employee.

Dalangin was barely a month on the job when the company terminated his employment. He was found wanting in qualities that would make him a "proper and efficient" employee or, as the company put it, he was unfit and unqualified to continue as its Immigration and Legal Manager.

Dalangin's dismissal was viewed differently by the NLRC and the CA. The NLRC upheld the dismissal as it was, it declared, in the exercise of the company's management prerogative. On

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[30] *Lanuza v. Muñoz,* 473 Phil. 616 (2004).

[31] *Palecpec, Jr. v. Davis,* G.R. No. 171048, July 31, 2007, 528 SCRA 720.

[32] 251 Phil. 560 (1989).

the other hand, the CA found that the dismissal was not supported by substantial evidence and that the company did not allow Dalangin to prove that he had the qualifications to meet the company's standards for his regular employment. The CA did not believe that the company could fully assess Dalangin's performance within a month. It viewed Dalangin's dismissal as arbitrary, considering that the company had very little time to determine his fitness for the job.

We disagree.

The essence of a probationary period of employment fundamentally lies in the purpose or objective of both the employer and the employee during the period. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the latter seeks to prove to the former that he has the qualifications to meet the reasonable standards for permanent employment.[33]

The "trial period" or the length of time the probationary employee remains on probation depends on the parties' agreement, but it shall not exceed six (6) months under Article 281 of the Labor Code, unless it is covered by an apprenticeship agreement stipulating a longer period. Article 281 provides:

> **Probationary employment**. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

As the Court explained in *International Catholic Migration Commission*, "the word 'probationary,' as used to describe the period of employment, implies the purpose of the term or period,

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[33] *Id.* at 567.

but not its length."[34] Thus, the fact that Dalangin was separated from the service after only about four weeks does not necessarily mean that his separation from the service is without basis.

Contrary to the CA's conclusions, we find substantial evidence indicating that the company was justified in terminating Dalangin's employment, however brief it had been. Time and again, we have emphasized that substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[35]

Dalangin overlooks the fact, wittingly or unwittingly, that he offered glimpses of his own behavior and actuations during his four-week stay with the company; he betrayed his negative attitude and regard for the company, his co-employees and his work.

Dalangin admitted in compulsory arbitration that the proximate cause for his dismissal was his refusal to attend the company's "Values Formation Seminar" scheduled for October 27, 2001, a Saturday. He refused to attend the seminar after he learned that it had no relation to his duties, as he claimed, and that he had to leave at 2:00 p.m. because he wanted to be with his family in the province. When Abad insisted that he attend the seminar to encourage his co-employees to attend, he stood pat on not attending, arguing that marked differences exist between their positions and duties, and insinuating that he did not want to join the other employees. He also questioned the scheduled 2:00 p.m. seminars on Saturdays as they were not supposed to be doing a company activity beyond 2:00 p.m. He considers 2:00 p.m. as the close of working hours on Saturdays; thus, holding them beyond 2:00 p.m. would be in violation of the law.

The "Values Formation Seminar" incident is an eye-opener on the kind of person and employee Dalangin was. His refusal

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[34] *Ibid.*

[35] *Madrigalejos v. Geminilou Trucking Service,* G.R. No. 179174, December 24, 2008, 575 SCRA 570.

to attend the seminar brings into focus and validates what was wrong with him, as Abad narrated in her affidavit[36] and as reflected in the termination of employment memorandum.[37] It highlights his lack of interest in familiarizing himself with the company's objectives and policies. Significantly, the seminar involved acquainting and updating the employees with the company's policies and objectives. Had he attended the seminar, Dalangin could have broadened his awareness of the company's policies, in addition to Abad's briefing him about the company's policies on punctuality and attendance, and the procedures to be followed in handling the clients' applications. No wonder the company charged him with obstinacy.

The incident also reveals Dalangin's lack of interest in establishing good working relationship with his co-employees, especially the rank and file; he did not want to join them because of his view that the seminar was not relevant to his position and duties. It also betrays an arrogant and condescending attitude on his part towards his co-employees, and a lack of support for the company objective that company managers be examples to the rank and file employees.

Additionally, very early in his employment, Dalangin exhibited negative working habits, particularly with respect to the one hour lunch break policy of the company and the observance of the company's working hours. Thus, Abad stated that Dalangin would take prolonged lunch breaks or would go out of the office — without leave of the company — only to call the personnel manager later to inform the latter that he would be unable to return as he had to attend to personal matters. Without expressly countering or denying Abad's statement, Dalangin dismissed the charge for the company's failure to produce his daily time record.[38]

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[36] *Supra* note 12.

[37] *Supra* note 4.

[38] *Supra* note 25, at 319.

The same thing is true with Dalangin's handling of Tecson's application for immigration to Canada, especially his failure to find ways to appeal the denial of Tecson's application, as Abad stated in her affidavit. Again, without expressly denying Abad's statement or explaining exactly what he did with Tecson's application, Dalangin brushes aside Abad's insinuation that he was not doing his job well, with the ready argument that the company did not even bother to present Tecson's testimony.

In the face of Abad's direct statements, as well as those of his co-employees, it is puzzling that Dalangin chose to be silent about the charges, other than saying that the company could not cite any policy he violated. All along, he had been complaining that he was not able to explain his side, yet from the labor arbiter's level, all the way to this Court, he offered no satisfactory explanation of the charges. In this light, coupled with Dalangin's adamant refusal to attend the company's "Values Formation Seminar" and a similar program scheduled earlier, we find credence in the company's submission that Dalangin was unfit to continue as its Immigration and Legal Manager. As we stressed earlier, we are convinced that the company had seen enough from Dalangin's actuations, behavior and deportment during a four-week period to realize that Dalangin would be a liability rather than an asset to its operations.

We, therefore, disagree with the CA that the company could not have fully determined Dalangin's performance barely one month into his employment. As we said in *International Catholic Migration Commission*, the probationary term or period denotes its purpose but not its length. To our mind, four weeks was enough for the company to assess Dalangin's fitness for the job and he was found wanting. **In separating Dalangin from the service before the situation got worse, we find the company not liable for illegal dismissal**.

The procedural due process issue

Section 2, Rule I, Book VI of the Labor Code's Implementing Rules and Regulations provides:

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

The company contends that it complied with the above rule when it asked Dalangin, through Abad's Memorandum dated October 26, 2001,[39] to explain why he could not attend the seminar scheduled for October 27, 2001. When he failed to submit his explanation, the company, again through Abad, served him a notice the following day, October 27, 2001, terminating his employment. Dalangin takes strong exception to the company's submission. He insists that the company failed to comply with the rules as he was not afforded a reasonable time to defend himself before he was dismissed.

The records support Dalangin's contention. The notice served on him did not give him a reasonable time, from the effective date of his separation, as required by the rules. He was dismissed on the very day the notice was given to him, or, on October 27, 2001. Although we cannot invalidate his dismissal in light of the valid cause for his separation, the company's non-compliance with the notice requirement entitles Dalangin to indemnity, in the form of nominal damages in an amount subject to our discretion.[40] Under the circumstances, we consider appropriate an award of nominal damages of ₱10,000.00 to Dalangin.

Damages and attorney's fees

Finally, given the valid reason for Dalangin's dismissal, the claim for moral and exemplary damages, as well as attorney's fees, must necessarily fail.

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The assailed decision and resolution of the Court of Appeals are hereby **SET ASIDE.** The complaint is **DISMISSED** for lack of merit.

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[39] *Supra* note 8.

[40] *Agabon v. NLRC,* 485 Phil. 248 (2004).

Petitioner Canadian Opportunities Unlimited, Inc. is **DIRECTED** to pay respondent Bart Q. Dalangin, Jr. nominal damages in the amount of ₱10,000.00.

Costs against the respondent.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189647. February 6, 2012]

NANCY T. LORZANO, *petitioner, vs.* **JUAN TABAYAG, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW SHALL BE RAISED; THE ISSUE OF FORGED SIGNATURE IS A CONCLUSION DERIVED BY TRIAL COURT AND THE COURT OF APPEALS ON A QUESTION OF FACT WHICH IS A MATTER NOT FOR THE COURT TO RESOLVE.— Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question

posed is one of fact. That the signature of Tabayag in the May 25, 1992 deed of sale was a forgery is a conclusion derived by the RTC and the CA on a question of fact. The same is conclusive upon this Court as it involves the truth or falsehood of an alleged fact, which is a matter not for this Court to resolve. Where a petitioner casts doubt on the findings of the lower court as affirmed by the CA regarding the existence of forgery is a question of fact.

2. ID.; ID.; ID.; THE QUESTION OF WHETHER THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES IS SUPPORTED BY EVIDENCE IS A FACTUAL QUESTION AS IT WOULD NECESSITATE WHETHER THE EVIDENCE ADDUCED IN SUPPORT OF THE SAME HAS ANY PROBATIVE VALUE.— For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact. Essentially, the petitioner is questioning the award of moral damages and attorney's fees in favor of the respondent as the same is supposedly not fully supported by evidence. However, in the final analysis, the question of whether the said award is fully supported by evidence is a factual question as it would necessitate whether the evidence adduced in support of the same has any probative value. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.

3. ID.; ID.; ID.; ANY ISSUE RAISED FOR THE FIRST TIME ON APPEAL IS ALREADY BARRED BY *ESTOPPEL*.— This Court notes that the foregoing argument is being raised by the petitioner for the first time in the instant petition. It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic

considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppels*. Accordingly, the petitioner's attack on the propriety of the action for reconveyance in this case ought to be disregarded. However, in order to obviate any lingering doubt on the resolution of the issues involved in the instant case, this Court would proceed to discuss the cogency of the petitioner's foregoing argument.

4. ID.; EVIDENCE; OPINION OF EXPERT WITNESS; THE OPINION OF HANDWRITING EXPERTS ARE NOT NECESSARILY BINDING UPON THE COURT, THE EXPERT'S FUNCTION BEING TO PLACE BEFORE THE COURT DATA UPON WHICH THE COURT CAN FORM ITS OWN OPINION.— In any case, the CA aptly ruled that a handwriting expert is not indispensable to prove that the signature of Tabayag in the questioned deed of sale was indeed a forgery. It is true that the opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.

5. ID.; ID.; A REVIEW OF THE AMOUNT OF MORAL DAMAGES ACTUALLY AWARDED BY THE LOWER COURTS IN FAVOR OF RESPONDENT IS NECESSARY AS THE SAME IS EXCESSIVE AND NOT REASONABLY COMMENSURATE TO THE INJURY HE SUSTAINED.— Nevertheless, a review of the amount of moral damages actually awarded by the lower courts in favor of the respondent is necessary. Here, the lower courts ordered the petitioner to pay the respondent moral damages in the amount of ₱100,000.00. We find the said amount to be excessive. Moral damages are not intended to enrich the complainant at the expense of the defendant. Rather, these are awarded only to enable the injured party to obtain "means, diversions or amusements" that will

serve to alleviate the moral suffering that resulted by reason of the defendant's culpable action. The purpose of such damages is essentially indemnity or reparation, not punishment or correction. In other words, the award thereof is aimed at a restoration within the limits of the possible, of the spiritual *status quo ante*; therefore, it must always reasonably approximate the extent of injury and be proportional to the wrong committed. Accordingly, the amount of moral damages must be reduced to ₱30,000.00, an amount reasonably commensurate to the injury sustained by the respondent.

6. CIVIL LAW; LAND REGISTRATION; LAND TITLES; FREE PATENT; TITLE EMANATING FROM A FREE PATENT FRAUDULENTLY SECURED DOES NOT BECOME INDEFEASIBLE.— A Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; is not the owner of more than twelve (12) hectares of land; has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public land subject to disposition, for at least 30 years prior to the effectivity of Republic Act No. 6940; and has paid the real taxes thereon while the same has not been occupied by any person. Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance. However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.

7. ID.; ID.; ID.; ID.; A FRAUDULENTLY ACQUIRED FREE PATENT MAY ONLY BE ASSAILED BY THE GOVERNMENT IN AN ACTION FOR REVERSION.— Nonetheless, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion pursuant to Section 101 of the Public Land Act. x x x In *Kayaban, et al. v. Republic, et al.,* this Court explained the reason for the rule that only the government, through the OSG, upon the recommendation of the Director of Lands, may bring an action assailing a certificate of title issued pursuant to a fraudulently

acquired free patent: Since it was the Director of Lands who processed and approved the applications of the appellants and who ordered the issuance of the corresponding free patents in their favor in his capacity as administrator of the disposable lands of the public domain, the action for annulment should have been initiated by him, or at least with his prior authority and consent.

8. ID.; ID.; ID.; ID.; ACTION FOR RECONVEYANCE IS PROPER IN CASE AT BAR; TO HOLD OTHERWISE WOULD BE TO MAKE THE TORRENS SYSTEM A SHIELD FOR THE COMMISSION OF FRAUD.— A recognized exception is that situation where plaintiff-claimant seeks direct reconveyance from defendant public land unlawfully and in breach of trust titled by him, on the principle of enforcement of a constructive trust. A private individual may bring an action for reconveyance of a parcel of land even if the title thereof was issued through a free patent since such action does not aim or purport to re-open the registration proceeding and set aside the decree of registration, but only to show that the person who secured the registration of the questioned property is not the real owner thereof. x x x Here, the respondent, in filing the amended complaint for annulment of documents, reconveyance and damages, was not seeking a reconsideration of the granting of the patent or the decree issued in the registration proceedings. What the respondent sought was the reconveyance of the subject property to the heirs of the late Tabayag on account of the fraud committed by the petitioner. Thus, the lower courts did not err in upholding the respondent's right to ask for the reconveyance of the subject property. To hold otherwise would be to make the Torrens system a shield for the commission of fraud.

9. ID.; ID.; ID.; ID.; THE RIGHT OF THE HEIRS OF RESPONDENT TO ASK FOR RECONVEYANCE IS IRREFUTABLE; THE HEIRS, BY THEMSELVES AND THROUGH THEIR PREDECESSORS-IN-INTEREST, HAD ALREADY ACQUIRED VESTED RIGHT OVER THE SUBJECT PROPERTY.— That the subject property was not registered under the name of the heirs of Tabayag prior to the issuance of OCT No. 1786 in the name of the petitioner would not effectively deny the remedy of reconveyance to the former. An action for reconveyance is a legal and equitable remedy

granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. It cannot be gainsaid that the heirs of Tabayag, by themselves and through their predecessors-in-interest, had already acquired a vested right over the subject property. An open, continuous, adverse and public possession of a land of the public domain from time immemorial by a private individual personally and through his predecessors confers an effective title on said possessors whereby the land ceases to be public, to become private property, at least by presumption. Hence, the right of the heirs of Tabayag to ask for the reconveyance of the subject property is irrefutable.

APPEARANCES OF COUNSEL

Sonny Manlangit for petitioner.

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 Nancy T. Lorzano (petitioner) assailing the Court of Appeals (CA) Decision[1] dated March 18, 2009 and Resolution[2] dated September 16, 2009 in CA-G.R. CV No. 87762 entitled "*Juan Tabayag, Jr. v. Nancy T. Lorzano.*"

The Antecedent Facts

The instant case stemmed from an amended complaint[3] for annulment of document and reconveyance filed by Juan Tabayag,

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Josefina Guevara-Salonga and Romeo F. Barza, concurring; *rollo*, pp. 33-39.

[2] *Id.* at 41.

[3] *Id.* at 62-64.

Jr. (respondent) against the petitioner, docketed as Civil Case No. Ir-3286, with the Regional Trial Court (RTC) of Iriga City.

The petitioner and the respondent are two of the children of the late Juan Tabayag (Tabayag) who died on June 2, 1992. Tabayag owned a parcel of land situated in Sto. Domingo, Iriga City (subject property). Right after the burial of their father, the petitioner allegedly requested from her siblings that she be allowed to take possession of and receive the income generated by the subject property until after her eldest son could graduate from college. The petitioner's siblings acceded to the said request.

After the petitioner's eldest son finished college, her siblings asked her to return to them the possession of the subject property so that they could partition it among themselves. However, the petitioner refused to relinquish her possession of the subject property claiming that she purchased the subject property from their father as evidenced by a Deed of Absolute Sale of Real Property[4] executed by the latter on May 25, 1992.

The respondent claimed that their father did not execute the said deed of sale. He pointed out that the signature of their father appearing in the said deed of sale was a forgery as the same is markedly different from the real signature of Tabayag.

Further, the respondent asserted that the said deed of sale was acknowledged before a person who was not a duly commissioned Notary Public. The deed of sale was acknowledged by the petitioner before a certain Julian P. Cabañes (Cabañes) on May 25, 1992 at Iriga City. However, as per the Certification[5] issued by the Office of the Clerk of Court of the RTC on May 16, 2002, Cabañes has never been commissioned as a Notary Public for and in the Province of Camarines Sur and in the Cities of Iriga and Naga.

The respondent alleged that the petitioner purposely forged the signature of Tabayag in the said deed of sale to deprive him and their other siblings of their share in the subject property.

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[4] *Id.* at 65.

[5] *Id.* at 73.

He then averred that the subject property was already covered by Original Certificate of Title (OCT) No. 1786[6] issued by the Register of Deeds of Iriga City on January 9, 2001 registered under the name of the petitioner. OCT No. 1786 was issued pursuant to Free Patent No. 051716 which was procured by the petitioner on June 24, 1996.

For her part, the petitioner maintained she is the owner of the subject parcel of land having purchased the same from Tabayag as evidenced by the May 25, 1992 deed of sale. Further, the petitioner asserted that the respondent failed to establish that the signature of Tabayag appearing on the said deed of sale was a forgery considering that it was not submitted for examination by a handwriting expert.

The RTC Decision

On April 28, 2006, the RTC rendered an Amended Decision[7] the decretal portion of which reads:

> WHEREFORE, Judgment is hereby rendered[:]
>
> a. Declaring the supposed Deed of Sale null and void and of no legal effect;
>
> b. Ordering the [petitioner] to reconvey to the heirs of the late Juan Tabayag, Sr. the land subject matter of this case[;]
>
> c. Declaring the property described in the complaint and in the spurious deed of sale to be owned in common by the heirs of Juan Tabayag, Sr. as part of their inheritance from said Juan Tabayag, Sr[.];
>
> d. Ordering [petitioner] to pay plaintiff the sum of One Hundred Thousand Pesos (₱100,000.00)by way of moral damages;
>
> e. Ordering defendant to pay plaintiff the attorney's fees in the sum of Fifteen Thousand Pesos (₱15,000.00), based on quantum meruit;

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[6] *Id.* at 74.

[7] *Id.* at 53-61.

f. Dismissing the counterclaim for lack of merit[;]

g. Costs against the defendant.

SO ORDERED.[8]

The RTC opined that a cursory comparison between the signature of Tabayag appearing on the said deed of sale and his signatures appearing on other documents would clearly yield a conclusion that the former was indeed a forgery. Moreover, the RTC asserted that the nullity of the said May 25, 1992 deed of sale all the more becomes glaring considering that the same was purportedly acknowledged before a person who is not a duly commissioned Notary Public.

The CA Decision

Thereafter, the petitioner appealed the decision with the CA. On March 18, 2009, the CA rendered the assailed decision affirming *in toto* the RTC decision.[9] The CA held that the testimony of a handwriting expert in this case is not indispensable as the similarity and dissimilarity between the questioned signature of Tabayag as compared to other signatures of the latter in other documents could be determined by a visual comparison.

Further, the CA upheld the award of moral damages and attorney's fees in favor of the respondent as the petitioner's conduct caused "great concern and anxiety" to the respondent and that the latter had to go to court and retain the services of counsel to pursue his rights and protect his interests.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court asserting the following: (1) the questioned signature of Tabayag in the May 25, 1992 deed of sale could not be declared spurious unless first examined and declared to be so by a handwriting expert; (2) considering that the subject property was registered under the petitioner's name pursuant to a free patent, reconveyance of the same in

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[8] *Id.* at 60-61.

[9] *Id.* at 33-39.

favor of the respondent is improper since only the Government, through the Office of the Solicitor General (OSG), could assail her title thereto in an action for reversion; and (3) the respondent is not entitled to an award for moral damages and attorney's fees.

In his Comment,[10] the respondent claimed that the issues raised in the instant petition are factual in nature and, hence, could not be passed upon by this Court in a petition for review on *certiorari* under Rule 45. Likewise, the respondent asserted that the petitioner's free patent, having been issued on the basis of a falsified document, does not create a right over the subject property in her favor.

Issues

In sum, the threshold issues for resolution are the following: (a) whether the lower courts erred in declaring the May 25, 1992 deed of sale a nullity; (b) whether an action for reconveyance is proper in the instant case; and (c) whether the respondent is entitled to an award of moral damages and attorney's fees.

The Court's Ruling

First and Third Issues: Nullity of the Deed of Sale and Award of Moral Damages and Attorney's Fees

This Court shall jointly discuss the *first* and *third issues* as the resolution of the same are interrelated.

Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on

[10] *Id.* at 135-142.

what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[11]

That the signature of Tabayag in the May 25, 1992 deed of sale was a forgery is a conclusion derived by the RTC and the CA on a question of fact. The same is conclusive upon this Court as it involves the truth or falsehood of an alleged fact, which is a matter not for this Court to resolve.[12] Where a petitioner casts doubt on the findings of the lower court as affirmed by the CA regarding the existence of forgery is a question of fact.[13]

In any case, the CA aptly ruled that a handwriting expert is not indispensable to prove that the signature of Tabayag in the questioned deed of sale was indeed a forgery. It is true that the opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. Handwriting experts are usually helpful in the examination of forged documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.[14]

For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages

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[11] *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011.

[12] See *PNOC v. National College of Business and Arts*, 516 Phil. 643, 653 (2006).

[13] See *Reyes v. CA*, 328 Phil. 171, 179 (1996).

[14] *De Jesus v. Court of Appeals*, 524 Phil. 633, 643 (2006). (citations omitted)

or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact.[15]

Essentially, the petitioner is questioning the award of moral damages and attorney's fees in favor of the respondent as the same is supposedly not fully supported by evidence. However, in the final analysis, the question of whether the said award is fully supported by evidence is a factual question as it would necessitate whether the evidence adduced in support of the same has any probative value. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[16]

Nevertheless, a review of the amount of moral damages actually awarded by the lower courts in favor of the respondent is necessary.

Here, the lower courts ordered the petitioner to pay the respondent moral damages in the amount of ₱100,000.00. We find the said amount to be excessive.

Moral damages are not intended to enrich the complainant at the expense of the defendant. Rather, these are awarded only to enable the injured party to obtain "means, diversions or amusements" that will serve to alleviate the moral suffering that resulted by reason of the defendant's culpable action. The purpose of such damages is essentially indemnity or reparation, not punishment or correction. In other words, the award thereof is aimed at a restoration within the limits of the possible, of the spiritual *status quo ante*; therefore, it must always reasonably approximate the extent of injury and be proportional to the wrong committed.[17]

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[15] *Caiña v. People*, G.R. No. 78777, September 2, 1992, 213 SCRA 309, 314.

[16] *Manila Bay Club Corp. v. CA*, 315 Phil. 805, 820 (1995).

[17] *Solidbank Corporation v. Spouses Arrieta*, 492 Phil. 95, 105 (2005). (citations omitted)

Accordingly, the amount of moral damages must be reduced to ₱30,000.00, an amount reasonably commensurate to the injury sustained by the respondent.

Second Issue: Propriety of the Reconveyance of the Subject Property to the Heirs of the late Juan Tabayag

The petitioner asserted that the CA erred in not finding that her ownership over the subject property was by virtue of a free patent issued by the government and, thus, even assuming that the subject deed of sale is invalid, her title and ownership of the subject property cannot be divested or much less ordered reconveyed to the heirs of Tabayag.

Simply put, the petitioner points out that the subject property, being acquired by her through a grant of free patent from the government, originally belonged to the public domain. As such, the lower courts could not order the reconveyance of the subject property to the heirs of Tabayag as the latter are not the original owners thereof. If at all, the subject property could only be ordered reverted to the public domain.

An issue cannot be raised for the first time on appeal as it is already barred by *estoppel*.

This Court notes that the foregoing argument is being raised by the petitioner for the first time in the instant petition. It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*.[18]

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[18] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214. (citations omitted)

Accordingly, the petitioner's attack on the propriety of the action for reconveyance in this case ought to be disregarded. However, in order to obviate any lingering doubt on the resolution of the issues involved in the instant case, this Court would proceed to discuss the cogency of the petitioner's foregoing argument.

Title emanating from a free patent fraudulently secured does not become indefeasible.

The petitioner asserts that the amended complaint for annulment of document, reconveyance and damages that was filed by the respondent with the RTC is a collateral attack on her title over the subject property. She avers that, when the said amended compliant was filed, more than a year had already lapsed since OCT No. 1786 over the subject property was issued under her name. Thus, the petitioner maintains that her title over the subject property is already indefeasible and, hence, could not be attacked collaterally.

We do not agree.

A Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; is not the owner of more than twelve (12) hectares of land; has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public land subject to disposition, for at least 30 years prior to the effectivity of Republic Act No. 6940; and has paid the real taxes thereon while the same has not been occupied by any person.[19]

Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance.[20]

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[19] *Republic v. Court of Appeals*, 406 Phil. 597, 606 (2001).

[20] *Heirs of Alcaraz v. Republic*, 502 Phil. 521, 532 (2005).

However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.[21]

On this point, our ruling in *Republic v. Heirs of Felipe Alejaga, Sr.*[22] is instructive:

> True, once a patent is registered and the corresponding certificate of title [is] issued, the land covered by them ceases to be part of the public domain and becomes private property. Further, the Torrens Title issued pursuant to the patent becomes indefeasible a year after the issuance of the latter. However, this indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. Well-settled is the doctrine that the registration of a patent under the Torrens System does not by itself vest title; it merely confirms the registrant's already existing one. Verily, registration under the Torrens System is not a mode of acquiring ownership.[23] (citations omitted)

A fraudulently acquired free patent may only be assailed by the government in an action for reversion.

Nonetheless, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion pursuant to Section 101 of the Public Land Act.[24] In *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*,[25] this Court pointed out that:

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[21] *Id.* at 533.

[22] 441 Phil. 656 (2002).

[23] *Id.* at 674.

[24] Section 101 of the Public Land Act provides:

> **Section 101.** All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.

[25] 500 Phil. 288 (2005).

It is also to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an even existing authority, thru its duly-authorized officers, to inquire into the circumstances surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the Government.[26]

In *Kayaban, et al. v. Republic, et al.*,[27] this Court explained the reason for the rule that only the government, through the OSG, upon the recommendation of the Director of Lands, may bring an action assailing a certificate of title issued pursuant to a fraudulently acquired free patent:

Since it was the Director of Lands who processed and approved the applications of the appellants and who ordered the issuance of the corresponding free patents in their favor in his capacity as administrator of the disposable lands of the public domain, the action for annulment should have been initiated by him, or at least with his prior authority and consent.[28]

An action for reconveyance is proper in this case.

However, the foregoing rule is not without an exception. A recognized exception is that situation where plaintiff-claimant seeks direct reconveyance from defendant public land unlawfully

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[26] *Id.* at 299-300, citing *Republic v. Court of Appeals*, 262 Phil. 677 (1990).

[27] 152 Phil. 323 (1973).

[28] *Id.* at 327.

and in breach of trust titled by him, on the principle of enforcement of a constructive trust.[29]

A private individual may bring an action for reconveyance of a parcel of land even if the title thereof was issued through a free patent since such action does not aim or purport to re-open the registration proceeding and set aside the decree of registration, but only to show that the person who secured the registration of the questioned property is not the real owner thereof.[30]

In *Roco, et al. v. Gimeda*,[31] we stated that if a patent had already been issued through fraud or mistake and has been registered, the remedy of a party who has been injured by the fraudulent registration is an action for reconveyance, thus:

> It is to be noted that the petition does not seek for a reconsideration of the granting of the patent or of the decree issued in the registration proceeding. The purpose is not to annul the title but to have it conveyed to plaintiffs. Fraudulent statements were made in the application for the patent and no notice thereof was given to plaintiffs, nor knowledge of the petition known to the actual possessors and occupants of the property. The action is one based on fraud and under the law, it can be instituted within four years from the discovery of the fraud. (Art. 1146, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.) It is to be noted that as the patent here has already been issued, the land has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance. (*Director of Lands vs. Registered of Deeds*, 92 Phil. 826; 49 Off. Gaz. [3] 935; Section 55 of Act No. 496.)[32]

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[29] *Causapin v. Court of Appeals*, G.R. No. 107432, July 4, 1994, 233 SCRA 615, 625.

[30] *Esconde v. Hon. Barlongay,* 236 Phil. 644, 654 (1987).

[31] 104 Phil. 1011 (1958).

[32] *Id.* at 1014.

In the same vein, in *Quiñiano, et al. v. Court of Appeals, et al.*,[33] we stressed that:

> The controlling legal norm was set forth in succinct language by Justice Tuason in a 1953 decision, *Director of Lands v. Register of Deeds of Rizal*. Thus: "The sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree, as was done in the instant case, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages." Such a doctrine goes back to the 1919 landmark decision of *Cabanos v. Register of Deeds of Laguna*. If it were otherwise the institution of registration would, to quote from Justice Torres, serve "as a protecting mantle to cover and shelter bad faith ...." In the language of the then Justice, later Chief Justice, Bengzon: "A different view would encourage fraud and permit one person unjustly to enrich himself at the expense of another." It would indeed be a signal failing of any legal system if under the circumstances disclosed, the aggrieved party is considered as having lost his right to a property to which he is entitled. It is one thing to protect an innocent third party; it is entirely a different matter, and one devoid of justification, if [deceit] would be rewarded by allowing the perpetrator to enjoy the fruits of his nefarious deed. As clearly revealed by the undeviating line of decisions coming from this Court, such an undesirable eventuality is precisely sought to be guarded against. So it has been before; so it should continue to be.[34] (citations omitted)

Here, the respondent, in filing the amended complaint for annulment of documents, reconveyance and damages, was not seeking a reconsideration of the granting of the patent or the decree issued in the registration proceedings. What the respondent sought was the reconveyance of the subject property to the heirs of the late Tabayag on account of the fraud committed by the petitioner. Thus, the lower courts did not err in upholding the respondent's right to ask for the reconveyance of the subject

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[33] 148-A Phil. 181 (1971).

[34] *Id.* at 186-187.

property. To hold otherwise would be to make the Torrens system a shield for the commission of fraud.

That the subject property was not registered under the name of the heirs of Tabayag prior to the issuance of OCT No. 1786 in the name of the petitioner would not effectively deny the remedy of reconveyance to the former. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.[35]

It cannot be gainsaid that the heirs of Tabayag, by themselves and through their predecessors-in-interest, had already acquired a vested right over the subject property. An open, continuous, adverse and public possession of a land of the public domain from time immemorial by a private individual personally and through his predecessors confers an effective title on said possessors whereby the land ceases to be public, to become private property, at least by presumption.[36] Hence, the right of the heirs of Tabayag to ask for the reconveyance of the subject property is irrefutable.

At this juncture, we deem it necessary to reiterate our disquisition in *Naval v. Court of Appeals*,[37] thus:

> The fact that petitioner was able to secure a title in her name did not operate to vest ownership upon her of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons

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[35] *Leoveras v. Valdez*, G.R. No. 169985, June 15, 2011.

[36] See *Susi v. Razon and Director of Lands*, 48 Phil. 424, 428 (1925).

[37] 518 Phil. 271 (2006).

not named in the certificate, or that it may be held in trust for another person by the registered owner.[38] (citations omitted)

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The Decision dated March 18, 2009 and Resolution dated September 16, 2009 issued by the Court of Appeals in CA-G.R. CV No. 87762 are hereby **AFFIRMED** with **MODIFICATION.** The petitioner is ordered to pay the respondent moral damages in the amount of Thirty Thousand Pesos (₱30,000.00).

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 193346. February 6, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES ROGELIO and EVELYN ROQUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PAYMENT OF THE FULL AMOUNT OF DOCKET FEES WITHIN THE REGLEMENTARY PERIOD IS AN INDISPENSABLE STEP FOR THE PERFECTION OF AN APPEAL, ABSENT WHICH WILL RESULT TO THE COURT NOT ACQUIRING JURISDICTION OVER THE APPEALED CASE. — We agree with the ruling of the CA, finding the petitioner to have timely filed the notice of appeal but failing to perfect the same. In *Enriquez v. Enriquez,* we

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[38] *Id.* at 282-283.

underscored the fact that payment of docket fees within the prescribed period is not merely a technicality but a condition *sine qua non* for the perfection of an appeal. We held: Time and again, this Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory. x x x Appeal is not a right but a statutory privilege, thus, appeal must be made strictly in accordance with the provision set by law. The requirement of the law under Section 4, Rule 41 is clear. The payment of appellate docket fee is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal. The payment of the docket fee within the period is a condition *sine qua non* for the perfection of an appeal. Contrary to petitioners' submission, the payment of the appellate court docket and other lawful fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from would become final and executory as if no appeal was filed at all. Indeed, the above-jurisprudence shows that the payment of the full amount of the docket fees within the reglementary period is an indispensable step for the perfection of an appeal, absent which will result to the court not acquiring jurisdiction over the appealed case.

2. ID.; ID.; ID.; NO COMPELLING REASON FOR RELAXATION OF THE RULES; PETITIONER BANK AND ITS COUNSEL CLEARLY TOOK FOR GRANTED THE MANDATORY NATURE OF PAYING THE DOCKET FEES SO AS TO LEAVE ITS PAYMENTS TO THE BANK'S SALES AND SERVICE HEAD, A NON-LAWYER. — Of course, the petitioner asks us to liberally construe the rules of procedure. However, required in the liberal interpretation of the rules of procedure is the effort on the invoking party to sufficiently explain his failure to abide by the Rules of Court. One who seeks to be exempted from the application of the rules must prove highly meritorious reasons to warrant departure from the rules. Here, the CA found no compelling reason to relax the rules and we agree with the said findings. The CA clearly explained its reasons for refusing liberal interpretation. xxx The petitioner and its counsel clearly took for granted the

mandatory nature of paying the docket fees so as to leave its payments to PNB's Malaybalay Sales and Service Head Bernardo R. Cagalawan (Cagalawan), a non-lawyer. To allow this kind of excuse is to open opportunities for litigants to advance flimsy and irresponsible reasons, to the detriment of the integrity of the Rules of Court. This we shall not tolerate, because while substantial justice must be given more weight over technicalities, the latter exists precisely to give way to substantial justice. Thus, absent compelling reason to disregard the Rules, we have no choice but to enforce the same.

3. CIVIL LAW; EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; QUESTIONED FORECLOSURE SALE IS VALID, CONSIDERING ABSENCE OF ANY GROUND TO ANNUL THE SAME. — We agree with the trial court and the CA as to its ruling on the validity of the subject foreclosure sale. To justify its ruling, the CA cited our decision in *United Coconut Planters Bank v. Beluso,* where we enumerated the grounds for the proper annulment of the foreclosure sale, to wit: "(1) that there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) that the sale had not been fairly and regularly conducted; or (3) that the price was inadequate and the inadequacy was so great as to shock the conscience of the court." The CA correctly pointed out that the present case does not fall in any of the grounds cited above. PNB did not appear to bid under fraud, collusion, accident, mutual mistake, breach of trust or misconduct; the sale was also conducted fairly and regularly considering that PNB did not even institute any action to correct its bid; nor did it file any counterclaim. The price was also not shockingly inadequate, as there was even an excess. Thus, in sum, no ground may be cited to declare the subject foreclosure sale null and void. Can we then say that the foreclosure sale is invalid because PNB committed a mistake in its bid? We rule in the negative.

APPEARANCES OF COUNSEL

Franc Evan L. Dandoy for petitioner.
San Jose Tagarda and Yap Law Firm for respondents.

R E S O L U T I O N

REYES, *J.*:

The Case

The present case is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Philippine National Bank (PNB), praying for the grant of the petition and the reversal of the Court of Appeals' (CA) November 26, 2009 Decision[2] and July 29, 2010 Resolution[3] in CA-G.R. SP No. 01625-MIN.

Antecedent Facts

Respondents Spouses Rogelio and Evelyn Roque (Spouses Roque) executed real estate mortgages over two (2) lots in Valencia City, Bukidnon and three (3) lots in Cagayan de Oro City to secure all loans they have incurred from petitioner PNB. On August 31, 2001, the respondents' entire obligation covered by the mortgages reached ₱16,534,803.29.[4]

However, the respondents failed to pay their loans upon maturity. Hence, on November 21, 2002, PNB filed before the Regional Trial Court (RTC) of Cagayan de Oro City a petition for extrajudicial foreclosure of the mortgaged properties located therein. The next day, PNB also filed a similar petition in the RTC, Malaybalay City, Bukidnon for the extrajudicial foreclosure of the mortgaged properties located in Valencia City. After the parties were duly notified, two (2) separate public auctions, one for the properties in Cagayan de Oro City (first foreclosure sale) and another for the properties in Valencia City (second foreclosure sale), were held on January 15, 2003.[5]

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[1] *Rollo*, pp. 36-71.

[2] Penned by Associate Justice Ruben C. Ayson, with Associate Justices Rodrigo F. Lim, Jr. and Leonita Real-Dimagiba concurring; *id.* at 72-91.

[3] *Id.* at 92-93.

[4] *Id.* at 153-154.

[5] *Id.* at 154-155.

For the properties located in Cagayan de Oro City, PNB submitted a bid of ₱16,534,803.29, equivalent to the amount of the indebtedness as of August 31, 2001. PNB submitted the same amount as its bid for the Valencia City properties. Thus, the total amount of PNB's bid reached ₱33,069,606.58. Since PNB was the sole bidder and mortgagee in both extrajudicial foreclosure sales, all of the properties were sold to the bank. Two separate Certificates of Sale were issued to the petitioner.[6]

On October 23, 2003, the respondents filed a "Complaint for Annulment of Sale, Cancellation of Certificate of Sale, Injunction and Damages" against PNB before the RTC of Malaybalay City. They sought to annul the second foreclosure sale covering the properties in Valencia City, because the principal obligation was already extinguished when PNB bought the Cagayan de Oro City properties in the first foreclosure sale.[7] During pre-trial, the respondents admitted the amount of their indebtedness as of January 15, 2003 at ₱22,230,269.57, while PNB also admitted that it made a bid for the total amount of ₱33,069,606.58.[8]

However, while PNB admitted the total amount of its bid, it claimed making a mistake in its bid for the Valencia City properties. It should have offered ₱4,785,000.00 only for the second foreclosure sale. PNB argued that it even sent a letter dated January 15, 2003 to the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Malaybalay City to correct its alleged mistake. The said letter, however, was only received on August 5, 2003 and the correction was not accepted since a certificate of sale had already been issued. PNB admitted that it took no action to contest the second foreclosure sale despite its supposed mistake.[9]

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[6] *Id.* at 155.

[7] *Id.* at 152-160.

[8] *Id.* at 75, 199.

[9] *Id.* at 75.

On December 19, 2005, the trial court ruled that both foreclosure sales were valid and directed PNB to return the balance of the proceeds of the two sales to the respondents, amounting to ₱10,839,337.01, including legal interest.[10]

On January 23, 2006 or six (6) days after its receipt of the December 19, 2005 Resolution of the RTC Malaybalay City, PNB filed a Motion for Reconsideration,[11] which was denied by the trial court in an Order[12] dated May 3, 2006. PNB received the said order on June 19, 2006.[13]

PNB then filed a Notice of Appeal[14] on June 27, 2006, alleging among other matters, that the docket and other lawful fees therefore had been paid through PNB's Manager's Check, payable to the Office of the Clerk of Court of the RTC Malaybalay City in the amount of ₱3,330.00. The respondents filed a motion to disallow the notice of appeal[15] on the grounds of the late filing of the same and of the petitioner's failure to pay the appeal fees.

The trial court in a Resolution dated November 7, 2006,[16] disallowed the notice of appeal because of the petitioner's failure to pay the required docket fees within the reglementary period, resulting in the non-perfection of the appeal. After its Motion for Reconsideration[17] was also denied,[18] PNB filed with the CA a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary

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

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

[12] *Id.* at 205-206.

[13] *Id.* at 207.

[14] *Id.* at 207-208.

[15] *Id.* at 209-211.

[16] *Id.* at 221-222.

[17] *Id.* at 223-228.

[18] *Id.* at 229-230.

Injunction[19] under Rule 65 of the Rules of Court. The said petition was subsequently denied *via* the CA Decision[20] dated November 26, 2009 and Resolution[21] dated July 29, 2010 for failure of petitioner PNB to show evidence of grave abuse of discretion on the part of the trial court.

Hence, this petition.

The Issues

From the issues petitioner PNB raised, we have deduced the following issues for our consideration:

I.

WHETHER OR NOT THE RULES ON APPEAL, PARTICULARLY PERFECTION OF APPEAL, SHOULD BE LIBERALLY CONSTRUED, CONSIDERING THE PETITIONER'S CLAIM OF VALID AND JUSTIFIABLE REASONS FOR THE DELAY IN THE PAYMENT OF THE APPEAL FEES.

II.

WHETHER OR NOT THE SUBJECT FORECLOSURE SALE IS VALID.

III.

WHETHER OR NOT THE RULING OF THE TRIAL COURT IS INCONSISTENT WITH THE CAUSES OF ACTION AND PRAYER OF SPOUSES ROQUE IN THEIR COMPLAINT.

Our Ruling

After carefully reviewing the records of the case, we resolve to deny the petition.

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[19] *Id.* at 231-243.

[20] *Supra* note 2.

[21] *Supra* note 3.

The petitioner failed to advance any compelling, valid and justifiable reason for us to liberally construe the rules on the perfection of appeal.

We agree with the ruling of the CA, finding the petitioner to have timely filed the notice of appeal but failing to perfect the same. In *Enriquez v. Enriquez*,[22] we underscored the fact that payment of docket fees within the prescribed period is not merely a technicality but a condition *sine qua non* for the perfection of an appeal. We held:

> Time and again, this Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.
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> x x x x x x x x x
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> Appeal is not a right but a statutory privilege, thus, appeal must be made strictly in accordance with the provision set by law. The requirement of the law under Section 4, Rule 41 is clear. The payment of appellate docket fee is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal.
>
> The payment of the docket fee within the period is a condition *sine qua non* for the perfection of an appeal. Contrary to petitioners' submission, the payment of the appellate court docket and other lawful fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from would become final and executory as if no appeal was filed at all.[23] (citations omitted)

Indeed, the above-jurisprudence shows that the payment of the full amount of the docket fees within the reglementary period is an indispensable step for the perfection of an appeal, absent which will result to the court not acquiring jurisdiction over the appealed case.

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[22] 505 Phil. 193 (2005).

[23] *Id.* at 200.

Of course, the petitioner asks us to liberally construe the rules of procedure. However, required in the liberal interpretation of the rules of procedure is the effort on the invoking party to sufficiently explain his failure to abide by the Rules of Court. One who seeks to be exempted from the application of the rules must prove highly meritorious reasons to warrant departure from the rules.[24]

Here, the CA found no compelling reason to relax the rules and we agree with the said findings. The CA clearly explained its reasons for refusing liberal interpretation, thus:

> In this case, the excuse of PNB for the late payment of the appeal fees is excusable neglect as its branch personnel, who was tasked to make the payment, was unaware of the significance of prompt payment. It then submitted the Affidavit of Cagalawan to prove the same. x x x:
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> x x x x x x x x x
>
> The above attempts to account for why the fees were not paid on **June 27, 2006** or the date when the Notice of Appeal was filed. The explanation is Cagalawan's failure to realize the import of paying the fees and his daily tasks **on the said date.** Unfortunately for PNB, this explanation is not sufficient to warrant a relaxation of the rules. It must be borne in mind that ignorance of the law is no excuse and pressure of work has been already been (sic) repeatedly held to be a flimsy excuse. More importantly, even granting that Cagalawan's excuse is a valid excuse for not paying the fees on **July 27, 2006, no excuse whatsoever was given why no payment was made after that date.** x x x
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> x x x x x x x x x
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> It can immediately be seen that, unlike in the first part of the Affidavit where there was at least a reason forwarded why payment was not made on June 27, 2006, **no reason or explanation was given why it took six (6) more days from the time of the second follow up to pay the docket fees resulting in a delay of one (1) day.** Cagalawan's affidavit **only** shows why no payment was made when the Notice of Appeal was filed. But it did not state reasons, flimsy or otherwise, why the fees were not paid for six (6) more

[24] *Tamayo v. Tamayo, Jr.,* 504 Phil. 179, 184 (2005).

days. Clearly, the evidence PNB submitted fails to discharge the burden of proving exceptionally meritorious instances explaining the delay.[25] (citations omitted)

From the foregoing, the petitioner and its counsel clearly took for granted the mandatory nature of paying the docket fees so as to leave its payments to PNB's Malaybalay Sales and Service Head Bernardo R. Cagalawan (Cagalawan), a non-lawyer. To allow this kind of excuse is to open opportunities for litigants to advance flimsy and irresponsible reasons, to the detriment of the integrity of the Rules of Court. This we shall not tolerate, because while substantial justice must be given more weight over technicalities, the latter exists precisely to give way to substantial justice. Thus, absent compelling reason to disregard the Rules, we have no choice but to enforce the same.

The questioned foreclosure sale is valid, considering absence of any ground to annul the same.

Our resolve to deny this petition emanates as well to the correctness of the trial court's ruling as to the merit of the case.

We agree with the trial court and the CA as to its ruling on the validity of the subject foreclosure sale. To justify its ruling, the CA cited our decision in *United Coconut Planters Bank v. Beluso*,[26] where we enumerated the grounds for the proper annulment of the foreclosure sale, to wit: "(1) that there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) that the sale had not been fairly and regularly conducted; or (3) that the price was inadequate and the inadequacy was so great as to shock the conscience of the court."[27]

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[25] *Rollo*, pp. 84-86.

[26] G.R. No. 159912, August 17, 2007, 530 SCRA 567.

[27] *Id.* at 593; *see* also *Philippine National Bank v. Gonzalez*, 45 Phil. 693, 699 (1924).

The CA correctly pointed out that the present case does not fall in any of the grounds cited above. PNB did not appear to bid under fraud, collusion, accident, mutual mistake, breach of trust or misconduct; the sale was also conducted fairly and regularly considering that PNB did not even institute any action to correct its bid; nor did it file any counterclaim.[28] The price was also not shockingly inadequate, as there was even an excess. Thus, in sum, no ground may be cited to declare the subject foreclosure sale null and void.

Can we then say that the foreclosure sale is invalid because PNB committed a mistake in its bid?

We rule in the negative. The CA wisely ratiocinated that PNB cannot be allowed to change its bid after the foreclosure sale by simply submitting a letter because tolerating it is to set a dangerous precedent where unscrupulous bidders would offer an astronomical amount, only to withdraw it after the foreclosure sale has been completed.[29] Such a scenario will defeat the very purpose of bidding. The CA clearly explained its ruling, to wit:

> Besides, PNB cannot be allowed to change its bid after the foreclosure sale by the simple expedient of submitting a letter months after the sale. To grant PNB's claim could set a dangerous precedent where unscrupulous bidders would offer astronomical amounts to overcome or discourage competition and upon winning, ask that their bid be changed to a lower amount because of mistake. This is definitely repugnant to fair play. Moreover, as observed by the trial court, PNB instituted no action to correct its bid. It did not even file a counterclaim. Thus, it appears that PNB really intended to bid sixteen million five hundred thirty four thousand eight hundred three pesos and twenty nine centavos (Php16,534,803.29) for the Valencia City properties[30]

Finally, there is no need to discuss the last issue that the petitioner raised because of our findings that the appeal was

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[28] *Rollo*, pp. 86-87.

[29] *Id.* at 86-87.

[30] *Id.* at 24-25.

not perfected. The non-perfection of the appeal therefore closes any possibility of reviewing the December 19, 2005 Resolution of the trial court, since the same has become final and executory.

WHEREFORE, in consideration of the above-findings and jurisprudence, we **DENY** the instant Petition.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 194306. February 6, 2012]

SEBASTIAN F. OASAY, JR., *petitioner, vs.* **PALACIO DEL GOBERNADOR CONDOMINIUM CORPORATION and/or OMAR T. CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED IN A PETITION FOR REVIEW ON *CERTIORARI*. — At the crux of the instant controversy is the validity of the termination of the petitioner's employment with PDGCC. At the outset, we stress that the question of whether the petitioner was illegally dismissed is a question of fact as the determination of which entails an evaluation of the evidence on record. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*. x x x Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA. Verily, 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 these rules.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SUBSTANTIVE REQUIREMENTS FOR A LAWFUL TERMINATION. — The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, *first*, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And *second*, whether the dismissal is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.

3. ID.; ID.; ID.; RESPONDENT COMPANY'S TERMINATION OF PETITIONER'S EMPLOYMENT WAS FOR A CAUSE PROVIDED UNDER THE LABOR CODE; LOSS OF TRUST AND CONFIDENCE. — On the substantive aspect, we find that PDGCC's termination of the petitioner's employment was for a cause provided under the Labor Code. Article 282 of the Labor Code states: Article 282. *TERMINATION BY EMPLOYER*. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or **willful breach by the employee of the trust reposed in him by his employer or duly authorized representative**; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) Other causes analogous to the foregoing. In terminating the petitioner's employment, PDGCC invoked loss of trust and confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. Verily, the Court must first determine if the petitioner holds such a position.

4. ID.; ID.; ID.; ID.; ID.; RESPONDENT COMPANY HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT PETITIONER'S ACTS JUSTIFIED ITS LOSS OF TRUST AND CONFIDENCE ON THE FORMER. — It is indubitable that the petitioner holds a position of trust and confidence. The position of Building Administrator, being managerial in nature, necessarily enjoys the trust and confidence of the employer. The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary. PDGCC had established, by clear and convincing evidence, the petitioner's acts which justified its loss of trust and confidence on the former.

5. ID.; ID.; ID.; ID.; ID.; PETITIONER'S RECEIPT OF ADDITIONAL INCOME FOR OVERTIME WORK RENDERED FOR THE COMMISSION ON ELECTIONS IS UNAUTHORIZED CONSIDERING THAT RESPONDENT COMPANY IS HIS EMPLOYER AND NOT THE COMMISSION ON ELECTIONS. — The petitioner profusely claims that his receipt of additional income from overtime work rendered for the COMELEC could not be made as a basis to terminate his employment. He asserts that there is nothing amiss when he rendered overtime work as it was authorized by the COMELEC. We disagree. What escapes the foregoing argument of the petitioner is that he is an employee of PDGCC and not of the COMELEC. It is undisputed that PDGCC did not authorize nor was it informed of the services rendered by the petitioner in favor of the COMELEC. To make matters worse, the said services rendered by the petitioner are, essentially, related to the performance of his duties as a Building Administrator of the condominium.

6. ID.; ID.; DUE PROCESS REQUIREMENTS IN TERMINATION CASES. — We find that PDGCC had observed due process in effecting the dismissal of the petitioner. With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought — and this may

loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled.

7. ID.; ID.; ID.; ID.; "TWO NOTICE" RULE; COMPLIED WITH IN CASE AT BAR. — PDGCC complied with the "two-notice rule" stated above. PDGCC complied with the first notice requirement, *i.e.* notice informing the petitioner of his infractions, as shown by the following: (1) the Memorandum dated September 27, 2005 sent by Cruz to the petitioner requiring the latter to explain and to submit his report on the additional compensation he received from COMELEC; and (2) the letter dated December 9, 2005 sent by Cruz to the petitioner requiring him to explain why he allowed the EGB Security Investigation and General Services, Inc. to render services to the condominium. The second notice requirement was likewise complied with by PDGCC when it sent to the petitioner the Memorandum dated October 28, 2006 which, in essence, informed the latter that a new Building Administrator had been appointed. It was stated in the said Memorandum that the decision to appoint a new Building Administrator was due to the fact that the PDGCC Board of Directors found the petitioner's explanation to the charges against him unsatisfactory.

APPEARANCES OF COUNSEL

Lameyra Law Office for petitioner.
The Government Corporate Counsel for respondents.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Sebastian F. Oasay, Jr. (petitioner)

assailing the Decision[1] dated August 27, 2010 and Resolution[2] dated October 29, 2010 issued by the Court of Appeals (CA) in CA-G.R. SP No. 107843.

Respondent Palacio Del Gobernador Condominium Corporation (PDGCC) is a government-owned and controlled corporation organized for the purpose of owning and arranging the common areas of Palacio Del Gobernador Condominium. The said condominium, all the units therein having been acquired by the government, houses various government agencies such as the Commission on Elections (COMELEC), Bureau of Treasury and the Intramuros Administration. On June 1, 1994, the petitioner was appointed by the PDGCC as its Building Administrator for a three-month probationary period. Consequently, the Board of Directors of PDGCC, through its Board Resolution No. 013[3] dated October 27, 1994, appointed the petitioner as its permanent Building Administrator effective September 1, 1994.

In a Memorandum[4] dated September 27, 2005, PDGCC President Omar T. Cruz (Cruz) required the petitioner to submit a written report on the allowances and other compensation, in connection with his duties as Building Administrator, that he received from the government offices housed in the condominium. Apparently, the petitioner had been earning additional income for services that he rendered for the COMELEC.

On October 3, 2005, the petitioner submitted his written report[5] wherein he admitted that he had received additional compensation from the COMELEC for services which he rendered after his regular working hours and on Saturdays, Sundays and holidays. He explained that the COMELEC had caused the rehabilitation

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Rosalinda Asuncion-Vicente and Rodil V. Zalameda, concurring; *rollo*, pp. 29-48.

[2] *Id.* at 49-50.

[3] *Id.* at 213.

[4] *Id.* at 146.

[5] *Id.* at 147-150.

of the 8th floor of the condominium and that he was tasked by the former, for a stated compensation, to supervise and monitor the rehabilitation.

The PDGCC Board of Directors referred the petitioner's written report to Atty. Alberto A. Bernardo (Atty. Bernardo), the Assistant Secretary for Internal Audit, Office of the President and PDGCC Board Member, for study.

Meanwhile, Cruz sent a letter[6] dated December 9, 2005 to the petitioner requiring the latter to explain why he allowed the EGB Security Investigation and General Services, Inc., despite its lack of license to operate as a security agency, to render services to the condominium to the detriment of PDGCC. Consequently, the petitioner sent Cruz a letter[7] dated January 12, 2006 denying any liability on the said matter as he had no power to award any contract as it is the function of the Bids and Awards Committee of PDGCC.

In a letter[8] dated February 16, 2006, after investigating the allegations against the petitioner, Atty. Bernardo recommended to Cruz and the PDGCC Board of Directors the filing of appropriate charges against the petitioner for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). Attached to the said letter was a detailed outline report[9] prepared by Atty. Bernardo which specified the acts committed by the petitioner which led him to recommend the filing of appropriate charges against the latter.

With respect to the petitioner's receipt of additional compensation from the COMELEC, Atty. Bernardo opined that the services which the former rendered for the latter relates to the duties which he actually performs pursuant to the functions

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[6] *Id.* at 203.

[7] *Id.* at 246-247.

[8] *Id.* at 164.

[9] *Id.* at 166-202.

of his office as Building Administrator.[10] Atty. Bernardo further stated that, in rendering the said services for the COMELEC, the petitioner acted with evident bad faith as he did not seek the permission of PDGCC nor did he inform COMELEC that he was not authorized by PDGCC to do so.[11]

Likewise, Atty. Bernardo found that the petitioner, as member of the Bids and Awards Committee, maneuvered the bidding process for the security services for the condominium to favor EGB Security Investigation and General Services, Inc. – a security agency which lacks the necessary license to operate as such.[12]

In a letter[13] dated March 16, 2006, the petitioner asked the PDGCC Board of Directors and Cruz to allow him to avail of an early retirement in view of the latter's decision to hand over the administration of the condominium to the Bureau of Treasury. The foregoing request was reiterated in the petitioner's letter[14] dated May 10, 2006.

On October 28, 2006, Cruz sent the petitioner a Memorandum[15] informing him that the PDGCC Board of Directors found his answers to the allegations against him unsatisfactory and, thus the Bureau of Treasury was being appointed as the new Building Administrator. Cruz then directed the petitioner to turn over all of his accountabilities to PDGCC. The foregoing was acknowledged by the petitioner in his letter[16] to the PDGCC Board of Directors dated November 17, 2006.

Nevertheless, on January 23, 2007, the petitioner filed a Complaint[17] for constructive dismissal with the arbitration branch

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[10] *Id.* at 168.

[11] *Id.* at 169.

[12] *Id.* at 187, 190.

[13] *Id.* at 206.

[14] *Id.* at 207-209.

[15] *Id.* at 210.

[16] *Id.* at 212.

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

of the National Labor Relations Commission (NLRC) in Quezon City against PDGCC and Cruz, with claims for service incentive leave pay, retirement benefits, PERA differential as well as performance bonus and incentive bonus on important projects and damages.

For its part, PDGCC claimed that the petitioner was not a regular employee, serving as a Building Administrator on a yearly basis depending on the PDGCC Board of Directors' discretion.[18] Further, on the assumption that the petitioner is a regular employee, PDGCC asserted that the petitioner was not illegally dismissed as it was based on a just cause for terminating an employment, *i.e.* loss of trust and confidence for receiving unlawful additional compensation for work rendered without its authority.[19]

On November 12, 2007, the Labor Arbiter (LA) rendered a Decision[20] dismissing the petitioner's complaint, finding that there was substantial evidence to conclude that the petitioner had breached the trust and confidence of PDGCC.

On appeal, the NLRC, on June 2, 2008, rendered a Decision[21] upholding the findings of the LA. Nonetheless, invoking equity, the NLRC awarded the petitioner separation pay equivalent to one and a half (1 ½) months pay for every year of service.

The petitioner sought a reconsideration of the June 2, 2008 Decision of the NLRC.[22] PDGCC likewise filed a motion for partial reconsideration of the same decision seeking the review of the award of separation pay to the petitioner. In a Resolution[23] dated December 23, 2008, the NLRC denied the foregoing motions. Thus, the petitioner and PDGCC both filed a petition for *certiorari* with the CA, the former seeking a review of the

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[18] *Id.* at 115-117.

[19] *Id.* at 117-121.

[20] *Id.* at 280-286.

[21] *Id.* at 74-88.

[22] *Id.* at 321-327.

[23] *Id.* at 89-90.

validity of his dismissal and the latter seeking a reversal of the award for separation pay.

On August 27, 2010, the CA rendered the herein assailed Decision[24] dismissing the petition for *certiorari* filed by the petitioner and granted the PDGCC's prayer for a reversal of the award for separation in favor of the former. The *fallo* of the said decision reads:

> **WHEREFORE,** in view of the foregoing premises, **CA-G.R. SP. No. 107843** appealing the finding of just dismissal is hereby **DISMISSED** for lack of merit while **CA-G.R. SP. No. 107925** questioning the award of separation pay to [petitioner] is hereby **GRANTED**. The assailed decision and resolution of the NLRC, insofar as it awards separation pay to [the petitioner], are hereby **REVERSED and SET ASIDE** and a new judgment is hereby entered finding [petitioner's] dismissal to be valid and for just cause and without any entitlement to separation pay.
>
> **SO ORDERED.**[25]

In denying the petition for *certiorari* filed by the petitioner, the CA held that there was a valid ground for the petitioner's dismissal. Thus:

> The services Oasay rendered for COMELEC were well within his duties as building administrator. In extending his hours of work and rendering duties within the scope of his work for a fee absent the consent from PDGCC, Oasay abused his position as building administrator and is guilty of contracting his services to PDGCC's occupants to the detriment of PDGCC. Not only did he maliciously used his position for personal gain, he also misused PDGCC's name and the goodwill it extended to its tenants by rendering his services for a fee in the guise of being authorized to do so when in truth and in fact there was no prior consent given by PDGCC regarding such matter.
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> On the same note, after an investigation uncovered that Oasay, in connivance with the other members of the BAC, violated the standard

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[24] *Supra* note 1.

[25] *Rollo*, pp. 47-48.

bidding process required by law when he allowed the employment and retention of services of EGB Security Agency despite its disqualification and paid the salaries of the agency's security guards out of PDGCC funds are enough reasons for PDGCC to breed mistrust and doubt Oasay's trustworthiness. In fact, the results of the investigation even prompted PDGCC to file criminal and administrative charges against Oasay.[26]

Moreover, the CA deleted the award of separation pay in favor of the petitioner as he was dismissed for an act which constitutes a palpable breach of trust in him.

Thereupon, the petitioner sought a reconsideration[27] of the August 27, 2010 Decision, but it was denied by the CA in its Resolution[28] dated October 29, 2010.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court alleging the following arguments: (1) the petitioner did not violate the trust and confidence of PDCGG; (2) his right to procedural due process was violated; and (3) he was illegally dismissed and, hence, entitled to all the benefits and monetary award given to illegally dismissed employees.

In its Comment,[29] PDCGG asserts that the petitioner is not its regular employee and that the dismissal of the petitioner was for just cause, the same being part of its management prerogative.

The petition is denied.

At the crux of the instant controversy is the validity of the termination of the petitioner's employment with PDGCC.

At the outset, we stress that the question of whether the petitioner was illegally dismissed is a question of fact as the determination of which entails an evaluation of the evidence on

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[26] *Id.* at 44-45.

[27] *Id.* at 355-359.

[28] *Supra* note 2.

[29] *Rollo*, pp. 371-385.

record. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*.

In *La Union Cement Workers Union v. National Labor Relations Commission*,[30] we stressed that:

> As an overture, clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. We therefore take this opportunity again to reiterate that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[31]

Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the CA.[32]

Verily, 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 these rules.

Nevertheless, even if we are to disregard the foregoing, the instant petition would still fail. A perusal of the allegations, issues and arguments set forth by the petitioner would readily

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[30] G.R. No. 174621, January 30, 2009, 577 SCRA 456.

[31] *Id.* at 462.

[32] *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353, 364.

show that the CA did not commit any reversible error as to warrant the exercise of the Court's appellate jurisdiction.

The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, *first*, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And *second*, whether the dismissal is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.[33]

On the substantive aspect, we find that PDGCC's termination of the petitioner's employment was for a cause provided under the Labor Code.

Article 282 of the Labor Code states:

Article 282. *TERMINATION BY EMPLOYER*. — An employer may terminate an employment for any of the following causes:

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

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

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

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

(e) Other causes analogous to the foregoing. (emphasis supplied)

In terminating the petitioner's employment, PDGCC invoked loss of trust and confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee

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[33] *Erector Advertising Sign Group, Inc. v. Cloma*, G.R. No. 167218, July 2, 2010, 622 SCRA 665, 674, citing *Pepsi Cola Distributors of the Philippines, Inc. v. NLRC*, 338 Phil .773, 779 (1997); and *New Ever Marketing, Inc. v. CA*, 501 Phil. 575, 585 (2005).

concerned must be holding a position of trust and confidence. Verily, the Court must first determine if the petitioner holds such a position.[34]

Here, it is indubitable that the petitioner holds a position of trust and confidence. The position of Building Administrator, being managerial in nature, necessarily enjoys the trust and confidence of the employer.

The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[35]

PDGCC had established, by clear and convincing evidence, the petitioner's acts which justified its loss of trust and confidence on the former. On this score, the LA keenly observed that:

> Complainant's breach of the trust reposed in him as Building Administrator is sufficiently supported by the evidence on record. Complainant's admission that he received remuneration from Commission on Elections (COMELEC) whose office is housed at respondent Palacio Del Gobernador Condominium justified his termination of employment. Complainant cannot assert that he rendered services to COMELEC only after office hours as his functions as Building Coordinator would definitely have favored COMELEC in the performance of his functions during regular office hours.
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> Likewise, as Building Administrator, his active vigilance in reporting and informing the respondents as to the expired license to operate of the EGB Security Agency and its revoked SEC Certificate of Registration was his duty and look-out. In the instant case, complainant instead of informing the respondents, kept this

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[34] *Abel v. Philex Mining Corporation,* G.R. No. 178976, July 31, 2009, 594 SCRA 683, 693.

[35] *Id*., at 694, citing *Equitable Banking Corporation v. NLRC*, G.R. No. 102647, June 13, 1997, 273 SCRA 352, 376; and *Garcia v. NLR*C, 351 Phil. 961, 971 (1998).

information from the knowledge of the respondents and allowed the security agency to render security services to the premises of respondents despite its expired license and revoked SEC Certificate of Registration.[36]

Nonetheless, the petitioner profusely claims that his receipt of additional income from overtime work rendered for the COMELEC could not be made as a basis to terminate his employment. He asserts that there is nothing amiss when he rendered overtime work as it was authorized by the COMELEC.

We disagree. What escapes the foregoing argument of the petitioner is that he is an employee of PDGCC and not of the COMELEC. It is undisputed that PDGCC did not authorize nor was it informed of the services rendered by the petitioner in favor of the COMELEC. To make matters worse, the said services rendered by the petitioner are, essentially, related to the performance of his duties as a Building Administrator of the condominium.

On the procedural aspect, we find that PDGCC had observed due process in effecting the dismissal of the petitioner.

With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought ═ and this may loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled.[37]

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[36] *Rollo*, p. 284.

[37] *Supra* note 33, citing *Mendoza v. NLRC*, 350 Phil. 486, 496-497 (1998).

Here, PDGCC complied with the "two-notice rule" stated above. PDGCC complied with the first notice requirement, *i.e.* notice informing the petitioner of his infractions, as shown by the following: (1) the Memorandum dated September 27, 2005 sent by Cruz to the petitioner requiring the latter to explain and to submit his report on the additional compensation he received from COMELEC; and (2) the letter dated December 9, 2005 sent by Cruz to the petitioner requiring him to explain why he allowed the EGB Security Investigation and General Services, Inc. to render services to the condominium.

The second notice requirement was likewise complied with by PDGCC when it sent to the petitioner the Memorandum dated October 28, 2006 which, in essence, informed the latter that a new Building Administrator had been appointed. It was stated in the said Memorandum that the decision to appoint a new Building Administrator was due to the fact that the PDGCC Board of Directors found the petitioner's explanation to the charges against him unsatisfactory.

All told, we find that no error has been committed by the CA in ruling that the termination of the petitioner's employment was for a cause and that, in doing so, PDGCC complied with the "two-notice" procedural due process requirement.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The assailed Decision dated August 27, 2010 and Resolution dated October 29, 2010 issued by the Court of Appeals in CA-G.R. SP No. 107843 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 199150. February 6, 2012]

CARMINA G. BROKMANN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *ESTAFA*; DECEIT IS NOT AN ESSENTIAL REQUISITE OF *ESTAFA* BY ABUSE OF CONFIDENCE; THE BREACH OF CONFIDENCE TAKES THE PLACE OF FRAUD OR DECEIT, WHICH IS A USUAL ELEMENT IN THE OTHER *ESTAFAS*. — Except for the penalty imposed, we find no reversible error in the CA's decision. First, the offense of *estafa,* in general, is committed either by (a) abuse of confidence or (b) means of deceit. The acts constituting *estafa* committed with abuse of confidence are enumerated in item (1) of Article 315 of the Revised Penal Code, as amended; item (2) of Article 315 enumerates *estafa* committed by means of deceit. Deceit is not an essential requisite of *estafa* by abuse of confidence; the breach of confidence takes the place of fraud or deceit, which is a usual element in the other *estafas*. In this case, the charge against the petitioner and her subsequent conviction was for *estafa* committed by abuse of confidence. Thus, it was not necessary for the prosecution to prove deceit as this was not an element of the *estafa* that the petitioner was charged with. Second, the cases cited by the petitioner are inapplicable. Our pronouncements in *Singson* and *Ojeda* apply to *estafa* under Article 315, paragraph 2(d) where the element of deceit was necessary to be proven.

2. ID.; PENALTIES; MODIFICATION OF THE PENALTY IMPOSED BY THE COURT OF APPEALS AND THE TRIAL COURT CONFORM TO PREVAILING JURISPRUDENCE. — We find the modification of the penalty imposed to be in order to conform to the prevailing jurisprudence. The second paragraph of Article 315 provides the appropriate penalty if the value of the thing, or the amount defrauded, exceeds ₱22,000.00: *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not

exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. The minimum term of imprisonment imposed by the CA and the RTC does not conform with the Court's ruling in *People v. Temporada,* where we held that the minimum indeterminate penalty in the above provision shall be one degree lower from the prescribed penalty for *estafa* which is anywhere within the range of *prision correccional*, in its minimum and medium periods, or six (6) months and one (1) day to four (4) years and two (2) months. In this case, the minimum term imposed by the CA and the RTC of six (6) years and six (6) months of *prision mayor* is modified to four (4) years and two (2) months of *prision correccional,* consistent with the prevailing jurisprudence.

APPEARANCES OF COUNSEL

Renato M. Cervantes for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

We review, pursuant to Rule 45 of the Rules of Court, the decision[1] and the resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 31887 which denied the appeal of Carmina G. Brokmann (*petitioner*). The CA affirmed the judgment[3] of the Regional Trial Court (*RTC*), Branch 132, Makati City, convicting the petitioner of the crime of *estafa,* defined and

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[1] Dated May 4, 2011; penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justices Stephen C. Cruz and Agnes Reyes-Carpio. *Rollo,* pp. 27-41.

[2] Dated October 26, 2011; *id.* at 42-43.

[3] Dated February 13, 2008; penned by Judge Rommel O. Baybay. *Id.* at 63-69.

penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

As borne by the records, the criminal charge stemmed from the failure of the petitioner to return or remit the proceeds of jewelries amounting to ₱1,861,000.00. The prosecution anchored its case on the testimony of Anna de Dios (*private complainant*), and the Memorandum of Agreement (*MOA*) executed between the private complainant and the petitioner. The gist of the MOA provides: (1) the petitioner's acknowledgment and receipt, on various dates, of jewelries from the private complainant amounting to ₱1,861,000.00; (2) the petitioner failed to remit the proceeds of the sale of the subject jewelries; and (3) the private complainant filed the *estafa* case against the petitioner for the non-remittance of the proceeds of the sale of the jewelries.

The petitioner asserted in defense her lack of bad faith and intention to deceive the private complainant. She narrated that she and the private complainant had been engaged in the buy and sell of jewelries for 15 years. She admitted receiving the subject jewelries on a consignment basis but she averred that not all the jewelries were sold. The petitioner emphasized that she made partial payments of her obligation and had no intention of absconding. With respect to the MOA, she insisted that there was no period in the agreed terms as to when the remittance of the proceeds for the sale of the jewelries or the return of the unsold jewelries should be made.

The RTC found the petitioner liable for *estafa,* and sentenced the petitioner to imprisonment of six (6) years and six (6) months of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal,* as maximum.[4] The RTC also ordered the petitioner to restitute the private complainant ₱1,047,720.00 as actual damages.

The petitioner appealed the judgment of the RTC to the CA which affirmed the petitioner's conviction. The CA held:

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[4] *Supra* note 3, at 69.

As to the first element, without a doubt[,] appellant acquired material possession of the jewelry. She admitted that she received the subject pieces of jewelry from De Dios.

x x x x x x x x x

Additionally, by the terms and conditions of the memorandum of agreement, Brokmann agreed to hold in trust the said pieces of jewelry for the purpose of selling them to the customers and with the obligation to remit the proceeds of those sold and return the items unsold. What was created was an agency for the sale of jewelry, in which Brokmann as an agent has the duty to return upon demand of its owner, herein appellee.

On the second element, misappropriation was clearly evident. Appellee sent a demand letter to appellant, reminding the latter of her subsisting obligation, however, it was simply ignored. x x x. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation. x x x.

x x x x x x x x x

The third element, it is apparent that appellee was prejudiced when appellant did not return the pieces of jewelry upon her demand. x x x. Damage as an element of estafa may consist in – 1) the offended party being deprived of his money or property as a result of the defraudation; 2) disturbance in property right; or 3) temporary prejudice. x x x.

Lastly, **the fourth element,** it has duly been established that appellee demanded for the payment and return of the pieces of jewelry, however, the same was unheeded.[5] (Emphases supplied.)

The petitioner elevated her judgment of conviction to the Court under Rule 45 of the Rules of Court.

The Issue

The petitioner raises the sole issue of whether the CA committed a reversible error in affirming the judgment of the RTC finding her guilty of *estafa* beyond reasonable doubt.

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[5] *Supra* note 1, at 37-39.

The petitioner prays for her acquittal for the prosecution's failure to prove the element of deceit. She argues that her actions prior to, during and after the filing of the *estafa* case against her negated deceit, ill-motive and/or bad faith to abscond with her obligation to the private complainant. She cites the cases of *People v. Singson*[6] and *People v. Ojeda*[7] where the Court acquitted the accused for the failure of the prosecution to prove the element of deceit.

The Court's Ruling

Except for the penalty imposed, we find no reversible error in the CA's decision.

First, the offense of *estafa*, in general, is committed either by (a) abuse of confidence or (b) means of deceit.[8] The acts constituting *estafa* committed with abuse of confidence are enumerated in item (1) of Article 315 of the Revised Penal Code, as amended; item (2) of Article 315 enumerates *estafa* committed by means of deceit. Deceit is not an essential requisite of *estafa* by abuse of confidence; the breach of confidence takes the place of fraud or deceit, which is a usual element in the other *estafas*.[9] In this case, the charge against the petitioner and her subsequent conviction was for *estafa* committed by abuse of confidence. Thus, it was not necessary for the prosecution to prove deceit as this was not an element of the *estafa* that the petitioner was charged with.

Second, the cases cited by the petitioner are inapplicable. Our pronouncements in *Singson* and *Ojeda* apply to *estafa* under Article 315, paragraph 2(d) where the element of deceit was necessary to be proven.

Nevertheless, we find the modification of the penalty imposed to be in order to conform to the prevailing jurisprudence. The

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[6] G.R. No. 75920, November 12, 1992, 215 SCRA 534.

[7] G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

[8] *Sy v. People*, G.R. No. 183879, April 14, 2010, 618 SCRA 264, 270.

[9] *Chua-Burce v. Court of Appeals*, 387 Phil. 15, 25 (2000).

second paragraph of Article 315 provides the appropriate penalty if the value of the thing, or the amount defrauded, exceeds ₱22,000.00:

> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years.

The minimum term of imprisonment imposed by the CA and the RTC does not conform with the Court's ruling in *People v. Temporada*,[10] where we held that the minimum indeterminate penalty in the above provision shall be one degree lower from the prescribed penalty for *estafa* which is anywhere within the range of *prision correccional*, in its minimum and medium periods, or six (6) months and one (1) day to four (4) years and two (2) months. In this case, the minimum term imposed by the CA and the RTC of six (6) years and six (6) months of *prision mayor* is modified to four (4) years and two (2) months of *prision correccional*, consistent with the prevailing jurisprudence.

ACCORDINGLY, premises considered, we **AFFIRM with MODIFICATION** the decision dated May 4, 2011 and the resolution dated October 26, 2011 of the Court of Appeals in CA-G.R. CR No. 31887. We find petitioner Carmina G. Brokmann GUILTY beyond reasonable doubt of *estafa* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended. We MODIFY the penalty imposed and sentence her to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum term, to twenty (20) years of *reclusion temporal*, as maximum term.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[10] G.R. No. 173473, December 17, 2008, 574 SCRA 258, 302.

EN BANC

[G.R. Nos. 153304-05. February 7, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN (FOURTH DIVISION), IMELDA R. MARCOS, JOSE CONRADO BENITEZ and GILBERT C. DULAY,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; WHEN JUDGMENT OF ACQUITTAL MAY BE REVIEWED WITHOUT VIOLATING THE RULE ON DOUBLE JEOPARDY. — We are called to overturn a judgment of acquittal in favor of the respondents brought about by the dismissal, for insufficiency of evidence, of the malversation charged in the two criminal cases. As a rule, once the court grants the demurrer, the grant amounts to an acquittal; any further prosecution of the accused would violate the constitutional proscription on double jeopardy. Notably, the proscription against double jeopardy only envisages appeals based on errors of judgment, but not errors of jurisdiction. Jurisprudence recognizes two grounds where double jeopardy will not attach, these are: (i) on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction; and/or (ii) where there is a denial of a party's due process rights. A judgment of acquittal sought to be reviewed on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction or on the ground of denial of due process implies an invalid or otherwise **void judgment**. If either or both grounds are established, the judgment of acquittal is considered void; as a void judgment, it is legally inexistent and does not have the effect of an acquittal. Thus, the defense of double jeopardy will not lie in such a case.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A REVIEW OF A DISMISSAL ORDER OF THE SANDIGANBAYAN GRANTING AN ACCUSED'S DEMURRER TO EVIDENCE

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[*] Per the petition for *certiorari*, Gilbert C. Dulay has remained at large and has not been arraigned. Thus, he never officially became an accused.

MAY BE DONE VIA THE SPECIAL ACTION OF *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; MERE ALLEGATION OF GRAVE ABUSE OF DISCRETION IS NOT ENOUGH. — A review of a dismissal order of the Sandiganbayan granting an accused's demurrer to evidence may be done *via* the special civil action of *certiorari* under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction. Mere allegations of grave abuse of discretion, however, are not enough to establish this ground; so also, mere abuse of discretion is not sufficient. On the petitioner lies the burden of demonstrating, **plainly and distinctly**, all facts essential to establish its right to a writ of *certiorari*.

3. ID.; ID.; ID.; PETITIONER MUST PROVE THAT PUBLIC RESPONDENT ACTED IN A CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER, AMOUNTING TO LACK OF JURISDICTION, IN THE EXERCISE OF ITS JUDGMENT. — In the present case, the petitioner particularly imputes grave abuse of discretion on the Sandiganbayan for its grant of the demurrer to evidence, without requiring the presentation of additional evidence and despite the lack of basis for the grant traceable to the special prosecutor's conduct. The special prosecutor's conduct allegedly also violated the State's due process rights. There is grave abuse of discretion when the public respondent acts in a capricious, whimsical, arbitrary or despotic manner, amounting to lack of jurisdiction, in the exercise of its judgment. An act is done without jurisdiction if the public respondent does not have the legal power to act or where the respondent, being clothed with the power to act, oversteps its authority as determined by law, or acts outside the contemplation of law. For the grant of the present petition, the petitioner must prove, based on the existing records, action in the above manner by the Sandiganbayan.

4. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; STATE'S RIGHT TO DUE PROCESS; THE STATE'S RIGHT TO BE HEARD IN COURT REST TO A LARGE EXTENT ON WHETHER THE PUBLIC PROSECUTOR PROPERLY UNDERTOOK HIS DUTIES IN PURSUING THE CRIMINAL ACTION FOR THE PUNISHMENT OF THE GUILTY. — In *People v. Leviste*, we stressed that the State, like any other litigant, is entitled

to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest. The State's right to be heard in court rests to a large extent on whether the public prosecutor properly undertook his duties in pursuing the criminal action for the punishment of the guilty. The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do. The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished. In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness.

5. ID.; ID.; ID.; THE CASE OF *MERCIALES* AND *VALENCIA* NOT ONLY SHOW THE EXISTING FACTUAL CONSIDERATIONS THAT LED TO THE CONCLUSION THAT THE PUBLIC PROSECUTOR WILLFULLY AND DELIBERATELY FAILED TO PERFORM ITS MANDATED DUTY TO REPRESENT THE STATE'S INTEREST, BUT STRESS AS WELL THAT THERE MUST BE SUFFICIENT FACTS ON RECORD SUPPORTING THE CONCLUSION. — The petitioner claims that the special prosecutor failed in her duty to give effective legal representation to enable the State to fully present its case against the respondents, citing *Merciales v. Court of Appeals* where we considered the following factual circumstances - (1) the public prosecutor rested the case *knowing fully well* that the evidence adduced was insufficient; (2) the refusal of the public prosecutor to present other witnesses available to take the stand; (3) the knowledge of the trial court of the insufficiency of the prosecution's evidence when the demurrer to evidence was filed

before it; and (4) the trial court's failure to require the presentation of additional evidence before it acted on the demurrer to evidence. All these circumstances effectively resulted in the denial of the State's right to due process, attributable to the inaction of the public prosecutor and/or the trial court. *Merciales* was followed by *Valencia v. Sandiganbayan,* where we recognized the violation of the State's right to due process in criminal proceedings because of sufficient showing that the special prosecutor *haphazardly* handled the prosecution. In upholding the prosecution's right to present additional evidence under the circumstances, *Valencia* took into account the fact that the former special prosecutor rested his case solely on the basis of a Joint Stipulation of Facts that was not even signed by the accused. These two cases, to our mind, not only show the existing factual considerations that led to the conclusion that the public prosecutor willfully and deliberately failed to perform his mandated duty to represent the State's interest, but stress as well that there must be sufficient facts on record supporting this conclusion. In the absence of these supporting facts, no conclusion similar to the *Merciales* and *Valencia* outcomes can be reached. The requirement for supporting factual premises finds complement in the general rule founded on public policy that the negligence or mistake of a counsel binds the client. While this rule admits of exceptions (as when the gross negligence of a counsel resulted in depriving the client of due process), the application of the exception likewise depends on a showing of facts on record demonstrating a clear violation of the client's due process rights.

6. ID.; ID.; ID.; STATE WAS NOT DENIED DUE PROCESS IN THE PROCEEDINGS BEFORE THE SANDIGANBAYAN; NO INDICATION THAT THE SPECIAL PROSECUTOR DELIBERATELY AND WILLFULLY FAILED TO PRESENT AVAILABLE EVIDENCE OR THAT OTHER EVIDENCE COULD BE SECURED. — In the present case, we find that the State was not denied due process in the proceedings before the Sandiganbayan. There was no indication that the special prosecutor deliberately and willfully failed to present available evidence or that other evidence could be secured. For purposes of clarity, we shall address the instances cited in the petition as alleged proof of the denial of the State's due process rights, and our reasons in finding them inadequate.

7. ID.; ID.; ID.; THE SPECIAL PROSECUTOR EXERTED REASONABLE EFFORTS TO PRESENT THE UNIVERSITY OF LIFE (UL) OFFICERS WHO EXECUTED AFFIDAVITS IN CONNECTION WITH THE ANOMALOUS TRANSFERS IN COURT BUT FAILED TO DO SO FOR REASONS BEYOND HER CONTROL. — Under the facts, and in the absence of indicators too that other persons could have testified, we cannot give weight to the petitioner's allegation that no efforts were exerted by the special prosecutor. On the contrary, we find under the circumstances that the special prosecutor exerted reasonable efforts to present these individuals in court, but failed to do so for reasons beyond her control. One of these reasons appears to be the simple lack of concrete evidence of irregularities in the respondents' handling of the MHS funds.

8. ID.; ID.; ID.; THE PRESENTATION OF THE RESIDENT AUDITOR WHO WOULD SIMPLY TESTIFY ON THE PHYSICAL INVENTORY OF THE MOTOR VEHICLES, OR THAT AN INSPECTION HAD BEEN CONDUCTED THEREON, WAS UNNECESSARY AND WILL NOT MATERIALLY REINFORCE THE PROSECUTION'S CASE. — Given the admissions regarding the existence of the motor vehicles, the presentation of the resident auditor who would simply testify on the physical inventory of the motor vehicles, or that an inspection had been conducted thereon, was unnecessary. Her presentation in court would not materially reinforce the prosecution's case; thus, the omission to present her did not deprive the State of due process. To repeat, the prosecution's theory of misappropriation was not based on the fact that the funds were not used to purchase motor vehicles, in which case, the testimony of the resident auditor would have had material implications. Rather, the prosecution's theory, as established by the records, shows that the imputed misappropriation stemmed from the registration of the motor vehicles in UL's name – an administrative lapse in light of the relationship of UL to MHS simply as an implementing agency.

9. ID.; ID.; ID.; NO BASIS EXISTS TO CONCLUDE THAT THE SPECIAL PROSECUTOR GROSSLY ERRED IN FAILING TO OPPOSE THE DEMURRER TO EVIDENCE. — The petitioner presents the special prosecutor's failure to oppose the demurrer to evidence as its last point and as basis for the

applicability of the *Merciales* ruling. The failure to oppose *per se* cannot be a ground for grave abuse of discretion. The real issue, to our mind, is whether the special prosecutor had basis to act as she did. As the point-by-point presentation above shows, the dismissal of the criminal cases cannot be attributed to any grossly negligent handling by the special prosecutor. To begin with, the prosecution's case suffered from lack of witnesses because, among others, of the time that elapsed between the act charged and the start of the actual prosecution in 1994; and from lack of sufficient preparatory investigation conducted, resulting in insufficiency of its evidence as a whole. In sum, in the absence of circumstances approximating the facts of *Merciales* and *Valencia*, which circumstances the petitioner failed to show, no basis exists to conclude that the special prosecutor grossly erred in failing to oppose the demurrer to evidence.

10. ID.; ID.; ID.; SINCE THE SPECIAL PROSECUTOR IS A STATE DELEGATE AND HAS ALL THE INCIDENTAL AND NECESSARY POWERS TO PROSECUTE THE CASE IN STATE'S BEHALF, HER ACTIONS BOUND THE STATE. — Neither are we persuaded by the petitioner's position that the special prosecutor's Manifestation of non-opposition to the demurrer needed to be submitted to, and approved by, her superiors. The petitioner's argument assumes that the special prosecutor lacked the necessary authority from her superiors when she filed her non-opposition to the demurrers to evidence. This starting assumption, in our view, is incorrect. The correct premise and presumption, since the special prosecutor is a State delegate, is that she had all incidental and necessary powers to prosecute the case in the State's behalf so that her actions as a State delegate bound the State. We do not believe that the State can have an unbridled discretion to disown the acts of its delegates at will unless it can clearly establish that its agent had been grossly negligent or was guilty of collusion with the accused or other interested party, resulting in the State's deprivation of its due process rights as client-principal.

11. ID.; ID.; ID.; WHAT THE RECORDS EMPHASIZED IN CASE AT BAR IS THE WEAKNESS OF THE PROSECUTION'S EVIDENCE AS A WHOLE RATHER THAN THE GROSS NEGLIGENCE OF THE SPECIAL PROSECUTOR. — Gross negligence exists where there is want, or absence of or failure

to exercise slight care or diligence, or the entire absence of care. It involves a thoughtless disregard of consequences without exerting any effort to avoid them. As the above discussions show, the State failed to clearly establish the gross negligence on the part of the special prosecutor (or to show or even allege that there was collusion in the principal case between the special prosecutor and the respondents) that resulted in depriving the petitioner of its due process rights; and, consequently prevent the application of the rule on double jeopardy. **If at all, what the records emphasized, as previously discussed, is the *weakness* of the prosecution's evidence as a whole rather than the gross negligence of the special prosecutor**. In these lights, we must reject the petitioner's position.

12. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION CANNOT BE ATTRIBUTED TO THE SANDIGANBAYAN WHEN IT EXERCISED RESTRAINT AND DID NOT REQUIRE THE PRESENTATION OF ADDITIONAL EVIDENCE GIVEN THE CLEAR WEAKNESS OF THE CASE AT THAT POINT. — Under the Rules on Criminal Procedure, the Sandiganbayan is under no obligation to require the parties to present additional evidence when a demurrer to evidence is filed. In a criminal proceeding, the burden lies with the prosecution to prove that the accused committed the crime charged beyond reasonable doubt, as the constitutional presumption of innocence ordinarily stands in favor of the accused. Whether the Sandiganbayan will intervene in the course of the prosecution of the case is within its exclusive jurisdiction, competence and discretion, provided that its actions do not result in the impairment of the substantial rights of the accused, or of the right of the State and of the offended party to due process of law. A discussion of the violation of the State's right to due process in the present case, however, is intimately linked with the gross negligence or the fraudulent action of the State's agent. The absence of this circumstance in the present case cannot but have a negative impact on how the petitioner would want the Court to view the Sandiganbayan's actuation and exercise of discretion. The court, in the exercise of its sound discretion, *may* require or allow the prosecution to present additional evidence (at its own initiative or upon a motion) after a *demurrer to evidence* is filed. This exercise, however, must be for good reasons and in

the paramount interest of justice. As mentioned, the court may require the presentation of further evidence if its action on the demurrer to evidence would patently result in the denial of due process; it may also allow the presentation of additional evidence if it is newly discovered, if it was omitted through inadvertence or mistake, or if it is intended to correct the evidence previously offered. In this case, we cannot attribute grave abuse of discretion to the Sandiganbayan when it exercised restraint and did not require the presentation of additional evidence, given the clear weakness of the case at that point. We note that under the obtaining circumstances, the petitioner failed to show *what and how additional available* evidence could have helped and the paramount interest of justice sought to be achieved. It does not appear that pieces of evidence had been omitted through inadvertence or mistake, or that these pieces of evidence are intended to correct evidence previously offered. More importantly, it does not appear that *these contemplated additional pieces of evidence (which the special prosecutor allegedly should have presented) were ever present and available.* For instance, at no point in the records did the petitioner unequivocally state that it could present the three UL officers, *Cueto, Jiao* and *Sison.* The petitioner also failed to demonstrate its possession of or access to these documents (such as the *final audit report*) to support the prosecution's charges — the proof that the State had been deprived of due process due to the special prosecutor's alleged inaction.

13. ID.; EVIDENCE; BEST EVIDENCE RULE; PRODUCTION OF THE ORIGINAL DOCUMENT MAY BE DISPENSED WITH IF THE OPPONENT DOES NOT DISPUTE THE CONTENTS OF THE DOCUMENT AND NO OTHER USEFUL PURPOSE WOULD BE SERVED BY REQUIRING ITS PRODUCTION. — Despite the Sandiganbayan's warning on June 7, 1996 that the various checks covering the cash advances for ₱40 Million were "photostatic" copies, the special prosecutor still failed to present the certified copies from the legal custodian of these commercial documents. The petitioner faults the special prosecutor for failing to present the original copies of the checks drawn out of the ₱21.6 Million and ₱17 Million combination account from the United Coconut Planters Bank (*UCPB*), as well as the ₱3.8 Million expense account with the same bank. The

presentation would have allegedly proven the misappropriation of these amounts. Records show that instead of presenting the original copies of these checks, the special prosecutor tried to establish, through the testimony of COA Auditor Cortez, that these checks were photocopied from the original checks in the possession of UCPB, which were obtained through the assistance of the UL management. Thus, while the originals of these checks were not presented, COA Auditor Cortez testified that the photostatic copies were furnished by the UCPB which had custody of the original checks. Further, the witness also testified that at the time she made the examination of these documents, the entries thereon were legible. She also presented a summary schedule of the *various micro film prints* of the UCPB checks that she examined. At any rate, we observe that the defense never objected to the submission of the photostatic copies of the UCPB checks as evidence, thus making the production of the originals dispensable. This was our view in *Estrada v. Hon. Desierto* where we ruled that the production of the original may be dispensed with if the opponent does not dispute the contents of the document and no other useful purpose would be served by requiring its production. In such case, we ruled that secondary evidence of the content of the writing would be received in evidence if no objection was made to its reception. We note, too, that in addition to the defense's failure to object to the presentation of photostatic copies of the checks, the petitioner failed to show that the presentation of the originals would serve a useful purpose, pursuant to our ruling in *Estrada*. We reiterate in this regard our earlier observation that other than enumerating instances in the petition where the State was allegedly deprived of due process in the principal case, no explanation was ever offered by the petitioner on how each instance resulted in the deprivation of the State's right to due process warranting the annulment of the presently assailed Sandiganbayan ruling.

14. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; THE PROSECUTION HAS TO PROVE THAT THE ACCUSED RECEIVED PUBLIC FUNDS OR PROPERTY THAT THEY COULD NOT ACCOUNT FOR, OR WAS NOT IN THEIR POSSESSION AND WHICH THEY COULD NOT GIVE A REASONABLE EXCUSE FOR THE DISAPPEARANCE OF SUCH PUBLIC FUNDS OR

PROPERTY. — To prove the misappropriation, the prosecution tried to establish that there was an irregularity in the procedure of liquidating these amounts on the basis of COA Auditor Cortez' testimony that the liquidation should have been made before the COA Chairman (not to the resident auditor of the MHS) because these funds were confidential. Quite evident from the prosecution's position is that it did not dispute whether a liquidation had been made of the whole amount of ₱60 Million; rather, what it disputed was the identity of the person before whom the liquidation should have been made. Before the directive of former President Marcos was made which declared the KSS funds (of which the ₱60 Million formed part) to be confidential, the liquidation of this amount must be made before the resident auditor of the MHS. With the issuance of the directive, liquidation should have been made to the COA Chairman who should have then issued a credit memo to prove proper liquidation. To justify conviction for malversation of public funds, the prosecution has to prove that the accused received public funds or property that they could not account for, or was not in their possession and which they could not give a reasonable excuse for the disappearance of such public funds or property. The prosecution failed in this task as the subject funds were liquidated and were not shown to have been converted for personal use by the respondents.

15. ID.; ID.; REGISTRATION OF THE MOTORCYCLES IN UNIVERSITY OF LIFE'S NAME ALONE DOES NOT CONSTITUTE MALVERSATION IN THE ABSENCE OF PROOF, BASED ON AVAILABLE EVIDENCE, TO ESTABLISH THAT RESPONDENT'S BENEFITED FROM THE REGISTRATION OR CONVERTED THE VEHICLES TO THEIR OWN PERSONAL USE. — With respect to the ₱17 Million, evidence adduced showed that 270 units of the motorcycles have already been transferred in the name of MHS by UL. There is also evidence that the audit team initially found nothing irregular in the documentation of the 500 motorcycles during the audit examination conducted in April 1986; the same goes for the eight cars purchased. Under the circumstances, we agree with the Sandiganbayan that registration of these vehicles in UL's name alone did not constitute malversation in the absence of proof, based on the available evidence, to establish that the respondents benefited from the registration

of these motor vehicles in UL's name, or that these motor vehicles were converted by the respondents to their own personal use. In the end, the prosecution's evidence tended to prove that the subject funds were actually used for their intended purpose.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rodolfo U. Jimenez for Imelda R. Marcos.
Maria Elena C. Ramiro for Jose Conrado Benitez and Gilbert Dulay.
Raul E. Espinosa for Rafael G. Zagala.

D E C I S I O N

BRION, *J.*:

Before us is a petition for *certiorari* filed by the People of the Philippines (*petitioner*) assailing the decision dated March 22, 2002 of the Sandiganbayan[1] in Criminal Case Nos. 20345 and 20346 which granted the demurrers to evidence filed by Imelda R. Marcos, Jose Conrado Benitez (*respondents*) and Rafael Zagala.

The Facts

The petition stemmed from two criminal informations filed before the Sandiganbayan, charging the respondents with the crime of malversation of public funds, defined and penalized under Article 217, paragraph 4 of the Revised Penal Code, as amended. The charges arose from the transactions that the respondents participated in, in their official capacities as Minister and Deputy Minister of the Ministry of Human Settlements (*MHS*) under the MHS' Kabisig Program.

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[1] Fourth Division. Penned by Associate Justice Narciso S. Nario, and concurred in by Associate Justice Nicodemo T. Ferrer, Associate Justice Teresita J. Leonardo-de Castro (now an Associate Justice of the Supreme Court) and Associate Justice Ma. Cristina G. Cortez-Estrada; Associate Justice Rodolfo G. Palattao dissented. *Rollo*, pp. 72-120.

In **Criminal Case No. 20345**, respondents, together with Gilbert C. Dulay, were charged with malversation of public funds, committed as follows:

That on or about April 6, 1984 or sometime and/or [subsequent] thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements and Gilbert C. Dulay being then [the] Assistant Manager for Finance, Ministry of Human Settlements, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract the total amount of ₱57.954 Million Pesos (*sic*), Philippine Currency from the funds of the Ministry of Human Settlements in the following manner: **accused Conrado Benitez approved the series of cash advances made and received by Gilbert C. Dulay, and made it appear that the funds were transferred to the University of Life, a private foundation represented likewise by Gilbert C. Dulay when in truth and in fact no such funds were transferred while Imelda R. Marcos concurred in the series of such cash advances approved by Jose Conrado Benitez and received by Gilbert C. Dulay and in furtherance of the conspiracy, in order to camouflage the aforesaid anomalous and irregular cash advances and withdrawals, Imelda R. Marcos requested that the funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and that the above-named accused, once in possession of the said aggregate amount of ₱57.954 Million Pesos (*sic*), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.**

CONTRARY TO LAW. [Emphasis ours][2]

In **Criminal Case No. 20346**, respondents together with Zagala were charged with malversation of public funds under these allegations:

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[2] *Id.* at 7-8.

That on or about April 6 to April 16, 1984[3] and/or sometime or subsequent thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements[,] and Rafael Zagala being then [the] Assistant Manager for Regional Operations and at the same time Presidential Action Officer, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith[,] did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract from the funds of the Ministry of Human Settlements the total amount of ₱40 Million Pesos (*sic*), Philippine Currency, in the following manner**: Jose Conrado Benitez approved the cash advances made by Rafael Zagala and Imelda R. Marcos concurred in the series of cash advances approved by Jose Conrado Benitez in favor of Rafael G. Zagala; and in furtherance of the conspiracy, Imelda R. Marcos in order to camouflage the aforesaid anomalous and irregular cash advances, requested that funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and the above-named accused, once in possession of the total amount of ₱40 Million Pesos (*sic*), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.**

CONTRARY TO LAW. [Emphasis ours][4]

Only the respondents and Zagala were arraigned for the above charges to which they pleaded not guilty; Dulay was not arraigned and remains at large. On March 15, 2000, Zagala died, leaving the respondents to answer the charges in the criminal cases.

After the pre-trial conference, a joint trial of the criminal cases ensued. The prosecution's chief evidence was based on the lone testimony of Commission of Audit (*COA*) Auditor

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[3] Records show that the transactions for these funds started on July 10, 1985, with the execution of the Memorandum of Agreement for ₱3.8 Million.

[4] *Rollo*, pp. 8-9.

Iluminada Cortez and the documentary evidence used in the audit examination of the subject funds.[5]

The gist of COA Auditor Cortez' direct testimony was summarized by the Sandiganbaya, as follows:

In Criminal Case No. 20345 –

[s]he was appointed on March 31, 1986 by then COA Chairman Teofisto Guingona, Jr. to head a team of COA auditors. Upon examination of the documents, she declared that an amount of ₱100 Million Pesos (*sic*) from the Office of Budget and Management was released for the KSS Project of the Ministry of Human Settlements (MHS) by virtue of an Advice of Allotment for Calendar Year 1984. Also, an amount of ₱42.4 Million Pesos (*sic*) was separately disbursed for the Kabisig Program of the Ministry of Human Settlements. With regard to the amount of ₱100 Million Pesos (*sic*) received by the MHS, ₱60 Million Pesos (*sic*) [was] disbursed through cash advances. Of the ₱60 Million Pesos (*sic*) in cash advances, accused Zagala received ₱40 Million Pesos (*sic*) in four (4) disbursements while accused Dulay received the remaining ₱20 Million Pesos (*sic*) in two disbursements.

With respect to accused Rafael Zagala, the cash advances consist of four (4) disbursement vouchers in the amount of ₱5 Million Pesos (*sic*), ₱10 Million Pesos (*sic*), ₱10 Million Pesos (*sic*) and ₱15 Million Pesos (*sic*). All of these vouchers are in the name of accused Zagala as claimant and accused Benitez as approving officer and are accompanied by their corresponding Treasury Warrants that were countersigned by accused Benitez and approved by accused Dulay.

In contrast, x x x a disbursement voucher in the amount of ₱10 Million Pesos (*sic*) was drawn in favor of accused Gilbert Dulay and approved by accused Benitez. Pursuant to this, a Treasury Warrant was issued to the order of accused Dulay, countersigned by accused Benitez and approved by accused Zagala. Another voucher was drawn in favor of accused Dulay in the amount of ₱10 Million Pesos (*sic*) and approved by accused Benitez. Again, a Treasury Warrant was issued to the order of accused Dulay in the amount of ₱10 Million Pesos (*sic*), which was countersigned by accused Benitez and approved by accused Zagala.

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[5] Formal Offer of Documentary Evidence, Exhibits "A" to "BB"; *id.* at 427-437.

x x x [A]ccused Marcos sent a letter to then President Ferdinand E. Marcos requesting that the fund intended for the KSS Project in the amount of ₱100 Million Pesos (*sic*) be deemed as "Confidential Fund."

x x x [T]he liquidation of accused Zagala's account, which was contained in a Journal Voucher dated November 27, 1984, was without any supporting documents. Upon this discovery, witness requested and secured a certification from the Manager of the National Government Audit Office to the effect that the COA did not receive any document coming from the MHS. However, this liquidation voucher which contained figures in the total amount of ₱50 Million Pesos (*sic*), comprised the entire cash advances of accused Zagala in the amount of ₱40 Million Pesos (*sic*) and the ₱10 Million Pesos (*sic*) cash advance made by accused Dulay. Since the amount of ₱10 Million Pesos (*sic*) was already contained in Zagala's Journal Voucher, the witness and her team of auditors tried to locate the remaining ₱10 Million Pesos (*sic*) and found out that accused Dulay had liquidated the same amount.[6] (footnotes omitted)

According to COA Auditor Cortez, Zagala's cash advances were supported by a liquidation report and supporting documents submitted to the resident auditor even before the ₱100 Million Kilusang Sariling Sikap (*KSS*) fund was made confidential.[7] The witness also testified that the COA resident auditor found no irregularity in this liquidation report.[8]

COA Auditor Cortez stated that since the ₱100 Million KSS fund was classified as confidential, the liquidation report should have been submitted to the COA Chairman who should have then issued a *credit memo*. No *credit memo* was ever found during the audit examination of the MHS accounts.[9] COA Auditor Cortez admitted that she did not verify whether the supporting documents of Zagala's cash advances were sent to the COA Chairman.[10]

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[6] *Id.* at 89-92.

[7] *Id.* at 101.

[8] *Ibid.*

[9] *Id.* at 102.

[10] *Ibid.*

Respondent Marcos was prosecuted because of her participation as Minister of the MHS, in requesting that the ₱100 Million KSS fund be declared confidential. Respondent Benitez was prosecuted because he was the approving officer in these disputed transactions.

In Criminal Case No. 20346 –

Regarding the Kabisig Program of the MHS, the COA team of auditors examined the vouchers of the MHS, which upon inspection revealed that there were at least three (3) memoranda of agreements entered into between the MHS and University of Life (UL). With reference to the first Memorandum of Agreement dated July 2, 1985, an amount of ₱21.6 Million Pesos (*sic*) was transferred by the MHS to the UL to pay for the operations of the Community Mobilization Program and the Kabisig Program of the MHS. Accused Benitez as the Deputy Minister of the MHS and accused Dulay as Vice President of the UL were the signatories of this agreement. Although there is no disbursement voucher in the records, it is admitted that a Treasury Warrant was drawn in the sum of ₱21.6 Million Pesos (*sic*). The second Memorandum of Agreement dated July 10, 1985 provided for a fund transfer in the amount of ₱3.8 Million Pesos (*sic*) for the Human Resources Development Plan of the MHS. Accordingly, a Disbursement Voucher certified by accused Dulay and approved by accused Benitez was drawn in the sum of ₱3.8 Million Pesos (*sic*). The third Memorandum of Agreement in the sum of ₱17 Million Pesos (*sic*) was granted for the acquisition of motor vehicles and other equipment to support the Kabisig Program of the MHS. For that reason, a Disbursement Voucher pertaining thereto accompanied by a Treasury Warrant was drafted.

Similarly, the witness declared that although they did not examine any of the records of the UL, the abovementioned sums were not received by the UL based on the affidavit of the UL Comptroller named Pablo Cueto. In the same way, an affidavit was executed by the UL Chief Accountant named Ernesto Jiao attesting that there is no financial transaction on record covering the purchase of motor vehicles. Again, witness Cortez admitted that they did not examine the books of the UL on this matter but only inquired about it from Mr. Jiao. The affidavit of Mr. Jiao with respect to the nonexistence of the purchases of motor vehicles was further corroborated by the affidavit of one Romeo Sison, who was the Administrative Assistant of the Property Section of the UL.

The respective treasury warrants representing the various sums of ₱21.6 Million Pesos (*sic*), ₱17 Million Pesos (*sic*) and ₱3.8 Million Pesos (*sic*) were subsequently deposited with the United Coconut Planters' Bank (UCPB), Shaw Blvd. Branch, Mandaluyong, under various accounts. Soon after, several checks were drawn out of these funds as evidenced by the Photostat copies recovered by the COA auditors. In the course of the testimony of the witness, she revealed that her team of auditors classified said several checks into different groups in accordance with the account numbers of the said deposits.

x x x [T]he amount of ₱3.8 Million Pesos (*sic*), the same was intended for the Human Resource Development Plan of the UL. x x x [T]he aforesaid amount is not a cash advance but rather paid as an expense account, which is charged directly as if services have already been rendered. Hence, UL is not mandated to render liquidation for the disbursement of ₱3.8 Million Pesos (*sic*).

The sums of ₱21.6 Million Pesos (*sic*) and ₱17 Million Pesos (*sic*) were deposited under x x x the name of the UL Special Account. Out of these deposits, the following first sequence of withdrawals of checks[11] payable either to its order or to cash x x x reached a total sum of ₱5,690,750.93 Million Pesos (*sic*).

The second list of checks[12] [which] consists of numerous [Manager's] Checks x x x reached the amount of ₱18,416,062.15.

A third set of checks allegedly consists of nine (9) ordinary checks and two (2) manager's checks in the sum of ₱1,971,568.00 and ₱4,566,712.18[,] respectively. x x x

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[11] A total of nine checks: (1) Check No. 282604 dated December 27, 1985; (2) Check No. 282606 dated January 28, 1986; (3) Check No. 282607 dated January 28, 1986; (4) Check No. 282608 dated January 29, 1986; (5) Check No. 282609 dated January 31, 1986; (6) Check No. 28610 dated January 31, 1986; (7) Check No. 282612 dated February 4, 1986; (8) Check No. 282616 dated February 18, 1986; and (9) Check No. 282618 dated February 20, 1986.

[12] A total of 10 checks: (1) Manager's Check No. 5280 dated January 15, 1986; (2) Manager's Check No. 5281 dated January 15, 1986; (3) Manager's Check No. 5283 dated January 15, 1986; (4) Manager's Check No. 5284 dated January 15, 1986; (5) Manager's Check No. 5363 dated January 28, 1986; (6) Manager's Check No. 5422 dated January 30, 1986; (7) Manager's Check No. 5468 dated January 31, 1986; (8) Manager's Check No. 5548 dated February 18, 1986; (9) Manager's Check No. 5549 dated February 12, 1986; and (10) Manager's Check No. 5641 dated February 27, 1986.

Moreover, [a] witness confirmed that as regards the amount of ₱17 Million Pesos (*sic*) intended for the acquisition of motor vehicles, ₱10.4 Million Pesos (*sic*) was spent for the purchase of some five hundred (500) units of motorcycles while ₱2.1 Million Pesos (*sic*) was used to procure eight (8) brand new cars. The balance of ₱4.5 Million Pesos (*sic*) was later refunded to the MHS. As regards the five hundred (500) units of motorcycle, the Presidential Task Force furnished the witness documents attesting to the transfers of some two hundred seventy-one (271) units of motorcycles from the UL to the MHS by virtue of Deed of Assignments allegedly executed on February 17, 1986. However, of the two hundred seventy-one (271) units of motorcycle, only one hundred ninety (190) units were covered with complete documents. With respect to the eight (8) brand new cars, the team of auditors did not see any registration papers. (footnotes omitted; underscorings ours)[13]

COA Auditor Cortez admitted that the audit team did not conduct a physical inventory of these motor vehicles; it based its report on the information given by the Presidential Task Force.[14] She emphasized that the audit team found it highly irregular that the motor vehicles were registered in the name of University of Life (*UL*) and not in the name of MHS; and for this reason, she believed that no proper liquidation was made of these vehicles by MHS.[15]

After COA Auditor Cortez' testimony, the prosecution submitted its formal offer of evidence and rested its case.

Subsequently, **separate motions to dismiss the criminal cases, by way of demurrers to evidence**, were filed by Zagala and the respondents on November 15, 1997, January 5, 1998 and January 28, 1998; on January 27, 1998, **the prosecution filed a Manifestation stating that it was not opposing the demurrers to evidence**.[16]

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[13] *Rollo*, pp. 92- 99.

[14] *Id.* at 100.

[15] *Ibid.*

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

The Sandiganbayan's Ruling

The Sandiganbayan granted the demurrers to evidence and acquitted the respondents in its assailed decision dated March 22, 2002. The dispositive portion of this decision reads:

> Wherefore, the Demurrers to Evidence are hereby granted. Accused Imelda R. Marcos, Jose Conrado Benitez and Gilbert C. Dulay are hereby acquitted of the crime of Malversation in Criminal Case No. 20435 for insufficiency of evidence to prove their guilt beyond reasonable doubt. Accused Imelda R. Marcos, Jose Conrado Benitez and Rafael G. Zagala are likewise acquitted of the offense of Malversation in Criminal Case No. 20346 for insufficiency of evidence in proving their guilt beyond reasonable doubt.[17]

In dismissing these criminal cases, the Sandiganbayan found no evidence of misappropriation of the subject funds in the two criminal cases considering the unreliability and incompleteness of the audit report.[18]

The Issues

The issues for our consideration are:

1. Whether the prosecutor's actions and/or omissions in these cases effectively deprived the State of its right to due process; and
2. Whether the Sandiganbayan gravely abused its discretion in granting the demurrers to evidence of the respondents.

The petitioner claims that the State was denied due process because of the nonfeasance committed by the special prosecutor in failing to present sufficient evidence to prove its case. It claims that the prosecutor failed to protect the State's interest in the proceedings before the Sandiganbayan. To support its position, petitioner cites the case of *Merciales v. Court of Appeals*[19] where the Court nullified the dismissal of the criminal

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

[18] *Id.* at 117-118.

[19] G.R. No. 124171, March 18, 2002, 379 SCRA 345, 352.

cases due to the serious nonfeasance committed by the public prosecutor.

The petitioner argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction that resulted in a miscarriage of justice prejudicial to the State's interest when it took the demurrers to evidence at face value instead of requiring the presentation of additional evidence, taking into consideration the huge amounts of public funds involved and the special prosecutor's failure to oppose the demurrers to evidence.

The Court's Ruling

We do not find the petition meritorious.

We are called to overturn a judgment of acquittal in favor of the respondents brought about by the dismissal, for insufficiency of evidence, of the malversation charged in the two criminal cases. As a rule, once the court grants the demurrer, the grant amounts to an acquittal; any further prosecution of the accused would violate the constitutional proscription on double jeopardy.[20] Notably, the proscription against double jeopardy only envisages appeals based on errors of judgment, but not errors of jurisdiction. Jurisprudence recognizes two grounds where double jeopardy will not attach, these are: (i) on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction;[21] and/or (ii) where there is a denial of a party's due process rights.[22]

A judgment of acquittal sought to be reviewed on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction or on the ground of denial of due process implies

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[20] *People v. Sandiganbayan (Fourth Division)*, G.R. No. 164185, July 23, 2008, 559 SCRA 449.

[21] *People v. Sandiganbayan*, G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185.

[22] *People v. Velasco*, G.R. No. 127444, September 13, 2000, 340 SCRA 207. A court certainly acts with grave abuse of discretion if it acts in violation of the due process rights of a party; but grave abuse of discretion is not limited to violation of the right to due process.

an invalid or otherwise **void judgment**. If either or both grounds are established, the judgment of acquittal is considered void; as a void judgment, it is legally inexistent and does not have the effect of an acquittal.[23] Thus, the defense of double jeopardy will not lie in such a case.[24]

Accordingly, a review of a dismissal order of the Sandiganbayan granting an accused's demurrer to evidence may be done *via* the special civil action of *certiorari* under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[25] Mere allegations of grave abuse of discretion, however, are not enough to establish this ground; so also, mere abuse of discretion is not sufficient.[26] On the petitioner lies the burden of demonstrating, **plainly and distinctly**, all facts essential to establish its right to a writ of *certiorari*.[27]

In the present case, the petitioner particularly imputes grave abuse of discretion on the Sandiganbayan for its grant of the demurrer to evidence, without requiring the presentation of additional evidence and despite the lack of basis for the grant traceable to the special prosecutor's conduct. The special prosecutor's conduct allegedly also violated the State's due process rights.

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[23] *People v. Sandiganbayan (Fourth Division), supra* note 20, at 460.

[24] *People v. Hernandez*, G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688.

[25] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393.

[26] *Marcelo B. Gananden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr. v. Honorable Office of the Ombudsman and Robert K. Humiwat*, G.R. Nos. 169359-61, June 1, 2011.

[27] *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 307. The petitioner must allege in the petition and establish facts to show that: (a) the *writ* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

There is grave abuse of discretion when the public respondent acts in a capricious, whimsical, arbitrary or despotic manner, amounting to lack of jurisdiction, in the exercise of its judgment.[28] An act is done without jurisdiction if the public respondent does not have the legal power to act or where the respondent, being clothed with the power to act, oversteps its authority as determined by law,[29] or acts outside the contemplation of law. For the grant of the present petition, the petitioner must prove, based on the existing records, action in the above manner by the Sandiganbayan.

I. State's right to due process

In *People v. Leviste*,[30] we stressed that the State, like any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest.[31] The State's right to be heard in court rests to a large extent on whether the public prosecutor properly undertook his duties in pursuing the criminal action for the punishment of the guilty.[32]

The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do.[33] The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and

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[28] *Ibid.*

[29] *Ibid.*

[30] G.R. No. 104386, March 28, 1996, 255 SCRA 238, 250.

[31] *Valencia v. Sandiganbayan*, G.R. No. 165996, October 17, 2005, 473 SCRA 279, 293.

[32] *Ibid.*

[33] *In re: The Hon. Climaco,* 154 Phil. 105 (1974).

meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished.[34] In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness.[35]

The petitioner claims that the special prosecutor failed in her duty to give effective legal representation to enable the State to fully present its case against the respondents, citing *Merciales v. Court of Appeals*[36] where we considered the following factual circumstances — (1) the public prosecutor rested the case *knowing fully well* that the evidence adduced was insufficient; (2) the refusal of the public prosecutor to present other witnesses available to take the stand; (3) the knowledge of the trial court of the insufficiency of the prosecution's evidence when the demurrer to evidence was filed before it; and (4) the trial court's failure to require the presentation of additional evidence before it acted on the demurrer to evidence. All these circumstances effectively resulted in the denial of the State's right to due process, attributable to the inaction of the public prosecutor and/or the trial court.

Merciales was followed by *Valencia v. Sandiganbayan*,[37] where we recognized the violation of the State's right to due process in criminal proceedings because of sufficient showing that the special prosecutor *haphazardly* handled the prosecution. In upholding the prosecution's right to present additional evidence under the circumstances, *Valencia* took into account the fact that the former special prosecutor rested his case solely on the basis of a Joint Stipulation of Facts that was not even signed by the accused.

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[34] *People v. Esquivel, et al.*, 82 Phil. 453 (1948).

[35] *Alvarez v. Court of Appeals*, 412 Phil. 137 (2001).

[36] *Supra* note 19.

[37] *Supra* note 31, at 293.

These two cases, to our mind, not only show the existing factual considerations[38] that led to the conclusion that the public prosecutor willfully and deliberately failed to perform his mandated duty to represent the State's interest, but stress as well that there must be sufficient facts on record supporting this conclusion. In the absence of these supporting facts, no conclusion similar to the *Merciales* and *Valencia* outcomes can be reached.

The requirement for supporting factual premises finds complement in the general rule founded on public policy[39] that the negligence or mistake of a counsel binds the client. While this rule admits of exceptions[40] (as when the gross negligence of a counsel resulted in depriving the client of due process), the application of the exception likewise depends on a showing of facts on record demonstrating a clear violation of the client's due process rights.

II. The factual premises cited in the petition and the issue of due process

In the present case, we find that the State was not denied due process in the proceedings before the Sandiganbayan. There was no indication that the special prosecutor deliberately and willfully failed to present available evidence or that other evidence could be secured. For purposes of clarity, we shall address the instances cited in the petition as alleged proof of the denial of the State's due process rights, and our reasons in finding them inadequate.

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[38] In *Merciales*, the failure to call witnesses who were plainly available; in *Valencia*, the submission of the case based on scanty evidence.

[39] Otherwise, there would never be an end to a suit so long as a new counsel could be employed who could allege and show that the former counsel had not been sufficiently diligent, experienced, or learned (*GSIS v. Bengson Comm'l. Bldgs., Inc.*, 426 Phil. 111 [2002]).

[40] The following are the recognized exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property, or (3) where the interests of justice so require (*APEX Mining, Inc. v. Court of Appeals*, 377 Phil. 482 [1999]).

First. The petitioner bewails the alleged lack of efforts by the special prosecutor to ascertain the last known addresses and whereabouts, and to compel the attendance of Pablo C. Cueto, Ernesto M. Jiao and Romeo F. Sison, UL officers who executed affidavits in connection with the alleged anomalous fund transfers from MHS to UL.

The special prosecutor likewise allegedly did not present the records of the UL to show that the sums under the Memoranda of Agreement were not received by UL (based on the affidavit of UL Comptroller Cueto) and that no financial transactions really took place for the purchase of the motor vehicles (based on the affidavit of UL Chief Accountant Jiao, as corroborated by the affidavit of UL Administrative Assistant Sison).

We note that, other than making a claim that these instances demonstrate the serious nonfeasance by the special prosecutor, the petitioner failed to offer any explanation showing how these instances deprived the State of due process. An examination of the records shows that the affidavits of Cueto,[41] Jiao and Sison surfaced early on to prove the alleged anomalous fund transfers from MHS to UL. The records further show that during the hearing of December 5, 1995 — when the special prosecutor was asked by the presiding judge what she intended to do with these affidavits — the special prosecutor replied that she *planned to present Jiao and Cueto* who were the chief accountant and the designated comptroller, respectively, of UL.[42] The same records, however, show that, indeed, an attempt had been made to bring these prospective witnesses to court; as early as April 20, 1994, subpoenas had been issued to these three individuals and these were all returned unserved because the subjects had RESIGNED from the service sometime in 1992, and their present whereabouts were unknown.[43]

We consider at this point that these individuals executed their respective affidavits on the alleged anomalous transactions

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[41] His affidavit was not included in the petition.

[42] TSN, December 5, 1995, p. 40.

[43] *Rollo*, p. 10.

between MHS and UL sometime in 1986; from that period on, and until the actual criminal prosecution started in 1994, a considerable time had elapsed bringing undesirable changes — one of which was the disappearance of these prospective witnesses.

Significantly, no evidence exists or has been submitted showing that the special prosecutor willfully and deliberately opted not to present these individuals. The petitioner also failed to show that the whereabouts of these individuals could have been located by the exercise of reasonable diligence in order to prove that the special prosecutor had been remiss in performing her duties. We can in fact deduce from the allegations in the petition that even at present, the petitioner has not and cannot ascertain the whereabouts of these prospective witnesses.

Further, the records show that the affidavits of these individuals (who denied the transfer of the funds in the amounts of ₱21.6 Million, ₱3.8 Million and ₱17 Million from MHS to UL) were *refuted by contrary evidence of the prosecution* itself. The records indicate that the special prosecutor presented treasury warrants and disbursement vouchers issued in the name of UL, bearing the respective amounts for transactions between MHS and UL.[44]

The special prosecutor admitted that the audit team failed to examine the records of UL to support the prosecution's allegation of an anomalous fund transfer. COA Auditor Cortez admitted, too, that the amounts (₱21.6 Million and ₱3.8 Million) were transferred[45] to UL[46] and that a portion of the amount of ₱17 Million, *i.e.*, ₱12.5 Million, was used to purchase 500 motorcycles and eight cars, while the remaining amount of ₱4.5 Million was refunded by UL to MHS.[47]

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[44] *Id.* at 465, 471, 477 and 479.

[45] On December 27, 1985 or the date stated in the treasury warrant.

[46] TSN, June 7, 1996, p. 21 and TSN, November 4, 1996, p. 28.

[47] TSN, February 24, 1997, pp. 9 and 17.

Under these facts, and in the absence of indicators too that other persons could have testified, we cannot give weight to the petitioner's allegation that no efforts were exerted by the special prosecutor. On the contrary, we find under the circumstances that the special prosecutor exerted reasonable efforts to present these individuals in court, but failed to do so for reasons beyond her control. One of these reasons appears to be the simple lack of concrete evidence of irregularities in the respondents' handling of the MHS funds.

Second. The petitioner alleged that the special prosecutor failed to present the resident auditor to testify on the physical inventory of the vehicles, or to produce documents showing that an inspection was conducted on the vehicles.

The prosecution's theory, as the records would show, was to prove that there had been misappropriation of funds since the motor vehicles were registered in UL's name instead of the MHS.[48] In this regard, the special prosecutor presented COA Auditor Cortez who testified that the audit team did not assail the existence of the motor vehicles and she also did not dispute that the amount of ₱12.5 Million (out of ₱17 Million) was used to purchase 500 motorcycles and eight cars. The witness stated that the audit team was more concerned with the documentation of the disbursements made rather than the physical liquidation (inventory) of the funds.[49] The witness further explained that it was the Presidential Task Force which had the duty to keep track of the existence of the motor vehicles.[50] She reiterated that the audit team was only questioning the registration of the vehicles; it never doubted that the vehicles were purchased.[51]

More importantly, COA Auditor Cortez stated that at the time the team made the audit examination in April 1986, 500 registration papers supported the purchase of these motorcycles;[52]

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[48] *Id.* at 23 and 29.

[49] *Id.* at 24.

[50] *Id.* at 21.

[51] *Id.* at 29.

[52] TSN, November 4, 1996, p. 17.

none of the audit team at that time found this documentation inadequate or anomalous.[53] The witness also stated that the Presidential Task Force gave the audit team a folder showing that ₱10.4 Million was used to purchase the motorcycles and ₱2.1 Million was used to purchase the cars.[54] Checks were presented indicating the dates when the purchase of some of the motor vehicles was made.[55] COA Auditor Cortez also testified that 270 of these motorcycles had already been transferred by UL in the name of MHS.[56] She stated that all the documents are in order except for the registration of the motor vehicles in the name of UL.[57]

Given these admissions regarding the existence of the motor vehicles, the presentation of the resident auditor who would simply testify on the physical inventory of the motor vehicles, or that an inspection had been conducted thereon, was unnecessary. Her presentation in court would not materially reinforce the prosecution's case; thus, the omission to present her did not deprive the State of due process. To repeat, the prosecution's theory of misappropriation was not based on the fact that the funds were not used to purchase motor vehicles, in which case, the testimony of the resident auditor would have had material implications. Rather, the prosecution's theory, as established by the records, shows that the imputed misappropriation stemmed from the registration of the motor vehicles in UL's name — an administrative lapse in light of the relationship of UL to MHS simply as an implementing agency.[58]

Third. Despite the Sandiganbayan's warning on June 7, 1996 that the various checks covering the cash advances for ₱40 Million were "photostatic" copies, the special prosecutor still

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[53] *Ibid.*

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

[55] *Id.* at 24.

[56] TSN, February 24, 1997, p. 33.

[57] *Id.* at 30.

[58] *Rollo*, pp. 462 and 473.

failed to present the certified copies from the legal custodian of these commercial documents.

The petitioner faults the special prosecutor for failing to present the original copies of the checks drawn out of the ₱21.6 Million and ₱17 Million combination account from the United Coconut Planters Bank (*UCPB*), as well as the ₱3.8 Million expense account with the same bank. The presentation would have allegedly proven the misappropriation of these amounts.[59]

Records show that instead of presenting the original copies of these checks, the special prosecutor tried to establish, through the testimony of COA Auditor Cortez, that these checks were photocopied from the original checks in the possession of UCPB, which were obtained through the assistance of the UL management.[60] Thus, while the originals of these checks were not presented, COA Auditor Cortez testified that the photostatic copies were furnished by the UCPB which had custody of the original checks.[61] Further, the witness also testified that at the time she made the examination of these documents, the entries thereon were legible.[62] She also presented a summary schedule of the *various micro film prints* of the UCPB checks that she examined.[63]

At any rate, we observe that the defense never objected[64] to the submission of the photostatic copies of the UCPB checks as evidence, thus making the production of the originals dispensable. This was our view in *Estrada v. Hon. Desierto*[65] where we ruled that the production of the original may be dispensed with if the opponent does not dispute the contents of the document

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[59] TSN, June 7, 1996, p. 21.

[60] *Ibid.*

[61] *Id.* at 22.

[62] *Id.* at 21.

[63] *Id.* at 23, 24, 37 and 48.

[64] *Rollo*, pp. 518-523.

[65] 408 Phil. 194 (2001).

and no other useful purpose would be served by requiring its production. In such case, we ruled that secondary evidence of the content of the writing would be received in evidence if no objection was made to its reception.[66] We note, too, that in addition to the defense's failure to object to the presentation of photostatic copies of the checks, the petitioner failed to show that the presentation of the originals would serve a useful purpose, pursuant to our ruling in *Estrada*.

We reiterate in this regard our earlier observation that other than enumerating instances in the petition where the State was allegedly deprived of due process in the principal case, no explanation was ever offered by the petitioner on how each instance resulted in the deprivation of the State's right to due process warranting the annulment of the presently assailed Sandiganbayan ruling.

Fourth. The petitioner faults the special prosecutor for making no effort to produce the "final audit report" dated June 6, 1986, referred to in the last paragraph of the Affidavit[67] dated June 10, 1987 of COA Auditor Cortez.

The records show that although this final audit report dated June 6, 1986 was not presented in court, the prosecution questioned her on the contents of this audit report since she had a hand in its preparation. COA Auditor Cortez directly testified on the audit team's findings and examination, which took three hearings to complete; the cross-examination of COA Auditor Cortez took two hearings to complete; and subsequently, the Sandiganbayan ordered that a clarificatory hearing be held with respect to COA Auditor Cortez' testimony. In addition to her testimony, the special prosecutor did present, too, other pieces of documentary evidence (from which the final audit report was based) before the Sandiganbayan.

Under these circumstances, we are reluctant to consider the special prosecutor's omission as significant in the petitioner's allegation of serious nonfeasance or misfeasance.

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[66] *Id.* at 231.

[67] *Rollo*, pp. 511-517.

Fifth. The petitioner presents the special prosecutor's failure to oppose the demurrer to evidence as its last point and as basis for the applicability of the *Merciales* ruling.

The failure to oppose *per se* cannot be a ground for grave abuse of discretion. The real issue, to our mind, is whether the special prosecutor had basis to act as she did. As the point-by-point presentation above shows, the dismissal of the criminal cases cannot be attributed to any grossly negligent handling by the special prosecutor. To begin with, the prosecution's case suffered from lack of witnesses because, among others, of the time that elapsed between the act charged and the start of the actual prosecution in 1994; and from lack of sufficient preparatory investigation conducted, resulting in insufficiency of its evidence as a whole. In sum, in the absence of circumstances approximating the facts of *Merciales* and *Valencia*, which circumstances the petitioner failed to show, no basis exists to conclude that the special prosecutor grossly erred in failing to oppose the demurrer to evidence.

Neither are we persuaded by the petitioner's position that the special prosecutor's Manifestation of non-opposition to the demurrer needed to be submitted to, and approved by, her superiors.[68] The petitioner's argument assumes that the special prosecutor lacked the necessary authority from her superiors when she filed her non-opposition to the demurrers to evidence. This starting assumption, in our view, is incorrect. The correct premise and presumption, since the special prosecutor is a State delegate, is that she had all incidental and necessary powers to prosecute the case in the State's behalf so that her actions as a State delegate bound the State. We do not believe that the State can have an unbridled discretion to disown the acts of its delegates at will unless it can clearly establish that its agent had been grossly negligent[69] or was guilty of collusion with the accused

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[68] *Id.* at 27.

[69] *Heirs of Atty. Jose C. Reyes v. Republic of the Philippines*, 529 Phil. 510 (2006); and *Callangan v. People*, G.R. No. 153414, June 27, 2006, 493 SCRA 269.

or other interested party,[70] resulting in the State's deprivation of its due process rights as client-principal.

Gross negligence exists where there is want, or absence of or failure to exercise slight care or diligence, or the entire absence of care. It involves a thoughtless disregard of consequences without exerting any effort to avoid them.[71] As the above discussions show, the State failed to clearly establish the gross negligence on the part of the special prosecutor (or to show or even allege that there was collusion in the principal case between the special prosecutor and the respondents) that resulted in depriving the petitioner of its due process rights; and, consequently prevent the application of the rule on double jeopardy. **If at all, what the records emphasized, as previously discussed, is the *weakness* of the prosecution's evidence as a whole rather than the gross negligence of the special prosecutor**. In these lights, we must reject the petitioner's position.

III. Grave abuse of discretion

Under the Rules on Criminal Procedure, the Sandiganbayan is under no obligation to require the parties to present additional evidence when a demurrer to evidence is filed. In a criminal proceeding, the burden lies with the prosecution to prove that the accused committed the crime charged beyond reasonable doubt, as the constitutional presumption of innocence ordinarily stands in favor of the accused. Whether the Sandiganbayan will intervene in the course of the prosecution of the case is within its exclusive jurisdiction, competence and discretion, provided that its actions do not result in the impairment of the substantial rights of the accused, or of the right of the State and of the offended party to due process of law.[72]

A discussion of the violation of the State's right to due process in the present case, however, is intimately linked with the gross

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[70] *People v. Sandiganbayan*, *supra* note 21; and *Galman v. Sandiganbayan*, 228 Phil. 42 (1986).

[71] *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*, G.R. No. 180817, June 23, 2009, 590 SCRA 675.

[72] *Dimatulac v. Hon. Villon*, 358 Phil. 328 (1998).

negligence or the fraudulent action of the State's agent. The absence of this circumstance in the present case cannot but have a negative impact on how the petitioner would want the Court to view the Sandiganbayan's actuation and exercise of discretion.

The court, in the exercise of its sound discretion, *may* require or allow the prosecution to present additional evidence (at its own initiative or upon a motion) after a *demurrer to evidence* is filed. This exercise, however, must be for good reasons and in the paramount interest of justice.[73] As mentioned, the court may require the presentation of further evidence if its action on the demurrer to evidence would patently result in the denial of due process; it may also allow the presentation of additional evidence if it is newly discovered, if it was omitted through inadvertence or mistake, or if it is intended to correct the evidence previously offered.[74]

In this case, we cannot attribute grave abuse of discretion to the Sandiganbayan when it exercised restraint and did not require the presentation of additional evidence, given the clear weakness of the case at that point. We note that under the obtaining circumstances, the petitioner failed to show *what and how additional available* evidence could have helped and the paramount interest of justice sought to be achieved. It does

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[73] *Atty. Gacayan v. Hon. Pamintuan*, 373 Phil. 460 (1999). Section 11, Rule 119 of the Rules on Criminal Procedure reads:

> Section. 11. *Order of trial.*— The trial shall proceed in the following order:
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> x x x x x x x x x
>
> (c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

[74] *Republic of the Philippines v. Sandiganbayan (Fourth Division), Jose L. Africa (substituted by his heirs), Manuel H. Nieto, Jr., Ferdinand E. Marcos (substituted by his heirs), Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (substituted by his heirs)*, G.R. No. 152375, December 16, 2011; and *Atty. Gacayan v. Hon. Pamintuan*, *supra* note 73.

not appear that pieces of evidence had been omitted through inadvertence or mistake, or that these pieces of evidence are intended to correct evidence previously offered. More importantly, it does not appear that *these contemplated additional pieces of evidence (which the special prosecutor allegedly should have presented) were ever present and available*. For instance, at no point in the records did the petitioner unequivocally state that it could present the three UL officers, *Cueto, Jiao* and *Sison*. The petitioner also failed to demonstrate its possession of or access to these documents (such as the *final audit report*) to support the prosecution's charges – the proof that the State had been deprived of due process due to the special prosecutor's alleged inaction.

IIIa. Grave abuse of discretion and the demurrers to evidence

In Criminal Case No. 20345 that charged conspiracy for abstracting ₱57.59 Million out of the ₱100 Million KSS fund, the prosecution's evidence showed that ₱60 Million of this fund was disbursed by respondent Benitez, as approving officer, in the nature of cash advances to Zagala (who received a total amount of ₱40 Million) and Dulay (who received ₱20 Million).

To prove the misappropriation, the prosecution tried to establish that there was an irregularity in the procedure of liquidating these amounts on the basis of COA Auditor Cortez' testimony that the liquidation should have been made before the COA Chairman (not to the resident auditor of the MHS) because these funds were confidential.[75]

Quite evident from the prosecution's position is that it did not dispute whether a liquidation had been made of the whole amount of ₱60 Million; rather, what it disputed was the identity of the person before whom the liquidation should have been made. Before the directive of former President Marcos was made which declared the KSS funds (of which the ₱60 Million formed part) to be confidential, the liquidation of this amount must be made before the resident auditor of the MHS. With the issuance of the directive, liquidation should have been made

[75] TSN, December 5, 1995, p. 17.

to the COA Chairman who should have then issued a credit memo to prove proper liquidation.[76]

To justify conviction for malversation of public funds, the prosecution has to prove that the accused received public funds or property that they could not account for, or was not in their possession and which they could not give a reasonable excuse for the disappearance of such public funds or property.[77] The prosecution failed in this task as the subject funds were liquidated and were not shown to have been converted for personal use by the respondents.

The records reveal that the amounts of ₱50 Million and ₱10 Million were liquidated by Zagala and Dulay, respectively.[78] On Zagala's part, the liquidation of ₱50 Million (₱10 Million of which was the cash advance given to Dulay) was made to resident auditor Flerida V. Creencia on September 25, 1984 **or before** the directive of former President Marcos (declaring the said funds confidential) was issued on November 7, 1984.[79] Hence, at the time the liquidation of the amount was made, the liquidation report submitted to the resident auditor was the proper procedure of liquidation. Respondent Benitez, for his part, submitted Journal Voucher No. 4350208 dated November 27, 1984 stating, among others, that as early as June 22, 1984, the supporting papers for the liquidation of the ₱50 Million had already been submitted to the COA.[80]

Moreover, even if the liquidation should have been made in compliance with the former President's directive, the prosecution's evidence did not sufficiently establish the non-existence of a credit memo. As admitted by COA Auditor Cortez, certain documents they were looking for during the audit examination (including the credit memo) could no longer be located after

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[76] *Rollo*, p. 102.

[77] *Estrella v. Sandiganbayan*, 389 Phil. 413 (2000).

[78] TSN, December 5, 1995, pp. 25-26.

[79] *Rollo*, p. 530.

[80] *Id.* at 450.

the (EDSA) revolution.[81] She further declared that she did not know if COA Chairman Alfredo Tantingco complied with the required audit examination of the liquidated ₱60 Million.[82]

In Criminal Case No. 20346, respondents are sought to be held liable under the criminal information for converting ₱40 Million (subdivided to ₱21.6 Million, ₱3.8 Million and ₱17 Million or a total of ₱42.4 Million) to their own use given that these funds were never allegedly transferred to UL, the intended beneficiary.

Records show that the disputed amount allegedly malversed was actually ₱37,757,364.57 Million because of evidence that an amount of ₱4.5 Million was returned by respondent Benitez.[83] As previously mentioned, the documentary evidence adduced reveals the existence of treasury warrants and disbursement vouchers issued in the name of UL bearing the amounts of ₱21.6 Million, ₱3.8 Million and ₱17 Million.[84] Documentary evidence also exists showing that these amounts were deposited in the UCPB and drawn afterwards by means of checks issued for purchases intended for the *Kabisig* Program of the MHS.

Except for the appropriated ₱17 Million, the petitioner's evidence does not sufficiently show how the amounts of ₱21.6 Million and ₱3.8 Million were converted to the personal use by the respondents. The testimony of COA Auditor Cortez revealed that documents showing the disbursements of the subject funds were in possession of one Flordeliz Gomez as the Records Custodian and Secretary of UL. For undisclosed reasons, however, COA Auditor Cortez failed to communicate with Gomez but merely relied on the documents and checks, which the audit team already had in its possession.[85]

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[81] TSN, November 5, 1996, p. 53.

[82] *Id.* at 51.

[83] The remaining balance in the UCBP accounts was about ₱142,635.43. TSN, November 4, 1996, pp. 31 and 34.

[84] *Rollo*, pp. 465, 471, 477, 479.

[85] TSN, November 4, 1996, pp. 24-26.

This omission, in our view, raises doubts on the completeness and accuracy of the audit examination pertaining to the ₱21.6 Million and ₱3.8 Million funds. Such doubt was further strengthened by COA Auditor Cortez' testimony showing that ₱3.8 Million was listed in the books of the MHS as a direct expense account to which UL is not required to render an accounting or liquidation.[86] Also, she admitted that the amount of ₱21.6 Million was contained in a liquidation voucher submitted by Dulay, which was included in the transmittal letter signed by the respondents to the COA and accompanied by a performance report on the *Kabisig* Program. This performance report showed that the total amount of ₱21.6 Million was exhausted in the *Kabisig* Program.[87]

With respect to the ₱17 Million, evidence adduced showed that 270 units of the motorcycles have already been transferred in the name of MHS by UL.[88] There is also evidence that the audit team initially found nothing irregular in the documentation of the 500 motorcycles during the audit examination conducted in April 1986; the same goes for the eight cars purchased.

Under the circumstances, we agree with the Sandiganbayan that registration of these vehicles in UL's name alone did not constitute malversation in the absence of proof, based on the available evidence, to establish that the respondents benefited from the registration of these motor vehicles in UL's name, or that these motor vehicles were converted by the respondents to their own personal use.[89] In the end, the prosecution's evidence tended to prove that the subject funds were actually used for their intended purpose.

IV. Conclusion

In dismissing this petition, we observe that the criminal cases might have been prompted by reasons other than injury to

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[86] *Id.* at 30.

[87] TSN, June 7, 1996, pp. 17-18.

[88] TSN, February 24, 1997, p. 33.

[89] *Id.* at 27.

government interest as the *primary* concern.[90] These other reasons might have triggered the hastiness that attended the conduct of audit examinations which resulted in evidentiary gaps in the prosecution's case to hold the respondents liable for the crime of malversation.[91] As matters now stand, no sufficient evidence exists to support the charges of malversation against the respondents. Hence, the Sandiganbayan did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the demurrers to evidence and, consequently, dismissed the criminal cases against the respondents.

We take this opportunity to remind the prosecution that this Court is as much a judge in behalf of an accused-defendant whose liberty is in jeopardy, as it is the judge in behalf of the State, for the purpose of safeguarding the interests of society.[92] Therefore, unless the petitioner demonstrates, through evidence and records, that its case falls within the narrow exceptions from the criminal protection of double jeopardy, the Court has no recourse but to apply the finality-of-acquittal rule.

WHEREFORE, premises considered, we hereby **DENY** the petition.

SO ORDERED.

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

Leonardo-de Castro, J., no part.

Del Castillo, J., on leave.

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[90] TSN, November 5, 1996, p. 44.

[91] These evidentiary gaps in the prosecution's evidence pointed to by the Sandiganbayan are: (1) the missing folders that included the findings of the audit team; (2) the unreliability of the audit team report, having relied on the affidavits of the UL officers who were not presented in court; and (3) the failure of the audit team to verify with the COA Chairman if the supporting documents from the cash advances were already in its custody.

[92] *Tabuena v. Sandiganbayan*, 335 Phil. 795, 875 (1997), citing *Murphy v. State*, 13 Ga. App. 431, 79 S.E. 228.

EN BANC

[G.R. No. 157838. February 7, 2012]

CANDELARIO L. VERZOSA, JR. (in his former capacity as Executive Director of the Cooperative Development Authority), *petitioner, vs.* **GUILLERMO N. CARAGUE (in his official capacity as Chairman of the COMMISSION ON AUDIT), RAUL C. FLORES, CELSO D. GANGAN, SOFRONIO B. URSAL and COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); NO VIOLATION OF COA RULES; THE ALLEGEDLY VIOLATED COA GUIDELINES HAVEN'T YET BEEN ISSUED AT THE TIME THE SUBJECT AUDIT WAS CONDUCTED IN 1993. — In *Arriola v. COA*, this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence, as it was based on undocumented claims. The documents that were used as basis of the COA Decision were not shown to petitioners therein despite their repeated demands to see them; they were denied access to the actual canvass sheets or price quotations from accredited suppliers. Absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis. Reiterating the above declaration, *National Center for Mental Health Management v. COA*, likewise ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects. The aforesaid jurisprudence became the basis of COA Memorandum No. 97-012 dated March 31, 1997 which contained guidelines on evidence to support audit findings of over-pricing. In the interest of fairness, transparency and due process, it was provided that copies of the documents establishing the audit findings of over-pricing are to be made available to the management of the audited agency. x x x Contrary to the thrust of Justice Sereno's dissent, the lack of compliance

with the above guidelines did not invalidate the audit report for violation of the CDA's right to due process. We categorically ruled in *Nava v. Palattao* that neither *Arriola* nor the COA Memorandum No. 97-012 can be given any retroactive effect. Thus, although *Arriola* was already promulgated at the time, it is not correct to say that the COA in this case violated the afore-quoted guidelines which have not yet been issued *at the time the audit was conducted* in 1993.

2. ID.; ID.; ID.; ID.; THE COOPERATIVE DEVELOPMENT AUTHORITY'S (CDA) PREFERENCES REGARDING BRAND OF ITS EQUIPMENT HAVE TO CONFORM TO THE CRITERIA SET BY THE COMMISSION ON AUDIT RULES ON WHAT IS REASONABLE PRICE FOR THE ITEMS PURCHASED. — The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." As such, CDA's decisions regarding procurement of equipment for its own use, including computers and its accessories, is subject to the COA's auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive and extravagant expenditures. Necessarily, CDA's preferences regarding brand of its equipment have to conform to the criteria set by the COA rules on what is reasonable price for the items purchased.

3. ID.; ID.; ID.; ID.; IT IS NOT FOR THE COURT TO MAKE ASSERTIONS CONTRARY TO THE COMMISSION THAT THE BRAND PREFERRED BY THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA) WAS SUPERIOR TO ANOTHER BRAND OR GENERIC COMPUTER HAVING SIMILAR SPECIFICATIONS/FUNCTIONS AND TO WHICH THE PRICE OF THE BRANDED COMPUTER WAS COMPARED BY RESPONDENTS; WHETHER A PARTICULAR BRAND OF COMPUTER OR

MICROPROCESSOR IS OF SUPERIOR QUALITY IS NOT SUBJECT TO JUDICIAL NOTICE. — In the light of the foregoing consistent stand of its own technical personnel having expertise in computer technology, the COA upheld the auditor's finding that brand was irrelevant to determining the reasonableness of the price at which CDA purchased the subject computers. It is not for this Court, as the dissent attempts, to make assertions to the contrary, *i.e.*, that the brand *preferred* by CDA was superior to another brand or generic computer having similar specifications/functions and to which the price of the branded computer was compared by respondents. Whether a particular brand of computer or microprocessor is of superior quality is not subject to judicial notice. Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them. The dissent also asserted that it is "unfair to compare Tetra's proposed Trigem computers to a computer clone that was not even qualified to be bidded on or was not subjected to the same hardware benchmark testing." But as COA ITC Director Acorda had explained in her December 9, 1996 memorandum, such Benchmark Testing conducted by the DAP-TEC is not a sufficient basis for them to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

4. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE COMMISSION ON AUDIT IN HOLDING PETITIONER PERSONALLY AND SOLIDARILY LIABLE FOR THE OVERPRICING OF COMPUTERS PROCURED BY THE COOPERATIVE DEVELOPMENT AUTHORITY. — We find no merit in the assertion that in ordering the petitioner to reimburse the disallowed amount, this Court misapplied the solidary nature of the liability determined by the COA for petitioner and the other members of the PBAC. We have categorically stated that the Court upholds the COA's ruling that petitioner is personally and solidarily liable for the overpricing in the computers purchased by CDA. The directive for the payment of the amount of disallowance finally determined by the COA did not change the nature of the obligation as solidary because the demand thus made upon petitioner did not foreclose his right as solidary debtor to proceed against his co-debtors/

obligors, in this case the members of the PBAC charged under Notice of Disallowance No. 93-0016-101, for their share in the total amount of disallowance. Petitioner is therefore liable to restitute the ₱881,819.00 to the Government without prejudice, however, to his right to recover it from persons who were solidarily liable with him. We stress anew that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence, and the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. There being no grave abuse of discretion in the findings and conclusions of the COA in this case, the Court finds no cogent reason to deviate from these long-settled rules.

VELASCO, JR., *J., dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); COA MEMORANDUM CIRCULAR NO. 97-012 CANNOT BE APPLIED TO THE INSTANT CASE BECAUSE IT WAS NOT YET IN EXISTENCE AT THE TIME THE DISALLOWANCE WAS MADE; THE RATIO UNDERPINNING *ARRIOLA V. COMMISSION* ON AUDIT IS SQUARELY IN POINT. — Why COA Memorandum Circular No. 97-012 cannot be applied to the instant case is understandable. It was not yet in existence at the time the disallowance was made. The ratio underpinning *Arriola*, however, is squarely in point. There is, thus, no rhyme or reason why, taking into account *Buscaino*, the findings in *Arriola* cannot be made to apply in the case at bar. To reiterate, *Arriola* stated: A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee **mandatory access to the COA source documents/canvass sheets**. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that: . . . As

regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like . . . **By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.** As things stand, the COA failed to give mandatory access to the COA source documents/canvass sheets. Its findings on overpricing were based, without more, on the TSO canvass and a telephone canvass confirmatory of the TSO canvass. The steps COA thus took do not conform to the due process requirements. Likewise, this fails to satisfy petitioner that the COA guidelines on excessive expenditures had been observed. Concomitantly, it behooves upon the Court to apply its ruling in *Arriola* to the present case.

2. ID.; ID.; ID.; ID.; THE COMMISSION ON AUDIT CANNOT SUBSTITUTE OR IMPOSE ITS OWN JUDGMENT ON THE PUBLIC BIDDING AND AWARDS COMMITTEE (PBAC) MEMBERS OF THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA) WITHOUT ANY LEGAL OR FACTUAL BASIS; THE COMMISSION CAN ONLY AUDIT PURCHASES MADE, IT CANNOT PRESCRIBE WHAT SHOULD BE PURCHASED. — By express constitutional provision, the COA is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties." On the other hand, the Administrative Code vests the Pre-qualification, Bids and Awards Committee (PBAC) the

responsibility "for the conduct of prequalification of contractors, biddings, evaluation of bids and recommending awards of contracts." Between the COA, which can only perform post-audit functions, and the PBAC members of CDA, it is the latter that have the technical expertise to determine the offers that will best meet the needs and requirements of their office. COA cannot, therefore, substitute or impose its own judgment on the PBAC members of CDA without any legal or factual basis. It can only audit purchases made; it cannot prescribe what should be purchased.

3. ID.; ID.; ID.; ID.; IN ASSESSING WHETHER THERE WAS INDEED AN OVERPRICING, A SPECIFIC COMPARISON WITH THE SAME BRAND, FEATURES AND SPECIFICATIONS AS THOSE THAT WERE ACTUALLY PURCHASED SHOULD BE MADE. — To uphold the COA's finding that brand was irrelevant in the determination of the reasonableness of the price at which CDA purchased the subject computers is to trod roughshod at the discretionary powers of the PBAC to set the criteria and approve the purchase of the equipment. It is settled jurisprudence that in assessing whether there was indeed an overpricing, a specific comparison with the same brand, features and specifications as those that were actually purchased should be made.

4. ID.; ID.; ID.; ID.; A PERUSAL OF COA CIRCULAR NO. 85-55-A WOULD SHOW THAT THERE WAS NEITHER ANY LEGAL OBLIGATION ON THE PART OF THE SUPPLIER TO GIVE A VOLUME DISCOUNT NOR TO DEMAND FOR SAID DISCOUNT ON THE PART OF THE CDA. — I differ with the view of the majority that COA's observation that the CDA should have been entitled to volume discount was valid. On the contrary, a perusal of COA Circular No. 85-55-A would show that there was neither any legal obligation on the part of Tetra to give a volume discount nor to demand for said discount on the part of CDA. Particularly: 2.Volume Discounts - The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document. The above-quoted provision simply states that if the discounts **allowed** in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document, then the price is deemed excessive. Without such allowed discounts, said provision does

not have any bearing for purposes of ascertaining whether a price should be deemed excessive or not. Discernibly, no legal obligation was imposed for the giving or demanding of volume discount can be inferred therefrom. When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; THERE IS REASON TO SET ASIDE THE COA'S DECISIONS AND FACTUAL PREMISES HOLDING THEM TOGETHER, FOR THE SAID DECISIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE INDICATING PETITIONER'S RESPONSIBILITY FOR THE DISALLOWANCE. — It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality **when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.** Thus, **only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction**, may this Court entertain a petition for *certiorari* under Rule 65 of the Rules of Court. In the case at bar, there is reason to set aside COA's decisions and the factual premises holding them together, for the said decisions are not supported by substantial evidence indicating petitioner's responsibility for the disallowance. Substantial evidence means such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

6. ID.; ID.; ID.; ABSENT ANY SHOWING THAT PETITIONER HAD A HAND IN THE ALLEGED INTENT TO ALTER THE EVALUATION RESULTS OF THE BIDDING, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY SHOULD APPLY; MERE FACT THAT PETITIONER SIGNED THE VOUCHERS AND OTHER DOCUMENTS FOR THE PROCESSING OF THE PURCHASE AFTER THE WINNING BIDDER HAS BEEN CHOSEN DOES NOT *PER SE* CONSTITUTE BAD FAITH ON HIS PART. — No bad faith can also be imputed upon petitioner, because, contrary to the assertion of respondents, the records do not support any finding that he prevailed upon the DAP-TEC to modify the initial result of

the technical evaluation of the computers by imposing an allegedly irrelevant grading system that was intended to favor one of the bidders. Assuming that there was, indeed, an alleged intent to alter the evaluation results of the bidding, no sufficient evidence can point to petitioner's direct participation or involvement in the said charge. It cannot be overemphasized that no connection was established between petitioner and a certain Rey Evangelista, a member of the staff of the PBAC Chairperson, who was said to have gone to DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units. Moreover, the mere fact that petitioner signed the vouchers and other documents for the processing of the purchase after the winning bidder has been chosen does not *per se* constitute bad faith on his part. Notably, petitioner's signature was given as final recommending/approving authority only after the entire bidding process was conducted. He cannot, therefore, be faulted for relying and depending, to a reasonable extent, on the integrity and performance of duty by the PBAC, as well as the Board of Administrators, which acted on the documents. x x x. Absent any clear showing that petitioner had a hand in the alleged intent to alter the evaluation results of the bidding, the presumption of regularity in the performance of duty should apply. Mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against this presumption.

SERENO, *J., dissenting opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); FIVE REASONS WHY THE PETITION SHOULD HAVE BEEN GRANTED BY THE COURT. — Reviewing the case at hand, this Court's dependence on unsupported allegations is alarming. Even more alarming is the fact that its findings are contrary to what the evidence actually proves. I reiterate the five reasons I enumerated in my Dissent to the Decision dated 8 March 2011 why this Court must grant the Petition. First, the Commission on Audit (COA) cannot violate the same rules it imposes on all public offices regarding the manner of conducting canvasses. Second, the COA auditor cannot substitute her own discretion for that of the Cooperative Development Authority (CDA) by denying its right to prefer certain specifications for

the computers it intended to purchase for its own use. Third, the amount of disallowance has no basis in fact, is grossly disproportionate to the total purchase price, and is in the nature of punitive damages. Fourth, there is no clear and convincing evidence that there were instances of manipulation during the bidding process. Moreover, this allegation of manipulation was belatedly raised by public respondents, having been raised for the first time only in COA's Comment before this Court, thus violating petitioner's right to due process. Finally, respondent miserably failed to show that petitioner was personally liable for the return of the disallowance.

2. ID.; ID.; ID.; ID.; THE CONSPIRACY THEORY OF THE SO-CALLED MANIPULATION WAS A MERE FIGMENT OF THE IMAGINATION OF AN OVER EAGER AUDITOR; SERIOUS FLAWS IN THE FINDINGS OF FACT IN THE DECISION WHICH MUST BE CONSIDERED. — In the Decision, the *ponencia* focuses on COA resident auditor Luzviminda V. Rubico's allegation of manipulation of the bidding process. A judicious review of the records and pleadings reveals, however, that the conspiracy theory of the so-called manipulation was a mere figment of the imagination of an overeager auditor. It must be emphasized that there are two very serious flaws in the findings of fact in the Decision, which must thus be reconsidered. First, respondents failed to refute the presumption of regularity in the exercise of official functions. Aside from the reports and bare allegations submitted by the resident auditor, there is nothing in the records that would speak of any hint of manipulation or illegality in any part of the bidding process. Second, respondents also failed to show that petitioner was involved in the so-called manipulation of the bidding process, if ever there was one. To prove the alleged manipulation, they presented only three documents, two of which were letters from auditor Rubico herself, dated 17 November 1995 and 23 November 1995, addressed to COA Legal Counsel Director Raquel Habitan. The third document is the letter, also dated 23 November 1995, written by Antonio Quintos, Jr. of the Development Academy of the Philippines (DAP) upon the request of COA representative Abraham Rodriguez.

3. ID.; ID.; ID.; ID.; THE MAJORITY'S DECISION WAS UNWARRANTED AND BEREFT OF ANY BASIS. — The

first evidence that the majority relied on was the 17 November 1995 letter of auditor Rubico. Here she alleged that she "discovered" an irregularity in the bidding process. She also alleged that the results were manipulated to make it appear that Tetra Corporation bested the other bidders. In her narration of her so-called "discovery," she never mentioned the name of petitioner. The second evidence that the majority considered was Rubico's 23 November 1995 letter, wherein she mentioned petitioner's name twice, but not in any manner as to indicate any suspicious behavior on petitioner's part. The first instance was in paragraph 1, where she mentioned that petitioner had reconstituted the Public Bidding and Awards Committee (PBAC). The second instance was in paragraph 5, where she merely confirmed that he had signed a Memorandum of Agreement between the CDA and the DAP. These two acts were neither illegal nor prohibited *per se*, and Rubico has not claimed so in any of her letters. Moreover, as the majority itself pointed out in its Decision promulgated on 8 March 2011, only paragraphs 6 to 12 of the 23 November 1995 letter were relevant to the discussion of the alleged manipulation. In these paragraphs, again, auditor Rubico made no mention at all of petitioner and his supposed participation in the alleged manipulation. The third and final piece of evidence on which the majority based its findings on (sic) was Quintos' letter also dated 23 November 1995. Likewise, his letter neither mentioned petitioner nor proved manipulation in the technical evaluation of the computer equipment. Looking very closely at these pieces of evidence, it is clear that the majority's Decision was unwarranted and was bereft of any basis.

4. ID.; ID.; ID.; ID.; SINCE THE HIGHER OFFICIALS OF THE COMMISSION OF AUDIT DID NOT FIND ANY MERIT IN THE AUDITORS'S ALLEGATIONS AFTER A "JUDICIOUS EVALUATION OF THE FACTS AND CIRCUMSTANCES," IT WOULD BE UNWARRANTED FOR THE COURT TO HOLD OTHERWISE. — More importantly, an indication that the COA officials themselves found the alleged manipulation to be improbable or, at the very least, unsupported by evidence was the inaction thereon by COA's legal counsel and its Commissioners Celso D. Gangan, Raul C. Flores and Sofronio B. Ursal in COA Decision No. 98-424; and again by Commissioners Guillermo N. Carague,

Emmanuel Dalman and Raul C. Flores in COA Decision No. 2003-061. To recall, CDA purchased the computer equipment in December 1992. Respondent COA issued the Notice of Disallowance on 17 November 1993. Auditor Rubico issued her reports in November 1995, and these were duly received on 16 February 1996 by respondent's legal office through the assistant commissioner of the National Government Audit Office I. Attached to the reports were additional pieces of evidence showing that petitioner and the PBAC were liable for the disallowed amount. However, respondent's legal counsel did not act on the alleged manipulation or institute any administrative action against petitioner and the PBAC members. Furthermore, despite being additional evidence for the disallowance, respondent's Decision No. 98-424 dated 21 October 1998 and Decision No. 2003-061 dated 18 March 2003 were deafeningly silent on Rubico's reports. The only conclusion to be reached is that the higher officials of COA did not find any merit in the auditor's allegations after conducting a "judicious evaluation of the facts and circumstances." Hence, it would be unwarranted for this Court to hold otherwise. To reiterate, it was only in respondents' Comment dated 12 March 2004 filed before this Court that the allegation of illegal manipulation was first made. Prior to this Comment, there was no indication that petitioner was ever informed of the possible accusation of illicit behaviour, or that such allegations were duly considered by the Commissioners who issued the assailed rulings.

5. ID.; ID.; ID.; ID.; THE COURT BLATANTLY IGNORED AND DISREGARDED PREVAILING LAWS, ADMINISTRATIVE RULES AND ESTABLISHED DOCTRINES ON ISSUES OF EXCESSIVE EXPENDITURE. — This Court blatantly ignores and disregards prevailing laws, administrative rules and established doctrines on issues of excessive expenditure. It fails to consider the prevailing doctrine first laid down in *Arriola v. COA* on issues of overpricing. The majority fails to squarely explain why *Arriola* should not be applied to this case, when both cases clearly proscribe a finding of overpricing when due process has been violated. To reiterate, the canvass sheets were not presented to the petitioner in *Arriola*. In the present case, aside from the non-presentation of the canvass sheets, no actual field canvass was made but, instead, a mere telephone canvass was conducted. The COA in *Arriola* likewise secured price quotations from three suppliers. In the present case, comparisons

of only one or two suppliers were made. The Court in *Arriola* struck down the comparison made by the COA between the equipment purchased and an item of the same brand, but not the same model. Here, different pieces of equipment of different brands were compared. Finally, in both cases, the specifications of the items compared were not provided.

6. ID.; ID.; ID.; ID.; WE ARE SETTING A VERY DANGEROUS PRECEDENT IF WE ARE TO INSIST THAT THE COMMISSION ON AUDIT'S PREFERENCE OR EVEN THAT OF ITS INFORMATION TECHNOLOGY (IT) PERSONNEL IS FAR SUPERIOR TO AND PREVAILS OVER THAT OF THE AGENCY IT IS AUDITING. — It must also be equally emphasized that, contrary to what the *ponente* posits, the opinion of COA's information technology (IT) personnel could not be the basis of overturning the discretion of the CDA in determining the specifications for the computer equipment. Nowhere in the Constitution or any law is the IT department of COA allowed to override the preference for equipment brands or specifications of an agency. To reiterate, what was at issue was not the **necessity** of these specifications or the equipment themselves, but only that it should not be **overpriced**. We are setting a very dangerous precedent if we are to insist that the COA's preference – or even that of its IT personnel — is far superior to and prevails over that of the agency that it is auditing.

7. ID.; ID.; ID.; ID.; THE CONCLUSIONS REACHED BY THE MAJORITY ARE MERE CONJECTURES AND SPECULATIONS THAT THE RECORDS NEVER BORE OUT, OR THAT PETITIONER NEVER HAD THE CHANCE TO CONTROVERT AT THE EARLIEST POSSIBLE TIME. — The majority contradicts itself when it says that findings of fact of administrative authorities must be respected and yet insists that there was manipulation in the bidding, when it was never held to be so by the same administrative authorities. It cannot be denied that the majority considered the matter as a substantial element or context when it upheld the disallowance made by respondent, when the presence of manipulation was never an official finding, expressly or impliedly, by the COA Commissioners. The conclusions reached by the majority are mere conjectures and speculations that the records never bore out, or that petitioner never had the chance to controvert at

the earliest possible time.

8. ID.; ID.; ID.; ID.; DANGERS POSED BY THE DECISION IN CASE AT BAR CANNOT BE OVEREMPHASIZED. — The dangers posed by the Decision in this case cannot be overemphasized. To say the least, there is nothing to prevent respondent COA from comparing all government purchases with generic equipment without even conducting a valid canvass of prices. Overpricing is not necessarily based on equipment that qualified for the bidding process; it may be based even on generic, unbranded equipment. There is no legal impediment for COA to recall the regulations on excessive purchases it had issued in the past and to issue new ones following the Court's interpretation of the matter. For the COA to be allowed to do so would further discourage industries from offering their equipment or services for government use. Finally, the bidding process will be rendered inutile. Hence, following and applying the majority's theory, the branded pieces of computer equipment that this Court itself uses in issuing its decisions may also be found to be excessively overpriced by respondent when these are compared to generic non-branded computer equipment. There is no need to conduct an actual canvass; present the canvass sheets; require a comparison of at least three (3) suppliers; compare the items with the same brands or specifications; or even with those that did not qualify for the bidding or have no known specifications at all. Thereafter, the determination of the overpriced amount would be based on the price of the cheapest generic brand having more or less similar but not necessarily identical specifications. Finally, all those who have approved the purchases would be held solidarily liable for the excess amount based on the prices of the cheapest equipment of different specifications and brands available in the market.

9. ID.; ID.; ID.; ID.; THE DECISION ALLOWS ALLEGATIONS TO BE BELATEDLY RAISED DESPITE THE ABSENCE OF ANY EXTRAORDINARY REASON TO DO SO AND THUS, CONTRADICTS THE BASIC TENETS OF DUE PROCESS. — Equally important, the Decision also allows allegations to be belatedly raised despite the absence of any extraordinary reason to do so and thus, contradicts the basic tenets of due process. The *ponente* has not even provided any legal basis why we should consider and allow these belatedly raised allegations that clearly prejudice the rights of petitioner.

10. ID.; ID.; ID.; ID.; THE MAJORITY, WHILE AFFIRMING THE FINDINGS OF THE COMMISSION ON AUDIT, ACTUALLY AGGRAVATED THE LATTER'S BASELESS RULING WHEN IT APPARENTLY ORDERED PETITIONER SINGLY TO REIMBURSE THE FULL AMOUNT OF DISALLOWANCE IN ITS ORIGINAL DECISION, WITHOUT MENTIONING THE LIABILITY OF ITS CO-RESPONDENTS IN THE ORIGINAL COA CASE.— The majority should categorically state in the dispositive portion that petitioner cannot be solely liable for the disallowed price. The majority, while affirming the findings of the COA, actually aggravated the latter's baseless ruling when it apparently ordered petitioner singly to reimburse the full amount of disallowance in its original Decision, without mentioning the liability of his co-respondents in the original COA case. The difference between sole liability and solidary liability cannot be emphasized enough. Solidary obligations assume that the debt can be divided into as many equal shares as there are debtors. In addition, while the creditor may only demand payment from one debtor, that debtor nevertheless has the right of reimbursement from the other debtors. In the present case, there are eight (8) debtors. Therefore, I maintain that the right of petitioner to due process was violated when respondents and the majority of this Court held him liable for the disallowed purchase price of the computer equipment.

APPEARANCES OF COUNSEL

Carlos Voltaire M. Verzosa for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

This resolves the motion for reconsideration of our Decision[1] dated March 8, 2011 affirming COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively. We upheld the COA's ruling that petitioner is

[1] G.R. No. 157838, March 8, 2011, 644 SCRA 679.

personally and solidarily liable for the amount of ₱881,819.00 under Notice of Disallowance No. 93-0016-101.

In compliance with our Resolution dated February 8, 2011, counsel for petitioner filed a Notice, Manifestation and Apology confirming the demise of petitioner on June 24, 2010 and explaining the reason for the delay in informing this Court.

The motion for reconsideration filed by petitioner's counsel, son of petitioner, is anchored on the following grounds:

1) There is no finding of fact in this Court's decision which supports the serious finding that petitioner acted in bad faith when he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an irrelevant grading system intended to favor one of the bidders;

2) Assuming without admitting there was an attempt to alter the results of the bidding, petitioner was not directly responsible for it since it was a certain Rey Evangelista whose act in itself did not constitute bad faith as to be interpreted as deliberately favoring TETRA;

3) The mere fact that petitioner was the signatory in the vouchers and other documents for the processing of the purchase after the winning bidder had been chosen does not by itself constitute bad faith, malice or negligence. His participation as final recommending/approving authority in the said purchase was merely ministerial;

4) Records of this case show that the COA decisions did not hold petitioner solely liable for the disallowed amount of ₱881,819.00; there were others adjudged solidarily liable with petitioner for the reimbursement of said amount;

5) The decision in *Arriola v. Commission on Audit*[2] should have been applied in this case. The TSO canvass coupled with confirmatory telephone canvass should be re-examined given the admission made by the COA Auditor in her 1st Indorsement dated June 6, 1994 and as held in the Dissenting Opinion of Justice Ma. Lourdes P.A. Sereno; and

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[2] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

6) The Court should consider the bases of comparison which is made against a clone generic brand (and its reference price values), in light of compliance with intellectual property laws on software piracy and hardware imitations.[3]

On September 15, 2011, the Office of the Solicitor General (OSG) filed its Comment reiterating its position that petitioner should not have been made liable for the disallowed amount since there was no substantial evidence of his direct responsibility. It contends that the decision should not have ordered petitioner to reimburse the disallowed amount on account of "overpricing of purchased equipment" because he did not have any participation in the bidding that was conducted by the PBAC, nor did he have any participation in influencing Mr. A. Quintos, Jr., the DAP-TEC evaluator, to change the evaluation results. As to the acts cited by the COA in holding petitioner liable for the disallowed amount, these cannot be the "clear showing of bad faith, malice or gross negligence" required by law to hold public officers liable for acts done in the performance of his official duties. There was no contrary evidence presented by the COA to overcome the presumption of regularity in the performance of official duty. The OSG also cites the discussion in the dissenting opinion of Justice Sereno that the standards set in *Arriola* should have been observed by the COA, *i.e.*, it should have compared the same brand of equipment (with the same features and specifications) with the items CDA purchased to determine if there was indeed overpricing.

Respondents filed their Comment asserting that the arguments raised by the petitioner in his motion for reconsideration do not warrant reversal of the decision rendered by this Court. They point out that the bad faith of petitioner was satisfactorily established when he prevailed upon DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units. As to the contention that petitioner's act of signing the documents for the processing of the purchase was merely a ministerial function, respondents noted that the Certification in

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[3] *Rollo*, pp. 375-382.

the Disbursement Voucher for the payment of the computer states that "***Expenses necessary, lawful and incurred under my direct supervision***." Such certification definitely involves the exercise of discretion and is not a ministerial act. Petitioner recommended to the Chairman of the Board of Administrators of CDA the award of the contract to TETRA upon evaluation by the PBAC which he reconstituted. He cannot therefore escape liability for the disallowed amount together with the other liable parties, namely: Mr. Edwin Canonizado, PBAC Chairman, Ms. Ma. Luz Aggabao, PBAC Vice-Chairman, and PBAC Members Ms. Sylvia Posadas, Ma. Erlinda Dailisan, Mr. Leonilo Cedicol, Ms. Amelia Torrente (IT Consultant) and CDA Board Chairman Ms. Edna E. Aberilla. As to the argument that the COA-TSO canvass was not accurate as it compared generic computers with the computers offered by TETRA, respondent pointed out that aside from having already been passed upon in the decision sought to be reconsidered, the report submitted by said office disclosed that certain specifications of the reference computers were either similar or better than those of the Trigem brand offered by TETRA at a much lower price. COA Auditor Rubico had allowed a 15% mark up on the prices of the items canvassed by COA-TSO, but still the actual purchase prices were way above the maximum allowable COA reference prices, hence, the disallowance was proper.

We find that the arguments raised in the motion have been adequately discussed and passed upon in our Decision dated March 8, 2011. There are, however, two significant issues that need to be clarified: *first*, whether the COA violated its own rules and jurisprudence in the determination of overpricing; *second*, whether petitioner may be ordered to reimburse the disallowed amount in the purchase of the subject computers.

There was no violation of COA rules

In *Arriola v. COA*,[4] this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence,

[4] *Id.*

as it was based on undocumented claims. The documents that were used as basis of the COA Decision were not shown to petitioners therein despite their repeated demands to see them; they were denied access to the actual canvass sheets or price quotations from accredited suppliers. Absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.

Reiterating the above declaration, *National Center for Mental Health Management v. COA*,[5] likewise ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects.

The aforesaid jurisprudence became the basis of COA Memorandum No. 97-012 dated March 31, 1997 which contained guidelines on evidence to support audit findings of over-pricing. In the interest of fairness, transparency and due process, it was provided that copies of the documents establishing the audit findings of over-pricing are to be made available to the management of the audited agency.

The memorandum laid down the following specific guidelines:

3.1 When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in reference price lists referred to in pa[r]. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial audit finding to a reliable degree of certainty.

3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa[r]. 2.1 above *have to be supported with canvass sheets and/or price quotations indicating:*

a) the *identities/names of the suppliers or sellers*;

b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;

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[5] G.R. No. 114864, December 6, 1996, 265 SCRA 390, 400.

c) the specifications of the items which should match those involved in the finding of over-pricing; and

d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

x x x x x x x x x (Italics supplied.)

Contrary to the thrust of Justice Sereno's dissent, the lack of compliance with the above guidelines did not invalidate the audit report for violation of the CDA's right to due process. We categorically ruled in *Nava v. Palattao*[6] that neither *Arriola* nor the COA Memorandum No. 97-012 can be given any retroactive effect. Thus, although *Arriola* was already promulgated at the time, it is not correct to say that the COA in this case violated the afore-quoted guidelines which have not yet been issued *at the time the audit was conducted* in 1993.

As to COA Resolution No. 90-43 dated September 10, 1990, while indeed it authorized the disclosure or identification of the sources of data gathered by the Price Evaluation Division-TSO in the conduct of its data gathering and price monitoring activities, perusal of this resolution failed to indicate that the disclosure of the names and identities of suppliers who provided the data during price monitoring activities of the TSO formed part of the evidentiary process in *audit findings of overpricing* and not merely to guide the agencies on where to procure their supplies. COA Resolution No. 90-43 reads as follows:

WHEREAS, it inheres in its constitutional mandate for this Commission to assist in the development efforts of government by providing audit services with a view to avoiding loss and wastage of public funds and property;

WHEREAS, in pursuance of such mandate, the determination of the reasonableness of price is an essential aspect of the audit of procurement in goods and services;

WHEREAS, towards that end, the Price Evaluation Division (PED) of the Technical Services Office (TSO), this commission, provides

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[6] G.R. No. 160211, August 28, 2006, 499 SCRA 745, 763-764.

the Auditors with reference values which are obtained thru a valid canvass in the open market;

WHEREAS, the price findings of the TSO that result from such audit determination of price reasonableness at times adversely affect auditees **who would request TSO to disclose or identify the sources of these price quotations set by PED so that they can procure their supply needs from said sources;**

WHEREAS, this Commission is cognizant of the national policy of transparency in government operations;

WHEREAS, this Commission perceives no legal impediment to the disclosure or identification of the sources of price data which will ensure economy, efficiency and effectiveness in government procurement;

NOW, THEREFORE, in keeping with the national policy of transparency, the commission Proper has resolved, as it does hereby resolve, to authorize the disclosure or identification of the sources of data gathered by the Price Evaluation Division, TSO **in the conduct of its data gathering and monitoring activities**;

Be it further resolved that in order to carry out such policy of disclosure, **the Price Monitor Bulletin, a COA publication, contain not only specific items and prices of goods and services but also the names and identities of responsive suppliers who provided the data during the canvass conducted by the PED, TSO**. (Emphasis and underscoring supplied.)

Accordingly, COA Memorandum No. 97-012 was issued on March 31, 1997 in view of the Commission's recognition that "[t]here is a need to clarify the *role and status of a price reference data*, such as those produced by the Technical Services Office, *in the audit evidence process* with respect to findings of overpricing." It is therefore improper to apply this regulation to the post-audit conducted in the year **1993** on the subject transaction.

Further, it must be noted that petitioner in requesting reconsideration of the audit disallowance, did not make a demand for the production of actual canvass sheets. Neither did he question the correctness of the reference values used by the TSO. Petitioner only pointed out that the date of canvass conducted

by the TSO does not coincide with the date of purchase. To this the COA-TSO countered that "there was no showing that the foreign exchange rate changed during the latter part of 1992 that would have significantly increased the prices of computers." Petitioner nonetheless assailed the price comparison of the *branded* computers purchased by the CDA with non-branded computers, which the dissent now deems as a right of preference or an exercise of discretion on the part of CDA.

COA Upheld the Auditor's Position that Brand is Irrelevant on the Basis of Findings of its Technical Personnel

The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis.[7] For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties."[8] As such, CDA's decisions regarding procurement of equipment for its own use, including computers and its accessories, is subject to the COA's auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive and extravagant expenditures. Necessarily, CDA's preferences regarding brand of its equipment have to conform to the criteria set by the COA rules on what is reasonable price for the items purchased.

The dissent points out that COA Circular No. 85-55-A itself provides that in determining whether the price is excessive, the brand of products **may** be considered, thus:

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[7] Section 2(1), Article IX(D), 1987 Constitution.

[8] Section 2(2), *id.*

D – Brand of Products

Products of recognized brands coming from countries known for producing such quality products are relatively expensive.

Ex. - Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

In this case, however, *brand information* was found by the COA's TSO Director, and also the Information Technology Center (ITC) Director Marieta SF. Acorda as irrelevant to the determination of the reasonableness of the price of the computers purchased by CDA from Tetra.

Director Jorge H.L. Perez of the TSO in his Memorandum dated April 24, 1995 addressed to the Legal Office Director of the COA explained their position as follows:

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1. On the allegation that Trigem and Genesis computers are not comparable since it is like comparing apples with oranges — As a general rule/procedure, verification by TSO of the price of an item requires comparison with the same/similar classification/group of items. The items would then have the same specifications unless stated otherwise in the price findings of the Office. In this case, the reference values are in accordance with the specifications but exclusive of the "branded" information, since this was not stated in the P.O./Invoice, which was used as basis of canvass. Since Trigem and Genesis are both computers of the same general characteristics/ attributes, the branded and non-branded labels propounded by the supplier is of scant consideration.

As regards the UPS, the enumerated advantages of the delivered items are the same advantages that can be generated from a UPS of the same specifications and standard features. In this case, the reference value pertains to a UPS with the same capacity, input, output, battery packed and back-up time, except for the brand.

x x x x x x x x x[9]

(Underscoring supplied.)

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[9] COA records.

On her part, COA Auditor Luzviminda V. Rubico maintained that what is important is that the specifications and functions of Genesis and Trigem computers are similar. She pointed out that "if the comparison of the prices for the disallowances issued was erroneous because what was compared was Genesis brand [versus] Trigem, then the bidding conducted by CDA would not be acceptable since in the Abstract of Bids, prices were not based on similar brands."

Director Acorda of the COA ITC likewise expressed a similar view when asked for comment regarding the penalty points imposed by the CDA after the result of the DAP technical evaluation initially showed that Tetra was ranked lowest. Thus, she explained in her December 9, 1996 memorandum addressed to COA Legal Counsel Director Habitan:

1. On the first issue — we observed that no additional computer features were introduced in CDA's grading system, rather the bidders were penalized for non-compliance with technical specifications fixed by CDA.

On CDA's representation with the Development Academy of the Philippines — Technical Evaluation Committee (DAP Committee) and based on the grading system devised by the former, the DAP Committee agreed to impose penalties for non-compliance of the bids with the technical specifications. Hereunder are their reasons for the penalties and our comments thereto:

1.1 Columbia Computer Center (Columbia) and MicroCircuits Corporation (MCC) were penalized because the microprocessor of the computer hardware they delivered for evaluation were AMD and not Intel as required in the technical specification.

AMD and Intel are both microprocessor brands. It rarely malfunctions. Hence, the difference in brands, as in this case, will not affect the efficiency of the computer's performance. However, Intel microprocessors are more expensive and are manufactured by Intel Corporation which pioneered the production of microprocessors for personal computers.

1.2 Columbia was penalized because the ROM BIOSes of the computer hardware they delivered were AcerBios, a deviation from the technical specifications which required ROM BIOSes licensed by IBM. AMI, Phoenix or Awards.

This will not affect the efficiency of the computer's performance. What is important is that these ROM BIOSes are legal or licensed.

1.3 Columbia was again penalized because the casing of the computer they delivered for evaluation in the Tower 386DX category has a desktop casing and not tower casing as provided in the technical specifications.

Casings do not affect the efficiency of the computer's performance but may affect office furniture requirements such as the design of the computer tables.

1.4 Tetra Corporation (Tetra) was penalized because the RAM of the Notebook it delivered for evaluation was only 640K instead of 2M (expandable).

We agree that RAM capacity will affect the efficiency of the computer's performance.

2. On the second issue — the Benchmark testing conducted by the DAP Committee in which Tetra got the lowest score in terms of Technical Evaluation is not a sufficient basis for us to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

In Benchmark Testing, weights are allocated to the different technical features of a computer. The computers are then evaluated/appraised using diagnostic software and ranked in accordance with the results of such evaluation/appraisal. The resulting ranking merely suggests which computer best the appraisals. (Underscoring supplied.)

In the light of the foregoing consistent stand of its own technical personnel having expertise in computer technology, the COA upheld the auditor's finding that brand was irrelevant to determining the reasonableness of the price at which CDA purchased the subject computers. It is not for this Court, as the dissent attempts, to make assertions to the contrary, *i.e.*, that the brand *preferred* by CDA was superior to another brand or generic computer having similar specifications/functions and to which the price of the branded computer was compared by respondents. Whether a particular brand of computer or microprocessor is of superior quality is not subject to judicial notice. Judicial notice is the cognizance of certain facts which

judges may properly take and act on without proof because they already know them.[10]

The dissent also asserted that it is "unfair to compare Tetra's proposed Trigem computers to a computer clone that was not even qualified to be bidded on or was not subjected to the same hardware benchmark testing." But as COA ITC Director Acorda had explained in her December 9, 1996 memorandum, such Benchmark Testing conducted by the DAP-TEC is not a sufficient basis for them to determine whether or not Trigem computers are inferior to the computer brands offered by the other bidders.

COA's observation that CDA should have been entitled to volume discount was valid

Under COA Circular No. 85-55-A, the price is deemed excessive if the discounts allowed in bulk purchases is not reflected in the price offered or in the award or in the purchase/payment documents. This implies that bulk purchases are expected to be accompanied by discounts that should have resulted in lowering the price of items, which is contrary to the dissent's stance that the supplier TETRA was not legally obligated to give such discount to CDA. COA noted that CDA should have been entitled to volume discount from the supplying dealer considering the number of units it procured from them. Instead of explaining why there was no volume discount at all reflected in the bid or purchase/payment documents, petitioner claimed that other buyers even bought the same computers at higher prices from Tetra. However, when the sales invoices issued to other companies were examined by the COA, it was found that only one unit was procured by each. Hence, it was not pure conjecture on the part of COA to take into consideration the absence of volume discount. Whether or not the other bidders actually committed to give volume

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[10] *People v. Tundag,* G.R. Nos. 135695-96, October 12, 2000, 342 SCRA 704, 716, citing 31 C.J.S. 509.

discount is beside the point, as the subject of post-audit was the reasonableness of the price already paid to Tetra by CDA.

No grave abuse of discretioncommitted by COA in holding petitioner personally and solidarily liable for the overpricing of the computers procured by CDA

Pursuant to Section 103 of P.D. No. 1445 and Section 19 of the Manual on the Certificates of Settlement of Balances, petitioner was found liable for the audit disallowances totaling ₱881,819.00 representing the overprice of the computers purchased by CDA. Petitioner's participation in the transaction was not limited to his signature/approval of the purchase as recommended by the PBAC.

As pointed out in our Decision, records showed it was petitioner who ordered the reconstitution of the PBAC which nullified the previous bidding conducted in December 1991. He further secured the services of the DAP-TEC for technical evaluation and signed the agreement for the said technical assistance when it is already the duty of the PBAC Chairman. Notwithstanding petitioner's claim that it was part of his duties as Executive Director to "[sign] outgoing communications/letters except letters addressed to Heads of [Office], Congressmen, Senators and to the Office of the President,"[11] the fact remains that the services of DAP-TEC for ₱15,000.00 fee were availed of at his instance. As it turned out, the DAP-TEC came out with two different technical evaluation reports, the second having been antedated but also signed by DAP-TEC Director Minerva Mecina who admitted it was her signature in both documents but claimed she was unaware that she had signed two different documents. The discrepancies in the two reports (in the first impartial result, Tetra got the lowest ranking but in the second result made after CDA ordered certain changes in the grading system, Tetra

[11] *Rollo*, pp. 277, 306.

eventually won) was found by Auditor Rubico to be irregular and indicative of bad faith.

The dissent assails such "alleged" instances of manipulation mentioned by Auditor Rubico as belatedly raised and contends that the November 23, 1995 letter of the DAP-TEC technician failed to show that Mr. Rey Evangelista (staff of the PBAC Chairman) went to DAP-TEC on instructions by the petitioner. These circumstances surrounding the issuance of the DAP-TEC technical evaluation results were additionally mentioned by Auditor Rubico to the respondents so that the latter may be apprised that the members of the PBAC, including petitioner, could not have been unaware of efforts to influence the outcome of the technical evaluation, **and not as ground *per se* of the disallowance**. Hence, there was nothing anomalous in the fact that Auditor Rubico only disclosed these additional findings in the course of her audit to the Commission's Legal Counsel and other COA officials when she was asked to comment on the appeal/request for reconsideration made by CDA from the notice of disallowance.

It is to be noted that petitioner never denied there were two different results of DAP-TEC technical evaluation. To refute the imputation of irregularity, petitioner submitted a certification from the incumbent CDA Executive Director that as per inventory, only fourteen out of the subject forty-four Trigem computers have become unserviceable, which he said vindicated their choice of branded computers. Thus, the supposedly "fraudulent" imposition of penalties in the DAP-TEC second report during the physical testing of the computer hardware, construed as manipulative endeavor by the COA Auditor, is now moot and academic. But as already explained in our Decision, the continued serviceability of the purchased items did not justify the overpricing nor render moot the disallowances based on post-audit examination of the pertinent bid and purchase documents.

Finally, we find no merit in the assertion that in ordering the petitioner to reimburse the disallowed amount, this Court misapplied the solidary nature of the liability determined by the COA for petitioner and the other members of the PBAC. We

have categorically stated that the Court upholds the COA's ruling that petitioner is personally and solidarily liable for the overpricing in the computers purchased by CDA. The directive for the payment of the amount of disallowance finally determined by the COA did not change the nature of the obligation as solidary because the demand thus made upon petitioner did not foreclose his right as solidary debtor to proceed against his co-debtors/obligors, in this case the members of the PBAC charged under Notice of Disallowance No. 93-0016-101, for their share in the total amount of disallowance.[12]

Petitioner is therefore liable to restitute the ₱881,819.00 to the Government without prejudice, however, to his right to recover it from persons who were solidarily liable with him.[13]

We stress anew that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce.[14] Findings

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[12] *See* CIVIL CODE, Art. 1217. The article provides:

ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (Emphasis supplied.)

[13] *Frias, Sr. v. People,* G.R. No. 171437, October 4, 2007, 534 SCRA 654, 666.

[14] *Sanchez v. Commission on Audit,* G.R. No. 127545, April 23, 2008, 552 SCRA 471, 489, citing *Cuerdo v. Commission on Audit,* No. 84592, October 27, 1988, 166 SCRA 657, 661 further citing *Tagum Doctors Enterprises v. Apsay,* No. 81188, August 30, 1988, 165 SCRA 154, 155-156.

of quasi-judicial agencies, such as the COA, which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence,[15] and the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[16]

There being no grave abuse of discretion in the findings and conclusions of the COA in this case, the Court finds no cogent reason to deviate from these long-settled rules.

WHEREFORE, the motion for reconsideration is **DENIED WITH FINALITY.**

No further pleadings shall be entertained.

Let entry of judgment be made in due course.

SO ORDERED.

Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Sereno, JJ.*, please see dissenting opinion.

Abad, J., joins the dissenting opinion of Justice M.L.P.A. Sereno.

Corona, C.J., no part.

Del Castillo, J., on leave.

DISSENTING OPINION

VELASCO, JR., *J.*:

The Court, by its Decision dated March 8, 2011, affirmed and upheld the Commission on Audit (COA) Decision Nos.

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[15] *Laysa v. Commission on Audit*, G.R. No. 128134, October 18, 2000, 343 SCRA 520, 526.

[16] *Sanchez v. Commission on Audit, supra* note 14.

98-424[1] and 2003-061[2] dated October 21, 1998 and March 18, 2003, respectively. Said COA Decisions, in turn, affirmed Notice of Disallowance No. 93-0016-101[3] dated November 17, 1993, which disallowed in audit the amount of Eight Hundred Eighty-One Thousand Eight Hundred Nineteen Pesos (PhP 881,819), representing the purported overprice in the purchase by the Cooperative Development Authority (CDA) of a total of forty-six (46) units of computer equipment and peripherals in the total amount of Two Million Two Hundred Eighty-Five Thousand Two Hundred Seventy-Nine Pesos (PhP 2,285,279) from Tetra Corporation (Tetra).

The facts of the case, as stated in this Court's Decision dated March 8, 2011, are as follows:

> On two separate occasions in December 1992, the [CDA] purchased from Tetra Corporation (Tetra) a total of forty-six (46) units of computer equipment and peripherals in the total amount of ₱2,285,279.00. Tetra was chosen from among three qualified bidders (Tetra, Microcircuits and Columbia). In the technical evaluation of the units to be supplied by the qualified bidders, CDA engaged the services of the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC). The bidding was conducted in accordance with the Approved Guidelines and Procedures of Public Bidding for Information Technology (IT) Resources and Memorandum Order No. 237 issued by the Office of the President. Petitioner who was then the Executive Director of the CDA approved the purchase.
>
> On May 18, 1993, the Resident Auditor sought the assistance of the Technical Services Office (TSO), COA in the determination of the reasonableness of the prices of the purchased computers. In its reply-letter dated October 18, 1993, the TSO found that the purchased computers were overpriced/excessive by a total of ₱881,819.00. It was noted that (1) no volume discount was given by the supplier, considering the number of units sold; (2) as early as 1992, there were so much supply of computers in the market so that the prices

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[1] *Rollo*, pp. 50-52.

[2] *Id.* at 61-63.

[3] *Id.* at 68.

of computers were relatively low already; and (3) when CDA first offered to buy computers, of the three qualified bidders, Microcircuits offered the lowest bid of ₱1,123,315.00 while Tetra offered the highest bid of ₱1,269,630.00. The Resident Auditor issued Notice of Disallowance No. 93-0016-101 dated November 17, 1993, for the amount of ₱881,819.00.

In a letter dated May 13, 1994, CDA Chairman Edna E. Aberilla appealed for reconsideration of the disallowance to COA Chairman Celso D. Gangan, submitting the following justifications:

> [1.] The basis of comparison (*Genesis vs. Trigem computers and ferro-resonant type UPS vs. ordinary UPS*) is erroneous, as it is like comparing apples to oranges. x x x Genesis, a non-branded computer, is incomparable to Trigem, a branded computer in the same manner as the MAGTEK-UPS, a ferro-resonant type of UPS, should not be compared with APC-1000W, ADMATE 1000W and PK 1000W, which are all ordinary types of UPS.
>
> x x x It would have been more appropriate, therefore, to compare the acquired computer equipment and peripherals with the same models of other branded computers.
>
> [2.] The technical specifications and other added features were given due weight. x x x [T]he criteria for determining the winning bidder is as follows:
>
> Cost/price 50%
>
> Technical Specifications 30%
>
> Support Services 20%
>
> [3.] The same technical specifications and special features explained the advantages of the acquired computer equipment and peripherals with those that are being compared with. With regards to our branded computer, the advantages include the following:
>
> [a.] Original and Licensed Copy of its Disk Operating System specifically MS-DOS Ver 5.0.
>
> [b.] Original and Licensed Operating System Diskettes and its Manuals.
>
> x x x x x x x x x

[c.] User's Manual and Installation Guide x x x

[d.] Computers offered should run PROGRESS Application Development System as indicated in the Bid Document x x x because the developing system for the establishment of the agency's Management Information System (MIS) is based on PROGRESS Application Software.

[e.] Legal Bios/License Agreement for the particular brand of computers offered to CDA. x x x

With these features, the agency is assured that the computers were acquired through a legitimate process (not smuggled/ "pirated"), thereby, upholding the agency's respect for Intellectual Property Law or P.D. No. 49.

With regard to the UPS, x x x it is a ferro-resonant type x x x [which has] advantages to ensure greater reliability and will enable users to operate without interruption.

[4.] [As declared in] COA Circular No. 85-55-A, "the price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award. As will be seen from the criteria adopted by the agency, both the warranty and special features were considered and given corresponding weights in the computation for the support services offered by the bidder.["]

[5.] x x x [T]here is no overpricing because in the process of comparing "*apples vs. apples*," the other buyers in effect procured their units at a higher price than those of the CDA. We x x x are still in the process of gathering additional data of other transactions to further support our stand. x x x

[6.] x x x The rapid changes due to research and development in Information Technology (I.T.) results in the significant reduction of prices of computer equipment. x x x [M]aking a comparison given two different periods (*December 1992 vs. August 1993*) may be invalid x x x.

[7.] The procedures of the public bidding as adopted by the [CDA] x x x demonstrate a very effective mechanism for avoiding any possible overpricing.

In compliance with the request of the Legal Office Director, the TSO submitted its comments on the justifications submitted by the CDA. On the non-comparability of Genesis and Trigem brands, it explained that the reference values were in accordance with the same specifications but exclusive of the "branded" information, since this was not stated in the P.O./Invoice, which was used as basis of the canvass. Since the said brands are both computers of the same general characteristics/attributes, the branded and non-branded labels propounded by the supplier is of scant consideration. As regards the UPS, it was pointed out that the enumerated advantages of the delivered items are the same advantages that can be generated from a UPS of the same specifications and standard features; in this case, the reference value pertains to a UPS with the same capacity, input, output, battery pack and back-up time, except for the brand. As to the period of purchase by the CDA, the TSO noted that based on its monitoring from October 1993 to May 1994, prices of Star and Epson printers and hard disk (120 MB Model St-3144A) either remained the same or even increased by 2% to 5%. It is therefore valid that the price of an item is the same from one period to another, and that an item may be available unless it is out of stock, or phased out, with or without a replacement. In this case, the reference value cannot be considered as the reduced price as a result of rapid changes due to research since the said reference value is the price for the same model already existing in December 1992 when the purchase was made and still available in August 1993, and not an equivalent nor replacement of a phased out model.

On the other hand, the Resident Auditor maintained her stand on the disallowance and submitted to Assistant Commissioner Raul C. Flores her replies to the CDA's justifications, as follows: (1) on the allegedly erroneous comparison between Genesis and Trigem brands, if this will be the basis, then their bidding will not be acceptable because in the Abstract of Bids, the comparison of prices was not based on similar brands, *i.e.*, Tetra offered Trigem-Korean for ₱1,269,620, Microcircuits offered Arche-US brand for ₱1,123,315, and Columbia offered Acer-Taiwan brand for ₱1,476,600; what is important is that, the specifications and functions are similar; (2) the 2nd, 3rd and 4th justifications are of no moment as all the offers of the three qualified bidders were of similar technical specifications, features and warranty as contained in the Proposal Bid Form; (3) on the 5th justification — the companies referred to procured only one unit each and of much higher grade; (4) on the 6th justification —

while the date of the canvass conducted by the TSO does not coincide with the date of purchase, there is no showing that foreign exchange rate changed during the latter part of 1992 which will significantly increase the prices of computers; and (5) on the 7th justification — while the COA witnessed the public bidding, the post-evaluation was left to the Pre-qualifications, Bids and Awards Committee (PBAC). The National Government Audit Office I concurred with the opinion of the Resident Auditor that CDA's request may not be given due course.

On October 21, 1998, respondent COA issued the assailed decision affirming the disallowance. It held that whether or not the product is branded is irrelevant in the determination of the reasonableness of the price since the brand was not stated in the Call for Bids nor in the Purchase Order. The bids of the three qualified bidders were based on similar technical specifications, features and warranty as contained in their proposals. It was also found that the performance of the competing computer equipment would not vary or change even if the attributes or characteristics of said computers cited by petitioner were to be factored in. The difference in brands, microprocessors, BIOSes, as well as casings will not affect the efficiency of the computer's performance.

Further, COA declared that CDA should not have awarded the contract to Tetra but to the other competing bidders, whose bid is more advantageous to the government. It noted that Microcircuits offered the lowest bid of ₱1,123,315.00 for the US brand said to be more durable than the Korean brand supplied by Tetra. CDA also should have been entitled to volume discount considering the number of units it procured from Tetra. Lastly, COA emphasized that the requirements and specifications of the end-user are of prime consideration and the other added features of the equipment, if not specified or needed by the end-user, should not be taken into account in determining the purchase price. The conduct of public bidding should be made objectively with the end in view of purchasing quality equipment as needed at the least cost to the government. The price for the equipment delivered having been paid, when such equipment could be acquired at a lower cost, the disallowance of the price difference was justified. (Citations omitted.)

As mentioned above, the Court, in its Decision dated March 8, 2011, affirmed COA's disallowance and held petitioner Candelario L. Verzosa, Jr. personally liable.

In this recourse, petitioner, now deceased, through his son and legal counsel, prays that the Court reconsider its Decision, anchoring his arguments essentially on two (2) grounds: *First*, there is no finding of bad faith on his part as to render him personally liable for the disallowed amount.[4] *Second*, the Technical Services Office (TSO) canvass, coupled with the confirmatory telephone canvass, does not comply with the requirement of an actual canvass and/or price quotations from identified suppliers as a valid basis for outright disallowance, consistent with this Court's ruling in *Arriola v. COA*.[5]

The Office of the Solicitor General (OSG) urges reconsideration. In its *Comment (Re: Petitioner's Motion for Reconsideration dated April 8, 2011)* dated September 12, 2011, the OSG avers that there might have been a misappreciation of the facts in the case at bar which rendered petitioner personally liable.[6] In support of petitioner's cause, the OSG invites attention to the following: (1) petitioner had no actual participation in the purported offending transaction;[7] (2) a finding of liability despite the COA's failure to prove it with substantial evidence amounts to a violation of petitioner's right to administrative due process; and (3) the presumption of regularity in the performance of duty.[8]

For their part, respondents maintain that: (1) the bad faith of petitioner is satisfactorily shown by his having prevailed upon the Development Academy of the Philippines-Technical Evaluation Committee (DAP-TEC) to modify the initial result of the technical evaluation of the bidders' computer units;[9] (2) petitioner's act of signing involves the exercise of discretion and is not a ministerial act;[10] (3) the TSO report, which was prepared by COA personnel

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[4] *Id.* at 375.

[5] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[6] *Rollo*, p. 478.

[7] *Id.* at 486.

[8] *Id.* at 488.

[9] *Id.* at 507.

[10] *Id*.

having knowledge and expertise on computer equipment, supplied reliable data that firmed up the finding of overpricing;[11] and (4) even without considering the canvassed prices of COA, the overprice in the subject procurement by the CDA could still be sufficiently established based on the bid results.[12]

Essentially, the issues for Our resolution are: (1) whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing in audit the purported overprice in the purchase of the computer equipment and peripherals by the CDA; and (2) whether there is substantial evidence to hold petitioner personally liable for the disallowed amount.

The majority rules in favor of respondents. I am constrained to register my dissent.

Applicability of *Arriola*

In *Arriola*, this Court held that "COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims." We also held that petitioners therein were not accorded due process for not having allowed access to source documents. As stated:

> We agree that petitioners [Arriola, *et al.*] were indeed not given due process in this case.
>
> We note that while NCA had provided receipts and invoices to show the acquisition costs of materials found by COA to be overpriced, COA merely referred to "a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO," (p. 124, *Rollo*).
>
> In fairness to petitioners, COA should have, with respect for instance to the submersible pump, produced a written price quotation specifically for "1 Unit Goulds Submersible Pump Model 25 EL 30432, 3 HP, 230 V., coupled to "Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz. 3450 RPM." The cost evaluation

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[11] *Id.* at 508.

[12] *Id.* at 510.

sheet, dated September 15, 1986, Item No. 12 (attached to the decision of Mr. Jose F. Mabanta, (Actg. Director, COA-TSO), merely refers to a "Goulds submersible pump." x x x

x x x x x x x x x

This is not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee **mandatory access to the COA source documents/canvass sheets**. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

> . . . As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like . . .

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

The second assigned error is tied in with the first.

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. Circular No. 85-55-A of the Commission on Audit lays down the following standards for "Excessive" Expenditures:

3.3 EXCESSIVE EXPENDITURES.

Definition: The term 'excessive expenditures' signifies unreasonable expense or expenses incurred at an immoderate quantity

and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

Standard for 'Excessive' Expenditures

The term 'excessive expenditures' pertains to the variables of Price and Quantity.

1. Price — The price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor.

Volume Discounts — The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchase/payment document.

3. Factors to be Considered — In determining whether or not the price is excessive, the following factors may be considered.

A — Supply and demand forces in the market.

Ex. — Where there is a supply shortage of a particular product, x x x prices of these products may vary within a day.

B — Government Price Quotations

C — Warranty of Products or Special Features.

The price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award.

D — Brand of Products.

Products of recognized brand coming from countries known for producing such quality products are relatively expensive.

Ex. — Solingen scissors x x x made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

It was incumbent upon the COA to prove that the foregoing standards were met in its audit disallowance. The records do not show that such was done in this case.

On the third issue, absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.[13] (Emphasis supplied.)

As correctly stated by the majority, the above-mentioned declaration in *Arriola* was reiterated in *National Center for Mental Health Management v. COA*, where the Court also ruled that "price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects."[14]

Both *Arriola* and *National Center for Mental Health Management* paved the way for the formulation of COA Memorandum No. 97-012 dated March 31, 1997, which imposed more stringent requirements on the process of evidence-gathering to support any audit finding of overpricing. Said COA Memorandum required that the initial findings be supported by canvass sheets and/or price quotations indicating: (1) the identities/names of the suppliers or sellers; (2) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; (3) the specifications of the items that should match those involved in the overpricing; and (4) the purchase/contract terms and conditions that should be the same as those of the questioned transaction.

In justifying that there was no violation of COA rules, the majority cited *Nava v. Palattao*,[15] where the Court held that neither *Arriola* nor COA Memorandum No. 97-012 can be given any retroactive effect. I respectfully except.

It is true that this Court in *Nava* held that neither *Arriola* nor the COA Memorandum that was issued pursuant to *Arriola* and *National Center for Mental Health Management* can be given any retroactive effect. The majority, however, failed to take into consideration that the very reason why *Arriola* was

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[13] *Arriola v. COA*, *supra* note 5, at 153-156.

[14] G.R. No. 114864, December 6, 1996, 265 SCRA 390, 400.

[15] G.R. No. 160211, August 28, 2006, 499 SCRA 745.

not applied in *Nava* is because both cases were cast under different circumstances. As this Court wrote in *Nava*:

> Second and **more important**, **the circumstances in *Arriola* are different from those in the present case**. In the earlier case, the COA merely referred to a cost comparison made by the engineer of COA-Technical Services Office (TSO), based on unit costs furnished by the Price Monitoring Division of the COA-TSO. The COA even refused to show the canvass sheets to the petitioners, explaining that the source document was confidential.
>
> In the present case, the audit team examined several documents before they arrived at their conclusion that the subject transactions were grossly disadvantageous to the government. These documents were included in the Formal Offer of Evidence submitted to the Sandiganbayan. Petitioner was likewise presented an opportunity to controvert the findings of the audit team during the exit conference held at the end of the audit, but he failed to do so.
>
> Further, the fact that only three canvass sheets/price quotations were presented by the audit team does not bolster petitioner's claim that his right to due process was violated. To be sure, there is no rule stating that all price canvass sheets must be presented. It is enough that those that are made the basis of comparison be submitted for scrutiny to the parties being audited. Indubitably, these documents were properly submitted and testified to by the principal prosecution witness, Laura Soriano. Moreover, petitioner had ample opportunity to controvert them.[16] (Emphasis supplied.)

On the other hand, the circumstances in the instant case are similar to those in *Arriola*, where "COA merely referred to 'a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO.' " In the case at bar, COA merely based its findings on overpricing on the TSO canvass and a telephone canvass which was confirmatory of the TSO canvass. Evidently, the TSO canvass and the confirmatory telephone canvass do not comply with the requirement of an actual canvass and/or price quotations from identified suppliers as a valid basis for outright disallowance, following *Arriola*.

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[16] *Id.* at 764.

The majority, however, is bent on disregarding the foregoing *Arriola* holding on the basis of the pronouncement in *Nava* that it cannot be applied retroactively. It is worth noting, however, that in *Buscaino v. COA*,[17] a case involving an audit disallowance made in 1986, as in *Arriola*, the Court's ruling in *Arriola* was nonetheless applied retroactively therein. Specifically:

> Going into the merits of the case, the Court finds that the [COA] acted with grave abuse of discretion in handing down its assailed decision. The various disbursements upon which petitioner's liability is based have not been indubitably established as patently invalid or irregular and the disallowances ordered by COA were not substantiated by sufficient evidence on record.
>
> To begin with, as regards the items disallowed on the ground of overpricing, petitioner was adjudged liable therefor because he was a member of the Canvass and Award Committee which was tasked to certify that the prices submitted were the lowest and which recommended the award to the supplier. The disallowances were made on the basis of respondent's allegation or theory that the school and other office supplies may be bought from other suppliers at prices much lower than those of the supplier to whom the bid was awarded.
>
> In order to find out how the COA reached such a conclusion, petitioner asked the COA to furnish him with the necessary information and/or documents that would indicate the large disparity in the prices such as the quotation of prices of every item re-canvassed by the resident auditor, reflecting the brand or quality of the items, the names and addresses of the suppliers where the items were re-canvassed and the date subject items were re-canvassed. Respondent COA, however, did not furnish the same x x x. Without the necessary information and/or documents, it baffles the Court how COA could have arrived at the conclusion that there were cases of overpricing. And without the needed information and/or documents, the petitioner was not afforded the opportunity to refute the disallowances, item by item, and to justify the legality of the purchases involved. As argued by the petitioner,
>
> "How can the undersigned (petitioner) determine the difference in prices and per cent increases between the then

[17] G.R. No. 110798, July 20, 1999, 310 SCRA 635.

> procurement officer's canvassed prices and the then COA Auditor's re-canvassed prices and possibly justify item by item the legality of the purchase when as you said 'no such document as you indicated above were turned-over to the undersigned (present PUP COA Auditor)'? The purchase orders contain several items and it is important that those items which were allegedly overpriced should be identified."

The requirements of due process of law mandate that every accused or respondent be apprised of the nature and cause of the charge against him, and the evidence in support thereof be shown or made available to him so that he can meet the charge x x x. COA's failure to furnish or show to the petitioner the inculpatory documents or records of purchases and price levels constituted a denial of due process which is a valid defense against the accusation. Absent any evidence documentary or testimonial to prove the same, the charge of COA against the herein petitioner must fail for want of any leg to stand on.

In the 1991 decision in the case of *Virgilio C. Arriola and Julian Fernandez vs. Commission on Audit and Board of Liquidators*, x x x which was reiterated in the case of *National Center for Mental Health Management vs. Commission on Audit* x x x, this Court succinctly held that mere allegations of overpricing are not,

> " '. . . in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.'
>
> A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. x x x
>
> By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.
>
> x x x x x x x x x

> We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. . . .
>
> x x x x x x x x x
>
> It was incumbent upon the COA to prove that its standards were met in its audit disallowance. The records do not show that such was done in this case.
>
> . . . absent due process and evidence to support COA's disallowance, COA's ruling on petitioner's liability has no basis."

Indeed, without the evidence upon which the charge of overpricing is anchored, apart from being a denial of due process, it would not be possible to attach liability to petitioner.[18]

Why COA Memorandum Circular No. 97-012 cannot be applied to the instant case is understandable. It was not yet in existence at the time the disallowance was made. The ratio underpinning *Arriola*, however, is squarely in point. There is, thus, no rhyme or reason why, taking into account *Buscaino*, the findings in *Arriola* cannot be made to apply in the case at bar. To reiterate, *Arriola* stated:

> A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee **mandatory access to the COA source documents/canvass sheets**. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:
>
> . . . As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like . . .
>
> **By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize**

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[18] *Id.* at 646-649. (Citations omitted.)

and or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit. (Emphasis supplied.)

As things stand, the COA failed to give mandatory access to the COA source documents/canvass sheets. Its findings on overpricing were based, without more, on the TSO canvass and a telephone canvass confirmatory of the TSO canvass. The steps COA thus took do not conform to the due process requirements. Likewise, this fails to satisfy petitioner that the COA guidelines on excessive expenditures had been observed. Concomitantly, it behooves upon the Court to apply its ruling in *Arriola* to the present case.

No valid comparison

By express constitutional provision, the COA is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis.[19] For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties."[20]

On the other hand, the Administrative Code vests the Pre-qualification, Bids and Awards Committee (PBAC) the responsibility "for the conduct of prequalification of contractors, biddings, evaluation of bids and recommending awards of contracts."

Between the COA, which can only perform post-audit functions, and the PBAC members of CDA, it is the latter that have the

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[19] *Villanueva v. COA*, G.R. No. 151987, March 18, 2005, 453 SCRA 782, 791.

[20] *Id.* at 791-792; citing CONSTITUTION, Art. IX(D), Sec. 2(2).

technical expertise to determine the offers that will best meet the needs and requirements of their office.[21] COA cannot, therefore, substitute or impose its own judgment on the PBAC members of CDA without any legal or factual basis. It can only audit purchases made; it cannot prescribe what should be purchased.

To uphold the COA's finding that brand was irrelevant in the determination of the reasonableness of the price at which CDA purchased the subject computers is to tread roughshod at the discretionary powers of the PBAC to set the criteria and approve the purchase of the equipment. It is settled jurisprudence that in assessing whether there was indeed an overpricing, a specific comparison with the same brand, features and specifications as those that were actually purchased should be made.[22]

Aside from the foregoing reasons, I differ with the view of the majority that COA's observation that the CDA should have been entitled to volume discount was valid. On the contrary, a perusal of COA Circular No. 85-55-A would show that there was neither any legal obligation on the part of Tetra to give a volume discount nor to demand for said discount on the part of CDA. Particularly:

> 2.Volume Discounts — The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document.

The above-quoted provision simply states that if the discounts **allowed** in bulk purchases are not reflected in the price offered or in the award or in the purchases/payment document, then the price is deemed excessive. Without such allowed discounts, said provision does not have any bearing for purposes of ascertaining whether a price should be deemed excessive or not. Discernibly, no legal obligation was imposed for the giving or demanding of volume discount can be inferred therefrom.

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[21] *Id.* at 796.

[22] *Arriola v. COA, supra* note 5, at 154.

When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms.[23] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[24]

When factual findings of administrative agencies are not binding upon the Court

Administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence. However, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court has not hesitated to reverse their factual findings.[25] As this Court held in *Litonjua v. Court of Appeals*:[26]

> It is clear from the foregoing discussion that the factual findings of the SEC are not supported by substantial evidence. Hence, it is the exception, rather than the general rule that factual findings of administrative agencies are binding upon the courts, that should apply. The exceptions are well-stated in *Datu Tagoranao Benito v. SEC*:
>
> > **Well-settled is the rule that the findings of facts of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the aforementioned findings are not supported by substantial evidence.** (*Gokongwei, Jr. vs. SEC*, 97 SCRA 78.) In a long string of cases, the Supreme Court has consistently adhered to the rule that decisions of administrative officers are not to be disturbed by the courts **except when the former have acted without or in excess of their jurisdiction or with grave abuse of discretion** x x x. (Emphasis supplied; citations omitted.)

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[23] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006, 492 SCRA 575, 581.

[24] *Philippine Amusement & Gaming Corp. v. Philippine Gaming Jurisdiction, Inc.*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665.

[25] *PAL, Inc. v. NLRC*, G.R. No. 117038, September 25, 1997, 279 SCRA 445, 458.

[26] G.R. No. 120294, February 10, 1998, 286 SCRA 136.

Yap v. COA is of the same tenor, to wit:

> We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality **when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.** Thus, **only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction**, may this Court entertain a petition for *certiorari* under Rule 65 of the Rules of Court.[27] (Emphasis supplied.)

In the case at bar, there is reason to set aside COA's decisions and the factual premises holding them together, for the said decisions are not supported by substantial evidence indicating petitioner's responsibility for the disallowance. Substantial evidence means such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

In upholding the finding by COA of the personal liability of petitioner for the overpricing of the computers procured by CDA, the majority found:

> As pointed out in our Decision, records showed it was petitioner who ordered the reconstitution of the PBAC which nullified the previous bidding conducted in December 1991. He further secured the services of the DAP-TEC for technical evaluation and signed the agreement for the said technical assistance when it is already the duty of the PBAC Chairman. Notwithstanding petitioner's claim that it was part of his duties as Executive Director to "[sign] outgoing communications/letters except letters addressed to Heads of offices, Congressmen, Senators and to the Office of the President," the fact

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[27] G.R. No. 158562, April 23, 2010, 619 SCRA 154, 174.

[28] *Ventis Maritime Corp. v. CA*, G.R. No. 160338, October 6, 2008, 567 SCRA 474, 480; citing *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639.

remains that the services of DAP-TEC for ₱15,000.00 fee were availed of at his instance. As it turned out, the DAP-TEC came out with two different technical evaluation reports, the second having been antedated but also signed by DAP-TEC Director Minerva Mecina who admitted it was her signature in both documents but claimed she was unaware that she had signed two different documents. The discrepancies in the two reports (in the first impartial result, Tetra got the lowest ranking but in the second result made after CDA ordered certain changes in the grading system, Tetra eventually won) [were] found by Auditor Rubico to be irregular and indicative of bad faith.

But as aptly observed by the OSG, "there might have been a misappreciation of the facts of the case."[29] Evidently, the only bases for a finding of bad faith on the part of petitioner so as to render him personally liable are: (1) the reconstitution of the PBAC by petitioner; and (2) petitioner's engagement of the services of the DAP-TEC. By themselves, there is nothing illegal from these actions. As mentioned above, the creation of the PBAC is even sanctioned by the Administrative Code, while the engagement of the services of the DAP-TEC, a third-party evaluator, by petitioner is even an indication that he "wanted transparency and independence in the bidding process."[30]

No bad faith can also be imputed upon petitioner, because, contrary to the assertion of respondents, the records do not support any finding that he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an allegedly irrelevant grading system that was intended to favor one of the bidders. Assuming that there was, indeed, an alleged intent to alter the evaluation results of the bidding, no sufficient evidence can point to petitioner's direct participation or involvement in the said charge. It cannot be overemphasized that no connection was established between petitioner and a certain Rey Evangelista, a member of the staff of the PBAC Chairperson, who was said to have gone to DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units.

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[29] *Rollo*, p. 478.

[30] *Id.* at 489.

Moreover, the mere fact that petitioner signed the vouchers and other documents for the processing of the purchase after the winning bidder has been chosen does not *per se* constitute bad faith on his part. Notably, petitioner's signature was given as final recommending/approving authority only after the entire bidding process was conducted. He cannot, therefore, be faulted for relying and depending, to a reasonable extent, on the integrity and performance of duty by the PBAC, as well as the Board of Administrators, which acted on the documents. By analogy, this Court's ruling in *Arias v. Sandiganbayan*[31] is instructive:

> x x x **All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.
>
> There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction. (Emphasis supplied.)

Absent any clear showing that petitioner had a hand in the alleged intent to alter the evaluation results of the bidding, the presumption of regularity in the performance of duty should apply. Mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against this presumption.[32]

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[31] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309, 306.

[32] *Flores v. Montemayor*, G.R. No. 170146, August 25, 2010, 629 SCRA 178, 195.

Accordingly, I vote to grant the motion for reconsideration, recall and set aside the March 8, 2011 Decision of this Court, and reverse and set aside COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively, and Notice of Disallowance No. 93-0016-101 dated November 17, 1993.

DISSENTING OPINION

SERENO, *J.*:

The Office of Solicitor General (OSG) is sworn to protect the interests of government as its principal law officer and legal defender. In a very rare occasion as in this case, the OSG has taken the side of private petitioner and against public respondents. When the OSG adopts a position contrary to that of a government agency, this Court should seriously pause and look at the facts and the law more closely. In *Gonzales v. Chavez,*[1] we said:

> Moreover, endowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, **the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal**. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. **Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve**. (Emphasis supplied.)

Petitioner is before us, seeking a reconsideration of this Court's Decision promulgated on 8 March 2011. He maintains that public respondents failed to present any evidence supporting the allegation that the bidding for the computer equipment was rigged, or that he had any part in such manipulation if indeed there was any. He also claims that the dispositive portion of the Decision wrongly made him solely liable for the disallowed amount when it stated as follows:

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[1] G.R. No. 97351, 4 February 1992, 205 SCRA 816.

WHEREFORE, the petition is **DENIED.** The COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively, are **AFFIRMED and UPHELD**. Petitioner Candelario L. Versoza, Jr. is hereby ordered to **REIMBURSE** the amount of ₱881,819.00 subject of Notice of Disallowance No. 93-0016-101 dated November 17, 1993 and the corresponding CSB No. 94-101 dated January 10, 1994.

We subsequently required the OSG and respondents to comment on the Motion for Reconsideration. **The OSG noted that "there is no finding of fact in the Decision dated March 8, 2011 which supports this serious finding or determination that the late Petitioner acted in bad faith so as to make him personally liable for the said amount disallowed."** The OSG's Comment further states:

> Assuming without admitting that there was an alleged intent to alter the results of the bidding, the late Petitioner was NOT DIRECTLY RESPONSIBLE FOR THIS (and there is also no factual finding even of any indirect responsibility on the part of the late Petitioner) since it was a certain Rey Evangelista who was directly responsible. Even by itself, the actions by Mr. Rey Evangelista do not *per se* constitute such serious bad faith as to be interpreted as deliberately favouring Tetra computer bid...
>
> x x x x x x x x x
>
> To be certain, the CDA being a government agency/corporation, **there is no single allegation or imputation much less any evidence of any act constituting bad faith, malice or negligence on the part of the petitioner** (during his services as Executive Director of the CDA) **in any of the issuances by the COA, whether it be COA Decision No. 98-424 dated October 21, 1998** (Annex "A") **or COA Decision No. 2003-061 dated March 18, 2003** (Annex "C") **or even the Notice of Disallowance 93-0016-101 dated November 17, 1993** (Annex "F")**, let alone any supporting document thereof.** (Emphasis supplied.)

Reviewing the case at hand, this Court's dependence on unsupported allegations is alarming. Even more alarming is the fact that its findings are contrary to what the evidence actually proves.

I reiterate the five reasons I enumerated in my Dissent to the Decision dated 8 March 2011 why this Court must grant the Petition.

First, the Commission on Audit (COA) cannot violate the same rules it imposes on all public offices regarding the manner of conducting canvasses. Second, the COA auditor cannot substitute her own discretion for that of the Cooperative Development Authority (CDA) by denying its right to prefer certain specifications for the computers it intended to purchase for its own use. Third, the amount of disallowance has no basis in fact, is grossly disproportionate to the total purchase price, and is in the nature of punitive damages. Fourth, there is no clear and convincing evidence that there were instances of manipulation during the bidding process. Moreover, this allegation of manipulation was belatedly raised by public respondents, having been raised for the first time only in COA's Comment before this Court, thus violating petitioner's right to due process. Finally, respondent miserably failed to show that petitioner was personally liable for the return of the disallowance.

In the Decision, the *ponencia* focuses on COA resident auditor Luzviminda V. Rubico's allegation of manipulation of the bidding process. A judicious review of the records and pleadings reveals, however, that the conspiracy theory of the so-called manipulation was a mere figment of the imagination of an overeager auditor.

It must be emphasized that there are two very serious flaws in the findings of fact in the Decision, which must thus be reconsidered.

First, respondents failed to refute the presumption of regularity in the exercise of official functions. Aside from the reports and bare allegations submitted by the resident auditor, there is nothing in the records that would speak of any hint of manipulation or illegality in any part of the bidding process.

Second, respondents also failed to show that petitioner was involved in the so-called manipulation of the bidding process, if ever there was one. To prove the alleged manipulation, they presented only three documents, two of which were letters from

auditor Rubico herself, dated 17 November 1995 and 23 November 1995, addressed to COA Legal Counsel Director Raquel Habitan. The third document is the letter, also dated 23 November 1995, written by Antonio Quintos, Jr. of the Development Academy of the Philippines (DAP) upon the request of COA representative Abraham Rodriguez.

The first evidence that the majority relied on was the 17 November 1995 letter of auditor Rubico. Here she alleged that she "discovered" an irregularity in the bidding process. She also alleged that the results were manipulated to make it appear that Tetra Corporation bested the other bidders. In her narration of her so-called "discovery," she never mentioned the name of petitioner.

The second evidence that the majority considered was Rubico's 23 November 1995 letter, wherein she mentioned petitioner's name twice, but not in any manner as to indicate any suspicious behavior on petitioner's part. The first instance was in paragraph 1, where she mentioned that petitioner had reconstituted the Public Bidding and Awards Committee (PBAC). The second instance was in paragraph 5, where she merely confirmed that he had signed a Memorandum of Agreement between the CDA and the DAP. These two acts were neither illegal nor prohibited *per se*, and Rubico has not claimed so in any of her letters. Moreover, as the majority itself pointed out in its Decision promulgated on 8 March 2011, only paragraphs 6 to 12 of the 23 November 1995 letter were relevant to the discussion of the alleged manipulation. In these paragraphs, again, auditor Rubico made no mention at all of petitioner and his supposed participation in the alleged manipulation.

The third and final piece of evidence on which the majority based its findings on was Quintos' letter also dated 23 November 1995. Likewise, his letter neither mentioned petitioner nor proved manipulation in the technical evaluation of the computer equipment.

Looking very closely at these pieces of evidence, it is clear that the majority's Decision was unwarranted and was bereft of any basis.

More importantly, an indication that the COA officials themselves found the alleged manipulation to be improbable or, at the very least, unsupported by evidence was the inaction thereon by COA's legal counsel and its Commissioners Celso D. Gangan, Raul C. Flores and Sofronio B. Ursal in COA Decision No. 98-424; and again by Commissioners Guillermo N. Carague, Emmanuel Dalman and Raul C. Flores in COA Decision No. 2003-061.

To recall, CDA purchased the computer equipment in December 1992. Respondent COA issued the Notice of Disallowance on 17 November 1993. Auditor Rubico issued her reports in November 1995, and these were duly received on 16 February 1996 by respondent's legal office through the assistant commissioner of the National Government Audit Office I. Attached to the reports were additional pieces of evidence showing that petitioner and the PBAC were liable for the disallowed amount. However, respondent's legal counsel did not act on the alleged manipulation or institute any administrative action against petitioner and the PBAC members. Furthermore, despite being additional evidence for the disallowance, respondent's Decision No. 98-424 dated 21 October 1998 and Decision No. 2003-061 dated 18 March 2003 were deafeningly silent on Rubico's reports.

The only conclusion to be reached is that the higher officials of COA did not find any merit in the auditor's allegations after conducting a "judicious evaluation of the facts and circumstances."[2] Hence, it would be unwarranted for this Court to hold otherwise. To reiterate, it was only in respondents' Comment dated 12 March 2004 filed before this Court that the allegation of illegal manipulation was first made. Prior to this Comment, there was no indication that petitioner was ever informed of the possible accusation of illicit behaviour, or that such allegations were duly considered by the Commissioners who issued the assailed rulings.

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[2] *Rollo*, p. 232.

In contrast, despite being caught off guard by the belated allegation of manipulation in the bidding process, petitioner was able to present substantial evidence to show that his participation was only ministerial. He duly submitted additional documents[3] and attached them to his Reply,[4] thus showing that the acts referred to by the auditor were regular and within the lawful ambit of his authority as executive director.

Moreover, this Court blatantly ignores and disregards prevailing laws, administrative rules and established doctrines on issues of excessive expenditure. It fails to consider the prevailing doctrine first laid down in *Arriola v. COA*[5] on issues of overpricing. The majority fails to squarely explain why *Arriola* should not be applied to this case, when both cases clearly proscribe a finding of overpricing when due process has been violated.

To reiterate, the canvass sheets were not presented to the petitioner in *Arriola*. In the present case, aside from the non-presentation of the canvass sheets, no actual field canvass was made but, instead, a mere telephone canvass was conducted. The COA in *Arriola* likewise secured price quotations from three suppliers. In the present case, comparisons of only one or two suppliers were made. The Court in *Arriola* struck down the comparison made by the COA between the equipment purchased and an item of the same brand, but not the same model. Here, different pieces of equipment of different brands

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[3] Letter dated 25 November 1992 from Dr. William Torres, Managing Director of the National Computer Center, consenting to the request for the additional purchase of computers and computer peripherals, *id*. at 299; Minutes of the board meeting of the CDA dated 8-10 January approving the recommendation of PBAC with regard to the awarding of the bid to Tetra, *id*. at 300-303; Minutes of the board meeting dated 24-25 August 1992, approving the Invitation to Pre-qualify to Bid, Instruction to Bidders and Bid Forms, *id*. at 304-305; Special Order No. 91-08 issued by the Office of the President delegating powers to petitioner as executive director of CDA, *id*. at 306; and Special Order No. 001, Series of 1995 on the Authority Specifications for the officers of CDA, *id*. at 307.

[4] *Id*. at 255-298.

[5] G.R. No. 90364, 30 September 1991, 202 SCRA 147.

were compared. Finally, in both cases, the specifications of the items compared were not provided.

As emphasized, this Court's ruling contradicts what the evidence has actually proved. It bears emphasis that the *ponencia* has reproduced the findings of the Technical Services Office (TSO). These TSO findings were the only ones relied upon by the auditor in holding petitioner liable for an overpricing of ₱811,819. The same document clearly shows that no comparison was actually made. It notes the following express disclosures:

> Other items were verified/evaluated **but had no valid data for comparison**.
>
> * The **only** available valid price information.
>
> ** Lower price out of only two valid price information **for want of a third valid price information as required**. (Emphasis supplied.)

Despite the TSO's findings, this Court still unreasonably upholds the auditor's findings on the overpricing and petitioner's personal liability.

It must also be equally emphasized that, contrary to what the *ponente* posits, the opinion of COA's information technology (IT) personnel could not be the basis of overturning the discretion of the CDA in determining the specifications for the computer equipment. Nowhere in the Constitution or any law is the IT department of COA allowed to override the preference for equipment brands or specifications of an agency. To reiterate, what was at issue was not the **necessity** of these specifications or the equipment themselves, but only that it should not be **overpriced**. We are setting a very dangerous precedent if we are to insist that the COA's preference — or even that of its IT personnel — is far superior to and prevails over that of the agency that it is auditing.

Thus, the majority fails to satisfactorily address the following truths:

1. The doctrine established in *Arriola* was already controlling at the time the issues arose in this case, and yet it was not applied to this case.

2. No actual field canvass was made, and no canvass sheets were presented.

3. Comparisons were made among **different specifications and brands** of equipment, or that the equipment was compared to those having no specifications at all.

4. Comparisons of pieces of the same equipment coming from at least three (3) suppliers were not made.

5. There was a contradiction in respondent's statement that, on the one hand, the winning bid should have been the lowest bidder, but that on the other hand, the amount of overprice was based on the price of the generic clone equipment.

6. The generic equipment referred to for comparison was not even included or qualified in the bid process.

7. Respondent COA itself did not act on Rubico's allegations of manipulation, and, in fact, did not raise them during the proceedings at the administrative level.

On that last point, the majority contradicts itself when it says that findings of fact of administrative authorities must be respected and yet insists that there was manipulation in the bidding, when it was never held to be so by the same administrative authorities. It cannot be denied that the majority considered the matter as a substantial element or context when it upheld the disallowance made by respondent, when the presence of manipulation was never an official finding, expressly or impliedly, by the COA Commissioners. The conclusions reached by the majority are mere conjectures and speculations that the records never bore out, or that petitioner never had the chance to controvert at the earliest possible time.

The dangers posed by the Decision in this case cannot be overemphasized. To say the least, there is nothing to prevent respondent COA from comparing all government purchases with generic equipment without even conducting a valid canvass of prices. Overpricing is not necessarily based on equipment that qualified for the bidding process; it may be based even on generic,

unbranded equipment. There is no legal impediment for COA to recall the regulations on excessive purchases it had issued in the past and to issue new ones following the Court's interpretation of the matter. For the COA to be allowed to do so would further discourage industries from offering their equipment or services for government use. Finally, the bidding process will be rendered inutile.

Hence, following and applying the majority's theory, the branded pieces of computer equipment that this Court itself uses in issuing its decisions may also be found to be excessively overpriced by respondent when these are compared to generic non-branded computer equipment. There is no need to conduct an actual canvass; present the canvass sheets; require a comparison of at least three (3) suppliers; compare the items with the same brands or specifications; or even with those that did not qualify for the bidding or have no known specifications at all. Thereafter, the determination of the overpriced amount would be based on the price of the cheapest generic brand having more or less similar but not necessarily identical specifications. Finally, all those who have approved the purchases would be held solidarily liable for the excess amount based on the prices of the cheapest equipment of different specifications and brands available in the market.

Equally important, the Decision also allows allegations to be belatedly raised despite the absence of any extraordinary reason to do so and thus, contradicts the basic tenets of due process. The *ponente* has not even provided any legal basis why we should consider and allow these belatedly raised allegations that clearly prejudice the rights of petitioner.

Lastly, the majority should categorically state in the dispositive portion that petitioner cannot be solely liable for the disallowed price. The majority, while affirming the findings of the COA, actually aggravated the latter's baseless ruling when it apparently ordered petitioner singly to reimburse the full amount of disallowance in its original Decision, without mentioning the liability of his co-respondents in the original COA case. The difference between sole liability and solidary liability cannot be

emphasized enough. Solidary obligations assume that the debt can be divided into as many equal shares as there are debtors. In addition, while the creditor may only demand payment from one debtor, that debtor nevertheless has the right of reimbursement from the other debtors. In the present case, there are eight (8) debtors.

Therefore, I maintain that the right of petitioner to due process was violated when respondents and the majority of this Court held him liable for the disallowed purchase price of the computer equipment.

Hence, I maintain my Dissent from the Decision dated 8 March 2011 and vote to grant petitioner's Motion for Reconsideration dated 8 April 2011.

EN BANC

[G.R. No. 180989. February 7, 2012]

GUALBERTO J. DELA LLANA, *petitioner, vs.* **THE CHAIRPERSON, COMMISSION ON AUDIT, THE EXECUTIVE SECRETARY and THE NATIONAL TREASURER,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; *LOCUS STANDI*; PETITIONER HAS STANDING TO FILE THE PRESENT SUIT AS A TAXPAYER, SINCE HE WOULD BE ADVERSELY AFFECTED BY THE ILLEGAL USE OF PUBLIC MONEY. — A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution. Petitioner claims that the issuance

of Circular No. 89-299 has led to the dissipation of public funds through numerous irregularities in government financial transactions. These transactions have allegedly been left unchecked by the lifting of the pre-audit performed by COA, which, petitioner argues, is its Constitutional duty. Thus, petitioner has standing to file this suit as a taxpayer, since he would be adversely affected by the illegal use of public money.

2. ID.; ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; NO PROVISION IN THE 1987 CONSTITUTION REQUIRING THE COMMISSION ON AUDIT TO CONDUCT A PRE-AUDIT OF ALL GOVERNMENT TRANSACTIONS AND FOR ALL GOVERNMENT AGENCIES; THE CONDUCT OF PRE-AUDIT IS NOT A MANDATORY DUTY THAT THE COURT MAY COMPEL THE COMMISSION TO PERFORM. — Petitioner's allegations find no support in the aforequoted Constitutional provision. There is nothing in the said provision that requires the COA to conduct a pre-audit of all government transactions and for all government agencies. The only clear reference to a pre-audit requirement is found in Section 2, paragraph 1, which provides that a post-audit is mandated for certain government or private entities with state subsidy or equity and **only** when the internal control system of an audited entity is inadequate. In such a situation, the COA **may** adopt measures, including a temporary or special pre-audit, to correct the deficiencies. Hence, the conduct of a pre-audit is not a mandatory duty that this Court may compel the COA to perform. This discretion on its part is in line with the constitutional pronouncement that the COA has the exclusive authority to define the scope of its audit and examination. When the language of the law is clear and explicit, there is no room for interpretation, only application. Neither can the scope of the provision be unduly enlarged by this Court.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CIRCULARS PROMULGATED BY THE COA UNDER ITS QUASI-LEGISLATIVE OR RULE-MAKING POWERS ARE NOT REVIEWABLE BY *CERTIORARI*. — Public respondents aver that a petition for *certiorari* is not proper in this case, as there is no indication that the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions, as required in *certiorari* proceedings. Conversely,

petitioner for his part claims that certiorari is proper under Section 7, Article IX-A of the 1987 Constitution, which provides in part: Section 7. x x x. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. Petitioner is correct in that decisions and orders of the COA are reviewable by the court via a petition for *certiorari*. However, these refer to decisions and orders which were rendered by the COA in its quasi-judicial capacity. Circular No. 89-299 was promulgated by the COA under its quasi-legislative or rule-making powers. Hence, Circular No. 89-299 is not reviewable by *certiorari.*

4. ID.; ID.; PROHIBITION; NOT APPROPRIATE IN CASE AT BAR; PROHIBITION ONLY LIES AGAINST JUDICIAL OR MINISTERIAL FUNCTIONS, BUT NOT AGAINST LEGISLATIVE OR QUASI-LEGISLATIVE FUNCTIONS. — Neither is a petition for prohibition appropriate in this case. A petition for prohibition is filed against any tribunal, corporation, board, or person — whether exercising judicial, quasi-judicial, or ministerial functions — who has acted without or in excess of jurisdiction or with grave abuse of discretion, and the petitioner prays that judgment be rendered, commanding the respondent to desist from further proceeding in the action or matter specified in the petition. However, prohibition only lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Nonetheless, this Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein. In this case, petitioner avers that the conduct of pre-audit by the COA could have prevented the occurrence of the numerous alleged irregularities in government transactions that involved substantial amounts of public money. This is a serious allegation of a grave deficiency in observing a constitutional duty if proven correct. This Court can use its authority to set aside errors of practice or technicalities of procedure, including the aforementioned technical defects of the Petition, and resolve the merits of a case with such serious allegations of constitutional breach. Rules of procedure were promulgated to provide guidelines for the orderly administration of justice, not to shackle the hand that dispenses it.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order pursuant to Section 7, Article IX-D of the 1987 Constitution, seeking to annul and set aside Commission on Audit (COA) Circular No. 89-299, which lifted its system of pre-audit of government financial transactions.

Statement of the Facts and the Case

On 26 October 1982, the COA issued Circular No. 82-195, lifting the system of pre-audit of government financial transactions, albeit with certain exceptions. The circular affirmed the state policy that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. Further, the circular emphasized that the responsibility to ensure faithful adherence to the policy rested directly with the chief or head of the government agency concerned. The circular was also designed to further facilitate or expedite government transactions without impairing their integrity.

After the change in administration due to the February 1986 revolution, grave irregularities and anomalies in the government's financial transactions were uncovered. Hence, on 31 March 1986, the COA issued Circular No. 86-257, which reinstated the pre-audit of selected government transactions. The selective pre-audit was perceived to be an effective, although temporary, remedy against the said anomalies.

With the normalization of the political system and the stabilization of government operations, the COA saw it fit to

issue **Circular No. 89-299**, which again lifted the pre-audit of government transactions of national government agencies (NGAs) and government-owned or -controlled corporations (GOCCs). The rationale for the circular was, *first*, to reaffirm the concept that fiscal responsibility resides in management as embodied in the Government Auditing Code of the Philippines; and, *second*, to contribute to accelerating the delivery of public services and improving government operations by curbing undue bureaucratic red tape and ensuring facilitation of government transactions, while continuing to preserve and protect the integrity of these transactions. Concomitant to the lifting of the pre-audit of government transactions of NGAs and GOCCs, Circular No. 89-299 mandated the installation, implementation and monitoring of an adequate internal control system, which would be the direct responsibility of the government agency head.

Circular No. 89-299 further provided that the pre-audit activities retained by the COA as therein outlined shall no longer be a pre-requisite to the implementation or prosecution of projects and the payment of claims. The COA aimed to henceforth focus its efforts on the post-audit of financial accounts and transactions, as well as on the assessment and evaluation of the adequacy and effectivity of the agency's fiscal control process. However, the circular did not include the financial transactions of local government units (LGUs) in its coverage.

The COA later issued Circular No. 94-006 on 17 February 1994 and Circular No. 95-006 on 18 May 1995. Both circulars clarified and expanded the total lifting of pre-audit activities on all financial transactions of NGAs, GOCCs, and LGUs. The remaining audit activities performed by COA auditors would no longer be pre-requisites to the implementation or prosecution of projects, perfection of contracts, payment of claims, and/or approval of applications filed with the agencies.[1]

It also issued COA Circular No. 89-299, as amended by Circular No. 89-299A, which in Section 3.2 provides:

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[1] Circular No. 95-006, Sec. 5.01.

> 3.2 Whenever circumstances warrant, however, such as where the internal control system of a government agency is inadequate, This Commission may reinstitute pre-audit or adopt such other control measures, including temporary or special pre-audit, as are necessary and appropriate to protect the funds and property of the agency.

On 18 May 2009, COA issued Circular No. 2009-002, which reinstituted the selective pre-audit of government transactions in view of the rising incidents of irregular, illegal, wasteful and anomalous disbursements of huge amounts of public funds and disposals of public property. Two years later, or on 22 July 2011, COA issued Circular No. 2011-002, which lifted the pre-audit of government transactions implemented by Circular No. 2009-002. In its assessment, subsequent developments had shown heightened vigilance of government agencies in safeguarding their resources.

In the interregnum, on 3 May 2006, petitioner dela Llana wrote to the COA regarding the recommendation of the Senate Committee on Agriculture and Food that the Department of Agriculture set up an internal pre-audit service. On 18 July 2006, the COA replied to petitioner, informing him of the prior issuance of Circular No. 89-299.[2] The 18 July 2006 reply of the COA further emphasized the required observance of Administrative Order No. 278 dated 8 June 1992, which directed the strengthening of internal control systems of government offices through the installation of an internal audit service (IAS).

On 15 January 2008, petitioner filed this Petition for *Certiorari* under Rule 65. He alleges that the pre-audit duty on the part of the COA cannot be lifted by a mere circular, considering that pre-audit is a constitutional mandate enshrined in Section 2 of Article IX-D of the 1987 Constitution.[3] He further claims that, because of the lack of pre-audit by COA, serious irregularities in government transactions have been committed, such as the

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[2] *Rollo,* p. 4.

[3] While the Petition states "1978 Constitution," the cited provisions refer to those of the 1987 Constitution.

₱728-million fertilizer fund scam, irregularities in the ₱550-million call center laboratory project of the Commission on Higher Education, and many others.

On 22 February 2008, public respondents filed their Comment[4] on the Petition. They argue therein that the Petition must be dismissed, as it is not proper for a petition for *certiorari*, considering that (1) there is no allegation showing that the COA exercised judicial or quasi-judicial functions when it promulgated Circular No. 89-299; and (2) there is no convincing explanation showing how the promulgation of the circular was done with grave abuse of discretion. Further, the Petition is allegedly defective in form, in that there is no discussion of material dates as to when petitioner received a copy of the circular; there is no factual background of the case; and petitioner failed to attach a certified true copy of the circular. In any case, public respondents aver that the circular is valid, as the COA has the power under the 1987 Constitution to promulgate it.

On 9 May 2008, petitioner filed his Reply[5] to the Comment.

On 17 June 2008, this Court resolved to require the parties to submit their respective memoranda. On 12 September 2008, public respondents submitted their Memorandum.[6] On 15 September 2008, Amethya dela Llana-Koval, daughter of petitioner, manifested to the Court his demise on 8 July 2008 and moved that she be allowed to continue with the Petition and substitute for him. Her motion for substitution was granted by this Court in a Resolution dated 7 October 2008. On 5 January 2009, petitioner, substituted by his daughter,[7] filed his Memorandum.[8]

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[4] *Rollo*, pp. 21-32.

[5] *Rollo*, pp. 34-39.

[6] *Id.* at 43-55.

[7] For purposes of convenience, references to "petitioner" shall henceforth continue to refer to the original petitioner, Gualberto J. dela Llana, as substituted by his daughter, Amethya dela Llana-Koval.

[8] *Rollo*, pp. 70-78.

The main issue for our resolution in this Petition is whether or not petitioner is entitled to the extraordinary writ of *certiorari*.

Procedural Issues

Technical Defects of the Petition

Public respondents correctly allege that petitioner failed to attach a certified true copy of the assailed Order, and that the Petition lacked a statement of material dates. In view, however, of the serious matters dealt with in this Petition, this Court opts to tackle the merits thereof with least regard to technicalities. A perusal of the Petition shows that the factual background of the case, although brief, has been sufficiently alleged by petitioner.

Standing

This Petition has been filed as a taxpayer's suit.

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution.[9] Petitioner claims that the issuance of Circular No. 89-299 has led to the dissipation of public funds through numerous irregularities in government financial transactions. These transactions have allegedly been left unchecked by the lifting of the pre-audit performed by COA, which, petitioner argues, is its Constitutional duty. Thus, petitioner has standing to file this suit as a taxpayer, since he would be adversely affected by the illegal use of public money.

Propriety of Certiorari

Public respondents aver that a petition for *certiorari* is not proper in this case, as there is no indication that the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions, as required in *certiorari*

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[9] *Gonzales v. Narvasa*, G.R. No. 140835, 392 Phil. 518 (2000); *Uy v. Sandiganbayan*, G.R. No. 111544, 6 July 2004, 433 SCRA 424.

proceedings.[10] Conversely, petitioner for his part claims that *certiorari* is proper under Section 7, Article IX-A of the 1987 Constitution, which provides in part:

> Section 7. x x x. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

Petitioner is correct in that decisions and orders of the COA are reviewable by the court via a petition for *certiorari*. However, these refer to decisions and orders which were rendered by the COA in its quasi-judicial capacity. Circular No. 89-299 was promulgated by the COA under its quasi-legislative or rule-making powers. Hence, Circular No. 89-299 is not reviewable by *certiorari*.

Neither is a petition for prohibition appropriate in this case. A petition for prohibition is filed against any tribunal, corporation, board, or person — whether exercising judicial, quasi-judicial, or ministerial functions — who has acted without or in excess of jurisdiction or with grave abuse of discretion, and the petitioner prays that judgment be rendered, commanding the respondent to desist from further proceeding in the action or matter specified in the petition.[11] However, prohibition only lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions.[12]

Nonetheless, this Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.[13] In this case, petitioner avers that the conduct of pre-

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[10] RULES OF COURT, Rule 65, Sec. 1; *Delos Santos v. Court of Appeals*, G.R. No. 169498, 11 December 2008, 573 SCRA 690.

[11] *Ongsuco v. Malones*, G.R. No. 182065, 27 October 2009, 604 SCRA 499.

[12] *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, 529 Phil. 573 (2006).

[13] See *Quinto v. Commission on Elections*, G.R. No. 189698, 1 December 2009, 606 SCRA 258; *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, G.R. No. 152214, 19 September 2006, 502 SCRA 295.

audit by the COA could have prevented the occurrence of the numerous alleged irregularities in government transactions that involved substantial amounts of public money. This is a serious allegation of a grave deficiency in observing a constitutional duty if proven correct.

This Court can use its authority to set aside errors of practice or technicalities of procedure, including the aforementioned technical defects of the Petition, and resolve the merits of a case with such serious allegations of constitutional breach. Rules of procedure were promulgated to provide guidelines for the orderly administration of justice, not to shackle the hand that dispenses it.[14]

Substantive Issues

The 1987 Constitution has made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenues and expenditures and the use of public funds and property, including the exclusive authority to define the scope of its audit and examination; to establish the techniques and methods for the review; and to promulgate accounting and auditing rules and regulations.[15] Its exercise of its general audit power is among the constitutional mechanisms that give life to the check and balance system inherent in our form of government.[16]

Petitioner claims that the constitutional duty of COA includes the duty to conduct pre-audit. A pre-audit is an examination of financial transactions before their consumption or payment.[17] It seeks to determine whether the following conditions are present:

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[14] *Quinto v. Commission on Elections*, G.R. No. 189698, 1 December 2009, 606 SCRA 258.

[15] *Yap v. Commission on Audit*, G.R. No. 158562, 23 April 2010, 619 SCRA 154, citing Sec. 2 (1) and (2), Art. IX-A, 1987 Constitution.

[16] *Olaguer v. Domingo*, G.R. No. 109666, 411 Phil. 576 (2001).

[17] *Villanueva v. Commission on Audit*, G.R. No. 151987, 493 Phil. 887 (2005), citing *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 107016, 11 March 1994, 231 SCRA 202.

(1) the proposed expenditure complies with an appropriation law or other specific statutory authority; (2) sufficient funds are available for the purpose; (3) the proposed expenditure is not unreasonable or extravagant, and the unexpended balance of appropriations to which it will be charged is sufficient to cover the entire amount of the expenditure; and (4) the transaction is approved by the proper authority and the claim is duly supported by authentic underlying evidence.[18] It could, among others, identify government agency transactions that are suspicious on their face prior to their implementation and prior to the disbursement of funds.

Petitioner anchors his argument on Section 2 of Article IX-D of the 1987 Constitution, which reads as follows:

Section 2.

1. The Commission on Audit shall have the power, authority, and duty **to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government**, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, **and on a post- audit basis**:

a. constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

b. autonomous state colleges and universities;

c. other government-owned or controlled corporations and their subsidiaries; and

d. such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. **However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies**.

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[18] *Id*.

> It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
>
> **2. The Commission shall have exclusive authority**, subject to the limitations in this Article, **to define the scope of its audit and examination**, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (Emphasis supplied)

He claims that under the first paragraph quoted above, government transactions must undergo a pre-audit, which is a COA duty that cannot be lifted by a mere circular.

We find for public respondents.

Petitioner's allegations find no support in the aforequoted Constitutional provision. There is nothing in the said provision that requires the COA to conduct a pre-audit of all government transactions and for all government agencies. The only clear reference to a pre-audit requirement is found in Section 2, paragraph 1, which provides that a post-audit is mandated for certain government or private entities with state subsidy or equity and **only** when the internal control system of an audited entity is inadequate. In such a situation, the COA **may** adopt measures, including a temporary or special pre-audit, to correct the deficiencies.

Hence, the conduct of a pre-audit is not a mandatory duty that this Court may compel the COA to perform. This discretion on its part is in line with the constitutional pronouncement that the COA has the exclusive authority to define the scope of its audit and examination. When the language of the law is clear and explicit, there is no room for interpretation, only application.[19] Neither can the scope of the provision be unduly enlarged by this Court.

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[19] *Mendoza v. COMELEC*, G.R. 191084, 25 March 2010, 616 SCRA 443.

WHEREFORE, premises considered, the Petition is **DISMISSED.**

SO ORDERED.

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

Del Castillo, J., on sick leave.

EN BANC

[G.R. No. 185572. February 7, 2012]

CHINA NATIONAL MACHINERY & EQUIPMENT CORP. (GROUP), *petitioner, vs.* **HON. CESAR D. SANTAMARIA, in his official capacity as Presiding Judge of Branch 145, Regional Trial Court of Makati City, HERMINIO HARRY L. ROQUE, JR., JOEL R. BUTUYAN, ROGER R. RAYEL, ROMEL R. BAGARES, CHRISTOPHER FRANCISCO C. BOLASTIG, LEAGUE OF URBAN POOR FOR ACTION (LUPA), KILUSAN NG MARALITA SA MEYCAUAYAN (KMM-LUPA CHAPTER), DANILO M. CALDERON, VICENTE C. ALBAN, MERLYN M. VAAL, LOLITA S. QUINONES, RICARDO D. LANOZO, JR., CONCHITA G. GOZO, MA. TERESA D. ZEPEDA, JOSEFINA A. LANOZO, and SERGIO C. LEGASPI, JR., KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY), EDY CLERIGO, RAMMIL DINGAL, NELSON B. TERRADO, CARMEN DEUNIDA, and EDUARDO LEGSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; DETERMINATION OF THE EXECUTIVE THAT AN ENTITY IS ENTITLED TO SOVEREIGN OR DIPLOMATIC IMMUNITY IS A POLITICAL QUESTION CONCLUSIVE UPON THE COURTS. — In *Holy See*, this Court reiterated the oft-cited doctrine that the determination by the Executive that an entity is entitled to sovereign or diplomatic immunity is a political question conclusive upon the courts, to wit: In Public International Law, when a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, it **requests the Foreign Office of the state where it is sued to convey to the court that said defendant is entitled to immunity.** xxx xxx xxx In the Philippines, **the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity**. But how the Philippine Foreign Office conveys its endorsement to the courts varies. In *International Catholic Migration Commission v. Calleja*, 190 SCRA 130 (1990), the Secretary of Foreign Affairs just sent a letter directly to the Secretary of Labor and Employment, informing the latter that the respondent-employer could not be sued because it enjoyed diplomatic immunity. In *World Health Organization v. Aquino*, 48 SCRA 242 (1972), the Secretary of Foreign Affairs sent the trial court a telegram to that effect. In *Baer v. Tizon*, 57 SCRA 1 (1974), the U.S. Embassy asked the Secretary of Foreign Affairs to request the Solicitor General to make, in behalf of the Commander of the United States Naval Base at Olongapo City, Zambales, a "suggestion" to respondent Judge. The Solicitor General embodied the "suggestion" in a Manifestation and Memorandum as *amicus curiae*. In the case at bench, the Department of Foreign Affairs, through the Office of Legal Affairs moved with this Court to be allowed to intervene on the side of petitioner. The Court allowed the said Department to file its memorandum in support of petitioner's claim of sovereign immunity. In some cases, the defense of sovereign immunity was submitted directly to the local courts by the respondents through their private counsels (*Raquiza v. Bradford*, 75 Phil. 50 [1945]; *Miquiabas v. Philippine-Ryukyus Command*, 80 Phil. 262 [1948]; *United States of America v. Guinto*, 182 SCRA 644 [1990] and

companion cases). In cases where the foreign states bypass the Foreign Office, the courts can inquire into the facts and make their own determination as to the nature of the acts and transactions involved.

2. ID.; ID.; THE DEPARTMENT OF FOREIGN AFFAIRS CAN MAKE A DETERMINATION OF IMMUNITY FROM SUIT, WHICH MAY BE CONSIDERED AS CONCLUSIVE UPON THE COURTS. — The question now is whether **any** agency of the Executive Branch can make a determination of immunity from suit, which may be considered as conclusive upon the courts. This Court, in *Department of Foreign Affairs (DFA) v. National Labor Relations Commission (NLRC)*, emphasized the DFA's competence and authority to provide such necessary determination, to wit:**The DFA's function includes, among its other mandates, the determination of persons and institutions covered by diplomatic immunities, a determination which, when challenge, (sic) entitles it to seek relief from the court so as not to seriously impair the conduct of the country's foreign relations.** The DFA must be allowed to plead its case whenever necessary or advisable to enable it to help keep the credibility of the Philippine government before the international community. **When international agreements are concluded, the parties thereto are deemed to have likewise accepted the responsibility of seeing to it that their agreements are duly regarded. In our country, this task falls principally of (sic) the DFA as being the highest executive department with the competence and authority to so act in this aspect of the international arena.** Further, the fact that this authority is **exclusive** to the DFA was also emphasized in this Court's ruling in *Deutsche Gesellschaft*: It is to be recalled that the Labor Arbiter, in both of his rulings, noted that it was imperative for petitioners to secure from the Department of Foreign Affairs "a certification of respondents' diplomatic status and entitlement to diplomatic privileges including immunity from suits." The requirement might not necessarily be imperative. However, **had GTZ obtained such certification from the DFA, it would have provided factual basis for its claim of immunity that would, at the very least, establish a disputable evidentiary presumption that the foreign party is indeed immune which the opposing party will have to overcome with its own factual evidence. We do not see why GTZ could not have**

secured such certification or endorsement from the DFA for purposes of this case. Certainly, it would have been highly prudential for GTZ to obtain the same after the Labor Arbiter had denied the motion to dismiss. Still, even at this juncture, **we do not see any evidence that the DFA, the office of the executive branch in charge of our diplomatic relations, has indeed endorsed GTZ's claim of immunity.** It may be possible that GTZ tried, but failed to secure such certification, due to the same concerns that we have discussed herein. **Would the fact that the Solicitor General has endorsed GTZ's claim of State's immunity from suit before this Court sufficiently substitute for the DFA certification? Note that the rule in public international law quoted in Holy See referred to endorsement by the Foreign Office of the State where the suit is filed, such foreign office in the Philippines being the Department of Foreign Affairs. Nowhere in the Comment of the OSG is it manifested that the DFA has endorsed GTZ's claim, or that the OSG had solicited the DFA's views on the issue.** The arguments raised by the OSG are virtually the same as the arguments raised by GTZ without any indication of any special and distinct perspective maintained by the Philippine government on the issue. **The Comment filed by the OSG does not inspire the same degree of confidence as a certification from the DFA would have elicited.**

3. ID.; ID.; THE CERTIFICATION EXECUTED BY THE ECONOMIC AND COMMERCIAL OFFICE OF THE EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA, STATING THAT THE NORTHRAIL PROJECT IS IN PURSUIT OF A SOVEREIGN ACTIVITY IS NOT THE KIND OF CERTIFICATION THAT CAN ESTABLISH PETITIONER'S ENTITLEMENT TO IMMUNITY FROM SUIT. — In the case at bar, CNMEG offers the Certification executed by the Economic and Commercial Office of the Embassy of the People's Republic of China, stating that the Northrail Project is in pursuit of a sovereign activity. Surely, this is not the kind of certification that can establish CNMEG's entitlement to immunity from suit, as *Holy See* unequivocally refers to the determination of the "Foreign Office of the state where it is sued."

4. ID.; ID.; THE DETERMINATION BY THE OFFICE OF THE SOLICITOR GENERAL (OSG) OR BY THE OFFICE OF

THE GOVERNMENT CORPORATE COUNSEL (OGCC) DOES NOT INSPIRE THE SAME DEGREE OF CONFIDENCE AS A DEPARTMENT OF FOREIGN AFFAIRS CERTIFICATION. — CNMEG also claims that its immunity from suit has the executive endorsement of both the OSG and the Office of the Government Corporate Counsel (OGCC), which must be respected by the courts. However, as expressly enunciated in *Deutsche Gesellschaft*, this determination by the OSG, or by the OGCC for that matter, does not inspire the same degree of confidence as a DFA certification. Even with a DFA certification, however, it must be remembered that this Court is not precluded from making an inquiry into the intrinsic correctness of such certification.

5. ID.; ID.; AN AGREEMENT TO SUBMIT ANY DISPUTE TO ARBITRATION MAY BE CONSTRUED AS AN IMPLICIT WAIVER OF IMMUNITY FROM SUIT. — In the United States, the Foreign Sovereign Immunities Act of 1976 provides for a waiver by implication of state immunity. In the said law, the agreement to submit disputes to arbitration in a foreign country is construed as an implicit waiver of immunity from suit. Although there is no similar law in the Philippines, there is reason to apply the legal reasoning behind the waiver in this case. The Conditions of Contract, which is an integral part of the Contract Agreement, states: 33. SETTLEMENT OF DISPUTES AND ARBITRATION 33.1. Amicable Settlement Both parties shall attempt to amicably settle all disputes or controversies arising from this Contract before the commencement of arbitration. 33.2. Arbitration All disputes or controversies arising from this Contract which cannot be settled between the Employer and the Contractor shall be submitted to arbitration in accordance with the UNCITRAL Arbitration Rules at present in force and as may be amended by the rest of this Clause. The appointing authority shall be Hong Kong International Arbitration Center. The place of arbitration shall be in Hong Kong at Hong Kong International Arbitration Center (HKIAC). Under the above provisions, if any dispute arises between Northrail and CNMEG, both parties are bound to submit the matter to the HKIAC for arbitration. In case the HKIAC makes an arbitral award in favor of Northrail, its enforcement in the Philippines would be subject to the Special Rules on Alternative Dispute Resolution (Special Rules). Rule 13 thereof provides for the Recognition and

Enforcement of a Foreign Arbitral Award. Under Rules 13.2 and 13.3 of the Special Rules, the party to arbitration wishing to have an arbitral award recognized and enforced in the Philippines must petition the proper regional trial court (a) where the assets to be attached or levied upon is located; (b) where the acts to be enjoined are being performed; (c) in the principal place of business in the Philippines of any of the parties; (d) if any of the parties is an individual, where any of those individuals resides; or (e) in the National Capital Judicial Region. From all the foregoing, it is clear that CNMEG has agreed that it will not be afforded immunity from suit. Thus, the courts have the competence and jurisdiction to ascertain the validity of the Contract Agreement.

6. ID.; ID.; THE SUBJECT AGREEMENT IN CASE AT BAR IS NOT AN EXECUTIVE AGREEMENT; THE PARTIES ENTERED INTO THE CONTRACT AGREEMENT AS ENTITIES WITH PERSONALITIES DISTINCT AND SEPARATE FROM THE PHILPPINE AND CHINESE GOVERNMENTS, RESPECTIVELY. — Article 2(1) of the Vienna Convention on the Law of Treaties (Vienna Convention) defines a treaty as follows: [A]n international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. In *Bayan Muna v. Romulo*, this Court held that an executive agreement is similar to a treaty, except that the former (a) does not require legislative concurrence; (b) is usually less formal; and (c) deals with a narrower range of subject matters. Despite these differences, to be considered an executive agreement, the following three requisites provided under the Vienna Convention must nevertheless concur: (a) the agreement must be between states; (b) it must be written; and (c) it must governed by international law. The first and the third requisites do not obtain in the case at bar. The Contract Agreement was not concluded between the Philippines and China, but between Northrail and CNMEG. By the terms of the Contract Agreement, Northrail is a government-owned or controlled corporation, while CNMEG is a corporation duly organized and created under the laws of the People's Republic of China. Thus, both Northrail and CNMEG entered into the Contract Agreement as entities with personalities distinct and separate from the Philippine and Chinese

governments, respectively. Neither can it be said that CNMEG acted as agent of the Chinese government. As previously discussed, the fact that Amb. Wang, in his letter dated 1 October 2003, described CNMEG as a "state corporation" and declared its designation as the Primary Contractor in the Northrail Project did not mean it was to perform sovereign functions on behalf of China. That label was only descriptive of its nature as a state-owned corporation, and did not preclude it from engaging in purely commercial or proprietary ventures.

7. ID.; ID.; THE CONTRACT AGREEMENT IS TO BE GOVERNED BY PHILIPPINE LAW.— Article 2 of the Conditions of Contract, which under Article 1.1 of the Contract Agreement is an integral part of the latter, states: APPLICABLE LAW AND GOVERNING LANGUAGE. The contract shall in all respects be read and construed in accordance with the laws of the Philippines. The contract shall be written in English language. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in English language. Since the Contract Agreement explicitly provides that Philippine law shall be applicable, the parties have effectively conceded that their rights and obligations thereunder are not governed by international law. It is therefore clear from the foregoing reasons that the Contract Agreement does not partake of the nature of an executive agreement. It is merely an ordinary commercial contract that can be questioned before the local courts.

APPEARANCES OF COUNSEL

Policarpio Pangulayan and Azura Law Office for petitioner.
Roque and Butuyan Law Office for respondents.
Office of the Government Corporate Counsel for movant-intervenor Northrail.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction assailing the 30 September 2008 Decision

and 5 December 2008 Resolution of the Court of Appeals (CA) in CA–G.R. SP No. 103351.[1]

On 14 September 2002, petitioner China National Machinery & Equipment Corp. (Group) (CNMEG), represented by its chairperson, Ren Hongbin, entered into a Memorandum of Understanding with the North Luzon Railways Corporation (Northrail), represented by its president, Jose L. Cortes, Jr. for the conduct of a feasibility study on a possible railway line from Manila to San Fernando, La Union (the Northrail Project).[2]

On 30 August 2003, the Export Import Bank of China (EXIM Bank) and the Department of Finance of the Philippines (DOF) entered into a Memorandum of Understanding (Aug 30 MOU), wherein China agreed to extend Preferential Buyer's Credit to the Philippine government to finance the Northrail Project.[3] The Chinese government designated EXIM Bank as the lender, while the Philippine government named the DOF as the borrower.[4] Under the Aug 30 MOU, EXIM Bank agreed to extend an amount not exceeding USD 400,000,000 in favor of the DOF, payable in 20 years, with a 5-year grace period, and at the rate of 3% per annum.[5]

On 1 October 2003, the Chinese Ambassador to the Philippines, Wang Chungui (Amb. Wang), wrote a letter to DOF Secretary Jose Isidro Camacho (Sec. Camacho) informing him of CNMEG's designation as the Prime Contractor for the Northrail Project.[6]

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[1] *China National Machinery & Equipment Corporation (Group) v. Hon. Cesar D. Santamaria, et al.*

[2] Petition, *rollo,* Vol. I, p. 25; Memorandum of Understanding dated 14 September 2002, *rollo,* Vol. I, pp. 400-406.

[3] Petition, *rollo,* Vol. I, pp. 25-26; Memorandum of Understanding dated 30 August 2003, *rollo,* Vol. I, pp. 308-310, 407-409.

[4] *Id.*

[5] Memorandum of Understanding dated 30 August 2003, *rollo,* Vol. I, pp. 308-310, 407-409.

[6] Petition, *rollo,* Vol. I, p. 26; Letter dated 1 October 2003, *rollo,* Vol. I, pp. 311-312.

On 30 December 2003, Northrail and CNMEG executed a Contract Agreement for the construction of Section I, Phase I of the North Luzon Railway System from Caloocan to Malolos on a turnkey basis (the Contract Agreement).[7] The contract price for the Northrail Project was pegged at USD 421,050,000.[8]

On 26 February 2004, the Philippine government and EXIM Bank entered into a counterpart financial agreement – Buyer Credit Loan Agreement No. BLA 04055 (the Loan Agreement).[9] In the Loan Agreement, EXIM Bank agreed to extend Preferential Buyer's Credit in the amount of USD 400,000,000 in favor of the Philippine government in order to finance the construction of Phase I of the Northrail Project.[10]

On 13 February 2006, respondents filed a Complaint for Annulment of Contract and Injunction with Urgent Motion for Summary Hearing to Determine the Existence of Facts and Circumstances Justifying the Issuance of Writs of Preliminary Prohibitory and Mandatory Injunction and/or TRO against CNMEG, the Office of the Executive Secretary, the DOF, the Department of Budget and Management, the National Economic Development Authority and Northrail.[11] The case was docketed as Civil Case No. 06-203 before the Regional Trial Court, National Capital Judicial Region, Makati City, Branch 145 (RTC Br. 145). In the Complaint, respondents alleged that the Contract Agreement and the Loan Agreement were void for being contrary to (a) the Constitution; (b) Republic Act No. 9184 (R.A. No. 9184), otherwise known as the Government Procurement Reform Act; (c) Presidential Decree No. 1445, otherwise known as the Government Auditing Code; and (d) Executive Order No. 292, otherwise known as the Administrative Code.[12]

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[7] Contract Agreement, *rollo*, Vol. I, pp. 126-130, 412-414.

[8] Memorandum of Agreement dated December 2003, *rollo*, Vol. I, pp. 198-201.

[9] Loan Agreement, *rollo*, Vol. I, pp. 242-282.

[10] *Id.*

[11] Complaint, *rollo*, Vol. I, pp. 102-125.

[12] *Id.*

RTC Br. 145 issued an Order dated 17 March 2006 setting the case for hearing on the issuance of injunctive reliefs.[13] On 29 March 2006, CNMEG filed an Urgent Motion for Reconsideration of this Order.[14] Before RTC Br. 145 could rule thereon, CNMEG filed a Motion to Dismiss dated 12 April 2006, arguing that the trial court did not have jurisdiction over (a) its person, as it was an agent of the Chinese government, making it immune from suit, and (b) the subject matter, as the Northrail Project was a product of an executive agreement.[15]

On 15 May 2007, RTC Br. 145 issued an Omnibus Order denying CNMEG's Motion to Dismiss and setting the case for summary hearing to determine whether the injunctive reliefs prayed for should be issued.[16] CNMEG then filed a Motion for Reconsideration,[17] which was denied by the trial court in an Order dated 10 March 2008.[18] Thus, CNMEG filed before the CA a Petition for *Certiorari* with Prayer for the Issuance of TRO and/or Writ of Preliminary Injunction dated 4 April 2008.[19]

In the assailed Decision dated 30 September 2008, the appellate court dismissed the Petition for *Certiorari*.[20] Subsequently, CNMEG filed a Motion for Reconsideration,[21] which was denied by the CA in a Resolution dated 5 December 2008.[22] Thus, CNMEG filed the instant Petition for Review on *Certiorari* dated 21 January 2009, raising the following issues:[23]

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[13] Order dated 17 March 2006, *rollo,* Vol. I, pp. 290-291.

[14] Urgent Motion for Reconsideration, *rollo*, Vol. I, pp. 292-307

[15] Motion to Dismiss, *rollo*, Vol. I, pp. 324-369.

[16] Omnibus Order dated 15 May 2007, *rollo,* Vol. I, pp. 648-658.

[17] Motion for Reconsideration, *rollo,* Vol. I, pp. 663-695.

[18] Order dated 10 March 2008, *rollo,* Vol. I, p. 737.

[19] Petition for *Certiorari, rollo,* Vol. I, pp. 738-792.

[20] CA Decision, *rollo,* Vol. I, pp. 81-99.

[21] Motion for Reconsideration, *rollo,* Vol. I, pp. 971-1001.

[22] CA Resolution, *rollo,* Vol. I, pp. 100-102.

[23] Petition, *rollo,* Vol. I, pp. 27-28.

Whether or not petitioner CNMEG is an agent of the sovereign People's Republic of China.

Whether or not the Northrail contracts are products of an executive agreement between two sovereign states.

Whether or not the certification from the Department of Foreign Affairs is necessary under the foregoing circumstances.

Whether or not the act being undertaken by petitioner CNMEG is an act *jure imperii*.

Whether or not the Court of Appeals failed to avoid a procedural limbo in the lower court.

Whether or not the Northrail Project is subject to competitive public bidding.

Whether or not the Court of Appeals ignored the ruling of this Honorable Court in the *Neri case*.

CNMEG prays for the dismissal of Civil Case No. 06-203 before RTC Br. 145 for lack of jurisdiction. It likewise requests this Court for the issuance of a TRO and, later on, a writ of preliminary injunction to restrain public respondent from proceeding with the disposition of Civil Case No. 06-203.

The crux of this case boils down to two main issues, namely:

1. Whether CNMEG is entitled to immunity, precluding it from being sued before a local court.
2. Whether the Contract Agreement is an executive agreement, such that it cannot be questioned by or before a local court.

First issue: Whether CNMEG is entitled to immunity

This Court explained the doctrine of sovereign immunity in *Holy See v. Rosario*,[24] to wit:

There are two conflicting concepts of sovereign immunity, each widely held and firmly established. According to the classical or

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[24] G.R. No. 101949, 1 December 1994, 238 SCRA 524, 535.

absolute theory, **a sovereign cannot, without its consent, be made a respondent in the courts of another sovereign.** According to the newer or restrictive theory, **the immunity of the sovereign is recognized only with regard to public acts or acts *jure imperii* of a state, but not with regard to private acts or acts *jure gestionis***. (Emphasis supplied; citations omitted.)

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The restrictive theory came about because of the entry of sovereign states into purely commercial activities remotely connected with the discharge of governmental functions. This is particularly true with respect to the Communist states which took control of nationalized business activities and international trading.

In *JUSMAG v. National Labor Relations Commission*,[25] this Court affirmed the Philippines' adherence to the restrictive theory as follows:

The doctrine of state immunity from suit has undergone further metamorphosis. The view evolved that the existence of a contract does not, *per se*, mean that sovereign states may, at all times, be sued in local courts. The complexity of relationships between sovereign states, brought about by their increasing commercial activities, mothered a more *restrictive* application of the doctrine.

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As it stands now, the application of the doctrine of immunity from suit has been restricted to sovereign or governmental activities (*jure imperii*). The mantle of state immunity cannot be extended to commercial, private and proprietary acts (*jure gestionis*).[26] (Emphasis supplied.)

Since the Philippines adheres to the restrictive theory, it is crucial to ascertain the legal nature of the act involved — whether the entity claiming immunity performs governmental, as opposed to proprietary, functions. As held in *United States of America v. Ruiz* —[27]

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[25] G.R. No. 108813, 15 December 1994, 239 SCRA 224.

[26] *Id.* at 231-232.

[27] 221 Phil. 179 (1985).

The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions.[28]

A. CNMEG is engaged in a proprietary activity.

A threshold question that must be answered is whether CNMEG performs governmental or proprietary functions. A thorough examination of the basic facts of the case would show that CNMEG is engaged in a proprietary activity.

The parties executed the Contract Agreement for the purpose of constructing the Luzon Railways, *viz*:[29]

> WHEREAS the Employer (Northrail) desired to construct the railways form Caloocan to Malolos, Section I, Phase I of Philippine North Luzon Railways Project (hereinafter referred to as THE PROJECT);
>
> AND WHEREAS the Contractor has offered to provide the Project on Turnkey basis, including design, manufacturing, supply, construction, commissioning, and training of the Employer's personnel;
>
> AND WHEREAS the Loan Agreement of the Preferential Buyer's Credit between Export-Import Bank of China and Department of Finance of Republic of the Philippines;
>
> NOW, THEREFORE, the parties agree to sign this Contract for the Implementation of the Project.

The above-cited portion of the Contract Agreement, however, does not on its own reveal whether the construction of the Luzon railways was meant to be a proprietary endeavor. In order to fully understand the intention behind and the purpose

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[28] *Id.* at 184.

[29] Contract Agreement, *rollo*, Vol. I, pp. 127, 413.

of the entire undertaking, the Contract Agreement must not be read in isolation. Instead, it must be construed in conjunction with three other documents executed in relation to the Northrail Project, namely: (a) the Memorandum of Understanding dated 14 September 2002 between Northrail and CNMEG;[30] (b) the letter of Amb. Wang dated 1 October 2003 addressed to Sec. Camacho;[31] and (c) the Loan Agreement.[32]

1. Memorandum of Understanding dated 14 September 2002

The Memorandum of Understanding dated 14 September 2002 shows that CNMEG sought the construction of the Luzon Railways as a proprietary venture. The relevant parts thereof read:

> WHEREAS, CNMEG has the financial capability, professional competence and technical expertise to assess the state of the [Main Line North (MLN)] and recommend implementation plans as well as undertake its rehabilitation and/or modernization;
>
> WHEREAS, **CNMEG has expressed interest in the rehabilitation and/or modernization of the MLN** from Metro Manila to San Fernando, La Union passing through the provinces of Bulacan, Pampanga, Tarlac, Pangasinan and La Union (the 'Project');
>
> WHEREAS, the NORTHRAIL CORP. welcomes CNMEG's proposal to undertake a Feasibility Study (the "Study") at no cost to NORTHRAIL CORP.;
>
> WHEREAS, **the NORTHRAIL CORP. also welcomes CNMEG's interest in undertaking the Project with Supplier's Credit and intends to employ CNMEG as the Contractor for the Project subject to compliance with Philippine and Chinese laws, rules and regulations for the selection of a contractor**;
>
> WHEREAS, the NORTHRAIL CORP. considers CNMEG's proposal advantageous to the Government of the Republic of the Philippines and has therefore agreed to assist CNMEG in the conduct of the aforesaid Study;

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[30] *Supra* note 2.

[31] *Supra* note 6.

[32] *Supra* note 9.

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II. APPROVAL PROCESS

2.1 As soon as possible after completion and presentation of the Study in accordance with Paragraphs 1.3 and 1.4 above and in compliance with necessary governmental laws, rules, regulations and procedures required from both parties, the parties shall commence the preparation and negotiation of the terms and conditions of the Contract (the "Contract") to be entered into between them on the implementation of the Project. **The parties shall use their best endeavors to formulate and finalize a Contract with a view to signing the Contract within one hundred twenty (120) days from CNMEG's presentation of the Study**.[33] (Emphasis supplied)

Clearly, it was CNMEG that initiated the undertaking, and not the Chinese government. The Feasibility Study was conducted not because of any diplomatic gratuity from or exercise of sovereign functions by the Chinese government, but was plainly a business strategy employed by CNMEG with a view to securing this commercial enterprise.

2. Letter dated 1 October 2003

That CNMEG, and not the Chinese government, initiated the Northrail Project was confirmed by Amb. Wang in his letter dated 1 October 2003, thus:

1. CNMEG has the proven competence and capability to undertake the Project as evidenced by the ranking of 42 given by the ENR among 225 global construction companies.

2. CNMEG already signed an MOU with the North Luzon Railways Corporation last September 14, 2000 during the visit of Chairman Li Peng. Such being the case, they have already established an initial working relationship with your North Luzon Railways Corporation. **This would categorize CNMEG as the state corporation within the People's Republic of China which initiated our Government's involvement in the Project.**

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[33] *Supra* note 2, at 400-402.

3. Among the various state corporations of the People's Republic of China, only CNMEG has the advantage of being fully familiar with the current requirements of the Northrail Project having already accomplished a Feasibility Study which was used as inputs by the North Luzon Railways Corporation in the approvals (sic) process required by the Republic of the Philippines.[34] (Emphasis supplied)

Thus, the desire of CNMEG to secure the Northrail Project was in the ordinary or regular course of its business as a global construction company. The implementation of the Northrail Project was intended to generate profit for CNMEG, with the Contract Agreement placing a contract price of USD 421,050,000 for the venture.[35] The use of the term "state corporation" to refer to CNMEG was only descriptive of its nature as a government-owned and/or -controlled corporation, and its assignment as the Primary Contractor did not imply that it was acting on behalf of China in the performance of the latter's sovereign functions. To imply otherwise would result in an absurd situation, in which all Chinese corporations owned by the state would be automatically considered as performing governmental activities, even if they are clearly engaged in commercial or proprietary pursuits.

3. The Loan Agreement

CNMEG claims immunity on the ground that the Aug 30 MOU on the financing of the Northrail Project was signed by the Philippine and Chinese governments, and its assignment as the Primary Contractor meant that it was bound to perform a governmental function on behalf of China. However, the Loan Agreement, which originated from the same Aug 30 MOU, belies this reasoning, *viz*:

Article 11. xxx (j) Commercial Activity The execution and delivery of this Agreement by the Borrower constitute, and the Borrower's performance of and compliance with its obligations under this Agreement will constitute, **private and commercial acts done and performed for commercial purposes under the laws of the**

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[34] *Supra* note 6.

[35] *Supra* note 8.

Republic of the Philippines and neither the Borrower nor any of its assets is entitled to any immunity or privilege (sovereign or otherwise) from suit, execution or any other legal process with respect to its obligations under this Agreement, as the case may be, in any jurisdiction. Notwithstanding the foregoing, the Borrower does not waive any immunity with respect of its assets which are (i) used by a diplomatic or consular mission of the Borrower and (ii) assets of a military character and under control of a military authority or defense agency and (iii) located in the Philippines and dedicated to public or governmental use (as distinguished from patrimonial assets or assets dedicated to commercial use). (Emphasis supplied.)

(k) Proceedings to Enforce Agreement In any proceeding in the Republic of the Philippines to enforce this Agreement, the choice of the laws of the People's Republic of China as the governing law hereof will be recognized and such law will be applied. The waiver of immunity by the Borrower, the irrevocable submissions of the Borrower to the non-exclusive jurisdiction of the courts of the People's Republic of China and the appointment of the Borrower's Chinese Process Agent is legal, valid, binding and enforceable and any judgment obtained in the People's Republic of China will be if introduced, evidence for enforcement in any proceedings against the Borrower and its assets in the Republic of the Philippines provided that (a) the court rendering judgment had jurisdiction over the subject matter of the action in accordance with its jurisdictional rules, (b) the Republic had notice of the proceedings, (c) the judgment of the court was not obtained through collusion or fraud, and (d) such judgment was not based on a clear mistake of fact or law.[36]

Further, the Loan Agreement likewise contains this express waiver of immunity:

15.5 Waiver of Immunity The Borrower irrevocably and unconditionally waives, any immunity to which it or its property may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any suit, judgment, service of process upon it or any agent, execution on judgment, set-off, attachment prior to judgment, attachment in aid of execution to which it or its assets may be entitled in any legal action or proceedings with respect to this Agreement or any of the transactions contemplated

[36] *Supra* note 9, at 260-261.

hereby or hereunder. Notwithstanding the foregoing, the Borrower does not waive any immunity in respect of its assets which are (i) used by a diplomatic or consular mission of the Borrower, (ii) assets of a military character and under control of a military authority or defense agency and (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets or assets dedicated to commercial use).[37]

Thus, despite petitioner's claim that the EXIM Bank extended financial assistance to Northrail because the bank was mandated by the Chinese government, and not because of any motivation to do business in the Philippines,[38] it is clear from the foregoing provisions that the Northrail Project was a purely commercial transaction.

Admittedly, the Loan Agreement was entered into between EXIM Bank and the Philippine government, while the Contract Agreement was between Northrail and CNMEG. Although the Contract Agreement is silent on the classification of the legal nature of the transaction, the foregoing provisions of the Loan Agreement, which is an inextricable part of the entire undertaking, nonetheless reveal the intention of the parties to the Northrail Project to classify the whole venture as commercial or proprietary in character.

Thus, piecing together the content and tenor of the Contract Agreement, the Memorandum of Understanding dated 14 September 2002, Amb. Wang's letter dated 1 October 2003, and the Loan Agreement would reveal the desire of CNMEG to construct the Luzon Railways in pursuit of a purely commercial activity performed in the ordinary course of its business.

B. CNMEG failed to adduce evidence that it is immune from suit under Chinese law.

Even assuming *arguendo* that CNMEG performs governmental functions, such claim does not automatically vest it with immunity.

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

[38] Petition, *rollo,* Vol. I, p. 47.

This view finds support in *Malong v. Philippine National Railways*, in which this Court held that "(i)mmunity from suit is determined by the character of the objects for which the entity was organized."[39]

In this regard, this Court's ruling in *Deutsche Gesellschaft Für Technische Zusammenarbeit (GTZ) v. CA*[40] must be examined. In *Deutsche Gesellschaft*, Germany and the Philippines entered into a Technical Cooperation Agreement, pursuant to which both signed an arrangement promoting the Social Health Insurance–Networking and Empowerment (SHINE) project. The two governments named their respective implementing organizations: the Department of Health (DOH) and the Philippine Health Insurance Corporation (PHIC) for the Philippines, and GTZ for the implementation of Germany's contributions. In ruling that GTZ was not immune from suit, this Court held:

> The arguments raised by GTZ and the [Office of the Solicitor General (OSG)] are rooted in several indisputable facts. ***The SHINE project was implemented pursuant to the bilateral agreements between the Philippine and German governments. GTZ was tasked, under the 1991 agreement, with the implementation of the contributions of the German government. The activities performed by GTZ pertaining to the SHINE project are governmental in nature***, related as they are to the promotion of health insurance in the Philippines. The fact that GTZ entered into employment contracts with the private respondents did not disqualify it from invoking immunity from suit, as held in cases such as *Holy See v. Rosario, Jr.*, which set forth what remains valid doctrine:
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> > Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a

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[39] 222 Phil. 381, 384 (1985).

[40] G.R. No. 152318, 16 April 2009, 585 SCRA 150.

sovereign activity, or an incident thereof, then it is an act *jure imperii*, especially when it is not undertaken for gain or profit.

Beyond dispute is the tenability of the comment points (sic) raised by GTZ and the OSG that ***GTZ was not performing proprietary functions*** notwithstanding its entry into the particular employment contracts. Yet there is an equally fundamental premise which GTZ and the OSG fail to address, namely: Is GTZ, by conception, able to enjoy the Federal Republic's immunity from suit?

The principle of state immunity from suit, whether a local state or a foreign state, is reflected in Section 9, Article XVI of the Constitution, which states that "the State may not be sued without its consent." Who or what consists of "the State"? For one, the doctrine is available to foreign States insofar as they are sought to be sued in the courts of the local State, necessary as it is to avoid "unduly vexing the peace of nations."

If the instant suit had been brought directly against the Federal Republic of Germany, there would be no doubt that it is a suit brought against a State, and the only necessary inquiry is whether said State had consented to be sued. However, the present suit was brought against GTZ. It is necessary for us to understand what precisely are the parameters of the legal personality of GTZ.

Counsel for GTZ characterizes GTZ as "the implementing agency of the Government of the Federal Republic of Germany," a depiction similarly adopted by the OSG. Assuming that the characterization is correct, **it does not automatically invest GTZ with the ability to invoke State immunity from suit.** The distinction lies in whether the agency is incorporated or unincorporated.

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State immunity from suit may be waived by general or special law. The special law can take the form of the original charter of the incorporated government agency. Jurisprudence is replete with examples of incorporated government agencies which were ruled not entitled to invoke immunity from suit, owing to provisions in their charters manifesting their consent to be sued.

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It is useful to note that on the part of the Philippine government, it had designated two entities, the Department of Health and the

Philippine Health Insurance Corporation (PHIC), as the implementing agencies in behalf of the Philippines. The PHIC was established under Republic Act No. 7875, Section 16 (g) of which grants the corporation the power "to sue and be sued in court." Applying the previously cited jurisprudence, PHIC would not enjoy immunity from suit even in the performance of its functions connected with SHINE, however, (sic) governmental in nature as (sic) they may be.

Is GTZ an incorporated agency of the German government? There is some mystery surrounding that question. Neither GTZ nor the OSG go beyond the claim that petitioner is "the implementing agency of the Government of the Federal Republic of Germany." On the other hand, private respondents asserted before the Labor Arbiter that GTZ was "a private corporation engaged in the implementation of development projects." The Labor Arbiter accepted that claim in his Order denying the Motion to Dismiss, though he was silent on that point in his Decision. Nevertheless, private respondents argue in their Comment that the finding that GTZ was a private corporation "was never controverted, and is therefore deemed admitted." In its Reply, GTZ controverts that finding, saying that it is a matter of public knowledge that the status of petitioner GTZ is that of the "implementing agency," and not that of a private corporation.

In truth, private respondents were unable to adduce any evidence to substantiate their claim that GTZ was a "private corporation," and the Labor Arbiter acted rashly in accepting such claim without explanation. But **neither has GTZ supplied any evidence defining its legal nature beyond that of the bare descriptive "implementing agency." There is no doubt that the 1991 Agreement designated GTZ as the "implementing agency" in behalf of the German government. Yet the catch is that such term has no precise definition that is responsive to our concerns. Inherently, an agent acts in behalf of a principal, and the GTZ can be said to act in behalf of the German state. But that is as far as "implementing agency" could take us. The term by itself does not supply whether GTZ is incorporated or unincorporated, whether it is owned by the German state or by private interests, whether it has juridical personality independent of the German government or none at all.**

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Again, we are uncertain of the corresponding legal implications under German law surrounding "a private company owned by the Federal Republic of Germany." Yet taking the description on face value, the apparent equivalent under Philippine law is that of a corporation organized under the Corporation Code but owned by the Philippine government, or a government-owned or controlled corporation without original charter. And it bears notice that Section 36 of the Corporate Code states that "[e]very corporation incorporated under this Code has the power and capacity x x x to sue and be sued in its corporate name."

It is entirely possible that under German law, an entity such as GTZ or particularly GTZ itself has not been vested or has been specifically deprived the power and capacity to sue and/or be sued. Yet in the proceedings below and before this Court, **GTZ has failed to establish that under German law, it has not consented to be sued despite it being owned by the Federal Republic of Germany. We adhere to the rule that in the absence of evidence to the contrary, foreign laws on a particular subject are presumed to be the same as those of the Philippines, and following the most intelligent assumption we can gather, GTZ is akin to a governmental owned or controlled corporation without original charter which, by virtue of the Corporation Code, has expressly consented to be sued.** At the very least, like the Labor Arbiter and the Court of Appeals, this Court has no basis in fact to conclude or presume that GTZ enjoys immunity from suit.[41] (Emphasis supplied.)

Applying the foregoing ruling to the case at bar, it is readily apparent that CNMEG cannot claim immunity from suit, even if it contends that it performs governmental functions. Its designation as the Primary Contractor does not automatically grant it immunity, just as the term "implementing agency" has no precise definition for purposes of ascertaining whether GTZ was immune from suit. Although CNMEG claims to be a government-owned corporation, it failed to adduce evidence that it has not consented to be sued under Chinese law. Thus, following this Court's ruling in *Deutsche Gesellschaft*, in the absence of evidence to the contrary, CNMEG is to be presumed

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[41] *Id.* at 165-173.

to be a government-owned and -controlled corporation without an original charter. As a result, it has the capacity to sue and be sued under Section 36 of the Corporation Code.

C. CNMEG failed to present a certification from the Department of Foreign Affairs.

In *Holy See*,[42] this Court reiterated the oft-cited doctrine that the determination by the Executive that an entity is entitled to sovereign or diplomatic immunity is a political question conclusive upon the courts, to wit:

> In Public International Law, when a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, it **requests the Foreign Office of the state where it is sued to convey to the court that said defendant is entitled to immunity.**
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> x x x x x x x x x
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> In the Philippines, **the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity**. But how the Philippine Foreign Office conveys its endorsement to the courts varies. In *International Catholic Migration Commission v. Calleja*, 190 SCRA 130 (1990), the Secretary of Foreign Affairs just sent a letter directly to the Secretary of Labor and Employment, informing the latter that the respondent-employer could not be sued because it enjoyed diplomatic immunity. In *World Health Organization v. Aquino*, 48 SCRA 242 (1972), the Secretary of Foreign Affairs sent the trial court a telegram to that effect. In *Baer v. Tizon*, 57 SCRA 1 (1974), the U.S. Embassy asked the Secretary of Foreign Affairs to request the Solicitor General to make, in behalf of the Commander of the United States Naval Base at Olongapo City, Zambales, a "suggestion" to respondent Judge. The Solicitor General embodied the "suggestion" in a Manifestation and Memorandum as *amicus curiae*.

In the case at bench, the Department of Foreign Affairs, through the Office of Legal Affairs moved with this Court to be allowed to intervene on the side of petitioner. The Court allowed the said

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[42] *Supra* note 24.

Department to file its memorandum in support of petitioner's claim of sovereign immunity.

In some cases, the defense of sovereign immunity was submitted directly to the local courts by the respondents through their private counsels (*Raquiza v. Bradford*, 75 Phil. 50 [1945]; *Miquiabas v. Philippine-Ryukyus Command*, 80 Phil. 262 [1948]; *United States of America v. Guinto*, 182 SCRA 644 [1990] and companion cases). In cases where the foreign states bypass the Foreign Office, the courts can inquire into the facts and make their own determination as to the nature of the acts and transactions involved.[43] (Emphasis supplied.)

The question now is whether **any** agency of the Executive Branch can make a determination of immunity from suit, which may be considered as conclusive upon the courts. This Court, in *Department of Foreign Affairs (DFA) v. National Labor Relations Commission (NLRC)*,[44] emphasized the DFA's competence and authority to provide such necessary determination, to wit:

The DFA's function includes, among its other mandates, the determination of persons and institutions covered by diplomatic immunities, a determination which, when challenge, (sic) entitles it to seek relief from the court so as not to seriously impair the conduct of the country's foreign relations. The DFA must be allowed to plead its case whenever necessary or advisable to enable it to help keep the credibility of the Philippine government before the international community. **When international agreements are concluded, the parties thereto are deemed to have likewise accepted the responsibility of seeing to it that their agreements are duly regarded. In our country, this task falls principally of (sic) the DFA as being the highest executive department with the competence and authority to so act in this aspect of the international arena.**[45] (Emphasis supplied.)

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[43] *Id.* at 531-533.

[44] 330 Phil. 573 (1996).

[45] *Id.* at 587-588.

Further, the fact that this authority is **exclusive** to the DFA was also emphasized in this Court's ruling in *Deutsche Gesellschaft*:

> It is to be recalled that the Labor Arbiter, in both of his rulings, noted that it was imperative for petitioners to secure from the Department of Foreign Affairs "a certification of respondents' diplomatic status and entitlement to diplomatic privileges including immunity from suits." The requirement might not necessarily be imperative. However, **had GTZ obtained such certification from the DFA, it would have provided factual basis for its claim of immunity that would, at the very least, establish a disputable evidentiary presumption that the foreign party is indeed immune which the opposing party will have to overcome with its own factual evidence. We do not see why GTZ could not have secured such certification or endorsement from the DFA for purposes of this case.** Certainly, it would have been highly prudential for GTZ to obtain the same after the Labor Arbiter had denied the motion to dismiss. Still, even at this juncture, **we do not see any evidence that the DFA, the office of the executive branch in charge of our diplomatic relations, has indeed endorsed GTZ's claim of immunity.** It may be possible that GTZ tried, but failed to secure such certification, due to the same concerns that we have discussed herein.
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> **Would the fact that the Solicitor General has endorsed GTZ's claim of State's immunity from suit before this Court sufficiently substitute for the DFA certification? Note that the rule in public international law quoted in Holy See referred to endorsement by the Foreign Office of the State where the suit is filed, such foreign office in the Philippines being the Department of Foreign Affairs. Nowhere in the Comment of the OSG is it manifested that the DFA has endorsed GTZ's claim, or that the OSG had solicited the DFA's views on the issue.** The arguments raised by the OSG are virtually the same as the arguments raised by GTZ without any indication of any special and distinct perspective maintained by the Philippine government on the issue. **The Comment filed by the OSG does not inspire the same degree of confidence as a certification from the DFA would have elicited.**[46] (Emphasis supplied.)

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[46] *Supra* note 40, at 174-175.

In the case at bar, CNMEG offers the Certification executed by the Economic and Commercial Office of the Embassy of the People's Republic of China, stating that the Northrail Project is in pursuit of a sovereign activity.[47] Surely, this is not the kind of certification that can establish CNMEG's entitlement to immunity from suit, as *Holy See* unequivocally refers to the determination of the "Foreign Office of the state where it is sued."

Further, CNMEG also claims that its immunity from suit has the executive endorsement of both the OSG and the Office of the Government Corporate Counsel (OGCC), which must be respected by the courts. However, as expressly enunciated in *Deutsche Gesellschaft*, this determination by the OSG, or by the OGCC for that matter, does not inspire the same degree of confidence as a DFA certification. Even with a DFA certification, however, it must be remembered that this Court is not precluded from making an inquiry into the intrinsic correctness of such certification.

D. An agreement to submit any dispute to arbitration may be construed as an implicit waiver of immunity from suit.

In the United States, the Foreign Sovereign Immunities Act of 1976 provides for a waiver by implication of state immunity. In the said law, the agreement to submit disputes to arbitration in a foreign country is construed as an implicit waiver of immunity from suit. Although there is no similar law in the Philippines, there is reason to apply the legal reasoning behind the waiver in this case.

The Conditions of Contract,[48] which is an integral part of the Contract Agreement,[49] states:

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[47] Petition, *rollo*, Vol. I, p. 30.

[48] Conditions of Contract, *rollo*, Vol. I, pp. 202-241, 415-455.

[49] *Supra* note 7. Clause 1.1 of the Contract Agreement provides:

33. SETTLEMENT OF DISPUTES AND ARBITRATION

33.1. Amicable Settlement

Both parties shall attempt to amicably settle all disputes or controversies arising from this Contract before the commencement of arbitration.

33.2. Arbitration

All disputes or controversies arising from this Contract which cannot be settled between the Employer and the Contractor shall be submitted to arbitration in accordance with the UNCITRAL Arbitration Rules at present in force and as may be amended by the rest of this Clause. The appointing authority shall be Hong Kong International Arbitration Center. The place of arbitration shall be in Hong Kong at Hong Kong International Arbitration Center (HKIAC).

Under the above provisions, if any dispute arises between Northrail and CNMEG, both parties are bound to submit the matter to the HKIAC for arbitration. In case the HKIAC makes an arbitral award in favor of Northrail, its enforcement in the Philippines would be subject to the Special Rules on Alternative Dispute Resolution (Special Rules). Rule 13 thereof provides for the Recognition and Enforcement of a Foreign Arbitral Award. Under Rules 13.2 and 13.3 of the Special Rules, the party to arbitration wishing to have an arbitral award recognized and enforced in the Philippines must petition the proper regional trial court (a) where the assets to be attached or levied upon is located; (b) where the acts to be enjoined are being performed; (c) in the principal place of business in the Philippines of any of the parties; (d) if any of the parties is an individual, where

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The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

(1) Contract Agreement
(2) Amendments, if any to the Contract documents agreed by the Parties
(3) Conditions of Contract
(4) Technical Documents
(5) Preliminary Engineering Design including Bill of Quantities
(6) Technical Specification

any of those individuals resides; or (e) in the National Capital Judicial Region.

From all the foregoing, it is clear that CNMEG has agreed that it will not be afforded immunity from suit. Thus, the courts have the competence and jurisdiction to ascertain the validity of the Contract Agreement.

Second issue: Whether the Contract Agreement is an executive agreement

Article 2(1) of the Vienna Convention on the Law of Treaties (Vienna Convention) defines a treaty as follows:

> [A]n international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

In *Bayan Muna v. Romulo*, this Court held that an executive agreement is similar to a treaty, except that the former (a) does not require legislative concurrence; (b) is usually less formal; and (c) deals with a narrower range of subject matters.[50]

Despite these differences, to be considered an executive agreement, the following three requisites provided under the Vienna Convention must nevertheless concur: (a) the agreement must be between states; (b) it must be written; and (c) it must governed by international law. The first and the third requisites do not obtain in the case at bar.

A. CNMEG is neither a government nor a government agency.

The Contract Agreement was not concluded between the Philippines and China, but between Northrail and CNMEG.[51] By the terms of the Contract Agreement, Northrail is a government-owned or -controlled corporation, while CNMEG

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[50] G.R. No. 159618, 1 February 2011, 641 SCRA 244, 258-259.

[51] *Supra* note 7.

is a corporation duly organized and created under the laws of the People's Republic of China.[52] Thus, both Northrail and CNMEG entered into the Contract Agreement as entities with personalities distinct and separate from the Philippine and Chinese governments, respectively.

Neither can it be said that CNMEG acted as agent of the Chinese government. As previously discussed, the fact that Amb. Wang, in his letter dated 1 October 2003,[53] described CNMEG as a "state corporation" and declared its designation as the Primary Contractor in the Northrail Project did not mean it was to perform sovereign functions on behalf of China. That label was only descriptive of its nature as a state-owned corporation, and did not preclude it from engaging in purely commercial or proprietary ventures.

B. The Contract Agreement is to be governed by Philippine law.

Article 2 of the Conditions of Contract,[54] which under Article 1.1 of the Contract Agreement is an integral part of the latter, states:

APPLICABLE LAW AND GOVERNING LANGUAGE

The contract shall in all respects be read and construed in accordance with the laws of the Philippines.

The contract shall be written in English language. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in English language.

Since the Contract Agreement explicitly provides that Philippine law shall be applicable, the parties have effectively conceded that their rights and obligations thereunder are not governed by international law.

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[52] *Id*.

[53] *Supra* note 6.

[54] *Supra* note 48.

It is therefore clear from the foregoing reasons that the Contract Agreement does not partake of the nature of an executive agreement. It is merely an ordinary commercial contract that can be questioned before the local courts.

WHEREFORE, the instant Petition is **DENIED.** Petitioner China National Machinery & Equipment Corp. (Group) is not entitled to immunity from suit, and the Contract Agreement is not an executive agreement. CNMEG's prayer for the issuance of a TRO and/or Writ of Preliminary Injunction is **DENIED** for being moot and academic. This case is **REMANDED** to the Regional Trial Court of Makati, Branch 145, for further proceedings as regards the validity of the contracts subject of Civil Case No. 06-203.

No pronouncement on costs of suit.

SO ORDERED.

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

Del Castillo, J., on leave.

SECOND DIVISION

[A.M. No. P-06-2111. February 8, 2012]

ANNABELLE F. GARCIA, Clerk of Court, Municipal Trial Court in Cities, Branch 2, Olongapo City, *complainant, vs.* **HERMINIO C. REYES and ZOSIMA S. DE VERA, Interpreter and Stenographer, respectively, Municipal Trial Court in Cities, Branch 2, Olongapo City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAWS; FALSIFICATION OF TIME RECORDS AMOUNTS TO DISHONESTY, A GRAVE OFFENSE PUNISHABLE BY DISMISSAL. — Section 4, Rule XVII on Government Office Hours of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Civil Service Laws (Omnibus Rules) provides: Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant. Falsification of time records amounts to dishonesty. Section 22(a), Rule XIV on Discipline of the Omnibus Rules considers dishonesty as a grave offense punishable by dismissal. Section 1, Canon 4 on Performance of Duties of the Code of Conduct for Court Personnel provides that "[c]ourt personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours." OCA Circular No. 7-2003 provides the guidelines for keeping the record of attendance of judges and lower court personnel. It underscores the importance of truthful and accurate record of the time of arrival in and departure from office.

2. ID.; ID.; ID.; ID.; LENGTH OF SERVICE AND ADMISSION OF INFRACTION CONSIDERED AS MITIGATING FACTORS IN NOT IMPOSING THE ACTUAL PENALTY OF DISMISSAL FROM SERVICE IN CASE AT BAR. — There have been administrative cases where the Court did not impose the actual penalties because of mitigating factors. Factors such as the respondent's length of service in the judiciary, the respondent's acknowledgment of his or her infractions and feeling of remorse, and family circumstances, among others, have had varying significance in the Court's determination of the imposable penalty. In the present case, Reyes asked another person to punch out his time card for him on at least two occasions: 26 November and 23 December, both in 2004. Reyes lied to Judge Pamintuan that the 26 November 2004 incident was the first and last time that he asked another person to punch out his time card for him. However, Reyes has, as of 2007, served the judiciary for 35 years and the present case is the

first complaint ever filed against him. De Vera also admitted that she asked another person to punch out her time card for her. However, De Vera stated that the act constituting the charge was committed at only one instance. We consider Reyes' length of service and De Vera's admission as circumstances that serve to mitigate their liability. Reyes and De Vera both implicated Pronto, and pointed to her as the person who punched out their time cards for them.

3. ID.; ID.; ID.; RESPONDENTS ARE REMINDED THAT COURT PERSONNEL SERVE AS SENTINELS OF JUSTICE AND ANY ACT OF IMPROPRIETY ON THEIR PART IMMEASURABLY AFFECTS THE HONOR AND DIGNITY OF THE JUDICIARY AND THE PEOPLE'S CONFIDENCE IN IT. — All parties in this case are reminded that "in performing their duties and responsibilities, court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it." Strained relations among its personnel should not detract from the efficient working of the Judiciary. All court personnel should bear in mind that the dispensation of justice is their basic duty and responsibility.

D E C I S I O N

CARPIO, *J.*:

The Case

A.M. No. P-06-2111 originates from a Memorandum[1] issued by Annabelle F. Garcia (Garcia), in her capacity as Clerk of Court of Branch 2, Municipal Trial Court in Cities (MTCC), Olongapo City, to Court Interpreter Herminio C. Reyes (Reyes) and Court Stenographer Zosima S. De Vera (De Vera). Pairing Judge Merinnisa O. Ligaya (Judge Ligaya) indorsed the memorandum to the Office of the Court Administrator (OCA). The OCA recommended that the memorandum be redocketed as a regular administrative matter, and that Reyes and De Vera be penalized with a fine in the amount of ₱5,000.00 and a

[1] *Rollo*, p. 2.

warning that repetition of the same or similar acts shall be dealt with more severely.

This Court referred the administrative matter to the OCA for designation of an investigating judge to conduct an investigation, report and recommendation. Executive Judge Norman V. Pamintuan (Judge Pamintuan) recommended penalties for Reyes and De Vera, as well as the conduct of an investigation to assess the culpability of complainant Garcia and of witness Amelia Gonzales Pronto (Pronto). In turn, the OCA recommended penalties for Reyes, De Vera, and Pronto.

The Facts

On 26 November 2004, Reyes and De Vera, for different reasons, left their stations and instructed Pronto to punch their respective time cards to make it appear that they were in the office until 5:00 p.m. Garcia later issued a Memorandum to Reyes and De Vera, and directed them to explain in writing why no disciplinary action should be taken against them for their violation of Civil Service rules. Judge Ligaya noted Garcia's memorandum and indorsed it to the OCA. OCA's Memorandum[2] to this Court summarized Reyes and De Vera's explanations, which read:

> In his written explanation dated 10 January 2005 in compliance with the Memorandum aforementioned which he adopts as his Comment, respondent Herminio Reyes admits having left the office at around 11:40 a.m. and requested Ms. Pronto to punch out his time card for lunch break. He avers, however, that he readily went back to the office after a thirty-minute consultation with his physician about his back pain, thus denying the allegation that he was out of the office the entire afternoon on 26 November 2004. He asserts that it was he who personally punched out his card at 5:00 o'clock in the afternoon on that day, and not Ms. Pronto.
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> In her "Manifestation with Additional Comment" dated 6 March 2005, respondent Zosima De Vera, repleads and incorporates her

[2] Signed by then Court Administrator (now Supreme Court Justice) Presbitero J. Velasco, Jr. and Consultant Narciso T. Atienza. *Id.* at 35-37.

written explanation dated 13 January 2005, as her Comment where she admitted that she left the office at around 4:30 p.m. that day to escort her relatives to the Binictican Housing SBMA. She claims that she intended to be back at the office before 5:00 p.m. that was why she requested Ms. Pronto to punch out her card only if she could not manage to be back on time and since she failed to return to the office on time, it was Ms. Pronto [who punched out her Daily Time Record]. She avers that she tried to ask for [Garcia's] permission before leaving as a precautionary measure, in view of the pendency of a previous complaint that [Garcia] had filed against her for Gross Insubordination. [Garcia] herself, however, was not in the office when [De Vera] left. [De Vera] contends that [Garcia] should be similarly charged with falsification because when [Garcia] signed [De Vera's] DTR, [Garcia] attested to its truth, veracity and due execution. [De Vera] likewise claims that [Garcia] filed this instant complaint to get even with her as she, too, had earlier filed two administrative complaints against [Garcia] for falsification of Time Record and Grave Abuse of Authority.

OTHER RELEVANT INFORMATION: Respondent Zosima De Vera is also the respondent in OCA IPI No. 04-1936, entitled "*Annabelle F. Garcia vs. Zosima De Vera*" for *Insubordination and Unworthy Behavior.* In said complaint, [Garcia] charges [De Vera] with improper conduct for uttering defamatory words and acting rudely to show [De Vera's] disrespect for [Garcia], who is the Acting Clerk of Court of Branch 2, MTCC, in Olongapo City, where [De Vera] is detailed.[3]

The OCA's Recommendation

The OCA docketed the present complaint as OCA IPI No. 05-2120-P. The OCA issued a Memorandum on 22 November 2005, the Evaluation and Recommendation of which read as follows:

EVALUATION: [Reyes and De Vera] admitted that they left the office before the lapse of the official office hours, and also admitted that they requested Ms. Pronto to punch their respective time cards. With [Reyes and De Vera's] admissions, they can be held liable for misconduct for making it appear in their respective daily time records

[3] *Id.* at 35-36.

that they were in their office from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M. in violation of Supreme Court Circular No. 2-99 and reiterated in Circular No. 03-2001 entitled "Strict Observance of Prescribed Working Hours and Session Hours and Rules on Punctuality and Attendance" which provides that: "*by reason of the nature and functions of their office, the officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every month thereof for public service if only to recompense the government and ultimately, the people, who shoulder the cost of maintaining the cost of judiciary. Accordingly, all courts must observe the following office hours, without, however, prejudice to the approved flexi-time of certain personnel:*

Monday to Friday 8:00 A.M. to 12:00 [Noon] 1:00 P.M. to 5:00 P.M."

Under Section 22[a] Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 as amended by CSC Memorandum Circular No. 19, s. 1999, [Reyes and De Vera's] dishonesty may be meted with the penalty of dismissal from service even if it is their first offense. However, considering Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. As the act constituting the charge was committed only at one instance and that respondents duly admitted the act being complained of, the same may be considered as a mitigating circumstance.

It is well to remind [Reyes and De Vera] once again that public service requires outmost [sic] integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to hold inviolate, and invigorate the principle that is solemnly enshrined in the 1987 Constitution that a public office is a public trust; and all public officers and employees must be at all times accountable to the people, serve them with outmost [sic] responsibility, loyalty and efficiency. The conduct and behavior of everyone connected with an office charged with the dispensation

of justice, from the presiding judge to the lowliest clerk should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but above all alse, must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is our recommendation that: [1] the instant IPI be REDOCKETED as regular administrative matter and; [2] Respondents, Interpreter Herminio C. Reyes and Stenographer Zosima C. De Vera, be penalized to pay a FINE in the amount of Five Thousand Pesos [₱5,000.00] each and they be WARNED that repetition of the same or similar act in the future shall be dealt with more severely.[4]

In its Resolution[5] dated 6 February 2006, this Court resolved to redocket OCA IPI No. 05-2120-P as a regular administrative matter. In a 14 June 2006 Resolution, the Court required the parties to manifest within ten days from notice whether they are willing to submit the case for decision on the basis of the pleadings and records already filed and submitted. On 27 September 2006, the Court noted that Reyes and De Vera failed to make any manifestation within the period granted; hence, the Court resolved that the filing of manifestation was deemed waived by Reyes and De Vera.

In a letter dated 25 October 2006, Garcia submitted documents to form part of the records of the case. The documents included a 22 February 2005 letter of Judge Ligaya withdrawing her certification as to the correctness of the entries of the time cards of Reyes and De Vera, particularly the entry of 26 November 2004, because of the reported falsification, and a photocopy of Reyes' December 2004 timecard. Garcia manifested her willingness to submit the case for decision on the basis of the pleadings filed in a letter dated 3 September 2007. She stated that her late compliance was brought about by "inadvertence in

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

[5] *Id.* at 37-a.

not immediately forwarding the same to [her], thus preventing her to submit the required compliance."[6]

In a letter dated 7 September 2007, Reyes claimed that he was unable to comply with the 14 June 2006 Resolution because he did not receive a copy. Upon checking, he saw that the Resolution dated 14 June 2006 was sent to "Municipal Trial Court in Cities, Br. 2, San Fernando, La Union" instead of "Municipal Trial Court in Cities, Br. 2, Olongapo City." Reyes asked for an opportunity to submit his Manifestation before the case is deemed considered submitted for decision.[7] Reyes and De Vera jointly filed a Manifestation with Motion for Reconsideration on 17 September 2007. In the attached Comment, Reyes and De Vera stated that, apart from the 16 June 2006 Resolution, they did not receive copies of documents related to the present case: Garcia's 25 October 2006 letter and, because it is attached to Garcia's letter, Judge Ligaya's 22 February 2005 letter. Reyes and De Vera reiterated the explanations for their actions and appealed to this Court to relax the stringent application of the rules on discipline of government employees. Reyes and De Vera also asked the Court to consider their remorse, the number of years of their service to the government without any derogatory record, and their sincere promise not to repeat the same mistake.

Both parties filed various submissions (*i.e.*, reply, rejoinder, sur-rejoinder) before this Court. In a Resolution[8] dated 17 June 2009, the Court resolved to refer the administrative matter to the OCA for the designation of an investigating judge to conduct an investigation, report and recommendation.

Judge Pamintuan of MTCC Olongapo City conducted hearings from 9 to 10 November 2009, and submitted his report to the OCA on 15 December 2009.

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[6] *Id.* at 56.

[7] *Id.* at 59.

[8] *Id.* at 225.

FINDINGS AND RECOMMENDATIONS:

Culled from the records of the case, the testimonies of the parties as well as the lone witness in this case, the hereunder Executive Judge reports his findings of facts, applicable jurisprudence and recommended penalties for the respondents herein as well as the possible culpabilities of other parties involve [sic] in this Administrative Matter.

This Administrative Matter although deeply rooted on the animosities between the complainant and respondents herein is just one of several cases involving the parties who are on guard for possible sanctions on perceived violations of each other and the lodging of the same with the Office of the Court Administrator, to wit:

1) ***OCA IPI No. 04-1936-P*** filed by complainant Annabelle F. Garcia against Zosima S. De Vera;

2) ***Adm. Matter OCA IPI No. 04-2052-P*** filed by Zosima S. De Vera charging Annabelle F. Garcia with grave misconduct (falsification of DTR), grave abuse of authority and conduct unbecoming of a public officer/employee; Resolved by the First Division on September 12, 2005 admonishing the latter for not reflecting in her daily time record that she was actually on official business on June 25, 2004 and on July 7, 12, 14 and 23, 2004 and May 17, 2004 with a **stern warning** that a repetition of the same or similar acts shall be dealt with more severely;

3) ***Adm. Matter No. P-07-2311*** – *Annabelle F. Garcia vs. Amelia C. Bada* resulting in the **Dismissal** of respondent Amelia Bada, Clerk III of Branch 2, MTCC, Olongapo City in an *en banc* decision of the Supreme Court dated August 23, 2007.

I. Herminio C. Reyes

Respondent Herminio C. Reyes (Reyes, for brevity) admitted that he left the office 11:40 A.M. on November 26, 2004 and requested Amie Pronto (Amelia Gonzales Pronto) now a Utility Aide and a Supreme Court employee assigned at MTCC, Branch 2, Olongapo City, to punch out his time card for lunch break only. [TSN, November 9, 2009 @ 3:00 P.M., pages 11 and 12].

When asked by the Court the number of times he requested other people to punch his time card, he replied that it was the first and last time. [TSN, November 9, 2009 @ 3:00 P.M., page 24].

With his admission, he is liable not only for violation of Supreme Court Circular No. 2-99 as reiterated in Supreme Court Circular 03-2001 which provides for the Strict Observance of Prescribed Working Hours and Session Hours and Rules on Punctuality and Attendance prescribing the office hours as Monday to Friday, 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m.

He is also liable under Section 22(a), Rule IV of the Omnibus Rules Implementing Book V of Executive Order No. 292 as amended by CSC Memorandum Circular No. 19, Series of 1999 for ***dishonesty*** which provides for dismissal even for the first offense.

Instead of being honest and remorseful in the wrongdoing which he admitted he did, he even lied to the Court when he replied it was the first and last time he did the same.

In a related case, a co-employee, Amelia C. Bada was dismissed from service for falsification of a public document and dishonesty [*Annabelle F. Garcia vs. Amelia C. Bada, A.M. No. P-07-2311, August 23, 2007*] for having admitted that she punched the time card of respondent here, Herminio C. Reyes, on December 23, 2004. A co-employee has been dismissed by acceeding [sic] to the request of respondent Reyes which happened on another date.

It must be noted that during the hearing conducted by the Investigating Judge on November 09, 2009, Reyes already knew that his fellow officemate [sic] Amelia C. Bada was dismissed because of acceeding [sic] to his request on December 23, 2004 to punch his time card. [It must be noted that this happened on a later date (later than November 26, 2004, the date of the incident subject of this case).

Instead of showing remorse, he has even the gull [sic] to try to mislead the Investigating Judge that indeed it was the first and last time that he did the act of asking another person to punch his time card. [TSN dated November 9, 2009 @ 3:00 P.M., page 24] This actuation of respondent Reyes is an indicia that he has shown no remorse on what he has done. By lying, he tried to make a mockery of the proceedings being conducted by the Investigating Judge.

Under Rule 14, Section 21 of the Civil Service Rules, dishonesty is a grave offense which provides for the penalty of ***dismissal*** even if committed for the first time. Obviously, respondent has shown a propensity to commit the same acts if given the opportunity. Respondent has not learned his lesson; neither was he repentant for

the act of asking a co-employee to punch his card for him. The admission of Amelia Bada that she punched the card of respondent Reyes caused her dismissal from service.

Considering the aforementioned, respondent Reyes no longer deserves to stay in the service a minute more and even his long years of stay in government service will not tilt the balance in his favor. This Investigating Judge therefore recommends that respondent Herminio C. Reyes, Court Interpreter, Branch 2, Municipal Trial Court in Cities, Olongapo City be ***dismissed*** from service with the forfeiture of all retirement benefits with perpetual disqualification for re-employment in government service.

II. Zosima S. De Vera

With respect to respondent Zosima S. De Vera (De Vera for brevity), she admitted that she requested Amie Pronto (Amelia Gonzales Pronto) now an employee of the Supreme Court with an item of Utility Aide assigned at MTCC, Branch 2, Olongapo City, to punch her time card in her letter compliance [Exhibits "2" and "2-A" - De Vera, pages 5 and 6, case folio] to the Memorandum.

However, upon thorough questioning by the Investigating Judge, she divulged that indeed the one she requested to punch her time card was not Amie Pronto but respondent Herminio Reyes [TSN dated November 10, 2009 @ 10:00 A.M., page 14].

She attested to the fact that she did not personally punch out her time card on November 26, 2004 [TSN dated November 10, 2009 @ 10:00 A.M., page 13]. She was remorseful and was even crying for the wrongful act which she has committed. [TSN dated November 10, 2009 @ 10:00 A.M., pages 44-46].

Her revelations to the Investigating Judge served as an eye-opener to the Court authorities that there were two (2) controls being implemented in their Court then, insofar as attendance is concerned, namely: (1) the use of a bundy clock; and (b) the use of a logbook.

She revealed in between sobs that everybody in their Court makes use of the bundy clock and the logbook in logging their attendance for a particular date. However, the logbook entries are not being filled up properly (not on the same date) and some of the entries are only entered at the end of the month and by using the time card as a guide, by copying the entries reflected in their time cards.

The system being implemented therefore during that time insofar as recording of their attendance is concerned as revealed by respondent De Vera is faulty. The system itself would encourage animosities between the employees and is prone to encourage irregularities among the employees thereat. The request of Zosima De Vera for her time card to be punched by another person is also dishonesty.

Under Section 22 (a) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 as amended by the CSC Memorandum Circular No. 19, Series of 1999, respondents' dishonesty may be meted with the penalty of dismissal from service even if it is her first offense. However, considering Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. As the act constituting the charge was committed only at one instance and that respondent duly admitted the act being complained of, the same may be considered as a mitigating circumstance.

Therefore, with the mitigating circumstance of committing this impropriety for the first time, this Investigating Judge recommends that respondent Stenographer Zosima S. De Vera, now with the Regional Trial Court, Branch 72, this city, be meted a fine of ***FIVE THOUSAND PESOS (₱5,000.00)*** and **WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely, as earlier recommended by the Office of the Court Administrator, Supreme Court, in OCA IPI No. 05-2120-P before this case was redocketed as a regular Administrative Matter.

III. Amelia Gonzales Pronto

In so far as witness Amelia Gonzales Pronto (Pronto, for brevity), now a Supreme Court employee with the item of Utility Aide at MTCC, Branch 2, Olongapo City who was implicated by the complainant Garcia. The latter categorically admitted before the Investigating Judge that she has personal knowledge that Pronto punched the time card of respondent Reyes as well as the time card of respondent De Vera (TSN dated November 9, 2009 @ 10:00 A.M., pages 28-29; 32-22] because Pronto herself confessed to her.

In so far as respondent Reyes is concerned, he admitted when he testified that indeed Pronto punched for him his time card. [TSN dated November 9, 2009 @ 3:00 P.M., page 21].

The statements of respondent Reyes implicating Pronto as the one who punched his time card for him as well as the statement of complainant Garcia implicating likewise Pronto for punching the time cards of respondents Reyes and De Vera clearly indicate the culpability of Amelia G. Pronto.

This is no different from the case of Amelia C. Bada, their co-employee, who was dismissed from the service for punching the time card of Herminio Reyes, who is the same respondent in this case. Citing the aforesaid case against Amelia C. Bada entitled "*A.M. No. P-07-2311, Annabelle F. Garcia, Clerk of Court, Municipal Trial Court in Cities, Branch 2, Olongapo City versus Amelia C. Bada, Court Interpreter, Municipal Trial Court in Cities, Branch 2, Olongapo City*" wherein respondent's act of punching another employee's time card falls within the ambit of falsification. She made it appear as though it was Reyes (also the same respondent in this case) himself who punched his own card and at the same time made the card reflect a log out time different from the actual time of departure from the office. Respondent Amelia C. Bada was administratively held liable for violation of Rule XVII, Sec. 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules) which provides, to wit:

> Section 4. — Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable. x x x

In the same context the Supreme Court *En Banc* ruled that falsification of Daily Time record is also an act of dishonesty under Rule XIV, Sec. 21 of the Civil Service Rules which as such carry [sic] the penalty of dismissal from service with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from re-employment in government service.

Further in the said Supreme Court ruling it reiterated that falsification of an official document is a criminal offense and is punishable under Art. 171 of the Revised Penal Code.

Although Pronto vehemently denied that she punched the Daily Time Records of respondents Reyes and De Vera when she testified on November 13, 2009 at 3:00 o'clock in the afternoon, she did not submit any documentary evidence to support her denial except her self-serving Affidavit denying that she punched the daily time records/ time cards of the respondents. Her denial will not overturn the

testimonies and documentary evidences of the complainant and respondent Reyes implicating her.

The Investigating Judge therefore recommends that the Office of the Court Administrator undertakes the necessary investigation to assess the culpability of witness Amelia Gonzales Pronto, now a Supreme Court employee with the item of Utility Aide at MTCC Branch 2, Olongapo City.

IV. Annabelle Florita Garcia

The complainant in this case, Branch Clerk of Court, Annabelle F. Garcia has been implicated by respondent Zosima De Vera [Exhibit "2-A-De Vera" and Exhibit "M" series for the complainant appearing on pages 5-6 of the case folio] particularly in paragraph "f" which states and I quote: "That it is not true that I was not in the office after lunch from 1:00 to 5:00 p.m. or half day because when I received the call from my relatives, I [was] supposed to ask permission from you to leave the office thirty (30) minutes before 5:00 at that time but you are not in the office and you left after lunch together with Ma. Theresa V. Antes (where [sic] I used to ask permission/inform her whenever you are out in [sic] the office), Sally Nera and Noel Domingo until 4:30 where I need to go out because they are waiting for me in front of the City Hall x x x."

The above-cited statement of respondent De Vera clearly imputes upon complainant Garcia that she was not in the office during office hours on said date, November 26, 2004.

Although the same was denied by Garcia in her "Comment" dated November 18, 2009 to respondent De Vera's "Manifestation" dated March 16, 2005 which she submitted to this Investigating Judge almost four (4) years from the submission of the said "Manifestation" by respondent De Vera, the same was not substantiated with any documentary proof to belie such imputation except her claim in par. 1 that "it appears on record that on the date referred to, complainant was on sick leave."

It must be noted that this is a ***complete reversal*** of her testimony wherein she claimed that she was in the office at that time (***November 26, 2004 particularly after lunch and specifically at around 4:30 in the afternoon when respondent De Vera claimed that she left the office failing to ask permission from complainant Garcia because she herself was not at the office at that time***).

Garcia even claimed that she was in the office but respondent De Vera did not ask permission from her. [TSN dated November 9, 2009 @ 10:00 A.M., pages 31 and 32.]

It must be noted that this is a serious allegation which deserves close scrutiny and careful evaluation since this also involves a violation of Supreme Court Circular 2-99 and reiterated in Supreme Court Circular 03-2001 entitled "***Strict Observance of Prescribed Working Hours and Session Hours and Rules on Punctuality and Attendance***" which provides among others that all Courts must observe the following office hours: Monday to Friday, 8:00 a.m. to 12:00 noon, 1:00 p.m. to 5:00 p.m.

Under Sec. 22 (a) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 as amended by CSC Memorandum Circular No. 19, series of 1999, if the allegations of respondent De Vera are proven true, the complainant herein Annabelle F. Garcia, Clerk of Court, MTCC Branch 2, Olongapo City, is liable for dishonesty and may be meted with the penalty of dismissal from the service even if it is for the first offense.

Complainant Annabelle F. Garcia has been charged with grave misconduct (falsification of DTR), grave abuse of authority and conduct unbecoming a public officer/employee in ***Administrative Matter OCA IPI No. 04-2052-P entitled Zosima S. De Vera vs. Annabelle F. Garcia, Clerk of Court III, Municipal Trial Court in Cities, Branch 2, Olongapo City***.

In the said Administrative Matter the Supreme Court First Division in its Resolution dated September 12, 2005, resolved and which the Investigating Judge quotes:

"***x x x x x x x x x***

> ***(b) ADMONISH respondent Annabelle F. Garcia x x x with [a] STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely. x x x***"

Therefore, in view of the aforementioned, the Investigating Judge hereby recommends that the Office of the Court Administrator undertakes [sic] the necessary investigation to assess the culpability as well of complainant Annabelle F. Garcia.[9]

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[9] *Id.* at 267-278.

The OCA submitted its Memorandum on the present case on 25 October 2011. The OCA stated:

This Office concurs with the findings and recommendations of Investigating Judge Pamintuan relative to the charges raised against respondents Reyes and De Vera. However, this Office also finds the evidence adduced during the investigation sufficient to warrant the inclusion of Utility Aide Ms. Pronto as a respondent. Respondents Reyes and De Vera both identified Ms. Pronto as the one who punched out their time cards. In the Investigation Report, it was also mentioned that an unnamed RTC employees [sic] of Olongapo City saw Ms. Pronto punching two (2) time cards sometime in November 2004.

There is no need to further investigate the matter concerning Ms. Pronto's culpability, as the same has been sufficiently established. Moreover, Ms. Pronto was given full opportunity to refute her participation in the irregularities committed by respondents De Vera and Reyes, but based on the assessment made by Investigating Judge Pamintuan, the Affidavit that Ms. Pronto submitted contained self-serving statements. At the very least, the penalty for Ms. Pronto should be tempered. It is clear from the findings of Investigating Judge Pamintuan that it was respondents Reyes and De Vera who instructed Ms. Pronto to punch their time cards. Ms. Pronto was unknowingly an accomplice in the case.

PREMISES CONSIDERED, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. Respondent Herminio C. Reyes, Interpreter, Municipal Trial Court in Cities, Branch 2, Olongapo City, be held liable for DISHONESTY for falsification of his DTR and be meted with the penalty of DISMISSAL from the service, with forfeiture of all retirement benefits excluding accrued leave benefits, and disqualification or appointment to any public office including government-owned or controlled corporations;

2. Respondent Zosima S. De Vera, Stenographer, Municipal Trial Court in Cities, Branch 2, Olongapo City, be meted with a FINE of FIVE THOUSAND PESOS (₱5,000.00) to be paid within fifteen (15) days from receipt of notice, with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely; and

3. Amelia G. Pronto, Utility Aide, Municipal Trial Court in Cities, Branch 2, Olongapo City, be INCLUDED AS A RESPONDENT in the administrative case and be FINED in the amount of Two Thousand Pesos (₱2,000.00) to be paid within fifteen (15) days from receipt of notice, with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.[10]

The Court's Ruling

We approve and adopt the OCA's findings with modifications as to its recommended penalties.

Section 4, Rule XVII on Government Office Hours of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Civil Service Laws (Omnibus Rules) provides:

> Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

Falsification of time records amounts to dishonesty.[11] Section 22(a), Rule XIV on Discipline of the Omnibus Rules considers dishonesty as a grave offense punishable by dismissal.

Section 1, Canon 4 on Performance of Duties of the Code of Conduct for Court Personnel[12] provides that "[c]ourt personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours."

OCA Circular No. 7-2003 provides the guidelines for keeping the record of attendance of judges and lower court personnel. It underscores the importance of truthful and accurate record of the time of arrival in and departure from office. OCA Circular No. 7-2003 reads:

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[10] Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office, Legal Office Wilhelmina D. Geronga. *Id.* at 554-555.

[11] *Servino v. Adolfo*, A.M. No. P-06-2204, 30 November 2006, 509 SCRA 42, 53.

[12] A.M. No. 03-06-13-SC (2004).

In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:

1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office. For Judges and Clerks of Court in the Regional Trial Court (RTC), they shall accomplish, in lieu of DTRs, Certificates of Service;

2. Certificates of Service for Clerks of Court in the RTC shall be certified correct by the Presiding Judge and Certificates of Service for Clerks of Court in the OCC of the RTC shall be certified correct by the Executive Judge;

3. DTRs/Bundy Cards shall be certified correct by the Executive/ Presiding Judge or, in his absence, by the Clerk of Court;

4. Every Clerk of Court shall:

4.1. maintain a registry book (logbook) in which all officials and employees of that court shall indicate their daily time of arrival in and departure from office;

4.2. check the accuracy of the DTRs prepared by the court employees by comparing them with the entries in the logbook; and

4.3. prepare a Monthly Report on Absences, Tardiness and Undertime, in accordance with the attached form.

5. The Clerk of Court shall thereafter forward, within five (5) days after the end of each month, the said Certificates of Service; DTRs/Bundy Cards and Monthly Report of Absences, Tardiness and Undertime in one batch to the:

Leave Division
Office of Administrative Services
Office of the Court Administrator
Supreme Court
1000 Manila

6. Failure to submit Certificates of Service and DTRs/Bundy Cards shall warrant the withholding of the salaries and benefits of the officers and employees concerned.

For strict compliance.

There have been administrative cases where the Court did not impose the actual penalties because of mitigating factors. Factors such as the respondent's length of service in the judiciary, the respondent's acknowledgment of his or her infractions and feeling of remorse, and family circumstances, among others, have had varying significance in the Court's determination of the imposable penalty.[13]

In *Office of the Court Administrator v. Sirios*, suspension of three months without pay was imposed for falsification of the DTR to cover up for absenteeism or tardiness.

In *Office of the Court Administrator v. Saa*, respondent there was fined ₱5,000 for falsifying his DTR to make it appear that he had reported for work on those days when he attended hearings of his case.

In *Reyes-Domingo v. Morales*, where the branch clerk of court was found guilty of dishonesty in not reflecting the correct time in his DTR, a fine of ₱5,000 was imposed.

In *Servino v. Adolfo*, respondent there readily acknowledged that some entries in her time card were falsified. The Court noted that this was her first administrative case in her three years in government service. A fine of ₱2,000 was imposed.[14]

In the present case, Reyes asked another person to punch out his time card for him on at least two occasions: 26 November and 23 December, both in 2004. Reyes lied to Judge Pamintuan that the 26 November 2004 incident was the first and last time that he asked another person to punch out his time card for him. However, Reyes has, as of 2007, served the judiciary for 35 years and the present case is the first complaint ever filed against him. De Vera also admitted that she asked another person to punch out her time card for her. However, De Vera stated that the act constituting the charge was committed at only one instance. We consider Reyes' length of service and De Vera's

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[13] *Re: Employees Incurring Habitual Tardiness in the First Semester of 2005*, 527 Phil. 1, 10 (2006).

[14] *Office of the Court Administrator v. Isip*, A.M. No. P-07-2390, 19 August 2009, 596 SCRA 407, 412-413. Citations omitted.

admission as circumstances that serve to mitigate their liability. Reyes and De Vera both implicated Pronto, and pointed to her as the person who punched out their time cards for them.

All parties in this case are reminded that "in performing their duties and responsibilities, court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it."[15] Strained relations among its personnel should not detract from the efficient working of the Judiciary. All court personnel should bear in mind that the dispensation of justice is their basic duty and responsibility.[16]

WHEREFORE, the Court finds the respondents administratively liable for **DISHONESTY** and imposes upon them the corresponding penalties, as follows:

(1) a **FINE** in the amount of Ten Thousand Pesos (₱10,000.00) on Herminio C. Reyes, Interpreter, Municipal Trial Court in Cities, Branch 2, Olongapo City, because he committed the same infraction twice. His liability is mitigated by his length of service.

(2) a **FINE** in the amount of Seven Thousand Pesos (₱7,000.00) on Zosima S. De Vera, Stenographer, Municipal Trial Court in Cities, Branch 2, Olongapo City. Her liability is mitigated by her admission of her offense.

As for Amelia G. Pronto, Utility Aide, Municipal Trial Court in Cities, Branch 2, Olongapo City, this Court directs the Office of the Court Administrator to file the necessary administrative complaint against her and render her due process.

All penalties shall be paid within fifteen (15) days from receipt of this Decision, with a **WARNING** that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

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[15] Fourth Whereas Clause, *supra* note 12.

[16] First Whereas Clause, *supra* note 12.

SECOND DIVISION

[A.M. No. MTJ-10-1761. February 8, 2012]

AIDA R. CAMPOS, ALISTAIR R. CAMPOS, and CHARMAINE R. CAMPOS, *complainants, vs.* **JUDGE ELISEO M. CAMPOS, Municipal Trial Court, Bayugan, Agusan del Sur,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; COMPLAINANTS FAILED TO PRESENT ANY PROOF OF RESPONDENTS ALLEGED RELATIONSHIP WITH ANOTHER WOMAN, SO AS TO JUSTIFY A CHARGE FOR IMMORALITY; NO EVIDENCE THAT RESPONDENT ENGAGED IN SCANDALOUS CONDUCT THAT WOULD WARRANT THE DISCIPLINARY ACTION AGAINST HIM. — Complainants failed to present any proof of respondent's alleged relationship with another woman, so as to justify a charge for immorality. There was no evidence that respondent engaged in scandalous conduct that would warrant the imposition of disciplinary action against him. We take this occasion to remind respondent, however, that the New Code of Conduct for the Philippine Judiciary provides that, as a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, judges must conduct themselves in a way that is consistent with the dignity of the judicial office. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, the judge must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.

2. ID.; ID.; ISSUE OF ALLEGED HOMOSEXUALITY IS FOR THE DETERMINATION OF THE TRIAL COURT WHEREIN THE PETITION FOR DECLARATION OF NULLITY IS PENDING. — With respect to respondent's alleged homosexuality, such issue is for the determination of the trial court wherein the petition for declaration of nullity

is pending. Thus, we also agree with the investigating judge and the OCA in absolving respondent from the charge of dishonesty. The fact that respondent got married and had children is not proof against his claim of homosexuality. As pointed out by the investigating judge, it is possible that respondent was only suppressing or hiding his true sexuality.

3. ID.; ID.; RESPONDENT JUDGE DID NOT APPEAR TO HAVE ACTED IN BAD FAITH OR COMMITTED DISHONESTY IN EXECUTING THE AFFIDAVIT OF LOSS OF TITLE COVERED BY OCT NO. P-28258. — We also agree with the investigating judge and the OCA's findings that respondent was not guilty of dishonesty as regards the declaration of loss of title covered by OCT No. P-28258. As found by the investigating judge, the title was kept by respondent in his drawer. When respondent could not find the title in his usual place for safekeeping, he sought the advice of the Register of Deeds who told him to execute the affidavit of loss. In addition, while the property was registered in Alistair's name, he did not controvert his father's claim that he was the real owner of the land and that his father kept the title in his possession. Thus, respondent did not appear to have acted in bad faith or committed dishonesty in executing the affidavit of loss of the title to the property.

4. ID.; ID.; RESPONDENT JUDGE IS GUILTY OF SIMPLE MISCONDUCT IN CAUSING THE REGISTRATION OF TITLE OVER OCT NO. P-28258 IN HIS SON'S NAME WITH THE INTENTION OF DEFRAUDING A POSSIBLE JUDGMENT-OBLIGEE. — We agree with the investigating judge and the OCA in finding respondent guilty of simple misconduct in causing the registration of the title over OCT No. P-28258 in his son's name with the intention of defrauding a possible judgment-obligee. The Court defined simple misconduct as follows: Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. It is an unlawful behavior. "Misconduct in office is any unlawful behavior by a public officer in relation to the duties of his office, willful in character. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate, or intentional purpose although it may not necessarily imply corruption or criminal intent." Simple misconduct is a transgression of some

established rule of action, an unlawful behavior, or negligence committed by a public officer. In this case, respondent knew at that time of the registration of the property that he had a pending case and that he could possibly lose the case. In order to manipulate the situation and taking advantage of his knowledge of the law, respondent caused the registration of the property in Alistair's name with the intention of defrauding a possible judgment-obligee. Clearly, it was an improper behavior which warrants a disciplinary sanction by this Court.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a complaint for serious misconduct, immorality and dishonesty filed by Aida R. Campos, Alistair R. Campos, and Charmaine R. Campos (complainants) against Eliseo M. Campos (respondent), former Presiding Judge of the Municipal Trial Court of Bayugan, Agusan del Sur.

The Antecedent Facts

Complainant Aida and respondent were married on 9 September 1981. They had two children, complainants Alistair and Charmaine. On 16 July 2008, respondent filed a petition for Declaration of Nullity of Marriage, docketed as Civil Case No. 1118, raffled before the Regional Trial Court of Bayugan, Agusan del Sur, Branch 7. Respondent alleged that he and Aida were both psychologically incapacitated to comply with the essential marital obligations. For his part, respondent alleged that he is a homosexual who could not be intimate with his wife unless he imagined he was with another man. Respondent alleged that as a result of his homosexuality, his wife had affairs with other men which he did not bother to stop or question.

Aida denied the allegations in respondent's petition for declaration of nullity of their marriage and alleged that respondent wanted their marriage annulled so that he could marry another woman with whom he was having a relationship. Aida opposed

the petition for declaration of nullity of marriage and filed instead a petition for legal separation.

Aida further alleged that soon after filing the petition for declaration of nullity of their marriage, respondent executed an affidavit of loss claiming that the title covering Lot No. 4747-A, Csd-13-002130-D, a parcel of registered land evidenced by OCT No. P-28258 under the name of Alistair, was lost in his possession. Respondent requested the Register of Deeds of the Province of Agusan del Sur to annotate the affidavit of loss on the title. Aida alleged that at the time of respondent's execution of the affidavit of loss, the title was in Alistair's possession. Aida alleged that respondent wanted the property back in the event his petition for declaration of nullity of marriage would be granted by the court. Aida alleged that respondent claimed before the Register of Deeds that he was the real owner of the property and it was only wrongly registered in the name of Alistair.

Respondent denied the allegations of Aida and alleged that he admitted to his children that the cause of the filing of the petition for declaration of nullity of marriage was his homosexuality and Aida's infidelity. Respondent further alleged that his children already abandoned him and he had to transfer to the basement of their house to avoid them. Respondent admitted executing the affidavit of loss of the title of OCT No. P-28258 but only to protect his interest. Respondent alleged that right after the filing of the petition for declaration of nullity of marriage, he learned that Aida and Alistair wanted to use the property as a collateral for a loan.

In its 2 July 2010 Resolution, the Court referred the case to the Executive Judge of the Regional Trial Court of Agusan del Sur for investigation, report and recommendation.

The Report of the Investigating Judge

In his report dated 16 February 2011, Executive Judge Hector B. Salise stated that respondent's admission of homosexuality does not make him automatically immoral. The investigating

judge also found no evidence of respondent having a relationship with another woman as claimed by Aida.

The investigating judge also found that respondent was not guilty of dishonesty. The investigating judge stated that the fact that respondent had children with Aida was not a proof that he was not a homosexual and thus he was lying in his petition for declaration of nullity of marriage. The investigating judge also stated that as far as respondent was concerned, the title to the property was lost and that he was only trying to protect his right as the true owner of the land. The investigating judge further stated that the complainants did not controvert respondent's allegation that while the property was in the name of Alistair, respondent was the real owner of the property.

However, the investigating judge found respondent guilty of misconduct in causing the registration of the land in the name of Alistair despite the fact that Alistair was still a minor at the time of the registration. According to the investigating judge, respondent manipulated the transaction in such a way that the title ended up with Alistair despite his lack of legal capacity to enter into the transaction. The investigating judge noted that Aida conspired with respondent in causing the registration of the title in the name of Alistair because at that time, there was a pending case against respondent. Respondent and Aida were afraid that if respondent lose the case, the property would be taken from them. The investigating judge stated that the action was clearly intended to defraud a possible judgment-obligee.

The investigating judge did not submit a recommendation and left it to the discretion of this Court to impose the proper penalty on respondent.

In its 8 June 2011 Resolution, this Court referred the report of the investigating judge to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

The Report and Recommendation of the OCA

In a Memorandum dated 12 October 2011, the OCA agreed with the report of the investigating judge. The OCA stated that the burden of proving the charge of immorality rests with the

complainants. Complainants failed to prove their allegation that respondent had a relationship with another woman. Neither was the charge of respondent's immorality on account of his being a homosexual proven by complainants.

The OCA likewise found that respondent was not guilty of dishonesty. According to the OCA, respondent's allegation of homosexuality in his petition for declaration of nullity of marriage could only be proven in the proceeding before the trial court. Thus, the OCA cannot rule on whether respondent is falsely claiming that he is a homosexual. As regards the affidavit of loss, the OCA noted that even Alistair admitted that respondent is the real owner of the property although it was registered in his name. The OCA further noted that the perjury case filed against respondent because of his execution of the affidavit of loss was dismissed because the prosecutor found that respondent was acting in good faith to protect his right.

However, the OCA found respondent guilty of simple misconduct in allowing the title of the property to be registered in the name of then minor Alistair. The OCA agreed with the investigating judge that respondent manipulated the transaction to avoid losing the property should he lose in the case filed against him.

The OCA recommended the dismissal of the complaints for immorality and dishonesty. The OCA further recommended that respondent should be held administratively liable for misconduct and should be imposed a fine equivalent to three months salary at the time of his resignation from service on 1 July 2009.

The Issue

The only issue in this case is whether respondent is guilty of simple misconduct.

The Ruling of this Court

Complainants failed to present any proof of respondent's alleged relationship with another woman, so as to justify a charge for immorality. There was no evidence that respondent engaged in scandalous conduct that would warrant the imposition of disciplinary action against him. We take this occasion to remind

respondent, however, that the New Code of Conduct for the Philippine Judiciary[1] provides that, as a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, judges must conduct themselves in a way that is consistent with the dignity of the judicial office.[2] Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, the judge must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[3]

With respect to respondent's alleged homosexuality, such issue is for the determination of the trial court wherein the petition for declaration of nullity is pending. Thus, we also agree with the investigating judge and the OCA in absolving respondent from the charge of dishonesty. The fact that respondent got married and had children is not proof against his claim of homosexuality. As pointed out by the investigating judge, it is possible that respondent was only suppressing or hiding his true sexuality.

We also agree with the investigating judge and the OCA's findings that respondent was not guilty of dishonesty as regards the declaration of loss of title covered by OCT No. P-28258. As found by the investigating judge, the title was kept by respondent in his drawer. When respondent could not find the title in his usual place for safekeeping, he sought the advice of the Register of Deeds who told him to execute the affidavit of loss. In addition, while the property was registered in Alistair's name, he did not controvert his father's claim that he was the real owner of the land and that his father kept the title in his

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[1] A.M. No. 03-05-01-SC, promulgated on 27 April 2004 and made effective on 1 June 2004.

[2] Section 2, Canon 4, New Code of Conduct for Philippine Judiciary.

[3] *Vedaña v. Judge Valencia*, A.M. No. RTJ-96-1351, 3 September 1998, 295 SCRA 1.

possession. Thus, respondent did not appear to have acted in bad faith or committed dishonesty in executing the affidavit of loss of the title to the property.

We agree with the investigating judge and the OCA in finding respondent guilty of simple misconduct in causing the registration of the title over OCT No. P-28258 in his son's name with the intention of defrauding a possible judgment-obligee.

The Court defined simple misconduct as follows:

> Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. It is an unlawful behavior. "Misconduct in office is any unlawful behavior by a public officer in relation to the duties of his office, willful in character. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate, or intentional purpose although it may not necessarily imply corruption or criminal intent."[4]

Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.[5] In this case, respondent knew at that time of the registration of the property that he had a pending case and that he could possibly lose the case. In order to manipulate the situation and taking advantage of his knowledge of the law, respondent caused the registration of the property in Alistair's name with the intention of defrauding a possible judgment-obligee. Clearly, it was an improper behavior which warrants a disciplinary sanction by this Court.

Under Section 9 in relation to Section 11(B), Rule 140 of the Rules of Court, simple misconduct is a less serious offense punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.[6]

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[4] *Bautista v. Sula,* A.M. No. P-04-1920, 17 August 2007, 530 SCRA 406, 418.

[5] *China Banking Corporation v. Janolo, Jr.,* A.M. No. RTJ-07-2035, 12 June 2008, 554 SCRA 295.

[6] *Id*.

Since respondent has already tendered his resignation from the judiciary effective 1 July 2009, his suspension is no longer possible. However, we modify the recommendation of the OCA that in lieu of suspension, a fine equivalent to three months salary at the time of his resignation should be imposed on respondent. Pursuant to the imposable penalty in accordance with the Rules of Court, a fine of ₱20,000 is in order.

WHEREFORE, we find respondent Eliseo M. Campos **GUILTY** of simple misconduct and **FINE** him Twenty Thousand Pesos (₱20,000) to be deducted from whatever benefits, if any, that he is still entitled to after his resignation from the judiciary. If there is none, respondent is **ORDERED** to pay directly the fine of ₱20,000.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.*, concur.

SPECIAL SECOND DIVISION

[A.M. No. RTJ-10-2255. February 8, 2012]
(Formerly OCA I.P.I. No. 10-3335-RTJ)

SPOUSES DEMOCRITO and OLIVIA LAGO, *complainants, vs.* **JUDGE GODOFREDO B. ABUL, JR., Regional Trial Court, Branch 43, Gingoog City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; THE COURT IS SATISFIED WITH THE REASONS ADVANCED BY RESPONDENT JUDGE WITH RESPECT TO THE ISSUES REGARDING THE RAFFLE OF THE CASE AND THE LACK OF NOTICE AND HEARING PRIOR TO THE ISSUANCE OF THE WRIT OF

PRELIMINARY INJUNCTION. — With respect to the issues regarding the raffle, the lack of notice and hearing prior to the issuance of the writ of preliminary injunction, the Court is satisfied with the explanation of Judge Abul as it is substantiated by the official records on file. As to the issue on the delay in conducting the summary hearing for purposes of extending the 72-hour TRO, the Court finds the reasons advanced by Judge Abul to be well-taken. Section 5, Rule 58 of the Rules permits the executive judge to issue a TRO *ex parte*, effective for 72 hours, in case of extreme urgency to avoid grave injustice and irreparable injury. Then, after the lapse of the 72 hours, the Presiding Judge to whom the case was raffled shall then conduct a summary hearing to determine whether the TRO can be extended for another period. Under the circumstances, Judge Abul should not be penalized for failing to conduct the required summary hearing within 72 hours from the issuance of the original TRO. Though the Rules require the presiding judge to conduct a summary hearing before the expiration of the 72 hours, it could not, however, be complied with because of the remoteness and inaccessibility of the trial court from the parties' addresses. The importance of notice to all parties concerned is so basic that it could not be dispensed with. The trial court cannot proceed with the summary hearing without giving all parties the opportunity to be heard.

2. ID.; ID.; JUDGES ARE NOT ADMINISTRATIVELY RESPONSIBLE FOR WHAT THEY DO IN THE EXERCISE OF THEIR JUDICIAL FUNCTIONS WHEN ACTING WITHIN THEIR POWERS AND JURISDICTION. — It is a settled doctrine that judges are not administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

3. ID.; ID.; TO CONSTITUTE GROSS IGNORANCE OF THE LAW, IT IS NOT ENOUGH THAT THE SUBJECT DECISION, ORDER OR ACTUATION OF THE JUDGE IN

THE PERFORMANCE OF HIS OFFICIAL DUTIES IS CONTRARY TO EXISTING LAW AND JURISPRUDENCE BUT, MOST IMPORTANTLY, HE MUST BE MOVED BY BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION. — To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the respondent judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption. In this case, complainants failed to show that Judge Abul was motivated by bad faith, ill will or malicious motive when he granted the TRO and preliminary injunction. Complainants did not adduce any proof to show that impropriety and bias attended the actions of the respondent judge.

APPEARANCES OF COUNSEL

Ricardo D. Gonzales for respondent.

R E S O L U T I O N

MENDOZA, *J.*:

Subject of this disposition is the motion for reconsideration of the Court's January 17, 2011 Decision, filed by respondent Judge Godofredo B. Abul, Jr. *(Judge Abul)*, Presiding Judge, Regional Trial Court, Branch 4, Butuan City, finding him guilty of gross ignorance of the law and imposing upon him a fine in the amount of ₱25,000.00.

Disciplinary action was meted on him for (1) assuming jurisdiction over Civil Case No. 2009-905 without the mandated raffle and notification and service of summons to the adverse party and issuing a temporary restraining order *(TRO)*; (2) setting the case for summary hearing beyond the 72-hour required by the law in order to determine whether the TRO could be extended; and (3) issuing a writ of preliminary injunction without prior notice to the complainants and without hearing.

Judge Abul stresses that contrary to the allegations of the complainants, the Clerk of Court conducted a raffle of the case

in question. In support thereof, he attached the Letter[1] dated July 3, 2009 of Atty. Rhodora N. Restituto, Clerk of Court VI, RTC, Misamis Oriental, to prove that the case was indeed raffled on June 9, 2009 to RTC, Branch 43, Gingoog City. He explained that he issued the 72-hour TRO pursuant to the 2nd paragraph of Section 5, Rule 58 of the Rules in order to avoid injustice and irreparable damage on the part of the plaintiff. He pointed out, however, that the 72-hour TRO was issued only on July 7, 2009 because he was not physically present in the RTC, Branch 43, from July 2, 2009 to July 6, 2009.

Judge Abul admits not conducting a summary hearing before the expiration of the 72 hours from the issuance of the *ex parte* TRO to determine whether it could be extended to twenty (20) days. He, however, explained that the holding of the summary hearing within 72 hours from the issuance of the TRO was simply not possible and was scheduled only on July 14, 2009 because the law office of the plaintiff's counsel was 144 kilometers away from Gingoog City and under that situation, the service of the notice could only be made on the following day, July 8, 2009. Hence, it would be impractical to set the hearing on July 8, 2009. In addition, on July 9, 10 and 13, 2009, he was conducting hearings in his permanent station, RTC, Branch 4, Butuan City.

As to the charge that he failed to cause the service of summons on the complainants and that no hearing was conducted prior to the issuance of the writ of preliminary injunction, Judge Abul belies the same by submitting (1) a certified true copy of the Sheriff's Return of Service[2] dated July 9, 2009 stating that he actually served the summons on the complainants on July 8, 2009 together with the copy of the 72-hour TRO; and (2) a certified machine copy of the summons[3] bearing the signature of complainant Democrito Lago that he personally received the same.

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[1] Annex "1" of the Motion for Reconsideration, *rollo*, p. 140.

[2] Annex "5" of the Motion for Reconsideration, *id.* at 157.

[3] Annex "6" of the Motion for Reconsideration, *id.* at 158.

Judge Abul likewise attached to his motion for reconsideration a certified true copy of the Order[4] dated July 29, 2009 and the Transcript of Stenographic Notes[5] to show that he conducted a hearing on July 21 and 29, 2009 and that the parties had a lengthy argument during the hearing and thereafter agreed to submit the application for the issuance of the writ of preliminary injunction for resolution.

The Court finds merit in the motion for reconsideration.

With respect to the issues regarding the raffle, the lack of notice and hearing prior to the issuance of the writ of preliminary injunction, the Court is satisfied with the explanation of Judge Abul as it is substantiated by the official records on file.

As to the issue on the delay in conducting the summary hearing for purposes of extending the 72-hour TRO, the Court finds the reasons advanced by Judge Abul to be well-taken. Section 5, Rule 58 of the Rules permits the executive judge to issue a TRO *ex parte*, effective for 72 hours, in case of extreme urgency to avoid grave injustice and irreparable injury. Then, after the lapse of the 72 hours, the Presiding Judge to whom the case was raffled shall then conduct a summary hearing to determine whether the TRO can be extended for another period.

Under the circumstances, Judge Abul should not be penalized for failing to conduct the required summary hearing within 72 hours from the issuance of the original TRO. Though the Rules require the presiding judge to conduct a summary hearing before the expiration of the 72 hours, it could not, however, be complied with because of the remoteness and inaccessibility of the trial court from the parties' addresses. The importance of notice to all parties concerned is so basic that it could not be dispensed with. The trial court cannot proceed with the summary hearing without giving all parties the opportunity to be heard.

It is a settled doctrine that judges are not administratively responsible for what they may do in the exercise of their judicial

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[4] Annex "7" of the Motion for Reconsideration, *id*. at 159.

[5] Annexes "8" and "9" of the Motion for Reconsideration, *id*. at 160-178.

functions when acting within their legal powers and jurisdiction.[6] Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice.[7] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[8]

To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the respondent judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.[9]

In this case, complainants failed to show that Judge Abul was motivated by bad faith, ill will or malicious motive when he granted the TRO and preliminary injunction. Complainants did not adduce any proof to show that impropriety and bias attended the actions of the respondent judge.

WHEREFORE, the motion for reconsideration is **GRANTED.** The Decision dated January 17, 2011 is **SET ASIDE.** The administrative complaint filed against Judge Godofredo B. Abul, Jr. is **DISMISSED.**

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Reyes, JJ.,* concur.

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[6] *Ang v. Quilala,* 444 Phil. 742, 747-748 (2003).

[7] *Balsamo v. Suan,* 458 Phil. 11, 24 (2003).

[8] *Fernandez v. Court of Appeals Justices,* 480 Phil. 1, 6 (2004).

[9] *Martinez v. Judge De Vera,* A.M. No. MTJ-08-1718, March 16, 2011.

SECOND DIVISION

[A.M. No. RTJ-11-2291. February 8, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE CELSO L. MANTUA, Regional Trial Court, Branch 17, Palompon, Leyte,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN DECIDING CASES; RESPONDENT JUDGE'S EARNEST EFFORTS IN ATTENDING TO PENDING CASES IN HIS DOCKET DURING HIS INCUMBENCY SERVE TO NEGATE HIS LIABILITY. — This Court has always impressed upon judges the necessity of deciding cases with dispatch. Section 5 of Canon 6 of the New Code of Conduct for the Philippine Judiciary states that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness." Rule 3.05 of the Code of Judicial Conduct states that "[a] judge shall dispose of the court's business promptly and decide cases within the required periods." Canon 6 of the Canons of Judicial Ethics provides that "[a judge] should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied." Section 15(2), Article VIII of the 1987 Constitution requires that judges of lower courts decide cases within three months from the date of submission. This Court has repeatedly reminded judges that they must resolve matters pending before them promptly and expeditiously within the constitutionally mandated three-month period. If they cannot comply with the same, they should ask for an extension from the Supreme Court upon meritorious grounds. The rule is that the reglementary period for deciding cases should be observed by all judges, unless they have been granted additional time. Judges must dispose of the court's business promptly. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards, and brings it to disrepute. Hence, judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanctions on them. Undue delay

in rendering a decision or order is a less serious charge, penalized either by suspension from office without salary and other benefits for not less than one nor more than three months; or by a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. We consider, however, that Judge Mantua's earnest efforts in attending to the pending cases in his docket during his incumbency serve to negate his liability.

2. ID.; ID.; A JUDICIAL AUDIT SHOULD NOT SERVE AS A LICENSE TO RECOMMEND THE IMPOSITION OF PENALTIES TO RETIRE JUDGES WHO, DURING THEIR INCUMBENCY, WERE NEVER GIVEN A CHANCE TO EXPLAIN THE CIRCUMSTANCES BEHIND THE RESULTS OF THE JUDICIAL AUDIT IN VIOLATION OF THEIR RIGHT TO DUE PROCESS. — This Court concedes that there are no promulgated rules on the conduct of judicial audit. However, the absence of such rules should not serve as license to recommend the imposition of penalties to retired judges who, during their incumbency, were never given a chance to explain the circumstances behind the results of the judicial audit. Judicial audit reports and the memoranda which follow them should state not only recommended penalties and plans of action for the violations of audited courts, but also give commendations when they are due. To avoid similar scenarios, manual judicial audits may be conducted at least six months before a judge's compulsory retirement. We recognize that effective monitoring of a judge's observance of the time limits required in the disposition of cases is hampered by limited resources. These limitations, however, should not be used to violate Judge Mantua's right to due process.

D E C I S I O N

CARPIO, *J.*:

The Case

A.M. No. RTJ-11-2291 originates from a judicial audit of the case records of Branch 17, Regional Trial Court, Palompon, Leyte (Branch 17) conducted from 25 to 27 November 2008 by the Office of the Court Administrator (OCA). At the time of audit, the presiding judge of Branch 17, Hon. Celso L. Mantua

(Judge Mantua), was on official leave in Manila. Judge Mantua retired on 9 January 2009.

The Facts

Travel Order No. 103-2008 dated 11 November 2008 ordered the conduct of a judicial audit in Branch 17 from 24 to 25 November 2008. The judicial audit team[1] submitted a memorandum[2] dated 14 January 2009, five days after Judge Mantua's retirement, to Deputy Court Administrator Nimfa C. Vilches (DCA Vilches). The judicial audit team quantified Branch 17's caseload as follows:

As of audit date, the Court has a total caseload of **356** cases consisting of **230** criminal cases and **126** civil cases based on the records actually presented to and examined by the team which are classified hereunder according to the status/stages of proceeding as shown by the table below:

STATUS/STAGES OF PROCEEDINGS	**CRIMINAL**	**CIVIL**	**TOTAL**
Warrants/Summons	21	1	22
Arraignment	22	0	22
Preliminary Conference/ Pre-Trial / Mediation	25	23	48
Trial	71	38	109
For Compliance	3	2	5
No Action Taken	20	7	27
No Further Action / Setting	41	27	68
Submitted for Resolution	12	11	23
Submitted for Decision	3[sic]	8	11

[1] Composed of Atty. Elizabeth S. Tanchoco as Team Leader and Mr. German C. Averia, Mr. Roly C. De Castro and Ms. Edna Barlaan as Members.

[2] *Rollo,* pp. 1-16.

Inhibited	0	1	1
Suspended Proceedings	0	1	1
Decided	1	2	3
Dismissed / Withdrawn	1	3	4
Archived	1	0	1
Newly Filed	9	2	11
TOTAL	**230**	**126**	**356**[3]

The judicial audit team further highlighted items in Branch 17's caseload using tables[4] which detailed the case number, parties, nature of the case, and last court action before the conduct of the audit. There were 20 criminal cases wherein the court failed to take any action from the time of filing, 41 criminal cases without further action or setting for a considerable length of time, 12 criminal cases with pending incidents or motions submitted for resolution, and two criminal cases submitted for decision. There were 7 civil cases that remained unacted upon from the time of filing, 27 civil cases without further setting or setting for a considerable length of time, 11 civil cases with pending incidents or motions submitted for resolution, and 8 cases submitted for decision.

The judicial audit team also found that Branch 17's case records were not in order.

The team noted that the case records are stitched together with pagination. However, the criminal records are not chronologically arranged. Also, the records attached to criminal cases jointly tried are incomplete (Crim. Cases 1129, 1131, 1189, 1190, 1185, 1186, 1033, 1205, among a few). The court's docket books are not updated. There are no log book[s] on arrest and search warrants, exhibits, disposed/decided/archived cases and incoming documents. There is no order on payment of postponement fee in proper cases.

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[3] *Id.* at 1.

[4] *Id.* at 2-8.

It was also noticed that *alias* warrants of arrest were issued without archiving cases.[5]

The judicial audit team recommended that Atty. Elmer P. Mape (Atty. Mape), as Officer-in-Charge (Legal Researcher II) of Branch 17, be directed to: (1) inform the OCA within 15 days of the status of Branch 17's caseload and submit a copy of the pertinent order, resolution and notice of hearing issued; (2) apprise the Acting Presiding Judge from time to time of cases submitted for resolution or decision and those cases that require immediate action; (3) implement the provisions of Memorandum Circular No. 01-2008 dated 17 January 2008 on the wearing of office uniform; (4) observe the flag raising and flag lowering ceremonies as mandated by Circular No. 62-2001 dated 27 September 2001; (5) order the stitching of all orders issued, minutes taken, notices of hearing issued, certificates of arraignment in all criminal case folders especially those cases jointly tried including their chronological arrangement and pagination and the updating of both the criminal and civil docket books; and (6) maintain separate log books for the recording of arrest and search warrants, exhibits, disposed/decided/archived cases and all incoming documents. The judicial audit team also recommended that Judge Crescente F. Maraya (Judge Maraya), who replaced retired Judge Mantua, be directed to take appropriate action on the cases where the court failed to take appropriate action, to resolve pending motions and to decide cases submitted for decision.

In a letter[6] dated 27 April 2009 addressed to DCA Vilches, Atty. Mape informed the OCA of the status of the cases enumerated in the report of the judicial audit team and submitted the Orders, Resolutions and Notices of Hearing issued by Branch 17. Atty. Mape also stated that Branch 17 already complied with all other items mentioned by the judicial audit team in their recommendation. However, the wearing of uniform was considered optional starting 1 April 2009 in view of a

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[5] *Id.* at 8.

[6] *Id.* at 25-30.

memorandum issued by the OCA. Atty. Mape begged for the OCA's indulgence and explained that the delay in the submission of his reply was brought about by two substitutions of the judge assigned to Branch 17. At the time of audit, Judge Mantua presided over the court. Pursuant to Judge Mantua's retirement on 9 January 2009, Administrative Order No. 180-2008 designated Judge Maraya, Presiding Judge of Branch 11, Regional Trial Court, Calubian, Leyte, as Acting Presiding Judge of Branch 17 to replace Judge Mantua. Administrative Order No. 23-2009 dated 3 March 2009 revoked Judge Maraya's designation and Judge Rogelio R. Joboco (Judge Joboco), Presiding Judge of Branch 27, Catbalogan, Samar, took over as acting presiding judge of Branch 17.

The OCA's Recommendation

On 12 May 2009, the OCA issued a Memorandum[7] addressed to then Chief Justice Reynato S. Puno (CJ Puno). The memorandum based its findings and recommendations on the 14 January 2009 report of the judicial audit team and Atty. Mape's submissions dated 19 January 2009 and 27 April 2009.

In its Memorandum to CJ Puno, the OCA added an "Action Taken" column to the tables initially submitted by the judicial audit team. The "Action Taken" column specified the action and the date of action, but made no mention who among Judge Mantua, Judge Maraya or Judge Joboco acted upon the enumerated items. Instead, the OCA merely stated that there are only two cases, one civil and one criminal, that still needed Judge Joboco's action. There are also two motions that remained unresolved. We reproduce the OCA's findings and recommendations below:

> From the above submissions, there are only a few cases that [are] needed to be acted upon by Acting Presiding Judge Joboco. One case is Crim. Case No. 1432, *People vs. Juanito Dalut* for Rape which was filed on 6-30-08 wherein the court failed to take action

[7] Signed by Court Administrator (now Supreme Court Justice) Jose P. Perez, Deputy Court Administrator Nimfa C. Vilches, and Judicial Supervisor Elizabeth S. Tanchoco. *Id.* at 273-286.

thereon from the time of its filing. Another case is Civil Case PN 0354, *Mingasca vs. [Omega-]Reyes, et al*. for Accion Reinvindicatoria wherein the court failed to take further action from the filing of the Reply on March 27, 2008.

However, there are two (2) motions that remain unresolved. These are the Motion to Reduce Bail Bond filed on July 24, 2008 in Crim. Case No. P-0768, *People vs. Capic[i]ño, et al*. for Qualified Theft and the implied motion contained in the Social Worker Report received on 10-16-06 recommending the dismissal of [the] case against minor accused and the Manifestation of Atty. Opeña that accused Lubiano, a minor, should be dismissed. These were considered submitted for resolution in an Order dated September 11, 2008. There is no record that Judge Mantua requested for any extension of time to resolve these motions.

Resolution of these motions should have been made on or before October 22, 2008 and December 230 [sic], 2008, respectively. The inaction of Judge Mantua created delay in the administration of justice and constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases and manifested his gross inefficiency in the performance of his official duties (*A.M. No. RTJ-05-1917 (Dee C. Chuan & Sons, Inc. vs. Judge William Simon P. Peralta, Presiding Judge, Regional Trial Court, Manila, Branch 50,* promulgated April 16, 2009).

Lower courts are mandated to decide or resolve all cases or matters within three months from date of their submission (Article VIII, Section 15 of the 1987 Constitution). A matter is deemed submitted for resolution upon the filing of the last pleading (Constitution, Art. VIII, Sec. 15[2]).

Rule 3.05 of Canon 3 of the Code of Judicial Conduct directs all judges to dispose of the court's business promptly and decide cases within the period fixed by law and Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that judges shall perform all judicial duties efficiently and with reasonable promptness.

The Court, however, is not unmindful of the caseloads of judges and ordinarily grants reasonable request[s] for extension. This is not true as to Judge Mantua.

Undue delay in rendering a decision or order is, under Section 9, Rule 140 of the Rules of Court, a less serious charge and punishable

by either suspension from office without salary and other benefits but not less than one month nor more than three months or a fine of more than ₱10,000.00 but nor [sic] exceeding ₱20,000.00.

In view of the foregoing, the Report is respectfully submitted for the consideration of the Honorable Court with the following recommendations:

1. This judicial audit report including the submissions of RTC 17, Palompon, Leyte in compliance with Memorandum dated January 14, 2009 be docketed as an administrative complaint against Retired Judge Celso L. Mantua for gross incompetency and inefficiency and that he be FINED the amount of TEN THOUSAND (₱10,000.00) to be deducted from the retirement benefits due him; and

2. Acting Presiding Judge Rogelio R. [Joboco], Regional Trial Court, Branch 17, Palompon, Leyte, be DIRECTED to immediately take appropriate action on Crim. Case No. 1432, entitled *People vs. Juanito Dal[u]t* for Rape and Civil Case No. PN 0354 entitled *Mingasca vs. [Omega-]Reyes, et al.*, for *Accion Reinvindicatoria* and to resolve with dispatch the pending motions in Crim. Case No. P-0768 entitled *People vs. Capic[i]ño* for Qualified Theft and Crim. Case No. 1205 entitled *People vs. Jonel Lubiano* for Less Serious Physical Injuries and furnish the Court, through the Office of the Court Administrator within ten (10) days a copy of each action taken thereon.[8]

In a letter dated 21 July 2009, Judge Joboco reported that he took action on the cases enumerated in the OCA's 12 May 2009 Memorandum. Judge Joboco dismissed Civil Case No. PN 0354, *Mingasca, et al. v. Omega-Reyes, et al.* Criminal Case No. P-0768, *People v. Capiciño, et al.*, and Criminal Case No. 1205, *People v. Lubiano*, were set for hearing, while Criminal Case No. 1432, *People v. Dalut*, cannot proceed because the accused has remained at large and the court has not acquired jurisdiction over the person of the accused. Judge Joboco appended the Orders in the cases to his letter.

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[8] *Id.* at 285-286.

The Court's Ruling

We cannot agree with the OCA's finding and recommendations.

The report of the judicial audit team, and consequently that of the OCA, suffers from inaccuracies and a slant towards mere fault-finding. Civil Case No. PN-0354, *Mingasca v. Omega-Reyes*, was entered twice, but in consecutive numbers, in the table for civil cases without further setting. Because of this double entry, the judicial audit team and OCA probably overlooked Judge Mantua's action dated 27 November 2008. Furthermore, despite Atty. Mape's submissions dated 19 January 2009 and 27 April 2009 of copies of the Orders, Resolutions and Notices of Hearing issued by Branch 17, the OCA failed to state in their Memorandum that out of the 126 cases listed, Judge Mantua took action on 114 cases, or 90.48%, before he retired on 9 January 2009.

It should be noted that the judicial audit team submitted their report to DCA Vilches five days after Judge Mantua's retirement. The OCA, in turn, submitted their Memorandum to CJ Puno on 12 May 2009, or a little over four months after Judge Mantua's retirement. During his incumbency, Judge Mantua was never given a chance to explain the results of the judicial audit report. With the knowledge that the judicial audit report will be submitted only after Judge Mantua's retirement, the judicial audit team's recommendations were directed only to Atty. Mape, the Acting Clerk of Court and Legal Researcher II of Branch 17, and Judge Maraya, Acting Presiding Judge of Branch 17 at the time of the report's submission. In its Memorandum, the OCA recommended that Judge Mantua be fined for gross incompentency and inefficiency.

The report of the judicial audit team showed that no appropriate action was done in 68 cases, 23 cases remained unresolved after a sufficient amount of time, and 10 cases were not decided within the reglementary period. In contrast, there is no showing that Judge Mantua ever requested this Court for a reasonable period of extension to dispose of these cases.

We issued a Resolution dated 15 August 2011 which redocketed the case as a regular administrative matter and required Judge Mantua to comment on the OCA's 12 May 2009 Memorandum. The pertinent portions of Judge Mantua's comment read:

> When I assumed office as Judge of RTC, Branch 17, Palompon, Leyte in August 2005, my court then had no Clerk of Court. This situation was true even up to the time when I retired in January 2009. A few months after my assumption as judge, the Legal Researcher of the court transferred to one of the branches of the Lapu-Lapu City Regional Trial Court. My sala then had only four (4) court stenographers, a sheriff, a process server, a clerk and a utility worker. Then, an interpreter was appointed before a legal researcher was also appointed. When the appointed legal researcher assumed office, I designated him as Officer-in-Charge of the Office of the Clerk of Court. I instructed the legal researcher to assist me in my administrative functions, as the office files then as well as the case folders were in a disarray and topsy turvey [sic]. The legal researcher assisted me in adopting a systematic filing system, segregating the kinds of cases obtaining in the court as well as aging the same because I inherited no filing system in the office. Be it noted also that when I assumed office there was no court inventory from my predecessors. It was only when I assumed office that we conducted an inventory of the court especially court cases. Considering the load of cases of my court and the lack of filing system, I have exercised extra efforts and divided my time to have a semblance of orderliness in the office including the supervision of the operation of the Office of the Clerk of Court and lower courts.
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> This comment is not an excuse for the findings of the Judicial Audit team of my performance, but is made only to show the state of affairs of the court during my stewardship of the same for a period of a little over three (3) years. However, despite my earnest efforts, there were things which have been overlooked due to inadvertence and these were just product [sic] of human weakness and imperfection.[9]

This Court has always impressed upon judges the necessity of deciding cases with dispatch. Section 5 of Canon 6 of the New Code of Conduct for the Philippine Judiciary states that

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[9] *Id.* at 323.

"[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness." Rule 3.05 of the Code of Judicial Conduct states that "[a] judge shall dispose of the court's business promptly and decide cases within the required periods." Canon 6 of the Canons of Judicial Ethics provides that "[a judge] should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied." Section 15(2), Article VIII of the 1987 Constitution requires that judges of lower courts decide cases within three months from the date of submission.[10]

This Court has repeatedly reminded judges that they must resolve matters pending before them promptly and expeditiously within the constitutionally mandated three-month period. If they cannot comply with the same, they should ask for an extension from the Supreme Court upon meritorious grounds. The rule is that the reglementary period for deciding cases should be observed by all judges, unless they have been granted additional time.

Judges must dispose of the court's business promptly. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards, and brings it to disrepute. Hence,

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[10] Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanctions on them.[11]

Undue delay in rendering a decision or order is a less serious charge,[12] penalized either by suspension from office without salary and other benefits for not less than one nor more than three months; or by a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[13] We consider, however, that Judge Mantua's earnest efforts in attending to the pending cases in his docket during his incumbency serve to negate his liability.

This Court concedes that there are no promulgated rules on the conduct of judicial audit. However, the absence of such rules should not serve as license to recommend the imposition of penalties to retired judges who, during their incumbency, were never given a chance to explain the circumstances behind the results of the judicial audit. Judicial audit reports and the memoranda which follow them should state not only recommended penalties and plans of action for the violations of audited courts, but also give commendations when they are due. To avoid similar scenarios, manual judicial audits may be conducted at least six months before a judge's compulsory retirement. We recognize that effective monitoring of a judge's observance of the time limits required in the disposition of cases is hampered by limited resources. These limitations, however, should not be used to violate Judge Mantua's right to due process.

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[11] *Atty. Montes v. Judge Bugtas*, 408 Phil. 662, 667-668 (2001). Citations omitted.

[12] Section 9, Rule 140 of the Rules of Court reads:

Less serious charges. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequent and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;
4. Violation of Supreme Court rules, directives, and circulars;
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple Misconduct.

[13] Section 11(B), Rule 140 of the Rules of Court.

WHEREFORE, the complaint against Judge Celso L. Mantua is **DISMISSED.** The Financial Management Office of the Office of the Court Administrator is **DIRECTED** to release the retirement pay and other benefits due Judge Mantua unless he is charged in some other administrative complaint or the same is otherwise withheld for some other lawful cause.

SO ORDERED.

Brion, Abad,[*] *Sereno,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 158413. February 8, 2012]

CELSO M. MANUEL, EVANGELISTA A. MERU, FLORANTE A. MIANO, and PEOPLE OF THE PHILIPPINES, *petitioners, vs.* **HON. SANDIGANBAYAN (FOURTH DIVISION), MELCHOR M. MALLARE and ELIZABETH GOSUDAN,** *respondents.*

[G.R. No. 161133. February 8, 2012]

MELCHOR M. MALLARE and ELIZABETH GOSUDAN, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; ELEMENTS THAT MUST BE PRESENT. — The Court has

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[*] Designated additional member per Special Order No. 1182 dated 8 February 2012.

carefully reviewed the records and found no reason to disturb the Sandiganbayan's decision of conviction against Mallare and Gosudan for the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, as amended. x x x. To sustain a criminal conviction for the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended, all the following elements must be present: 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.

2. ID.; ID.; ID.; RESPONDENTS, AS MUNICIPAL MAYOR AND TREASURER, RESPECTIVELY, ARE ACCOUNTABLE FOR PUBLIC FUNDS AND PROPERTY. — The accountability for public funds or property of municipal mayors and treasurers was well-discussed in the case of *People of the Philippines v. Teofilo G. Pantaleon, Jr.* x x x Unquestionably, the source of the subject funds taken by Mallare and Gosudan came from the municipal funds. As Municipal Mayor and Treasurer, respectively, they had the sworn duty to safely keep said funds and disburse the same in accordance with standard procedure because the subject funds belong to the municipality and must only be used for the benefit of the municipality. The standard practice in the disbursement of public funds is that they cannot be released and disbursed without the signatures of the Mayor and the Treasurer. In this case, the written approvals of Mallare and Gosudan were essential before any release and disbursement of municipal funds could be made. This was quite clear in *Pantaleon* where it was further written: As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos. Hence, any unlawful

disbursement or misappropriation of the subject funds would make them accountable.

3. ID.; ID.; ID.; THE SUBJECT LOANS THAT RESPONDENT MUNICIPAL TREASURER EXTENDED TO THE MUNICIPAL OFFICIALS AND EMPLOYEES INCLUDING HERSELF WERE UNOFFICIAL AND UNAUTHORIZED LOANS AND, THEREFORE, ANOMALOUS IN NATURE. — The Court agrees with the Sandiganbayan's ruling that there was more than enough evidence to prove that Gosudan abused her position as Municipal Treasurer of Infanta, Pangasinan, by committing the crime of Malversation of Public Funds when she gave out loans in the total amount of ₱774,285.78 to several co-employees including herself. Gosudan does not deny the fact that she extended thirteen (13) loans to the following borrowers including herself: x x x When COA Auditor Emilie S. Ritua *(Ritua)* requested Gosudan to immediately produce the missing funds and to explain why there was a shortage in the accounting of municipal funds, she failed to immediately do so. The best that she could do was to explain that the subject amount was lent to the said municipal officials and employees. Gosudan presented an informal list of the borrowers who were granted "vales" or "*pautang*" and, who, in turn, gave IOUs. The confirmation letters prepared by the audit team of Ritua showed the written acknowledgment of the said borrowers that they had outstanding loan balances from Gosudan. Gosudan also admitted that these loans were neither covered by supporting vouchers signed by the Municipal Mayor nor officially entered in the cash book as official cash advances. Worse, she could no longer remember the particular amount loaned and the specific purpose therefor. 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 in malversation cases. Clearly, the subject loans that Gosudan extended to the said municipal officials and employees including herself were unofficial and unauthorized loans and, therefore, anomalous in nature. The Sandiganbayan was correct in ruling that said loans were nothing but personal loans taken from the cash account of the

Municipality of Infanta, Pangasinan. Gosudan unlawfully disbursed funds from the coffers of the municipality and, therefore, guilty of the crime of Malversation of Public Funds.

4. ID.; ID.; ID.; RESPONDENT MAYOR IS ALSO GUILTY OF THE SAME CRIME AS RESPONDENT TREASURER FOR ACCEPTING OR GETTING FOR HIMSELF A LOAN; RESPONDENT MAYOR'S ACCEPTANCE OF A LOAN WITHOUT ANY SUPPORTING VOUCHER IS PROOF THAT THERE WAS CONSPIRACY IN THE ILLEGAL DISBURSEMENT OF THE LOAN AMOUNTS. — Like Gosudan, Mallare is also guilty of the same crime for accepting or getting for himself the loan amount of ₱300,998.59 from Gosudan as evidenced by his written acknowledgment in the COA Audit Team's confirmation letter. His acceptance of the subject loan amount of ₱300,998.59 without any supporting official voucher is proof that there was a conspiracy in the illegal disbursement of the subject loan amounts. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated. In this case, petitioners Zacaria A. Candao and Abas A. Candao were co-signatories in the subject checks issued without the required disbursement vouchers. Their signatures in the checks, as authorized officials for the purpose, made possible the illegal withdrawals and embezzlement of public funds in the staggering aggregate amount of ₱21,045,570.64.

5. ID.; ID.; ID.; FULL RESTITUTION OF THE LENT PUBLIC FUNDS CANNOT EXONERATE RESPONDENTS FROM THE CRIME CHARGED BECAUSE PAYMENT DOES NOT EXTINGUISH CRIMINAL LIABILITY. — The Court is in accord with the Sandiganbayan's ruling that the full restitution of the lent public funds cannot exonerate Mallare and Gosudan from the crime charged because payment does not extinguish

criminal liability. It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.

APPEARANCES OF COUNSEL

Francisco F. Baraan III for Melchor M. Mallare and E.M. Gosudan.

Florante A. Miano for Celso M. Manuel, *et al.*

The Solicitor General for the People of the Philippines.

D E C I S I O N

MENDOZA, *J.*:

These consolidated petitions question an interlocutory order of the Sandiganbayan as well as its decision and resolution in Criminal Case No. 25673 for malversation of public funds, entitled *People of the Philippines v. Melchor M. Mallare and Elizabeth M. Gosudan.*

In the earlier petition, G.R. No. 158413, the petitioners, Celso M. Manuel, Evangelista A. Meru and Florante A. Miano *(petitioners),* question the May 20, 2002 Resolution[1] of the Sandiganbayan granting the Motion to Re-open Proceedings filed by the accused after their conviction in the September 17, 2001 Decision[2] of the said tribunal.

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[1] *Rollo* (G.R. No. 158413), pp. 129-136.

[2] *Id.* at 98 and (G.R. No. 161133), pp. 40-69. Penned by Associate Justice Nicodemo T. Ferrer and concurred in by Associate Justice Narciso S. Nario and Associate Justice Rodolfo G. Palattao.

In G.R. No. 161133, the petitioners are the accused assailing the (1) September 17, 2001 Decision of the Sandiganbayan finding them guilty beyond reasonable doubt of the crime charged; (2) the July 21, 2003 Resolution[3] affirming the conviction after reception of additional evidence in the re-opened proceedings; and (3) the November 13, 2003 Resolution[4] denying their motion for reconsideration.

The Consolidated Facts on Record

On October 4, 1999, an Information[5] was filed before the Sandiganbayan charging Melchor M. Mallare *(Mallare)* and Elizabeth M. Gosudan *(Gosudan),* Mayor and Treasurer, respectively, of the Municipality of Infanta, Pangasinan with the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code. The Information reads:

> That on or about 17 August 1998, and for sometime prior thereto, in the Municipality of Infanta, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Melchor M. Mallare, being the Mayor of the said Municipality and a high ranking official, and Elizabeth M. Gosudan, being the Treasurer of the said Municipality and an accountable officer of public funds of said municipality by reason of the duties of her office, while in the performance and taking advantage of their official and administrative functions, conspiring and confederating with or mutually helping each other, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, take or misappropriate, or permit any other person to take wholly or partially, public funds in the custody of the accused Municipal Treasurer Gosudan amounting to PESOS: ONE MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND ONE HUNDRED SEVEN AND 40/100 (₱1,487,107.40), when said accused disbursed, or authorized, allowed, consented or tolerated the disbursement, of public funds in the amounts of: (1) ₱995,686.09 for unlawful personal

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[3] *Id.* (G.R. No. 161133), at 80.

[4] *Id.* at 81-101.

[5] *Id.* (G.R. No. 158413), at 51-52.

loans to several municipal officials and employees including themselves; (2) ₱291,421.31 for payments without the requisite appropriation; and (3) ₱200,000 for withdrawals recorded as cash disbursement, said disbursement being in violation of the Constitution, law, rules and regulation, to the damage and prejudice of the Government and public interest.

CONTRARY TO LAW.

The Information ascribed to Mallare and Gosudan *(accused)* the following acts of alleged unlawful disbursement, constituting the elements of the crime of Malversation of Public Funds, to wit: 1) ₱995,686.09 for unlawful personal loans to several municipal officials and employees including themselves; 2) ₱291,421.31 for payments without the requisite appropriation; and 3) ₱200,000.00 for withdrawals recorded as cash disbursements.

Upon being arraigned on January 4, 2000, the accused pleaded "Not Guilty." During the pre-trial, the parties stipulated and agreed: 1) that the accused were public officers; 2) that there was an audit report; 3) that there was restitution in the amount of 110,000.00; 4) that there was a written demand on the accused to pay the shortage; and 5) that the shortage was in the amount of ₱1,487,107.40.

The issues posed before the Sandiganbayan were the following:

(1) Whether or not accused Municipal Treasurer Elizabeth M. Gosudan committed the crime of Malversation of Public Funds when she granted personal loans to the municipal officials and employees, including herself and her co-accused Municipal Mayor Melchor M. Mallare, from the municipal funds, despite the fact that the full amount of said loan had been completely reimbursed or restituted at the exit conference.

(2) Whether or not accused Municipal Mayor Melchor M. Mallare has conspired with his co-accused Municipal Treasurer Gosudan in the commission of the crime of Malversation of Public Funds.

During the trial, the prosecution presented several documents and the lone testimony of Emelie S. Ritua, State Auditor II of the Commission on Audit *(COA)*. The defense, on the other

hand, presented their own documents and Gosudan as its only witness.

On September 17, 2001, the Sandiganbayan rendered a decision finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds. The dispositive portion of the decision reads:

> WHEREFORE, the herein two (2) accused, MELCHOR M. MALLARE and ELIZABETH M. GOSUDAN, are hereby found GUILTY beyond reasonable doubt of the crime of MALVERSATION OF PUBLIC FUNDS, defined and penalized under the first paragraph, subparagraph 4, Article 217, Revised Penal Code, and each of them is sentenced under the Indeterminate Sentence Law to suffer the penalty of imprisonment of from Thirteen (13) Years and Four (4) Months, as minimum, to Nineteen (19) Years and Four (4) Months, as maximum, both of reclusion temporal, and also to suffer the penalty of perpetual special disqualification. Further, accused Melchor M. Mallare is hereby sentenced to pay a fine of ₱300,998.59, accused Elizabeth M. Gosudan to pay a fine of ₱774,285.78, and both to pay the costs.
>
> SO ORDERED.[6]

In reaching said determination, the Sandiganbayan gave the following reasons:

> Going now to the essential elements of the crime of Malversation of Public Funds, the following facts must concur:
>
> (1) That the accused is a public officer;
>
> (2) That he/she had custody and/or control of funds by reason of his/her office;
>
> (3) That the funds involved were public funds for which he/she is accountable; and
>
> (4) That he/she appropriated or consented, or through abandonment or through negligence, permitted another person to take said public funds.

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[6] *Id.* (G.R. No. 158413), at 98.

On the first element, as borne by the record of this case, and as specifically stipulated by the parties per the Pre-Trial Order, dated 7 February 2000, the accused Melchor M. Mallare and Elizabeth M. Gosudan are public officers at the time of the commission of the alleged offense, the former being the Municipal Mayor and the latter the Municipal Treasurer of Infanta, Pangasinan. On the second and third elements, as Municipal Treasurer, accused Gosudan had the duty to have custody and the obligation to exercise proper management of the municipal funds of Infanta, Pangasinan, and accused, Mallare, as the local chief executive, is responsible for the supervision of all government funds and property pertaining to his agency, the Municipality of Infanta, Pangasinan.

Anent the fourth element, the record is replete with evidence showing that accused Treasurer Gosudan herself admitted that she gave the "missing" amount to several municipal officials and employees, as witness the following facts:

1. Per the testimony of COA Auditor Emelie S. Ritua on the witness stand, when she and her audit team told the Treasurer "to produce immediately the missing funds and to explain why the shortage have [had] occurred x x x [s]he told [them] that she [could]not produce immediately a part of the shortage because they were loaned out to some of the officials and employees;" and that [s]he presented to them an informal list of the officials and employees who were granted IOUs or 'vales'" or "*pautang*."

2. The fact of the accused Treasurer having given the subject amounts to the municipal officials and employees named in the "unofficial list" is not denied by her, as the lone witness for the prosecution, she and her counsel merely insisting that the amounts were not given as loans but as "vales" or "*pautang*."

3. The confirmation letters prepared by COA Auditor Ritua wherein the persons named in the accused Treasurer's "informal list" of borrowers acknowledged by their signatures at the bottom thereof that they have "outstanding loan balance from her," further prove beyond reasonable doubt that said accused Treasurer loaned out to said persons amounts from the municipal funds.

4. The insistence of accused Treasurer Gosudan that the subject amounts that she gave to the aforenamed persons,

including herself and the accused Mayor, were not "loans" but were "vales" "*pautang*," "salary advances" "cash advances," "travel expenses," "gasoline expenses" and/or "funds used for purchase of spare parts of municipal vehicle" – is belied by her own admission that the amounts of these "vales" were not covered by the required vouchers (with supporting papers) signed by accused Municipal Mayor Mallare and were not entered in the cash book because they were "not an official cash advance," and she could no longer remember what particular amount is for which specific purpose.

5. The foregoing naked claims and admissions of accused Treasurer Gosudan lead Us to the inevitable conclusion that the amounts she gave to the municipal officials and employees, including herself and her co-accused Mayor Mallare, were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan.

6. As already stated earlier, the full amount of the "shortages" found by the COA audit team (which constitute the subject personal loans, as already determined) was fully restituted (according to COA Auditor Ritua) or reimbursed (according to accused Gosudan), as shown in Official Receipts all issued in the name of accused Gosudan.[7]

The Sandiganbayan further stated that Gosudan's acts of allowing other persons to borrow municipal funds constituted solid proof of malversation. In the case of Mallare, his act of getting or accepting the subject loan for himself in the amount of ₱300,998.59 from Gosudan amounted to a conspiracy with the latter in the commission of the crime of malversation. The full restitution of the total amount of the loaned public funds did not exonerate Mallare and Gosudan because the crime of Malversation of Public Funds was already consummated upon the latter's granting of the loans, and upon the former's acceptance and taking of the amounts lent to him. Restitution of the loaned amounts could only mitigate their civil liabilities, not exonerate them from criminal liability. The pertinent portions of the Sandiganbayan Decision read as follows:

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[7] *Id.* at 86-89.

The foregoing discussion leads us to the inevitable conclusion that accused Municipal Treasurer Gosudan committed the crime of Malversation of Public Funds when she extended loans or cash advances to herself and several of her co-employees including her co-accused Mayor Mallare, in the total amount of ₱774,285.78.

On the part of accused Municipal Mayor Melchor M. Mallare, it is true that not an iota of evidence was introduced to show that he conspired with accused Treasurer Gosudan in giving loans to all the municipal officials and employees named in the confirmation letters, other than that to himself. Hence, he cannot be faulted for the grant of said loans by his co-accused municipal treasurer. However, his act of getting or accepting the loan for himself in the amount of ₱300,998.59 from accused Treasurer Gosudan, as acknowledged by him in the confirmation letter that he signed, is a concrete proof of his having conspired with her in the commission of the crime of Malversation of Public Funds in the said amount.

The full restitution of the total amount of the loaned public funds does not exonerate the herein two accused, because the crime of Malversation of Public Funds was consummated upon accused Treasurer Gosudan's granting of the loans, and upon accused Mayor Mallare's acceptance and taking of the amount thus loaned to him. The restitution of the loaned amounts thereafter will not exonerate said accused, and can merely mitigate their civil liabilities which, however, they have fully settled when the whole amount of the loan was restituted.[8]

Insisting on their innocence, Mallare and Gosudan filed a motion for reconsideration[9] but it was denied in a resolution[10] dated November 16, 2001.

On January 9, 2002, Mallare and Gosudan filed their Motion To Re-Open Proceedings[11] arguing that their counsel committed a misjudgment by not presenting Mallare at the witness stand. Such circumstance justified re-opening of proceedings to avoid

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[8] *Id.* at 96-97.

[9] *Id.* at 101-106.

[10] *Id.* at 114-118.

[11] *Id.* at 119-122.

a miscarriage of justice. The Ombudsman Prosecutor filed his Comment/Opposition[12] contending that the subject motion to re-open proceedings was without merit because it was filed late and after the decision convicting the accused had already attained finality.

On May 20, 2002, the Sandiganbayan issued its Resolution[13] granting the Motion To Re-open Proceedings and allowing the reception of Mallare's testimony. The grant of the subject motion was based 1) on Section 24, Rule 119 of the Revised Rules of Court on Criminal Procedure; and 2) in the interest of justice. The Sandiganbayan wrote :

> Section 24, Rule 119 of the Revised Rules of Court on Criminal Procedure, provides that:
>
> Section 24. Reopening. — At any time before finality of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it.
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> While it may be true , as ably argued by the prosecution, that an accused has only one day after receipt of the resolution denying the motion for reconsideration, to file an appeal, after which the decision attains finality, the same rule does not apply to cases falling within the jurisdiction of the Sandiganbayan.
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> Under Rule 45, Section 2 of the Revised Rules of Procedure, a party desiring to appeal by *certiorari* from a judgment or a final order or resolution of the Sandiganbayan may file within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for reconsideration filed in due time after notice of the judgment.
>
> Otherwise put, if a motion for reconsideration is filed, the 15-day reglementary period within which to appeal the decision of the Sandiganbayan is reckoned from the date the party who intends to appeal received the order denying the motion for reconsideration.

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[12] *Id.* at 123-128.

[13] *Id.* at 129-136.

In the case at bar, since the motion for reconsideration was filed on October 2, 2001 of the decision promulgated on September 17, 2001, and the motion for reconsideration's denial dated November 13, 2001 was only received on December 5, 2001, the instant Motion to Reopen the Proceedings which was filed on December 20, 2001, may still be entertained, since the period of fifteen (15) days begun to run all over again from notice of the denial of the resolution. Hence, the decision convicting the accused has not yet attained finality.

Secondly, and more importantly, accused-movants' plights would certainly result in a miscarriage of justice if the same were not harmonized with justice and the facts. No less than their liberty is at stake here. They face a jail term of thirteen (13) years and four (4) months to nineteen (19) years and four (4) months. And, if they have to spend this long stretch in prison, their guilt must be established beyond reasonable doubt. They cannot lose their liberty because their former lawyer pursued a carelessly contrived strategy of not presenting herein-accused-movant Mallare to testify, which thus forbade him to air his side. Under the circumstances, higher interests of justice and equity demand that herein accused be not penalized for the costly importuning of their previous lawyer, since their only fault was to repose their faith and entrust their innocence to him. Losing liberty, therefore, on default or miscalculation of a lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer.

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Most assuredly, therefore, the better part of discretion is to admit and appreciate herein accused-movant Mallare's testimony. Without prejudging, however, the result of such appreciation, accused-movant Mallare's testimony *prima facie* appears strong when considered with the fact, that the amount of ₱300,998.59 which he admitted (as shown by his "CONFORME" in Exh. "K") as his outstanding loan balance, was supposedly used for a public purpose, and such fact was actually testified to by his co-accused Elizabeth Gosudan. It was his understanding then, when he signed the *pro-forma* confirmation letter, that he was merely informing the COA Auditors the amount of his cash advance as basis later for liquidation or settlement, and not an admission of a personal loan.

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Hence, if only to truly make the courts really genuine instruments in the administration of justice, We believe, in order to assure against any possible miscarriage of justice resulting from accused-movant Mallare's failure to present his side of the story, through no fault of his, that this case be reopened for reception of evidence and appreciation of his testimony.[14]

With the Sandiganbayan's May 20, 2002 Resolution granting the re-opening of the proceedings, Mallare completed his testimony and the defense rested its case on September 11, 2002.

On June 10, 2003, Celso M. Manuel, Evangelista A. Meru and Florante A. Miano *(petitioners)* filed a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order dated May 30, 2003, docketed as **G.R. No. 158413**, particularly assailing the Sandiganbayan's Order granting the re-opening of the subject criminal case.

Thereafter, on July 21, 2003, the Sandiganbayan issued a resolution,[15] affirming its September 17, 2001 Decision which convicted Mallare and Gosudan of the crime of Malversation of Public Funds beyond reasonable doubt after its reception of additional evidence during the re-opened proceedings. The dispositive portion of the resolution reads:

WHEREFORE, the Court finds no cogent reason to disturb or amend the Court's Decision promulgated on September 17, 2001.

SO ORDERED.[16]

The Sandiganbayan ruled, among others, that Mallare's testimony at the re-opened proceedings was just an afterthought and could not be given greater weight as to reverse his conviction.

On November 13, 2003, the Sandiganbayan issued a resolution[17] denying Mallare's motion for reconsideration.

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[14] *Id.* at 132-136.

[15] *Id.* (G.R. No. 161133), at 78-80.

[16] *Id.* at 80.

[17] *Id.* at 81-101.

On December 17, 2003, the Office of the Solicitor General (OSG) filed its Comment[18] praying that the petition in G.R. No. 158413 be given due course.

On January 16, 2004, Mallare and Gosudan filed a petition for review docketed as **G.R. No. 161133** where one of the grounds raised was the Sandiganbayan's alleged misunderstanding of the nature of a motion for the reopening of the proceedings, and its eventual granting of said motion.

On March 16, 2004, petitioners in G.R. No. 158413 filed an urgent motion to consolidate their case with G.R. No. 161133.

On April 15, 2009, this Court issued a Resolution[19] directing the consolidation of G.R. No. 158413 with G.R. No. 161133.

The petition in G.R. No. 158413 raises the following issues:

1) WHETHER OR NOT THE MOTION TO REOPEN THE PROCEEDINGS WAS PROPER?

2) WHETHER OR NOT THE MOTION TO REOPEN THE PROCEEDINGS TOLLED THE RUNNING OF THE PERIOD TO APPEAL?

3) WHETHER OR NOT THE RESPONDENT COURT HAD JURISDICTION OVER THE CASE WHEN IT GRANTED PRIVATE RESPONDENTS' MOTION TO REOPEN THE PROCEEDINGS?

4) WHETHER OR NOT RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION FOR GRANTING THE MOTION TO REOPEN THE PROCEEDINGS?[20]

On the other hand, the petition in G.R. No. 161133 raises the following grounds:

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[18] *Id.* (G.R. No. 158413), at 202-213.

[19] *Id.* at 475.

[20] *Id.* at 14.

I

UPON THE RECORD, SUBSTANTIAL AND CREDIBLE EVIDENCE EXISTS, WHICH APPEARS TO HAVE BEEN OVERLOOKED OR DISREGARDED, RAISING A REASONABLE DOUBT OF THE GUILT OF THE PETITIONERS AT THE VERY LEAST, AND JUSTIFYING, UNDER WELL-ESTABLISHED RULE, THE EXERCISE OF THE POWER OF THE SUPREME COURT TO REVIEW THE FINDINGS OF FACT OF THE SANDIGANBAYAN.

II

THE APPEALED DECISION AND RESOLUTIONS OF THE SANDIGANBAYAN ARE BASED ON A MISAPPREHENSION OF THE EVIDENCE – PARTICULARLY EXHIBIT "K" — THUS LEADING TO ITS ERRONEOUS CONCLUSIONS AND MISTAKEN INFERENCES.

III

THE SANDIGANBAYAN MISUNDERSTOOD THE NATURE OF A MOTION FOR THE REOPENING OF PROCEEDINGS, WHICH IT IRONICALLY GRANTED, AND DID NOT PROPERLY CONSIDER THE ADDITIONAL EXCULPATORY EVIDENCE PRESENTED BY MALLARE, AND MISAPPLIED A SUPREME COURT DECISION IN DISMISSING THE ADDITIONAL EVIDENCE.[21]

G.R. No. 158413

Petitioner's argument

In G.R. No. 158413, petitioners argue that the motion to re-open proceedings was improper because the earlier filing of a motion for reconsideration by the accused precluded them from filing a subsequent motion to re-open proceedings. Petitioners contend that the motion to re-open proceedings was in reality a second motion for reconsideration prohibited by the rules. The ground invoked by the accused in the motion, like the failure of Mallare to take the witness stand, should have been

[21] *Id.* (G.R. No. 161133), at 17-18.

raised prior to or simultaneous with the filing of the motion for reconsideration because that ground had been in existence at the time of the filing of the motion for reconsideration.

Moreover, petitioners in this case insist that the motion to re-open the proceedings did not toll the running of the period to appeal. They claim that the accused received a copy of the order denying their motion for reconsideration on December 5, 2001. The accused, however, failed to appeal to this Court in accordance with Rule 45 of the New Rules of Court after the denial of their motion for reconsideration. Instead, the accused filed a motion to re-open proceedings which was not allowed by the rules. Considering that the filing of the motion to re-open did not toll the running of the period to file a petition for review, the judgment of conviction became final as of December 21, 2001. Petitioners likewise stress that the motion to re-open proceedings was not a petition for review contemplated under Rule 45 of the New Rules of Court that could be filed within fifteen (15) days from receipt of the order denying the motion for reconsideration. Hence, the Sandiganbayan should not have accepted, entertained or acted on the motion to re-open the proceedings filed after December 6, 2001.

G.R. No. 161133

Petitioners' argument

Petitioners Mallare and Gosudan argue that the Sandiganbayan's decision convicting them of the crime of Malversation of Public Funds was based on a misapprehension of the evidence because it did not particularly appreciate the nature and purpose of the "reimbursement expense receipt" (RER) which required the signatures of the officials and employees before Gosudan could give a cash advance. What was extended by Gosudan to certain officials and employees were not loans but reimbursement expenses such as cash advances for traveling expenses, purchase of spare parts and salary advances.

The accused lament that the Sandiganbayan ignored and misappreciated the testimony of Mallare given after the re-opening of the proceedings. It was their contention that Mallare did not

conspire with Gosudan, and that the money he received from Gosudan was not used for a personal, but for a public, purpose. Mallare claims that he did not get or accept a loan for himself and that he gave good and valid reasons to justify how the amount of ₱300,998.00 was spent, none of which was for his personal use.

The accused further argue that there was full restitution made within a reasonable time, which the COA auditors acknowledged.

People's argument

The prosecution claims that the Sandiganbayan's decision and resolutions took into consideration all the evidence on record, testimonial and documentary, presented by the prosecution and the defense during the hearings of the case. It likewise argues that all the elements of the crime of Malversation of Public Funds were present in this case considering that 1) Mallare and Gosudan were public officers being the Mayor and Municipal Treasurer, respectively, of Infanta, Pangasinan; 2) Gosudan, as Municipal Treasurer, had custody of public funds thereby making her accountable for these funds; 3) Godusan granted loans to herself and her co-employees; and 4) Mallare signed the confirmation letter stating that he had outstanding loans received from Gosudan.

The Court's Verdict

Considering that the Sandiganbayan had issued its July 21, 2003 Resolution affirming its September 17, 2001 decision, which convicted Mallare and Gosudan of the crime of Malversation of Public Funds beyond reasonable doubt, the Court need not pass upon the technical issues in G.R. No. 158413.

The only standing issue now is whether or not the Sandiganbayan was correct in finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds.

The Court has carefully reviewed the records and found no reason to disturb the Sandiganbayan's decision of conviction against Mallare and Gosudan for the crime of Malversation of

Public Funds, defined and penalized under Article 217 of the Revised Penal Code, as amended, as follows:

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

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

To sustain a criminal conviction for the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended, all the following elements must be present:

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.

Mallare and Gosudan were accountable for public funds or property

The accountability for public funds or property of municipal mayors and treasurers was well-discussed in the case of *People of the Philippines v. Teofilo G. Pantaleon, Jr.*,[22] as follows:

> The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable.
>
> Vallejos, as municipal treasurer, was an accountable officer pursuant to Section 101(1) of P.D. No. 1445 which defines an accountable officer to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law." Among the duties of Vallejos as treasurer under Section 470(d)(2) of Republic Act No. 7160 is "to take custody and exercise proper management of the funds of the local government unit concerned."
>
> Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government, which reads:
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> Section 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or

[22] G.R. Nos. 158694-96, March 13, 2009, 581 SCRA 140, 161.

requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

Section 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

Unquestionably, the source of the subject funds taken by Mallare and Gosudan came from the municipal funds. As Municipal Mayor and Treasurer, respectively, they had the sworn duty to safely keep said funds and disburse the same in accordance with standard procedure because the subject funds belong to the municipality and must only be used for the benefit of the municipality. The standard practice in the disbursement of public funds is that they cannot be released and disbursed without the signatures of the Mayor and the Treasurer. In this case, the written approvals of Mallare and Gosudan were essential before any release and disbursement of municipal funds could be made. This was quite clear in *Pantaleon* where it was further written:

As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos.

Hence, any unlawful disbursement or misappropriation of the subject funds would make them accountable.

Mallare and Gosudan appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them

The Court agrees with the Sandiganbayan's ruling that there was more than enough evidence to prove that Gosudan abused her position as Municipal Treasurer of Infanta, Pangasinan, by committing the crime of Malversation of Public Funds when she gave out loans in the total amount of 774,285.78 to several co-employees including herself. Gosudan does not deny the fact that she extended thirteen (13) loans to the following borrowers including herself:[23]

	Name	Position	Amount	Exhibit
1.	Onofre M. Mayo	Municipal Assessor	₱55,000.00	"D"
2.	Daisy M. Ofalza	Social Development Officer	53,842.00	"E"
3.	Marivic M. Fortes	Clerk II	50,000.00	"F"
4.	Elena M. Mores	S.B. Secretary	46,420.19	"G"
5.	Manolito P. Monta	Budget Officer	2,500.00	"H"
6.	Luzviminda Maniago	Municipal Accountant	17,200.00	"I"
7.	Elizabeth M. Gosudan	Municipal Treasurer	75,000.00	"J"
8.	Melchor M. Mallare	Municipal Mayor	300,998.59	"K"
9.	Marle M. Mas	S.B. Member	115,625.00	"L"
10.	Faustina Pagarigan	Agricultural Technologist	500.00	"M"
11.	Pedro M. Mallare	Private Secretary	2,500.00	"N"
12.	Anacleto Montero	ABC President	50,000.00	"O"
13.	Manuel Domalanta	Chief of Police	5,200.00	"P"

When COA Auditor Emilie S. Ritua *(Ritua)* requested Gosudan to immediately produce the missing funds and to explain why there was a shortage in the accounting of municipal funds, she failed to immediately do so. The best that she could do was to

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[23] *Rollo* (G.R. No. 158413), p. 83.

explain that the subject amount was lent to the said municipal officials and employees.[24] Gosudan presented an informal list of the borrowers who were granted "vales" or "*pautang*" and, who, in turn, gave IOUs.[25]

The confirmation letters prepared by the audit team of Ritua showed the written acknowledgment of the said borrowers that they had outstanding loan balances from Gosudan.[26] Gosudan also admitted that these loans were neither covered by supporting vouchers signed by the Municipal Mayor nor officially entered in the cash book as official cash advances. Worse, she could no longer remember the particular amount loaned and the specific purpose therefor.[27]

> 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 in malversation cases.[28]

Clearly, the subject loans that Gosudan extended to the said municipal officials and employees including herself were unofficial and unauthorized loans and, therefore, anomalous in nature. The Sandiganbayan was correct in ruling that said loans were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan. Gosudan unlawfully disbursed funds from the coffers of the municipality and, therefore, guilty of the crime of Malversation of Public Funds.

Like Gosudan, Mallare is also guilty of the same crime for accepting or getting for himself the loan amount of ₱300,998.59 from Gosudan as evidenced by his written acknowledgment in

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[24] *Id.* at 87.

[25] *Id.* at 87-88.

[26] *Id.* at 88.

[27] *Id.* at 88-89.

[28] *Zacaria A. Candao v. People*, G.R. Nos.186659-710, October 19, 2011.

the COA Audit Team's confirmation letter. His acceptance of the subject loan amount of ₱300,998.59 without any supporting official voucher is proof that there was a conspiracy in the illegal disbursement of the subject loan amounts.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.

In this case, petitioners Zacaria A. Candao and Abas A. Candao were co-signatories in the subject checks issued without the required disbursement vouchers. Their signatures in the checks, as authorized officials for the purpose, made possible the illegal withdrawals and embezzlement of public funds in the staggering aggregate amount of ₱21,045,570.64.[29]

This Court takes note of the following findings made by the Sandiganbayan regarding the supposed disbursement vouchers presented by Mallare when he testified at the re-opening proceedings. Thus:

Finally, the Court's resolution to uphold and sustain the September 17, 2001 conviction of the two accused was buttressed by a closer scrutiny of documentary evidence presented during the trial when the case was re-opened, more particularly, Exhibits "2-Mallare" and "3-Mallare," which were the supposed disbursement vouchers for the public funds received by the accused Mayor Mallare from the Municipality of Infanta, Pangasinan.

The Court noticed the irregularities of the two disbursement vouchers. Said vouchers appear to have been spurious, fabricated and/or falsified, and therefore, the Court did not give any probative value to these documentary exhibits. The following are the reasons:

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[29] *Id.*

a) The disbursement vouchers did not have the required control number in the space provided for it;

b) The two disbursement vouchers were totally prepared, approved, and signed by accused Mayor Mallare alone;

c) The Government Accounting and Auditing Manual requires:

Sec. 168. Basic Requirements applicable to classes of disbursements. — The following basic requirements shall be complied with:

CERTIFICATE OF AVAILABILITY OF FUND – Existence of lawful appropriation, the unexpended balance which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

The accounting entries in the two vouchers were totally missing. Expectedly, the certification for the availability of funds in the disbursement voucher was not signed by the accountant.

d) It did not conform with the regulations on disbursement of expenses that were enumerated at the back portion of the disbursement voucher form, which, among others, required the following:

   i) The voucher number shall be indicated on the face of the voucher and on every supporting documents;

   ii) Attach original supporting documents, bill, invoices, purchase orders, *etc*., to the voucher;

   iii) Paid vouchers including its supporting documents, shall be perforated and conspicuously stamped PAID;

   iv) The "RECEIVED FROM" portion shall be accomplished only after the three signatories in the voucher are secured and only upon actual receipt of payment.

e) There were no supporting documents to establish validity of claim. The submission of documents and other evidence was required to establish the validity and correctness of the claim for payment.

Therefore, despite the additional evidence presented by accused Mayor Mallare, said accused failed to overcome the overwhelming evidence proffered by the prosecution which established the guilt of the accused beyond reasonable doubt.[30]

Finally, the Court is in accord with the Sandiganbayan's ruling that the full restitution of the lent public funds cannot exonerate Mallare and Gosudan from the crime charged because payment does not extinguish criminal liability.

It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.[31]

WHEREFORE, the petition is **DENIED.** The September 17, 2001 decision of the Sandiganbayan in Criminal Case No. 25673 for Malversation of Public Funds is **AFFIRMED.**

SO ORDERED.

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

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[30] *Rollo*, (G.R. No. 161133), pp. 95-96.

[31] *Zenon R. Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 566-567.

THIRD DIVISION

[G.R. No. 160278. February 8, 2012]

GARDEN OF MEMORIES PARK and LIFE PLAN, INC. and PAULINA T. REQUIÑO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, LABOR ARBITER FELIPE T. GARDUQUE II and HILARIA CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTIONS, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY, AND BIND THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE. — At the outset, it must be stressed that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. This is in line with the well-entrenched doctrine that the Court is not a trier of facts, and this is strictly adhered to in labor cases. Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. Particularly when passed upon and upheld by the CA, they are binding and conclusive upon the Court and will not normally be disturbed. This is because it is not the function of this Court to analyze or weigh all over again the evidence already considered in the proceedings below; or reevaluate the credibility of witnesses; or substitute the findings of fact of an administrative tribunal which has expertise in its special field. In the present case, the LA, the NLRC, and the CA are one in declaring that petitioner Requiño was not a legitimate contractor. Echoing the decision of the LA and the NLRC, the CA reasoned out that Requiño was not a licensed contractor and had no substantial capital or investment in the form of tool, equipment and work premises, among others.

2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; INDEPENDENT CONTRACTOR; LABOR-ONLY CONTRACTING; ELEMENTS. — In determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment. On the other hand, there is labor-only contracting where: (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.

3. ID.; ID.; ID.; ID.; ID.; PETITIONER COMPANY FAILED TO ADDUCE EVIDENCE PURPORTING TO SHOW THAT ITS SUPPOSED CONTRACTOR HAS SUFFICIENT CAPITALIZATION AND INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT, MACHINERIES, WORK PREMISES AND OTHER MATERIALS WHICH ARE NECESSARY IN THE COMPLETION OF THE SERVICE CONTRACT. — The Court finds no compelling reason to deviate from the findings of the tribunals below. Both the capitalization requirement and the power of control on the part of Requiño are wanting. Generally, the presumption is that the contractor is a labor-only contracting unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like. In the present case, though Garden of Memories is not the contractor, it has the burden of proving that Requiño has sufficient capital or investment since it is claiming the supposed status of Requiño as independent contractor. Garden of Memories, however, failed to adduce evidence purporting to show that Requiño had sufficient capitalization. Neither did it show that she invested in the form of tools, equipment, machineries, work premises and other materials which are necessary in the completion of the service

contract. Furthermore, Requiño was not a licensed contractor. Her explanation that her business was a mere livelihood program *akin* to a cottage industry provided by Garden of Memories as part of its contribution to the upliftment of the underprivileged residing near the memorial park proves that her capital investment was not substantial. Substantial capital or investment refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. Obviously, Requiño is a labor-only contractor.

4. ID.; ID.; ID.; ID.; ID.; POWER OF CONTROL ON THE PART OF THE SUPPOSED CONTRACTOR IS ALSO WANTING. — Another determinant factor that classifies petitioner Requiño as a labor-only contractor was her failure to exercise the right to control the performance of the work of Cruz. This can be gleaned from the Service Contract Agreement between Garden of Memories and Requiño. x x x The requirement of the law in determining the existence of independent contractorship is that the contractor should undertake the work on his own account, under his own responsibility, according to his own manner and method, free from the control and direction of the employer except as to the results thereof. In this case, however, the Service Contract Agreement clearly indicates that Requiño has no discretion to determine the means and manner by which the work is performed. Rather, the work should be in strict compliance with, and subject to, all requirements and standards of Garden of Memories. Under these circumstances, there is no doubt that Requiño is engaged in labor-only contracting, and is considered merely an agent of Garden of Memories. As such, the workers she supplies should be considered as employees of Garden of Memories. Consequently, the latter, as principal employer, is responsible to the employees of the labor-only contractor as if such employees have been directly employed by it. Notably, Cruz was hired as a utility worker tasked to clean, sweep and water the lawn of the memorial park. She performed activities which were necessary or desirable to its principal trade or business. Thus, she was a regular employee of Garden of Memories and cannot be dismissed except for just and authorized causes.

5. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESPONDENT DID NOT ABANDON HER WORK BUT WAS ILLEGALLY DISMISSED; NO INTENTION TO ABANDON WORK CAN BE DISCERNED FROM THE ACTUATIONS OF RESPONDENT. — Moreover, the Court agrees with the findings of the tribunals below that respondent Cruz did not abandon her work but was illegally dismissed. As the employer, Garden of Memories has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. It has been said that abandonment of position cannot be lightly inferred, much less legally presumed from certain equivocal acts. Mere absence is not sufficient. In this case, no such intention to abandon her work can be discerned from the actuations of Cruz. Neither were there overt acts which could be considered manifestations of her desire to truly abandon her work. On the contrary, her reporting to the personnel manager that she had been replaced and the immediate filing of the complaint before the DOLE demonstrated a desire on her part to continue her employment with Garden of Memories. As correctly pointed out by the CA, the filing of the case for illegal dismissal negated the allegation of abandonment.

APPEARANCES OF COUNSEL

Ungco & Ungco Law Office for petitioners.
Atienza Madrid & Formento Law Offices for private respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking nullification of the June 11, 2003

Decision[1] and October 16, 2003 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 64569, which affirmed the December 29, 2000 Decision[3] of the National Labor Relations Commission *(NLRC)*. The NLRC agreed with the Labor Arbiter *(L.A.)* in finding that petitioner Garden of Memories Memorial Park and Life Plan, Inc. *(Garden of Memories)* was the employer of respondent Hilaria Cruz *(Cruz)*, and that Garden of Memories and petitioner Paulina Requiño *(Requiño)*, were jointly and severally liable for the money claims of Cruz.

The Facts

Petitioner Garden of Memories is engaged in the business of operating a memorial park situated at Calsadang Bago, Pateros, Metro-Manila and selling memorial Plan and services.

Respondent Cruz, on the other hand, worked at the Garden of Memories Memorial Park as a utility worker from August 1991 until her termination in February 1998.

On March 13, 1998, Cruz filed a complaint[4] for illegal dismissal, underpayment of wages, non-inclusion in the Social Security Services, and non-payment of legal/special holiday, premium pay for rest day, 13th month pay and service incentive leave pay against Garden of Memories before the Department of Labor and Employment *(DOLE)*.

Upon motion of Garden of Memories, Requiño was impleaded as respondent on the alleged ground that she was its service contractor and the employer of Cruz.

In her position paper,[5] Cruz averred that she worked as a utility worker of Garden of Memories with a salary of ₱115.00

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[1] *Rollo*, pp. 133-142. Penned by Justice Marina L. Buzon and concurred in by Justice Rebecca De Guia-Salvador and Associate Justice Rosmari D. Carandang.

[2] *Id.* at 148-149.

[3] *Id.* at 86-99.

[4] *Id.* at 40.

[5] *Id.* at 41-46.

per day. As a utility worker, she was in charge, among others, of the cleaning and maintenance of the ground facilities of the memorial park. Sometime in February 1998, she had a misunderstanding with a co-worker named Adoracion Requiño regarding the use of a garden water hose. When the misunderstanding came to the knowledge of Requiño, the latter instructed them to go home and not to return anymore. After three (3) days, Cruz reported for work but she was told that she had been replaced by another worker. She immediately reported the matter of her replacement to the personnel manager of Garden of Memories and manifested her protest.

Cruz argued that as a regular employee of the Garden of Memories, she could not be terminated without just or valid cause. Also, her dismissal was violative of due process as she was not afforded the opportunity to explain her side before her employment was terminated.

Cruz further claimed that as a result of her illegal dismissal, she suffered sleepless nights, serious anxiety and mental anguish.

In its Answer,[6] Garden of Memories denied liability for the claims of Cruz and asserted that she was not its employee but that of Requiño, its independent service contractor, who maintained the park for a contract price. It insisted that there was no employer-employee relationship between them because she was employed by its service contractor, Victoriana Requiño *(Victoriana)*, who was later succeeded by her daughter, Paulina, when she (Victoriana) got sick. Garden of Memories claimed that Requiño was a service contractor who carried an independent business and undertook the contract of work on her own account, under her own responsibility and according to her own manner and method, except as to the results thereof.

In her defense, Requiño prayed for the dismissal of the complaint stating that it was Victoriana, her mother, who hired Cruz, and she merely took over the supervision and management of the workers of the memorial park when her mother got ill.

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[6] *Id.* at 58-60.

She claimed that the ownership of the business was never transferred to her.

Requiño further stated that Cruz was not dismissed from her employment but that she abandoned her work.[7]

On October 27, 1999, the LA ruled that Requiño was not an independent contractor but a labor-only contractor and that her defense that Cruz abandoned her work was negated by the filing of the present case.[8] The LA declared both Garden of Memories and Requiño, jointly and severally, liable for the monetary claims of Cruz, the dispositive portion of the decision reads:

> WHEREFORE, premises considered, respondents Garden of Memories Memorial [P]ark and Life Plan, Inc. and/or Paulina Requiño are hereby ordered to jointly and severally pay within ten (10) days from receipt hereof, the herein complainant Hilaria Cruz, the sums of ₱72,072 (₱198 x 26 days x 14 months pay), representing her eight (8) months separation pay and six (6) months backwages; ₱42,138.46, as salary differential; ₱2,475.00, as service incentive leave pay; and ₱12,870.00 as 13th month pay, for three (3) years, or a total sum of ₱129,555.46, plus ten percent attorney's fee.
>
> Complainant's other claims including her prayer for damages are hereby denied for lack of concrete evidence.
>
> SO ORDERED.[9]

Garden of Memories and Requiño appealed the decision to the NLRC. In its December 29, 2000 Decision, the NLRC affirmed the ruling of the LA, stating that Requiño had no substantial capital or investments in the form of tools, equipment, machineries, and work premises, among others, for her to qualify as an independent contractor. It declared the dismissal of Cruz illegal reasoning out that there could be no abandonment of work on her part since Garden of Memories and Requiño failed to prove

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[7] *Id.* at 48-52.

[8] *Id.* at 66-72.

[9] *Id.* at 72.

that there was a deliberate and unjustified refusal on the part of the employee to go back to work and resume her employment.

Garden of Memories moved for a reconsideration of the NLRC decision but it was denied for lack of merit.[10]

Consequently, Garden of Memories and Requiño filed before the CA a petition for *certiorari* under Rule 65 of the Rules of Court. In its June 11, 2003 Decision, the CA dismissed the petition and affirmed the NLRC decision. Hence, this petition, where they asserted that:

The Public Respondents National Labor Relations Commission and Court of Appeals committed serious error, gravely abused their discretion and acted in excess of jurisdiction when they failed to consider the provisions of Section 6 (d) of Department Order No. 10, Series of 1997, by the Department of Labor and Employment, and then rendered their respective erroneous rulings that:

I

PETITIONER PAULINA REQUIÑO IS ENGAGED IN LABOR-ONLY CONTRACTING.

II

THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN RESPONDENT CRUZ AND PETITIONER GARDEN OF MEMORIES.

III

RESPONDENT HILARIA CRUZ DID NOT ABANDON HER WORK.

IV

THERE IS [NO] BASIS IN GRANTING THE MONETARY AWARDS IN FAVOR OF THE RESPONDENT CRUZ DESPITE THE ABSENCE OF A CLEAR PRONOUNCEMENT REGARDING THE LEGALITY OR ILLEGALITY OF HER DISMISSAL.[11]

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[10] *Id.* at 108.

[11] *Id.* at 25-26.

The petitioners aver that Requiño is the employer of Cruz as she *(Requiño)* is a legitimate independent contractor providing maintenance work in the memorial park such as sweeping, weeding and watering of the lawns. They insist that there was no employer-employee relationship between Garden of Memories and Cruz. They claim that there was a service contract between Garden of Memories and Requiño for the latter to provide maintenance work for the former and that the "power of control," the most important element in determining the presence of such a relationship was missing. Furthermore, Garden of Memories alleges that it did not participate in the selection or dismissal of Requiño's employees.

As to the issue of dismissal, the petitioners denied the same and insist that Cruz willfully and actually abandoned her work. They argue that Cruz's utterances "*HINDI KO KAILANGAN ANG TRABAHO"* and "*HINDI KO KAILANGAN MAGTRABAHO AT HINDI KO KAILANGAN MAKI-USAP KAY PAULINA REQUIÑO,"* manifested her belligerence and disinterest in her work and that her unexplained absences later only showed that she had no intention of returning to work.

The Court finds no merit in the petition.

At the outset, it must be stressed that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. This is in line with the well-entrenched doctrine that the Court is not a trier of facts, and this is strictly adhered to in labor cases.[12] Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. Particularly when passed upon and upheld by the CA, they are binding and conclusive upon the Court and will not normally be disturbed.[13] This is because it is not the function

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[12] *Dealco Farms, Inc. v. National Labor Relations Commission*, G.R. No. 153192, January 30, 2009, 577 SCRA 280, 292.

[13] *G & M (Phils.), Inc. v. Cruz*, 496 Phil. 119, 121 (2005).

of this Court to analyze or weigh all over again the evidence already considered in the proceedings below; or reevaluate the credibility of witnesses; or substitute the findings of fact of an administrative tribunal which has expertise in its special field.[14]

In the present case, the LA, the NLRC, and the CA are one in declaring that petitioner Requiño was not a legitimate contractor. Echoing the decision of the LA and the NLRC, the CA reasoned out that Requiño was not a licensed contractor and had no substantial capital or investment in the form of tool, equipment and work premises, among others.

Section 106 of the Labor Code on contracting and subcontracting provides:

Article 106. Contractor or subcontractor. — Whenever, an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are

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[14] *Maritime Factors, Inc. v. Hindang*, G.R. No. 151993, October 19, 2011.

performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. [Underscoring provided]

In the same vein, Sections 8 and 9, DOLE Department Order No. 10, Series of 1997, state that:

Sec. 8. *Job contracting.* — There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. *Labor-only contracting.* — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the

contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers."

On the matter of labor-only contracting, Section 5 of Rule VIII-A of the Omnibus Rules Implementing the Labor Code, provides:

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities related to the main business of the principal, or

ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

x x x x x x x x x

Thus, in determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[15]

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[15] *New Golden City Builders & Development Corp. v. Court of Appeals*, 463 Phil. 821, 829 (2003).

On the other hand, there is labor-only contracting where: (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.[16]

The Court finds no compelling reason to deviate from the findings of the tribunals below. Both the capitalization requirement and the power of control on the part of Requiño are wanting.

Generally, the presumption is that the contractor is a labor-only contracting unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.[17] In the present case, though Garden of Memories is not the contractor, it has the burden of proving that Requiño has sufficient capital or investment since it is claiming the supposed status of Requiño as independent contractor. [18] Garden of Memories, however, failed to adduce evidence purporting to show that Requiño had sufficient capitalization. Neither did it show that she invested in the form of tools, equipment, machineries, work premises and other materials which are necessary in the completion of the service contract.

Furthermore, Requiño was not a licensed contractor. Her explanation that her business was a mere livelihood program *akin* to a cottage industry provided by Garden of Memories as part of its contribution to the upliftment of the underprivileged residing near the memorial park proves that her capital investment was not substantial. Substantial capital or investment refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, and

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[16] *Neri v. National Labor Relations Commission*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717, 721.

[17] *7K Corporation v. National Labor Relations Commission*, G.R. No. 148490, November 22, 2006, 507 SCRA 509, 523.

[18] *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, February 13, 2009, 579 SCRA 445, 465.

work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.[19] Obviously, Requiño is a labor-only contractor.

Another determinant factor that classifies petitioner Requiño as a labor-only contractor was her failure to exercise the right to control the performance of the work of Cruz. This can be gleaned from the Service Contract Agreement[20] between Garden of Memories and Requiño, to wit:

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NOW THEREFORE, premises considered, the parties hereto have hereunto agreed on the following terms and conditions:

1. That the Contractor shall undertake the maintenance of the above-mentioned works in strict compliance with and subject to all the requirements and standards of GMMPLPI.

2. Likewise, the Contractor shall perform all other works that may from time to time be designated by GMMPLPI thru its authorized representatives, which work is similar in nature to the responsibilities of a regular employee with a similar function.

3. The contract price for the labor to be furnished or the service to be rendered shall be THIRTY-FIVE THOUSAND (₱35,000.00) PESOS per calendar month, payable as follows:

(a) Eight Thousand Seven Hundred Fifty Thousand (₱8,750.00) Pesos payable on every 7th, 15th, 23rd and 30th of the month.

4. The period of this Contract shall be for Three (3) months from Feb 1, – April 30, 1998 and renewable at the option of the Management.

5. It is expressly recognized that this contract was forged for the purpose of supplying the necessary maintenance work and in no way shall the same be interpreted to have created an employer-employee relationship.

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[19] Section 5, Rule VIII-A of the Omnibus Rules Implementing the Labor Code.

[20] CA *rollo*, pp. 88-89.

x x x x x x x x x
[Underscoring supplied]

The requirement of the law in determining the existence of independent contractorship is that the contractor should undertake the work on his own account, under his own responsibility, according to his own manner and method, free from the control and direction of the employer except as to the results thereof.[21] In this case, however, the Service Contract Agreement clearly indicates that Requiño has no discretion to determine the means and manner by which the work is performed. Rather, the work should be in strict compliance with, and subject to, all requirements and standards of Garden of Memories.

Under these circumstances, there is no doubt that Requiño is engaged in labor-only contracting, and is considered merely an agent of Garden of Memories. As such, the workers she supplies should be considered as employees of Garden of Memories. Consequently, the latter, as principal employer, is responsible to the employees of the labor-only contractor as if such employees have been directly employed by it.[22]

Notably, Cruz was hired as a utility worker tasked to clean, sweep and water the lawn of the memorial park. She performed activities which were necessary or desirable to its principal trade or business. Thus, she was a regular employee of Garden of Memories and cannot be dismissed except for just and authorized causes.[23]

Moreover, the Court agrees with the findings of the tribunals below that respondent Cruz did not abandon her work but was illegally dismissed.

As the employer, Garden of Memories has the burden of proof to show the employee's deliberate and unjustified refusal

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[21] Section 8 of Department of Labor and Employment (DOLE) Department Order No. 10, Series of 1997.

[22] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 567 (2003).

[23] Section 2, Rule I, Book V of the Labor Code.

to resume his employment without any intention of returning.[24] For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[25] It has been said that abandonment of position cannot be lightly inferred, much less legally presumed from certain equivocal acts.[26] Mere absence is not sufficient.[27]

In this case, no such intention to abandon her work can be discerned from the actuations of Cruz. Neither were there overt acts which could be considered manifestations of her desire to truly abandon her work. On the contrary, her reporting to the personnel manager that she had been replaced and the immediate filing of the complaint before the DOLE demonstrated a desire on her part to continue her employment with Garden of Memories. As correctly pointed out by the CA, the filing of the case for illegal dismissal negated the allegation of abandonment.

WHEREFORE, the petition is **DENIED.** The June 11, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 64569 and its October 16, 2003 Resolution are hereby **AFFIRMED.**

SO ORDERED.

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

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[24] *E, G & I Construction Corporation v. Sato*, G.R. No. 182070, February 16, 2011; *Aboitiz Haulers, Inc. Dimapatoi*, G. R. No. 148619, September 19, 2006, 502 SCRA 271, 291.

[25] *Aboitiz Haulers, Inc. Dimapatoi*, G. R. No. 148619, September 19, 2006, 502 SCRA 271, 291.

[26] *Hda. Dapdap v. National Labor Relations Commission*, 348 Phil. 785, 791-792 (1998).

[27] *E, G & I Construction Corporation v. Sato, supra* note 24.

THIRD DIVISION

[G.R. No. 161796. February 8, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ESTATE OF J. AMADO ARANETA,** *respondent.*

[G.R. No. 161830. February 8, 2012]

DEPARTMENT OF AGRARIAN REFORM,[1] *petitioner,* **NORBERTO RESULTA, EDITHA ABAD, LEDELIA ASIDOY, GIL PAGARAGAN, ROSALITO PAGHUBASAN, EDWIN FAUSTINO, FELOMINO JUSOL, EDELBERTO POBLARES, EFREN APON, NELSON VILLAREAL, JIMMY ZONIO, SERLISTO ZONIO, WILFREDO MARCELINO, ROGELIO RODERO, SERGIO ZONIO, NORBERTO FRANCISCO, AURORA VILLACORTE, JOVITO NINONUEVO, ELIZABETH ZAUSA, RUBEN VILLANUEVA, VICENTA RACCA, ROGELIO RACCA, MERCEDES VILLANUEVA, EDUARDO BIUTE, APOLINARIO TORRAL, BENJAMIN TANJER, JR., MINDA SOLIMAN, CIPRIANO REQUIOLA, GLORIA ROMERO, SILVERIO ZONIO, NESTOR ZONIO, NILO ZAUSA, ROMUALDO ZAUSA, REYNALDO ZAUSA, LUMILYN ZAUSA, GILBERT BAUTISTA, GILDA PACETES, ALUDIA CALUB, LOURDES CAGNO, ABELARDO CAGNO, BENJAMIN MARINAS, CRISPINA ARNAIZ, MARIA CABUS, RESTITUTA PRETENCIO, MA. LUZ ABALOS, ABELARDO DEL ROSARIO, CANDELARIA CEPEDA, HAYDEE MARQUILENCIA, LEONCIA ZATA, LUCIA LOPEZ, MARGARITA MANLANGIT, CRISTINA PACIS, LEONELDA FIDELA, MA. BLESS MASAGNAY, AGUSTIN CADAO, DOLORES FELICIANO, MA. JESSICA FELICIANO,**

[1] Represented by then Secretary Roberto M. Pagdanganan and then Officer-in-Charge Secretary Jose Mari B. Ponce, now Virgilio R. De Los Reyes.

MA. LOURDES FELICIANO, MA. JULITA FELICIANO, FEDERICO ZONIO, NENITA SINGSON, LIBRADA ZASPA, THELMA ELISERIO, SALVADOR VILLORENTE, SATURNINA TESORERO, ROGELIO PARACUELES, ANITA MENDOZA, AMADEO MASAGNAY, ELVIRA CAMPOS, LAURIANO CAMPOS, BENITO VILLAGANAS, VIRGILIO FERRER, SALVADOR RESULTA, NORLITO RESULTA, DIANA SEPTIMO, SALVADOR SEPTIMO, DIOSDADO LAGMAN, CLAUDIA MIRALLES, RICARDO FRANCISCO, RODOLFO FRANCISCO, ALEXANDER YURONG, ALFREDO BUENAVENTURA, ISIDRO DELA CRUZ, REMEDIOS CABUNDOC, ARTEMIO MIRASOL, MINDA COPINO, ANDRES IBARBIA, WILFREDO BALLOS, ELSA BANGCA, ARTURO CANTURIA, PABLITO SAGUIBO, CARLITO VILLONES, JOSEFINA TABANGCURA, NEDA MASAGNAY, *petitioners-intervenors,* **ESTELA MARIE MALOLOS, LORETO DELA CRUZ, JOSE PAJARILLO, IMELDA ZAUSA, FEDERICO ZAUSA represented by ROSALINDA ZAUSA, LUDEVICO ZAUSA, GLORIA VILLANUEVA, ZENAIDA MASAGNAY, ELSIO ESTO, RODOLFO VILLONES, ALVINO NARCI represented by LILIA VILLONES, RUFINO ZONIO, ALBERTO ROSI, ZENAIDA VILLENA, ANTONIO ZAUSA, SALDITO ZONIO, ZACARIAS CORTEZ, LARRY MASAGNAY represented by LEONEL MASAGNAY, ERLINDA MORISON, JUAN CORTEZ, PRIMITIBO NICASIO, CARMELO CESAR, ANDRES ZONIO represented by RUFINO ZONIO, JUANITO ZONIO, JERENCIO ZONIO, ALEX CORTEZ, PEPITO VILLAREAL,** *petitioners-movants, vs.* **ESTATE OF J. AMADO ARANETA,** *respondent.*

[G.R. No. 190456. February 8, 2012]

ERNESTO B. DURAN, LOPE P. ABALOS (deceased) represented by LOPE ABALOS, JR., ARTEMIO T.

GONZALES (deceased) represented by PAUL GONZALES, AUGUSTO LIM, IMELDA MARCELINO, ERNESTO NAVARTE (deceased) represented by surviving spouse NELIA NAVARTE, FLORANTE M. QUIMZON, MANUEL R. QUIMZON (deceased) represented by FLORANTE M. QUIMZON, NELIA ZAUSA, *petitioners-intervenors, vs.* **ESTATE OF J. AMADO ARANETA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; WHEN PROCLAMATION 1637 ESTABLISHING "LUNGSOD SILANGAN TOWNSITE" (LS TOWNSITE) WAS ISSUED ON APRIL 18, 1977, THE ENTIRE LOT 23 WAS, FOR ALL INTENTS AND PURPOSES, CONSIDERED RESIDENTIAL, EXEMPTED ORDINARILY FROM LAND REFORM, EVEN THOUGH PARTS OF THE LOT MAY STILL BE SUITABLE FOR AGRICULTURAL PURPOSES.— Several basic premises should be made clear at the outset. Immediately prior to the promulgation of PD 27 in October 1972, the 1,645-hectare Doronilla property, or a large portion of it, was indisputably agricultural, some parts devoted to rice and/or corn production tilled by Doronilla's tenants. Doronilla, in fact, provided concerned government agencies with a list of seventy-nine (79) names he considered *bona fide* "planters" of his land. These planters, who may reasonably be considered tenant-farmers, had purposely, so it seems, organized themselves into *Samahang Nayon*(s) so that the DAR could start processing their applications under the PD 27 OLT program. CLTs were eventually generated covering 73 hectares, with about 75 CLTs actually distributed to the tenant-beneficiaries. However, upon the issuance of Proclamation 1637, "all activities related to the OLT were stopped." The discontinuance of the OLT processing was obviously DAR's way of acknowledging the implication of the townsite proclamation on the agricultural classification of the Doronilla property. It ought to be emphasized, as a general proposition, however, that the former agricultural lands of Doronilla—situated as they were within areas duly set aside for townsite purposes, by virtue particularly

of Proclamation 1637—were converted for residential use. By the terms of *Natalia Realty, Inc.*, they would be exempt from land reform and, by necessarily corollary, beyond DAR's or DARAB's jurisdictional reach. Excerpts from *Natalia Realty, Inc.*: We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands*." Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivison cannot in any language be considered as 'agricultural lands.' **These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation**. x x x Since the NATALIA lands were converted prior to 15, June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of CARL. Guided by the foregoing doctrinal pronouncement, the key date to reckon, as a preliminary matter, is the precise time when Doronilla's Lot 23, now Araneta's property, ceased to be agricultural. This is the same crucial cut-off date for considering the existence of "private rights" of farmers, if any, to the property in question. This, in turn, means the date when Proclamation 1637 establishing LS Townsite was issued: April 18, 1977. From then on, the entire Lot 23 was, for all intents and purposes, considered residential, exempted ordinarily from land reform, albeit parts of the lot may still be actually suitable for agricultural purposes. Both the Natalia lands, as determined in *Natalia Realty, Inc.*, and the Doronilla property are situated within the same area covered by Proclamation 1637; thus, the principles regarding the classification of the land within the Townsite stated in *Natalia Realty, Inc.* apply *mutatis mutandis* to the instant case.

2. ID.; ID.; RA 6657 OR THE "COMPREHENSIVE AGRARIAN REFORM LAW" IS NOW THE PRIMARY GOVERNING

AGRARIAN LAW WITH REGARD TO AGRICULTURAL LANDS, BE THEY OF PRIVATE OR PUBLIC OWNERSHIP AND REGARDLESS OF TENURIAL ARRANGEMENT AND CROPS PRODUCED.— From the standpoint of agrarian reform, PD 27, being in context the earliest issuance, governed at the start the disposition of the rice-and-corn land portions of the Doronilla property. And true enough, the DAR began processing land transfers through the OLT program under PD 27 and thereafter issued the corresponding CLTs. However, when Proclamation 1637 went into effect, DAR discontinued with the OLT processing. The tenants of Doronilla during that time desisted from questioning the halt in the issuance of the CLTs. It is fairly evident that DAR noted the effect of the issuance of Proclamation 1637 on the subject land and decided not to pursue its original operation, recognizing the change of classification of the property from agricultural to residential. When it took effect on June 15, 1988, RA 6657 became the prevailing agrarian reform law. This is not to say, however, that its coming into effect necessarily impeded the operation of PD 27, which, to repeat, covers only rice and corn land. Far from it, for RA 6657, which identifies "rice and corn land" under PD 27 as among the properties the DAR shall acquire and distribute to the landless, no less provides that PD 27 shall be of suppletory application. We stated in *Land Bank of the Philippines v. Court of Appeals*, "We cannot see why Sec. 18 of R.A. 6657 should not apply to rice and corn lands under P.D. 27. Section 75 of R.A. 6657 clearly states that the provisions of P.D. 27 and E.O. 228 shall only have a suppletory effect." All told, the primary governing agrarian law with regard to agricultural lands, be they of private or public ownership and regardless of tenurial arrangement and crops produced, is now RA 6657. Section 3(c) of RA 6657 defines "agricultural lands" as "**lands devoted to agricultural activity as defined in the Act and not classified as mineral, forest, residential, commercial or industrial land**." The DAR itself refers to "agricultural lands" as: those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding

competent authorities prior to 15 June 1988 for residential, commercial or industrial use.

3. ID.; ID.; PROCLAMATION 1637 IS CONSIDERED A SPECIAL LAW WHICH ENJOYS PRIMACY OVER GENERAL LAWS, LIKE RA 6657.— At the time of the effectivity of RA 6657 on June 15, 1998, the process of agrarian reform on the Doronilla property was, however, to reiterate, far from complete. In fact, the DAR sent out a Notice of Acquisition to Araneta only on December 12, 1989, after the lapse of around 12 years following its discontinuance of all activities incident to the OLT. Proclamation 1637, a martial law and legislative-powers issuance, partakes the nature of a law. In *Natalia Realty, Inc.*, the Court in fact considered and categorically declared Proclamation 1637 a special law, since it referred specifically to the LS Townsite Reservation. As such, Proclamation 1637 enjoys, so *Natalia Realty, Inc.* intones, applying basic tenets of statutory construction, primacy over general laws, like RA 6657. In light of the foregoing legal framework, the question that comes to the fore is whether or not the OLT coverage of the Doronilla property after June 15, 1988, ordered by DAR pursuant to the provisions of PD 27 and RA 6657, was still valid, given the classificatory effect of the townsite proclamation. To restate a basic postulate, the provisions of RA 6657 apply only to agricultural lands under which category the Doronilla property, during the period material, no longer falls, having been effectively classified as residential by force of Proclamation 1637. It ceased, following *Natalia Realty, Inc.*, to be agricultural land upon approval of its inclusion in the LS Townsite Reservation pursuant to the said reclassifying presidential issuance. In this regard, the Court cites with approval the following excerpts from the appealed CA decision: **The above [*Natalia Realty, Inc.*] ruling was reiterated in *National Housing Authority vs. Allarde* where the Supreme Court held that lands reserved for, converted to, non-agricultural uses by government agencies other than the [DAR], prior to the effectivity of [RA] 6657 x x x are not considered and treated as agricultural lands and therefore, outside the ambit of said law**. The High Court declared that since the Tala Estate as early as April 26, 1971 was reserved, *inter alia*, under Presidential Proclamation No. 843, for the housing program of the [NHA], the same has been categorized

as not being devoted to agricultural activity contemplated by Section 3(c) of R.A. No. 6657, and therefore outside the coverage of CARL.

4. ID.; ID.; THE OWNERSHIP RIGHT OF THE FARMER-BENEFICIARIES IS A STATUTORY RIGHT THAT MUST BE RESPECTED.— The CA held that the "private rights" referred to in the proclamation pertained to the rights of the registered owner of the property in question, meaning Doronilla or Araneta, as the case may be. The Court cannot lend full concurrence to the above holding of the appellate court and the consequent wholesale nullification of the awards made by the DARAB. The facts show that several farmer-beneficiaries received 75 CLTs prior to the issuance of Proclamation 1637 on June 21, 1974. The 75 CLTs seemingly represent the first batch of certificates of *bona fide* planting rice and corn. These certificates were processed pursuant to the OLT program under PD 27. It bears to stress, however, that the mere issuance of the CLT does not vest on the recipient-farmer-tenant ownership of the lot described in it. At best, the certificate, in the phraseology of *Vinzons-Magana v. Estrella*, "merely evidences the government's recognition of the grantee as the party qualified to avail of the statutory mechanisms for the acquisition of ownership of the land [tilled] by him as provided under [PD] 27." The clause "**now deemed full owners as of October 21, 1972**" could not be pure rhetoric, without any beneficial effect whatsoever descending on the actual tillers of rice and/or corn lands, as the appealed decision seems to convey. To Us, the clause in context means that, with respect to the parcel of agricultural land covered by PD 27 and which is under his or her tillage, the farmer-beneficiary *ipso facto* acquires, by weight of that decree, ownership rights over it. That ownership right may perhaps not be irrevocable and permanent, nay vested, until the tenant-farmer shall have complied with the amortization payments on the cost of the land and other requirements exacted in the circular promulgated to implement PD 27. *Vinzons-Magana* holds: This Court has therefore clarified that it is only compliance with the prescribed conditions which entitled the farmer/grantee to an emancipation patent by which he acquires the vested right of absolute ownership in the landholding—a right which has become fixed and established and is no longer open to doubt and controversy.

x x x Said ownership right is, nonetheless, a statutory right to be respected.

5. ID.; ID.; THE PRIVATE RIGHTS REFERRED TO IN PROCLAMATION 1637 MEANS THOSE OF THE FARMER-BENEFICIARIES WHO WERE ISSUED THE 75 CERTIFICATES OF LAND TRANSFER(CLT's); AS TO THE SAID FARMER-BENEFICIARIES, FARM LOTS ARE EXCLUDED FROM THE COVERAGE OF PROCLAMATION 1637 AND ARE GOVERNED BY PD 27 AND SUBSEQUENTLY RA 6657.— Plainly enough then, the farmer-beneficiaries *vis-à-vis* the PD 27 parcel they till, especially that brought within the coverage of OLT under PD 27, own in a sense the lot which they can validly set up against the original owners notwithstanding the fact that the latter have not yet been paid by Land Bank and/or even if the farmers have not yet fully paid their amortization obligation to the Land Bank, if that be the case. After all, the former landowners, by force of PD 27, is already divested of their ownership of the covered lot, their right to payment of just compensation or of the un-amortized portion payable by Land Bank being assured under EO 228 and RA 6657. If only to stress, while the PD 27 tenant-farmers are considered the owners by virtue of that decree, they cannot yet exercise all the attributes inherent in ownership, such as selling the lot, because, with respect to the government represented by DAR and LBP, they have in the meantime only inchoate rights in the lot—the being "amortizing owners." This is because they must still pay all the amortizations over the lot to Land Bank before an EP is issued to them. Then and only then do they acquire, in the phraseology of *Vinzons-Magana*, "the vested right of absolute ownership in the landholding." This brings us to the question, to whom does "private rights" referred to in Proclamation 1637 pertain? Absent any agrarian relationship involving the tract of lands covered by the proclamation, We can categorically state that the reference is to the private rights of the registered lot owner, in this case Doronilla and subsequently, Araneta. But then the reality on the ground was that the Araneta property or at least a portion was placed under OLT pursuant to PD 27 and subject to compulsory acquisition by DAR prior to the issuance of Proclamation 1637 on June 21, 1974, and 75 CLTs were also issued to the farmer-beneficiaries. Stated a bit

differently, before Proclamation 1637 came to be, there were already PD 27 tenant-farmers in said property. In a very real sense, the "private rights" belong to these tenant-farmers. Since the said farmer-beneficiaries were **deemed owners** of the agricultural land awarded to them as of October 21, 1972 under PD 27 and subsequently deemed **full owners** under EO 228, the logical conclusion is clear and simple: the township reservation established under Proclamation 1637 must yield and recognize the "deemed ownership rights" bestowed on the farmer-beneficiaries under PD 27. Another way of looking at the situation is that these farmer-beneficiaries are subrogated in the place of Doronilla and eventual transferee Araneta. To Us, the private rights referred to in Proclamation 1637 means those of the farmer-beneficiaries who were issued the 75 CLTs. As to them, farm lots are EXCLUDED from the coverage of Proclamation 1637 and are governed by PD 27 and subsequently RA 6657.

6. ID.; ID.; THE CERTIFICATES OF LAND TRANSFER (CLT's) AND EMANCIPATION PATENTS (EP's) ISSUED AFTER JUNE 21, 1974 HAVE TO BE ANNULLED AND INVALIDATED FOR WANT OF LEGAL BASIS, SINCE THE LOTS IN QUESTION ARE NO LONGER SUBJECT TO AGRARIAN REFORM DUE TO THE RECLASSIFICATION OF THE ERSTWHILE DORONILLA ESTATE TO NON-AGRICULTURAL PURPOSES.— With respect to **the 912 farmer-beneficiaries who were issued around 1,200 EPs** as a result of the **DAR Notice of Acquisition dated December 12, 1989**, We are constrained to affirm the CA ruling invalidating the individual lot awarded to them. Obviously, they are not rice/corn land tenant-farmers contemplated in PD 27. They do not possess the rights flowing from the phrase "deemed owner as of October 21, 1972." In this regard, the Court notes only too distinctly that Doronilla no less only named some 79 individuals as coming close to being legitimate PD 27 tenant-farmers of Lot 23. We reiterate the ensuing pronouncement in *Natalia Realty, Inc.*, as cited by the CA, that agricultural lands reclassified as a residential land are outside the ambit of compulsory acquisition under RA 6657 ought to be brought to bear against the 912 farmer-beneficiaries adverted to. Summarizing, the farmer-beneficiaries who were given the 75 CLTs prior to the issuance of

Proclamation 1283, as amended by Proclamation 1637, are deemed full owners of the lots covered by 75 CLTs *vis-à-vis* the real registered owner. The farmer-beneficiaries have private rights over said lots as they were deemed owners prior to the establishment of the LS Townsite reservation or at least are subrogated to the rights of the registered lot owner. Those farmer-beneficiaries who were issued CLTs or EPs after June 21, 1974 when Proclamation 1283, as amended, became effective do not acquire rights over the lots they were claiming under PD 27 or RA 6657, because the lots have already been reclassified as residential and are beyond the compulsory coverage for agrarian reform under RA 6657. Perforce, the said CLTs or EPs issued after June 21, 1974 have to be annulled and invalidated for want of legal basis, since the lots in question are no longer subject to agrarian reform due to the reclassification of the erstwhile Doronilla estate to non-agricultural purposes.

7. ID.; ID.; THE POWER TO CLASSIFY OR RECLASSIFY LANDS IS ESSENTIALLY AN EXECUTIVE PREROGATIVE.— Petitioners DAR and Land Bank ascribe error on the CA in giving Proclamation 1637, an administrative issuance, preference and weight over PD 27, a law. As argued, it is basic that, in the hierarchy of issuances, a law has greater weight than and takes precedence over a mere administrative issuance. Petitioners' contention may be accorded some measure of plausibility, except for the fact that it ignores a basic legal principle: that the power to classify or reclassify lands is essentially an executive prerogative, albeit local government units, thru zoning ordinances, may, subject to certain conditions, very well effect reclassification of land use within their respective territorial jurisdiction. Reclassification decrees issued by the executive department, through its appropriate agencies, carry the same force and effect as any statute. As it were, PD 27 and Proclamation 1637 are both presidential issuances, each forming, by virtue of Sec. 3(2), Article XVII of the 1973 Constitution, a part of the law of the land. Sec. 3(2), Art. XVII of the 1973 Constitution provides that: [A]ll **proclamations, orders, decrees**, instructions, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and **shall remain valid, legal, binding and effective** even after the lifting of Martial Law or the ratification of this Constitution unless modified, revoked,

or superseded by subsequent proclamations, orders, decrees, instructions or unless expressly or impliedly modified or repealed by the regular *Batasang Pambansa*. While not determinative of the outcome of this dispute, the Court has, in *Agrarian Reform Beneficiaries Association* (*ARBA*) *v. Nicolas*, held that the principles enunciated in *Natalia Realty, Inc.* hold sway regardless of what non-agricultural use to which an agricultural land is converted. *ARBA*, in fine, declares that the *Natalia Realty, Inc.* ruling is not confined solely to agricultural lands located within the townsite reservations; it is also applicable to other agricultural lands converted to non-agricultural uses prior to the effectivity of the CARL. The land classifying medium that *ARBA* teaches is not limited solely to a proclamation, but may also involve a city ordinance.

8. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); BEING OUTSIDE THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), THE DORONILLA PROPERTY IS BEYOND DARAB'S JURISDICTION.— The DARAB has been created and designed to exercise the DAR's adjudicating functions. And just like any quasi-judicial body, DARAB derives its jurisdiction from law, specifically RA 6657, which invested it with adjudicatory powers over agrarian reform disputes and matters related to the implementation of CARL. We need not belabor that DARAB's jurisdiction over the subject matter, the Doronilla property, cannot be conferred by the main parties, let alone the intervening farmer-beneficiaries claiming to have "vested rights" under PD 27. As earlier discussed, the process of land reform covering the 1,266 hectares of the Araneta estate was not completed prior to the issuance of Proclamation 1637. So the intervenors, with the exception of the 79 tenant-beneficiaries who were granted CLTs, failed to acquire private rights of ownership under PD 27 before the effective conversion of the Doronilla property to non-agricultural uses. Hence, the Doronilla property, being outside of CARP coverage, is also beyond DARAB's jurisdiction.

9. ID.; ID.; THE OFFICE OF THE SOLICITOR GENERAL'S WITHDRAWAL OF THE EXPROPRIATION SUIT DID NOT AUTOMATICALLY RESTORE THE DORONILLA PROPERTY TO ITS ORIGINAL CLASSIFICATION NOR DID IT GRANT THE DEPARTMENT OF AGRARIAN

REFORM (DAR) AND DARAB THE POWER OR JURISDICTION TO ORDER THE COMPULSORY ACQUISITION OF THE PROPERTY AND PLACE IT UNDER THE CARP.— The OSG's withdrawal of the expropriation suit on September 9, 1987 did not, as Land Bank posits, automatically restore the Doronilla property to its original classification nor did it grant DAR or DARAB the power or jurisdiction to order the compulsory acquisition of the property and to place it under CARP. And, as the CA aptly noted, the DOJ Secretary, through Opinion No. 181, even advised the DAR Secretary that lands covered by Proclamation 1637, having been reserved for townsite purposes, are not deemed **"agricultural lands" within the meaning and intent of Sec. 3(c) of RA 6657 and, hence, outside the coverage of CARL**. The Secretary of Justice further stated that RA 6657 did not supersede or repeal Proclamations 1283 and 1637 and they remain operative until now; their being townsite reservations still remain valid and subsisting. To clarify, a DOJ opinion carries only a persuasive weight upon the courts. However since this Court, in *Natalia Realty, Inc.*, cited with approval DOJ Opinion No. 181, such citation carries weight and importance as jurisprudence. Be that as it may, We recognize and apply the principles found in *Natalia Realty, Inc.* regarding the character of the Doronilla property being converted to a townsite and, thus, non-agricultural in character.

10. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. (AO) 3, SERIES OF 1996 PROVIDES FOR THE MECHANISM/REMEDY TO ADDRESS ERRONEOUS COMPULSORY COVERAGE OR ACQUISITION OF NON-AGRICULTURAL LANDS OR AGRICULTURAL LANDS SUBJECT OF RETENTION, ESPECIALLY WHERE CERTIFICATES OF LAND OWNERSHIP AWARD (CLOA's) OR EMANCIPATION PATENTS (EP's) HAVE BEEN GRANTED.— Worth mentioning at this juncture is the fact that DAR itself issued administrative circulars governing lands exempted from CARP. For instance, Administrative No. (AO) 3, Series of 1996, declares in its policy statement what categories of lands are outside CARP coverage and unequivocally states that properties not covered by CARP shall be reconveyed to the original transferors or owners. Significantly, AO 3 defines lands not

so covered as **"property determined to be exempted from CARP coverage pursuant to [DOJ] Opinion Nos. 44 and 181"** and **"where Presidential Proclamation has been issued declaring the subject property for certain uses other than agricultural."** Said policy of the DAR, as explained in the CA Decision, should be "applied and upheld in cases where the DAR had erroneously ordered the compulsory acquisition of the lands found outside CARP coverage." This is true with the case at bar due to the fact that Proclamation 1283, as amended by Proclamation 1637, had effectively reclassified respondent's land as "residential." To address erroneous compulsory coverage or acquisition of non-agricultural lands or agricultural lands subject of retention, especially where Certificates of Land Ownership Award (CLOAs) or EPs have been generated, the said AO itself provides the mechanism/ remedy for the reconveyance of lots thus covered or acquired, *viz*: 1. The Emancipation Patents (EPs) or Certificate of Land Ownership Awards (CLOAs) already generated for landholdings to be reconveyed shall have to be cancelled first pursuant to Administrative Order No. 02, Series of 1994 prior to the actual reconveyance. The cancellation shall either be through administrative proceedings in cases where the EP/CLOA has not yet been registered with the ROD or through quasi-judicial proceedings in cases where the said EP/CLOA has already been registered. Given the foregoing perspective, private petitioners' lament about the injustice done to them due to the cancellation of their EPs or CLOAs, as the case may be, is specious at best, for those EPs or CLOAs were generated or granted based on the invalid order by DAR for the inclusion of the bulk of the Doronilla property under PD 27 and CARP.

11. ID.; ID.; PLEA FOR INTERVENTION, DENIED; INTERVENORS ARE GUILTY OF NEGLECT IN TAKING NECESSARY STEPS TO PROTECT THEIR CLAIMED RIGHT AND INTEREST IN THE CASE.— As the records would show, the DARAB promulgated its Decision on February 7, 2001 or six (6) years **after** Atty. Lara died. Yet, intervening petitioners opted to make an issue only with respect about their inability, due to Atty. Lara's death, to receive the adverse CA Decision, but curiously not about the DARAB judgment favorable to them. Noticeably, in the instant petition, they only focused on questioning what they termed as the

"malicious" failure of the Estate of Araneta to individually inform them of the filing of its petition for review with the CA. Nowhere can it be gleaned that they are questioning the failure of the CA and the DARAB to send copies of their respective decisions to them. Thus, the Court is at a loss to understand how Duran, *et al*. can insinuate malice on the part of the Estate of Araneta's for its alleged failure to provide them with a copy of the CA decision and yet not have any problem with respect to the DARAB decision which they also failed to personally receive due to their counsel's demise. While the fault clearly lies with Duran, *et al*. themselves, they found it convenient to point fingers. To be sure, they were remiss in their duty of coordinating with their counsel on the progress of their pending case. The constant communication link needed to be established between diligent clients and their attorney did not obtain in this case. It is not surprising, therefore, that Duran and his group only filed their instant petition 14 years after the death of their counsel, Atty. Lara. Parties cannot blame their counsel for negligence when they themselves were guilty of neglect. Relief cannot be granted to parties who seek to be relieved from the effects of a judgment when the loss of the remedy was due to their own negligence. Equity serves the vigilant and not those who slumber on their rights. Duran, *et al*., as are expected of prudent men concerned with their ordinary affairs, should have had periodically touched base at least to be apprised with the status of their case. Judiciousness in this regard would have alerted them about their counsel's death, thus enabling them to take the necessary steps to protect their claimed right and interest in the case.

12. ID.; ID.; LACHES; THE LONG INACTION OF INTERVENORS TO ASSERT THEIR RIGHT OVER THE SUBJECT CASE SHOULD BE BROUGHT TO BEAR AGAINST THEM.— As Araneta aptly suggested in its Comment on the petition for review-in-intervention, it is Duran, *et al*., as clients, not the court or their adversary, who are in a better position or at least expected to know about their lawyer's death due to the nature of a client-lawyer relationship. And knowing, fair play demands that the client accordingly advises the court and the adverse party about the fact of death. It is not for the appellate court or respondent Araneta to inquire why service of court processes or pleadings seemingly remained unacted by Atty. De Lara and/

or his clients. The long inaction of Duran, *et al*. to assert their rights over the subject case should be brought to bear against them. Thus, We held in *Esmaquel v. Coprada*: Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice. There can be little quibble about Duran, *et al*. being guilty of laches. They failed and neglected to keep track of their case with their lawyer for 14 long years. As discussed above, Atty. Lara died even prior to the promulgation of the DARAB Decision. Even then, they failed to notify the DARAB and the other parties of the case regarding the demise of Atty. Lara and even a change of counsel. It certainly strains credulity to think that literally no one, among those constituting the petitioning-intervenors, had the characteristic good sense of following up the case with their legal counsel. Only now, 14 years after, did some think of fighting for the right they slept on. Thus, as to them, the CA Decision is deemed final and executory based on the principle of laches.

13. ID.; ID.; WHILE THE CONCEPT OF SOCIAL JUSTICE IS INTENDED TO FAVOR THOSE WHO HAVE LESS IN LIFE, IT SHOULD NEVER BE TAKEN AS A TOLL TO JUSTIFY LET ALONE COMMIT INJUSTICE.— Agrarian reform finds context in social justice in tandem with the police power of the State. But social justice itself is not merely granted to the marginalized and the underprivileged. But while the concept of social justice is intended to favor those who have less in life, it should never be taken as a toll to justify let alone commit an injustice. To borrow from Justice Isagani A. Cruz: [S]ocial justice—or any justice for that matter—is for the deserving whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in a case of reasonable doubt, we are

called upon to tilt the balance in favor of the poor simply because they are poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to eject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law. At any rate, all is not lost on the part of Duran and the other petitioners-intervenors. In the event that they belong to the group of 75 PD 27 tenant-farmers who, as earlier adverted, were awarded individual CLT covering parcels of lands described in the CLT, then it is just but fair and in keeping with the imperatives of social justice that their rights to the covered lots should be recognized and respected. To the 912 holders of EPs, this decision might be a big let down. But then the facts and applicable laws and jurisprudence call for this disposition.

APPEARANCES OF COUNSEL

Jethro L. F. Villanueva for Nell-Armin Aurora DP. Raralio.

Kristine Dacuyan, Florisa C. Almodiel and Luis G. Delos Santos for intervenors in G.R. No. 161830.

Michelle Ann U. Juan for Heirs of Amado J. Araneta.

D E C I S I O N

VELASCO, JR., *J.*:

In these three petitions for review under Rule 45, petitioners Land Bank of the Philippines (Land Bank), Department of Agrarian Reform (DAR), and Ernesto B. Duran, *et al.* (Duran, *et al*.) separately assail and seek to nullify the Decision[2] of the Court of Appeals (CA) dated September 19, 2003 in CA-G.R. SP No. 65822 that set aside the February 7, 2001 Decision of the DAR Adjudication Board (DARAB) in DARAB Case No. 4176. Likewise sought to be annulled is the Resolution of

[2] *Rollo* (G.R. No. 161796), pp. 73-89. Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr.

the CA dated January 22, 2004[3] that denied separate motions for reconsideration of the September 19, 2003 Decision.

The reversed DARAB decision upheld the agrarian reform coverage of 1,266 hectares of respondent estate's 1,644.55-hectare property and its award to over a thousand farmer-beneficiaries. The CA's reversing decision, on the other hand, is hinged on the illegality of the coverage and the consequent award. According to the CA, the property in question, having meanwhile ceased to be agricultural, is not amenable to land reform coverage and, hence, falls outside of DAR's jurisdiction to implement agrarian enactments.

In G.R. No. 161796, petitioner Land Bank faults the CA insofar as it accorded retroactive exclusionary application to Presidential Proclamation No. (Proclamation) 1283,[4] as amended by Proclamation 1637.[5] In so doing, so Land Bank claims, the appellate court effectively but illegally extended exempt-coverage status to the subject land and in the process negated the purpose behind Presidential Decree No. (PD) 27: to emancipate rice/corn land tenant-farmers from the bondage of the soil under their tillage.

Pursuing cognate arguments, petitioner DAR, in G.R. No. 161830, assails the CA's holding, and the premises tying it together, on the department's jurisdiction over the property subject of the case.

In G.R. No. 190456, petitioners Duran, *et al*. take issue at the CA's pronouncement on the validity of service of the petition

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[3] *Id.* at 91-96; another Resolution dated April 2, 2004 denied the motion for reconsideration of Nell Armin Aurora Raralio.

[4] "*x x x Reserving [a Parcel of Land], Together with the Adjacent Parcel of Land of the Public Domain, for Townsite Purposes Under the Provisions of Chapter XI of the Public Land Act x x x,*" June 21, 1974.

[5] "*Amending Proclamation No. 1283, dated June 21, 1974 which Established the Townsite Reservation in the Municipalities of Antipolo and San Mateo, Province of Rizal x x x by Increasing the Area and Revising the Technical Description of the Land Embraced therein x x x,*" April 18, 1977.

for review effected by respondent upon their long-deceased counsel of record, Atty. Eduardo Soliven Lara (Atty. Lara).[6] Like Land Bank and DAR, Duran, *et al*. impute reversible error on the CA for holding that the concerned farmer-beneficiaries never acquired ownership over their respective portions subject of the DAR award, owing to the prior conversion of the whole property to non-agricultural uses before the completion of the land reform process.

Per its Resolution of June 28, 2004, the Court ordered the consolidation of G.R. Nos. 161796 and 161830 with G.R. No. 163174 (*Nell-Armin Raralio v. Estate of J. Amado Araneta*). Another Resolution issued on November 17, 2010 directed that G.R. No. 190456 be consolidated with G.R. Nos. 161796, 161830 and 163174.

Due, however, to the denial, per Resolution of August 18, 2004, of the petition in G.R. No. 163174 and pursuant to entry of judgment dated December 9, 2004, the Court, by Resolution dated July 11, 2011, deconsolidated G.R. No. 163174 with the other three cases and considered it closed and terminated.[7]

The Facts

At the heart of the controversy is a large tract of land, denominated as Lot No. 23 of the Montalban Cadastre (Lot 23), located in Brgy. Mascap, Montalban, Rizal with an area of 1,645 hectares, more or less. Lot 23 was originally registered in the name of Alfonso Doronilla (Doronilla) under Original Certificate of Title (OCT) No. 7924 of the Rizal Registry.

On June 21, 1974, then President Marcos issued Proclamation 1283, carving out a wide expanse from the Watershed Reservation in Antipolo, Rizal and reserving the segregated area for townsite purposes, "**subject to private rights, if any there be**." In its pertinent parts, Proclamation 1283 reads:

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[6] Atty. Lara passed away on March 6, 1995, *rollo* (G.R. No. 190456), p. 4.

[7] *Rollo* (G.R. No. 161830), p. 687.

"Excluding from the Operation of Executive Order No. 33 dated July 26, 1904, as Amended by Executive Orders Nos. 14 and 16, Both Series of 1915, which Established the Watershed Reservation Situated in the Municipality of Antipolo, Province of Rizal, Island of Luzon, a Certain Portion of the Land Embraced therein and Reserving the Same, Together with the Adjacent Parcel of Land of the Public Domain, for Townsite Purposes Under the Provisions of Chapter XI of the Public Land Act"

Upon recommendation of the Secretary of Agriculture and Natural Resources x x x, I, FERDINAND E. MARCOS, President of the Philippines, do hereby exclude from the operation of Executive Order No. 33 dated July 26, 1904, as amended x x x, which established the Watershed Reservation situated in the Municipality of Antipolo, Province of Rizal, Island of Luzon, certain portions of land embraced therein and reserve the same, together with the adjacent parcel of land of the public domain, for townsite purposes under the provisions of Chapter XI of the Public Land Act, **subject to private rights, if any there be**, and to future subdivision survey in accordance with the development plan to be prepared and approved by the Department of Local Government and Community Development, which parcels are more particularly described as follows:

Lot A (Part of Watershed Reservation)

A parcel of land (Lot A of Proposed Poor Man's Baguio, being a portion of the Marikina Watershed, IN-2), situated in the municipality of Antipolo, Province of Rizal, Island of Luzon x x x;

[technical description omitted]

Containing an area of THREE THOUSAND SEVEN HUNDRED EIGHTY (3,780) Hectares, more or less.

Lot B (Alienable and Disposable Land)

A parcel of land (Lot B of Proposed Poor Man's Baguio, being a portion of alienable and disposable portion of public domain) situated in the municipality of Antipolo, Province of Rizal x x x;

[technical description omitted]

Containing an area of ONE THOUSAND TWO HUNDRED TWENTY FIVE (1,225) Hectares, more or less. (Emphasis supplied.)

Then came the amendatory issuance, Proclamation 1637 dated April 18, 1977, thereby increasing the size of the reservation,

designated as "Lungsod Silangan Townsite" (LS Townsite), by 20.312 hectares and revising its technical description so as to include, within its coverage, other lands in the municipalities of San Mateo and Montalban, Rizal to absorb "**the population overspill in Greater Manila Area**," but again "**subject to private rights, if any there be**," thus:

> Upon recommendation of the Secretary of Natural Resources x x x, I, FERDINAND E. MARCOS, President of the Philippines, do hereby amend Proclamation No. 1283, dated June 21, 1974 which established the townsite reservation in the municipalities of Antipolo and San Mateo, Province of Rizal, Island of Luzon, by increasing the area and revising the technical descriptions of the land embraced therein, **subject to private rights, if any there be**, which parcel of land is more particularly described as follows:
>
> (Proposed Lungsod Silangan Townsite)
>
> A PARCEL OF LAND (Proposed Lungsod Silangan Townsite Reservation amending the area under SWO-41762 establishing the Bagong Silangan Townsite Reservation) situated in the Municipalities of Antipolo, San Mateo, and Montalban, Province of Rizal, Island of Luzon. Bounded on the E., along lines x x x.
>
> Beginning at a point marked "1" on the Topographic Maps with the Scale of 1:50,000 which is the identical corner 38 IN-12, Marikina Watershed Reservation.
>
> [technical description omitted]
>
> Containting an area of TWENTY THOUSAND THREE HUNDRED TWELVE (20,312) hectares, more or less.
>
> NOTE: all data are approximate and subject to change based on future survey. (Emphasis supplied.)

On November 9, 1977, Letter of Instructions No. (LOI) 625 addressed to several agencies was issued for the implementation of the aforementioned proclamations. The Office of the Solicitor General (OSG), in particular, was directed to initiate condemnation proceedings for the acquisition of private lands within the new townsite, among which was Lot 23 (the Doronilla property).

Prior to the issuance of the LS Townsite proclamations, the following events transpired:

(1) On October 21, 1972, PD 27 (*Tenant's Emancipation Decree*) was issued. In accordance with PD 27 in relation to LOI 474 and related issuances, the DAR undertook to place under the *Operation Land Transfer* (OLT) program of the government all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven (7) hectares. In line with this program, the tenants of Doronilla tilling portions of his property, who claimed their primary crops to be rice and/or corn, organized themselves into farmers' cooperatives or *Samahang Nayon*s and applied for certificates of land transfer (CLTs); and

(2) The DAR, to which the processed applications were forwarded, processed **106 CLTs** involving **100 tenants-beneficiaries** covering **73 hectares** out of the total 1,645 hectares of Lot 23. However, out of the 106 CLTs generated, only **75 CLTs had actually been distributed**.

Upon the issuance of Proclamation 1637 on April 18, 1977, on-going parcellary mapping, survey and other processing activities related to the Doronilla property were stopped.[8]

In 1978, the OSG, conformably with the directive embodied in LOI 625, filed with the then Court of First Instance (CFI) of Rizal an expropriation complaint against the Doronilla property. Meanwhile, on June 6, 1979, Doronilla issued a Certification,[9] copy furnished the Agrarian Reform Office, among other agencies, listing seventy-nine (79) "bona fide planters" he allegedly permitted to occupy a portion of his land. On September 9, 1987 or nine (9) years after it commenced expropriation proceedings, the OSG moved[10] for and secured, per the Rizal CFI Order[11] dated September 18, 1987, the dismissal of the expropriation case.

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[8] *Rollo* (G.R. No. 161796), p. 74.

[9] *Rollo* (G.R. No. 161830), p. 292.

[10] *Id.* at 361.

[11] *Id*.

Earlier, or on March 15, 1983, J. Amado Araneta, now deceased, acquired ownership of the subject Doronilla property by virtue of court litigation. A little over a week later, he had OCT No. 7924 canceled and secured the issuance of Transfer Certificate of Title (TCT) No. N-70860 in his name.

On July 22, 1987, then President Corazon C. Aquino issued Proclamation No. 131 instituting the *Comprehensive Agrarian Reform Program* (CARP). Thereafter, then DAR Undersecretary Jose C. Medina, in a memorandum of March 10, 1988, ordered the Regional Director of DAR Region IV to proceed with the OLT coverage and final survey of the Doronilla property.[12] Republic Act No. (RA) 6657, otherwise known as the *Comprehensive Agrarian Reform Law* (CARL)[13] of 1988, was then enacted, and took effect on June 15, 1988.

On July 27, 1989, Jorge L. Araneta, as heir of J. Amado Araneta and administrator of his estate, wrote the DAR Secretary requesting approval, for reasons stated in the covering letter, of the conversion of Lot 23 from agricultural to commercial, industrial and other non-agricultural uses.[14] Appended to the letter were maps, location clearance and other relevant documents. Through Jorge L. Araneta, respondent Estate of J. Amado Araneta (Araneta or Araneta Estate) would, however, reiterate the conversion request owing to what it viewed as DAR's inaction on said request.

On December 12, 1989, DAR issued a "Notice of Acquisition" addressed to Doronilla, covering 7.53 hectares of the land now covered by TCT No. 216746 and offering compensation at a valuation stated in the notice.[15] Alarmed by the turn of events

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[12] *Rollo* (G.R. No. 161796), p. 353.

[13] Referred to also as the CARP law.

[14] *Rollo* (G.R. No. 161797), pp. 496-497.

[15] In part DOJ Opinion No. 181 reads: "2. As regards the second query, neither Proclamation No. 1283 nor Proclamation No, 1637, has been expressly repealed by R.A. No. 6657. Thus any allegation that the Proclamations have been superseded by R.A. 6657 must perforce be premised upon an inconsistency between them. But we do not see any repugnancy x x x. Administrative

whereby DAR was having its property, or a portion of it, surveyed, incidental to effecting compulsory land acquisition, the Araneta Estate addressed a letter[16] to DAR dated June 27, 1990, formally protesting the series of land surveys being conducted by the Bureau of Lands on what is now its property. It claimed that the CARL does not cover the said property, being part of the LS Townsite reservation, apart from being mountainous, with a slope of more than 70 degrees and containing commercial quantities of marble deposit. The Araneta Estate followed its protest letter with two (2) more letters dated June 20, 1990 and May 28, 1991, in which it reiterated its request for conversion, citing, for the purpose, Department of Justice (DOJ) Opinion No. 181, Series of 1990.[17]

On November 29, 1991, the Office of the Provincial Adjudication Board of Rizal set a hearing to determine the just compensation for the subject property, docketed as P.A. Case No. IV-Ri-0024-91. Notwithstanding Araneta's protest against the compulsory agrarian reform coverage and acquisition of the property in question, the Land Bank, nonetheless, proceeded to approve, on January 21, 1992, the land transfer claim (Claim No. EO-91-1266) covering 1,266 hectares. On February 26, 1992, Land Bank notified Araneta of its entitlement, upon its compliance with certain requirements, of the amount of PhP 3,324,412.05, representing just compensation for its covered parcels of land.[18]

Order No. 61, series of 1990 of the [DAR] (Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non Agricultural Uses) provides that said rules do not cover lands previously classified in town plans and zoning ordinances x x x. Since the lands covered by the two Proclamations in question have been reserved for townsite purposes x x x the same are not deemed 'aricultural lands' within the meaning and intent of Section 3(c) of R.A. 6657 and are beyond the purview of A.O. No. 61." Records, Vol. 1, p. 164.

[16] *Rollo* (G.R. No. 161796), pp. 494-495.

[17] *Id.* at 506-508.

[18] Records, Vol. 1, p. 39.

By September 25, 1990, some 1,200 emancipation patents (EPs) had been generated in favor of **912 farmer-beneficiaries** and TCTs derived from the EPs issued.[19]

It is upon the foregoing backdrop of events that Araneta, sometime in April 1992, filed with the DARAB an action against the DAR and Land Bank for *Cancellation of Compulsory Coverage under PD 27 and Exemption from CARL Coverage* of the erstwhile Doronilla property, docketed as DARAB Case No. DCN-JC-RIV-R12-026-CO.[20] Thereafter, DARAB turned over the case folder to the Rizal Provincial Agrarian Reform Adjudicator (PARAD) where the matter was re-docketed as PARAD Case No. IV-Ri-0057-92. Before the Rizal PARAD Office and with its leave, some 1,022 individuals affiliated with different farmer groups intervened and filed an answer-in-intervention,[21] joining a group of earlier intervenors led by one Anastacia Ferrer claiming to be EP grantees.

Save for Land Bank, all the parties subsequently submitted their respective position papers.

Ruling of the Regional Adjudicator

By Decision dated October 17, 1994,[22] Regional Agrarian Reform Adjudicator (RARAD) Fe Arche-Manalang ruled against Araneta, denying its bid to have its property excluded from OLT coverage and/or the compulsory scheme under CARL. The *fallo* of the RARAD's Decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Dismissing the petition for lack of merit;

2. Upholding the OLT coverage of the property described in Paragraph 1 of the Petition, pursuant to the provision of P.D. 27 as affirmed by E.O. 228 in relation to Section 7 of R.A. 6657;

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[19] *Rollo* (G.R. No. 161830), p. 189.

[20] *Rollo* (G.R. No. 161796), pp. 272-282.

[21] *Id.* at 453-472.

[22] *Rollo* (G.R. No. 161830), pp. 177-195.

3. Affirming the regularity of the OLT processing undertaken on the subject Property and sustaining the validity of the Transfer Certificates of Title emanating from the Emancipation Patents generated in favor of the Intervenors-awardees;

4. Directing the Respondent Land Bank of the Philippines to effect and release immediate payment to the Petitioner-Landowner under approved Land Transfer Claim No. EO-91-1266 dated February 3, 1992; and

5. Without pronouncement as to costs.

SO ORDERED.

Therefrom, Araneta appealed to the DARAB proper. The appeal was docketed as DARAB Case No. 4176. In due time, the DARAB, following the RARAD's line that the intervenor-appellees were deemed owners of the land they tilled as of October 21, 1972, rendered a Decision dated February 7, 2001[23] affirming *in toto* that of the RARAD's, disposing as follows:

WHEREFORE, premises considered, this Board hereby AFFIRMS the appealed decision *in toto* without pronouncement as to costs.

SO ORDERED.

Just like that of the RARAD, the DARAB ruling did not name individuals in whose favor the EPs were specifically generated, albeit, 86 were, per Our count, impleaded as "intervenor-appellees" in DARAB Case No. 4176.

Subsequently, Araneta went to the CA via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure on the stated principal issue of whether or not the DARAB in its appealed decision unduly expanded the scope of coverage of PD 27.

Ruling of the CA

By Decision of September 19, 2003, the CA, as earlier stated, set aside the Decision of the DARAB, in effect nullifying all the individual farm lots awards thus made by the DARAB ostensibly

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[23] *Id.* at 236-251.

in favor of the named intervenor-appellees and necessarily all other unnamed awardees. The decretal portion of the CA decision reads as follows:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE. The challenged Decision of the DARAB in DARAB Case No. 4176 (Reg. Case No. IV-RI-0057-92) is hereby ANNULLED and SET ASIDE. The DARAB is hereby ordered to reconvey to petitioner [Araneta] the subject portions of petitioner's property embraced in TCT No. N-70860, earlier awarded to intervenors-appellees under their individual EPs now covered by their respective certificates of title, in accordance with pertinent administrative issuances of DARAB.
>
> No pronouncement as to costs.
>
> SO ORDERED.

In the main, the CA predicated its reversal action on the interplay of the ensuing premises, juxtaposed with the pertinent pronouncements in the cited cases of *Natalia Realty, Inc. v. DAR*[24] and *Paris v. Alfeche*,[25] among other landmark agrarian cases, thus:

(1) Agricultural lands found within the boundaries of declared townsite reservations are reclassified for residential use. They ceased to be agricultural lands upon approval of their inclusion in the reservation, as in the case of agricultural lands situated within the LS Townsite reservation upon its establishment pursuant to Proclamation 1637.

(2) The processing of the OLT coverage of the Doronilla property was not completed prior to the passage of CARL or RA 6657; hence, the governing law should be RA 6657, with PD 27 and Executive Order No. (EO) 228[26] only having suppletory effect.

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[24] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

[25] G.R. No. 139083, August 30, 2001, 364 SCRA 110.

[26] "*Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by [PD] 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to [PD] 27; and Providing for the Management*

(3) Full payment of the cost of the land, inclusive of interest, is in every case considered a mandatory requirement prior to the transfer of the title to the farmer-beneficiary. Before that time, the term "subject to private rights, if any" found in Proclamation 1637 refers to the landowner's private rights. At the time Proclamation 1637 was issued, the farmer-beneficiaries of the Doronilla property have no "vested rights" yet under PD 27 to their allotted lot, as erroneously ruled by the DARAB.

(4) The DARAB, as the adjudicating arm of DAR, was divested of jurisdiction over the Araneta property upon its inclusion in the LS Townsite reservation by virtue of Proclamation 1637, as can be gleaned from LOI 625 which directed the implementation of Proclamation 1637.

From the foregoing decision, Land Bank, DAR/DARAB and Araneta separately moved for but were denied reconsideration by the appellate court in its Resolution of January 22, 2004.

In due time, Land Bank and DARAB/DAR interposed before the Court separate petitions for review.

On the other hand, in December 2009, or some six (6) years after the CA rendered its appealed judgment, Duran and eight others, as self-styled petitioners-intervenors, came to this Court on a petition for review under Rule 45. In a bid to justify the six-year hiatus between the two events, Duran, *et al*. claimed that, through the machinations of Araneta's counsel, they have been virtually kept in the dark about CA-G.R. SP No. 65822 and consequently were deprived of their right to appeal what turned out to be an adverse CA ruling. How the supposed deprivation came about, per Duran, *et al*.'s version, shall be explained shortly. Duran, *et al*. presently allege being EP holders over portions of the property in question, their rights to the patents having been decreed in the October 17, 1994 RARAD Decision, as affirmed by the DARAB.

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of Payment by the Farmer Beneficiary and Mode of Compensation by the Landowner," July 17, 1987.

The Issues

Apart from what it considers the appellate court's misapplication of the holdings in *Natalia Realty, Inc.* and *Paris*, Land Bank, in G.R. No. 161796,[27] ascribes to the CA the commission of serious errors of law:

1) When it gave retroactive effect or application to Proclamation Nos. 1283 & 1637 resulting in the negation of "full land ownership to qualified farmer-beneficiaries covered by P.D. No. 27 x x x."

2) When it gave imprimatur to the virtual conversion through Proclamation Nos. 1283 & 1637 of erstwhile agricultural lands to residential use without the requisite expropriation/ condemnation proceedings pursuant to LOI No. 625.

3) When it upheld the nullification of the CLTs and EPs in the name of farmer-beneficiaries through a mere collateral attack which is not allowed by law.

4) When it recognized respondent's alleged private right which had been reduced into a mere claim for just compensation upon promulgation or effectivity of P.D. No. 27 on October 21, 1972.

In G.R. No. 161830,[28] the DAR raises the following issues:

1) Whether the subject agricultural landholding is exempt from CARP coverage, being non-agricultural, pursuant to Proclamation Nos. 1283, as amended, over and above the statutory emancipation of the tenants from the bondage of the soil under P.D. No. 27;

2) Whether or not DAR was no longer possessed of jurisdiction over respondent Araneta's landholding after the same was included in the LS Townsite; and

3) Whether or not DAR should reconvey to Araneta the portion of its property that was subjected to OLT under P.D. 27.

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[27] *Rollo* (G.R. No. 161796), p. 32.

[28] *Rollo* (G.R. No. 161830), p. 15.

Aside from the procedural concerns articulated in their petition, the main substantive issue raised by Duran, *et al*. in G.R. No. 190456,[29] as outlined at the outset, revolves around the question, and its implication on their ownership rights over a portion of the subject estate, of whether or not the process of land reform was incomplete at the time of issuance of Proclamation 1637.

The different but oftentimes overlapping issues tendered in this consolidated recourse boil down to this relatively simple but pregnant question: whether or not the Doronilla, now the Araneta, property, in light of the issuance of the land reclassifying Proclamation 1283, as amended, is, as held by the CA, entirely outside the ambit of PD 27 and RA 6657, and, thus, excluded from compulsory agrarian reform coverage, unfettered by the private claim of the farmer-beneficiaries.

The Court's Ruling

We find the petitions partly meritorious.

Classification of the Doronilla Property

Several basic premises should be made clear at the outset. Immediately prior to the promulgation of PD 27 in October 1972, the 1,645-hectare Doronilla property, or a large portion of it, was indisputably agricultural, some parts devoted to rice and/or corn production tilled by Doronilla's tenants. Doronilla, in fact, provided concerned government agencies with a list of seventy-nine (79)[30] names he considered *bona fide* "planters" of his land. These planters, who may reasonably be considered tenant-farmers, had purposely, so it seems, organized themselves into *Samahang Nayon*(s) so that the DAR could start processing their applications under the PD 27 OLT program. CLTs were eventually generated covering 73 hectares, with about 75 CLTs

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[29] *Rollo* (G.R. No. 190456), p. 21.

[30] Annex "E" of Answer submitted by the Intervenors thru *Barangay* Chairwoman Anastacia S. Ferrer, Mascap, Rodriguez, Rizal, original records (DARAB Case No. 4176, Vol. 3).

actually distributed to the tenant-beneficiaries. However, upon the issuance of Proclamation 1637, "all activities related to the OLT were stopped."[31]

The discontinuance of the OLT processing was obviously DAR's way of acknowledging the implication of the townsite proclamation on the agricultural classification of the Doronilla property. It ought to be emphasized, as a general proposition, however, that the former agricultural lands of Doronilla—situated as they were within areas duly set aside for townsite purposes, by virtue particularly of Proclamation 1637—were converted for residential use. By the terms of *Natalia Realty, Inc.*, they would be exempt from land reform and, by necessarily corollary, beyond DAR's or DARAB's jurisdictional reach. Excerpts from *Natalia Realty, Inc.*:

> We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands*."
>
> Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivison cannot in any language be considered as 'agricultural lands.' **These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation**. x x x
>
> x x x x x x x x x
>
> Since the NATALIA lands were converted prior to 15, June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of CARL.[32] (Emphasis added; italics in the original.)

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[31] *Rollo* (G.R. No. 161796), p. 74.

[32] *Supra* note 24, at 282-284.

Guided by the foregoing doctrinal pronouncement, the key date to reckon, as a preliminary matter, is the precise time when Doronilla's Lot 23, now Araneta's property, ceased to be agricultural. This is the same crucial cut-off date for considering the existence of "private rights" of farmers, if any, to the property in question. This, in turn, means the date when Proclamation 1637 establishing LS Townsite was issued: April 18, 1977. From then on, the entire Lot 23 was, for all intents and purposes, considered residential, exempted ordinarily from land reform, albeit parts of the lot may still be actually suitable for agricultural purposes. Both the Natalia lands, as determined in *Natalia Realty, Inc.*, and the Doronilla property are situated within the same area covered by Proclamation 1637; thus, the principles regarding the classification of the land within the Townsite stated in *Natalia Realty, Inc.* apply *mutatis mutandis* to the instant case.

Applicability of PD 27, RA 6657 and Proclamation 1637 to the Doronilla Estate

From the standpoint of agrarian reform, PD 27, being in context the earliest issuance, governed at the start the disposition of the rice-and-corn land portions of the Doronilla property. And true enough, the DAR began processing land transfers through the OLT program under PD 27 and thereafter issued the corresponding CLTs. However, when Proclamation 1637 went into effect, DAR discontinued with the OLT processing. The tenants of Doronilla during that time desisted from questioning the halt in the issuance of the CLTs. It is fairly evident that DAR noted the effect of the issuance of Proclamation 1637 on the subject land and decided not to pursue its original operation, recognizing the change of classification of the property from agricultural to residential.

When it took effect on June 15, 1988, RA 6657 became the prevailing agrarian reform law. This is not to say, however, that its coming into effect necessarily impeded the operation of PD 27, which, to repeat, covers only rice and corn land. Far from it, for RA 6657, which identifies "rice and corn land" under PD 27 as among the properties the DAR shall acquire

and distribute to the landless,[33] no less provides that PD 27 shall be of suppletory application. We stated in *Land Bank of the Philippines v. Court of Appeals*, "We cannot see why Sec. 18 of R.A. 6657 should not apply to rice and corn lands under P.D. 27. Section 75 of R.A. 6657 clearly states that the provisions of P.D. 27 and E.O. 228 shall only have a suppletory effect."[34]

All told, the primary governing agrarian law with regard to agricultural lands, be they of private or public ownership and regardless of tenurial arrangement and crops produced, is now RA 6657. Section 3(c) of RA 6657 defines "agricultural lands" as "**lands devoted to agricultural activity as defined in the Act and not classified as mineral, forest, residential, commercial or industrial land**." The DAR itself refers to "agricultural lands" as:

> those devoted to agricultural activity as defined in RA 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential, commercial or industrial use.[35]

At the time of the effectivity of RA 6657 on June 15, 1998, the process of agrarian reform on the Doronilla property was, however, to reiterate, far from complete. In fact, the DAR sent out a Notice of Acquisition to Araneta only on December 12, 1989, after the lapse of around 12 years following its discontinuance of all activities incident to the OLT.

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[33] Sec. 7 of RA 6657 provides that the acquisition and distribution of rice and corn lands under PD 27 shall be a priority in the plan and program of the DAR.

[34] G.R. No. 128557, December 29, 1999, 321 SCRA 629, 641.

[35] DAR Administrative Order No. 1, Series of 1990, prescribing the Revised Rules and Regulations Governing Conversion of Private Agricultural lands to Non-Agricultural Uses.

Proclamation 1637, a martial law and legislative-powers issuance, partakes the nature of a law. In *Natalia Realty, Inc.*, the Court in fact considered and categorically declared Proclamation 1637 a special law, since it referred specifically to the LS Townsite Reservation.[36] As such, Proclamation 1637 enjoys, so *Natalia Realty, Inc.* intones, applying basic tenets of statutory construction, primacy over general laws, like RA 6657.

In light of the foregoing legal framework, the question that comes to the fore is whether or not the OLT coverage of the Doronilla property after June 15, 1988, ordered by DAR pursuant to the provisions of PD 27 and RA 6657, was still valid, given the classificatory effect of the townsite proclamation.

To restate a basic postulate, the provisions of RA 6657 apply only to agricultural lands under which category the Doronilla property, during the period material, no longer falls, having been effectively classified as residential by force of Proclamation 1637. It ceased, following *Natalia Realty, Inc.*, to be agricultural land upon approval of its inclusion in the LS Townsite Reservation pursuant to the said reclassifying presidential issuance. In this regard, the Court cites with approval the following excerpts from the appealed CA decision:

> **The above [*Natalia Realty, Inc.*] ruling was reiterated in *National Housing Authority vs. Allarde* where the Supreme Court held that lands reserved for, converted to, non-agricultural uses by government agencies other than the [DAR], prior to the effectivity of [RA] 6657 x x x are not considered and treated as agricultural lands and therefore, outside the ambit of said law**. The High Court declared that since the Tala Estate as early as April 26, 1971 was reserved, *inter alia*, under Presidential Proclamation No. 843, for the housing program of the [NHA], the same has been categorized as not being devoted to agricultural activity contemplated by Section 3(c) of R.A. No. 6657, and therefore outside the coverage of CARL.[37] (Emphasis supplied.)

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[36] *Supra* note 24, at 282.

[37] *Rollo* (G.R. No. 161796), p. 84.

"Private Rights" and Just Compensation as Payment

Unlike in *Natalia Realty, Inc.*, however, where pre-existing tenancy arrangement over the Natalia land, among other crucial considerations, was not part of the equation, this case involves farmers claiming before April 18, 1979 to be actual tenants of the rice and/or corn portion of the Doronilla property. The Court has, to be sure, taken stock of the fact that PD 27 ordains the emancipation of tenants and "deems" them owners of the rice and corn lands they till as of October 21, 1972. The following provisions of the decree have concretized this emancipation and ownership policy:

> This [decree] shall apply to tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy, whether classified as landed estate or not;
>
> The tenant farmer x x x **shall be deemed owner** of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated. (Emphasis added.)

Complementing PD 27 is EO 228, Series of 1987, Sec. 1 of which states, "All qualified farmer beneficiaries are now **deemed full owners** as of October 21, 1972 of the land they acquired by virtue of Presidential Decree No. 27." (Emphasis supplied.)

Petitioners DAR, Land Bank and Duran, *et al*. uniformly maintain that the PD 27 tenant-beneficiaries have acquired "vested rights" over the lands they tilled as of October 21, 1972 when the decree took effect. Pursuing this point, they argue that, as of that date, the farmer-beneficiaries were "deemed owners" of what was to be Araneta's property, and the issuance of Proclamation 1637 did not alter the legal situation.

The CA, however, was of a different mind, predicating its stance on the following:

> Since actual title remained with the landowner Alfonso Doronilla at the time Presidential Proclamation No. 1637 was issued in 1977, it follows that **it is the "private rights" of such owner which are contemplated by the exemption declared in said proclamation**. Definitely, the proviso "subject to private rights"

could not refer to the farmer-tenants the process of land reform having just been commenced with the filing of their application with the DAR. The conclusion finds support in a similar proclamation covering the Baguio Townsite Reservation. Our Supreme Court in a case involving an application for registration of lots situated within the Baguio Townsite Reservation cited the decision dated November 13, 1922 of the Land Registration Court in Civil Reservation No. 1, GLRO Record No. 211, which held that all lands within the Baguio Townsite are public land with the exception of (1) lands reserved for specific public uses and (2) *lands claimed and adjudicated as private property*. It is therefore in that sense that the term "private rights" under the subject proviso in Presidential Proclamation No. 1637 must be understood.[38] x x x (Emphasis added.)

In fine, the CA held that the "private rights" referred to in the proclamation pertained to the rights of the registered owner of the property in question, meaning Doronilla or Araneta, as the case may be.

The Court cannot lend full concurrence to the above holding of the appellate court and the consequent wholesale nullification of the awards made by the DARAB.

The facts show that several farmer-beneficiaries received 75 CLTs prior to the issuance of Proclamation 1637 on June 21, 1974. The 75 CLTs seemingly represent the first batch of certificates of *bona fide* planting rice and corn. These certificates were processed pursuant to the OLT program under PD 27. It bears to stress, however, that the mere issuance of the CLT does not vest on the recipient-farmer-tenant ownership of the lot described in it. At best, the certificate, in the phraseology of *Vinzons-Magana v. Estrella*,[39] "merely evidences the government's recognition of the grantee as the party qualified to avail of the statutory mechanisms for the acquisition of ownership of the land [tilled] by him as provided under [PD] 27."

The clause "**now deemed full owners as of October 21, 1972**" could not be pure rhetoric, without any beneficial effect

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[38] *Id.* at 86.

[39] G.R. No. 60269, September 13, 1991, 201 SCRA 536, 540.

whatsoever descending on the actual tillers of rice and/or corn lands, as the appealed decision seems to convey. To Us, the clause in context means that, with respect to the parcel of agricultural land covered by PD 27 and which is under his or her tillage, the farmer-beneficiary *ipso facto* acquires, by weight of that decree, ownership rights over it. That ownership right may perhaps not be irrevocable and permanent, nay vested, until the tenant-farmer shall have complied with the amortization payments on the cost of the land and other requirements exacted in the circular promulgated to implement PD 27. *Vinzons-Magana* holds:

> This Court has therefore clarified that it is only compliance with the prescribed conditions which entitled the farmer/grantee to an emancipation patent by which he acquires the vested right of absolute ownership in the landholding—a right which has become fixed and established and is no longer open to doubt and controversy.[40] x x x

Said ownership right is, nonetheless, a statutory right to be respected.

Plainly enough then, the farmer-beneficiaries *vis-à-vis* the PD 27 parcel they till, especially that brought within the coverage of OLT under PD 27, own in a sense the lot which they can validly set up against the original owners notwithstanding the fact that the latter have not yet been paid by Land Bank and/or even if the farmers have not yet fully paid their amortization obligation to the Land Bank, if that be the case. After all, the former landowners, by force of PD 27, is already divested of their ownership of the covered lot, their right to payment of just compensation or of the un-amortized portion payable by Land Bank[41] being assured under EO 228 and RA 6657.

If only to stress, while the PD 27 tenant-farmers are considered the owners by virtue of that decree, they cannot yet exercise all

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[40] *Id.* at 541.

[41] The Land Bank, under PD 251 dated July 21, 1973, has assumed the task of financing land reform by paying the old owners and reimbursing itself by collecting from the tenant-owners.

the attributes inherent in ownership, such as selling the lot, because, with respect to the government represented by DAR and LBP, they have in the meantime only inchoate rights in the lot—the being "amortizing owners." This is because they must still pay all the amortizations over the lot to Land Bank before an EP is issued to them. Then and only then do they acquire, in the phraseology of *Vinzons-Magana*, "the vested right of absolute ownership in the landholding."

This brings us to the question, to whom does "private rights" referred to in Proclamation 1637 pertain? Absent any agrarian relationship involving the tract of lands covered by the proclamation, We can categorically state that the reference is to the private rights of the registered lot owner, in this case Doronilla and subsequently, Araneta. But then the reality on the ground was that the Araneta property or at least a portion was placed under OLT pursuant to PD 27 and subject to compulsory acquisition by DAR prior to the issuance of Proclamation 1637 on June 21, 1974, and 75 CLTs were also issued to the farmer-beneficiaries. Stated a bit differently, before Proclamation 1637 came to be, there were already PD 27 tenant-farmers in said property. In a very real sense, the "private rights" belong to these tenant-farmers. Since the said farmer-beneficiaries were **deemed owners** of the agricultural land awarded to them as of October 21, 1972 under PD 27 and subsequently deemed **full owners** under EO 228, the logical conclusion is clear and simple: the township reservation established under Proclamation 1637 must yield and recognize the "deemed ownership rights" bestowed on the farmer-beneficiaries under PD 27. Another way of looking at the situation is that these farmer-beneficiaries are subrogated in the place of Doronilla and eventual transferee Araneta.

To Us, the private rights referred to in Proclamation 1637 means those of the farmer-beneficiaries who were issued the 75 CLTs. As to them, farm lots are EXCLUDED from the coverage of Proclamation 1637 and are governed by PD 27 and subsequently RA 6657.

With respect to **the 912 farmer-beneficiaries who were issued around 1,200 EPs** as a result of the **DAR Notice of Acquisition dated December 12, 1989**, We are constrained to affirm the CA ruling invalidating the individual lot awarded to them. Obviously, they are not rice/corn land tenant-farmers contemplated in PD 27. They do not possess the rights flowing from the phrase "deemed owner as of October 21, 1972." In this regard, the Court notes only too distinctly that Doronilla no less only named some 79 individuals as coming close to being legitimate PD 27 tenant-farmers of Lot 23. We reiterate the ensuing pronouncement in *Natalia Realty, Inc.*, as cited by the CA, that agricultural lands reclassified as a residential land are outside the ambit of compulsory acquisition under RA 6657 ought to be brought to bear against the 912 farmer-beneficiaries adverted to:

The issue of whether such lands of the Lungsod Silangan Townsite are covered by the Comprehensive Agrarian Reform Law of 1988, the Supreme Court categorically declared, *viz*:

> We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that CARL shall 'cover, regardless of tenurial agreement and commodity produced, all public and private agricultural lands.' As to what constitutes '*agricultural land,*' it is referred to as 'land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land.*' The deliberations of the Constitutional Commission confirm this limitation. 'Agricultural lands' are only those lands which are 'arable and suitable agricultural lands' and *do not include commercial, industrial and residential lands.*'
>
> "Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as 'agricultural lands.' These lots were intended for residential use. *They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation*. Even today, the areas in question continued to be developed as a low-cost housing subdivision, albeit at a snail's pace. x x x
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> "*Indeed, lands not devoted to agricultural activity are outside the coverage of CARL*. These include lands previously

converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR. In its Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses, DAR itself defined 'agricultural land; thus —

'x x x *Agricultural land refers* to those devoted to agricultural activity as defined in R.A. 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and *not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to June 15, 1988 for residential,* commercial or industrial use..'

"Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within the coverage of CARL.

"Be that as it may, the Secretary of Justice, responding to a query by the Secretary of Agrarian Reform noted in an Opinion that *lands covered by Presidential Proclamation No. 1637, inter alia, of which the NATALIA lands are part, having been reserved for townsite purposes 'to be developed as human settlements by the proper land and housing agency,' are not deemed 'agricultural lands' within the meaning and intent of Section 3 (c) of R.A. No. 6657.' Not being deemed 'agricultural lands,' they are outside the coverage of CARL."*[42]

Summarizing, the farmer-beneficiaries who were given the 75 CLTs prior to the issuance of Proclamation 1283, as amended by Proclamation 1637, are deemed full owners of the lots covered by 75 CLTs *vis-à-vis* the real registered owner. The farmer-beneficiaries have private rights over said lots as they were deemed owners prior to the establishment of the LS Townsite reservation or at least are subrogated to the rights of the registered lot owner. Those farmer-beneficiaries who were issued CLTs

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[42] *Rollo* (G.R. No. 161796), pp. 83-84; citing *Natalia Realty, Inc.*, *supra* note 24, at 282-284.

or EPs after June 21, 1974 when Proclamation 1283, as amended, became effective do not acquire rights over the lots they were claiming under PD 27 or RA 6657, because the lots have already been reclassified as residential and are beyond the compulsory coverage for agrarian reform under RA 6657. Perforce, the said CLTs or EPs issued after June 21, 1974 have to be annulled and invalidated for want of legal basis, since the lots in question are no longer subject to agrarian reform due to the reclassification of the erstwhile Doronilla estate to non-agricultural purposes.

Power of Reclassification of Land

Petitioners DAR and Land Bank ascribe error on the CA in giving Proclamation 1637, an administrative issuance, preference and weight over PD 27, a law. As argued, it is basic that, in the hierarchy of issuances, a law has greater weight than and takes precedence over a mere administrative issuance.

Petitioners' contention may be accorded some measure of plausibility, except for the fact that it ignores a basic legal principle: that the power to classify or reclassify lands is essentially an executive prerogative,[43] albeit local government units, thru zoning ordinances, may, subject to certain conditions, very well effect reclassification of land use within their respective territorial jurisdiction.[44] Reclassification decrees issued by the executive department, through its appropriate agencies, carry the same force and effect as any statute. As it were, PD 27 and Proclamation 1637 are both presidential issuances, each forming, by virtue of Sec. 3(2), Article XVII of the 1973 Constitution, a part of the law of the land. Sec. 3(2), Art. XVII of the 1973 Constitution provides that:

[A]ll **proclamations, orders, decrees**, instructions, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and **shall remain valid, legal, binding**

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[43] *Bureau of Forestry v. Court of Appeals*, No. L-37995, August 31, 1987, 153 SCRA 351, 357.

[44] *Advincula-Velasquez v. Court of Appeals*, G.R. Nos. 111387 & 127497, June 8, 2004, 431 SCRA 165, 186-187.

and effective even after the lifting of Martial Law or the ratification of this Constitution unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions or unless expressly or impliedly modified or repealed by the regular *Batasang Pambansa*. (Emphasis supplied.)

While not determinative of the outcome of this dispute, the Court has, in *Agrarian Reform Beneficiaries Association* (*ARBA*) *v. Nicolas*,[45] held that the principles enunciated in *Natalia Realty, Inc.* hold sway regardless of what non-agricultural use to which an agricultural land is converted. *ARBA*, in fine, declares that the *Natalia Realty, Inc.* ruling is not confined solely to agricultural lands located within the townsite reservations; it is also applicable to other agricultural lands converted to non-agricultural uses prior to the effectivity of the CARL. The land classifying medium that *ARBA* teaches is not limited solely to a proclamation, but may also involve a city ordinance.

Jurisdiction of DAR and its Adjudicating Arm

The DARAB has been created and designed to exercise the DAR's adjudicating functions.[46] And just like any quasi-judicial body, DARAB derives its jurisdiction from law, specifically RA 6657, which invested it with adjudicatory powers over agrarian reform disputes[47] and matters related to the implementation of CARL. We need not belabor that DARAB's jurisdiction over the subject matter, the Doronilla property, cannot be conferred by the main parties, let alone the intervening farmer-beneficiaries claiming to have "vested rights" under PD 27. As earlier discussed, the process of land reform covering the 1,266 hectares of the Araneta estate was not completed prior to the issuance of Proclamation 1637. So the intervenors, with the exception of the 79 tenant-beneficiaries who were granted CLTs, failed to

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[45] G.R. No. 168394, October 6, 2008, 567 SCRA 540, 553-554.

[46] *Vda. De Tangub v. Court of Appeals*, UDK No. 9864, December 3, 1990, 191 SCRA 885, 890.

[47] *Padunan v. DARAB*, G.R. No. 132163, January 28, 2003, 396 SCRA 196, 204.

acquire private rights of ownership under PD 27 before the effective conversion of the Doronilla property to non-agricultural uses. Hence, the Doronilla property, being outside of CARP coverage, is also beyond DARAB's jurisdiction.

The OSG's withdrawal of the expropriation suit on September 9, 1987 did not, as Land Bank posits, automatically restore the Doronilla property to its original classification nor did it grant DAR or DARAB the power or jurisdiction to order the compulsory acquisition of the property and to place it under CARP. And, as the CA aptly noted, the DOJ Secretary, through Opinion No. 181,[48] even advised the DAR Secretary that lands covered by Proclamation 1637, having been reserved for townsite purposes, are not deemed **"agricultural lands" within the meaning and intent of Sec. 3(c) of RA 6657 and, hence, outside the coverage of CARL**.[49] The Secretary of Justice further stated that RA 6657 did not supersede or repeal Proclamations 1283 and 1637 and they remain operative until now; their being townsite reservations still remain valid and subsisting. To clarify, a DOJ opinion carries only a persuasive weight upon the courts. However since this Court, in *Natalia Realty, Inc.*, cited with approval DOJ Opinion No. 181, such citation carries weight and importance as jurisprudence. Be that as it may, We recognize and apply the principles found in *Natalia Realty, Inc.* regarding the character of the Doronilla property being converted to a townsite and, thus, non-agricultural in character.

Worth mentioning at this juncture is the fact that DAR itself issued administrative circulars governing lands exempted from CARP. For instance, Administrative No. (AO) 3, Series of 1996, declares in its policy statement what categories of lands are outside CARP coverage and unequivocally states that properties not covered by CARP shall be reconveyed to the original transferors or owners. Significantly, AO 3 defines lands not so

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[48] By then Secretary of Justice Franklin M. Drilon.

[49] Opinion No. 181 was also cited favorably in the *Natalia Realty Realty, Inc.* regarding the lack of jurisdiction of the DAR over the subject property.

covered as "**property determined to be exempted from CARP coverage pursuant to [DOJ] Opinion Nos. 44 and 181**" and "**where Presidential Proclamation has been issued declaring the subject property for certain uses other than agricultural**." Said policy of the DAR, as explained in the CA Decision,[50] should be "applied and upheld in cases where the DAR had erroneously ordered the compulsory acquisition of the lands found outside CARP coverage." This is true with the case at bar due to the fact that Proclamation 1283, as amended by Proclamation 1637, had effectively reclassified respondent's land as "residential."

To address erroneous compulsory coverage or acquisition of non-agricultural lands or agricultural lands subject of retention, especially where Certificates of Land Ownership Award (CLOAs) or EPs have been generated, the said AO itself provides the mechanism/remedy for the reconveyance of lots thus covered or acquired, *viz*:

> 1. The Emancipation Patents (EPs) or Certificate of Land Ownership Awards (CLOAs) already generated for landholdings to be reconveyed shall have to be cancelled first pursuant to Administrative Order No. 02, Series of 1994 prior to the actual reconveyance. The cancellation shall either be through administrative proceedings in cases where the EP/CLOA has not yet been registered with the ROD or through quasi-judicial proceedings in cases where the said EP/CLOA has already been registered.[51]

Given the foregoing perspective, private petitioners' lament about the injustice done to them due to the cancellation of their EPs or CLOAs, as the case may be, is specious at best, for those EPs or CLOAs were generated or granted based on the invalid order by DAR for the inclusion of the bulk of the Doronilla property under PD 27 and CARP.

With Respect to Petitioners-Intervenors Duran, *et al*.

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[50] *Rollo* (G.R. No. 161796), pp. 88-89.

[51] AO 3, paragraph 3(II).

In their petition for intervention filed before Us on December 17, 2009, Duran, *et al*. claim that Atty. Lara, the counsel who won their case before the DARAB, passed away on March 6, 1995.[52] They bemoan the fact that due to his death, which was unbeknownst to them at that time, they were not able to receive a copy of, thus are not bound by, the CA Decision dated September 19, 2003. They blame Araneta for this unfortunate incident, alleging, "[S]ix years after Atty. Lara died, the Estate of J. Amado Araneta x x x filed a Petition for Review [of the DARAB's decision] before the Court of Appeals. x x x The Araneta estate faked and feigned the service of its Petition upon Atty. Lara and the farmers by registered mail with the Explanation 'unavailability of messenger.' "[53] On the basis of the foregoing premises, Duran, *et al*. pray to be allowed to intervene in the instant case and admit their petition for review.

In its Comment (with motion to exclude) on intervenors' petition for review, Araneta stated the observation that if a handling lawyer dies, it is the that lawyer's client who is in the better position to know about the former's death, not his adversary or the court. Assuming that court notices and pleadings continued to be sent and delivered to Atty. Lara even after his death, at his given address, the comment added, it was intervenors' fault.[54] And in support of the motion to exclude, Araneta draws attention to the rule governing how intervention is done, *i.e.*, via a motion with a pleading-in- intervention attached to it. Exclusion is also sought on the ground that the petition includes individuals who are long dead and parties who are not parties below.

We resolve to deny due course to the plea for intervention of Duran, *et al.*

As the records would show, the DARAB promulgated its Decision on February 7, 2001 or six (6) years **after** Atty. Lara died. Yet, intervening petitioners opted to make an issue only

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[52] Certificate of Death, *rollo* (G.R. No. 190456), p. 128.

[53] *Id.* at 5.

[54] *Id.* at 371.

with respect about their inability, due to Atty. Lara's death, to receive the adverse CA Decision, but curiously not about the DARAB judgment favorable to them. Noticeably, in the instant petition, they only focused on questioning what they termed as the "malicious" failure of the Estate of Araneta to individually inform them of the filing of its petition for review with the CA. Nowhere can it be gleaned that they are questioning the failure of the CA and the DARAB to send copies of their respective decisions to them. Thus, the Court is at a loss to understand how Duran, *et al.* can insinuate malice on the part of the Estate of Araneta's for its alleged failure to provide them with a copy of the CA decision and yet not have any problem with respect to the DARAB decision which they also failed to personally receive due to their counsel's demise.

While the fault clearly lies with Duran, *et al*. themselves, they found it convenient to point fingers. To be sure, they were remiss in their duty of coordinating with their counsel on the progress of their pending case. The constant communication link needed to be established between diligent clients and their attorney did not obtain in this case. It is not surprising, therefore, that Duran and his group only filed their instant petition 14 years after the death of their counsel, Atty. Lara. Parties cannot blame their counsel for negligence when they themselves were guilty of neglect.[55] Relief cannot be granted to parties who seek to be relieved from the effects of a judgment when the loss of the remedy was due to their own negligence.[56] Equity serves the vigilant and not those who slumber on their rights.[57] Duran, *et al*., as are expected of prudent men concerned with their ordinary affairs, should have had periodically touched base at least to be apprised with the status of their case. Judiciousness in this regard would have alerted them about their counsel's

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[55] *Amatorio v. People*, G.R. No. 150453, February 14, 2003, 397 SCRA 445, 455.

[56] *Ampo v. Court of Appeals*, G.R. No. 169091, February 16, 2006, 482 SCRA 562, 568.

[57] *Id.* at 567.

death, thus enabling them to take the necessary steps to protect their claimed right and interest in the case.

As Araneta aptly suggested in its Comment on the petition for review-in-intervention, it is Duran, *et al.*, as clients, not the court or their adversary, who are in a better position or at least expected to know about their lawyer's death due to the nature of a client-lawyer relationship. And knowing, fair play demands that the client accordingly advises the court and the adverse party about the fact of death. It is not for the appellate court or respondent Araneta to inquire why service of court processes or pleadings seemingly remained unacted by Atty. De Lara and/or his clients.

The long inaction of Duran, *et al*. to assert their rights over the subject case should be brought to bear against them. Thus, We held in *Esmaquel v. Coprada*:[58]

> Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.

There can be little quibble about Duran, *et al*. being guilty of laches. They failed and neglected to keep track of their case with their lawyer for 14 long years. As discussed above, Atty. Lara died even prior to the promulgation of the DARAB Decision. Even then, they failed to notify the DARAB and the other parties of the case regarding the demise of Atty. Lara and even a change of counsel. It certainly strains credulity to think that literally no one, among those constituting the petitioning-intervenors,

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[58] G.R. No. 152423, December 15, 2010, 638 SCRA 428, 439.

had the characteristic good sense of following up the case with their legal counsel. Only now, 14 years after, did some think of fighting for the right they slept on. Thus, as to them, the CA Decision is deemed final and executory based on the principle of laches.

Agrarian reform finds context in social justice in tandem with the police power of the State. But social justice itself is not merely granted to the marginalized and the underprivileged. But while the concept of social justice is intended to favor those who have less in life, it should never be taken as a toll to justify let alone commit an injustice. To borrow from Justice Isagani A. Cruz:

> [S]ocial justice—or any justice for that matter—is for the deserving whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in a case of reasonable doubt, we are called upon to tilt the balance in favor of the poor simply because they are poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to eject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[59]

At any rate, all is not lost on the part of Duran and the other petitioners-intervenors. In the event that they belong to the group of 75 PD 27 tenant-farmers who, as earlier adverted, were awarded individual CLT covering parcels of lands described in the CLT, then it is just but fair and in keeping with the imperatives of social justice that their rights to the covered lots should be recognized and respected.

To the 912 holders of EPs, this decision might be a big let down. But then the facts and applicable laws and jurisprudence call for this disposition.

WHEREFORE, the petitions are hereby partly **DENIED.** The CA Decision dated September 19, 2003, as effectively

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[59] G.R. No. 86186, May 8, 1992, 208 SCRA 608, 616; cited in *Land Bank of the Philippines v. Court of Appeals*, G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149, 151.

reiterated in its Resolution of January 22, 2004 and April 2, 2004, is **AFFIRMED** with the modification that the 75 CLTs issued prior to the effectivity of Presidential Proclamation No. 1283 on June 21, 1974 are declared legal and valid. The other CLTs, EPs, CLOAs issued by DAR involving the subject property are hereby **CANCELED** and **NULLIFIED.**

The Land Bank and DAR are hereby ordered to **COMPUTE** the just compensation of the land subject of the 75 CLTs and **PAY** the just compensation to the Estate of J. Amado Araneta.

No pronouncement as to cost.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 165935. February 8, 2012]

BRIGHT MARITIME CORPORATION (BMC)/DESIREE P. TENORIO, *petitioners, vs.* **RICARDO B. FANTONIAL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; RESPONDENT'S MEDICAL CERTIFICATE DATED JANUARY 17, 2000, STAMPED WITH THE WORDS "FIT TO WORK," PROVES THAT RESPONDENT WAS MEDICALLY FIT TO LEAVE MANILA ON JANUARY 17, 2000 TO JOIN THE VESSEL M/V AUK IN GERMANY.— The Court has carefully reviewed the records of the case, and agrees with the Court of Appeals that respondent's Medical Certificate dated January 17, 2000, stamped with the words "FIT TO WORK," proves that respondent was medically fit to leave Manila on January 17, 2000 to join

the vessel M/V AUK in Germany. The Affidavit of Dr. Lyn dela Cruz-De Leon that respondent was declared fit to work only on January 21, 2000 cannot overcome the evidence in the Medical Certificate dated January 17, 2000, which already stated that respondent had "Class-B Non-Infectious Hepatitis-B," and that he was fit to work. The explanation given by Dr. Lyn dela Cruz-De Leon in her affidavit that the Medical Certificate was dated January 17, 2000, since it carries the date when they started to examine the patient per standard operating procedure, does not persuade as it goes against logic and the chronological recording of medical procedures. The Medical Certificate submitted as documentary evidence is proof of its contents, including the date thereof which states that respondent was already declared fit to work on January 17, 2000, the date of his scheduled deployment.

2. ID.; ID.; EMPLOYMENT CONTRACTS; WHEN PERFECTED.— An employment contract, like any other contract, is perfected at the moment (1) the parties come to agree upon its terms; and (2) concur in the essential elements thereof: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract, and (c) cause of the obligation. The object of the contract was the rendition of service by respondent on board the vessel for which service he would be paid the salary agreed upon. In this case, **the employment contract was perfected on January 15, 2000** when it was signed by the parties, respondent and petitioners, who entered into the contract in behalf of their principal, Ranger Marine S.A., thereby signifying their consent to the terms and conditions of employment embodied in the contract, and the contract was approved by the POEA on January 17, 2000. However, **the employment contract did not commence**, since petitioners did not allow respondent to leave on January 17, 2000 to embark the vessel M/V AUK in Germany on the ground that he was not yet declared fit to work on the day of departure, although his Medical Certificate dated January 17, 2000 proved that respondent was fit to work.

3. ID.; ID.; ID.; EVEN BEFORE THE START OF ANY EMPLOYER-EMPLOYEE RELATIONSHIP, CONTEMPORANEOUS WITH THE PERFECTION OF THE EMPLOYMENT CONTRACT WAS THE BIRTH OF CERTAIN RIGHTS AND OBLIGATIONS, THE BREACH

OF WHICH MAY GIVE RISE TO A CAUSE OF ACTION AGAINST THE ERRING PARTY.— In ***Santiago v. CF Sharp Crew Management, Inc.,*** the Court held that the employment contract did not commence when the petitioner therein, a hired seaman, was not able to depart from the airport or seaport in the point of hire; thus, no employer-employee relationship was created between the parties. Nevertheless, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. If the reverse happened, that is, the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; PETITIONER'S ACT OF PREVENTING RESPONDENT FROM LEAVING AND COMPLYING WITH HIS CONTRACT OF EMPLOYMENT CONSTITUTES BREACH OF CONTRACT FOR WHICH PETITIONER IS LIABLE FOR ACTUAL DAMAGES TO RESPONDENT FOR THE LOSS OF ONE-YEAR SALARY AS PROVIDED IN THE CONTRACT.— The Court agrees with the NLRC that a recruitment agency, like petitioner BMC, must ensure that an applicant for employment abroad is technically equipped and physically fit because a labor contract affects public interest. Nevertheless, in this case, petitioners failed to prove with substantial evidence that they had a valid ground to prevent respondent from leaving on the scheduled date of his deployment. While the POEA Standard Contract must be recognized and respected, neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason. Petitioners' act of preventing respondent from leaving and complying with his contract of employment constitutes breach of contract for which petitioner BMC is liable for actual damages to respondent for the loss of one-year salary as provided in the contract. The monthly salary stipulated in the contract is US$670, inclusive of allowance.

5. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WARRANTED IN CASE AT BAR.— The Court upholds the award of moral damages in the amount of ₱30,000.00, as the Court of Appeals correctly found that

petitioners' act was tainted with bad faith, considering that respondent's Medical Certificate stated that he was fit to work on the day of his scheduled departure, yet he was not allowed to leave allegedly for medical reasons. Further, the Court agrees with the Court of Appeals that petitioner BMC is liable to respondent for exemplary damages, which are imposed by way of example or correction for the public good in view of petitioner's act of preventing respondent from being deployed on the ground that he was not yet declared fit to work on the date of his departure, despite evidence to the contrary. Such act, if tolerated, would prejudice the employment opportunities of our seafarers who are qualified to be deployed, but prevented to do so by a manning agency for unjustified reasons. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. In this case, petitioner should be held liable to respondent for exemplary damages in the amount of ₱50,000.00, following the recent case of ***Claudio S. Yap v. Thenamaris Ship's Management, et al.***, instead of ₱10,000.00. The Court also holds that respondent is entitled to attorney's fees in the concept of damages and expenses of litigation. Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. Petitioners' failure to deploy respondent based on an unjustified ground forced respondent to file this case, warranting the award of attorney's fees equivalent to ten percent (10%) of the recoverable amount.

APPEARANCES OF COUNSEL

Mateo & Associates for petitioners.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 67571, dated

[1] Under Rule 45 of the Rules of Court.

October 25, 2004, reversing and setting aside the Decision of the National Labor Relations Commission (NLRC), and reinstating the Decision of the Labor Arbiter finding that respondent Ricardo B. Fantonial was illegally dismissed, but the Court of Appeals modified the award of damages.

The facts are as follows:

On January 15, 2000, a Contract of Employment[2] was executed by petitioner Bright Maritime Corporation (BMC), a manning agent, and its president, petitioner Desiree P. Tenorio, for and in behalf of their principal, Ranger Marine S.A., and respondent Ricardo B. Fantonial, which contract was verified and approved by the Philippine Overseas Employment Administration (POEA) on January 17, 2000. The employment contract provided that respondent shall be employed as boatswain of the foreign vessel M/V AUK for one year, with a basic monthly salary of US$450, plus an allowance of US$220. The contract also provided for a 90 hours per month of overtime with pay and a vacation leave with pay of US$45 per month.

Respondent was made to undergo a medical examination at the Christian Medical Clinic, which was petitioner's accredited medical clinic. Respondent was issued a Medical Certificate[3] dated January 17, 2000, which certificate had the phrase "FIT TO WORK" stamped on its lower and upper portion.

At about 3:30 p.m. of January 17, 2000, respondent, after having undergone the pre-departure orientation seminar and being equipped with the necessary requirements and documents for travel, went to the Ninoy Aquino International Airport upon instruction of petitioners. Petitioners told respondent that he would be departing on that day, and that a liaison officer would be delivering his plane ticket to him. At about 4:00 p.m., petitioners' liaison officer met respondent at the airport and told him that he could not leave on that day due to some defects in his medical certificate. The liaison officer instructed respondent to return to the Christian Medical Clinic.

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[2] Annex "B", records, p. 52.

[3] Annex "A", *id.* at 51.

Respondent went back to the Christian Medical Clinic the next day, and he was told by the examining physician, Dr. Lyn dela Cruz-De Leon, that there was nothing wrong or irregular with his medical certificate.

Respondent went to petitioners' office for an explanation, but he was merely told to wait for their call, as he was being lined-up for a flight to the ship's next port of call. However, respondent never got a call from petitioners.

On May 16, 2000, respondent filed a complaint against petitioners for illegal dismissal, payment of salaries for the unexpired portion of the employment contract and for the award of moral, exemplary, and actual damages as well as attorney's fees before the Regional Arbitration Branch No. 7 of the NLRC in Cebu City.[4]

In their Position Paper,[5] petitioners stated that to comply with the standard requirements that only those who meet the standards of medical fitness have to be sent on board the vessel, respondent was referred to their accredited medical clinic, the Christian Medical Clinic, for pre-employment medical examination on January 17, 2000, the same day when respondent was supposed to fly to Germany to join the vessel. Unfortunately, respondent was not declared fit to work on January 17, 2000 due to some medical problems.

Petitioners submitted the Affidavit[6] of Dr. Lyn dela Cruz-De Leon, stating that the said doctor examined respondent on January 17, 2000; that physical and laboratory results were all within normal limits except for the finding, after chest x-ray, of Borderline Heart Size, and that respondent was positive to Hepatitis B on screening; that respondent underwent ECG to check if he had any heart problem, and the result showed left axis deviation. Dr. De Leon stated that she requested for a Hepatitis profile, which was done on January 18, 2000; that on

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[4] The case was docketed as NLRC Case No. 7-05-0020-2000 OFW.

[5] Records, p. 17.

[6] Annex "B", *id.* at 24.

January 20, 2000, the result of the Hepatitis profile showed non-infectious Hepatitis B. Further, Dr. De Leon stated that respondent was declared fit to work only on January 21, 2000; however, the date of the Medical Certificate was January 17, 2000, which was the date when she started to examine the patient per standard operating procedure.

Petitioners argued that since respondent was declared fit to work only on January 21, 2000, he could not join the vessel anymore as it had left the port in Germany. Respondent was advised to wait for the next vacancy for boatswain, but he failed to report to petitioners' office, and he gave them an incorrect telephone number. During the mandatory conference/conciliation stage of this case, petitioners offered respondent to join one of their vessels, but he refused.

Petitioners further argued that they cannot be held liable for illegal dismissal as the contract of employment had not yet commenced based on Section 2 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Memorandum Circular No. 055-96), which states:

> SEC 2. COMMENCEMENT/DURATION OF CONTRACT
>
> A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.

Petitioners asserted that since respondent was not yet declared fit to work on January 17, 2000, he was not able to leave on the scheduled date of his flight to Germany to join the vessel. With his non-departure, the employment contract was not commenced; hence, there is no illegal dismissal to speak of. Petitioners prayed for the dismissal of the complaint.

On September 25, 2000, Labor Arbiter Ernesto F. Carreon rendered a Decision[7] in favor of respondent. The pertinent portion of the decision reads:

> Unarguably, the complainant and respondents have already executed a contract of employment which was duly approved by the POEA. There is nothing left for the validity and enforceability of the contract except compliance with what are agreed upon therein and to all their consequences. Under the contract of employment, the respondents are under obligation to employ the complainant on board M/V AUK for twelve months with a monthly salary of 450 US$ and 220 US$ allowance. The respondents failed to present plausible reason why they have to desist from complying with their obligation under the contract. The allegation of the respondents that the complainant was unfit to work is ludicrous. Firstly, the respondents' accredited medical clinic had issued a medical certificate showing that the complainant was fit to work. Secondly, if the complainant was not fit to work, a contract of employment would not have been executed and approved by the POEA.
>
> We are not also swayed by the argument of the respondents that since the complainant did not actually depart from Manila his contract of employment can be withdrawn because he has not yet commenced his employment. The commencement of the employment is not one of those requirements in order to make the contract of employment consummated and enforceable between the parties, but only as a gauge for the payment of salary. In this case, while it is true that the complainant is not yet entitled to the payment of wages because then his employment has not yet commenced, nevertheless, the same did not relieve the respondents from fulfilling their obligation by unilaterally revoking the contract as the same amounted to pre-termination of the contract without just or authorized cause perforce, we rule to be constitutive of illegal dismissal.
>
> Anent our finding of illegal dismissal, we condemn the respondent corporation to pay the complainant three (3) months salary and the refund of his placement fee, including documentation and other actual expenses, which we fixed at one month pay.
>
> The granted claims are computed as follows:

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[7] *Rollo,* pp. 45-48.

US$670 x 4 months US$ 2,680.00

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Bright Maritime Corporation to pay the complainant Ricardo Fantonial the peso equivalent at the time of actual payment of US$ 2,680.00.

The other claims and the case against respondent Desiree P. Tenorio are dismissed for lack of merit.[8]

Petitioners appealed the decision of the Labor Arbiter to the NLRC.

On May 31, 2001, the NLRC, Fourth Division, rendered a Decision[9] reversing the decision of the Labor Arbiter. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Ernesto F. Carreon, dated 25 September 2000, is SET ASIDE and a new one is entered DISMISSING the complaint of the complainant for lack of merit.

SO ORDERED.[10]

The NLRC held that the affidavit of Dr. Lyn dela Cruz-De Leon proved that respondent was declared fit to work only on January 21, 2000, when the vessel was no longer at the port of Germany. Hence, respondent's failure to depart on January 17, 2000 to join the vessel M/V AUK in Germany was due to respondent's health. The NLRC stated that as a recruitment agency, petitioner BMC has to protect its name and goodwill, so that it must ensure that an applicant for employment abroad is both technically equipped and physically fit because a labor contract affects public interest.

Moreover, the NLRC stated that the Labor Arbiter's decision ordering petitioners to refund respondent's placement fee and other actual expenses, which was fixed at one month pay in the

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[8] *Id.* at 46-48.

[9] *Id.* at 50-56.

[10] *Id.* at 56.

amount of US$670.00, does not have any bases in law, because in the deployment of seafarers, the manning agency does not ask the applicant for a placement fee. Hence, respondent is not entitled to the said amount.

Respondent filed a motion for reconsideration of the NLRC decision, which motion was denied in a Resolution[11] dated July 23, 2001.

Respondent filed a petition for *certiorari* before the Court of Appeals, alleging that the NLRC committed grave abuse of discretion in rendering the Decision dated May 31, 2001and the Resolution dated July 23, 2001.

On March 12, 2002, respondent's counsel filed a Manifestation with Motion for Substitution of Parties due to the death of respondent on November 15, 2001, which motion was granted by the Court of Appeals.

On October 25, 2004, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us REVERSING and SETTING ASIDE the May 31, 2001 Decision and the July 23, 2001 Resolution of the NLRC, Fourth Division, and REINSTATING the September 25, 2000 Decision of the Labor Arbiter with the modification that the placement fee and other expenses equivalent to one (1) month salary is deleted and that the private respondent Bright Maritime Corporation must also pay the amounts of ₱30,000.00 and ₱10,000.00 as moral and exemplary damages, respectively, to the petitioner.[12]

The Court of Appeals held that the NLRC, Fourth Division, acted with grave abuse of discretion in reversing the decision of the Labor Arbiter who found that respondent was illegally dismissed. It agreed with the Labor Arbiter that the unilateral revocation of the employment contract by petitioners amounted to pre-termination of the said contract without just or authorized cause.

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[11] *Id.* at 59-63.

[12] *Id.* at 43.

The Court of Appeals held that the contract of employment between petitioners and respondent had already been perfected and even approved by the POEA. There was no valid and justifiable reason for petitioners to withhold the departure of respondent on January 17, 2000. It found petitioners' argument that respondent was not fit to work on the said date as preposterous, since the medical certificate issued by petitioners' accredited medical clinic showed that respondent was already fit to work on the said date. The Court of Appeals stated, thus:

> Private respondent's contention, which was contained in the affidavit of Dr. Lyn dela Cruz-De Leon, that the Hepatitis profile was done only on January 18, 2000 and was concluded on January 20, 2000, is of dubious merit. For how could the said examining doctor place in the medical certificate dated January 17, 2000 the words "CLASS-B NON-Infectious Hepatitis" *(Rollo, p.* 17) if she had not conducted the hepatitis profile? Would the private respondent have us believe that its accredited physician would fabricate medical findings?
>
> It is obvious, therefore, that the petitioner had been fit to work on January 17, 2000 and he should have been able to leave for Germany to meet with the vessel M/V AUK, had it not been for the unilateral act by private respondent of preventing him from leaving. The private respondent was merely grasping at straws in attacking the medical condition of the petitioner just so it can justify its act in preventing petitioner from leaving for abroad.[13]

The Court of Appeals held that petitioners' act of preventing respondent from leaving for Germany was tainted with bad faith, and that petitioners were also liable to respondent for moral and exemplary damages.

Thereafter, petitioners filed this petition raising the following issues:

I

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED A SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT HELD THE PETITIONERS LIABLE FOR

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[13] *Id.* at 42.

ILLEGALLY TERMINATING THE PRIVATE RESPONDENT FROM HIS EMPLOYMENT.

II

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION IN SETTING ASIDE THE OVERWHELMING EVIDENCE SHOWING THAT THE PRIVATE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS SET BY THE POEA RULES REGARDING FITNESS FOR WORK.

III

WHETHER OR NOT THE HONORABLE APPELLATE COURT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AWARDED MONETARY BENEFITS TO THE PRIVATE RESPONDENT DESPITE THE PROVISION OF THE POEA [STANDARD EMPLOYMENT CONTRACT] TO THE CONTRARY.

IV

WHETHER OR NOT THE HONORABLE APPELLATE COURT COMMITTED SERIOUS ERROR WITH REGARD TO ITS FINDINGS OF FACTS, WHICH, IF NOT CORRECTED, WOULD CERTAINLY CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE PETITIONERS.[14]

The general rule that petitions for review only allow the review of errors of law by this Court is not ironclad.[15] Where the issue is shrouded by a conflict of factual perceptions by the lower court or the lower administrative body, such as the NLRC in this case, this Court is constrained to review the factual findings of the Court of Appeals.[16]

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[14] *Id.* at 21.

[15] *Alay sa Kapatid International Foundation, Inc. (AKAP) v. Dominguez*, G.R. No. 164198, June 15, 2007, 524 SCRA 719.

[16] *Id.* See also *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 314; *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, March 18, 2005, 453 SCRA 820, 826; *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 365.

Petitioners contend that the Court of Appeals erred in doubting the Affidavit of Dr. Lyn dela Cruz-De Leon, which affidavit stated that the Hepatitis profile of respondent was done only on January 18, 2000 and was concluded on January 20, 2000. Petitioners stated that they had no intention to fabricate or mislead the appellate court and the Labor Arbiter, but they had to explain the circumstances that transpired in the conduct of the medical examination. Petitioners reiterated that the medical examination was conducted on January 17, 2000 and the result was released on January 20, 2000. As explained by Dr. Lyn dela Cruz-De Leon, the date "January 17, 2000" was written on the medical examination certificate because it was the day when respondent was referred and initially examined by her. The medical examination certificate was dated January 17, 2000 not for any reason, but in accordance with a generally accepted medical practice, which was not controverted by respondent.

Petitioners assert that respondent's failure to join the vessel on January 17, 2000 should not be attributed to it for it was a direct consequence of the delay in the release of the medical report. Respondent was not yet declared fit to work at the time when he was supposed to be deployed on January 17, 2000, as instructed by petitioners' principal. Respondent's fitness to work is a condition *sine qua non* for purposes of deploying an overseas contract worker. Since respondent failed to qualify on the date designated by the principal for his deployment, petitioners had to find a qualified replacement considering the nature of the shipping business where delay in the departure of the vessel is synonymous to demurrage/damages on the part of the principal and on the vessel's charterer. Without a clean bill of health, the contract of employment cannot be considered to have been perfected as it is wanting of an important requisite.

Based on the foregoing argument of petitioners, the first issue to be resolved is whether petitioners' reason for preventing respondent from leaving Manila and joining the vessel M/V AUK in Germany on January 17, 2000 is valid.

The Court rules in the negative.

The Court has carefully reviewed the records of the case, and agrees with the Court of Appeals that respondent's Medical Certificate[17] dated January 17, 2000, stamped with the words "FIT TO WORK," proves that respondent was medically fit to leave Manila on January 17, 2000 to join the vessel M/V AUK in Germany. The Affidavit of Dr. Lyn dela Cruz-De Leon that respondent was declared fit to work only on January 21, 2000 cannot overcome the evidence in the Medical Certificate dated January 17, 2000, which already stated that respondent had "Class-B Non-Infectious Hepatitis-B," and that he was fit to work. The explanation given by Dr. Lyn dela Cruz-De Leon in her affidavit that the Medical Certificate was dated January 17, 2000, since it carries the date when they started to examine the patient per standard operating procedure, does not persuade as it goes against logic and the chronological recording of medical procedures. The Medical Certificate submitted as documentary evidence[18] is proof of its contents, including the date thereof which states that respondent was already declared fit to work on January 17, 2000, the date of his scheduled deployment.

Next, petitioners contend that respondent's employment contract was not perfected pursuant to the POEA Standard Employment Contract, which provides:

> SEC 2. COMMENCEMENT/DURATION OF CONTRACT
>
> A. The **employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract**. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.[19]

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[17] Also referred to as Medical Examination Certificate by petitioners, records, p. 51.

[18] Rules of Court, Rule 130, Sec. 2. *Documentary evidence*. — Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents.

[19] Emphasis supplied.

Petitioners argue that, as ruled by the NLRC, since respondent did not actually depart from the Ninoy Aquino International Airport in Manila, no employer-employee relationship existed between respondent and petitioners' principal, Ranger Marine S.A., hence, there is no illegal dismissal to speak of, so that the award of damages must be set aside.

Petitioners assert that they did not conceal any information from respondent related to his contract of employment, from his initial application until the release of the result of his medical examination. They even tried to communicate with respondent for another shipboard assignment even after his failed deployment, which ruled out bad faith. They pray that respondent's complaint be dismissed for lack of merit.

Petitioners' argument is partly meritorious.

An employment contract, like any other contract, is perfected at the moment (1) the parties come to agree upon its terms; and (2) concur in the essential elements thereof: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract, and (c) cause of the obligation.[20] The object of the contract was the rendition of service by respondent on board the vessel for which service he would be paid the salary agreed upon.

Hence, in this case, **the employment contract was perfected on January 15, 2000** when it was signed by the parties, respondent and petitioners, who entered into the contract in behalf of their principal, Ranger Marine S.A., thereby signifying their consent to the terms and conditions of employment embodied in the contract, and the contract was approved by the POEA on January 17, 2000. However, **the employment contract did not commence**, since petitioners did not allow respondent to leave on January 17, 2000 to embark the vessel M/V AUK in Germany on the ground that he was not yet declared fit to work on the day of departure, although his Medical Certificate dated January 17, 2000 proved that respondent was fit to work.

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[20] *OSM Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 138193, March 5, 2003, 398 SCRA 606, 615.

In ***Santiago v. CF Sharp Crew Management, Inc.***,[21] the Court held that the employment contract did not commence when the petitioner therein, a hired seaman, was not able to depart from the airport or seaport in the point of hire; thus, no employer-employee relationship was created between the parties.

Nevertheless, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party.[22] If the reverse happened, that is, the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.[23]

The Court agrees with the NLRC that a recruitment agency, like petitioner BMC, must ensure that an applicant for employment abroad is technically equipped and physically fit because a labor contract affects public interest. Nevertheless, in this case, petitioners failed to prove with substantial evidence that they had a valid ground to prevent respondent from leaving on the scheduled date of his deployment. While the POEA Standard Contract must be recognized and respected, neither the manning agent nor the employer can simply prevent a seafarer from being deployed without a valid reason.[24]

Petitioners' act of preventing respondent from leaving and complying with his contract of employment constitutes breach of contract for which petitioner BMC is liable for actual damages to respondent for the loss of one-year salary as provided in the contract.[25] The monthly salary stipulated in the contract is US$670, inclusive of allowance.

The Court upholds the award of moral damages in the amount of ₱30,000.00, as the Court of Appeals correctly found that

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[21] G.R. No. 162419, July 10, 2007, 527 SCRA 165.

[22] *Id.* at 176.

[23] *Id*.

[24] *Id*.

[25] *Id*.

petitioners' act was tainted with bad faith,[26] considering that respondent's Medical Certificate stated that he was fit to work on the day of his scheduled departure, yet he was not allowed to leave allegedly for medical reasons.

Further, the Court agrees with the Court of Appeals that petitioner BMC is liable to respondent for exemplary damages,[27] which are imposed by way of example or correction for the public good in view of petitioner's act of preventing respondent from being deployed on the ground that he was not yet declared fit to work on the date of his departure, despite evidence to the contrary. Such act, if tolerated, would prejudice the employment opportunities of our seafarers who are qualified to be deployed, but prevented to do so by a manning agency for unjustified reasons. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[28] In this case, petitioner should be held liable to respondent for exemplary damages in the amount of ₱50,000.00,[29] following the recent case of ***Claudio S. Yap v. Thenamaris Ship's Management, et al.***,[30] instead of ₱10,000.00

The Court also holds that respondent is entitled to attorney's fees in the concept of damages and expenses of litigation.[31]

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[26] Civil Code, Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. *The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.* (Emphasis supplied.)

[27] Civil Code, Art. 2229. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[28] *German Marine Agencies, Inc. v. National Labor Relations Commission*, G.R. No. 142049, January 30, 2001, 350 SCRA 629, 648.

[29] *Claudio S. Yap v. Thenamaris Ship's Management, et al.*, G.R. No. 179532, May 30, 2011.

[30] *Id.*

[31] *Santiago v. CF Sharp Crew Management, Inc.*, *supra* note 21, at 179.

Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[32] Petitioners' failure to deploy respondent based on an unjustified ground forced respondent to file this case, warranting the award of attorney's fees equivalent to ten percent (10%) of the recoverable amount.[33]

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. SP No. 67571, dated October 25, 2004, is **AFFIRMED** with modification. Petitioner Bright Maritime Corporation is hereby **ORDERED** to pay respondent Ricardo B. Fantonial actual damages in the amount of the peso equivalent of US$8,040.00, representing his salary for one year under the contract; moral damages in the amount Thirty Thousand Pesos (₱30,000.00); exemplary damages that is increased from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00), and attorney's fees equivalent to ten percent (10%) of the recoverable amount.

Costs against petitioners.

SO ORDERED.

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

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[32] *Id.*

[33] *Claudio S. Yap v. Thenamaris Ship's Management, et al., supra* note 29; *Santiago v. CF Sharp Crew Management, Inc., supra* note 21, at 179.

SECOND DIVISION

[G.R. No. 171701. February 8, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MA. IMELDA "IMEE" R. MARCOS-MANOTOC, FERDINAND "BONGBONG" R. MARCOS, JR., GREGORIO MA. ARANETA III, IRENE R. MARCOS-ARANETA, YEUNG CHUN FAN, YEUNG CHUN HO, YEUNG CHUN KAM, and PANTRANCO EMPLOYEES ASSOCIATION (PEA)-PTGWO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; PHOTOCOPIED DOCUMENTS ARE IN VIOLATION OF THE RULE. — It is petitioner's burden to prove the allegations in its Complaint. For relief to be granted, the operative act on how and in what manner the Marcos siblings participated in and/or benefitted from the acts of the Marcos couple must be clearly shown through a preponderance of evidence. Should petitioner fail to discharge this burden, the Court is constrained and is left with no choice but to uphold the Demurrer to Evidence filed by respondents. First, petitioner does not deny that what should be proved are the contents of the documents themselves. It is imperative, therefore, to submit the original documents that could prove petitioner's allegations. Thus, the photocopied documents are in violation of Rule 130, Sec. 3 of the Rules of Court, otherwise known as the best evidence rule, which mandates that the evidence must be the original document itself. The origin of the best evidence rule can be found and traced to as early as the 18th century in *Omychund v. Barker*, wherein the Court of Chancery said: The judges and sages of the law have laid it down that **there is but one general rule of evidence,** ***the best that the nature of the case will admit.*** **The rule is, that if the writings have subscribing witnesses to them, they must be proved by those witnesses.** The first ground judges have gone upon in departing from strict rules, is an absolute strict necessity. *Secondly*, a presumed necessity. In the case of writings, subscribed by witnesses, if all are dead, the proof of one of their hands is

sufficient to establish the deed: where an original is lost, a copy may be admitted; if no copy, then a proof by witnesses who have heard the deed, and yet it is a thing the law abhors to admit the memory of man for evidence.

2. ID.; ID.; ID.; FACT THAT THE DOCUMENTS WERE COLLECTED BY THE PHILIPPINE COMMISSION ON GOOD GOVERNMENT (PCGG) IN THE COURSE OF ITS INVESTIGATION DOES NOT MAKE THEM *PER SE* PUBLIC RECORDS. — Petitioner did not even attempt to provide a plausible reason why the originals were not presented, or any compelling ground why the court should admit these documents as secondary evidence absent the testimony of the witnesses who had executed them. In particular, it may not insist that the photocopies of the documents fall under Sec. 7 of Rule 130, which states: *Evidence admissible when original document is a public record.* — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. xxx The fact that these documents were collected by the PCGG in the course of its investigations does not make them *per se* public records referred to in the quoted rule.

3. ID.; ID.; TESTIMONIAL EVIDENCE; TESTIMONIAL KNOWLEDGE; THE WITNESS PRESENTED CAN ONLY TESTIFY AS TO HOW THE PCGG OBTAINED CUSTODY OF DOCUMENTS, BUT NOT AS TO THE CONTENTS OF THE DOCUMENTS THEMSELVES. — Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.

4. ID.; ID.; ID.; AFFIDAVITS ARE GENERALLY REJECTED FOR BEING HEARSAY, UNLESS THE AFFIANTS THEMSELVES ARE PLACED ON THE WITNESS STAND TO TESTIFY THEREON. — Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

5. ID.; ID.; AUTHENTICATION AND PROOF OF DOCUMENTS; WHILE THE TRANSCRIPT OF STENOGRAPHIC NOTES (TSN) OF THE PROCEEDINGS BEFORE THE PCGG MAY BE CONSIDERED AS A PUBLIC DOCUMENT SINCE IT WAS TAKEN IN THE COURSE OF THE PCGG'S EXERCISE OF ITS MANDATE, IT WAS NOT ATTESTED TO BY THE LEGAL CUSTODIAN TO BE A CORRECT COPY OF THE ORIGINAL. — As to the copy of the TSN of the proceedings before the PCGG, while it may be considered as a public document since it was taken in the course of the PCGG's exercise of its mandate, it was not attested to by the legal custodian to be a correct copy of the original. This omission falls short of the requirement of Rule 132, Secs. 24 and 25 of the Rules of Court. x x x Thus, absent any convincing evidence to hold otherwise, it follows that petitioner failed to prove that the Marcos siblings and Gregorio Araneta III collaborated with former President Marcos and Imelda R. Marcos and participated in the first couple's alleged accumulation of ill-gotten wealth insofar as the specific allegations herein were concerned.

6. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS; IN ORDER TO REACH A FINAL DETERMINATION OF THE MATTERS

CONCERNING THE ESTATE OF FERDINAND MARCOS THE PRESENT CASE MUST BE MAINTAINED AGAINST RESPONDENTS IMELDA MARCOS AND FERDINAND "BONGBONG" R. MARCOS, JR., AS EXECUTORS OF THE MARCOS ESTATE PURSUANT TO THE RULES OF COURT. — Since the pending case before the Sandiganbayan survives the death of Ferdinand E. Marcos, it is imperative therefore that the estate be duly represented. The purpose behind this rule is the protection of the right to due process of every party to a litigation who may be affected by the intervening death. The deceased litigant is himself protected, as he continues to be properly represented in the suit through the duly appointed legal representative of his estate. On that note, we take judicial notice of the probate proceedings regarding the will of Ferdinand E. Marcos. In *Republic of the Philippines v. Marcos II*, we upheld the grant by the Regional Trial Court (RTC) of letters testamentary *in solidum* to Ferdinand R. Marcos, Jr. and Imelda Romualdez-Marcos as executors of the last will and testament of the late Ferdinand E. Marcos. Unless the executors of the Marcos estate or the heirs are ready to waive in favor of the state their right to defend or protect the estate or those properties found to be ill-gotten in their possession, control or ownership, then they may not be dropped as defendants in the civil case pending before the Sandiganbayan. Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those parties-in-interest without whom there can be no final determination of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Parties are indispensable if their interest in the subject matter of the suit and in the relief sought is inextricably intertwined with that of the other parties. In order to reach a final determination of the matters concerning the estate of Ferdinand E. Marcos – that is, the accounting and the recovery of ill-gotten wealth – the present case must be maintained against Imelda Marcos and herein respondent Ferdinand "Bongbong" R. Marcos, Jr., as executors of the Marcos estate pursuant to Sec. 1 of Rule 87 of the Rules of Court. According to this provision, actions may be commenced to recover from the estate, real or personal property, or an interest therein, or to enforce a lien thereon; and actions to recover damages for an injury to person or property, real or personal, may be commenced

against the executors. We also hold that the action must likewise be maintained against Imee Marcos-Manotoc and Irene Marcos-Araneta on the basis of the non-exhaustive list attached as Annex "A" to the Third Amended Complaint, which states that the listed properties therein were owned by Ferdinand and Imelda Marcos and their immediate family. It is only during the trial of Civil Case No. 0002 before the Sandiganbayan that there could be a determination of whether these properties are indeed ill-gotten or were legitimately acquired by respondents and their predecessors. Thus, while it was not proven that respondents conspired in accumulating ill-gotten wealth, they may be in possession, ownership or control of such ill-gotten properties or the proceeds thereof as heirs of the Marcos couple. Thus, their lack of participation in any illegal act does not remove the character of the property as ill-gotten and, therefore, as rightfully belonging to the State.

7. CIVIL LAW; SUCCESSION; RESPONDENT-HEIRS INSTANTANEOUSLY BECAME CO-OWNERS OF THE MARCOS PROPERTIES UPON THE DEATH OF THE FORMER PRESIDENT; REASONS WHY THE MARCOS SIBLINGS ARE MAINTAINED AS RESPONDENTS. — Under the rules of succession, the heirs instantaneously became co-owners of the Marcos properties upon the death of the President. The property rights and obligations to the extent of the value of the inheritance of a person are transmitted to another through the decedent's death. In this concept, nothing prevents the heirs from exercising their right to transfer or dispose of the properties that constitute their legitimes, even absent their declaration or absent the partition or the distribution of the estate. x x x In sum, the Marcos siblings are maintained as respondents, because (1) the action pending before the Sandiganbayan is one that survives death, and, therefore, the rights to the estate must be duly protected; (2) they allegedly control, possess or own ill-gotten wealth, though their direct involvement in accumulating or acquiring such wealth may not have been proven.

8. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE COMMISSION ON GOOD GOVERNMENT (PCGG); RECOVERY OF ILL-GOTTEN WEALTH CASES; THE ALLEGATIONS AGAINST RESPONDENTS YEUNG CHUNG KAM, YEUNG CHUN HO AND YEUNG CHUN

FAN THAT THEY ACTED AS DUMMIES OF THE MARCOSES IN ACQUIRING ILL-GOTTEN WEALTH ARE BASELESS. — It is worthy to note that respondents draw our attention to *American Inter-Fashion Corporation v. Office of the President* in which they contend that this Court considered the allegation of dollar salting as baseless. The cited case, however, finds no application herein as the former merely ruled that Glorious Sun was denied due process when it was not furnished by the Garments and Textile Export Board (GTEB) any basis for the cancellation of the export quota because of allegations of dollar salting. That Decision did not prevent petitioner from adducing evidence to support its allegation in Civil Case No. 0002 before the Sandiganbayan under a different cause of action. Nevertheless, the allegations against Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan in the case at bar were also proved to be baseless. Again, petitioner failed to illustrate how respondents herein acted as dummies of the Marcoses in acquiring ill-gotten wealth. This Court notes that the Complaint against the Yeungs alleges that the Marcoses used Glorious Sun — the garment company in which the Yeungs are controlling stockholders — for illegal dollar salting through the company's importation of denim fabrics from only one supplier at prices much higher than those being paid by other users of similar materials. Notably, no mention of De Soleil Apparel was made. To prove its allegations, petitioner submitted the controverted Exhibits "P", "Q", "R", "S", and "T". As earlier discussed in detail, these pieces of evidence were mere photocopies of the originals and were unauthenticated by the persons who executed them; thus, they have no probative value. Even the allegations of petitioner itself in its Petition for Review are bereft of any factual basis for holding that these documents undoubtedly show respondents' participation in the alleged dollar salting.

9. LEGAL ETHICS; ATTORNEYS; PUBLIC PROSECUTORS; SHOULD SERVE WITH COMPETENCE AND DILIGENCE. — As earlier adverted to, the best evidence rule has been recognized as an evidentiary standard since the 18th century. For three centuries, it has been practiced as one of the most basic rules in law. It is difficult to conceive that one could have finished law school and passed the bar examinations without knowing such elementary rule. Thus, it is deeply disturbing

that the PCGG and the Office of the Solicitor General (OSG) — the very agencies sworn to protect the interest of the state and its people — could conduct their prosecution in the manner that they did. To emphasize, the PCGG is a highly specialized office focused on the recovery of ill-gotten wealth, while the OSG is the principal legal defender of the government. The lawyers of these government agencies are expected to be the best in the legal profession. However, despite having the expansive resources of government, the members of the prosecution did not even bother to provide any reason whatsoever for their failure to present the original documents or the witnesses to support the government's claims. Even worse was presenting in evidence a photocopy of the TSN of the PCGG proceedings instead of the original, or a certified true copy of the original, which the prosecutors themselves should have had in their custody. Such manner of legal practice deserves the reproof of this Court. We are constrained to call attention to this apparently serious failure to follow a most basic rule in law, given the special circumstances surrounding this case. The public prosecutors should employ and use all government resources and powers efficiently, effectively, honestly and economically, particularly to avoid wastage of public funds and revenues. They should perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. The basic ideal of the legal profession is to render service and secure justice for those seeking its aid. In order to do this, lawyers are required to observe and adhere to the highest ethical and professional standards. The legal profession is so imbued with public interest that its practitioners are accountable not only to their clients, but to the public as well. The public prosecutors, aside from being representatives of the government and the state, are, first and foremost, officers of the court. They took the oath to exert every effort and to consider it their duty to assist in the speedy and efficient administration of justice. Lawyers owe fidelity to the cause of the client and should be mindful of the trust and confidence reposed in them. Hence, should serve with competence and diligence.

10. ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO ADHERE TO SOMETHING BASIC AS THE BEST EVIDENCE RULE RAISES SERIOUS DOUBTS ON THE

LEVEL AND QUALITY OF EFFORT GIVEN TO THE GOVERNMENT'S CAUSE. — We note that there are instances when this Court may overturn the dismissal of the lower courts in instances when it is shown that the prosecution has deprived the parties their due process of law. In *Merciales v. Court of Appeals,* we reversed the Decision of the RTC in dismissing the criminal case for rape with homicide. In that case, it was very apparent that the public prosecutor violated the due process rights of the private complainant owing to its blatant disregard of procedural rules and the failure to present available crucial evidence, which would tend to prove the guilt or innocence of the accused therein. Moreover, we likewise found that the trial court was gravely remiss in its duty to ferret out the truth and, instead, just "passively watched as the public prosecutor bungled the case." However, it must be emphasized that *Merciales* was filed exactly to determine whether the prosecution and the trial court gravely abused their discretion in the proceedings of the case, thus resulting in the denial of the offended party's due process. Meanwhile, the present case merely alleges that there was an error in the Sandiganbayan's consideration of the probative value of evidence. We also note that in *Merciales*, both the prosecution and the trial court were found to be equally guilty of serious nonfeasance, which prompted us to remand the case to the trial court for further proceedings and reception of evidence. *Merciales* is thus inapplicable to the case at bar. Nevertheless, given the particular context of this case, the failure of the prosecution to adhere to something as basic as the best evidence rule raises serious doubts on the level and quality of effort given to the government's cause. Thus, we highly encourage the Office of the President, the OSG, and the PCGG to conduct the appropriate investigation and consequent action on this matter.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Robert Sison and *Mendoza Dizon Purugganan and Partners Law Offices* for Irene Marcos-Araneta and Gregorio Araneta.

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan.

Marcos Ochoa Serapio & Tan Law Firm for Ferdinand R. Marcos, Jr.

D E C I S I O N

SERENO, *J.*:

Before this Court is a Petition for Review filed by the Republic of the Philippines assailing the Resolutions[1] issued by the Sandiganbayan in connection with an alleged portion of the Marcoses' supposed ill-gotten wealth.

This case involves ₱200 billion of the Marcoses' alleged accumulated ill-gotten wealth. It also includes the alleged use of the media networks IBC-13, BBC-2 and RPN-9 for the Marcos family's personal benefit; the alleged use of De Soleil Apparel for dollar salting; and the alleged illegal acquisition and operation of the bus company Pantranco North Express, Inc. (Pantranco).

The Facts

After the EDSA People Power Revolution in 1986, the first executive act of then President Corazon C. Aquino was to create the Presidential Commission on Good Government (PCGG). Pursuant to Executive Order No. 1, the PCGG was given the following mandate:

> Sec. 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:
>
> (a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.
>
> (b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

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[1] Penned by Associate Justice Gregory S. Ong, with Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada, concurring; *rollo*, pp. 119-246.

(c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.

Sec. 3. The Commission shall have the power and authority:

(a) To conduct investigation as may be necessary in order to accomplish and carry out the purposes of this order.

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

(d) To enjoin or restrain any actual or threatened commission of facts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order.

(e) To administer oaths, and issue subpoena requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission.

(f) To hold any person in direct or indirect contempt and impose the appropriate penalties, following the same procedures and penalties provided in the Rules of Court.

(g) To seek and secure the assistance of any office, agency or instrumentality of the government.

(h) To promulgate such rules and regulations as may be necessary to carry out the purpose of this order.

Thus, numerous civil and criminal cases were subsequently filed. One of the civil cases filed before the Sandiganbayan to recover the Marcoses' alleged ill-gotten wealth was Civil Case No. 0002, now subject of this Petition.

On 16 July 1987, the PCGG, acting on behalf of the Republic and assisted by the Office of the Solicitor General (OSG), filed a Complaint for Reversion, Reconveyance, Restitution, Accounting and Damages against Ferdinand E. Marcos, who was later substituted by his estate upon his death; Imelda R. Marcos; and herein respondents Imee Marcos-Manotoc, Irene Marcos-Araneta, Bongbong Marcos, Tomas Manotoc, and Gregorio Araneta III.

On 1 October 1987, the PCGG filed an amended Complaint to add Constante Rubio as defendant.

Again on 9 February 1988, it amended the Complaint, this time to include as defendants Nemesio G. Co and herein respondents Yeung Chun Kam, Yeung Chun Ho, and Yeung Chun Fan.

For the third time, on 23 April 1990, the PCGG amended its Complaint, adding to its growing list of defendants Imelda Cojuangco, the estate of Ramon Cojuangco, and Prime Holdings, Inc.[2]

The PCGG filed a fourth amended Complaint, which was later denied by the Sandiganbayan in its Resolution dated 2 September 1998.

The allegations contained in the Complaint specific to herein respondents are the following:[3]

29. Defendants Imelda (IMEE) R. Marcos-Manotoc, Tomas Manotoc, Irene R. Manotoc (sic) Araneta, Gregorio Ma. Araneta III, and Ferdinand R. Marcos, Jr., actively collaborated, with Defendants Ferdinand E. Marcos and Imelda R. Marcos among others, in confiscating and/or unlawfully appropriating funds and other

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[2] *Rollo*, pp. 742-778.

[3] *Id.* at 763-765.

property, and in concealing the same as described above. In addition, each of the said Defendants, either by taking undue advantage of their relationship with Defendants Ferdinand E. Marcos and Imelda R. Marcos, or by reason of the above-described active collaboration, unlawfully acquired or received property, shares of stocks in corporations, illegal payments such as commissions, bribes or kickbacks, and other forms of improper privileges, income, revenues and benefits. Defendant Araneta in particular made use of Asialand Development Corporation which is included in Annex "A" hereof as corporate vehicle to benefit in the manner stated above.

31. Defendants Nemesio G. Co, Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan are the controlling stockholders of Glorious Sun Fashion Manufacturing Corporation (Phils.). Through Glorious Sun (Phils.), they acted as fronts or dummies, cronies or otherwise willing tools of spouses Ferdinand and Imelda Marcos and/or the family, particularly of Defendant Imelda (Imee) Marcos-Manotoc, in the illegal salting of foreign exchange[4] by importing denim fabrics from only one supplier — a Hong Kong based corporation which was also owned and controlled by defendant Hong Kong investors, at prices much higher than those being paid by other users of similar materials to the grave and irreparable damage of Plaintiff.

Thus, petitioner set forth the following causes of action in its Complaint:[5]

32. First Cause of Action: BREACH OF PUBLIC TRUST — A public office is a public trust. By committing all the acts described above, Defendants repeatedly breached public trust and the law, making them liable solidarily to Plaintiff. The funds and other property acquired by Defendants following, or as a result of, their breach of public trust, some of which are mentioned or described above, estimated to amount to ₱200 billion are deemed to have been acquired for the benefit of Plaintiff and are, therefore, impressed with

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[4] Presidential Decree No. 1883, Sec. 2 defines "salting of foreign exchange" as when any person engaged in the business of exporting underdeclares or undervalues his exports, either as to price or quantity, or any person engaged in the business of importation overvalues or overdeclares his importations, either as to price or quantity, for the purpose of salting and retaining foreign exchange abroad in violation of existing laws and Central Bank rules and regulations.

[5] *Rollo*, pp. 765-771.

constructive trust in favor of Plaintiff and the Filipino people. Consequently, Defendants are solidarily liable to restore or reconvey to Plaintiff all such funds and property thus impressed with constructive trust for the benefit of Plaintiff and the Filipino people.

33. Second Cause of Action: ABUSE OF RIGHT AND POWER —

(a) Defendants, in perpetrating the unlawful acts described above, committed abuse of right and power which caused untold misery, sufferings and damages to Plaintiff. Defendants violated, among others Articles 19, 20, and 21 of the Civil Code of the Philippines;

(b) As a result of the foregoing acts, Defendants acquired the title to the beneficial interest in funds and other property and concealed such title, funds and interest through the use of relatives, business associates, nominees, agents, or dummies. Defendants are, therefore, solidarily liable to Plaintiff to return and reconvey all such funds and other property unlawfully acquired by them estimated at TWO HUNDRED BILLION PESOS, or alternatively, to pay Plaintiff, solidarily, by way of indemnity, the damage caused to Plaintiff equivalent to the amount of such funds or the value of other property not returned or restored to Plaintiff, plus interest thereon from the date of unlawful acquisition until full payment thereof.

34. Third Cause of Action: UNJUST ENRICHMENT —

Defendants illegally accumulated funds and other property whose estimated value is ₱200 billion in violation of the laws of the Philippines and in breach of their official functions and fiduciary obligations. Defendants, therefore, have unjustly enriched themselves to the grave and irreparable damage and prejudice of Plaintiff. Defendants have an obligation at law, independently of breach of trust and abuse of right and power, and as an alternative, to solidarily return to Plaintiff such funds and other property with which Defendants, in gross evident bad faith, have unjustly enriched themselves or, in default thereof, restore to Plaintiff the amount of such funds and the value of the other property including those which may have been wasted, and/or lost estimated at ₱200 billion with interest thereon from the date of unlawful acquisition until full payment thereof.

35. Fourth Cause of Action: ACCOUNTING —

The Commission, acting pursuant to the provisions of the applicable law, believe that Defendants, acting singly or collectively, in unlawful concert with one another, and with the active collaboration of third

persons, subject of separate suits, acquired funds, assets and property during the incumbency of Defendant public officers, manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property. Consequently, they are required to show to the satisfaction of this Honorable Court that they have lawfully acquired all such funds, assets and property which are in excess of their legal net income, and for this Honorable Court to decree that the Defendants are under obligation to account to Plaintiff with respect to all legal or beneficial interests in funds, properties and assets of whatever kind and wherever located in excess of the lawful earnings or lawful income from legitimately acquired property.

36. Fifth Cause of Action — LIABILITY FOR DAMAGES —

(a) By reason of the unlawful acts set forth above, Plaintiff and the Filipino people have suffered actual damages in an amount representing the pecuniary loss sustained by the latter as a result of the Defendants' unlawful acts, the approximate value and interest of which, from the time of their wrongful acquisition, are estimated at ₱200 billion plus expenses which Plaintiff has been compelled to incur and shall continue to incur in its effort to recover Defendants' ill-gotten wealth all over the world, which expenses are reasonably estimated at ₱250 million. Defendants are, therefore, jointly and severally liable to Plaintiff for actual damages in an amount reasonably estimated at ₱200 Billion Pesos and to reimburse expenses for recovery of Defendants' ill-gotten wealth estimated to cost ₱250 million or in such amount as are proven during the trial.

(b) As a result of Defendants' acts described above, Plaintiff and the Filipino people had painfully endured and suffered moral damages for more than twenty long years, anguish, fright, sleepless nights, serious anxiety, wounded feelings and moral shock as well as besmirched reputation and social humiliation before the international community.

(c) In addition, Plaintiff and the Filipino people are entitled to temperate damages for their sufferings which, by their very nature are incapable of pecuniary estimation, but which this Honorable Court may determine in the exercise of its sound discretion.

(d) Defendants, by reason of the above described unlawful acts, have violated and invaded the inalienable right of Plaintiff and the Filipino people to a fair and decent way of life befitting a Nation with rich natural and human resources. This basic and fundamental

right of Plaintiff and the Filipino people should be recognized and vindicated by awarding nominal damages in an amount to be determined by the Honorable Court in the exercise of its sound discretion.

(e) By way of example and correction for the public good and in order to ensure that Defendants' unlawful, malicious, immoral and wanton acts are not repeated, said Defendants are solidarily liable to Plaintiff for exemplary damages.

In the meantime, the Pantranco Employees Association-PTGWO (PEA-PTGWO), a union of Pantranco employees, moved to intervene before the Sandiganbayan. The former alleged that the trust funds in the account of Pantranco North Express, Inc. (Pantranco) amounting to ₱55 million rightfully belonged to the Pantranco employees, pursuant to the money judgment the National Labor Relations Commission (NLRC) awarded in favor of the employees and against Pantranco. Thus, PEA-PTGWO contested the allegation of petitioner that the assets of Pantranco were ill-gotten because, otherwise, these assets would be returned to the government and not to the employees.

Thereafter, petitioner presented and formally offered its evidence against herein respondents. However, the latter objected to the offer primarily on the ground that the documents violated the best evidence rule of the Rules of Court, as these documents were unauthenticated; moreover, petitioner had not provided any reason for its failure to present the originals.

On 11 March 2002, the Sandiganbayan issued a Resolution[6] admitting the pieces of evidence while expressing some reservation, to wit:

WHEREFORE, taking note of the objections of accused Marcoses and the reply thereto by the plaintiff, all the documentary exhibits formally offered by the prosecution are hereby admitted in evidence; however, their evidentiary value shall be left to the determination of the Court.

SO ORDERED.

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[6] *Rollo*, pp. 796-800.

Imelda R. Marcos; Imee Marcos-Manotoc and Bongbong Marcos, Jr.; Irene Marcos-Araneta and Gregorio Ma. Araneta III; Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan; and the PEA-PTGWO subsequently filed their respective Demurrers to Evidence.

On 6 December 2005, the Sandiganbayan issued the assailed Resolution,[7] which granted all the Demurrers to Evidence except the one filed by Imelda R. Marcos. The dispositive portion reads:

> **WHEREFORE,** premises considered, the Demurrer to Evidence filed by defendant Imelda R. Marcos is hereby **DENIED**. The Demurrer to Evidence filed by defendants Maria Imelda Marcos Manotoc, Ferdinand Marcos, Jr., Irene Marcos Araneta, Gregorio Maria Araneta III, Yeung Chun Kam, Yeung Chun Fan, Yeung Chun Ho, and intervenor PEA-PTGWO, are hereby **GRANTED**. The sequestration orders on the properties in the name of defendant Gregorio Maria Araneta III, are accordingly ordered lifted.
>
> **SO ORDERED.**

The Sandiganbayan denied Imelda R. Marcos' Demurrer primarily because she had categorically admitted that she and her husband owned properties enumerated in the Complaint, while stating that these properties had been lawfully acquired. The court held that the evidence presented by petitioner constituted a *prima facie* case against her, considering that the value of the properties involved was grossly disproportionate to the Marcos spouses' lawful income. Thus, this admission and the fact that Imelda R. Marcos was the compulsory heir and administratrix of the Marcos estate were the primary reasons why the court held that she was responsible for accounting for the funds and properties alleged to be ill-gotten.

Secondly, the court pointed out that Rolando Gapud, whose deposition was taken in Hong Kong, referred to her as one directly involved in amassing ill-gotten wealth. The court also considered the compromise agreement between petitioner and Antonio O. Floirendo, who disclosed that he had performed

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[7] *Id.* at 119-236.

several business transactions upon the instructions of the Marcos spouses.

With regard to the siblings Imee Marcos-Manotoc and Bongbong Marcos, Jr., the court noted that their involvement in the alleged illegal activities was never established. In fact, they were never mentioned by any of the witnesses presented. Neither did the documentary evidence pinpoint any specific involvement of the Marcos children.

Moreover, the court held that the evidence, in particular, Exhibits "P,"[8] "Q",[9] "R",[10] "S",[11] and "T",[12] were considered hearsay, because their originals were not presented in court, nor were they authenticated by the persons who executed them. Furthermore, the court pointed out that petitioner failed to provide any valid reason why it did not present the originals in court. These exhibits were supposed to show the interests of Imee Marcos-Manotok in the media networks IBC-13, BBC-2 and RPN-9, all three of which she had allegedly acquired illegally. These exhibits also sought to prove her alleged participation in dollar salting through De Soleil Apparel.

Finally, the court held that the relationship of respondents to the Marcos spouses was not enough reason to hold the former liable.

In the matter of the spouses Irene Marcos and Gregorio Araneta III, the court similarly held that there was no testimonial or documentary evidence that supported petitioner's allegations against the couple. Again, petitioner failed to present the original documents that supposedly supported the allegations against them. Instead, it merely presented photocopies of documents

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[8] Affidavit of Ramon S. Monzon.

[9] TSN taken during the hearing held before the PCGG on the 6th Floor, Philcomcen Building, Ortigas Avenue, Pasig, Metro Manila, on 8 June 1987.

[10] Affidavit of Yeung Kwok Ying.

[11] Letter of Paulino Petralba to Yeung Chun Kam, Yeung Chun Ho, and Arcie Chan.

[12] Affidavit of Rodolfo V. Puno.

that sought to prove how the Marcoses used the Potencianos[13] as dummies in acquiring and operating the bus company Pantranco.

Meanwhile, as far as the Yeungs were concerned, the court found the allegations against them baseless. Petitioner failed to demonstrate how their business, Glorious Sun Fashion Garments Manufacturing, Co. Phils. (Glorious Sun), was used as a vehicle for dollar salting; or to show that they themselves were dummies of the Marcoses. Again, the court held that the documentary evidence relevant to this allegation was inadmissible for being mere photocopies, and that the affiants had not been presented as witnesses.

Finally, the court also granted the Demurrer filed by PEA-PTGWO. While the court held that there was no evidence to show that Pantranco was illegally acquired, the former nevertheless held that there was a need to first determine the ownership of the disputed funds before they could be ordered released to the rightful owner.

On 20 December 2005, petitioner filed its Motion for Partial Reconsideration, insisting that there was a preponderance of evidence to show that respondents Marcos siblings and Gregorio Araneta III had connived with their parents in acquiring ill-gotten wealth. It pointed out that respondents were compulsory heirs to the deposed President and were thus obliged to render an accounting and to return the ill-gotten wealth.

Moreover, petitioner asserted that the evidence established that the Yeungs were dummies of the Marcoses, and that the Pantranco assets were part of the Marcoses' alleged ill-gotten wealth.

Finally, petitioner questioned the court's ruling that the evidence previously admitted was later held to be inadmissible in evidence against respondents, thus, depriving the former of due process.

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[13] Max B. Potenciano, Max Joseph A. Potenciano, and Dolores A. Potenciano were owners of Batangas Laguna Tayabas Bus Company (BLTBCo.). In line with the government's privatization program, the assets of Pantranco were sold to the BLTBCo. in 1985. The Potencianos thereafter incorporated Pantranco as a private corporation.

Inadvertently, petitioner was not able to serve a copy of the motion on respondents Imee Marcos-Manotoc and Bongbong Marcos, Jr. But upon realizing the oversight, it immediately did so and filed the corresponding Manifestation and Motion before the court. Nonetheless, this inadvertence prompted Imee Marcos-Manotoc and Bongbong Marcos, Jr. to file their Motion for Entry of Judgment.

On 2 March 2006, the court issued the second assailed Resolution,[14] denying petitioner's Motion. The court pointed out its reservation in its Resolution dated 12 March 2002, wherein it said that it would still assess and weigh the evidentiary value of the admitted evidence. Furthermore, it said that even if it included the testimonies of petitioner's witnesses, these were not substantial to hold respondents liable. Thus, the court said:

WHEREFORE, there being no sufficient reason to set aside the resolution dated December 6, 2005, the plaintiff's *Motion for Partial Reconsideration* is hereby **DENIED**. The plaintiff's *Motion and Manifestation* dated January 18, 2006 is **GRANTED** in the interest of justice. The *Motion for Entry of Judgment* filed by defendants Imee Marcos and Bongbong Marcos is **DENIED**.

SO ORDERED.

Hence, this Petition.

Petitioner raises the same issues it raised in its Motion for Reconsideration filed before the Sandiganbayan, to wit:[15]

I. THE SANDIGANBAYAN ERRED IN GRANTING THE DEMURRER TO EVIDENCE FILED BY RESPONDENTS MA. IMELDA (IMEE) R. MARCOS AND FERDINAND (BONGBONG) R. MARCOS, JR., CONSIDERING THAT MORE THAN PREPONDERANT EVIDENCE ON RECORD CLEARLY DEMONSTRATES THEIR CONNIVANCE WITH FORMER PRESIDENT FERDINAND E. MARCOS AND OTHER MARCOS DUMMIES AND ABUSED THEIR

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[14] *Rollo*, pp. 237-246.

[15] *Id.* at 55-57.

POWER AND INFLUENCE IN UNLAWFULLY AMASSING FUNDS FROM THE NATIONAL TREASURY.

II. PETITION PROVED, BY MORE THAN PREPONDERANT EVIDENCE, THAT RESPONDENT-SPOUSES GREGORIO ARANETA III AND IRENE MARCOS ARANETA CONNIVED WITH FORMER PRESIDENT MARCOS IN UNLAWFULLY ACQUIRING BUSINESS INTERESTS WHICH ARE GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT, AND IN A MANNER PROHIBITED UNDER THE CONSTITUTION AND ANTI-GRAFT STATUTES.

III. RESPONDENTS IMEE, BONGBONG, AND IRENE MARCOS ARE COMPULSORY HEIRS OF FORMER PRESIDENT MARCOS AND ARE EQUALLY OBLIGED TO RENDER AN ACCOUNTING AND RETURN THE ALLEGED ILL-GOTTEN WEALTH OF THE MARCOSES.

IV. THERE EXISTS CONCRETE EVIDENCE PROVING THAT RESPONDENTS YEUNG CHUN KAM, YEUNG CHUN FAN, AND YEUNG CHUN HO ACTED AS DUMMIES FOR THE MARCOSES, AND USED THE CORPORATION, GLORIOUS SUN, AS A CONDUIT IN AMASSING THE ILL-GOTTEN WEALTH. ACCORDINGLY, THE SANDIGANBAYAN ERRED IN GRANTING THEIR DEMURRER TO EVIDENCE.

V. THE DEMURRER TO EVIDENCE FILED BY INTERVENOR PEA-PTGWO WITH RESPECT TO THE PANTRANCO ASSETS SHOULD NOT HAVE BEEN GRANTED SINCE AMPLE EVIDENCE PROVES THAT THE SAID ASSETS INDUBITABLY FORM PART OF THE MARCOS ILL-GOTTEN WEALTH, AS BUTTRESSED BY THE FACT THAT NO JUDICIAL DETERMINATION HAS BEEN MADE AS TO WHOM THESE ASSETS RIGHTFULLY BELONG.

VI. THE SANDIGANBAYAN'S RULING WHICH REJECTED PEITITONER'S DOCUMENTARY EXHIBITS ALLEGEDLY FOR BEING "INADMISSIBLE" DIRECTLY CONTRADICTS ITS EARLIER RULING ADMITTING ALL SAID DOCUMENTARY EVIDENCE AND WAS RENDERED IN A MANNER THAT DEPRIVED PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

There is some merit in petitioner's contention.

The Marcos Siblings and Gregorio Araneta III

Closely analyzing petitioner's Complaint and the present Petition for Review, it is clear that the Marcos siblings are being sued in two capacities: first, as co-conspirators in the alleged accumulation of ill-gotten wealth; and second, as the compulsory heirs of their father, Ferdinand E. Marcos.[16]

With regard to the first allegation, as contained in paragraph 29 of its Third Amended Complaint quoted above, petitioner accused the Marcos siblings of having collaborated with, participated in, and/or benefitted from their parents' alleged accumulation of ill-gotten wealth. In particular, as far as Imee Marcos-Manotoc was concerned, she was accused of dollar salting by using Glorious Sun to import denim fabrics from one supplier at prices much higher than those paid by other users of similar materials. It was also alleged that the Marcoses personally benefitted from the sequestered media networks IBC-13, BBC-2, and RPN-9, in which Imee Marcos had a substantial interest.

Irene Marcos-Araneta, on the other hand, was accused of having conspired with her husband, respondent Gregorio Araneta III, in his being President Marcos' conduit to Pantranco, thereby paving the way for the President's ownership of the company in violation of Article VII, Section 4, paragraph 2 of the 1973 Constitution.[17]

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[16] Attached as Annex "A" to the Complaint is a list of assets and other properties purported to be owned by Ferdinand E. Marcos, Imelda R. Marcos, and their immediate family.

[17] (2) The President and the Vice-President shall not, during their tenure, hold any other office, except when otherwise provided in this Constitution, nor may they practice any profession, participate directly or indirectly in any business, or be financially interested directly or indirectly in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation.

To prove the general allegations against the Marcos siblings, petitioner primarily relied on the Sworn Statement[18] and the Deposition[19] of one of the financial advisors of President Marcos, Rolando C. Gapud, taken in Hong Kong on various dates.

Meanwhile, to prove the participation and interests of Imee Marcos-Manotoc in De Soleil Apparel and the media networks, petitioner relied on the Affidavits of Ramon S. Monzon,[20] Yeung Kwok Ying,[21] and Rodolfo V. Puno;[22] and the transcript of stenographic notes (TSN) taken during the PCGG hearing held on 8 June 1987.[23]

As to spouses Irene Marcos-Araneta and Gregorio Araneta III, petitioner submitted the Articles of Incorporation of Northern Express Transport, Inc.;[24] the Memorandum of Agreement[25] and the Purchase Agreement[26] between Pantranco and Batangas Laguna Tayabas Bus Company, Inc. (BLTBCo.); the Confidential Memorandum regarding the sale of the Pantranco assets;[27] the Affidavit[28] and the letter to the PCGG[29] of Dolores A. Potenciano, owner of BLTBCo.; the Affidavit[30] and the Memorandum[31] of Eduardo Fajardo, who was then the Senior Vice-President of

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[18] *Rollo*, pp. 318-325.

[19] *Id.* at 350-455.

[20] *Id.* at 247-255.

[21] *Id.* at 313.

[22] *Id.* at 316-317.

[23] *Id.* at 256-312.

[24] *Id.* at 456-473.

[25] *Id.* at 475-479.

[26] *Id.* at 480-493.

[27] *Id.* at 494.

[28] *Id.* at 497-503.

[29] *Id.* at 504-507.

[30] *Id.* at 512-515.

[31] *Id.* at 516-519.

the Account Management Group of the Philippine National Bank (PNB), which was in turn the creditor for the Pantranco sale; and the Affidavit of Florencio P. Lucio, who was the Senior Account Specialist of the National Investment and Development Corporation.[32]

Petitioner contends that these documents fall under the Rule's third exception, that is, these documents are public records in the custody of a public officer or are recorded in a public office. It is its theory that since these documents were collected by the PCGG, then, necessarily, the conditions for the exception to apply had been met. Alternatively, it asserts that the "documents were offered to prove not only the truth of the recitals of the documents, but also of other external or collateral facts."[33]

The Court's Ruling

Petitioner failed to observe the best evidence rule.

It is petitioner's burden to prove the allegations in its Complaint. For relief to be granted, the operative act on how and in what manner the Marcos siblings participated in and/or benefitted from the acts of the Marcos couple must be clearly shown through a preponderance of evidence. Should petitioner fail to discharge this burden, the Court is constrained and is left with no choice but to uphold the Demurrer to Evidence filed by respondents.

First, petitioner does not deny that what should be proved are the contents of the documents themselves. It is imperative, therefore, to submit the original documents that could prove petitioner's allegations.

Thus, the photocopied documents are in violation Rule 130, Sec. 3 of the Rules of Court, otherwise known as the best evidence rule, which mandates that the evidence must be the original document itself. The origin of the best evidence rule

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[32] *Id.* at 526-528.

[33] *Id.* at 65.

can be found and traced to as early as the 18th century in *Omychund v. Barker*,[34] wherein the Court of Chancery said:

> The judges and sages of the law have laid it down that **there is but one general rule of evidence, *the best that the nature of the case will admit***.
>
> **The rule is, that if the writings have subscribing witnesses to them, they must be proved by those witnesses.**
>
> The first ground judges have gone upon in departing from strict rules, is an absolute strict necessity. *Secondly*, a presumed necessity. In the case of writings, subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed: where an original is lost, a copy may be admitted; if no copy, then a proof by witnesses who have heard the deed, and yet it is a thing the law abhors to admit the memory of man for evidence.

Petitioner did not even attempt to provide a plausible reason why the originals were not presented, or any compelling ground why the court should admit these documents as secondary evidence absent the testimony of the witnesses who had executed them.

In particular, it may not insist that the photocopies of the documents fall under Sec. 7 of Rule 130, which states:

> *Evidence admissible when original document is a public record.* — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved be a certified copy issued by the public officer in custody thereof.

Secs. 19 and 20 of Rule 132 provide:

> SECTION 19. *Classes of documents*. — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

[34] 26 E.R. 15 (1745).

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

SECTION 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

The fact that these documents were collected by the PCGG in the course of its investigations does not make them *per se* public records referred to in the quoted rule.

Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception.[35] Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.

Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public

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[35] Rules of Court, Rule 130, Sec. 36.

documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[36]

As to the copy of the TSN of the proceedings before the PCGG, while it may be considered as a public document since it was taken in the course of the PCGG's exercise of its mandate, it was not attested to by the legal custodian to be a correct copy of the original. This omission falls short of the requirement of Rule 132, Secs. 24 and 25 of the Rules of Court.[37]

In summary, we adopt the ruling of the Sandiganbayan, to wit:

Further, again contrary to the theory of the plaintiff, the presentation of the originals of the aforesaid exhibits is not validly excepted

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[36] *People's Bank and Trust Company v. Leonidas*, G.R. No. 47815, 11 March 1992, 207 SCRA 164.

[37] SECTION 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

SECTION 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

under Rule 130, Section 3 (a), (b), and (d) of the Rules of Court. Under paragraph (d), when 'the original document is a public record in the custody of a public officer or is recorded in a public office,' presentation of the original thereof is excepted. However, as earlier observed, all except one of the exhibits introduced by the plaintiff were not necessarily public documents. The transcript of stenographic notes (TSN) of the proceedings purportedly before the PCGG, the plaintiff's exhibit "Q", may be a public document, but what was presented by the plaintiff was a mere photocopy of the purported TSN. The Rules provide that when the original document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. Exhibit "Q" was not a certified copy and it was not even signed by the stenographer who supposedly took down the proceedings.

The rest of the above-mentioned exhibits cannot likewise be excepted under paragraphs (a) and (b) of Section 3. Section 5 of the same Rule provides that 'when the original documents has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.' Thus, in order that secondary evidence may be admissible, there must be proof by satisfactory evidence of (1) due execution of the original; (2) loss, destruction or unavailability of all such originals and (3) reasonable diligence and good faith in the search for or attempt to produce the original. None of these requirements were complied with by the plaintiff. Similar to exhibit 'Q', exhibits 'P', 'R', 'S', and 'T' were all photocopies. 'P', 'R', and 'T' were affidavits of persons who did not testify before the Court. Exhibit 'S' is a letter which is clearly a private document. Not only does it not fall within the exceptions of Section 3, it is also a mere photocopy. As We previously emphasized, even if originals of these affidavits were presented, they would still be considered hearsay evidence if the affiants do not testify and identify them.[38]

Thus, absent any convincing evidence to hold otherwise, it follows that petitioner failed to prove that the Marcos siblings and Gregorio Araneta III collaborated with former President

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[38] *Rollo*, pp. 221-222.

Marcos and Imelda R. Marcos and participated in the first couple's alleged accumulation of ill-gotten wealth insofar as the specific allegations herein were concerned.

The Marcos siblings are compulsory heirs.

To reiterate, in its third Amended Complaint, petitioner prays that the Marcos respondents be made to (1) pay for the value of the alleged ill-gotten wealth with interest from the date of acquisition; (2) render a complete accounting and inventory of all funds and other pieces of property legally or beneficially held and/or controlled by them, as well as their legal and beneficial interest therein; (3) pay actual damages estimated at ₱200 billion and additional actual damages to reimburse expenses for the recovery of the alleged ill-gotten wealth estimated at ₱250 million or in such amount as may be proven during trial; (4) pay moral damages amounting to ₱50 billion; (5) pay temperate and nominal damages, as well as attorney's fees and litigation expenses in an amount to be proven during the trial; (6) pay exemplary damages in the amount of ₱1 billion; and (7) pay treble judicial costs.[39]

It must be stressed that we are faced with exceptional circumstances, given the nature and the extent of the properties involved in the case pending with the Sandiganbayan. It bears emphasis that the Complaint is one for the reversion, the reconveyance, the restitution and the accounting of alleged ill-gotten wealth and the payment of damages. Based on the allegations of the Complaint, the court is charged with the task of (1) determining the properties in the Marcos estate that constitute the alleged ill-gotten wealth; (2) tracing where these properties are; (3) issuing the appropriate orders for the accounting, the recovery, and the payment of these properties; and, finally, (4) determining if the award of damages is proper.

Since the pending case before the Sandiganbayan survives the death of Ferdinand E. Marcos, it is imperative therefore that the estate be duly represented. The purpose behind this

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[39] *Id.* at 771-773.

rule is the protection of the right to due process of every party to a litigation who may be affected by the intervening death. The deceased litigant is himself protected, as he continues to be properly represented in the suit through the duly appointed legal representative of his estate.[40] On that note, we take judicial notice of the probate proceedings regarding the will of Ferdinand E. Marcos. In *Republic of the Philippines v. Marcos II*,[41] we upheld the grant by the Regional Trial Court (RTC) of letters testamentary *in solidum* to Ferdinand R. Marcos, Jr. and Imelda Romualdez-Marcos as executors of the last will and testament of the late Ferdinand E. Marcos.

Unless the executors of the Marcos estate or the heirs are ready to waive in favor of the state their right to defend or protect the estate or those properties found to be ill-gotten in their possession, control or ownership, then they may not be dropped as defendants in the civil case pending before the Sandiganbayan.

Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those parties-in-interest without whom there can be no final determination of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Parties are indispensable if their interest in the subject matter of the suit and in the relief sought is inextricably intertwined with that of the other parties.[42]

In order to reach a final determination of the matters concerning the estate of Ferdinand E. Marcos — that is, the accounting and the recovery of ill-gotten wealth — the present case must be maintained against Imelda Marcos and herein respondent Ferdinand "Bongbong" R. Marcos, Jr., as executors of the Marcos estate pursuant to Sec. 1 of Rule 87 of the Rules of Court.

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[40] *Sumaljag v. Spouses Literato*, G.R. No. 149787, 18 June 2008, 555 SCRA 53.

[41] G.R. Nos. 130371 &130855, 4 August 2009, 595 SCRA 43.

[42] *Macababbad, Jr. v. Masirag*, G.R. No. 161237, 14 January 2009, 576 SCRA 70.

According to this provision, actions may be commenced to recover from the estate, real or personal property, or an interest therein, or to enforce a lien thereon; and actions to recover damages for an injury to person or property, real or personal, may be commenced against the executors.

We also hold that the action must likewise be maintained against Imee Marcos-Manotoc and Irene Marcos-Araneta on the basis of the non-exhaustive list attached as Annex "A" to the Third Amended Complaint, which states that the listed properties therein were owned by Ferdinand and Imelda Marcos and their immediate family.[43] It is only during the trial of Civil Case No. 0002 before the Sandiganbayan that there could be a determination of whether these properties are indeed ill-gotten or were legitimately acquired by respondents and their predecessors. Thus, while it was not proven that respondents conspired in accumulating ill-gotten wealth, they may be in possession, ownership or control of such ill-gotten properties or the proceeds thereof as heirs of the Marcos couple. Thus, their lack of participation in any illegal act does not remove the character of the property as ill-gotten and, therefore, as rightfully belonging to the State.

Secondly, under the rules of succession, the heirs instantaneously became co-owners of the Marcos properties upon the death of the President. The property rights and obligations to the extent of the value of the inheritance of a person are transmitted to another through the decedent's death.[44] In this concept, nothing prevents the heirs from exercising their right to transfer or dispose of the properties that constitute their legitimes, even absent their declaration or absent the partition or the distribution of the estate. In *Jakosalem v. Rafols*,[45] we said:

Article 440 of the Civil Code provides that **"the possession of hereditary property is deemed to be transmitted to the heir**

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[43] *Rollo*, pp. 776-778.

[44] Civil Code, Art. 774.

[45] 73 Phil. 628 (1942).

without interruption from the instant of the death of the decedent, in case the inheritance be accepted." And Manresa with reason states that **upon the death of a person, each of his heirs "becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the coowners of the estate while it remains undivided."** (3 Manresa, 357; *Alcala vs. Alcala*, 35 Phil. 679.) And according to Article 399 of the Civil Code, **every part owner may assign or mortgage his part in the common property**, and the effect of such assignment or mortgage shall be limited to the portion which may be allotted him in the partition upon the dissolution of the community. **Hence, in the case of *Ramirez vs. Bautista*, 14 Phil. 528, where some of the heirs, without the concurrence of the others, sold a property left by their deceased father, this Court, speaking thru its then Chief Justice Cayetano Arellano, said that the sale was valid, but that the effect thereof was limited to the share which may be allotted to the vendors upon the partition of the estate**. (Emphasis supplied)

Lastly, petitioner's prayer in its Third Amended Complaint directly refers to herein respondents, *to wit*:

1. AS TO THE FIRST SECOND AND THIRD CAUSES OF ACTION — **To return and reconvey to Plaintiff all funds and other property acquired** by Defendants during their incumbency as public officers, which funds and other property are manifestly out of proportion to their salaries, other lawful income and income from legitimately acquired property which Defendants have failed to establish as having been, in fact, lawfully acquired by them, alternatively, to solidarily pay Plaintiff the value thereof with interest thereon from the date of acquisition until full payment.

2. AS TO THE FOURTH CAUSE OF ACTION — **to individually render to this Honorable Court a complete accounting and inventory**, subject to evaluation of Court-appointed assessors, of all funds and other property legally or beneficially held and/or controlled by them, as well as their legal and beneficial interest in such funds and other property. (Emphasis supplied)

In sum, the Marcos siblings are maintained as respondents, because (1) the action pending before the Sandiganbayan is one that survives death, and, therefore, the rights to the estate must be duly protected; (2) they allegedly control, possess or

own ill-gotten wealth, though their direct involvement in accumulating or acquiring such wealth may not have been proven.

Yeung Chun Kam, Yeung Chun Ho And Yeung Chun Fan

It is worthy to note that respondents draw our attention to *American Inter-Fashion Corporation v. Office of the President*[46] in which they contend that this Court considered the allegation of dollar salting as baseless. The cited case, however, finds no application herein as the former merely ruled that Glorious Sun was denied due process when it was not furnished by the Garments and Textile Export Board (GTEB) any basis for the cancellation of the export quota because of allegations of dollar salting. That Decision did not prevent petitioner from adducing evidence to support its allegation in Civil Case No. 0002 before the Sandiganbayan under a different cause of action.

Nevertheless, the allegations against Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan in the case at bar were also proved to be baseless. Again, petitioner failed to illustrate how respondents herein acted as dummies of the Marcoses in acquiring ill-gotten wealth. This Court notes that the Complaint against the Yeungs alleges that the Marcoses used Glorious Sun — the garment company in which the Yeungs are controlling stockholders — for illegal dollar salting through the company's importation of denim fabrics from only one supplier at prices much higher than those being paid by other users of similar materials. Notably, no mention of De Soleil Apparel was made.

To prove its allegations, petitioner submitted the controverted Exhibits "P", "Q", "R", "S", and "T". As earlier discussed in detail, these pieces of evidence were mere photocopies of the originals and were unauthenticated by the persons who executed them; thus, they have no probative value. Even the allegations of petitioner itself in its Petition for Review are bereft of any factual basis for holding that these documents undoubtedly show respondents' participation in the alleged dollar salting. The pertinent portion of the Petition reads:

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[46] 274 Phil. 691 (1991).

To illustrate, the Affidavit dated May 29, 1987 executed by Mr. Ramon Monzon which was submitted as **Exhibit P**, showed that respondent Imee Marcos-Manotoc owns and controls IBC-13, BBC-2 and (R)PN-9, and has interest in the De Soleil Apparel. The testimony of Mr. Ramon Monzon during the hearing on June 8, 1987 before the Presidential Commission on Good Government as shown in the Transcript of Stenographic Notes also affirmed his declarations in the Affidavit dated May 29, 1987. The Transcript of Stenographic Notes dated June 8, 1987 was presented as **Exhibit Q**. Moreover, the Affidavit dated March 21, 1986 of Yeung Kwok Ying which was presented as **Exhibit R** disclosed that Imee Marcos-Manotoc is the owner of 67% equity of De Soleil Apparel. The letter dated July 17, 1984 signed by seven (7) incorporators of De Soleil Apparel, addressed to Hongkong investors which was presented as **Exhibit S** confirmed that the signatories hold or own 67% equity of the corporation in behalf of the beneficial owners previously disclosed to the addressees. In addition to the foregoing documents, petitioner presented the Affidavit of Rodolfo V. Puno, Chairman of the Garments and Textile Export Group (GTEB) as **Exhibit T** wherein he categorically declared that the majority of De Soleil Apparel was actually owned by respondent Imee Marcos-Manotoc.[47]

The foregoing quotation from the Petition is bereft of any factual matter that warrants a consideration by the Court. Straight from the horse's mouth, these documents are only meant to show the ownership and interest of Imee Marcos Manotoc in De Soleil – and not how respondent supposedly participated in dollar salting or in the accumulation of ill-gotten wealth.

PEA-PTGWO

The PEA-PTGWO Demurrer to Evidence was granted primarily as a consequence of the prosecution's failure to establish that the assets of Pantranco were ill-gotten, as discussed earlier. Thus, we find no error in the assailed Order of the Sandiganbayan.

A Final Note

As earlier adverted to, the best evidence rule has been recognized as an evidentiary standard since the 18th century.

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[47] *Id.* at 58-59.

For three centuries, it has been practiced as one of the most basic rules in law. It is difficult to conceive that one could have finished law school and passed the bar examinations without knowing such elementary rule. Thus, it is deeply disturbing that the PCGG and the Office of the Solicitor General (OSG) — the very agencies sworn to protect the interest of the state and its people — could conduct their prosecution in the manner that they did. To emphasize, the PCGG is a highly specialized office focused on the recovery of ill-gotten wealth, while the OSG is the principal legal defender of the government. The lawyers of these government agencies are expected to be the best in the legal profession.

However, despite having the expansive resources of government, the members of the prosecution did not even bother to provide any reason whatsoever for their failure to present the original documents or the witnesses to support the government's claims. Even worse was presenting in evidence a photocopy of the TSN of the PCGG proceedings instead of the original, or a certified true copy of the original, which the prosecutors themselves should have had in their custody. Such manner of legal practice deserves the reproof of this Court. We are constrained to call attention to this apparently serious failure to follow a most basic rule in law, given the special circumstances surrounding this case.

The public prosecutors should employ and use all government resources and powers efficiently, effectively, honestly and economically, particularly to avoid wastage of public funds and revenues. They should perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.[48]

The basic ideal of the legal profession is to render service and secure justice for those seeking its aid.[49] In order to do

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[48] R.A. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees, Sec. 4(a) and (b).

[49] *Mayer v. State Bar*, 2 Cal.2d, 71.

this, lawyers are required to observe and adhere to the highest ethical and professional standards. The legal profession is so imbued with public interest that its practitioners are accountable not only to their clients, but to the public as well.

The public prosecutors, aside from being representatives of the government and the state, are, first and foremost, officers of the court. They took the oath to exert every effort and to consider it their duty to assist in the speedy and efficient administration of justice.[50] Lawyers owe fidelity to the cause of the client and should be mindful of the trust and confidence reposed in them.[51] Hence, should serve with competence and diligence.[52]

We note that there are instances when this Court may overturn the dismissal of the lower courts in instances when it is shown that the prosecution has deprived the parties their due process of law. In *Merciales v. Court of Appeals*,[53] we reversed the Decision of the RTC in dismissing the criminal case for rape with homicide. In that case, it was very apparent that the public prosecutor violated the due process rights of the private complainant owing to its blatant disregard of procedural rules and the failure to present available crucial evidence, which would tend to prove the guilt or innocence of the accused therein. Moreover, we likewise found that the trial court was gravely remiss in its duty to ferret out the truth and, instead, just "passively watched as the public prosecutor bungled the case."

However, it must be emphasized that *Merciales* was filed exactly to determine whether the prosecution and the trial court gravely abused their discretion in the proceedings of the case, thus resulting in the denial of the offended party's due process. Meanwhile, the present case merely alleges that there was an error in the Sandiganbayan's consideration of the probative value

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[50] Code of Professional Responsibility, Canon 12.

[51] *Id.*, Canon 17.

[52] *Id.*, Canon 18.

[53] 429 Phil. 70 (2002).

of evidence. We also note that in *Merciales*, both the prosecution and the trial court were found to be equally guilty of serious nonfeasance, which prompted us to remand the case to the trial court for further proceedings and reception of evidence. *Merciales* is thus inapplicable to the case at bar.

Nevertheless, given the particular context of this case, the failure of the prosecution to adhere to something as basic as the best evidence rule raises serious doubts on the level and quality of effort given to the government's cause. Thus, we highly encourage the Office of the President, the OSG, and the PCGG to conduct the appropriate investigation and consequent action on this matter.

WHEREFORE, in view of the foregoing, the Petition is **PARTIALLY GRANTED.** The assailed Sandiganbayan Resolution dated 6 December 2005 is **AFFIRMED** with **MODIFICATION.** For the reasons stated herein, respondents Imelda Marcos-Manotoc, Irene Marcos-Araneta, and Ferdinand R. Marcos, Jr. shall be maintained as defendants in Civil Case No. 0002 pending before the Sandiganbayan.

Let a copy of this Decision be furnished to the Office of the President so that it may look into the circumstances of this case and determine the liability, if any, of the lawyers of the Office of the Solicitor General and the Presidential Commission on Good Government in the manner by which this case was handled in the Sandiganbayan.

SO ORDERED.

Brion (Acting Chairperson),[*] *Villarama, Jr.,*[**] *Perez,* and *Reyes, JJ.,* concur.

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[*] In lieu of Associate Justice Antonio T. Carpio who inhibited from the case.

[**] Additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated 30 January 2012.

SECOND DIVISION

[G.R. No. 173291. February 8, 2012]

ROMEO A. GALANG, *petitioner, vs.* **CITYLAND SHAW TOWER, INC. and VIRGILIO BALDEMOR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSE FOR EMPLOYEE'S DISMISSAL, PROVEN. — [T]he affidavits executed in 2005, simply amplified the evidence Cityland submitted in 2002, including documents which cited Galang's serious negligence in causing the flooding of his assigned condominium floor, which resulted in a costly repair of the buildings' elevator. Additionally, there was Tupas' memo to Cityland's President which "pertains to the case of Romeo Galang x x x for harassment to co-janitors, insubordination to Supervisor and conduct unbecoming an employee." As earlier pointed out, Tupas made a report of the incident where Galang took pictures of his co-janitors whom he considered as suspects in the alleged loss of money (₱4,000.00) kept in his locker. Tupas called a meeting to investigate the matter. She asked Galang to surrender the pictures, but he refused and harassed the janitors and insulted Tupas in front of everybody. Tupas also reported that on several occasions, Galang disobeyed her orders, often finding fault with his co-employees, and was very hard to deal with. She believed that Galang had been grossly insubordinate and had committed acts of harassment against his co-employees. Thus, he was already a liability to the organization. In light of the circumstances obtaining in the case, we find credible the respondents' submission that Galang had become unfit to continue in employment. The evidence supports the view that he continued to exhibit undesirable traits as an employee and as a person, in relation to both his co-workers and his superiors, particularly Tupas, her immediate supervisor.

2. ID.; ID.; ID.; REQUIRED NOTICE BEFORE EMPLOYEE'S DISMISSAL MAY BE EFFECTED, NOT COMPLIED

WITH; EMPLOYEE IS ENTITLED TO NOMINAL DAMAGES. — The finding of a just cause for Galang's dismissal notwithstanding, we concur with the CA's conclusion that Cityland did not afford Galang the required notice before he was dismissed. As the CA noted, the investigation conference Tupas called to look into the janitors' complaints against Galang, did not constitute the written notice required by law as he had no clear idea what the charges were. Thus, the CA committed no error in sustaining his dismissal and awarding him nominal damages as indemnity.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Smith and Smith Law Office for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the decision[2] dated March 27, 2006 and the resolution[3] dated June 21, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 91037.

The Antecedents

On August 9, 2002, petitioner Romeo A. Galang filed a complaint[4] for illegal dismissal with several money claims, including damages and attorney's fees, against the respondents Cityland Shaw Tower, Inc. (*Cityland*) and its Building Manager, Virgilio Baldemor.

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[1] *Rollo*, pp. 10-25; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 201-212; penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Conrado M. Vasquez , Jr. and Mariano C. del Castillo (now a Supreme Court Justice).

[3] *Id.* at 224-226.

[4] *Id.* at 28.

Galang alleged on compulsory arbitration[5] that after the expiration of his employment contracts with the agencies providing maintenance services to Cityland, he was absorbed as a janitor by Cityland with a promise of regular employment after the completion of his six-month probation. He claimed that even after the lapse of the period, he continued working for Cityland although he had no idea about his employment status. He did not know his status for certain until he was shown a document on May 21, 2002 informing him that his employment would be terminated effective May 20, 2002.

The respondents countered[6] that Cityland absorbed Galang as a casual employee after the expiration of his contract with *Gayren Maintenance Services*. They alleged that during his employment with them, they found him to be remiss in the performance of his job and he failed, too, to conduct himself as a good employee. At times, he would disobey the orders of his supervisor, Eva Tupas,[7] Cityland's janitorial services head.

The respondents further alleged that in the face of Galang's negative work attitude and job performance, Cityland charged him with gross insubordination, harassment of his co-employees and conduct unbecoming an employee.

On one occasion, he took pictures of his co-janitors after he allegedly lost ₱4,000.00 in his locker; he suspected that the culprit was one of the janitors. This caused agitation among the janitors, prompting Tupas to investigate the incident. She called the janitors, including Galang, to a meeting. At the meeting, Galang told Tupas that she was not qualified to be his supervisor. He also verbally insulted and offended her in the presence of her subordinates.

Additionally, the janitors, security guards and other employees disclosed that Galang exhibited an air of superiority towards them and would always shout whenever misunderstandings

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[5] *Id.* at 29-32.

[6] *Id.* at 34-38.

[7] Appeared in the records several times as Eva Tupaz.

occurred. Galang's alleged transgressions were the subject of Tupas' memo to Moralde Arrogante, Cityland's President.[8]

The respondents stressed that Cityland's Board of Directors terminated Galang's services, for gross insubordination, effective May 20, 2002, after a "comprehensive examination of the accusation against complainant."[9]

Cityland, through Baldemor's reply to the labor arbiter's summons,[10] denied liability for Galang's money claims, maintaining that either the claim had no basis or Galang had already been granted the benefit.

The Compulsory Arbitration Rulings

In a decision dated September 22, 2003,[11] Labor Arbiter Fe Superiaso-Cellan found that Galang had been illegally dismissed. Labor Arbiter Cellan ruled that Cityland failed to present evidence to support Galang's dismissal for cause after observance of due process. She observed that the alleged board resolution dismissing Galang was unsubstantiated and self-serving, and carries no probative value. She also noted that there was no proof that Galang was notified of the charges against him before he was dismissed.

Labor Arbiter Cellan ordered Cityland to immediately reinstate Galang; if reinstatement is not legally feasible, to pay him separation pay at one-half (1/2) month salary for every year of service, backwages of ₱134,305.00 (latest computation), 13th month pay differential of ₱3,601.22, and service incentive leave pay of ₱1,295.00.

Labor Arbiter Cellan absolved Baldemor from liability, absent a showing that he exceeded his authority in Galang's dismissal. She also denied Galang's claim for damages and attorney's fees

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[8] *Rollo,* p. 164.

[9] *Id.* at 35.

[10] *Id.* at 125.

[11] *Id.* at 53-60.

as Galang failed to prove that his dismissal was attended by bad faith or was done in a wanton and malevolent manner. Moreover, he was not represented by a counsel.

On appeal, the National Labor Relations Commission (*NLRC*) affirmed the labor arbiter's findings.[12] The respondents moved for reconsideration, but the NLRC denied the motion in its resolution of May 31, 2005.[13] Cityland then elevated the case to the CA through a Rule 65 petition for *certiorari*.

The CA Decision

On March 27, 2006, the CA granted the petition.[14] It annulled the NLRC's February 28, 2005 decision and declared that Galang had been dismissed for a just cause. However, it ordered Cityland to pay him nominal damages of ₱30,000.00 for its violation of Galang's right to procedural due process, in accordance with *Agabon v. NLRC*.[15]

The CA took exception to the conclusion of both the labor arbiter and the NLRC that the respondents failed to discharge the burden of proving that Galang had been dismissed for cause. It pointed out that the records are replete with proof that Galang committed acts justifying the termination of his employment.

The CA stressed that prior to the incidents leading to Galang's dismissal, he had already committed serious negligence in his work. It referred to the flooding of the 32nd floor of the condominium where he was assigned, due to his failure to secure tightly the valve filter room.[16] The flooding severely damaged the building's elevator, resulting in repair work amounting to ₱23,952.65. The CA stressed that despite this act of gross negligence, he still remained in employment and it was only

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[12] Decision dated February 28, 2005; *id.* at 78-85.

[13] *Id.* at 86.

[14] *Supra* note 2.

[15] 485 Phil. 248 (2004).

[16] *Rollo*, p. 153; Incident Report dated November 11, 2001 of Ricky Palmares, OIC, Security Department.

"on account of subsequent events x x x that [the respondents] were compelled to dismiss him."[17]

The CA upheld Galang's dismissal on the strength of: (1) Tupas' *Sinumpaang Salaysay*,[18] executed and notarized on April 14, 2005, reiterating the statements she made in her memorandum of May 20, 2002;[19] (2) Baldemor's affidavit,[20] executed and notarized also on April 14, 2005; and, (3) the affidavit[21] jointly executed, notarized on April 14, 2005, by the members of Cityland's audit team (Arrogante, Emilio dela Cruz and Baldemor) which "specified the acts comprising [Galang's] stubborn nature[,] as well as acts of insubordination, disrespect of superiors, gross misconduct and gross negligence."[22]

While the CA had no doubt that Galang's dismissal was for cause, it nonetheless believed that he was not afforded procedural due process for lack of notice. The CA rejected Cityland's explanation that it deviated from the rule because the circumstances of the case left it no room to comply with the requirement. The CA noted that although the meeting — which Tupas convened, was intended to address the janitors' complaints against Galang — the latter had no knowledge of the charges at that point in time. The CA stressed that Galang should have been given a reasonable time to defend himself. Accordingly, it considered Galang's separation as a dismissal for cause, but without the observance of procedural due process. Consequently, it awarded Galang nominal damages of ₱30,000.00, pursuant to *Agabon.*

After the denial of the motion for reconsideration that he subsequently filed, Galang appealed to this Court under Rule 45 of the Rules of Court.

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[17] *Supra* note 2, at 208.

[18] *Rollo,* pp. 162-163.

[19] *Id.* at 164.

[20] *Id.* at 165-166.

[21] *Id.* at 174-175.

[22] *Supra* note 2, at 208.

The Case for Galang

In his submissions,[23] Galang posits that the appellate court gravely erred in (1) holding that there was a just cause for his dismissal based on evidence not presented before the labor arbiter and the NLRC, and (2) in applying the *Agabon* doctrine in his case.

On the first ground, Galang contends that in granting Cityland's appeal, the CA relied heavily on Tupas' *Sinumpaang Salaysay*,[24] and on the joint affidavit[25] of Baldemor, Arrogante and Dela Cruz, despite the fact that these pieces of evidence were not presented before the labor arbiter and the NLRC; they were presented only on a motion for reconsideration. He points out that he filed the case as early as August 9, 2002, yet it was only in April 2005 when Cityland submitted the self-serving affidavits to the NLRC.

Galang claims that except for Baldemor's affidavit,[26] Cityland had difficulties in securing the affidavits during the early stages of the case and it was only after three years that the affiants executed the affidavits to save their own employment. He argues that the affidavits are not admissible in evidence.

On the second ground, Galang submits that the *Agabon* ruling cannot be applied to his case as it cannot be applied retroactively; *Agabon* was not yet in place and *Serrano v. NLRC*[27] was the prevailing doctrine. Under *Serrano*, failure to comply with the notice requirement in employee dismissals for cause entitles the employee to full backwages.

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[23] *Supra* note 1; Reply, *rollo*, pp. 243-248; Memorandum, *id.* at 272-284.

[24] *Supra* note 18.

[25] *Supra* note 21.

[26] *Supra* note 20.

[27] 380 Phil. 416 (2000).

The Respondents' Position

In their bid to have the petition dismissed, the respondents filed a Comment[28] and a Memorandum[29] raising the following issues: (1) whether the CA committed a grave abuse of discretion in declaring that Galang had been dismissed for cause; (2) whether the affidavits of Cityland's witnesses constitute new evidence and, therefore, not admissible; and (3) whether the CA erred in applying the *Agabon* doctrine in this case.

The respondents contend that the CA committed no error; neither did it commit grave abuse of discretion in rejecting the findings of the labor arbiter and the NLRC that Galang had been illegally dismissed; and that Cityland's evidence has no probative value. In a comparison of evidence, Galang did not offer any piece of evidence, except his identification card, to establish his claim or to refute their assertions. They posit that the evidence they presented satisfied the burden of proof required of them.

The respondents take strong exception to Galang's submission that the affidavits of their witnesses lack probative value because they were not presented to the labor arbiter. They argue that the rules of evidence prevailing in courts of law are not controlling in labor cases. They stress that the affidavits were intended to elucidate, corroborate or bolster the evidence already presented to the labor arbiter. One such piece of evidence is Tupas' investigation report[30] which the labor arbiter rejected because the minutes of the meeting were not submitted at the arbitration proceedings. They, therefore, maintain that while the affidavits were submitted for the first time to the NLRC, they, nonetheless, contain factual statements to clarify the evidence earlier presented to the labor arbiter. They contend that the CA committed no error in accepting the affidavits, especially considering that Galang did not deny the contents of Cityland's documentary evidence nor dispute them at any stage of the proceedings.

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[28] *Rollo*, pp. 229-236.

[29] *Id.* at 252-270.

[30] *Id.* at 164.

Finally, the respondents take exception to Galang's position that the CA erred in applying the *Agabon* doctrine to his case, instead of *Serrano* which was the prevailing jurisprudence at the time. They maintain that Galang's argument is premised on the assumption that he had acquired a vested right under the decisions of the labor arbiter and the NLRC. They stress that the labor authorities' decisions have not yet attained finality and, therefore, cannot be the basis of the acquisition of a vested right.

In a different vein, the respondents maintain that by laying down the *Agabon* doctrine, the Court had overturned and abandoned the *Serrano* ruling; having been abandoned without conditions, *Serrano* has no force and effect, and Galang acquired no vested right under it.

The Court's Ruling

We find the petition unmeritorious.

The CA committed no reversible error and neither did it commit grave abuse of discretion in declaring that Galang had been dismissed for cause. Contrary to Galang's submission, there is substantial evidence — such relevant evidence that a reasonable mind might accept as adequate to support a conclusion[31] — supporting the CA decision.

The pieces of evidence which Galang objected to (the affidavits submitted to the NLRC) were not the sole basis of the CA ruling. They simply corroborated the respondents' earlier submissions to the labor arbiter. We refer to Tupas' memorandum dated May 20, 2002 to Arrogante[32] and Cityland's reply to the labor arbiter's summons[33] where Cityland's Board of Directors approved Tupas' recommendation, as well as that of the audit

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[31] *Bibas v. Office of the Ombudsman (Visayas)*, G.R. No. 172580, July 23, 2008, 559 SCRA 591.

[32] *Supra* note 8.

[33] *Supra* note 10.

team, for Galang's dismissal. The grounds for Galang's dismissal had already been laid down by Tupas' memorandum.

Stated otherwise, the affidavits executed in 2005, simply amplified the evidence Cityland submitted in 2002, including documents[34] which cited Galang's serious negligence in causing the flooding of his assigned condominium floor, which resulted in a costly repair of the buildings' elevator. Additionally, there was Tupas' memo to Cityland's President[35] which "pertains to the case of Romeo Galang xxx for harassment to co-janitors, insubordination to Supervisor and conduct unbecoming an employee."[36]

As earlier pointed out, Tupas made a report of the incident where Galang took pictures of his co-janitors whom he considered as suspects in the alleged loss of money (₱4,000.00) kept in his locker. Tupas called a meeting to investigate the matter. She asked Galang to surrender the pictures, but he refused and harassed the janitors and insulted Tupas in front of everybody. Tupas also reported that on several occasions, Galang disobeyed her orders, often finding fault with his co-employees, and was very hard to deal with. She believed that Galang had been grossly insubordinate and had committed acts of harassment against his co-employees. Thus, he was already a liability to the organization.

In light of the circumstances obtaining in the case, we find credible the respondents' submission that Galang had become unfit to continue in employment. The evidence supports the view that he continued to exhibit undesirable traits as an employee and as a person, in relation to both his co-workers and his superiors, particularly Tupas, her immediate supervisor.

On a different plane, Galang kept on saying that the respondents failed to prove their case against him, yet he chose to simply

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[34] *Supra* note 17. *Rollo*, p. 164. Tupas' memorandum to Galang requiring him to explain the flooding.

[35] *Supra* note 8.

[36] *Ibid.*

ignore, as the CA aptly put it, the respondents' documented accusations against him; he did not even deny them in his comment with the CA nor in his submissions to this Court.

We quote with approval the following excerpt from the assailed CA decision:

> Without offering any possible ill motive that might have impelled [the respondents] to summarily dismiss [Galang], who admitted having been absorbed by the former as janitor upon the termination of his contract with his agency, this Court is more inclined to give credence to the evidence pointing to the conclusion that [Galang's] employment was actually severed for a just cause.[37]

The procedural due process issue

The finding of a just cause for Galang's dismissal notwithstanding, we concur with the CA's conclusion that Cityland did not afford Galang the required notice before he was dismissed. As the CA noted, the investigation conference Tupas called to look into the janitors' complaints against Galang, did not constitute the written notice required by law as he had no clear idea what the charges were. Thus, the CA committed no error in sustaining his dismissal and awarding him nominal damages as indemnity.

*The **Agabon** ruling versus the **Serrano** doctrine*

As a final point, Galang posits that *vis-à-vis* the matter of dismissal for just cause without due process, the CA "was incorrect when it retroactively applied the later ruling of the High Court in *Agabon v. NLRC,* considering that when this case was filed, the applicable doctrine was *Serrano*."[38]

We disagree with this position. As the respondents correctly pointed out, the decision of the NLRC did not attain finality as it was brought to the CA on a petition for *certiorari* and was overturned. Galang simply did not have the benefit of any final

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[37] *Supra* note 2, at 209.

[38] *Rollo,* p. 265.

arbiter or NLRC decision to which the *Serrano* ruling could be applied. When the CA ruled on the case, this Court had abandoned the *Serrano* doctrine in favor of *Agabon.* Thus, the CA committed no error in applying *Agabon* to the case.

WHEREFORE, premises considered, we **DENY** the petition for lack of merit. The assailed decision and resolution of the Court of Appeals are **AFFIRMED.** No costs.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 175558. February 8, 2012]

SKIPPERS UNITED PACIFIC, INC. and SKIPPERS MARITIME SERVICES, INC., LTD., *petitioners, vs.* **NATHANIEL DOZA, NAPOLEON DE GRACIA, ISIDRO L. LATA, and CHARLIE APROSTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF DUE PROCESS IN DISMISSAL CASES, DISCUSSED. — For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process. Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first

notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted. Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.

2. ID.; ID.; ID.; THE EMPLOYER'S CLAIM OF VOLUNTARY PRE-TERMINATION OF CONTRACT BY SEAFARERS MUST BE PROVED OTHERWISE THEIR DISMISSAL IS CONSIDERED ILLEGAL. — In this case, there was no written notice furnished to De Gracia, *et al.* regarding the cause of their dismissal. Cosmoship furnished a written notice (telex) to Skippers, the local manning agency, claiming that De Gracia, *et al.* were repatriated because the latter voluntarily pre-terminated their contracts. This telex was given credibility and weight by the Labor Arbiter and NLRC in deciding that there was pre-termination of the employment contract "akin to resignation" and no illegal dismissal. However, as correctly ruled by the CA, the telex message is "a biased and self-serving document that does not satisfy the requirement of substantial evidence." If, indeed, De Gracia, *et al.* voluntarily pre-terminated their contracts, then De Gracia, *et al.* should have submitted their written resignations. Article 285 of the Labor Code recognizes termination by the employee of the employment contract by "serving written notice on the employer at least one (1) month in advance." Given that provision, the law contemplates the requirement of a written notice of resignation. In the absence of a written resignation, it is safe to presume that the employer terminated the seafarers. In addition, the telex message relied upon by the Labor Arbiter and NLRC bore conflicting dates of 22 January 1998 and 22 January 1999, giving doubt to the veracity and authenticity of the document. In 22 January 1998, De Gracia, *et al.* were not even employed yet by the foreign principal. For these reasons, the dismissal of De Gracia, *et al.* was illegal.

3. ID.; ID.; ID.; HOME ALLOTMENT PAY OF SEAFARERS IS NOT IN THE NATURE OF EXTRAORDINARY BENEFIT

BUT CONSIDERED AS SALARY TO BE PAID FOR SERVICES RENDERED. — Contrary to the claim of the Labor Arbiter and NLRC that the home allotment pay is in "the nature of extraordinary money where the burden of proof is shifted to the worker who must prove he is entitled to such monetary benefit," Section 8 of POEA Memorandum Circular No. 55, series of 1996, states that the allotment actually constitutes **at least eighty percent (80%) of the seafarer's salary** x x x Paragraph 2 of the employment contracts of De Gracia, Lata and Aprosta incorporated the provisions of above Memorandum Circular No. 55, series of 1996, in the employment contracts. Since said memorandum states that home allotment of seafarers actually constitutes at least eighty percent (80%) of their salary, home allotment pay is not in the nature of an extraordinary money or benefit, but should actually be considered as salary which should be paid for services rendered. For this reason, such non-remittance of home allotment pay should be considered as unpaid salaries, and Skippers shall be liable to pay the home allotment pay of De Gracia, *et al.* for the month of December 1998.

4. ID.; ID.; ID.; ILLEGALLY DISMISSED SEAFARERS ARE ENTITLED TO SALARIES REPRESENTING THE UNEXPIRED PORTION OF THEIR CONTRACTS. — The Migrant Workers Act provides that salaries for the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less, shall be awarded to the overseas Filipino worker, in cases of illegal dismissal. However, in 24 March 2009, *Serrano v. Gallant Maritime Services and Marlow Navigation Co. Inc.*, the Court, in an *En Banc* Decision, declared unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" and awarded the entire unexpired portion of the employment contract to the overseas Filipino worker. On 8 March 2010, however, Section 7 of Republic Act No. 10022 (RA 10022) amended Section 10 of the Migrant Workers Act, and once again reiterated the provision of awarding the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less. Nevertheless, since the termination occurred on January 1999 before the passage of the amendatory RA 10022, we shall apply RA 8042, as unamended, without touching on the constitutionality of Section 7 of RA 10022. The declaration

> in March 2009 of the unconstitutionality of the clause "or for three months for every year of the unexpired term, whichever is less" in RA 8042 shall be given retroactive effect to the termination that occurred in January 1999 because an unconstitutional clause in the law confers no rights, imposes no duties and affords no protection. The unconstitutional provision is inoperative, as if it was not passed into law at all. x x x [W]e modify the CA's imposition of award, and grant to De Gracia, *et al.* salaries representing the unexpired portion of their contracts, instead of salaries for three (3) months.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma and Carbonell for petitioners.

Linsangan Linsangan & Linsangan Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a Petition for Review under Rule 45 assailing the 5 July 2006 Decision[1] and 7 November 2006 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 88148.[3]

This arose from consolidated labor case[4] filed by seafarers Napoleon De Gracia (De Gracia), Isidro L. Lata (Lata), Charlie

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[1] *Rollo*, pp. 31-40. Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Justice) with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid concurring.

[2] *Id.* at 41. Penned by Associate Justice Estela M. Perlas-Bernabe (now Supreme Court Justice) with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid concurring.

[3] *Id.* at 11-29.

[4] CA *rollo*, p. 77.

Aprosta (Aprosta), and Nathaniel Doza (Doza) against local manning agency Skippers United Pacific, Inc. and its foreign principal, Skippers Maritime Services, Inc., Ltd. (Skippers) for unremitted home allotment for the month of December 1998, salaries for the unexpired portion of their employment contracts, moral damages, exemplary damages, and attorney's fees. Skippers, on the other hand, answered with a claim for reimbursement of De Gracia, Aprosta and Lata's repatriation expenses, as well as award of moral damages and attorney's fees.

De Gracia, Lata, Aprosta and Doza's (De Gracia, *et al*.) claims were dismissed by the Labor Arbiter for lack of merit.[5] The Labor Arbiter also dismissed Skippers' claims.[6] De Gracia, *et al*. appealed[7] the Labor Arbiter's decision with the National Labor Relations Commission (NLRC), but the First Division of the NLRC dismissed the appeal for lack of merit.[8] Doza, *et al*.'s Motion for Reconsideration was likewise denied by the NLRC,[9] so they filed a Petition for *Certiorari* with the Court of Appeals (CA).[10]

The CA granted the petition, reversed the Labor Arbiter and NLRC Decisions, and awarded to De Gracia, Lata and Aprosta their unremitted home allotment, three months salary each representing the unexpired portion of their employment contracts and attorney's fees.[11] No award was given to Doza for lack of factual basis.[12] The CA denied Skippers' Motion for Partial Reconsideration.[13] Hence, this Petition.

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[5] *Id.* at 81.

[6] *Id.*

[7] *Id.* at 82-95.

[8] *Id.* at 126-131.

[9] *Id.* at 132-134.

[10] *Id.* at 1-24.

[11] *Rollo*, pp. 31-40.

[12] *Id.* at 38.

[13] *Id.* at 41.

The Facts

Skippers United Pacific, Inc. deployed, in behalf of Skippers, De Gracia, Lata, and Aprosta to work on board the vessel MV Wisdom Star, under the following terms and conditions:

Name:	Napoleon O. De Gracia
Position:	3rd Engineer
Contract Duration:	10 months
Basic Monthly Salary:	US$800.00
Contract Date:	17 July 1998[14]

Name:	Isidro L. Lata
Position:	4th Engineer
Contract Duration:	12 months
Basic Monthly Salary:	US$600.00
Contract Date:	17 April 1998[15]

Name:	Charlie A. Aprosta
Position:	Third Officer
Contract Duration:	12 months
Basic Monthly Salary:	US$600.00
Contract Date:	17 April 1998[16]

Paragraph 2 of all the employment contracts stated that: "The terms and conditions of the Revised Employment Contract Governing the Employment of All Seafarers approved per Department Order No. 33 and Memorandum Circular No. 55, both series of 1996 shall be strictly and faithfully observed."[17] No employment contract was submitted for Nathaniel Doza.

De Gracia, *et al.* claimed that Skippers failed to remit their respective allotments for almost five months, compelling them to air their grievances with the Romanian Seafarers Free Union.[18] On 16 December 1998, ITF Inspector Adrian Mihalcioiu of the

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[14] CA *rollo*, p. 60.

[15] *Id.* at 61.

[16] *Id.* at 62.

[17] *Id.* at 60-62.

[18] *Id.* at 50.

Romanian Seafarers Union sent Captain Savvas of Cosmos Shipping a fax letter, relaying the complaints of his crew, namely: home allotment delay, unpaid salaries (only advances), late provisions, lack of laundry services (only one washing machine), and lack of maintenance of the vessel (perforated and unrepaired deck).[19] To date, however, Skippers only failed to remit the home allotment for the month of December 1998.[20] On 28 January 1999, De Gracia, *et al*. were unceremoniously discharged from MV Wisdom Stars and immediately repatriated.[21] Upon arrival in the Philippines, De Gracia, *et al*. filed a complaint for illegal dismissal with the Labor Arbiter on 4 April 1999 and prayed for payment of their home allotment for the month of December 1998, salaries for the unexpired portion of their contracts, moral damages, exemplary damages, and attorney's fees.[22]

Skippers, on the other hand, claims that at around 2:00 a.m. on 3 December 1998, De Gracia, smelling strongly of alcohol, went to the cabin of Gabriel Oleszek, Master of MV Wisdom Stars, and was rude, shouting noisily to the master.[23] De Gracia left the master's cabin after a few minutes and was heard shouting very loudly somewhere down the corridors.[24] This incident was evidenced by the Captain's Report sent via telex to Skippers on said date.[25]

Skippers also claims that at 12:00 noon on 22 January 1999, four Filipino seafarers, namely Aprosta, De Gracia, Lata and Doza, arrived in the master's cabin and demanded immediate repatriation because they were not satisfied with the ship.[26] De

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[19] *Id*. at 63.

[20] *Id*. at 48.

[21] *Id*. at 50.

[22] *Id*. at 57.

[23] *Id*. at 65.

[24] *Id*.

[25] *Id*. at 73.

[26] *Id*. at 65.

Gracia, *et al*. threatened that they may become crazy any moment and demanded for all outstanding payments due to them.[27] This is evidenced by a telex of Cosmoship MV Wisdom to Skippers, which however bears conflicting dates of 22 January 1998 and 22 January 1999.[28]

Skippers also claims that, due to the disembarkation of De Gracia, *et al*., 17 other seafarers disembarked under abnormal circumstsances.[29] For this reason, it was suggested that Polish seafarers be utilized instead of Filipino seamen.[30] This is again evidenced by a fax of Cosmoship MV Wisdom to Skippers, which bears conflicting dates of 24 January 1998 and 24 January 1999.[31]

Skippers, in its Position Paper, admitted non-payment of home allotment for the month of December 1998, but prayed for the offsetting of such amount with the repatriation expenses in the following manner:[32]

Seafarer	Repatriation Expense	Home Allotment	Balance
De Gracia	US$1,340.00	US$900.00	US$440.00
Aprosta	US$1,340.00	US$600.00	US$740.00
Lata	US$1,340.00	US$600.00	US$740.00

Since De Gracia, *et al*. pre-terminated their contracts, Skippers claims they are liable for their repatriation expenses[33] in accordance with Section 19(G) of Philippine Overseas Employment

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[27] *Id*. at 74.

[28] *Id*.

[29] *Id*. at 75.

[30] *Id*.

[31] *Id*.

[32] *Id*. at 68.

[33] *Id*.

Administration (POEA) Memorandum Circular No. 55, series of 1996 which states:

> G. A seaman who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. The employer may, in case of compassionate grounds, assume the transportation cost of the seafarer's replacement.

Skippers also prayed for payment of moral damages and attorney's fees.[34]

The Decision of the Labor Arbiter

The Labor Arbiter rendered his Decision on 18 February 2002, with its dispositive portion declaring:

> WHEREFORE, judgment is hereby rendered dismissing herein action for lack of merit. Respondents' claim for reimbursement of the expenses they incurred in the repatriation of complainant Nathaniel Doza is likewise dismissed.
>
> SO ORDERED.[35]

The Labor Arbiter dismissed De Gracia, *et al*.'s complaint for illegal dismissal because the seafarers voluntarily pre-terminated their employment contracts by demanding for immediate repatriation due to dissatisfaction with the ship.[36] The Labor Arbiter held that such voluntary pre-termination of employment contract is akin to resignation,[37] a form of termination by employee of his employment contract under Article 285 of the Labor Code. The Labor Arbiter gave weight and credibility to the telex of the master of the vessel to Skippers, claiming that De Gracia, *et al*. demanded for immediate repatriation.[38] Due to

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[34] *Id*. at 70.

[35] *Id*. at 81.

[36] *Id*. at 80.

[37] *Id*. at 79.

[38] *Id*. at 80.

the absence of illegal dismissal, De Gracia, *et al.*'s claim for salaries representing the unexpired portion of their employment contracts was dismissed.[39]

The Labor Arbiter also dismissed De Gracia *et al.*'s claim for home allotment for December 1998.[40] The Labor Arbiter explained that payment for home allotment is "in the nature of extraordinary money where the burden of proof is shifted to the worker who must prove he is entitled to such monetary benefit."[41] Since De Gracia, *et al*. were not able to prove their entitlement to home allotment, such claim was dismissed.[42]

Lastly, Skippers' claim for reimbursement of repatriation expenses was likewise denied, since Article 19(G) of POEA Memorandum Circular No. 55, Series of 1996 allows the employer, in case the seafarer voluntarily pre-terminates his contract, to assume the repatriation cost of the seafarer on compassionate grounds.[43]

The Decision of the NLRC

The NLRC, on 28 October 2002, dismissed De Gracia, *et al.*'s appeal for lack of merit and affirmed the Labor Arbiter's decision.[44] The NLRC considered De Gracia, *et al*.'s claim for home allotment for December 1998 unsubstantiated, since home allotment is a benefit which De Gracia, *et al*. must prove their entitlement to.[45] The NLRC also denied the claim for illegal dismissal because De Gracia, *et al*. were not able to refute the telex received by Skippers from the vessel's master that De Gracia, *et al*. voluntarily pre-terminated their contracts and

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[39] *Id.* at 81.

[40] *Id*.

[41] *Id.* at 80.

[42] *Id.* at 80-81.

[43] *Id.* at 81.

[44] *Id.* at 131.

[45] *Id*. at 130.

demanded immediate repatriation due to their dissatisfaction with the ship's operations.[46]

The Decision of the Court of Appeals

The CA, on 5 July 2006, granted De Gracia, *et al*.'s petition and reversed the decisions of the Labor Arbiter and NLRC, its dispositive portion reading as follows:

> WHEREFORE, the instant petition for *certiorari* is GRANTED. The Resolution dated October 28, 2002 and the Order dated August 31, 2004 rendered by the public respondent NLRC are ANNULLED and SET ASIDE. Let another judgment be entered holding private respondents jointly and severally liable to petitioners for the payment of:
>
> 1. Unremitted home allotment pay for the month of December, 1998 or the equivalent thereof in Philippine pesos:
>
> a. De Gracia = US$900.00
> b. Lata = US$600.00
> c. Aprosta = US$600.00
>
> 2. Salary for the unexpired portion of the employment contract or for 3 months for every year of the unexpired term, whichever is less, or the equivalent thereof in Philippine pesos:
>
> a. De Gracia = US$2,400.00
> b. Lata = US$1,800.00
> c. Aprosta = US$1,800.00
>
> 3. Attorney's fees and litigation expenses equivalent to 10% of the total claims.
>
> SO ORDERED.[47]

The CA declared the Labor Arbiter and NLRC to have committed grave abuse of discretion when they relied upon the telex message of the captain of the vessel stating that De Gracia, *et al*. voluntarily pre-terminated their contracts and demanded

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[46] *Id*.

[47] *Rollo,* pp. 39-40.

immediate repatriation.[48] The telex message was "a self-serving document that does not satisfy the requirement of substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion that petitioners indeed voluntarily demanded their immediate repatriation."[49] For this reason, the repatriation of De Gracia, *et al*. prior to the expiration of their contracts showed they were illegally dismissed from employment.[50]

In addition, the failure to remit home allotment pay was effectively admitted by Skippers, and prayed to be offset from the repatriation expenses.[51] Since there is no proof that De Gracia, *et al*. voluntarily pre-terminated their contracts, the repatriation expenses are for the account of Skippers, and cannot be offset with the home allotment pay for December 1998.[52]

No relief was granted to Doza due to lack of factual basis to support his petition.[53] Attorney's fees equivalent to 10% of the total claims was granted since it involved an action for recovery of wages or where the employee was forced to litigate and incur expenses to protect his rights and interest.[54]

The Issues

Skippers, in its Petition for Review on *Certiorari*, assigned the following errors in the CA Decision:

a) The Court of Appeals seriously erred in not giving due credence to the master's telex message showing that the respondents voluntarily requested to be repatriated.

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[48] *Id*. at 36.

[49] *Id*.

[50] *Id*. at 37.

[51] *Id*. at 38.

[52] *Id*.

[53] *Id*.

[54] *Id*. at 39.

b) The Court of Appeals seriously erred in finding petitioners liable to pay backwages and the alleged unremitted home allotment pay despite the finding of the Labor Arbiter and the NLRC that the claims are baseless.

c) The Court of Appeals seriously erred in awarding attorney's fees in favor of respondents despite its findings that the facts attending in this case do not support the claim for moral and exemplary damages.[55]

The Ruling of this Court

We deny the petition and affirm the CA Decision, but modify the award.

For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.[56]

Procedural due process in dismissal cases consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.[57]

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[55] *Id.* at 19.

[56] *Quirico Lopez v. Alturas Group of Companies and/or Marlito Uy*, G.R. No. 191008, 11 April 2011, citing *Tirazona v. Court of Appeals*, G.R. No. 169712, 14 March 2008, 548 SCRA 560.

[57] *New Puerto Commercial v. Lopez*, G.R. No. 169999, 26 July 2010, 625 SCRA 422, citing *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, 14 August 2007, 530 SCRA 132, 140-141.

Substantive due process, on the other hand, requires that dismissal by the employer be made under a just or authorized cause under Articles 282 to 284 of the Labor Code.

In this case, there was no written notice furnished to De Gracia, *et al*. regarding the cause of their dismissal. Cosmoship furnished a written notice (telex) to Skippers, the local manning agency, claiming that De Gracia, *et al*. were repatriated because the latter voluntarily pre-terminated their contracts. This telex was given credibility and weight by the Labor Arbiter and NLRC in deciding that there was pre-termination of the employment contract "akin to resignation" and no illegal dismissal. However, as correctly ruled by the CA, the telex message is "a biased and self-serving document that does not satisfy the requirement of substantial evidence." If, indeed, De Gracia, *et al*. voluntarily pre-terminated their contracts, then De Gracia, *et al*. should have submitted their written resignations.

Article 285 of the Labor Code recognizes termination by the employee of the employment contract by "serving written notice on the employer at least one (1) month in advance." Given that provision, the law contemplates the requirement of a written notice of resignation. In the absence of a written resignation, it is safe to presume that the employer terminated the seafarers. In addition, the telex message relied upon by the Labor Arbiter and NLRC bore conflicting dates of 22 January 1998 and 22 January 1999, giving doubt to the veracity and authenticity of the document. In 22 January 1998, De Gracia, *et al*. were not even employed yet by the foreign principal. For these reasons, the dismissal of De Gracia, *et al*. was illegal.

On the issue of home allotment pay, Skippers effectively admitted non-remittance of home allotment pay for the month of December 1998 in its Position Paper. Skippers sought the repatriation expenses to be offset with the home allotment pay. However, since De Gracia, *et al*.'s dismissal was illegal, their repatriation expenses were for the account of Skippers and could not be offset with the home allotment pay.

Contrary to the claim of the Labor Arbiter and NLRC that the home allotment pay is in "the nature of extraordinary money

where the burden of proof is shifted to the worker who must prove he is entitled to such monetary benefit," Section 8 of POEA Memorandum Circular No. 55, series of 1996, states that the allotment actually constitutes **at least eighty percent (80%) of the seafarer's salary**:

> The seafarer is required to make an allotment which is payable once a month to his designated allottee in the Philippines through any authorized Philippine bank. The master/employer/agency shall provide the seafarer with facilities to do so at no expense to the seafarer. The allotment shall be **at least eighty percent (80%)** of the seafarer's monthly basic salary including backwages, if any. (Emphasis supplied)

Paragraph 2 of the employment contracts of De Gracia, Lata and Aprosta incorporated the provisions of above Memorandum Circular No. 55, series of 1996, in the employment contracts. Since said memorandum states that home allotment of seafarers actually constitutes at least eighty percent (80%) of their salary, home allotment pay is not in the nature of an extraordinary money or benefit, but should actually be considered as salary which should be paid for services rendered. For this reason, such non-remittance of home allotment pay should be considered as unpaid salaries, and Skippers shall be liable to pay the home allotment pay of De Gracia, *et al*. for the month of December 1998.

Damages

As admitted by Skippers in its Position Paper, the home allotment pay for December 1998 due to De Gracia, Lata and Aprosta is:

Seafarer	Home Allotment Pay
De Gracia	US$900.00
Aprosta	US$600.00
Lata	US$600.00

The monthly salary of De Gracia, according to his employment contract, is only US$800.00. However, since Skippers admitted

in its Position Paper a higher home allotment pay for De Gracia, we award the higher amount of home allotment pay for De Gracia in the amount of US$900.00. Since the home allotment pay can be considered as unpaid salaries, the peso equivalent of the dollar amount should be computed using the prevailing rate at the time of termination since it was due and demandable to De Gracia, *et al*. on 28 January 1999.

Section 10 of Republic Act No. 8042 (Migrant Workers Act) provides for money claims in cases of unjust termination of employment contracts:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

The Migrant Workers Act provides that salaries for the unexpired portion of the employent contract or three (3) months for every year of the unexpired term, whichever is less, shall be awarded to the overseas Filipino worker, in cases of illegal dismissal. However, in 24 March 2009, *Serrano v. Gallant Maritime Services and Marlow Navigation Co. Inc.*,[58] the Court, in an *En Banc* Decision, declared unconstitutional the clause "or for three months for every year of the unexpired term, whichever is less" and awarded the entire unexpired portion of the employment contract to the overseas Filipino worker.

On 8 March 2010, however, Section 7 of Republic Act No. 10022 (RA 10022) amended Section 10 of the Migrant Workers Act, and once again reiterated the provision of awarding the unexpired portion of the employment contract or three (3) months for every year of the unexpired term, whichever is less.

Nevertheless, since the termination occurred on January 1999 before the passage of the amendatory RA 10022, we shall apply RA 8042, as unamended, without touching on the constitutionality of Section 7 of RA 10022.

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[58] G.R. No. 167614, 24 March 2009, 582 SCRA 254.

The declaration in March 2009 of the unconstitutionality of the clause "or for three months for every year of the unexpired term, whichever is less" in RA 8042 shall be given retroactive effect to the termination that occurred in January 1999 because an unconstitutional clause in the law confers no rights, imposes no duties and affords no protection. The unconstitutional provision is inoperative, as if it was not passed into law at all.[59]

As such, we compute the claims as follows:

Seafarer	Contract Term	Contract Date	Repatriation Date	Unexpired Term	Monthly Salary	Total Claims
De Gracia	10 months	17 Jul. 1998	28 Jan. 1999	3 months & 20 days	US$800	US$2933.34
Lata	12 months	17 Apr. 1998	28 Jan. 1999	2 months & 20 days	US$600	US$1600
Aprosta	12 months	17 Apr. 1998	28 Jan. 1999	2 months & 20 days	US$600	US$1600

Given the above computation, we modify the CA's imposition of award, and grant to De Gracia, *et al*. salaries representing the unexpired portion of their contracts, instead of salaries for three (3) months.

Article 2219 of the Civil Code of the Philippines provides for recovery of moral damages in certain cases:

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

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[59] *Yap v. Thenamaris Ship's Management and Intermare Maritime Agencies, Inc.*, G.R. No. 179532, 30 May 2011.

(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.

Article 2229 of the Civil Code, on the other hand, provides for recovery of exemplary damages:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

In this case, we agree with the CA in not awarding moral and exemplary damages for lack of factual basis.

Lastly, Article 2208 of the Civil Code provides for recovery of attorney's fees and expenses of litigation:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Article 111 of the Labor Code provides for a maximum award of attorney's fees in cases of recovery of wages:

> Art. 111. Attorney's fees.
> a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
> b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Since De Gracia, *et al*. had to secure the services of the lawyer to recover their unpaid salaries and protect their interest, we agree with the CA's imposition of attorney's fees in the amount of ten percent (10%) of the total claims.

WHEREFORE, we **AFFIRM** the Decision of the Court of Appeals dated 5 July 2006 with **MODIFICATION.** Petitioners Skippers United Pacific, Inc. and Skippers Maritime Services Inc., Ltd. are jointly and severally liable for payment of the following:

1) Unremitted home allotment pay for the month of December 1998 in its equivalent rate in Philippine Pesos at the time of termination on 28 January 1999:

a. De Gracia = US$900.00
b. Lata = US$600.00
c. Aprosta = US$600.00

2) Salary for the unexpired portion of the employment contract or its current equivalent in Philippine Pesos:

a. De Gracia = US$2,933.34
b. Lata = US$1,600.00
c. Aprosta = US$1,600.00

3) Attorney's fees and litigation expenses equivalent to 10% of the total claims.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176085. February 8, 2012]

FEDERICO S. ROBOSA, ROLANDO E. PANDY, NOEL D. ROXAS, ALEXANDER ANGELES, VERONICA GUTIERREZ, FERNANDO EMBAT, and NANETTE H. PINTO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (First Division), CHEMO-TECHNISCHE MANUFACTURING, INC. and its responsible officials led by FRANKLIN R. DE LUZURIAGA, and PROCTER & GAMBLE PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) HAS CONTEMPT POWERS. — [W]e stress that under Article 218 of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose appropriate penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court. Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers. As is clear under Article 218(d) of the Labor Code, the labor arbiter or the Commission is empowered or has jurisdiction to hold the offending party or parties in direct or indirect contempt. The petitioners, therefore, have not improperly brought the indirect contempt charges against the respondents before the NLRC.

2. ID.; ID.; ID.; AVOIDANCE OF THE NLRC TO RESOLVE THE ISSUES WHICH PERTAIN EXCLUSIVELY TO THE LABOR ARBITER DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION; THE NLRC CORRECTLY

DISMISSED THE CONTEMPT CHARGES. — We find no grave abuse of discretion in the assailed NLRC ruling. It rightly avoided delving into issues which would clearly be in excess of its jurisdiction for they are issues involving the merits of the case which are by law within the original and exclusive jurisdiction of the labor arbiter. To be sure, whether payroll reinstatement of some of the petitioners is proper; whether the resignation of some of them was compelled by dire economic necessity; whether the petitioners are entitled to their money claims; and whether quitclaims are contrary to law or public policy are issues that should be heard by the labor arbiter in the first instance. The NLRC can inquire into them only on appeal after the merits of the case shall have been adjudicated by the labor arbiter. The NLRC correctly dismissed the contempt charges against the respondents. The CA likewise committed no grave abuse of discretion in not disturbing the NLRC resolution.

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. for petitioners.

Angara Abello Concepcion Regala & Cruz for Procter and Gamble Philippines, Inc.

Sunico Malabanan & Associates Law Offices for Franklin R. De Luzuriaga.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] seeking the reversal of the resolutions of the Court of Appeals (*CA*) rendered on February 24, 2006[2] and December 14, 2006[3] in CA-G.R. SP No. 80436.

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[1] *Rollo*, pp. 10-91; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 320-327; penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justices Marina L. Buzon and Aurora Santiago-Lagman.

[3] *Id.* at 329-331.

Factual Background

Federico S. Robosa, Rolando E. Pandy, Noel D. Roxas, Alexander Angeles, Veronica Gutierrez, Fernando Embat and Nanette H. Pinto (*petitioners*) were rank-and-file employees of respondent Chemo-Technische Manufacturing, Inc. (*CTMI*), the manufacturer and distributor of "Wella" products. They were officers and members of the CTMI Employees Union-DFA (*union*). Respondent Procter and Gamble Philippines, Inc. (*P & GPI*) acquired all the interests, franchises and goodwill of CTMI during the pendency of the dispute.

Sometime in the first semester of 1991, the union filed a petition for certification election at CTMI. On June 10, 1991, Med-Arbiter Rasidali Abdullah of the Office of the Department of Labor and Employment in the National Capital Region (*DOLE-NCR*) granted the petition. The DOLE-NCR conducted a consent election on July 5, 1991, but the union failed to garner the votes required to be certified as the exclusive bargaining agent of the company.

On July 15, 1991, CTMI, through its President and General Manager Franklin R. de Luzuriaga, issued a memorandum[4] announcing that effective that day: (1) all sales territories were demobilized; (2) all vehicles assigned to sales representatives should be returned to the company and would be sold; (3) sales representatives would continue to service their customers through public transportation and would be given transportation allowance; (4) deliveries of customers' orders would be undertaken by the warehouses; and (5) revolving funds for ex-truck selling held by sales representatives should be surrendered to the cashier (for Metro Manila) or to the supervisor (for Visayas and Mindanao), and truck stocks should immediately be surrendered to the warehouse.

On the same day, CTMI issued another memorandum[5] informing the company's sales representatives and sales drivers

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[4] *Rollo*, p. 450.

[5] *Id.* at 453.

of the new system in the Salon Business Group's selling operations.

The union asked for the withdrawal and deferment of CTMI's directives, branding them as union busting acts constituting unfair labor practice. CTMI ignored the request. Instead, it issued on July 23, 1991 a notice of termination of employment to the sales drivers, due to the abolition of the sales driver positions.[6]

On August 1, 1991, the union and its affected members filed a complaint for illegal dismissal and unfair labor practice, with a claim for damages, against CTMI, De Luzuriaga and other CTMI officers. The union also moved for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO).

The Compulsory Arbitration Proceedings

The labor arbiter handling the case denied the union's motion for a stay order on the ground that the issues raised by the petitioners can best be ventilated during the trial on the merits of the case. This prompted the union to file on August 16, 1991 with the National Labor Relations Commission (*NLRC*), a petition for the issuance of a preliminary mandatory injunction and/or TRO.[7]

On August 23, 1991, the NLRC issued a TRO.[8] It directed CTMI, De Luzuriaga and other company executives to (1) cease and desist from dismissing any member of the union and from implementing the July 23, 1991 memorandum terminating the services of the sales drivers, and to immediately reinstate them if the dismissals have been effected; (2) cease and desist from implementing the July 15, 1991 memorandum grounding the sales personnel; and (3) restore the *status quo ante* prior to the formation of the union and the conduct of the consent election.

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[6] *Id.* at 454-462.

[7] *Id.* at 191-208.

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

Allegedly, the respondents did not comply with the NLRC's August 23, 1991 resolution. They instead moved to dissolve the TRO and opposed the union's petition for preliminary injunction.

On September 12, 1991, the NLRC upgraded the TRO to a writ of preliminary injunction.[9] The respondents moved for reconsideration. The union opposed the motion and urgently moved to cite the responsible CTMI officers in contempt of court.

On August 25, 1993, the NLRC denied the respondents' motion for reconsideration and directed Labor Arbiter Cristeta Tamayo to hear the motion for contempt. In reaction, the respondents questioned the NLRC orders before this Court through a petition for *certiorari* and prohibition with preliminary injunction. The Court dismissed the petition for being premature. It also denied the respondents' motion for reconsideration, as well as a second motion for reconsideration, with finality. This notwithstanding, the respondents allegedly refused to obey the NLRC directives. The respondents' defiance, according to the petitioners, resulted in the loss of their employment.

Meanwhile, the NLRC heard the contempt charge. On October 31, 2000, it issued a resolution[10] dismissing the charge. **It ordered the labor arbiter to proceed hearing the main case on the merits**.

The petitioners moved for, but failed to secure, a reconsideration from the NLRC on the dismissal of the contempt charge. They then sought relief from the CA by way of a petition for *certiorari* under Rule 65.

The CA Decision

The CA saw no need to dwell on the issues raised by the petitioners as the question it deemed appropriate for resolution

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[9] *Id.* at 234-235.

[10] *Id.* at 162-184.

is whether the NLRC's dismissal of the contempt charge against the respondents may be the proper subject of an appeal. It opined that the dismissal is not subject to review by an appellate court. Accordingly, the CA Special Sixth Division dismissed the petition in its resolution of February 24, 2006.[11]

The CA considered the prayer of P & GPI to be dropped as party-respondent moot and academic.

The petitioners sought a reconsideration, but the CA denied the motion in its resolution of December 14, 2006.[12] Hence, the present Rule 45 petition.

The Petition

The petitioners charge the CA with grave abuse of discretion in upholding the NLRC resolutions, despite the reversible errors the labor tribunal committed in dismissing the contempt charge against the respondents. They contend that the respondents were guilty of contempt for their failure (1) to observe strictly the NLRC *status quo* order; and (2) to reinstate the dismissed petitioners and to pay them their lost wages, sales commissions, per diems, allowances and other employee benefits. They also claim that the NLRC, in effect, overturned this Court's affirmation of the TRO and of the preliminary injunction.

The petitioners assail the CA's reliance on the Court's ruling that a contempt charge partakes of a criminal proceeding where an acquittal is not subject to appeal. They argue that the facts obtaining in the present case are different from the facts of the cases where the Court's ruling was made. They further argue that by the nature of this case, the Labor Code and its implementing rules and regulations should apply, but in any event, the appellate court is not prevented from reviewing the factual basis of the acquittal of the respondents from the contempt charges.

The petitioners lament that the NLRC, in issuing the challenged resolutions, had unconstitutionally applied the law. They maintain

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[11] *Supra* note 2.

[12] *Supra* note 3.

that not only did the NLRC unconscionably delay the disposition of the case for more than twelve (12) years; it also rendered an unjust, unkind and dubious judgment. They bewail that "[f]or some strange reason, the respondent NLRC made a queer [somersault] from its earlier rulings which favor the petitioners."[13]

The Case for the Respondents

Franklin K. De Luzuriaga

De Luzuriaga filed a Comment[14] on May 17, 2007 and a Memorandum on December 4, 2008,[15] praying for a dismissal of the petition.

De Luzuriaga argues that the CA committed no error when it dismissed the petition for *certiorari* since the dismissal of the contempt charge against the respondents amounted to an acquittal where review by an appellate court will not lie. In any event, he submits, the respondents were charged with indirect contempt which may be initiated only in the appropriate regional trial court, pursuant to Section 12, Rule 71 of the Rules of Court. He posits that the NLRC has no jurisdiction over an indirect contempt charge. He thus argues that the petitioners improperly brought the contempt charge before the NLRC.

Additionally, De Luzuriaga points out that the petition raises only questions of facts which, procedurally, is not allowed in a petition for review on *certiorari*. Be this as it may, he submits that pursuant to *Philippine Long Distance Telephone Company, Inc. v. Tiamson*,[16] factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality. He stresses that the CA committed no reversible error in not reviewing the NLRC's factual findings.

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[13] *Rollo,* p. 74.

[14] *Id.* at 415-440.

[15] *Id.* at 642-686.

[16] G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761.

Further, De Luzuriaga contends that the petitioners' verification and certification against forum shopping is defective because it was only Robosa and Pandy who executed the document. There was no indication that they were authorized by Roxas, Angeles, Gutierrez, Embat and Pinto to execute the required verification and certification.

Lastly, De Luzuriaga maintains that the petitioners are guilty of forum shopping as the reliefs prayed for in the petition before the CA, as well as in the present petition, are the same reliefs that the petitioners may be entitled to in the complaint before the labor arbiter.[17]

P & GPI

As it did with the CA when it was asked to comment on the petitioners' motion for reconsideration,[18] P & GPI prays in its Comment[19] and Memorandum[20] that it be dropped as a party-respondent, and that it be excused from further participating in the proceedings. It argues that inasmuch as the NLRC resolved the contempt charge on the merits, an appeal from its dismissal through a petition for *certiorari* is barred. Especially in its case, the dismissal of the petition for *certiorari* is correct because it was never made a party to the contempt proceedings and, thus, it was never afforded the opportunity to be heard. It adds that it is an entity separate from CTMI. It submits that it cannot be made to assume any or all of CTMI's liabilities, absent an agreement to that effect but even if it may be liable, the present proceedings are not the proper venue to determine its liability, if any.

On December 16, 2008, the petitioners filed a Memorandum[21] raising essentially the same issues and arguments laid down in the petition.

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[17] NLRC–NCR Case No. 00-08-04455-91.

[18] *Rollo*, pp. 370-375.

[19] *Id.* at 504-509.

[20] *Id.* at 622-633.

[21] *Id.* at 706-784.

The Court's Ruling

Issues

The parties' submissions raise the following issues:

(1) whether the NLRC has contempt powers;

(2) whether the dismissal of a contempt charge is appealable; and

(3) whether the NLRC committed grave abuse of discretion in dismissing the contempt charge against the respondents.

On the first issue, we stress that under Article 218[22] of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose

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[22] Article 218 of the Labor Code provides:

Powers of the Commission. — The Commission shall have the power and authority:

x x x x x x x x x

(d) To hold any person in contempt directly or indirectly and impose appropriate penalties therefor in accordance with law.

A person guilty of misbehavior in the presence of or so near the Chairman or any member of the Commission or any Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn, or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in direct contempt by said officials and punished by fine not exceeding five hundred pesos (₱500) or imprisonment not exceeding five (5) days, or both, if it be the Commission, or a member thereof, or by a fine not exceeding one hundred pesos (₱100) or imprisonment not exceeding one (1) day, or both, if it be a Labor Arbiter.

The person adjudged in direct contempt by a Labor Arbiter may appeal to the Commission and the execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond on condition that he will abide by and perform the judgment of the Commission should the appeal be decided against him. Judgment of the Commission on direct contempt is immediately executory and unappealable. Indirect contempt shall be dealt with by the Commission or Labor Arbiter in the manner prescribed under Rule 71 of the Revised Rules of Court[.]

appropriate penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court.[23]

Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers.[24] As is clear under Article 218(d) of the Labor Code, the labor arbiter or the Commission is empowered or has jurisdiction to hold the offending party or parties in direct or indirect contempt. The petitioners, therefore, have not improperly brought the indirect contempt charges against the respondents before the NLRC.

The second issue pertains to the nature of contempt proceedings, especially with respect to the remedy available to the party adjudged to have committed indirect contempt or has been absolved of indirect contempt charges. In this regard, Section 11, Rule 71 of the Rules of Court states that the judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in a criminal case. This is not the point at issue, however, in this petition. It is rather the question of whether the dismissal of a contempt charge, as in the present case, is appealable. The CA held that the NLRC's dismissal of the contempt charges against the respondents amounts to an acquittal in a criminal case and is not subject to appeal.

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[23] *Id.*, last paragraph.

[24] SEC. 12. ***Contempt against quasi-judicial entities.*** **— Unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor.**

The CA ruling is grounded on prevailing jurisprudence.

In *Yasay, Jr. v. Recto*,[25] the Court declared:

> A distinction is made between a civil and [a] criminal contempt. Civil contempt is the failure to do something ordered by a court to be done for the benefit of a party. A criminal contempt is any conduct directed against the authority or dignity of the court.[26]

The Court further explained in *Remman Enterprises, Inc. v. Court of Appeals*[27] and *People v. Godoy*[28] the character of contempt proceedings, thus —

> The real character of the proceedings in contempt cases is to be determined by the relief sought or by the dominant purpose. The proceedings are to be regarded as criminal when the purpose is primarily punishment and civil when the purpose is primarily compensatory or remedial.

Still further, the Court held in *Santiago v. Anunciacion, Jr.*[29] that:

> But whether the first or the second, contempt is still a criminal proceeding in which acquittal, for instance, is a bar to a second prosecution. The distinction is for the purpose only of determining the character of punishment to be administered.

In the earlier case of *The Insurance Commissioner v. Globe Assurance Co., Inc.*,[30] the Court dismissed the appeal from the ruling of the lower court denying a petition to punish the respondent therein from contempt for lack of evidence. The Court said in that case:

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[25] G.R. No. 129521, September 7, 1999, 313 SCRA 739, 744.

[26] See also *People v. Godoy*, G.R. Nos. 115908-09, March 29, 1995, 243 SCRA 64.

[27] G.R. No. 107671, February 26, 1997, 268 SCRA 688, 697.

[28] *Supra* note 26, at 78.

[29] G.R. No. 89318, April 3, 1990, 184 SCRA 118, 121.

[30] No. L-27874, January 30, 1982, 111 SCRA 202, 204.

It is not the sole reason for dismissing this appeal. In the leading case of In re *Mison, Jr. v. Subido*, it was stressed by Justice J.B.L. Reyes as *ponente*, that the contempt proceeding far from being a civil action is "of a criminal nature and of summary character in which the court exercises but limited jurisdiction." It was then explicitly held: "Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court." [footnote omitted]

Is the NLRC's dismissal of the contempt charges against the respondents beyond review by this Court? On this important question, we note that the petitioners, in assailing the CA main decision, claim that the appellate court committed grave abuse of discretion in not ruling on the dismissal by the NLRC of the contempt charges.[31] They also charge the NLRC of having gravely abused its discretion and having committed reversible errors in:

(1) setting aside its earlier resolutions and orders, including the writ of preliminary injunction it issued, with its dismissal of the petition to cite the respondents in contempt of court;

(2) overturning this Court's resolutions upholding the TRO and the writ of preliminary injunction;

(3) failing to impose administrative fines upon the respondents for violation of the TRO and the writ of preliminary injunction; and

(4) failing to order the reinstatement of the dismissed petitioners and the payment of their accrued wages and other benefits.

In view of the grave abuse of discretion allegation in this case, we deem it necessary to look into the NLRC's dismissal of the contempt charges against the respondents. As the charges were rooted into the respondents' alleged non-compliance with the NLRC directives contained in the TRO[32] and the writ of preliminary injunction,[33] we first inquire into what really happened to these directives.

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[31] *Supra* note 1, at 47-48.

[32] *Supra* note 8.

[33] *Supra* note 9.

The assailed NLRC resolution of October 31, 2000[34] gave us the following account on the matter —

On the first directive, x x x We find that there was no violation of the said order. A perusal of the records would show that in compliance with the temporary restraining order (TRO), respondents reinstated back to work the sales drivers who complained of illegal dismissal (Memorandum of Respondents, page 4).

Petitioners' allegation that there was only payroll reinstatement does not make the respondents guilty of contempt of court. Even if the drivers were just in the garage doing nothing, the same does not make respondents guilty of contempt nor does it make them violators of the injunction order. What is important is that they were reinstated and receiving their salaries.

As for petitioners Danilo Real, Roberto Sedano and Rolando Manalo, they have resigned from their jobs and were paid their separation pay xxx (Exhibits "6", "6-A", "7", "7-A", "8", "8-A", Respondents' Memorandum dated August 12, 1996). The issue of whether they were illegally dismissed should be threshed out before the Labor Arbiter in whose sala the case of unfair labor practice and illegal dismissal were (sic) filed. Records also show that petitioner Antonio Desquitado during the pendency of the case executed an affidavit of desistance asking that he be dropped as party complainant in as much as he has already accepted separation benefits totaling to ₱63,087.33.

With respect to the second directive ordering respondents to cease and desist from implementing the memoranda dated July 15, 1991 designed to ground sales personnel who are members of the union, respondents alleged that they can no longer be restrained or enjoined and that the status quo can no longer be restored, for implementation of the memorandum was already consummated or was a *fait accompli*. x x x

All sales vehicles were ordered to be turned over to management and the same were already sold[.] xxx [I]t would be hard to undo the sales transactions, the same being valid and binding. The memorandum of July 15, 1991 authorized still all sales representatives to continue servicing their customers using public transportation and a transportation allowance would be issued.

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[34] *Supra* note 10, at 181-183.

x x x x x x x x x

The third directive of the Commission is to preserve the "status quo ante" between the parties.

Records reveal that WELLA AG of Germany terminated its Licensing Agreement with respondent company effective December 31, 1991 (Exhibit "11", Respondents' Memorandum).

On January 31, 1992, individual petitioners together with the other employees were terminated xxx. In fact, this event resulted to the closure of the respondent company. The manufacturing and marketing operations ceased. This is evidenced by the testimony of Rosalito del Rosario and her affidavit (Exh. "9", memorandum of Respondents) as well as Employer's Monthly Report on Employees Termination/ dismissals/suspension xxx (Exhibits "12-A" to "12-F", *ibid.*) as well as the report that there is a permanent shutdown/total closure of all units of operations in the establishment (*Ibid.*). A letter was likewise sent to the Department of Labor and Employment (Exh. "12", *Ibid.*) in compliance with Article 283 of the Labor Code, serving notice that it will cease business operations effective January 31, 1992.

The petitioners strongly dispute the above account. They maintain that the NLRC failed to consider the following:

1. CTMI violated the *status quo ante* order when it did not restore to their former work assignments the dismissed sales drivers. They lament that their being "garaged" deprived them of benefits, and they were subjected to ridicule and psychological abuse. They assail the NLRC for considering the payroll reinstatement of the drivers as compliance with its stay order.

They also bewail the NLRC's recognition of the resignation of Danilo Real, Roberto Sedano, Rolando Manalo and Antonio Desquitado as they were just compelled by economic necessity to resign from their employment. The quitclaims they executed were contrary to public policy and should not bar them from claiming the full measure of their rights, including their counsel who was unduly deprived of his right to collect attorney's fees.

2. It was error for the NLRC to rule that the memorandum, grounding the sales drivers, could no longer be restrained or enjoined because all sales vehicles were already sold. No

substantial evidence was presented by the respondents to prove their allegation, but even if there was a valid sale of the vehicles, it did not relieve the respondents of responsibility under the stay order.

3. The alleged termination of the licensing agreement between CTMI and WELLA AG of Germany, which allegedly resulted in the closure of CTMI's manufacturing and marketing operations, occurred after the NLRC's issuance of the injunctive reliefs. CTMI failed to present substantial evidence to support its contention that it folded up its operations when the licensing agreement was terminated. Even assuming that there was a valid closure of CTMI's business operations, they should have been paid their lost wages, allowances, incentives, sales commissions, per diems and other employee benefits from August 23, 1991 up to the date of the alleged termination of CTMI's marketing operations.

Did the NLRC commit grave abuse of discretion in dismissing the contempt charges against the respondents? An act of a court or tribunal may only be considered as committed in grave abuse of discretion when it was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive 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 personal hostility.[35]

The petitioners insist that the respondents violated the NLRC directives, especially the *status quo ante* order, for their failure to reinstate the dismissed petitioners and to pay them their benefits. In light of the facts of the case as drawn above, we cannot see how the *status quo ante* or the employer-employee situation before the formation of the union and the conduct of the consent election can be maintained. As the NLRC explained,

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[35] *Gonzales v. Intermediate Appellate Court*, 252 Phil. 253 (1989); see also *Manila Electric Company v. Barlis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11.

CTMI closed its manufacturing and marketing operations after the termination of its licensing agreement with WELLA AG of Germany. In fact, the closure resulted in the termination of CTMI's remaining employees on January 31, 1992, aside from the sales drivers who were earlier dismissed but reinstated in the payroll, in compliance with the NLRC injunction. The petitioners' termination of employment, as well as all of their money claims, was the subject of the illegal dismissal and unfair labor practice complaint before the labor arbiter. The latter was ordered by the NLRC on October 31, 2000 to proceed hearing the case.[36] The NLRC thus subsumed all other issues into the main illegal dismissal and unfair labor practice case pending with the labor arbiter. On this point, the NLRC declared:

> Note that when the injunction order was issued, WELLA AG of Germany was still under licensing agreement with respondent company. However, the situation has changed when WELLA AG of Germany terminated its licensing agreement with the respondent, causing the latter to close its business.
>
> Respondents could no longer be ordered to restore the status quo as far as the individual petitioners are concerned as these matters regarding the termination of the employees are now pending litigation with the Arbitration Branch of the Commission. To resolve the incident now regarding the closure of the respondent company and the matters alleged by petitioners such as the creations of three (3) new corporations xxx as successor-corporations are matters best left to the Labor Arbiter hearing the merits of the unfair labor practice and illegal dismissal cases.[37]

We find no grave abuse of discretion in the assailed NLRC ruling. It rightly avoided delving into issues which would clearly be in excess of its jurisdiction for they are issues involving the merits of the case which are by law within the original and exclusive jurisdiction of the labor arbiter.[38] To be sure, whether payroll reinstatement of some of the petitioners is proper; whether

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[36] *Supra* note 10.

[37] *Id.* at 183-184.

[38] LABOR CODE, Article 217.

the resignation of some of them was compelled by dire economic necessity; whether the petitioners are entitled to their money claims; and whether quitclaims are contrary to law or public policy are issues that should be heard by the labor arbiter in the first instance. The NLRC can inquire into them only on appeal after the merits of the case shall have been adjudicated by the labor arbiter.

The NLRC correctly dismissed the contempt charges against the respondents. The CA likewise committed no grave abuse of discretion in not disturbing the NLRC resolution.

In light of the above discussion, we find no need to dwell into the other issues the parties raised.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit and **AFFIRM** the assailed resolutions of the Court of Appeals.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 180157. February 8, 2012]

EQUITABLE CARDNETWORK, INC., *petitioner, vs.* **JOSEFA BORROMEO CAPISTRANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; WHERE AN INADEQUATE DENIAL OF ACTIONABLE DOCUMENTS ATTACHED TO THE COMPLAINT IS CURED BY WAY OF "SPECIAL AND AFFIRMATIVE DEFENSES." — [T]he

Court holds that the CA correctly ordered the dismissal of ECI's action since, contrary to the RTC's finding, Mrs. Capistrano effectively denied the genuineness and due execution of ECI's actionable documents. True, Mrs. Capistrano denied ECI's actionable documents merely "for lack of knowledge" which denial, as pointed out above, is inadequate since by their nature she ought to know the truth of the allegations regarding those documents. But this inadequacy was cured by her quick assertion that she was also denying the allegations regarding those actionable documents "for the reasons as stated in her special and affirmative defenses." In the "Special and Affirmative Defenses" section of her answer, Mrs. Capistrano in fact denied ECI's documented allegations that she applied for a credit card, was given one, and used it. She said: 11. Defendant denies having applied for membership with the Equitable Cardnetwork, Inc. as a widow of a deceased member of the Manila Yacht Club. 12. She has never authorized anyone to get her alleged card for the preceding reason. Therefore, being not a member, she has no obligation, monetary or otherwise to herein plaintiff. Neither the RTC nor the CA can ignore Mrs. Capistrano's above additional reasons denying ECI's allegations regarding its actionable documents. Such reasons form part of her answer. Parenthetically, it seems that, when Mrs. Capistrano denied the transactions with ECI "for lack of knowledge," it was her way of saying that such transactions took place without her knowing. And, since Mrs. Capistrano in fact verified her claim that she had no part in those transactions, she in effect denied under oath the genuineness and due execution of the documents supporting them. For this reason, she is not barred from introducing evidence that those documents were forged.

2. ID.; EVIDENCE; WHERE A PARTY SUFFICIENTLY ESTABLISHED THAT HER SIGNATURES ON THE ACTIONABLE DOCUMENTS WERE FORGED. — [A]part from presenting an officer who identified its documents, ECI presented no other evidence to support its claim that Mrs. Capistrano did business with it. On the other hand, the evidence for the defense shows that it was not likely for Mrs. Capistrano to have applied for a credit card since she was already 81 years old, weak, bedridden, and suffering from senility at the time in question. What is more, she had been staying in Cagayan

de Oro under the care of his son Mario; whereas she made the alleged cash advances and purchases using the credit card in different malls in Cebu City, Bohol, and Muntinlupa City. Further, as the CA found, Mrs. Capistrano's specimen signatures on a Deed of Sale, an Extra-judicial Settlement of Estate of Deceased Person, a Waiver of Rights, and a handwritten note, executed at about the time in question, clearly varied from the signatures found on ECI's documents. The testimony of a handwriting expert, while useful, is not indispensable in examining or comparing handwritings or signatures. The matter here is not too technical as to preclude the CA from examining the signatures and ruling on whether or not they are forgeries. The Court finds no reason to take exception from the CA's finding.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Tabor Mordeno Tan-Gan & Sumicad-Huerbana Law Offices for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the sufficiency of the defendant's allegations in the answer denying the due execution and genuineness of the plaintiff's actionable documents and the kind of evidence needed to prove forgery of signature.

The Facts and the Case

Petitioner Equitable Cardnetwork, Inc. (ECI) alleged in its complaint that in September 1997 respondent Josefa B. Capistrano (Mrs. Capistrano) applied for membership at the Manila Yacht Club (MYC) under the latter's widow-membership program. Since the MYC and ECI had a credit card sponsorship agreement in which the Club would solicit for ECI credit card enrollment among its members and dependents, Mrs. Capistrano allegedly applied for and was granted a Visa Credit Card by ECI.

ECI further alleged that Mrs. Capistrano authorized her daughter, Valentina C. Redulla (Mrs. Redulla), to claim from ECI her credit card and ATM application form.[1] Mrs. Redulla signed the acknowledgment receipt[2] on behalf of her mother, Mrs. Capistrano. After Mrs. Capistrano got hold of the card, she supposedly started using it. On November 24, 1997 Mrs. Redulla personally issued a ₱45,000.00 check as partial payment of Mrs. Capistrano's account with ECI. But Mrs. Redulla's check bounced upon deposit.

Because Mrs. Capistrano was unable to settle her ₱217,235.36 bill, ECI demanded payment from her. But she refused to pay, prompting ECI to file on February 30, 1998 a collection suit against her before the Regional Trial Court (RTC) of Cebu City.

Answering the complaint, Mrs. Capistrano denied ever applying for MYC membership and ECI credit card; that Mrs. Redulla was not her daughter; and that she never authorized her or anyone to claim a credit card for her. Assuming she applied for such a card, she never used it. Mrs. Redulla posed as Mrs. Capistrano and fooled ECI into issuing the card to her. Consequently, the action should have been brought against Mrs. Redulla. Mrs. Capistrano asked the court to hold ECI liable to her for moral and exemplary damages, attorney's fees, and litigation expenses.

After trial, the RTC[3] ruled that, having failed to deny under oath the genuineness and due execution of ECI's actionable documents that were attached to the complaint, Mrs. Capistrano impliedly admitted the genuineness and due execution of those documents. In effect she admitted: *1)* applying for membership at the MYC;[4] *2)* accomplishing the MYC membership information

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[1] Exhibit "F".

[2] Exhibit "E".

[3] *Rollo,* pp. 77-82.

[4] Exhibit "A".

sheet[5] which contained a request for an ECI Visa card; *3)* holding herself liable for all obligations incurred in the use of such card; *4)* authorizing Mrs. Redulla to receive the Visa card issued in her name;[6] *5)* applying for an ATM Card with ECI; [7] and *6)* using the credit card in buying merchandise worth ₱217,235.36 as indicated in the sales slips.

The RTC said that when an action is founded upon written documents, their genuineness and due execution shall be deemed admitted unless the defendant specifically denies them under oath and states what he claims to be the facts.[8] A mere statement that the documents were procured by fraudulent representation does not raise any issue as to their genuineness and due execution.[9] The RTC rejected Mrs. Capistrano's argument that, having verified her answer, she should be deemed to have denied those documents under oath. The RTC reasoned that she did not, in her verification, deny signing those documents or state that they were false or fabricated.

The RTC added that respondent Mrs. Capistrano could no longer raise the defense of forgery since this had been cut-off by her failure to make a specific denial. Besides, said the RTC, Mrs. Capistrano failed to present strong and convincing evidence that her signatures on the document had been forged. She did not present a handwriting expert who could attest to the forgery. The trial court ordered Mrs. Capistrano to pay ECI's claim of ₱217,235.36 plus interests, attorney's fees and litigation expenses. Mrs. Capistrano appealed the decision to the Court of Appeals (CA).

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[5] Exhibit "C".

[6] Exhibit "E".

[7] Exhibit "F".

[8] RULES OF COURT, Rule 8, Sec. 8.

[9] *Songco v. Sellner*, 37 Phil. 254, 256 (1917).

On May 10, 2007 the CA reversed the trial court's decision and dismissed ECI's complaint.[10] The CA ruled that, although Mrs. Capistrano's answer was somewhat infirm, still she raised the issue of the genuineness and due execution of ECI's documents during trial by presenting evidence that she never signed any of them. Since ECI failed to make a timely objection to its admission, such evidence cured the vagueness in her answer. Further, the CA ruled that Mrs. Capistrano sufficiently proved by evidence that her signatures had been forged.

The Issues Presented

The issues presented are:

1. Whether or not the CA correctly ruled that, although Mrs. Capistrano failed to make an effective specific denial of the actionable documents attached to the complaint, she overcame this omission by presenting parol evidence to which ECI failed to object; and

2. Whether or not the CA correctly ruled that Mrs. Capistrano presented clear and convincing evidence that her signatures on the actionable documents had been forged.

Ruling of the Court

One. An answer to the complaint may raise a negative defense which consists in defendant's *specific denial* of the material fact that plaintiff alleges in his complaint, which fact is essential to the latter's cause of action.[11] Specific denial has three modes. Thus:

1) The defendant must specify each material allegation of fact the truth of which he does not admit and whenever practicable set forth the substance of the matters on which he will rely to support his denial;

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[10] *Rollo*, pp. 34-43.

[11] RULES OF COURT, Rule 6, Sec. 5.

2) When the defendant wants to deny only a part or a qualification of an averment in the complaint, he must specify so much of the averment as is true and material and deny the remainder; and

3) When the defendant is without knowledge and information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state and this shall have the effect of a denial.

But the rule that applies when the defendant wants to contest the documents attached to the claimant's complaint which are essential to his cause of action is found in Section 8, Rule 8 of the Rules of Court, which provides:

SECTION 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the *genuineness and due execution* of the instrument shall be *deemed admitted* unless the adverse party, under oath, *specifically denies them, and sets forth what he claims to be the facts*; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

To determine whether or not respondent Mrs. Capistrano effectively denied the genuineness and due execution of ECI's actionable documents as provided above, the pertinent averments of the complaint and defendant Capistrano's answer are here reproduced.

ECI's complaint:

3. That sometime in 1997, defendant applied for membership, as widow of a deceased member of the Manila Yacht Club;

4. That in connection with her application for membership in the Manila Yacht Club, defendant applied for and was granted a Manila Yacht Club Visa Card in accordance with Credit Card Sponsorship Agreement entered into between the plaintiff and the Manila Yacht Club wherein Manila Yacht Club shall solicit applications for the Manila Yacht Club Visa Cards from Manila Yacht Club members and dependents. Copy of the Manila Yacht Club Information Sheet is hereto attached as Annex "A";

Mrs. Capistrano's answer:

3. She specifically denies paragraph[s] 3 and 4 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons stated in her special and affirmative defenses.

x x x x x x x x x

ECI's complaint:

5. That defendant authorized her daughter, Mrs. Valentina Redulla to get the said credit card including her ATM application form from the plaintiff which enabled the defendant to avail of the cash advance facility with the use of said card; Copy of the authorization letter, application form and acknowledgment receipt showing that Valentina C. Redulla received the said credit card are hereto attached as Annexes "B", "C", and "D", respectively;

Mrs. Capistrano's answer:

4. She specifically denies paragraph 5 of the complaint for want of sufficient knowledge to form a belief as to the allegations contained therein. She never authorized any person to get her card. Valentina Redulla is not her daughter.

x x x x x x x x x

ECI's complaint:

6. That with the use of the said Manila Yacht Club Visa Card, defendant could purchase goods and services from local and accredited stores and establishments on credit and could make cash advances from ATM machines since it is the plaintiff who pays first the said obligations and later at a stated period every month, the plaintiff will send a statement of account to defendant showing how much she owes the plaintiff for the payments it previously made on her behalf. Copy of the monthly statement of accounts for the months of November and December 1997 are hereto attached as Annexes "E" and "F", respectively;

Mrs. Capistrano's answer:

5. She specifically denies paragraph 6 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons as stated in her special and affirmative defenses.

x x x x x x x x x

ECI's complaint:

7. That it is the agreement of the parties that in the event that an account is overdue, interest at 1.75% per month and service charge at 1.25% will be charged to the defendant;

Mrs. Capistrano's answer:

6. She specifically denies paragraph 7 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein.

x x x x x x x x x

ECI's complaint:

8. That on November 24, 1997, defendant's daughter, Mrs. Valentina C. Redulla issued Solidbank Check No. 0127617 dated November 24, 1997 in the amount of ₱45,000.00 in partial payment of defendant's account with the plaintiff;

9. That when the said check was deposited in the bank, the same was dishonored for the reason "Account Closed." Copy of said said check is hereto attached as Annex "G";

Mrs. Capistrano's answer:

7. She denies paragraph[s] 8 and 9 for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons aforestated. It is quite peculiar that herein defendant's alleged account would be paid with a personal check of somebody not related to her.

x x x x x x x x x

ECI's complaint:

10. That defendant has an unpaid principal obligation to the plaintiff in the amount of ₱217,235.326;

Mrs. Capistrano's answer:

8. She denies paragraph 10 for want of sufficient knowledge as to the veracity of the allegations contained therein and for the reasons stated in her special and affirmative defenses. Granting *ex gratia argumenti* that defendant did indeed apply for a card, still, she vehemently denies using the same to purchase goods from any establishment on credit.

x x x x x x x x x

ECI's complaint

11. That plaintiff made demands on the defendant to pay her obligation but despite said demands, defendant has failed and refused to pay her obligation and still fails and refuses to pay her obligation to the plaintiff and settle her obligation, thus, compelling the plaintiff to file the present action and hire the services of counsel for the amount of ₱53,998.84 and incur litigation expenses in the amount of ₱30,000.00;

12. That it is further provided as one of the terms and conditions in the issuance of the Manila Yacht Club Card that in the event that collection is enforced through court action, 25% of the amount due of ₱53,998.84 will be charged as attorney's fees and ₱53,998.84 will be charged as liquidated damages;

Mrs. Capistrano's answer

9. She denies paragraph[s] 11 and 12 for want of sufficient knowledge to form a belief as to the veracity of the allegations therein. If ever there was any demand sent to herein defendant the same would have been rejected on valid and lawful grounds. Therefore, any damage or expense, real or imaginary, incurred or sustained by the plaintiff should be for its sole and exclusive account.

x x x x x x x x x

Further, Mrs. Capistrano's **special and affirmative defenses** read as follows:

10. Defendant repleads by reference all the foregoing allegations which are relevant and material hereto.

11. Defendant denies having applied for membership with the Equitable Cardnetwork, Inc. as a widow of a deceased member of the Manila Yacht Club.

12. She has never authorized anyone to get her alleged card for the preceding reason. Therefore, being not a member, she has no obligation, monetary or otherwise to herein plaintiff.

13. Plaintiff has no cause of action against herein answering defendant.

14. This Valentina C. Redulla is not her daughter. In all modesty, defendant being a member of one of the prominent families of Cebu and being a board member of the Borromeo Brothers Estate whose holdings include Honda Cars Cebu as well as other prestigious

establishments, it would be totally uncalled for if she would not honor a valid obligation towards any person or entity.

15. She surmises that this Valentina Redulla has been posing as Josefa Capistrano. Therefore, plaintiff's cause of action should have been directed towards this Redulla.

16. Even granting for the sake of argument that herein answering defendant did indeed authorized somebody to pick up her card, still, she never made any purchases with the use thereof. She, therefore, vehemently denies having used the card to purchase any merchandise on credit.

In substance, ECI's allegations, supported by the attached documents, are that Mrs. Capistrano applied through Mrs. Redulla for a credit card and that the former used it to purchase goods on credit yet Mrs. Capistrano refused to pay ECI for them. On the other hand, Mrs. Capistrano denied these allegations "for lack of knowledge" as to their truth.[12] This mode of denial is by itself obviously ineffectual since a person must surely know if he applied for a credit card or not, like a person must know if he is married or not. He must also know if he used the card and if he did not pay the card company for his purchases. A person's denial for lack of knowledge of things that by their nature he ought to know is not an acceptable denial.

In any event, the CA ruled that, since ECI did not object on time to Mrs. Capistrano's evidence that her signatures on the subject documents were forged, such omission cured her defective denial of their genuineness and due execution. The CA's ruling on this point is quite incorrect.

True, issues not raised by the pleadings may be tried with the implied consent of the parties as when one of them fails to object to the evidence adduced by the other concerning such unimpleaded issues.[13] But the CA fails to reckon with the rule

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[12] *Rollo*, pp. 71-72, paragraphs 3 to 9.

[13] RULES OF COURT, Rule 10, Sec. 5. *Amendment to conform to or authorize presentation of evidence.* — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be

that a party's admissions in the course of the proceedings, like an admission in the answer of the genuineness and true execution of the plaintiff's actionable documents, can only be contradicted by showing that defendant made such admission through palpable mistake.[14] Here, Mrs. Capistrano never claimed palpable mistake in the answer she filed.

It is of no moment that plaintiff ECI failed to object to Mrs. Capistrano's evidence at the trial that the subject documents were forgeries. As the Court ruled in *Elayda v. Court of Appeals*,[15] the trial court may reject evidence that a party adduces to contradict a judicial admission he made in his pleading since such admission is conclusive as to him. It does not matter that the other party failed to object to the contradictory evidence so adduced.

Notwithstanding the above, the Court holds that the CA correctly ordered the dismissal of ECI's action since, contrary to the RTC's finding, Mrs. Capistrano effectively denied the genuineness and due execution of ECI's actionable documents. True, Mrs. Capistrano denied ECI's actionable documents merely "for lack of knowledge" which denial, as pointed out above, is inadequate since by their nature she ought to know the truth of the allegations regarding those documents. But this inadequacy was cured by her quick assertion that she was also denying the allegations regarding those actionable documents "for the reasons as stated in her special and affirmative defenses."

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treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. xxx

[14] Rule 129, Sec. 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

[15] G.R. No. L-49327, July 18, 1991, 199 SCRA 349, 353.

In the "Special and Affirmative Defenses" section of her answer, Mrs. Capistrano in fact denied ECI's documented allegations that she applied for a credit card, was given one, and used it. She said:

> 11. Defendant denies having applied for membership with the Equitable Cardnetwork, Inc. as a widow of a deceased member of the Manila Yacht Club.
>
> 12. She has never authorized anyone to get her alleged card for the preceding reason. Therefore, being not a member, she has no obligation, monetary or otherwise to herein plaintiff.

Neither the RTC nor the CA can ignore Mrs. Capistrano's above additional reasons denying ECI's allegations regarding its actionable documents. Such reasons form part of her answer. Parenthetically, it seems that, when Mrs. Capistrano denied the transactions with ECI "for lack of knowledge," it was her way of saying that such transactions took place without her knowing. And, since Mrs. Capistrano in fact verified her claim that she had no part in those transactions, she in effect denied under oath the genuineness and due execution of the documents supporting them. For this reason, she is not barred from introducing evidence that those documents were forged.

Two. Here, apart from presenting an officer who identified its documents, ECI presented no other evidence to support its claim that Mrs. Capistrano did business with it. On the other hand, the evidence for the defense shows that it was not likely for Mrs. Capistrano to have applied for a credit card since she was already 81 years old, weak, bedridden, and suffering from senility at the time in question.[16] What is more, she had been staying in Cagayan de Oro under the care of his son Mario; whereas she made the alleged cash advances and purchases using the credit card in different malls in Cebu City, Bohol, and Muntinlupa City.[17]

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[16] TSN, March 16, 2001, pp. 7-8.

[17] Annex "E".

Further, as the CA found, Mrs. Capistrano's specimen signatures on a Deed of Sale,[18] an Extra-judicial Settlement of Estate of Deceased Person,[19] a Waiver of Rights,[20] and a handwritten note,[21] executed at about the time in question, clearly varied from the signatures found on ECI's documents.[22] The testimony of a handwriting expert, while useful, is not indispensable in examining or comparing handwritings or signatures.[23] The matter here is not too technical as to preclude the CA from examining the signatures and ruling on whether or not they are forgeries. The Court finds no reason to take exception from the CA's finding.

WHEREFORE, the Court **DISMISSES** the petition and **AFFIRMS** the order of the Court of Appeals in CA-G.R. CV 79424 dated May 10, 2007 that directed the dismissal of the complaint against respondent Josefa B. Capistrano.

SO ORDERED.

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

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[18] Exhibits "8" and "9".

[19] Exhibit "10".

[20] Exhibit "11".

[21] Exhibit "7".

[22] Exhibit "F".

[23] *Progressive Trade & Service Enterprises v. Antonio*, G.R. No. 179502, September 18, 2009, 600 SCRA 683, 689.

THIRD DIVISION

[G.R. No. 183132. February 8, 2012]

RICHARD CHUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CRIMINAL LAW; FALSIFICATION OF COMMERCIAL DOCUMENTS; ELEMENTS, PRESENT. — The elements of the crime as found in paragraph 1, Article 172 of the RPC, are: "1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; 2) the offender committed any of the acts of falsification enumerated in Article 171; and 3) the falsification was committed in a public or official or commercial document." Applying this to the present case, all three elements are undeniably present — (*i*) Chua is a private individual; (*ii*) he used fictitious "inward foreign remittance advice of credit" to cause the funneling or transfer of the two named bank clients' payments into his own account, squarely falling under paragraph 2 of Article 171 of the Revised Penal Code; and (*iii*) the falsification was committed in two commercial documents, namely, "inward foreign remittance advice of credit" and the "debit tickets."

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to annul and set aside the February 21, 2008 Decision[1] and

[1] *Rollo*, pp. 9-20. Penned by Justice Japar B. Dimaampao with Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr., concurring.

June 2, 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. C.R. No. 29051, modifying the October 6, 2004 Decision[3] of the Regional Trial Court, Branch 132, Makati City *(RTC)* in Criminal Case No. 21499 entitled *People of the Philippines v. Richard Chua, for Estafa thru Falsification of Commercial Document.*

The Facts:

In 1982, Allied Banking Corporation *(the bank)* hired Richard Chua as a general clerk in its International Banking Division which processed the opening of domestic and international letters of credit, domestic and international remittances as well as importation and exportation. Specifically, Chua was tasked to process trust receipts, accept trust receipt payments and issue the corresponding receipts for these payments.[4]

In response to a complaint of a bank client regarding the non- application of his payments, an internal audit was conducted. In the course of the audit, twenty-nine (29) fictitious payments backed by equally bogus foreign remittances were discovered. The audit led to a finding that these remittances were not supported by the necessary authenticated advice from the foreign bank concerned. Two of these remittances were with instructions to credit specified amounts to Savings Account No. 1000-209312 which turned out to be under Chua's name.

1. Inward Foreign Remittance Advice of Credit dated 29 October 1984 in the amount of ₱16,729.96:

   "Kindly credit & advi[s]e immediately SA# 1000-209312 of R. CHUA representing proceeds of remittance by order of Amado Roque under TT ref. BKT/1752/25 dated 10-26-84."

2. Inward Foreign Remittance Advice of Credit dated 6 August 1984 in the amount of ₱16,024.70:

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

[3] *Id.* at 45-51.

[4] *Id.* at 11.

> *"Please credit & advi[s]e immediately SA# 1000-209312 of R. Chua representing proceeds of remittance from San Francisco by order of Linda Castro for US$899.75 @ 17.822 less charges."*[5]

Meanwhile, the accounts payable or the excess payments made by two clients of the Bank, *ATL Plastic Manufacturing Industries* and *Unidex Garments*, were used to cover up the discrepancy created as a result of the crediting of the foregoing amounts to Chua's account. It was made to appear that the said amounts were refunded to the same clients although they were not. Debit Tickets were even accomplished to justify the act of crediting the subject amounts to Chua's account. Afterwards, when the same had been credited to his account, Chua withdrew them on different dates.[6]

On December 17, 1985, Chua was charged with Estafa through Falsification of Commercial Documents before the RTC. The Information reads:

> That on or about May 18, 1984 and October 24, 1984 and for sometime prior to and subsequent thereto, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit and false pretenses executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud Allied Banking Corporation in the following manner, to wit: the said accused, as General Clerk of the said complainant and taking advantage of his position as such, received from clients of the bank, Unidex Garments and ATL Plastics Manufacturing Industries, the respective sums of ₱16,024.70 and ₱16,729.96 for the purpose of applying the same to the payment of the excess indebtedness of said clients with the complainant bank but the accused instead made it appear that said amounts were to be credited to the current account of the client by executing an advice of credit which the said accused, however, did not forward to the Cash Department of the complainant and, instead, he prepared a fictitious inward foreign remittance advice of credit by falsely making

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[5] *Id.* at 12.

[6] *Id.* at 12.

it appear therein that there existed dollar remittances of a certain Linda Castro and Amado Roque in the U.S. dollar equivalent of said amounts which the accused credited to his personal account with the bank; and the accused, once in possession of said funds, did then and there willfully, unlawfully and feloniously appropriate and convert the same to his own personal use and benefit, to the damage and prejudice of the complainant, Allied Banking Corporation, in the total amount of ₱32,754.66.[7]

Records show that the case was ordered archived on March 31, 1986 when Chua evaded arrest after the court's issuance of an arrest warrant. He was finally arrested on September 10, 1999, after 13 years, but was released on bail the following day. When arraigned, Chua entered a plea of not guilty.[8]

For his defense, Chua denied that he prepared the subject Debit Tickets. He insisted on their regularity as these were duly signed and approved by two of his immediate supervisors. Chua likewise denied having prepared the Advice of Credit documents that covered the questioned foreign remittances. He pointed out that these documents were likewise approved for final processing by his supervisors. Finally, he denied having prepared the withdrawal slips, much more, the cash withdrawals corresponding to the subject amounts.[9]

In the assailed decision dated October 6, 2004, the RTC found Chua guilty beyond reasonable doubt of the crime of *estafa through falsification of commercial documents* and was sentenced accordingly.[10]

On appeal, the CA modified the RTC's judgment of conviction by holding Chua liable for falsification of commercial documents only. The CA reasoned out that Chua, being a mere general clerk of the bank, did not acquire both material and juridical

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[7] *Id.* at 10.

[8] *Id.* at 10-11.

[9] *Id.* at 13.

[10] *Id.* at 10.

possession of the subject amounts. He was likened to a bank teller "whose possession over the money received by him is possession by the bank itself."[11] Be that as it may, the CA, still under the same indictment/information and pursuant to this Court's ruling in *Gonzaludo v. People*,[12] held Chua liable for *falsification of commercial documents* as defined in Articles 172 and 171 of the Revised Penal Code.[13]

The CA wrote:

> In the case at bench, the prosecution was able to prove that the subject Inward Foreign Remittance Advices of Credit which were used to transfer the excess payments made by ATL Plastic Manufacturing Industries and Unidex Garments to the appellant's account in the guise of remittances, were fictitious since there were really no Linda Castro or Amado Roque who sent the same. It adduced two documents, *i.e.*, the Advices of Credit and the Debit Tickets, which were merely used to cover up the fictitious remittances. It is true that there is no direct proof that appellant was the author of the falsification. However, since he benefited from the fictitious transactions in question, the inevitable conclusion is that he falsified them. It is an established 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 justified that such person is the forger. On this score, the prosecution convincingly demonstrated that appellant withdrew the subject amounts on different dates.[14]

Chua's defense of forgery failed to impress the CA. As it was his burden to establish his defense, it was not enough for him to submit just any specimen of his signature. The NBI requested him to submit additional documents containing his signatures for the years 1983 and 1984 but he failed to meet its requirements. Thus, the CA gave no value to his defense. The dispositive portion of its February 21, 2008 Decision reads:

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[11] *Id.* at 16.

[12] 517 Phil. 110 (2006).

[13] *Rollo*, pp. 17-18.

[14] *Id.* at 19.

WHEREFORE, the Decision dated 6 October 2004 of the Regional Trial Court, Makati City, Branch 132, is MODIFIED. Appellant RICHARD CHUA is hereby ACQUITTED of the complex crime of Estafa through Falsification of Commercial Documents. However, he is adjudged GUILTY of the crime of Falsification of Commercial Documents and is SENTENCED to suffer an indeterminate penalty of 4 months and 1 day of *arresto mayor*, as minimum, to 2 years and 4 months of *prision correccional*, as maximum. Likewise, he is ORDERED to PAY a fine of ₱5,000.00.

No Costs.

SO ORDERED.[15]

Chua sought partial reconsideration but his motion was denied by the CA on June 2, 2008. Still not satisfied, Chua now comes to this Court raising the following

ISSUES:

I

Whether or not the Honorable Court of Appeals erred in finding the petitioner guilty of the crime of Falsification of Commercial Documents considering that it has categorically ADMITTED that there is no direct proof that petitioner was the author of the falsification in the case at bar.

II

Whether or not the Honorable Court of Appeals erred in not applying the paramount constitutional presumption of innocence in favor of the petitioner in view of its explicit admission that there is no direct proof that the petitioner was the author of the falsification.[16]

The Court finds no merit in the petition.

Chua claims that the CA's statement, "It is true that there is no direct proof that appellant was the author of the falsification,"[17]

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[15] *Id.* at 20.

[16] *Id.* at 35 and 112.

[17] *Id.* at 113.

absolves him from criminal liability even for the lesser offense of falsification of commercial documents. According to Chua, the CA was merely speculating when it held that he was the author of the falsified commercial documents because he allegedly benefited from them. He further argues that the prosecution "failed to show other facts and circumstances from which it may be reasonably and logically inferred that he committed the crime of falsification."[18]

Chua is obviously clutching at straws when he argues that the CA's judgment of conviction was based merely on speculation. He apparently misread the CA decision. First of all, the CA never abandoned or set aside the factual findings of the RTC when it ordered the modification of the judgment of conviction. The modification was merely on the RTC's conclusion as to the crime actually committed. In its appealed decision, the CA pointed out that an essential element in the complex crime of *estafa through falsification of commercial documents* was lacking, thus:

> Evidently, in the case at bench, appellant did not acquire juridical possession over the subject payments which were made by two of Allied Bank's clients, *i.e.*, Unidex Garments and ATL Plastic Manufacturing Industries. It must be borne in mind that appellant is a mere general clerk of Allied Bank. As part of his duties, he received payments from clients. His position therefor may be likened to the position of a bank teller whose possession over the money received by him is possession by the bank itself.[19]

The CA never disturbed, categorically or otherwise, the RTC's factual findings with regard to (a) the discovery of fictitious payments purportedly from equally fictitious foreign remittances; (b) the fictitious debit or refund to the bank's clients although in truth there were none as indicated in the bank's History of Daily Transactions, and was instead credited to the account of Chua; (c) authenticity of his signature in the withdrawal slips as testified to by the bank's signature verifier; (d) his denial

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[18] *Id.* at 115.

[19] *Id.* at 62.

that he ever knew the two persons named above who allegedly remitted the subject amount to him; (e) his own admission on cross examination that the subject amounts were indeed credited to his savings account with the bank; and (f) his admission that after the subject incident with the bank, he filed a notice of leave and never came back.[20]

The absence of a direct proof that Chua was the author of the falsification is of no moment for the rule remains that whenever someone has in his possession falsified documents and "uttered" or used the same for his advantage and benefit, the presumption that he authored it arises.

> X x x. This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and therefore, had complicity in the forgery.
>
> In the absence of a satisfactory explanation, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger.[21]

Certainly, the channeling of the subject payments via false remittances to his savings account, his subsequent withdrawals of said amount as well as his unexplained flight at the height of the bank's inquiry into the matter more than sufficiently establish Chua's involvement in the falsification.

The evidentiary bases of the RTC were the very same bases relied upon by the CA when it instead found Chua guilty beyond reasonable doubt of *falsification of commercial documents*. The facts are the same. The elements of the crime as found in paragraph 1, Article 172 of the RPC, are: "1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; 2) the offender committed any of the acts of falsification enumerated in Article 171; and

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[20] *Id.* at 122-123.

[21] *Serrano v. CA*, 452 Phil. 801, 819-820 (2003).

3) the falsification was committed in a public or official or commercial document."[22]

Applying this to the present case, all three elements are undeniably present — (*i*) Chua is a private individual; (*ii*) he used fictitious "inward foreign remittance advice of credit" to cause the funneling or transfer of the two named bank clients' payments into his own account,[23] squarely falling under paragraph 2 of Article 171 of the Revised Penal Code[24]; and (*iii*) the falsification was committed in two commercial documents, namely, "inward foreign remittance advice of credit" and the "debit tickets."[25] Without doubt, his subsequent conviction to a lesser crime was not unfounded.

A conviction coming from the heels of an acquittal in a complex or a more serious crime is nothing new. The CA was merely following the Court's lead in the case of *Gonzaludo v. People*,[26] where it was held:

> The lack of criminal liability for estafa, however, will not necessarily absolve petitioner from criminal liability arising from the charge of *falsification of public document* under the same Information charging the complex crime of estafa through falsification of public document. It is settled doctrine that —
>
> "When a complex crime has been charged in an information and the evidence fails to support the charge on one of the component offenses, can defendant still be separately convicted

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[22] *Guillergan v. People*, G.R. No. 185493, February 2, 2011, 641 SCRA 511, 516.

[23] *Rollo*, pp. 136-137.

[24] Art. 171. Falsification by public officer, employee, or notary or ecclesiastical minister. — x x x.

1. x x x x x x x x x.
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. x x x x x x x x x.

[25] *Rollo*, p. 137.

[26] *Supra* note 12.

of the other offense? The question has long been answered in the affirmative. In *United States v. Lahoylahoy and Madanlog*,[27] the Court has ruled to be legally feasible the conviction of an accused on one of the offenses included in a complex crime charged, when properly established, despite the failure of evidence to hold the accused of the other charge."[28] (previous citations omitted)

WHEREFORE, the petition is **DENIED.** The February 21, 2008 Decision and June 2, 2008 Resolution of the Court of Appeals in CA-G.R. CR No. 29051 are **AFFIRMED.**

SO ORDERED.

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

SPECIAL SECOND DIVISION

[G.R. No. 183444. February 8, 2012]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **RONALDO E. QUIWA, doing business under the name "R.E.Q. Construction," EFREN N. RIGOR, doing business under the name "Chiara Construction," ROMEO R. DIMATULAC, doing business under the name "Ardy Construction," and FELICITAS C. SUMERA, doing business under the name "F.C.S. Construction," represented by her attorney-in-fact ROMEO M. DE LEON,** *respondents.*

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[27] 38 Phil. 330 (1918).

[28] *Gonzaludo v. People, supra* note 12 at 580.

SYLLABUS

1. CIVIL LAW; GOVERNMENT CONTRACTS; CLEAN HANDS DOCTRINE, NOT APPLICABLE; THE OMISSION OF A PARTY TO COMPLY WITH LEGAL REQUIREMENTS DOES NOT AMOUNT TO FRAUD. — [R]espondents' purported omissions, standing alone, cannot be construed as fraudulent or deceitful. Petitioner did not present evidence of actual fraud and merely inferred that because of the omissions, the respondent contractors were in bad faith. "Fraud is never presumed but must be established by clear and convincing evidence. The strongest suspicion cannot sway judgment or overcome the presumption of regularity." Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter." Neither the trial court nor the appellate court found any design to defraud on the part of the respondent contractors. While petitioner is correct in saying that one who seeks equity must do equity, and one who comes into equity must come with clean hands, it is equally true that an allegation of fraud and dishonesty to come within the doctrine's purview must be substantiated. x x x This court recognizes that certain omissions will qualify as "acting with unclean hands." The omission, though, must be such as to give rise to a confusion that leads to an undesirable state of things. Here, even with the respondents' supposed failure to ascertain the validity of the contract and the authority of the public official involved in the construction agreements, there is no such confusion as to the matter of the contract's validity and the equivalent compensation. As found by the court *a quo*, petitioner had assured the contractors that they would be paid for the work that they would do, as even DPWH Undersecretary Teodoro T. Encarnacion had told them to "fast-track" the project. Hence, respondents cannot by any stretch of logic, be deprived of compensation for their services when — despite their ostensible omissions — they only heeded the assurance of DPWH and proceeded to work on the urgent project. Lest it be forgotten, our courts are courts of both law and equity. The petitioner merely claims that the omissions of respondents amount to fraud, while the records show that the public benefitted from the services of respondents. Given these,

this Court will remain true to the rule of substantial justice and direct the payment of compensation to the contractors, who have completed their services for the government's Mt. Pinatubo Rehabilitation Project. Otherwise, urgent actions for emergency work in the future would be discouraged.

2. ID.; ID.; THE GOVERNMENT CANNOT AVOID PAYMENT FOR COMPLETED WORK ALTHOUGH IT IS BASED ON A VOID OR UNWRITTEN CONTRACT. — Petitioner reiterates that the contracts are void, without legal effect, and cannot be cured by ratification. In the same Motion, it claims that the contracts were unenforceable, as they were entered into beyond the authority of Engineer Meñez. Petitioner also stresses that since the construction contracts with Rigor and Dimatulac are unwritten, DPWH cannot be held liable. It raises the point that the writing of government contracts is a requirement for existence, validity and enforceability. Citing the treatise of Bartolome C. Fernandez, petitioner DPWH further asserts that the government, being an artificial person, cannot verbally consent to the contract. These arguments have already been ruled upon, and we find no reason to disturb the rulings. To reiterate, it has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided. The government is unjustified in denying what it owes to contractors and in leaving them uncompensated after it has benefitted from the already completed work. Jurisprudence recognizes the principle of *quantum meruit*. Accordingly, in the interest of substantial justice, the contractor's entitlement to compensation has been and is hereby directed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Durian Alday & Cruz-Matters for respondents.

R E S O L U T I O N

SERENO, *J.*:

Assailed in this Motion for Partial Reconsideration dated 8 November 2011 filed by petitioner Department of Public Works

and Highways (DPWH) is the 12 October 2011 Decision of the Court, primarily affirming the trial and the appellate courts' judgments in favor of respondents' entitlement to compensation.

To recall, after the Mt. Pinatubo tragedy in 1991, DPWH engaged a number of contractors, including the respondents, for the urgent rehabilitation of the affected river systems. Save for Chiara Construction and Ardy Construction, respectively owned by Efren N. Rigor and Romeo R. Dimatulac, the contractors signed written agreements with Engineer Philip Meñez, Project Manager II of the DPWH.

It is undisputed that the contractors have completed their assigned rehabilitation works.[1] But DPWH refused to pay the contractors for the reason that the contracts were invalid due to non-compliance with legal requirements.[2] As such, respondents filed an action for a sum of money against DPWH.[3] The Regional Trial Court (RTC) of Manila, in Civil Case No. 96-77180, held that the contracts were valid and thus directed payment of compensation to the contractors.[4] DPWH appealed to the Court of Appeals (CA), which like the RTC, ruled that the respondents are entitled to their claim of compensation.[5]

Petitioner appealed by *certiorari* before this Court. In the questioned 12 October 2011 Decision, the Court primarily affirmed the trial and the appellate courts' judgments in favor of respondents' entitlement to compensation against petitioner DPWH.

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[1] *Department of Public Works and Highways vs. Ronald E. Quiwa,* doing business under the name "R.E.Q. Construction," G.R. No. 183444, 12 October 2011.

[2] CA Decision penned by Associate Justice Agustin S. Dizon, with Associate Justices Regalado E. Maambong and Cecilia C. Librea-Leagogo concurring, dated 26 June 2008, p. 5; *rollo,* p. 51.

[3] *Id.* at 50.

[4] RTC Decision penned by Judge Rustico V. Panganiban, dated 28 January 2002, p. 10; *rollo,* p. 67.

[5] CA Decision, *supra* note 2, at 10; *rollo,* p. 56.

On 10 November 2011, petitioner filed a Motion for Partial Reconsideration[6] assailing the aforementioned Decision.

Petitioner's main contention is that respondents did not come to court with clean hands to assert their money claims against petitioner in view of their failure to comply with the legal requirements concerning government contracts and in ascertaining the extent of authority of the public official with whom they contracted.[7] These omissions made the contracts void *ab initio* and, as a consequence, petitioner should not be made to suffer by paying respondents huge sums of money arising from void contracts.[8]

We deny the motion.

Petitioner unsuccessfully established the applicability of the clean hands doctrine. Citing *Muller v. Muller*, petitioner points out that "a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue."[9]

However, respondents' purported omissions, standing alone, cannot be construed as fraudulent or deceitful. Petitioner did not present evidence of actual fraud and merely inferred that because of the omissions, the respondent contractors were in bad faith. "Fraud is never presumed but must be established by clear and convincing evidence. The strongest suspicion cannot sway judgment or overcome the presumption of regularity."[10]

Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing.[11] The action

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[6] *Rollo*, p. 2.

[7] Petitioner's Motion for Partial Reconsideration, dated 8 November 2011, p. 3; *rollo*, p. 271.

[8] *Id.* at 270.

[9] *Id.* at 271.

[10] *Manotok Realty v. CLT Realty*, G.R. No. 123346, 31 March 2009, 582 SCRA 583.

[11] *People v. Punto*, 68 Phil. 481, 482 (1939).

(or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter."[12] Neither the trial court nor the appellate court found any design to defraud on the part of the respondent contractors.

While petitioner is correct in saying that one who seeks equity must do equity, and one who comes into equity must come with clean hands,[13] it is equally true that an allegation of fraud and dishonesty to come within the doctrine's purview must be substantiated:

> Bad faith and fraud are allegations of fact that demand clear and convincing proof. They are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them.[14]

This court recognizes that certain omissions will qualify as "acting with unclean hands." The omission, though, must be such as to give rise to a confusion that leads to an undesirable state of things.[15]

Here, even with the respondents' supposed failure to ascertain the validity of the contract and the authority of the public official involved in the construction agreements, there is no such confusion as to the matter of the contract's validity and the equivalent compensation. As found by the court *a quo*, petitioner had assured the contractors that they would be paid for the work that they

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[12] *Kentland Coal & Coke Co. v. Elswick*, 167 Ky., 593; 181 S. W., 181, 182, 183.

[13] Petitioner's Motion for Partial Reconsideration, *supra* note 7, p. 3; *rollo*, p. 271. Petitioner stated that "[h]e who seeks equity must do equity, and he who comes into equity must come with clean hands."

[14] *Cathay Pacific Airways, Ltd. v. Spouses Vazquez*, 447 Phil. 306 (2003).

[15] *United Housing Corporation v. Dayrit*, G.R. No. 76422, 260 Phil. 301 (1990); Concurring Opinion of Barredo, *J.*, *Estrada v. Sto. Domingo*, G.R. No. L-30570, 139 Phil. 158 (1969).

would do, as even DPWH Undersecretary Teodoro T. Encarnacion had told them to "fast-track" the project.[16] Hence, respondents cannot by any stretch of logic, be deprived of compensation for their services when - despite their ostensible omissions - they only heeded the assurance of DPWH and proceeded to work on the urgent project.

Lest it be forgotten, our courts are courts of both law and equity.[17] The petitioner merely claims that the omissions of respondents amount to fraud, while the records show that the public benefitted from the services of respondents. Given these, this Court will remain true to the rule of substantial justice and direct the payment of compensation to the contractors, who have completed their services for the government's Mt. Pinatubo Rehabilitation Project. Otherwise, urgent actions for emergency work in the future would be discouraged.

After the unfounded clean hands doctrine resorted to by petitioner DPWH is cleared up, all that remains is its repeated arguments. Petitioner reiterates that the contracts are void, without legal effect, and cannot be cured by ratification.[18] In the same Motion, it claims that the contracts were unenforceable, as they were entered into beyond the authority of Engineer Meñez.[19] Petitioner also stresses that since the construction contracts with Rigor and Dimatulac are unwritten, DPWH cannot be held liable.[20] It raises the point that the writing of government contracts is a requirement for existence, validity and enforceability. Citing the treatise of Bartolome C. Fernandez,[21] petitioner DPWH

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[16] RTC Decision, *supra* note 4, p.7; *rollo*, p. 64.

[17] *Hodges v. Yulo*, 81 Phil. 622 (1954).

[18] *Rollo*, p. 276.

[19] *Id*.

[20] *Id.* at 278.

[21] BARTOLOME C. FERNANDEZ, A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW 10 (2001). Petitioner's Motion for Partial Reconsideration, *supra* note 7, p. 10; *rollo*, p. 278.

further asserts that the government, being an artificial person, cannot verbally consent to the contract.[22]

These arguments have already been ruled upon, and we find no reason to disturb the rulings. To reiterate, it has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided.[23] The government is unjustified in denying what it owes to contractors and in leaving them uncompensated after it has benefitted from the already completed work.[24] Jurisprudence recognizes the principle of *quantum meruit*. Accordingly, in the interest of substantial justice, the contractor's entitlement to compensation has been and is hereby directed.[25]

IN VIEW THEREOF, the 8 November 2011 Motion for Partial Reconsideration of the 12 October 2011 Decision of this Court's Second Division is **DENIED** for lack of merit.

SO ORDERED.

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

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[22] *Id*.

[23] *EPG Construction Co. v. Hon. Gregorio R. Vigilar*, G.R. No. 131544, 16 March 2001, 354 SCRA 566; *Melchor vs. COA*, G.R. No. 95398, 16 August 1991, 200 SCRA 704; *Eslao vs. COA*, G.R. No. 89745, 8 April 1991, 195 SCRA 730; *Royal Trust Construction vs. Commission on Audit*, G.R. No. 84202, *rollo*, pp. 65-66.

[24] *Melchor v. COA*, G.R. No. 95398, 16 August 1991, 200 SCRA 704.

[25] *EPG Construction Co. v. Hon. Gregorio R. Vigilar*, G.R. No. 131544, 16 March 2001, 354 SCRA 566.

[*] Designated as Member of the Special Second Division vice Associate Justice Jose Portugal Perez per Special Order No. 1114 dated 3 October 2011.

SECOND DIVISION

[G.R. No. 183622. February 8, 2012]

MEROPE ENRIQUEZ *VDA. DE* CATALAN, *petitioner, vs.* **LOUELLA A. CATALAN-LEE,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; LETTERS OF ADMINISTRATION, WHEN AND TO WHOM ISSUED; REQUIREMENT BEFORE THE SECOND WIFE OF THE DECEASED MAY BE ISSUED LETTERS OF ADMINISTRATION OVER THE ESTATE; CASE AT BAR.— It appears that the trial court no longer required petitioner to prove the validity of Orlando's divorce under the laws of the United States and the marriage between petitioner and the deceased. Thus, there is a need to remand the proceedings to the trial court for further reception of evidence to establish the fact of divorce. Should petitioner prove the validity of the divorce and the subsequent marriage, she has the preferential right to be issued the letters of administration over the estate. Otherwise, letters of administration may be issued to respondent, who is undisputedly the daughter or next of kin of the deceased, in accordance with Sec. 6 of Rule 78 of the Revised Rules of Court.

APPEARANCES OF COUNSEL

Evangelista and Evangelista for petitioner.
Villamor Tolete for respondent.

R E S O L U T I O N

SERENO, *J.*:

Before us is a Petition for Review assailing the Court of Appeals (CA) Decision[1] and Resolution[2] regarding the issuance

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Ramon R. Garcia concurring; *rollo*, pp. 20-30.

[2] *Id.* at 49.

of letters of administration of the intestate estate of Orlando B. Catalan.

The facts are as follows:

Orlando B. Catalan was a naturalized American citizen. After allegedly obtaining a divorce in the United States from his first wife, Felicitas Amor, he contracted a second marriage with petitioner herein.

On 18 November 2004, Orlando died intestate in the Philippines.

Thereafter, on 25 February 2005, petitioner filed with the Regional Trial Court (RTC) of Burgos, Pangasinan a Petition for the issuance of letters of administration for her appointment as administratrix of the intestate estate of Orlando. The case was docketed as Special Proceedings (Spec. Proc.) No. 228.

On 3 March 2005, while Spec. Proc. No. 228 was pending, respondent Louella A. Catalan-Lee, one of the children of Orlando from his first marriage, filed a similar petition with the RTC docketed as Spec. Proc. No. 232.

The two cases were subsequently consolidated.

Petitioner prayed for the dismissal of Spec. Proc. No. 232 on the ground of *litis pendentia*, considering that Spec. Proc. No. 228 covering the same estate was already pending.

On the other hand, respondent alleged that petitioner was not considered an interested person qualified to file a petition for the issuance of letters of administration of the estate of Orlando. In support of her contention, respondent alleged that a criminal case for bigamy was filed against petitioner before Branch 54 of the RTC of Alaminos, Pangasinan, and docketed as Crim. Case No. 2699-A.

Apparently, Felicitas Amor filed a Complaint for bigamy, alleging that petitioner contracted a second marriage to Orlando despite having been married to one Eusebio Bristol on 12 December 1959.

On 6 August 1998, the RTC had acquitted petitioner of bigamy.[3] The trial court ruled that since the deceased was a divorced American citizen, and since that divorce was not recognized under Philippine jurisdiction, the marriage between him and petitioner was not valid.

Furthermore, it took note of the action for declaration of nullity then pending action with the trial court in Dagupan City filed by Felicitas Amor against the deceased and petitioner. It considered the pending action to be a prejudicial question in determining the guilt of petitioner for the crime of bigamy.

Finally, the trial court found that, in the first place, petitioner had never been married to Eusebio Bristol.

On 26 June 2006, Branch 70 of the RTC of Burgos, Pangasinan dismissed the Petition for the issuance of letters of administration filed by petitioner and granted that of private respondent. Contrary to its findings in Crim. Case No. 2699-A, the RTC held that the marriage between petitioner and Eusebio Bristol was valid and subsisting when she married Orlando. Without expounding, it reasoned further that her acquittal in the previous bigamy case was fatal to her cause. Thus, the trial court held that petitioner was not an interested party who may file a petition for the issuance of letters of administration.[4]

After the subsequent denial of her Motion for Reconsideration, petitioner elevated the matter to the Court of Appeals (CA) via her Petition for *Certiorari*, alleging grave abuse of discretion on the part of the RTC in dismissing her Petition for the issuance of letters of administration.

Petitioner reiterated before the CA that the Petition filed by respondent should have been dismissed on the ground of *litis pendentia*. She also insisted that, while a petition for letters of administration may have been filed by an "uninterested person," the defect was cured by the appearance of a real party-in-interest.

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[3] *Id*. at 38-45; penned by Judge Jules A. Mejia.

[4] As narrated by the Court of Appeals on p. 3 of its Decision.

Thus, she insisted that, to determine who has a better right to administer the decedent's properties, the RTC should have first required the parties to present their evidence before it ruled on the matter.

On 18 October 2007, the CA promulgated the assailed Decision. First, it held that petitioner undertook the wrong remedy. She should have instead filed a petition for review rather than a petition for *certiorari*. Nevertheless, since the Petition for *Certiorari* was filed within the fifteen-day reglementary period for filing a petition for review under Sec. 4 of Rule 43, the CA allowed the Petition and continued to decide on the merits of the case. Thus, it ruled in this wise:

> As to the issue of *litis pendentia*, we find it not applicable in the case. 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. A petition for letters of administration is a special proceeding. A special proceeding is an application or proceeding to establish the status or right of a party, or a particular fact. And, in contrast to an ordinary civil action, a special proceeding involves no defendant or respondent. The only party in this kind of proceeding is the petitioner of the applicant. Considering its nature, a subsequent petition for letters of administration can hardly be barred by a similar pending petition involving the estate of the same decedent unless both petitions are filed by the same person. In the case at bar, the petitioner was not a party to the petition filed by the private respondent, in the same manner that the latter was not made a party to the petition filed by the former. The first element of *litis pendentia* is wanting. The contention of the petitioner must perforce fail.
>
> Moreover, to yield to the contention of the petitioner would render nugatory the provision of the Rules requiring a petitioner for letters of administration to be an "interested party," inasmuch as any person, for that matter, regardless of whether he has valid interest in the estate sought to be administered, could be appointed as administrator for as long as he files his petition ahead of any other person, in

derogation of the rights of those specifically mentioned in the order of preference in the appointment of administrator under Rule 78, Section 6 of the Revised Rules of Court, which provides:

x x x x x x x x x

The petitioner, armed with a marriage certificate, filed her petition for letters of administration. As a spouse, the petitioner would have been preferred to administer the estate of Orlando B. Catalan. However, a marriage certificate, like any other public document, is only *prima facie* evidence of the facts stated therein. **The fact that the petitioner had been charged with bigamy and was acquitted has not been disputed by the petitioner.** Bigamy is an illegal marriage committed by contracting a second or subsequent marriage before the first marriage has been dissolved or before the absent spouse has been declared presumptively dead by a judgment rendered in a proper proceedings. **The deduction of the trial court that the acquittal of the petitioner in the said case negates the validity of her subsequent marriage with Orlando B. Catalan has not been disproved by her. There was not even an attempt from the petitioner to deny the findings of the trial court.** There is therefore no basis for us to make a contrary finding. Thus, not being an interested party and a stranger to the estate of Orlando B. Catalan, the dismissal of her petition for letters of administration by the trial court is in place.

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WHEREFORE, premises considered, the petition is **DISMISSED** for lack of merit. No pronouncement as to costs.

SO ORDERED.[5] (Emphasis supplied)

Petitioner moved for a reconsideration of this Decision.[6] She alleged that the reasoning of the CA was illogical in stating, on the one hand, that she was acquitted of bigamy, while, on the other hand, still holding that her marriage with Orlando was invalid. She insists that with her acquittal of the crime of bigamy, the marriage enjoys the presumption of validity.

On 20 June 2008, the CA denied her motion.

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[5] *Rollo*, pp. 26-29.

[6] *Id*. at 31-36.

Hence, this Petition.

At the outset, it seems that the RTC in the special proceedings failed to appreciate the finding of the RTC in Crim. Case No. 2699-A that petitioner was never married to Eusebio Bristol. Thus, the trial court concluded that, because petitioner was acquitted of bigamy, it follows that the first marriage with Bristol still existed and was valid. By failing to take note of the findings of fact on the nonexistence of the marriage between petitioner and Bristol, both the RTC and CA held that petitioner was not an interested party in the estate of Orlando.

Second, it is imperative to note that at the time the bigamy case in Crim. Case No. 2699-A was dismissed, we had already ruled that under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality. This doctrine was established as early as 1985 in *Van Dorn v. Romillo, Jr.*[7] wherein we said:

> It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces[,] the same being considered contrary to our concept of public policy and morality. **However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which divorce dissolves the marriage.** xxx

We reiterated this principle in *Llorente v. Court of Appeals*,[8] to wit:

> In *Van Dorn v. Romillo, Jr.* we held that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces, the same being considered contrary to our concept of public policy and morality. In the same case**, the Court ruled that aliens may obtain divorces abroad, provided they are valid according to their national law.**

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[7] 223 Phil. 357, 362 (1985).

[8] 399 Phil. 342, 355-356 (2000).

Citing this landmark case, the Court held in *Quita v. Court of Appeals*, that once proven that respondent was no longer a Filipino citizen when he obtained the divorce from petitioner, the ruling in *Van Dorn* would become applicable and petitioner could "very well lose her right to inherit" from him.

In *Pilapil v. Ibay-Somera*, we recognized the divorce obtained by the respondent in his country, the Federal Republic of Germany. **There, we stated that divorce and its legal effects may be recognized in the Philippines insofar as respondent is concerned in view of the nationality principle in our civil law on the status of persons.**

For failing to apply these doctrines, the decision of the Court of Appeals must be reversed. **We hold that the divorce obtained by Lorenzo H. Llorente from his first wife Paula was valid and recognized in this jurisdiction as a matter of comity.** xxx

Nonetheless, the fact of divorce must still first be proven as we have enunciated in *Garcia v. Recio*,[9] to wit:

Respondent is getting ahead of himself. Before a foreign judgment is given presumptive evidentiary value, the document must first be presented and admitted in evidence. A divorce obtained abroad is proven by the divorce decree itself. **Indeed the best evidence of a judgment is the judgment itself.** The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country.

Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

The divorce decree between respondent and Editha Samson appears to be an authentic one issued by an Australian family court. However,

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[9] 418 Phil. 723, 723-735 (2001).

appearance is not sufficient; **compliance with the aforementioned rules on evidence must be demonstrated.**

Fortunately for respondent's cause, when the divorce decree of May 18, 1989 was submitted in evidence, counsel for petitioner objected, not to its admissibility, but only to the fact that it had not been registered in the Local Civil Registry of Cabanatuan City. The trial court ruled that it was admissible, subject to petitioner's qualification. Hence, it was admitted in evidence and accorded weight by the judge. Indeed, petitioner's failure to object properly rendered the divorce decree admissible as a written act of the Family Court of Sydney, Australia.

Compliance with the quoted Articles (11, 13 and 52) of the Family Code is not necessary; respondent was no longer bound by Philippine personal laws after he acquired Australian citizenship in 1992. Naturalization is the legal act of adopting an alien and clothing him with the political and civil rights belonging to a citizen. Naturalized citizens, freed from the protective cloak of their former states, don the attires of their adoptive countries. By becoming an Australian, respondent severed his allegiance to the Philippines and the *vinculum juris* that had tied him to Philippine personal laws.

Burden of Proving Australian Law

Respondent contends that the burden to prove Australian divorce law falls upon petitioner, because she is the party challenging the validity of a foreign judgment. He contends that petitioner was satisfied with the original of the divorce decree and was cognizant of the marital laws of Australia, because she had lived and worked in that country for quite a long time. Besides, the Australian divorce law is allegedly known by Philippine courts; thus, judges may take judicial notice of foreign laws in the exercise of sound discretion.

We are not persuaded. **The burden of proof lies with the "party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters. Since the divorce was a defense raised by respondent, the burden of proving the pertinent Australian law validating it falls squarely upon him.**

It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. Australian marital laws are not among those matters that judges are supposed to know by reason of their judicial function. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative. (Emphasis supplied)

It appears that the trial court no longer required petitioner to prove the validity of Orlando's divorce under the laws of the United States and the marriage between petitioner and the deceased. Thus, there is a need to remand the proceedings to the trial court for further reception of evidence to establish the fact of divorce.

Should petitioner prove the validity of the divorce and the subsequent marriage, she has the preferential right to be issued the letters of administration over the estate. Otherwise, letters of administration may be issued to respondent, who is undisputedly the daughter or next of kin of the deceased, in accordance with Sec. 6 of Rule 78 of the Revised Rules of Court.

This is consistent with our ruling in *San Luis v. San Luis*,[10] in which we said:

> Applying the above doctrine in the instant case, the divorce decree allegedly obtained by Merry Lee which absolutely allowed Felicisimo to remarry, would have vested Felicidad with the legal personality to file the present petition as Felicisimo's surviving spouse. **However, the records show that there is insufficient evidence to prove the validity of the divorce obtained by Merry Lee as well as the marriage of respondent and Felicisimo under the laws of the U.S.A.** In *Garcia v. Recio*, the Court laid down the specific guidelines for pleading and proving foreign law and divorce judgments. It held that presentation solely of the divorce decree is insufficient and that proof of its authenticity and due execution must be presented. Under Sections 24 and 25 of Rule 132, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer

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[10] G.R. Nos. 133743 & 134029, 6 February 2007, 514 SCRA 294, 313-314.

having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

With regard to respondent's marriage to Felicisimo allegedly solemnized in California, U.S.A., she submitted photocopies of the Marriage Certificate and the annotated text of the Family Law Act of California which purportedly show that their marriage was done in accordance with the said law. As stated in Garcia, however, the Court cannot take judicial notice of foreign laws as they must be alleged and proved.

Therefore, this case should be remanded to the trial court for further reception of evidence on the divorce decree obtained by Merry Lee and the marriage of respondent and Felicisimo. (Emphasis supplied)

Thus, it is imperative for the trial court to first determine the validity of the divorce to ascertain the rightful party to be issued the letters of administration over the estate of Orlando B. Catalan.

WHEREFORE, premises considered, the Petition is hereby **PARTIALLY GRANTED.** The Decision dated 18 October 2007 and the Resolution dated 20 June 2008 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE.** Let this case be **REMANDED** to Branch 70 of the Regional Trial Court of Burgos, Pangasinan for further proceedings in accordance with this Decision.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 184015. February 8, 2012]

SPOUSES MARIANO P. MARASIGAN and JOSEFINA LEAL, *petitioners, vs.* **CHEVRON PHILS., INC., ACCRA INVESTMENTS, CORP., and ANGARA ABELLO CONCEPCION REGALA & CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ESSENCE. — The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for *certiorari*. It is the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; *LITIS PENDENTIA* AS A GROUND FOR DISMISSAL OF AN ACTION, EXPLAINED; REQUISITES. — *Litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant.* As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case,

regardless of which party is successful, would amount to *res judicata* in the other case. What is pivotal in determining whether forum shopping exists or not is the vexation caused to the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.

3. ID.; ID.; ID.; ID.; ELEMENTS OF *LITIS PENDENTIA*, PRESENT IN CASE AT BAR.— In the case at bench, all the requisites of *litis pendentia* are present. The first element, identity of parties, or at least representing the same interest in both actions, exists. The Court agrees with the ruling of the CA that Chevron and Spouses Marasigan are the same parties in the RTC-Makati Case and the RTC-Gumaca Case. Unquestionably, the plaintiff and the defendants in the RTC-Makati Case are Chevron and Spouses Marasigan as well as Mareal Co., Inc., respectively. On the other hand, the plaintiffs in the RTC-Gumaca Case are the Spouses Marasigan and the defendants therein are Chevron, ACCRAIN and ACCRALAW. The absence of ACCRAIN and ACCRALAW as party plaintiffs in the RTC-Makati case and their additional presence as party defendants in the RTC-Gumaca case would not unfavorably affect the respondents because the rule does not require absolute identity of parties. A substantial identity of parties is enough to qualify under the first requisite. What is important here is that the principal parties – Chevron and Spouses Marasigan — are the same in both cases. x x x The second element, identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts, likewise subsists here. It cannot be denied that the complaint filed in the RTC-Makati was for a Sum of Money while that filed in the RTC-Gumaca was for Declaration of Nullity and/or Annulment of Foreclosure with Damages. Although both cases differ in form or nature, the same facts would be alleged and the same evidence would be presented considering that the resolution of both cases would be based on the validity and enforceability of the same credit lines, real estate mortgages and foreclosure proceedings. Indeed, the true test in determining the identity of causes of action

> lies not in the form or nature of the actions but rather in the evidence that would be presented. x x x Finally, the presence of the third element, that the identity of the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other, cannot be disputed either. Spouses Marasigan do not deny the fact that the affirmative defense that they raised in the RTC-Makati case was the illegality of the foreclosure sale of the Mulanay property. They raised the same issue in the RTC-Gumaca case. As correctly ruled by the CA, the judgment in the RTC-Makati with regard to the validity of the foreclosure sale of the Mulanay property will constitute *res judicata* in the case, and vice versa.

APPEARANCES OF COUNSEL

Gaudencio A. Palafox for petitioners.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

MENDOZA, *J.*:

Challenged in this petition is the January 31, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 85223, which reversed and set aside the January 4, 2005 Decision[2] of the Regional Trial Court, Branch 61, Gumaca, Quezon *(RTC-Gumaca)*, in Civil Case No. 2448-G, declaring the subject foreclosure sale and the consequent certificate of sale null and void and ordering the petitioners, Spouses Mariano P. Marasigan and Josefina Leal *(Spouses Marasigan)* to pay respondent Chevron Phils., Inc. *(Chevron [formerly Caltex Philippines, Inc.])*, moral damages, attorney's fees and costs of suit.

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[1] *Rollo*, pp. 42-58. [Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Lucas P. Bersamin (now Supreme Court Justice) and Estela M. Perlas-Bernabe (now Supreme Court Justice)].

[2] *Id.* at 92-140.

The Facts

Records disclose Spouses Marasigan were operators of a gasoline station in Montalban, Rizal, while Chevron is a corporation engaged in the business of refining, manufacturing, storing, distributing, and marketing of fuels, lubricants and other petroleum products. Spouses Marasigan and Chevron entered into a dealership and distributorship agreement wherein the former can purchase petroleum products from the latter on credit. To complete said agreement, Spouses Marasigan executed deeds of real estate mortgage over their properties, as collateral, in favor of Chevron.

Credit Lines	Secured by	
	Location	TCT No.
₱ 1,886.000.00	Diliman, Q.C.	93559/290739
350, 000.00	Bo. Cambal, San Mateo, Rizal	75470
3,242,000.00	Quezon City	227086
1,975,600.00	Bo. Burgos, Rodriguez, Rizal	TD No. 02-4813/ TD No. 02-4860
1,600,000.00	Mulanay,	T- 199817
₱ 9,053,600.00	Quezon Province	

Records further show that by September 30, 1993, Spouses Marasigan exceeded their credit line and owed Chevron the amount of ₱12,075,261.02. Spouses Marasigan failed to pay the obligation despite oral and written demands from Chevron. Thus, Chevron through its counsel, the Angara Abello Concepcion Regala and Cruz (ACCRALAW), initiated foreclosure proceedings by filing a petition for extrajudicial foreclosure against the real estate mortgages executed by Spouses Marasigan in favor of Chevron.

Chevron, through ACCRALAW, was able to foreclose all the real estate mortgages on Spouses Marasigan's subject properties. Chevron, however, was only able to recover the

total amount of ₱4,925,000.00 from the public auction sales of the mortgaged properties including the sale of the 167.1597 hectare coconut farm property located in Mulanay, Quezon, which was sold for ₱130,000.00 to the only bidder, ACCRA Investments, Corp. *(ACCRAIN).*

Subsequently, on November 7, 1995, Chevron filed a complaint (Civil Case No. 95-1619 for Sum of Money entitled "*Caltex Philippines, Inc. v. Sps. Mariano P. Marasigan and Mareal Corporation*") against Spouses Marasigan before the RTC, Branch 136, Makati City *(RTC–Makati)* to recover the deficiency in the amount of ₱7,667,188.10. Chevron basically alleged therein that Spouses Marasigan's outstanding obligation as of October 15, 1995 was ₱7,667,188.10 and that said obligation remained unpaid.

In their Answer, Spouses Marasigan mainly alleged that they were greatly prejudiced because the foreclosure sales on the subject mortgaged properties were illegal and that the bid price of the Mulanay property in particular was shockingly low.

On February 8, 1996, Spouses Marasigan filed a complaint [Civil Case No. 2448-C for Declaration of Nullity and/or Annulment of Foreclosure with Damages entitled "*Sps. Mariano P. Marasigan and Josefina Leal Marasigan v. Caltex (Philippines), Inc., ACCRA Investment Corporation, Angara Abello Concepcion Regala & Cruz and Romeo N. Villafranca*"] against Chevron, ACCRAIN and ACCRALAW and Sheriff Romeo Villafranca before the RTC-Gumaca. Spouses Marasigan principally alleged therein that the bid price was grossly inadequate and shockingly low which rendered the foreclosure sale fatally defective and the foreclosure proceedings invalid and illegal. Chevron, ACCRAIN and ACCRALAW filed a motion to dismiss citing as ground Spouses Marasigan's failure to disclose in their certification against forum shopping the pending case filed before the RTC-Makati and the consequent violation of the rule on *litis pendentia*.

On August 21, 1996, the RTC issued an order[3] denying the motion to dismiss, and ruling that there was no forum shopping

[3] *Id.* at 463-464.

because there was no decision yet in the RTC-Makati case (Civil Case No. 95-1619) when the RTC-Gumaca case (Civil Case No. 2448-G) was filed and that there were parties in the former who were not parties in the latter.

Chevron, ACCRAIN and ACCRALAW then filed their Answer with Compulsory Counterclaim alleging, among others, that the foreclosure sale was conducted in accordance with law and that the complaint in Civil Case No. 2448-G violated the rule on forum shopping and *litis pendentia*.

On January 4, 2005, the RTC-Gumaca rendered a decision in favor of Spouses Marasigan and against Chevron, ACCRAIN and ACCRALAW, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant:
>
> 1. Declaring the foreclosure sale of Mulanay property conducted by Provincial Sheriff of Gumaca on September 12, 1995 as well as the certificate of sale dated September 18, 1995 issued thereto as null and void and hereby ordered the same cancelled and set aside.
>
> 2. Ordering defendants jointly and severally to pay plaintiffs the amount of Php25,000.00 as moral damages, and the amount of Php50,000.00 as attorney's fees and costs of the suit.
>
> The defendants counterclaim being merely the result of the filing of the plaintiff's complaint is hereby dismissed.
>
> SO ORDERED.[4]

Chevron, ACCRAIN and ACCRALAW appealed to the CA which summed up the issues to be resolved as follows:

> 1) Whether or not the instant case is dismissible on the grounds of forum shopping and *litis pendentia*;
>
> 2) Whether or not the foreclosure sale can be declared null and void for gross inadequacy of the price;

[4] *Id*. at 139-140.

3) Whether or not appellees are entitled to moral damages, attorney's fees and costs of suit; and

4) Whether or not the appellants are entitled to their counterclaims.

On January 31, 2008, the CA rendered a decision reversing and setting aside the RTC decision. The CA ruled that Spouses Marasigan committed forum shopping and that all the elements of *litis pendentia* are present. Accordingly, Civil Case No. 2448-G, filed by Spouses Marasigan in the RTC-Gumaca was dismissible on the grounds of forum shopping and *litis pendentia*. The CA ruled as follows:

> On the other hand, forum shopping is the act of the party against whom an adverse judgment has been rendered in one forum, of seeking another 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 on the supposition that one or the other court would make a favorable disposition. We find that the appellees committed forum shopping which is cause for the dismissal of the case. Under the last part of Section 5, Rule 7 of the Rules, if the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as cause for administrative sanctions. Forum shopping is an act of malpractice because it abuses court processes.
>
> The test for determining whether a party violates the rule against forum shopping is where a final judgment in one case will amount to *res judicata* in the action under consideration or where the elements of *litis pendentia* are present: The requisites of *litis pendentia* are the following: (a) identity of parties, or at least such as representing the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief founded on the same facts; and (c) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.
>
> In the instant case, We find the elements of *litis pendentia* present. On identity of parties, appellant Chevron and the appellees are the same parties in both cases. Appellant Chevron is the plaintiff while the appellees and Mareal Co., Inc. are the defendants in the Makati RTC case. On the other hand, in the instant case, the appellees are

the plaintiffs while appellants Chevron, ACCRALAW and ACCRAIN are the defendants. It is of no moment that ACCRALAW and ACCRAIN are not party-plaintiffs in the Makati RTC case because the rule does not require absolute identity of parties; substantial identity of parties is sufficient. The fact that there are additional parties in the present case is not material as long as the principal parties — Chevron and the Spouses Marasigan –remain.

As to subject matter, the rights asserted by both parties are based on the same credit lines and real estate mortgages. In the Makati RTC case, appellant Chevron has to prove that deliveries of Chevron products were made pursuant to the credit lines and the real estate mortgages securing the same; and that the subsequent foreclosure are valid but there is still a deficiency after conducting the proceeds of the foreclosure sale from appellees' obligation. In the instant case, appellees seek to evade or diminish their liability under the credit lines and real estate mortgages by either having the foreclosure sale of the Mulanay property annulled or by collecting the alleged discrepancy between the market value of the property and the bid price offered by ACCRAIN. Thus, although the instant case pertains only to the Mulanay property, the resolution of both cases would require a determination of the validity and enforceability of the deliveries made by Chevron, of the real estate mortgages and foreclosure proceedings. In both cases, the same evidence would be presented and the same subject matter would be litigated. The difference in the form of the actions is of no moment as the test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action.

X x x x x x x x x

It must be stressed that the appellees raised an affirmative defense in their amended answer in the Makati RTC case the illegality of the foreclosure sale of the Mulanay property; appellees raise the same issue in the instant complaint. There is no doubt that a judgment in the Makati RTC case as regards the validity of the foreclosure sale of the Mulanay property will constitute *res judicata* in the instant case, and vice versa.

Accordingly, the instant case is dismissible on the *litis pendentia* pursuant to Section 1 (e). Rule 16 of the Rules of Civil Procedure. The case is also dismissible on the ground of forum shopping since

forum shopping exists where the elements of *litis pendentia* are present.

The Makati case should subsist because it was filed ahead and is an appropriate vehicle for litigating all issues in this controversy.

X x x x x x x x x

We find no need to expound on the other issues raised in this case. Indeed, to do so would preempt the judgment of the RTC in Civil Case No. 95-1619 which is still pending with Branch 136, and result in the miscarriage of justice.

Aggrieved by the CA decision, Spouses Marasigan filed this petition praying for its reversal and setting aside anchored on the following

GROUNDS:

I

THE CA ERRED IN RULING THAT THE RTC-GUMACA ERRED WHEN IT DENIED RESPONDENTS' MOTION TO DISMISS ON THE GROUND OF FORUM SHOPPING AND *LITIS PENDENTIA*.

II

THE CA ERRED IN RULING THAT THE MAKATI CASE (CIVIL CASE NO. 95-1619) SHOULD SUBSIST BECAUSE IT WAS FILED AHEAD AND IS AN APPROPRIATE VEHICLE FOR LITIGATING ALL THE ISSUES IN THE CONTROVERSY.

III

THE COURT OF APPEALS GROSSLY ERRED IN NOT APPRECIATING THE DECISION OF ITS FIFTEENTH DIVISION DATED MAY 21, 1999 FINDING ANOMALY IN THE CONDUCT OF FORECLOSURE BY RESPONDENTS. RESPONDENTS DELIBERATELY OMITTED THE DECISION OF THE FIFTEENTH DIVISION IN ITS APPELLANTS' BRIEF IN CA G.R. NO. C.V. NO. 85223.

IV

RESPONDENTS CHEVRON, ACCRALAW AND ACCRAIN DID NOT INCLUDE RESPONDENT SHERIFF OF GUMACA (QUEZON) IN THEIR APPEAL BEFORE THE COURT OF

APPEALS. SHERIFF IS INDISPENSABLE PARTY TO THE GUMACA CASE (CIVIL CASE NO. 2448-G).

V

RESPONDENTS ACCRALAW AND ACCRAIN VIOLATED ARTICLE 1461 OF THE CIVIL CODE.

Spouses Marasigan argue that the RTC-Gumaca properly denied the respondents' motion to dismiss on the ground of forum shopping and *litis pendentia*. Citing the decision of the RTC-Gumaca, Spouses Marasigan claim that Civil Case No. 95-1619 filed by Chevron in the RTC-Makati was for collection with preliminary attachment with prayer for preliminary injunction, and that Mareal Co., Inc. and themselves are the defendants therein. On the other hand, Civil Case No. 2448-G filed by them before the RTC-Gumaca was for declaration of nullity and/or annulment of foreclosure with damages against Chevron, ACCRALAW and ACCRAIN. They further claim that in the Makati RTC case, Chevron endeavored to collect the deficiency arising from the foreclosure of mortgage on the properties of Spouses Marasigan, including their Gumaca property, while in the RTC-Gumaca case, they sought a court declaration that the foreclosure sale, specially the Mulanay property, was a nullity.

Spouses Marasigan also insist that there is no forum shopping because of the diversity of parties in the RTC-Makati case and the RTC-Gumaca case. They argue that in the RTC-Gumaca case, only the Spouses Marasigan stand as plaintiffs while Chevron, ACCRAIN and ACCRALAW are the defendants. They likewise aver that Mareal Co., Inc. is not a party plaintiff in the RTC-Gumaca case and ACCRAIN, ACCRALAW and Romeo Villafranca are not parties in the RTC-Makati case.

The petitioners state that ACCRAIN, ACCRALAW and Villafranca did not join Chevron in the RTC-Makati case. Neither did they participate in, nor claim responsibility for, the acts complained of against Chevron. Said defendants had nothing to do with the deficiency claim and the application, issuance and implementation of the writ of attachment which pertain solely to Chevron. Hence, any judgment that may be rendered in the

RTC-Makati case cannot be legally enforced against said defendants because they cannot be held responsible for the acts of Chevron.

Further, according to Spouses Marasigan, the rights alleged to have been violated in the two (2) cases arose out of separate sources. They claim that in the RTC-Makati case, the legal basis for the claim of damages was the application, issuance and implementation of a writ of attachment which resulted in damage to said defendants consisting of damaged reputation, credit standing before the banks and their creditors and the business community; that, in effect, the issues in the RTC-Makati case were basically anchored on the applicability of the legal provisions on damages defined in Articles 2195 to 2232 of the Civil Code and the pertinent provisions of the Rules of Court; that, on the other hand, the issues in the RTC-Gumaca case were based on the application of Article 1491 of the Civil Code which relates to the validity of the acquisition of real property at public or judicial action by officers of the court; and that since the issues in the two (2) civil actions were distinct, they did not engage in forum shopping.

Thus, Spouses Marasigan are adamant that *litis pendentia* is not a valid ground for the dismissal of the RTC-Gumaca case because a judgment in the RTC-Makati case or vice versa, will not be *res judicata* on the other.

Spouses Marasigan further argue that the CA violated the rule on venue and jurisdiction when it ruled that the RTC-Makati was the appropriate vehicle for litigating the annulment of foreclosure of the Mulanay property. They add that the RTC-Gumaca is the appropriate vehicle for it because the subject property is located there.

Finally, Spouses Marasigan assert that the CA erred in not appreciating the finding of an anomaly in the conduct of the foreclosure by the respondents; that the respondents did not include the Sheriff of Gumaca in their appeal before the CA; that the Sheriff is an indispensable party to the RTC-Gumaca case; and that Article 1461 of the Civil Code was violated by

the acquisition of the Mulanay property by ACCRAIN, an investment arm of ACCRALAW, and controlled by the latter.

On the other hand, the respondents counter, among others, that the petition should have been dismissed outright considering that the petitioners failed to comply with the most basic and express requirements of the Rules of Court; that despite being given the opportunity to do so, the petitioners failed to submit a Verification and Certification and an Affidavit of Service that complies with the 2004 Rules on Notarial Practice; that the petitioners failed to attach material portions of the record, such as their Amended Answer to the complaint in the RTC-Makati case; that the petitioners' repeated non-compliance with procedural rules, absent special and compelling circumstances to justify the same, is undeserving of a liberal application of the rules; that the petition raises questions of facts; that the petitioners committed forum-shopping in instituting the RTC-Gumaca Case notwithstanding the pendency of the RTC-Makati Case; that the petitioners prayed for the same relief in their complaint in the RTC-Gumaca Case and in their Answer in the Makati Case; that the petitioners are estopped from questioning the jurisdiction of the court in the RTC-Makati case considering that they were the ones who submitted the issues before said court, and prayed for relief from said court; that the petitioners failed to appeal the decision of the Makati RTC rejecting their claim that the foreclosure sale violated Article 1491 of the Civil Code, thus, they are bound by such ruling and that, in any case, there was no violation of Article 1491 by ACCRALAW and ACCRAIN and that the petitioners have no personality to question the foreclosure sale on the ground of Article 1491; and that the foreclosure sale was valid and complied strictly with the requirements of Act No. 3135 and that inadequacy of the bid price is not a ground to annul the foreclosure sale.

THE COURT'S RULING

The petition cannot prosper.

This Court shall first tackle the issue of whether or not the CA correctly ordered the dismissal of the complaint in Civil Case No. 2448-G filed by Spouses Marasigan before the RTC-

Gumaca on the grounds of forum shopping and *litis pendentia*. Simply put, the determinative questions in this petition are: (1) is *litis pendentia* present? and (2) did petitioners violate the rules on forum shopping? An affirmative answer to these particular questions would necessarily mean that there would be no need to discuss, much less, resolve all the other issues raised in this petition.

The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for *certiorari*. It is the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration.[5]

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant.* As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[6]

Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

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[5] *Roberto S. Benedicto v. Manuel Lacson*, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 97-98.

[6] *DotMatrix Trading v. Rommel B. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436.

What is pivotal in determining whether forum shopping exists or not is the vexation caused to the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[7]

In the case at bench, all the requisites of *litis pendentia* are present. The first element, identity of parties, or at least representing the same interest in both actions, exists. The Court agrees with the ruling of the CA that Chevron and Spouses Marasigan are the same parties in the RTC-Makati Case and the RTC-Gumaca Case. Unquestionably, the plaintiff and the defendants in the RTC-Makati Case are Chevron and Spouses Marasigan as well as Mareal Co., Inc., respectively. On the other hand, the plaintiffs in the RTC-Gumaca Case are the Spouses Marasigan and the defendants therein are Chevron, ACCRAIN and ACCRALAW. The absence of ACCRAIN and ACCRALAW as party plaintiffs in the RTC-Makati case and their additional presence as party defendants in the RTC-Gumaca case would not unfavorably affect the respondents because the rule does not require absolute identity of parties. A substantial identity of parties is enough to qualify under the first requisite. What is important here is that the principal parties — Chevron and Spouses Marasigan — are the same in both cases. The Court held:

> In this case, the first requisite, identity of parties or at least such as represent the same interest in both actions, is present. The Court of Appeals correctly ruled that the fact that there is no absolute identity of parties in both cases will not preclude the application of the rule of *litis pendentia,* since **only substantial and not absolute identity of parties is required** for *litis pendentia* to lie.[8] [Emphasis supplied]

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[7] *Philip S. Yu v. Hernan G. Lim,* G.R. No. 182291, September 22, 2010, 631 SCRA 172, 184.

[8] *City of Makati v. Municipality (Now City) of Taguig,* G.R. No. 163175, June 27, 2008, 556 SCRA 218, 228.

The second element, identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts, likewise subsists here. It cannot be denied that the complaint filed in the RTC-Makati was for a Sum of Money while that filed in the RTC-Gumaca was for Declaration of Nullity and/or Annulment of Foreclosure with Damages. Although both cases differ in form or nature, the same facts would be alleged and the same evidence would be presented considering that the resolution of both cases would be based on the validity and enforceability of the same credit lines, real estate mortgages and foreclosure proceedings. Indeed, the true test in determining the identity of causes of action lies not in the form or nature of the actions but rather in the evidence that would be presented.

The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.[9]

In this regard, the CA aptly explained this matter, as follows:

As to subject matter, the rights asserted by both parties are based on the same credit lines and real estate mortgages. In the Makati RTC case, appellant Chevron has to prove that deliveries of Chevron products were made pursuant to the credit lines and the real estate mortgages securing the same; and that the subsequent foreclosure are valid but there is still a deficiency after deducting the proceeds of the foreclosure sale from appellees' obligation. In the instant case, appellees seek to evade or diminish their liability under the credit lines and real estate mortgages by either having the foreclosure sale of the Mulanay property annulled or by collecting the alleged discrepancy between the market value of the property and the bid price offered by ACCRAIN. Thus, although the instant case pertains only to the Mulanay property, the resolution of both cases would

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[9] *Roberto S. Benedicto v. Manuel Lacson, supra* note 5.

require a determination of the validity and enforceability of the deliveries made by Chevron of the real estate mortgages and foreclosure proceedings. In both cases, the same evidence would be presented and the same subject matter would be litigated. The difference in the form of actions is of no moment as the test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action.

Finally, the presence of the third element, that the identity of the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other, cannot be disputed either.

Spouses Marasigan do not deny the fact that the affirmative defense that they raised in the RTC-Makati case was the illegality of the foreclosure sale of the Mulanay property.[10] They raised the same issue in the RTC-Gumaca case.[11] As correctly ruled by the CA, the judgment in the RTC-Makati with regard to the validity of the foreclosure sale of the Mulanay property will constitute *res judicata* in the case, and vice versa. The Court also agrees with its ruling that the RTC-Makati case should be the priority case because it was filed earlier and, therefore, the appropriate vehicle for litigating all issues in this case.

The Court having ruled that the CA properly dismissed the petitioners' complaint due to the presence of *litis pendentia* and the violation of the rule on forum shopping, there is no need to rule further on the other issues raised by the petitioners and the respondents in this case.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[10] *Rollo,* pp. 435-438.

[11] *Id.* at 76-89.

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated February 6, 2012.

THIRD DIVISION

[G.R. No. 185665. February 8, 2012]

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **EASTERN TELECOMS EMPLOYEES UNION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; WAGES; BONUS; NATURE, EXPLAINED. — From a legal point of view, a bonus is a gratuity or act of liberality of the giver which the recipient has no right to demand as a matter of right. The grant of a bonus is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages. A bonus, however, becomes a demandable or enforceable obligation when it is made part of the wage or salary or compensation of the employee.

2. ID.; ID.; ID.; WHERE THE GRANT OF BONUSES TO EMPLOYEES HAS BECOME A CONTRACTUAL OBLIGATION OF THE EMPLOYER. — In the case at bench, it is indubitable that ETPI and ETEU agreed on the inclusion of a provision for the grant of 14th, 15th and 16th month bonuses in the 1998-2001 CBA Side Agreement, as well as in the 2001-2004 CBA Side Agreement[.] x x x A reading of the x x x provision reveals that the same provides for the giving of 14th, 15th and 16th month bonuses *without qualification*. The wording of the provision does not allow any other interpretation. There were no conditions specified in the CBA Side Agreements for the grant of the benefits contrary to the claim of ETPI that the same is justified only when there are profits earned by the company. Terse and clear, the said provision does not state that the subject bonuses shall be made to depend on the ETPI's financial standing or that their payment was contingent upon the realization of profits. Neither does it state that if the company derives no profits, no bonuses are to be given to the employees. In fine, the payment of these bonuses was not related to the profitability of business operations. The records are also bereft of any showing that the ETPI made it clear before or during

the execution of the Side Agreements that the bonuses shall be subject to any condition. Indeed, if ETPI and ETEU intended that the subject bonuses would be dependent on the company earnings, such intention should have been expressly declared in the Side Agreements or the bonus provision should have been deleted altogether. In the absence of any proof that ETPI's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the Side Agreements voluntarily, that it had full knowledge of the contents thereof and that it was aware of its commitment under the contract. Verily, by virtue of its incorporation in the CBA Side Agreements, the grant of 14th, 15th and 16th month bonuses has become more than just an act of generosity on the part of ETPI but a contractual obligation it has undertaken. Moreover, the continuous conferment of bonuses by ETPI to the union members from 1998 to 2002 by virtue of the Side Agreements evidently negates its argument that the giving of the subject bonuses is a management prerogative.

3. ID.; ID.; ID.; ID.; BUSINESS LOSSES ARE NOT VALID GROUNDS TO DISREGARD THE BONUS PROVISION IN THE CBA SIDE AGREEMENT. — ETPI cannot insist on business losses as a basis for disregarding its undertaking. It is manifestly clear that although it incurred business losses of 149,068,063.00 in the year 2000, it continued to distribute 14th, 15th and 16th month bonuses for said year. Notwithstanding such huge losses, ETPI entered into the 2001-2004 CBA Side Agreement on September 3, 2001 whereby it contracted to grant the subject bonuses to ETEU in no uncertain terms. ETPI continued to sustain losses for the succeeding years of 2001 and 2002 in the amounts of ₱348,783,013.00 and ₱315,474,444.00, respectively. Still and all, this did not deter it from honoring the bonus provision in the Side Agreement as it continued to give the subject bonuses to each of the union members in 2001 and 2002 despite its alleged precarious financial condition. Parenthetically, it must be emphasized that ETPI even agreed to the payment of the 14th, 15th and 16th month bonuses for 2003 although it opted to defer the actual grant in April 2004. All given, business losses could not be cited as grounds for ETPI to repudiate its obligation under the 2001-2004 CBA Side Agreement.

4. ID.; ID.; ID.; WHERE THE GIVING OF BONUSES HAS BECOME AN ESTABLISHED COMPANY POLICY;

PRINCIPLE OF NON-DIMINUTION OF BENEFITS, APPLIED. — [T]he Court finds that its act of granting the same has become an established company practice such that it has virtually become part of the employees' salary or wage. A bonus may be granted on equitable consideration when the giving of such bonus has been the company's long and regular practice. x x x The records show that ETPI, aside from complying with the regular 13th month bonus, has been further giving its employees 14th month bonus every April as well as 15th and 16th month bonuses every December of the year, without fail, from 1975 to 2002 or for 27 years whether it earned profits or not. The considerable length of time ETPI has been giving the special grants to its employees indicates a unilateral and voluntary act on its part to continue giving said benefits knowing that such act was not required by law. Accordingly, a company practice in favor of the employees has been established and the payments made by ETPI pursuant thereto ripened into benefits enjoyed by the employees. x x x The rule is settled that any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection.

APPEARANCES OF COUNSEL

Liam S. Pagdanganan & Rodolfo Ma. A. Ponferrada for petitioner.

Domingo T. Anonuevo for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* seeking modification of the June 25, 2008 Decision[1] of the Court of

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[1] *Rollo,* pp. 59-71. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Ricardo R. Rosario, concurring.

Appeals *(CA)* and its December 12, 2008 Resolution,[2] in CA-G.R. SP No. 91974, annulling the April 28, 2005 Resolution[3] of the National Labor Relations Commission *(NLRC)* in NLRC-NCR-CC-000273-04 entitled "*In the Matter of the Labor Dispute in Eastern Telecommunications, Philippines, Inc.*"

The Facts

As synthesized by the NLRC, the facts of the case are as follows, *viz*:

> Eastern Telecommunications Phils., Inc. (ETPI) is a corporation engaged in the business of providing telecommunications facilities, particularly leasing international date lines or circuits, regular landlines, internet and data services, employing approximately 400 employees.
>
> Eastern Telecoms Employees Union (ETEU) is the certified exclusive bargaining agent of the company's rank and file employees with a strong following of 147 regular members. It has an existing collecti[ve] bargaining agreement with the company to expire in the year 2004 with a Side Agreement signed on September 3, 2001.
>
> In essence, the labor dispute was a spin-off of the company's plan to defer payment of the 2003 14th, 15th and 16th month bonuses sometime in April 2004. The company's main ground in postponing the payment of bonuses is due to allege continuing deterioration of company's financial position which started in the year 2000. However, ETPI while postponing payment of bonuses sometime in April 2004, such payment would also be subject to availability of funds.
>
> Invoking the Side Agreement of the existing Collective Bargaining Agreement for the period 2001-2004 between ETPI and ETEU which stated as follows:
>
> > *"4. Employment Related Bonuses. The Company confirms that the 14th, 15th and 16th month bonuses (other than 13th month pay) are granted."*
>
> The union strongly opposed the deferment in payment of the bonuses by filing a preventive mediation complaint with the NCMB

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[2] *Id.* at 73-74.

[3] *Id.* at 75-91.

on July 3, 2003, the purpose of which complaint is to determine the date when the bonus should be paid.

In the conference held at the NCMB, ETPI reiterated its stand that payment of the bonuses would only be made in April 2004 to which date of payment, the union agreed. Thus, considering the agreement forged between the parties, the said agreement was reduced to a Memorandum of Agreement. The union requested that the President of the company should be made a signatory to the agreement, however, the latter refused to sign. In addition to such a refusal, the company made a sudden turnaround in its position by declaring that they will no longer pay the bonuses until the issue is resolved through compulsory arbitration.

The company's change in position was contained in a letter dated April 14, 2004 written to the union by Mr. Sonny Javier, Vice-President for Human Resources and Administration, stating that "the deferred release of bonuses had been superseded and voided due to the union's filing of the issue to the NCMB on July 18, 2003." He declared that "until the matter is resolved in a compulsory arbitration, the company cannot and will not pay any 'bonuses' to any and all union members."

Thus, on April 26, 2004, ETEU filed a Notice of Strike on the ground of unfair labor practice for failure of ETPI to pay the bonuses in gross violation of the economic provision of the existing CBA.

On May 19, 2004, the Secretary of Labor and Employment, finding that the company is engaged in an industry considered vital to the economy and any work disruption thereat will adversely affect not only its operation but also that of the other business relying on its services, certified the labor dispute for compulsory arbitration pursuant to Article 263 (q) of the Labor Code as amended.

Acting on the certified labor dispute, a hearing was called on July 16, 2004 wherein the parties have submitted that the issues for resolution are (1) unfair labor practice and (2) the grant of 14th, 15th and 16th month bonuses for 2003, and 14th month bonus for 2004. Thereafter, they were directed to submit their respective position papers and evidence in support thereof after which submission, they agreed to have the case considered submitted for decision.[4]

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[4] *Id.* at 76-78.

In its position paper,[5] the Eastern Telecoms Employees Union *(ETEU)* claimed that Eastern Telecommunications Philippines, Inc. *(ETPI)* had consistently and voluntarily been giving out 14th month bonus during the month of April, and 15th and 16th month bonuses every December of each year *(subject bonuses)* to its employees from 1975 to 2002, even when it did not realize any net profits. ETEU posited that by reason of its long and regular concession, the payment of these monetary benefits had ripened into a company practice which could no longer be unilaterally withdrawn by ETPI. ETEU added that this long-standing company practice had been expressly confirmed in the Side Agreements of the 1998-2001 and 2001-2004 Collective Bargaining Agreements *(CBA)* which provided for the continuous grant of these bonuses in no uncertain terms. ETEU theorized that the grant of the subject bonuses is not only a company practice but also a contractual obligation of ETPI to the union members.

ETEU contended that the unjustified and malicious refusal of the company to pay the subject bonuses was a clear violation of the economic provision of the CBA and constitutes unfair labor practice *(ULP)*. According to ETEU, such refusal was nothing but a ploy to spite the union for bringing the matter of delay in the payment of the subject bonuses to the National Conciliation and Mediation Board *(NCMB)*. It prayed for the award of moral and exemplary damages as well as attorney's fees for the unfair labor practice allegedly committed by the company.

On the other hand, ETPI in its position paper,[6] questioned the authority of the NLRC to take cognizance of the case contending that it had no jurisdiction over the issue which merely involved the interpretation of the economic provision of the 2001-2004 CBA Side Agreement. Nonetheless, it maintained that the complaint for nonpayment of 14th, 15th and 16th month bonuses for 2003 and 14th month bonus for 2004 was bereft of

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[5] *Id.* at 494-514.

[6] *Id.* at 118-143.

any legal and factual basis. It averred that the subject bonuses were not part of the legally demandable wage and the grant thereof to its employees was an act of pure gratuity and generosity on its part, involving the exercise of management prerogative and always dependent on the financial performance and realization of profits. It posited that it resorted to the discontinuance of payment of the bonuses due to the unabated huge losses that the company had continuously experienced. It claimed that it had been suffering serious business losses since 2000 and to require the company to pay the subject bonuses during its dire financial straits would in effect penalize it for its past generosity. It alleged that the non-payment of the subject bonuses was neither flagrant nor malicious and, hence, would not amount to unfair labor practice.

Further, ETPI argued that the bonus provision in the 2001-2004 CBA Side Agreement was a mere affirmation that the distribution of bonuses was discretionary to the company, premised and conditioned on the success of the business and availability of cash. It submitted that said bonus provision partook of the nature of a "one-time" grant which the employees may demand only during the year when the Side Agreement was executed and was never intended to cover the entire term of the CBA. Finally, ETPI emphasized that even if it had an unconditional obligation to grant bonuses to its employees, the drastic decline in its financial condition had already legally released it therefrom pursuant to Article 1267 of the Civil Code.

On April 28, 2005, the NLRC issued its Resolution dismissing ETEU's complaint and held that ETPI could not be forced to pay the union members the 14th, 15th and 16th month bonuses for the year 2003 and the 14th month bonus for the year 2004 inasmuch as the payment of these additional benefits was basically a management prerogative, being an act of generosity and munificence on the part of the company and contingent upon the realization of profits. The NLRC pronounced that ETPI may not be obliged to pay these extra compensations in view of the substantial decline in its financial condition. Likewise, the NLRC found that ETPI was not guilty of the ULP charge

elaborating that no sufficient and substantial evidence was adduced to attribute malice to the company for its refusal to pay the subject bonuses. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the instant complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[7]

Respondent ETEU moved for reconsideration but the motion was denied by the NLRC in its Resolution dated August 31, 2005.

Aggrieved, ETEU filed a petition for *certiorari*[8] before the CA ascribing grave abuse of discretion on the NLRC for disregarding its evidence which allegedly would prove that the subject bonuses were part of the union members' wages, salaries or compensations. In addition, ETEU asserted that the NLRC committed grave abuse of discretion when it ruled that ETPI is not contractually bound to give said bonuses to the union members.

In its assailed June 25, 2008 Decision, the CA declared that the Side Agreements of the 1998 and 2001 CBA created a contractual obligation on ETPI to confer the subject bonuses to its employees without qualification or condition. It also found that the grant of said bonuses has already ripened into a company practice and their denial would amount to diminution of the employees' benefits. It held that ETPI could not seek refuge under Article 1267 of the Civil Code because this provision would apply only when the difficulty in fulfilling the contractual obligation was manifestly beyond the contemplation of the parties, which was not the case therein. The CA, however, sustained the NLRC finding that the allegation of ULP was devoid of merit. The dispositive portion of the questioned decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED and the resolution of the National Labor Relations

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[7] *Id.* at 90.

[8] *Id.* at 450-480.

Commission dated April 28, 2005 is hereby ANNULLED and SET ASIDE. Respondent Eastern Telecommunications Philippines, Inc. is ordered to pay the members of petitioner their 14th, 15th and 16th month bonuses for the year 2003 and 14th month for the year 2004. The complaint for unfair labor practice against said respondent is DISMISSED.

SO ORDERED.[9]

ISSUES

Dissatisfied, ETPI now comes to this Court via Rule 45, raising the following errors allegedly committed by the CA, to wit:

I.

THE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT ANNULLED AND SET ASIDE THE RESOLUTIONS OF THE NLRC DISREGARDING THE WELL SETTLED RULE THAT A WRIT OF *CERTIORARI* (UNDER RULE 65) ISSUES ONLY FOR CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT DISREGARDED THE RULE THAT FINDINGS OF FACTS OF QUASI-JUDICIAL BODIES ARE ACCORDED FINALITY IF THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE CONSIDERING THAT THE CONCLUSIONS OF THE NLRC WERE BASED ON SUBSTANTIAL AND OVERWHELMING EVIDENCE AND UNDISPUTED FACTS.

III.

IT WAS A GRAVE ERROR OF LAW FOR THE COURT OF APPEALS TO CONSIDER THAT THE BONUS GIVEN BY EASTERN COMMUNICATIONS TO ITS EMPLOYEES IS NOT DEPENDENT ON THE REALIZATION OF PROFITS.

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[9] *Id.* at 70-71.

IV.

THE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW WHEN IT DISREGARDED THE UNDISPUTED FACT THAT EASTERN COMMUNICATIONS IS SUFFERING FROM TREMENDOUS FINANCIAL LOSSES, AND ORDERED EASTERN COMMUNICATIONS TO GRANT THE BONUSES REGARDLESS OF THE FINANCIAL DISTRESS OF EASTERN COMMUNICATIONS.

V.

THE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW WHEN IT ARRIVED AT THE CONCLUSION THAT THE GRANT OF BONUS GIVEN BY EASTERN COMMUNICATIONS TO ITS EMPLOYEES HAS RIPENED INTO A COMPANY PRACTICE.[10]

A careful perusal of the voluminous pleadings filed by the parties leads the Court to conclude that this case revolves around the following core issues:

1. Whether or not petitioner ETPI is liable to pay 14th, 15th and 16th month bonuses for the year 2003 and 14th month bonus for the year 2004 to the members of respondent union; and

2. Whether or not the CA erred in not dismissing outright ETEU's petition for *certiorari*.

ETPI insists that it is under no legal compulsion to pay 14th, 15th and 16th month bonuses for the year 2003 and 14th month bonus for the year 2004 contending that they are not part of the demandable wage or salary and that their grant is conditional based on successful business performance and the availability of company profits from which to source the same. To thwart ETEU's monetary claims, it insists that the distribution of the subject bonuses falls well within the company's prerogative, being an act of pure gratuity and generosity on its part. Thus, it can withhold the grant thereof especially since it is currently plagued with economic difficulties and financial losses. It alleges that the company's fiscal situation greatly declined due to

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[10] *Id.* at 34.

tremendous and extraordinary losses it sustained beginning the year 2000. It claims that it cannot be compelled to act liberally and confer upon its employees additional benefits over and above those mandated by law when it cannot afford to do so. It posits that so long as the giving of bonuses will result in the financial ruin of an already distressed company, the employer cannot be forced to grant the same.

ETPI further avers that the act of giving the subject bonuses did not ripen into a company practice arguing that it has always been a contingent one dependent on the realization of profits and, hence, the workers are not entitled to bonuses if the company does not make profits for a given year. It asseverates that the 1998 and 2001 CBA Side Agreements did not contractually afford ETEU a vested property right to a perennial payment of the bonuses. It opines that the bonus provision in the Side Agreement allows the giving of benefits only at the time of its execution. For this reason, it cannot be said that the grant has ripened into a company practice. In addition, it argues that even if such traditional company practice exists, the CA should have applied Article 1267 of the Civil Code which releases the obligor from the performance of an obligation when it has become so difficult to fulfill the same.

It is the petitioner's stance that the CA should have dismissed outright the respondent union's petition for *certiorari* alleging that no question of jurisdiction whatsoever was raised therein but, instead, what was being sought was a judicial re-evaluation of the adequacy or inadequacy of the evidence on record. It claims that the CA erred in disregarding the findings of the NLRC which were based on substantial and overwhelming evidence as well as on undisputed facts. ETPI added that the CA court should have refrained from tackling issues of fact and, instead, limited itself on issues of jurisdiction and grave abuse of jurisdiction amounting to lack or excess of it.

The Court's Ruling

As a general rule, in petitions for review under Rule 45, the Court, not being a trier of facts, does not normally embark on

a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. The rule, however, admits of several exceptions, one of which is when the findings of the appellate court are contrary to those of the trial court or the lower administrative body, as the case may be.[11] Considering the incongruent factual conclusions of the CA and the NLRC, this Court finds Itself obliged to resolve it.

The pivotal question determinative of this controversy is whether the members of ETEU are entitled to the payment of 14th, 15th and 16th month bonuses for the year 2003 and 14th month bonus for year 2004.

After an assiduous assessment of the record, the Court finds no merit in the petition.

From a legal point of view, a bonus is a gratuity or act of liberality of the giver which the recipient has no right to demand as a matter of right.[12] The grant of a bonus is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages.[13]

A bonus, however, becomes a demandable or enforceable obligation when it is made part of the wage or salary or compensation of the employee.[14] Particularly instructive is the

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[11] *New City Builders, Inc. v. National Labor Relations Commission,* 499 Phil. 207, 212-213 (2005).

[12] *Philippine National Construction Corp. v. National Labor Relations Commission,* 345 Phil. 324, 331 (1997).

[13] *Trader's Royal Bank v. National Labor Relations Commission,* G.R. No. 88168, August 30, 1990, 189 SCRA 274, 277.

[14] *Philippine National Construction Corp. v. National Labor Relations Commission*, 366 Phil. 678 (1999); *Philippine Duplicators, Inc. v. National Labor Relations Commission,* 311 Phil. 407, 419 (1995).

ruling of the Court in *Metro Transit Organization, Inc. v. National Labor Relations Commission*,[15] where it was written:

> Whether or not a bonus forms part of wages depends upon the circumstances and conditions for its payment. If it is additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or if a certain level of productivity is achieved, it cannot be considered part of the wage. Where it is not payable to all but only to some employees and only when their labor becomes more efficient or more productive, it is only an inducement for efficiency, a prize therefore, not a part of the wage.

The consequential question that needs to be settled, therefore, is whether the subject bonuses are demandable or not. Stated differently, can these bonuses be considered part of the wage, salary or compensation making them enforceable obligations?

The Court believes so.

In the case at bench, it is indubitable that ETPI and ETEU agreed on the inclusion of a provision for the grant of 14th, 15th and 16th month bonuses in the 1998-2001 CBA Side Agreement,[16] as well as in the 2001-2004 CBA Side Agreement,[17] which was signed on September 3, 2001. The provision, which was similarly worded, states:

> Employment-Related Bonuses
>
> The Company confirms that the 14th, 15th and 16th month bonuses (other than the 13th month pay) are granted.

A reading of the above provision reveals that the same provides for the giving of 14th, 15th and 16th month bonuses *without qualification*. The wording of the provision does not allow any other interpretation. There were no conditions specified in the CBA Side Agreements for the grant of the benefits contrary to

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[15] 315 Phil. 860, 871 (1995).

[16] *Rollo*, pp. 560-564.

[17] *Id.* at 240-245.

the claim of ETPI that the same is justified only when there are profits earned by the company. Terse and clear, the said provision does not state that the subject bonuses shall be made to depend on the ETPI's financial standing or that their payment was contingent upon the realization of profits. Neither does it state that if the company derives no profits, no bonuses are to be given to the employees. In fine, the payment of these bonuses was not related to the profitability of business operations.

The records are also bereft of any showing that the ETPI made it clear before or during the execution of the Side Agreements that the bonuses shall be subject to any condition. Indeed, if ETPI and ETEU intended that the subject bonuses would be dependent on the company earnings, such intention should have been expressly declared in the Side Agreements or the bonus provision should have been deleted altogether. In the absence of any proof that ETPI's consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the Side Agreements voluntarily, that it had full knowledge of the contents thereof and that it was aware of its commitment under the contract. Verily, by virtue of its incorporation in the CBA Side Agreements, the grant of 14th, 15th and 16th month bonuses has become more than just an act of generosity on the part of ETPI but a contractual obligation it has undertaken. Moreover, the continuous conferment of bonuses by ETPI to the union members from 1998 to 2002 by virtue of the Side Agreements evidently negates its argument that the giving of the subject bonuses is a management prerogative.

From the foregoing, ETPI cannot insist on business losses as a basis for disregarding its undertaking. It is manifestly clear that although it incurred business losses of ₱149,068,063.00 in the year 2000, it continued to distribute 14th, 15th and 16th month bonuses for said year. Notwithstanding such huge losses, ETPI entered into the 2001-2004 CBA Side Agreement on September 3, 2001 whereby it contracted to grant the subject bonuses to ETEU in no uncertain terms. ETPI continued to sustain losses for the succeeding years of 2001 and 2002 in the amounts of 348,783,013.00 and ₱315,474,444.00, respectively. Still and all, this did not deter it from honoring the bonus provision

in the Side Agreement as it continued to give the subject bonuses to each of the union members in 2001 and 2002 despite its alleged precarious financial condition. Parenthetically, it must be emphasized that ETPI even agreed to the payment of the 14th, 15th and 16th month bonuses for 2003 although it opted to defer the actual grant in April 2004. All given, business losses could not be cited as grounds for ETPI to repudiate its obligation under the 2001-2004 CBA Side Agreement.

The Court finds no merit in ETPI's contention that the bonus provision confirms the grant of the subject bonuses only on a single instance because if this is so, the parties should have included such limitation in the agreement. Nowhere in the Side Agreement does it say that the subject bonuses shall be conferred once during the year the Side Agreement was signed. The Court quotes with approval the observation of the CA in this regard:

> ETPI argues that assuming the bonus provision in the Side Agreement of the 2001-2004 CBA entitles the union members to the subject bonuses, it is merely in the nature of a "one-time" grant and not intended to cover the entire term of the CBA. The contention is untenable. The bonus provision in question is exactly the same as that contained in the Side Agreement of the 1998-2001 CBA and there is no denying that from 1998 to 2001, ETPI granted the subject bonuses for each of those years. Thus, ETPI may not now claim that the bonus provision in the Side Agreement of the 2001-2004 CBA is only a "one-time" grant.[18]

ETPI then argues that even if it is contractually bound to distribute the subject bonuses to ETEU members under the Side Agreements, its current financial difficulties should have released it from the obligatory force of said contract invoking Article 1267 of the Civil Code. Said provision declares:

> Article 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

The Court is not persuaded.

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[18] *Id.* at 18.

The parties to the contract must be presumed to have assumed the risks of unfavorable developments. It is, therefore, only in absolutely exceptional changes of circumstances that equity demands assistance for the debtor.[19] In the case at bench, the Court determines that ETPI's claimed depressed financial state will not release it from the binding effect of the 2001-2004 CBA Side Agreement.

ETPI appears to be well aware of its deteriorating financial condition when it entered into the 2001-2004 CBA Side Agreement with ETEU and obliged itself to pay bonuses to the members of ETEU. Considering that ETPI had been continuously suffering huge losses from 2000 to 2002, its business losses in the year 2003 were not exactly unforeseen or unexpected. Consequently, it cannot be said that the difficulty in complying with its obligation under the Side Agreement was "manifestly beyond the contemplation of the parties." Besides, as held in *Central Bank of the Philippines v. Court of Appeals*,[20] mere pecuniary inability to fulfill an engagement does not discharge a contractual obligation. Contracts, once perfected, are binding between the contracting parties. Obligations arising therefrom have the force of law and should be complied with in good faith. ETPI cannot renege from the obligation it has freely assumed when it signed the 2001-2004 CBA Side Agreement.

Granting *arguendo* that the CBA Side Agreement does not contractually bind petitioner ETPI to give the subject bonuses, nevertheless, the Court finds that its act of granting the same has become an established company practice such that it has virtually become part of the employees' salary or wage. A bonus may be granted on equitable consideration when the giving of such bonus has been the company's long and regular practice. In *Philippine Appliance Corporation v. Court of Appeals*,[21] it was pronounced:

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[19] *So v. Food Fest Land, Inc*., G.R. No. 183628, April 7, 2010, 617 SCRA 541, 550.

[20] 223 Phil. 266, 274 (1985).

[21] G.R. No. 149434, June 3, 2004, 430 SCRA 525, 532.

To be considered a "regular practice," however, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.

The records show that ETPI, aside from complying with the regular 13th month bonus, has been further giving its employees 14th month bonus every April as well as 15th and 16th month bonuses every December of the year, without fail, from 1975 to 2002 or for 27 years whether it earned profits or not. The considerable length of time ETPI has been giving the special grants to its employees indicates a unilateral and voluntary act on its part to continue giving said benefits knowing that such act was not required by law. Accordingly, a company practice in favor of the employees has been established and the payments made by ETPI pursuant thereto ripened into benefits enjoyed by the employees.

The giving of the subject bonuses cannot be peremptorily withdrawn by ETPI without violating Article 100 of the Labor Code:

Art. 100. Prohibition against elimination or diminution of benefits. — Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

The rule is settled that any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. The principle of non-diminution of benefits is founded on the constitutional mandate to protect the rights of workers and to promote their welfare and to afford labor full protection.[22]

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[22] *Arco Metal Products Co., Inc. v. Samahan Ng Mga Manggagawa Sa Arco Metal-NAFLU,* G.R. No. 170734, May 14, 2008, 554 SCRA 110, 118.

Interestingly, ETPI never presented countervailing evidence to refute ETEU's claim that the company has been continuously paying bonuses since 1975 up to 2002 regardless of its financial state. Its failure to controvert the allegation, when it had the opportunity and resources to do so, works in favor of ETEU. Time and again, it has been held that should doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[23]

WHEREFORE, the petition is **DENIED.** The June 25, 2008 Decision of the Court of Appeals and its December 12, 2008 Resolution are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186720. February 8, 2012]

ELSA D. MEDADO, *petitioner, vs.* **HEIRS OF THE LATE ANTONIO CONSING, as represented by DR. SOLEDAD CONSING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON VERIFICATION AND CERTIFICATION AGAINST FORUM, SUBSTANTIALLY COMPLIED WITH. —

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[23] *Gu-miro v. Adorable,* G.R. No. 160952,480 Phil. 597, 605 (2004).

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated July 1, 2010.

> [R]ecords show that Soledad signed the verification and certification against forum shopping on behalf of her co-petitioners by virtue of a Special Power of Attorney (SPA) attached to the petition filed with the CA. The SPA, signed by her co-heirs Ma. Josefa Consing Saguitguit, Ma. Carmela Consing Lopez, Ma. Lourdes Consing Gonzales and Mary Rose Consing Tuason, provides that their attorney-in-fact Soledad is authorized: To protect, sue, prosecute, defend and adopt whatever action necessary and proper relative and with respect to our right, interest and participation over said properties x x x the authority of Soledad includes the filing of an appeal before the CA, including the execution of a verification and certification against forum shopping therefor, being acts necessary "to protect, sue, prosecute, defend and adopt whatever action necessary and proper" in relation to their rights over the subject properties. In addition, the allegations and contentions embodied in the CA petition do not deviate from the claims already made by the heirs in Civil Case Nos. 00-11320 and 797-C, both specifically mentioned in the SPA. We emphasize that the verification requirement is simply intended to secure an assurance 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. We rule that there was no deficiency in the petition's verification and certification against forum shopping filed with the CA. x x x [W]e have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct. It was based on this principle that this Court had also allowed herein petitioner, *via* our Resolution dated April 22, 2009, a chance to submit a verification that complied with Section 4, Rule 7 of the Rules of Court, as amended, instead of us dismissing the petition outright.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION FOR *CERTIORARI* IS ALLOWED DESPITE WITHDRAWAL

OF THE MOTION FOR RECONSIDERATION. — [T]he CA did not err in accepting the petition for *certiorari* even if the motion for reconsideration of the RTC Order of March 9, 2007 was withdrawn by herein respondents before the RTC could act thereon. It is settled that the requirement on the filing of a motion for reconsideration prior to the institution of a petition for *certiorari* under Rule 65 of the Rules of Court admits of several exceptions, such as when the filing of a motion appears to be useless given the circumstances attending the action. x x x As correctly held by the CA, a motion for reconsideration, or the resolution of the trial court thereon, had become useless given that the particular acts which the movants sought to prevent by the filing of the motion were already carried out. Significantly, the heirs of the late Consing had filed a motion for reconsideration of the RTC's order, but withdrew it only after the trial court had decided to implement the writs notwithstanding the pendency of the motion and just a day before the scheduled hearing on said motion.

3. ID.; CIVIL PROCEDURE; FORUM SHOPPING EXISTS WHEN THE ELEMENTS OF *LITIS PENDENCIA* CONCUR; APPLICATION. — On the third issue, there is forum shopping when the elements of *litis pendentia* are present, *i.e.*, between actions pending before courts, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions, (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*. Applying the foregoing, there was clearly a violation of the rule against forum shopping when Spouses Medado instituted Civil Case No. 797-C for injunction notwithstanding the pendency of Civil Case No. 00-11320 for rescission of contract and damages. All elements of *litis pendentia* are present with the filing of the two cases. There is no dispute that there is identity of parties representing the same interests in the two actions, both involving the estate and heirs of the late Consing on one hand, and Spouses Medado on the other. x x x The primary litigants in the two action, and their interests, are the same. The two other elements are likewise satisfied. There is an identity of

rights asserted and reliefs prayed for in the two cases, with the reliefs being founded on the same set of facts. In both cases, the parties claim their supposed right as owners of the subject properties. They all anchor their claim of ownership on the deeds of absolute sale which they had executed, and the law applicable thereto. They assert their respective rights, with Spouses Medado as buyers and the heirs as sellers, based on the same set of facts that involve the deeds of sale's contents and their validity. Both actions necessarily involve a ruling on the validity of the same contract as against the same parties. Thus, the identity of the two cases is such as would render the decision in the rescission case *res judicata* in the injunction case, and *vice versa*.

APPEARANCES OF COUNSEL

Bimbo Lavides for petitioner.
Edgardo M. Salandanan for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, which seeks to **annul and set aside** the following issuances of the Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 02660, entitled "*Heirs of the Late Antonio Consing as represented by Dra. Soledad Consing v. Hon. Renato D. Muñez, Presiding Executive Judge, Regional Trial Court, Branch 60, Cadiz City, Spouses Meritus Rey Medado, the Sheriff IV, Balbino B. Germinal, Regional Trial Court, Branch 60, Cadiz City and Land Bank of the Philippines*":

(1) the Decision[1] dated September 26, 2008, reversing and setting aside the order[2] of the Regional Trial Court (RTC),

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Edgardo L. Delos Santos, concurring; *rollo*, pp. 31-43.

[2] *Id.* at 134-141.

Branch 60, Cadiz City, in Civil Case No. 797-C, an action for injunction; and

(2) the Resolution[3] dated January 21, 2009, denying the motion for reconsideration of the decision dated September 26, 2008.

The Factual Antecedents

Sometime in 1996, petitioner Meritus Rey Medado and Elsa Medado (Spouses Medado) and the estate of the late Antonio Consing (Estate of Consing), as represented by Soledad Consing (Soledad), executed Deeds of Sale with Assumption of Mortgage for the former's acquisition from the latter of the property in Cadiz City identified as Hacienda Sol. Records indicate that the sale included the parcels of land covered by OCT No. P-498, TCT No. T-31275, TCT No. T-31276 and TCT No. T-31277. As part of the deal, Spouses Medado undertook to assume the estate's loan with Philippine National Bank (PNB).

Subsequent to the sale, however, the Estate of Consing offered the subject lots to the government *via* the Department of Agrarian Reform's Voluntary Offer to Sell (VOS) program. On November 22, 2000, the Estate of Consing also instituted with the RTC, Branch 44 of Bacolod City an action for rescission and damages, docketed as Civil Case No. 00-11320 against Spouses Medado, PNB and the Register of Deeds of Cadiz City, due to the alleged failure of the spouses to meet the conditions in their agreement.

In the meantime that Civil Case No. 00-11320 for rescission was pending, Land Bank of the Philippines (LBP) issued in favor of the Estate of Consing a certificate of deposit of cash and agrarian reform bonds, as compensation for the lots covered by the VOS. Spouses Medado feared that LBP would release the full proceeds thereof to the Estate of Consing. They claimed to be the ones entitled to the proceeds considering that they had bought the properties through the Deeds of Sale with

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[3] *Id.* at 55.

Assumption of Mortgage which they and the Estate of Consing had earlier executed.

The foregoing prompted Spouses Medado to institute Civil Case No. 797-C, an action for injunction with prayer for the issuance of a temporary restraining order, with the RTC, Branch 60 of Cadiz City. They asked that the following be issued by the trial court: (a) writ of prohibitory injunction to restrain LBP from releasing the remaining amount of the VOS proceeds of the lots offered by the Estate of Consing, and restraining the Estate of Consing from receiving these proceeds; and (b) writ of mandatory injunction to compel LBP to release the remaining amount of the VOS to the spouses.

On March 9, 2007, the RTC of Cadiz City issued an Order[4] granting Spouses Medado's application for the issuance of writs of preliminary prohibitory and mandatory injunction. The order's dispositive portion reads:

> WHEREFORE, finding the application for the issuance of a writ of preliminary prohibitory injunction and preliminary mandatory injunction of the plaintiffs to be MERITORIOUS, the same is hereby GRANTED.
>
> Let therefore a Writ of Preliminary Prohibitory and Mandatory Injunction be issued against defendant Land Bank, its agents, lawyers and all other persons acting in its behalf to cease and desist from releasing the balance of the VOS Proceeds to defendant Heirs of the Late Antonio Consing as represented by Dra. Soledad Consing and restraining said defendant Consing, her agents, lawyers, successors-in-interest, and all other persons acting in its behalf from receiving the same and to maintain the *STATUS QUO ANTE BELLUM* while defendant Land Bank of the Philippines is hereby ordered to release and pay the whole of the remaining balance of the VOS Proceeds held by the said defendant to the plaintiffs after the posting of a bond by the plaintiffs in the amount of FIVE MILLION PESOS (₱5,000,000.00) executed in favor of the defendants conditioned upon the payment to the said defendants by the plaintiffs [of] all damages which the former may sustain by reason of the issuance of the writ of preliminary prohibitory and mandatory injunction in case

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[4] *Supra* note 2.

this Court should finally decide that the plaintiffs are not entitled thereto.

Furnish copies of this Order to all counsels and parties.

SO ORDERED.[5]

Feeling aggrieved, the heirs of the late Antonio Consing (Consing) questioned the RTC's order *via* a petition for *certiorari* filed with the CA, against Hon. Renato D. Muñez, Presiding Executive Judge, RTC, Branch 60 of Cadiz City, Spouses Medado, Sheriff IV Balbino B. Germinal of RTC, Branch 60 of Cadiz City and LBP. They sought, among other reliefs, the dismissal of the complaint for injunction for violation of the rules on *litis pendentia* and forum shopping. On the matter of the absence of a motion for reconsideration of the trial court's order before resorting to a petition for *certiorari*, the heirs explained that the implementation of the questioned writs through LBP's release of the VOS proceeds' balance to the sheriff on March 29, 2007, notwithstanding: (a) the pendency of motions for reconsideration and dissolution of the writs filed by the heirs, and (b) the fact that the writs were immediately implemented even if a hearing on the motions was already scheduled for March 30, 2007, prompted the heirs' withdrawal of their motions for being already moot and academic. The heirs argued that their case was within the exceptions to the general rule that a petition under Rule 65 will not lie unless a motion for reconsideration is first filed before the lower court.

In their comment on the petition, Spouses Medado questioned, among other matters, the authority of Soledad to sign the petition's certification of non-forum shopping on behalf of her co-petitioners.

The Ruling of the CA

On September 26, 2008, the CA rendered the assailed decision,[6] the dispositive portion of which reads:

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[5] *Rollo*, pp. 140-141.

[6] *Supra* note 1.

WHEREFORE, the petition being impressed with merit is ***GRANTED***. The assailed Order dated March 9, 2007 is ***NULLIFIED*** and ***SET ASIDE*** and the complaint in Civil Case No. 797-C ***DISMISSED***. Private respondents are directed to return ₱3,743,825.88 to Land Bank of the Philippines to await a final ruling in Civil Case No. 00-1320.

No costs.

SO ORDERED.[7]

The CA ruled that the RTC gravely abused its discretion in taking cognizance of Civil Case No. 797-C for injunction during the pendency of Civil Case No. 00-11320 for rescission and damages as this violates the rule against forum shopping.

Spouses Medado's motion for reconsideration of the decision of September 26, 2008 was denied by the CA *via* its Resolution[8] dated January 21, 2009. Hence, this petition.

The Present Petition

This petition was instituted by petitioner Elsa Medado without naming her husband as co-petitioner, due to their alleged separation *de facto*.[9] It presents the following issues for this Court's determination:

I. Whether or not the CA correctly admitted the petition for *certiorari* filed before it, notwithstanding alleged deficiencies in its verification and certification against forum shopping;

II. Whether or not the CA correctly admitted the petition for *certiorari* filed before it even if no motion for reconsideration of the RTC's Order dated March 9, 2007 was filed with the lower court; and

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[7] *Rollo*, pp. 42-43.

[8] *Supra* note 3.

[9] *Rollo*, p. 5.

III. Whether or not the CA correctly held that the rule against forum shopping was violated by the filing of the complaint for injunction during the pendency of the action for rescission and damages.

In their comment on the petition, the respondents also raise as an issue the failure of the petitioner to join her husband as a party to the petition, considering that the action affects conjugal property.

This Court's Ruling

After due study, this Court finds the petition bereft of merit.

The requirements for verification and certification against forum shopping in the CA petition were substantially complied with, following settled jurisprudence.

Before us, the petitioner contended that the consolidated verification and certification against forum shopping of the petition filed with the CA was defective: first, for being signed only by Soledad, instead of by all the petitioners, and second, its *jurat* cites a mere community tax certificate of Soledad, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. The second ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.

As regards the first ground, records show that Soledad signed the verification and certification against forum shopping on behalf of her co-petitioners by virtue of a Special Power of Attorney[10] (SPA) attached to the petition filed with the CA. The SPA, signed by her co-heirs Ma. Josefa Consing Saguitguit, Ma. Carmela Consing Lopez, Ma. Lourdes Consing Gonzales and Mary Rose Consing Tuason, provides that their attorney-in-fact Soledad is authorized:

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[10] *Id.* at 103-105.

> To protect, sue, prosecute, defend and adopt whatever action necessary and proper relative and with respect to our right, interest and participation over said properties, particularly those described in previous titles under TCT No. T-498, TCT No. T-31275, TCT No. T-31276 and TCT No. T-31277 of the [R]egister of Deeds, Cadiz City, covering a total area of 73.6814 square meters, and declared in the name of said Antonio Consing and located in Brgy. Magsaysay, Cadiz City, Negros Occidental, the same parcels of land are the subject of judicial litigation before the [R]egional Trial [Court], Branch 44, Bacolod City, docketed as Civil [C]ase No. 11320, entitled "*Soledad T. Consing, for herself and as Administratix of the estate of Antonio Consing*, plaintiffs, *versus, Spouses Meritus Rey and Elsa Medado, et.al.*, defendants," and Regional Trial Court, Branch 60, Cadiz City and docketed as Civil Case No. 797-C, entitled, ["]*Spouse*[*s*] *Meritus Rey Medado* and *Elsa Medado*, plaintiffs, *versus*, *Land Bank of the Philippines and heirs of the Late Antonio Consing as represented by Dra. Soledad Consing*, defendants"; pending in said court and which cases may at anytime be elevated to the Court of Appeals and/or Supreme Court as the circumstances so warrant;[11]

As may be gleaned from the foregoing, the authority of Soledad includes the filing of an appeal before the CA, including the execution of a verification and certification against forum shopping therefor, being acts necessary "to protect, sue, prosecute, defend and adopt whatever action necessary and proper" in relation to their rights over the subject properties.

In addition, the allegations and contentions embodied in the CA petition do not deviate from the claims already made by the heirs in Civil Case Nos. 00-11320 and 797-C, both specifically mentioned in the SPA. We emphasize that the verification requirement is simply intended to secure an assurance 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.[12] We rule that there was no

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[11] *Id.* at 103.

[12] *Republic v. Coalbrine International Philippines, Inc.*, G.R. No. 161838, April 7, 2010, 617 SCRA 491, 499.

deficiency in the petition's verification and certification against forum shopping filed with the CA.

In any case, we reiterate that where the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action. In *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*,[13] we held:

> Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in *Heirs of Olarte v. Office of the President:*
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> > The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.
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> > In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with [the] rules because all the petitioners share a common interest and invoke a common cause of action or defense.

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[13] G.R. No. 146548, December 18, 2009, 608 SCRA 394.

> The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest.
> x x x
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> x x x x x x x x x
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> Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.[14] (citations omitted)

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.[15] It was based on this principle that this Court had also allowed herein petitioner, *via* our Resolution[16] dated April 22, 2009, a chance to submit a verification that complied with Section 4, Rule 7 of the Rules of Court, as amended, instead of us dismissing the petition outright.

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[14] *Id.* at 405-407.

[15] *Bello v. Bonifacio Security Services, Inc.*, G.R. No. 188086, August 3, 2011.

[16] *Rollo*, pp. 143-144.

There are recognized exceptions permitting resort to a special civil action of *certiorari* even without first filing a motion for reconsideration.

On the second issue, the CA did not err in accepting the petition for *certiorari* even if the motion for reconsideration of the RTC Order of March 9, 2007 was withdrawn by herein respondents before the RTC could act thereon. It is settled that the requirement on the filing of a motion for reconsideration prior to the institution of a petition for *certiorari* under Rule 65 of the Rules of Court admits of several exceptions, such as when the filing of a motion appears to be useless given the circumstances attending the action. Thus, we have repeatedly held:

> The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by re-examination of the legal and factual circumstances of the case. There are, however, recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*, it was written:
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> > "The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo* had no jurisdiction; where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; **where, under the circumstances, a motion for reconsideration would be useless;** where the petitioner was deprived of due process and there is extreme urgency of relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a

> nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is involved."[17] (emphasis supplied, and citations and underscoring omitted)

As correctly held by the CA, a motion for reconsideration, or the resolution of the trial court thereon, had become useless given that the particular acts which the movants sought to prevent by the filing of the motion were already carried out. Significantly, the heirs of the late Consing had filed a motion for reconsideration of the RTC's order, but withdrew it only after the trial court had decided to implement the writs notwithstanding the pendency of the motion and just a day before the scheduled hearing on said motion.

Forum-shopping exists when the elements of *litis pendentia* concur.

On the third issue, there is forum shopping when the elements of *litis pendentia* are present, *i.e.*, between actions pending before courts, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions, (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.[18] Applying the foregoing, there was clearly a violation of the rule against forum shopping when Spouses Medado instituted Civil Case No. 797-C for injunction notwithstanding the pendency of Civil Case No. 00-11320 for rescission of contract and damages.

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[17] *Pineda v. Court of Appeals*, G. R. No. 181643, November 17, 2010, 635 SCRA 274, 281-282.

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

All elements of *litis pendentia* are present with the filing of the two cases. There is no dispute that there is identity of parties representing the same interests in the two actions, both involving the estate and heirs of the late Consing on one hand, and Spouses Medado on the other. The rescission case names "Soledad T. Consing, for herself and as administratrix of the estate of Antonio Consing" as plaintiff, with "Spouses Meritus Rey and Elsa Medado, [PNB] and the Register of Deeds of Cadiz City" as respondents. The injunction case, on the other hand, was instituted by Spouses Medado, against "(LBP) and the Heirs of the Late Antonio Consing, as represented by Dra. Soledad Consing." The primary litigants in the two action, and their interests, are the same.

The two other elements are likewise satisfied. There is an identity of rights asserted and reliefs prayed for in the two cases, with the reliefs being founded on the same set of facts. In both cases, the parties claim their supposed right as owners of the subject properties. They all anchor their claim of ownership on the deeds of absolute sale which they had executed, and the law applicable thereto. They assert their respective rights, with Spouses Medado as buyers and the heirs as sellers, based on the same set of facts that involve the deeds of sale's contents and their validity. Both actions necessarily involve a ruling on the validity of the same contract as against the same parties. Thus, the identity of the two cases is such as would render the decision in the rescission case *res judicata* in the injunction case, and *vice versa*.

It does not even matter that one action is for the enforcement of the parties' agreements, while the other action is for the rescission thereof. In the similar case of *Victronics Computers, Inc. v. RTC, Branch 63, Makati*,[19] we discussed:

> Civil Case No. 91-2069 actually involves an action for specific performance; it thus upholds the contract and assumes its validity. Civil Case No. 91-2192, on the other hand, is for the nullification of the contract on the grounds of fraud and vitiated consent. **While**

[19] G.R. No. 104019, January 25, 1993, 217 SCRA 517.

ostensibly the cause of action in one is opposite to that in the other, in the final analysis, what is being determined is the validity of the contract. x x x Thus, the identity of rights asserted cannot be disputed. Howsoever viewed, it is beyond cavil that regardless of the decision that would be promulgated in Civil Case No. 91-2069, the same would constitute *res judicata* on Civil Case No. 91-2192 and *vice versa*.[20] (emphasis supplied)

This was further explained in *Casil v. CA*,[21] where we ruled*:*

The Court of Appeals held that there can be no *res adjudicata* because there is no identity of causes of action between the two cases. We do not agree. In the two cases, both petitioner and private respondent brought to fore the validity of the agreement dated May 4, 1994. Private respondent raised this point as an affirmative defense in her answer in the First Case. She brought it up again in her complaint in the Second Case. A single issue cannot be litigated in more than one forum. As held in *Mendiola vs. Court of Appeals:*

> The similarity between the two causes of action is only too glaring. *The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment.* In Civil Case No. 58713, the action is to enjoin PNB from foreclosing petitioner's properties, while in Civil Case No. 60012, the action is one to annul the auction sale over the foreclosed properties of petitioner based on the same grounds. *Notwithstanding a difference in the forms of the two actions, the doctrine of res judicata still applies considering that the parties were litigating for the same thing, i.e. lands covered by TCT No. 27307, and more importantly, the same contentions and evidence as advanced by herein petitioner in this case were in fact used to support the former cause of action*."[22]

The CA was then correct in ordering the dismissal of the complaint in Civil Case No. 797-C for violation of the rule

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[20] *Id.* at 530-531.

[21] 349 Phil. 187 (1998).

[22] *Id.* at 200-201.

against forum shopping. The issue on the validity of the subject deeds of absolute sale can best be addressed in the action for rescission, as against the case for injunction filed by Spouses Medado. In a line of cases, we have set the relevant factors that courts must consider when they have to determine which case should be dismissed, given the pendency of two actions, to wit:

(1) the date of filing, with preference generally given to the first action filed to be retained;

(2) whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal; and

(3) whether the action is the appropriate vehicle for litigating the issues between the parties.[23]

We emphasize that the rules on forum shopping are meant to prevent such eventualities as conflicting final decisions.[24] This Court has consistently held that the costly consequence of forum shopping should remind the parties to ever be mindful against abusing court processes.[25] In addition, the principle of *res judicata* requires that stability be accorded to judgments. Controversies once decided on the merits shall remain in repose for there should be an end to litigation which, without the doctrine, would be endless.[26]

Given the foregoing grounds already warranting the denial of this petition, we deem it no longer necessary to take any action or to now rule on the issue of the non-joinder of the petitioner's husband in the petition.

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[23] *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 81-82; *Casil v. CA*, *supra* note 21, at 204; *Allied Banking Corp. v. CA*, 328 Phil. 710, 719 (1996).

[24] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 568.

[25] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011.

[26] *Nacuray v. NLRC*, 336 Phil. 749, 757 (1997).

WHEREFORE, premises considered, the instant petition for review on *certiorari* is hereby **DENIED.** Accordingly, the Court of Appeal's Decision dated September 26, 2008, which reversed and set aside the order of the Regional Trial Court, Branch 60, Cadiz City, dated March 09, 2007, is perforce **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187490. February 8, 2012]

ANTONIA R. DELA PEÑA and ALVIN JOHN B. DELA PEÑA, *petitioners, vs.* **GEMMA REMILYN C. AVILA and FAR EAST BANK & TRUST CO.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MARRIAGE; CONJUGAL PARTNERSHIP OF GAINS; PRESUMPTION OF CONJUGALITY OPERATES ONLY UPON PROOF THAT THE PROPERTY WAS ACQUIRED DURING THE MARRIAGE. — Pursuant to Article 160 of the *Civil Code of the Philippines*, all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. Although it is not necessary to prove that the property was acquired with funds of the partnership, proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership. x x x As the parties invoking the presumption of conjugality under Article 160 of the *Civil Code*, the Dela Peñas did not even come close to proving that the subject property was acquired during the marriage between Antonia and Antegono. Beyond Antonia's bare and uncorroborated assertion that the property was purchased when she was already married, the record is bereft of any evidence

from which the actual date of acquisition of the realty can be ascertained. When queried about the matter during his cross-examination, even Alvin admitted that his sole basis for saying that the property was owned by his parents was Antonia's unilateral pronouncement to the effect. Considering that the presumption of conjugality does not operate if there is no showing of *when* the property alleged to be conjugal was acquired, we find that the CA cannot be faulted for ruling that the realty in litigation was Antonia's exclusive property.

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO PROVE THE TIME OF THE ACQUISITION OF THE PROPERTY RENDERS ITS NATURE AS PARAPHERNAL. — Not having established the time of acquisition of the property, the Dela Peñas insist that the registration thereof in the name of "Antonia R. Dela Peña, of legal age, Filipino, married to Antegono A. Dela Peña" should have already sufficiently established its conjugal nature. Confronted with the same issue in the case *Ruiz vs. Court of Appeals*, this Court ruled, however, that the phrase "married to" is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner. Because it is likewise possible that the property was acquired by the wife while she was still single and registered only after her marriage, neither would registration thereof in said manner constitute proof that the same was acquired during the marriage and, for said reason, to be presumed conjugal in nature. "Since there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, *i.e.*, belonging exclusively to said spouse."

3. ID.; SALES; VALIDITY OF AN ABSOLUTE DEED OF SALE, UPHELD; REASONS. — For all of Antonia's denial of her receipt of any consideration for the sale of the property in favor of Gemma, the evidence on record also lend credence to Gemma's version of the circumstances surrounding the execution of the assailed 4 November 1997 *Deed of Absolute Sale*. Consistent with Gemma's claim that said deed was executed to facilitate the loans she obtained from FEBTC-BPI which were agreed to be used as payment of the sums she expended to settle the outstanding obligation to Aguila and the ₱50,000.00 she loaned Antonia, the latter admitted during her direct examination that she did not pay the loan she obtained

from Aguila. Presented as witness of the Dela Peñas, Alessandro Almoden also admitted that Gemma had extended a loan in the sum of ₱50,000.00 in favor of Antonia. Notably, Alessandro Almoden's claim that the title to the property had been delivered to Gemma as a consequence of the transaction is at odds with Antonia's claim that she presented said document to the Registry of Deeds when she verified the status of the property prior to the filing of the complaint from which the instant suit originated. With the material contradictions in the Dela Peña's evidence, the CA cannot be faulted for upholding the validity of the impugned 4 November 1997 *Deed of Absolute Sale*. Having been duly notarized, said deed is a public document which carries the evidentiary weight conferred upon it with respect to its due execution. Regarded as evidence of the facts therein expressed in a clear, unequivocal manner, public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The burden of proof to overcome said presumptions lies with the party contesting the notarial document like the Dela Peñas who, unfortunately, failed to discharge said onus. Absent clear and convincing evidence to contradict the same, we find that the CA correctly pronounced the *Deed of Absolute Sale* was valid and binding between Antonia and Gemma.

4. ID.; MORTGAGE; EFFECTS OF NON-PAYMENT OF THE MORTGAGE DEBT. — Since foreclosure of the mortgage is but the necessary consequence of non-payment of the mortgage debt, FEBTC-BPI was, likewise, acting well within its rights as mortgagee when it foreclosed the real estate mortgage on the property upon Gemma's failure to pay the loans secured thereby. Executed on 26 November 1997, the mortgage predated Antonia's filing of an *Affidavit of Adverse Claim* with the Register of Deeds of Marikina on 3 March 1998 and the annotation of a *Notice of Lis Pendens* on TCT No. 337834 on 10 December 1999. "The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfilment of the obligation for whose security it was constituted." When the principal obligation is not paid when due, the mortgagee consequently has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan.

APPEARANCES OF COUNSEL

Ariel R. Subia for petitioners.
Benedicto Versoza Felipe & Burkley Law Offices for FEBTC.

D E C I S I O N

PEREZ, *J.*:

Filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, this petition for review on *certiorari* seeks the reversal and setting aside of the Decision[1] dated 31 March 2009 rendered by the then Second Division of the Court of Appeals in CA-G.R. CV No. 90485,[2] the dispositive portion of which states:

> WHEREFORE, premises considered, the appeal is GRANTED and the assailed Decision, dated December 18, 2007, of the Regional Trial Court of Marikina City, Branch 272, is hereby REVERSED and SET ASIDE. The Deed of Absolute Sale in favor of Gemma Avila dated November 4, 1997 and the subsequent sale on auction of the subject property to FEBTC (now Bank of the Philippine Islands) on March 15, 1999 are upheld as valid and binding.
>
> SO ORDERED.[3]

The Facts

The suit concerns a 277 square meter parcel of residential land, together with the improvements thereon, situated in Marikina City and previously registered in the name of petitioner Antonia R. Dela Peña (Antonia), "married to Antegono A. Dela Peña" (Antegono) under Transfer Certificate of Title (TCT)

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[1] Penned by Associate Justice Portia Alino-Hormachuelos and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Ramon M. Bato, Jr.

[2] CA *rollo*, CA-G.R. CV No. 90485, CA's 31 March 2009 Decision, pp. 113-131.

[3] *Id.* at 130-131.

No. N-32315 of the Registry of Deeds of Rizal.[4] On 7 May 1996, Antonia obtained from A.C. Aguila & Sons, Co. (Aguila) a loan in the sum of ₱250,000.00 which, pursuant to the *Promissory Note* the former executed in favor of the latter, was payable on or before 7 July 1996, with interest pegged at 5% per month.[5] On the very same day, Antonia also executed in favor of Aguila a notarized *Deed of Real Estate Mortgage* over the property, for the purpose of securing the payment of said loan obligation. The deed provided, in part, that "(t)his contract is for a period of Three (3) months from the date of this instrument".[6]

On 4 November 1997, Antonia executed a notarized *Deed of Absolute Sale* over the property in favor of respondent Gemma Remilyn C. Avila (Gemma), for the stated consideration of ₱600,000.00.[7] Utilizing the document, Gemma caused the cancellation of TCT No. N-32315 as well as the issuance of TCT No. 337834 of the Marikina City Registry of Deeds, naming her as the owner of the subject realty.[8] On 26 November 1997, Gemma also constituted a real estate mortgage over said parcel in favor of respondent Far East Bank and Trust Company [now Bank of the Philippine Islands] (FEBTC-BPI), to secure a loan facility with a credit limit of ₱1,200,000.00.[9] As evidenced by the Promissory Notes she executed from 12 December 1997 to 10 March 1998,[10] Gemma obtained the following loans from Visayas Avenue Branch of the FEBTC-BPI, in the aggregate sum of ₱1,200,000.00, to wit:

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[4] Exhibit "C", TCT No. N-32315, Record, Civil Case No. 98-445-MK, Vol. II, pp. 4-5.

[5] Exhibit "E", Promissory Note, *id.* at 9.

[6] Exhibit "D", Deed of Real Estate Mortgage, *id.* at 6-9.

[7] Exhibit "F", Deed of Absolute Sale, *id.* at 10-11.

[8] Exhibit "G", TCT No. 337834, *id.* at 12-13.

[9] Exhibit "7", Real Estate Mortgage, *id.* at 27-30.

[10] Exhibits "1" to "13A", FEBTC-BPI Promissory Notes, *id.* at 15-26.

Promissory Note	*Date*	*Amount*	*Maturity*
BDS#970779	12/02/97	₱300,000.00	04/30/98
BDS#970790	12/15/97	₱100,000.00	04/14/98
BDS#980800	01/16/98	₱100,000.00	04/30/98
BDS#980805	02/06/98	₱100,000.00	04/30/98
BDS#980817	02/27/98	₱150,000.00	04/30/98
BDS#980821	03/10/98	₱450,000.00	04/30/98

On 3 March 1998, in the meantime, Antonia filed with the Register of Deeds of Marikina an *Affidavit of Adverse Claim* to the effect, among others, that she was the true and lawful owner of the property which had been titled in the name of Gemma under TCT No. 32315; and, that the Deed of Absolute Sale Gemma utilized in procuring her title was simulated.[11] As a consequence, Antonia's *Affidavit of Adverse Claim* was inscribed on TCT No. 337834 as Entry No. 501099 on 10 March 1998.[12] In view of Gemma's failure to pay the principal as well as the accumulated interest and penalties on the loans she obtained, on the other hand, FEBTC-BPI caused the extrajudicial foreclosure of the real estate mortgage constituted over the property. As the highest bidder at the public auction conducted in the premises,[13] FEBTC-BPI later consolidated its ownership over the realty and caused the same to be titled in its name under TCT No. 415392 of the Marikina registry.[14]

On 18 May 1998, Antonia and her son, petitioner Alvin John B. Dela Peña (Alvin), filed against Gemma the complaint for annulment of deed of sale docketed before Branch 272 of the Regional Trial Court (RTC) of Marikina City as Civil Case No. 98-445-MK. Claiming that the subject realty was conjugal

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[11] Exhibit "H", Affidavit of Adverse Claim, *id.* at 14.

[12] *Id.* at 13.

[13] Exhibit "9", FEBTC-BPI's Written Bid, *id.* at 31.

[14] Exhibit "12", TCT No. 415392, *id.* at 34.

property, the Dela Peñas alleged, among other matters, that the 7 May 1996 *Deed of Real Estate Mortgage* Antonia executed in favor of Aguila was not consented to by Antegono who had, by then, already died; that despite its intended 1998 maturity date, the due date of the loan secured by the mortgage was shortened by Gemma who, taking advantage of her "proximate relationship" with Aguila, altered the same to 1997; and, that the 4 November 1997 *Deed of Absolute Sale* in favor of Gemma was executed by Antonia who was misled into believing that the transfer was necessary for the loan the former promised to procure on her behalf from FEBTC-BPI. In addition to the annulment of said *Deed of Absolute Sale* for being simulated and derogatory of Alvin's successional rights, the Dela Peñas sought the reconveyance of the property as well as the grant of their claims for moral and exemplary damages, attorney's fees and the costs.[15]

Served with summons, Gemma specifically denied the material allegations of the foregoing complaint in her 1 July 1998 answer. Maintaining that the realty was the exclusive property of Antonia who misrepresented that her husband was still alive, Gemma averred that the former failed to pay the ₱250,000.00 loan she obtained from Aguila on its stipulated 7 July 1996 maturity; that approached to help prevent the extrajudicial foreclosure of the mortgage constituted on the property, she agreed to settle the outstanding obligation to Aguila and to extend Antonia a ₱50,000.00 loan, with interest pegged at 10% per month; that to pay back the foregoing accommodations, Antonia agreed to the use of the property as collateral for a loan to be obtained by her from FEBTC-BPI, hence, the execution of the impugned *Deed of Absolute Sale*; and, that conformably with the foregoing agreement, she obtained loans in the total sum of ₱1,200,000.00 from FEBTC-BPI and applied the proceeds thereof to the sums owed by Antonia. Together with the dismissal of the complaint, Gemma also prayed for the grant of her counterclaims for moral

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[15] Record, Civil Case No. 98-445-MK, Vol. 1, Dela Peña's Complaint, pp. 1-4.

and exemplary damages, attorney's fees, litigation expenses and the costs.[16]

On 25 September 1999, the Dela Peñas filed a supplemental complaint, impleading FEBTC-BPI as additional defendant. Calling attention to Antonia's 3 March 1998 *Affidavit of Adverse Claim* and the *Notice of Lis Pendens* they purportedly caused to be annotated on TCT No. 337834 on 10 December 1999, the Dela Peñas alleged that FEBTC-BPI was in bad faith when it purchased the property at public auction on 15 March 1999.[17] In their 12 November 1999 answer, FEBTC-BPI, in turn, asserted that the property was already titled in Gemma's name when she executed the 26 November 1997 real estate mortgage thereon, to secure the payment of the loans she obtained in the sum of ₱1,200,000.00; and, that not being privy to Antonia's transaction with Gemma and unaware of any adverse claim on the property, it was a mortgagee in good faith, entitled to foreclose the mortgage upon Gemma's failure to pay the loans she obtained. Seeking the dismissal of the complaint and the grant of its counterclaims for damages against the Dela Peñas, FEBTC-BPI alternatively interposed cross-claims against Gemma for the payment of the subject loans, the accumulated penalties thereon as well as such sums for which it may be held liable in the premises.[18]

On 14 April 2000, the RTC issued the order terminating the pre-trial stage and declaring Gemma in default for failure to attend the pre-trial settings and to engage the services of a new lawyer despite due notice and the withdrawal of her counsel of record.[19] In support of their complaint, Antonia[20] and Alvin[21] both took the witness stand and, by way of corroborative evidence,

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[16] Gemma's Answer, *id.* at 28-40.

[17] Dela Peñas' Supplemental Complaint, *id.* at 129-134.

[18] FEBTC's Answer, *id.* at 148-155.

[19] *Id.* at 204.

[20] TSN, 26 May 2000; TSN, 30 June 2000.

[21] TSN, 22 September 2000; TSN, 13 October 2000.

presented the testimony of one Alessandro Almoden[22] who claimed to have referred Antonia to Gemma for the purpose of obtaining a loan. By way of defense evidence, on the other hand, FEBTC-BPI adduced the oral evidence elicited from Eleanor Abellare, its Account Officer who handled Gemma's loans,[23] and Zenaida Torres, the National Bureau of Investigation (NBI) Document Examiner who, after analyzing Antonia's specimen signatures on the 7 May 1996 *Deed of Real Estate Mortgage* and 4 November 1997 *Deed of Absolute Sale*,[24] issued NBI Questioned Documents Report No. 482-802 to the effect, among others, that said signatures were written by one and the same person.[25]

On 18 December 2007, the RTC went on to render a Decision finding that the subject property was conjugal in nature and that the 4 November 1997 *Deed of Absolute Sale* Antonia executed in favor of Gemma was void as a disposition without the liquidation required under Article 130 of the *Family Code*. Brushing aside FEBTC-BPI's claim of good faith,[26] the RTC disposed of the case in the following wise:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:
>
> 1). Declaring the Deed of Absolute dated November 04, 1997 in favor of defendant, [Gemma] as null and void;
>
> 2). Ordering defendant [FEBTC-BPI] to execute a deed of reconveyance in favor of the [Dela Peñas] involving the subject property now covered by Transfer Certificate of Title No. 415392 in the name of [FEBTC-BPI];
>
> 3). Ordering [Gemma] to pay the [Dela Peñas] the following:

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[22] TSN, 12 August 2004.

[23] TSN, 18 November 2004.

[24] TSN, 20 July 2006.

[25] Exhibit "13" and submarkings, Record, Civil Case No. 98-445-MK, Vol. II, pp. 35-36.

[26] Record, Civil Case No. 98-445-MK, Vol. I, pp. 440-457.

a). the amount of ₱200,000.00 as moral damages; and
b). the amount of ₱20,000.00 as and for attorney's fees; and
c). costs of the suit

On the cross-claim, [Gemma] is hereby ordered to pay [FEBTC-BPI] the amount of ₱2,029,317.17 as of November 10, 1999, with twelve (12%) percent interest per annum until fully paid.

SO ORDERED.[27]

Aggrieved, FEBTC-BPI perfected the appeal which was docketed before the CA as CA-G.R. CV No. 90485. On 31 March 2009 the CA's Second Division rendered the herein assailed decision, reversing the RTC's appealed decision, upon the following findings and conclusions: (a) the property was paraphernal in nature for failure of the Dela Peñas to prove that the same was acquired during Antonia's marriage to Antegono; (b) having misled Gemma into believing that the property was exclusively hers, Antonia is barred from seeking the annulment of the 4 November 1997 *Deed of Absolute Sale*; (c) Antonia's claim that her signature was forged is belied by her admission in the pleadings that she was misled by Gemma into executing said *Deed of Absolute Sale* and by NBI Questioned Document Report No. 482-802; and, (d) FEBTC-BPI is a mortgagee in good faith and for value since Gemma's 26 November 1997 execution of the real estate mortgage in its favor predated Antonia's 3 March 1998 *Affidavit of Adverse Claim* and the 10 December 1999 annotation of a *Notice of Lis Pendens* on TCT No. 337834.[28]

The Issues

The Dela Peñas seek the reversal of the assailed 31 March 2009 CA decision upon the affirmative of following issues, to wit:

1) Whether or not the CA erred in reversing the RTC holding the house and lot covered by TCT No. N-32315 conjugal property of the spouses Antegono and Antonia Dela Peña;

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[27] *Id.* at 456-457.

[28] CA *rollo*, CA-G.R. CV No. 90485, pp. 113-131.

2) Whether or not the CA erred in reversing the RTC declaring null and void the Deed of Absolute Sale executed by Antonia to (Gemma); and

3. Whether or not the CA erred in reversing the RTC holding (FEBTC-BPI) a mortgagee/purchaser in bad faith.[29]

The Court's Ruling

The petition is bereft of merit.

Pursuant to Article 160 of the *Civil Code of the Philippines*, all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. Although it is not necessary to prove that the property was acquired with funds of the partnership,[30] proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.[31] In the case of *Francisco vs. Court of Appeals*,[32] this Court categorically ruled as follows:

> Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition *during* the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired. Moreover, this presumption in favor of conjugality is

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[29] *Rollo*, pp. 17-18.

[30] *Tan v. Court of Appeals*, G.R. No. 120594, 10 June 1997, 273 SCRA 229, 236.

[31] *Manongsong v. Estimo*, 452 Phil. 862, 878 (2003) citing *Francisco v. CA*, 359 Phil. 519, 526 (1998).

[32] 359 Phil. 519 (1998).

rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses.[33]

As the parties invoking the presumption of conjugality under Article 160 of the *Civil Code*, the Dela Peñas did not even come close to proving that the subject property was acquired during the marriage between Antonia and Antegono. Beyond Antonia's bare and uncorroborated assertion that the property was purchased when she was already married,[34] the record is bereft of any evidence from which the actual date of acquisition of the realty can be ascertained. When queried about the matter during his cross-examination, even Alvin admitted that his sole basis for saying that the property was owned by his parents was Antonia's unilateral pronouncement to the effect.[35] Considering that the presumption of conjugality does not operate if there is no showing of *when* the property alleged to be conjugal was acquired,[36] we find that the CA cannot be faulted for ruling that the realty in litigation was Antonia's exclusive property.

Not having established the time of acquisition of the property, the Dela Peñas insist that the registration thereof in the name of "Antonia R. Dela Peña, of legal age, Filipino, married to Antegono A. Dela Peña" should have already sufficiently established its conjugal nature. Confronted with the same issue in the case *Ruiz vs. Court of Appeals*,[37] this Court ruled, however, that the phrase "married to" is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner. Because it is likewise possible that the property was acquired by the wife while she was still single and registered only after her marriage, neither would registration thereof in said manner constitute proof that the same was acquired during the marriage and, for said reason, to be

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[33] *Id.* at 526.

[34] TSN, 30 June 2000, p. 5.

[35] TSN, 13 October 2000, pp. 4; 6.

[36] *Go v. Yamane*, G.R. No. 160762, 3 May 2006, 489 SCRA 107, 117.

[37] 449 Phil. 419, 431 (2003).

presumed conjugal in nature. "Since there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, *i.e.,* belonging exclusively to said spouse."[38]

Viewed in light of the paraphernal nature of the property, the CA correctly ruled that the RTC reversibly erred in nullifying Antonia's 4 November 1997 sale thereof in favor of Gemma, for lack of the liquidation required under Article 130 of the *Family Code*.[39] That Antonia treated the realty as her own exclusive property may, in fact, be readily gleaned from her utilization thereof as security for the payment of the ₱250,000.00 loan she borrowed from Aguila.[40] Despite Gemma's forfeiture of the right to present evidence on her behalf, her alleged alteration of the 7 May 1996 *Deed of Real Estate Mortgage* to shorten the maturity of the loan secured thereby was also properly brushed aside by the CA. The double lie inherent in Antonia's assertion that the same deed was altered by Gemma to shorten the maturity of the loan to "1997 instead of 1998" is instantly evident from paragraph 1 of the document which, consistent with 7 July 1996 maturity date provided in the *Promissory Note* she executed,[41] specifically stated that "(t)his contract is for a period of Three (3) months from the date of this instrument."[42]

Antonia's evident lack of credibility also impels us to uphold the CA's rejection of her version of the circumstances surrounding

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[38] *Id.* at 431-432.

[39] Art. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of said period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.

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[40] TSN, 26 May 2000, p. 13.

[41] Exhibit "E", *supra.*

[42] Exhibit "D", *supra.*

the execution of the 4 November 1997 *Deed of Absolute Sale* in favor of Gemma. In disavowing authorship of the signature appearing on said deed,[43] Antonia contradicted the allegation in the Dela Peñas' complaint that she was misled by Gemma into signing the same document.[44] The rule is well-settled that judicial admissions like those made in the pleadings are binding and cannot be contradicted, absent any showing that the same was made thru palpable mistake.[45] Alongside that appearing on the *Deed of Real Estate Mortgage* she admitted executing in favor of Aguila, Antonia's signature on the *Deed of Absolute Sale* was, moreover, found to have been written by one and the same person in Questioned Document Report No. 482-802 prepared by Zenaida Torres, the NBI Document Examiner to whom said specimen signatures were submitted for analysis.[46] Parenthetically, this conclusion is borne out by our comparison of the same signatures.

For all of Antonia's denial of her receipt of any consideration for the sale of the property in favor of Gemma,[47] the evidence on record also lend credence to Gemma's version of the circumstances surrounding the execution of the assailed 4 November 1997 *Deed of Absolute Sale*. Consistent with Gemma's claim that said deed was executed to facilitate the loans she obtained from FEBTC-BPI which were agreed to be used as payment of the sums she expended to settle the outstanding obligation to Aguila and the ₱50,000.00 she loaned Antonia,[48] the latter admitted during her direct examination that she did not pay the loan she obtained from Aguila.[49] Presented as

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[43] TSN, 26 May 2000, p. 20.

[44] Record, Civil Case No. 98-445-MK, p. 2.

[45] *Binarao v. Plus Builders, Inc.*, G.R. No. 154430, 16 June 2006, 491 SCRA 49, 54.

[46] Exhibit "13".

[47] TSN, 26 May 2000, pp. 18-19.

[48] Record, Civil Case No. 98-445-MK, pp. 33-37.

[49] TSN, 26 May 2000, pp. 21-22.

witness of the Dela Peñas, Alessandro Almoden also admitted that Gemma had extended a loan in the sum of ₱50,000.00 in favor of Antonia. Notably, Alessandro Almoden's claim that the title to the property had been delivered to Gemma as a consequence of the transaction[50] is at odds with Antonia's claim that she presented said document to the Registry of Deeds when she verified the status of the property prior to the filing of the complaint from which the instant suit originated.[51]

With the material contradictions in the Dela Peña's evidence, the CA cannot be faulted for upholding the validity of the impugned 4 November 1997 *Deed of Absolute Sale*. Having been duly notarized, said deed is a public document which carries the evidentiary weight conferred upon it with respect to its due execution.[52] Regarded as evidence of the facts therein expressed in a clear, unequivocal manner,[53] public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[54] The burden of proof to overcome said presumptions lies with the party contesting the notarial document[55] like the Dela Peñas who, unfortunately, failed to discharge said onus. Absent clear and convincing evidence to contradict the same, we find that the CA correctly pronounced the *Deed of Absolute Sale* was valid and binding between Antonia and Gemma.

Since foreclosure of the mortgage is but the necessary consequence of non-payment of the mortgage debt,[56] FEBTC-BPI was, likewise, acting well within its rights as mortgagee

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[50] TSN, 12 August 2004, pp. 6-12.

[51] TSN, 26 May 2000, pp. 27-28.

[52] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, 517 Phil. 380, 388 (2006).

[53] *Sps. Alfarero v. Sps. Sevilla*, 458 Phil. 255, 262 (2003).

[54] *Meneses v. Venturozo*, G.R. No. 172196, 19 October 2011.

[55] *Destreza v. Rinoza-Plazo*, G.R. No. 176863, 30 October 2009, 604 SCRA 775, 785.

[56] *Santiago v. Pioneer Savings and Loan Bank*, 241 Phil. 113, 119 (1988).

when it foreclosed the real estate mortgage on the property upon Gemma's failure to pay the loans secured thereby. Executed on 26 November 1997, the mortgage predated Antonia's filing of an *Affidavit of Adverse Claim* with the Register of Deeds of Marikina on 3 March 1998 and the annotation of a *Notice of Lis Pendens* on TCT No. 337834 on 10 December 1999. "The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfilment of the obligation for whose security it was constituted."[57] When the principal obligation is not paid when due, the mortgagee consequently has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan.[58]

Finally, the resolution of this case cannot be affected by the principles that banks like FEBTC-BPI are expected to exercise more care and prudence than private individuals in that their dealings because their business is impressed with public interest[59] and their standard practice is to conduct an ocular inspection of the property offered to be mortgaged and verify the genuineness of the title to determine the real owner or owners thereof, hence, the inapplicability of the general rule that a mortgagee need not look beyond the title does not apply to them.[60] The validity of the *Deed of Absolute Sale* executed by Antonia in favor of Gemma having been upheld, FEBTC-BPI's supposed failure to ascertain the ownership of the property has been rendered immaterial for the purpose of determining the validity of the mortgage executed in its favor as well as the subsequent extrajudicial foreclosure thereof.

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[57] Article 2126, Civil Code of the Philippines.

[58] *Talmonte v. Hongkong and Shanghai Banking Corporation, Ltd.*, G.R. No. 166970, 17 August 2011.

[59] *Rural Bank of Siaton (Negros Oriental) v. Macajilos*, G.R. No. 152483, 14 July 2006, 495 SCRA 127, 140.

[60] *Alano v. Planters Development Bank*, G.R. No. 171628, 13 June 2011.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit and the assailed CA Decision dated 31 March 2009 is, accordingly, **AFFIRMED *in toto*.**

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 187733. February 8, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TEOFILO "REY" BUYAGAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; DIRECT RELATION BETWEEN THE ROBBERY AND THE KILLING, PROVEN. — Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes were committed at the same time. In the present case, we find no compelling reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness accounts of the prosecution witnesses are worthy of belief as they were clear and straightforward and were consistent with the medical findings of Dr. Vladimir Villaseñor. Melvyn Pastor and Cristina Calixto positively identified the appellant as the person who shot Calixto at the back of his head as the latter was grappling with John Doe; Orlando Viray, Jeanie Tugad, Allan Santiago, and Joel Caldito all declared that the appellant shot PO2 Osorio at the market while the latter was chasing him. Significantly, the appellant never imputed any ill motive on the part of these witnesses to falsely testify against him.

2. ID.; ID.; CONSPIRACY EXISTS IN THE COMMISSION OF ROBBERY WITH HOMICIDE. — The lower courts correctly ruled that the appellant and John Doe acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution. The records show that after John Doe robbed the WT Construction Supply store, he casually walked away from the store but Calixto grabbed him. While John Doe and Calixto were grappling with each other, the appellant suddenly appeared from behind and shot Calixto on the head. Immediately after, both the appellant and John Doe ran towards the Hilltop Road going to the direction of the Hangar Market. Clearly, the two accused acted in concert to attain a common purpose. Their respective actions summed up to collective efforts to achieve a common criminal objective.

3. ID.; ID.; PROPER PENALTY WHERE THE CRIME WAS COMMITTED WITH THE USE OF UNLICENSED FIREARM. — The special complex crime of robbery with homicide is penalized, under Article 294, paragraph 1 of the Revised Penal Code, with *reclusion perpetua* to death. Since the aggravating circumstance of the use of an unlicensed firearm had been alleged and proven during trial, the lower court correctly sentenced the appellant to suffer the death penalty pursuant to Article 63 of the Revised Penal Code, as amended. Nonetheless, we cannot impose the death penalty in view of Republic Act (*R.A.*) No. 9346, entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*." Pursuant to this law, we affirm the CA's reduction of the penalty from death to *reclusion perpetua* for each count, with the modification that the appellant shall **not be eligible for parole**.

4. ID.; ID.; CIVIL INDEMNITIES AND INDEMNITY FOR LOSS OF EARNING CAPACITY, AWARDED. — For the deaths of Calixto and PO2 Osorio, we increase the amounts of the awarded civil indemnities from ₱50,000.00 to ₱75,000.00, as the imposable penalty against the appellant would have been death were it not for the enactment of R.A. No. 9346. We affirm, to be duly supported by evidence, the award of ₱1,588,600.00 as indemnity for loss of earning capacity to PO2 Osorio's heirs. We, however, delete the award for loss of earning capacity to Calixto's heirs because the prosecution failed to establish this claim. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. While there are exceptions to this rule, these exceptions do not apply to Calixto as he was a security guard when he died; he was not a worker earning less than the current minimum wage under current labor laws.

5. ID.; ID.; ACTUAL, EXEMPLARY, AND MORAL DAMAGES, AWARDED. — With respect to actual damages, established jurisprudence only allows expenses duly supported by receipts. Out of the ₱50,690.00 awarded by the RTC to PO2 Osorio's heirs, only ₱15,000.00 was supported by receipts. The difference consists of unreceipted amounts claimed by the victim's wife. Considering that the proven amount is less than ₱25,000.00, we award temperate damages in the amount of ₱25,000.00 in lieu of actual damages, pursuant to our ruling in *People v. Villanueva*. For the same reasons, we also award temperate damages in the amount of ₱25,000.00, in lieu of actual damages, to the heirs of Calixto since the proven actual damages amounted to only ₱22,400.00. The existence of one aggravating circumstance also merits the grant of exemplary damages under Article 2230 of the New Civil Code. Pursuant to prevailing jurisprudence, we award exemplary damages of ₱30,000.00, respectively, to the heirs of PO2 Osorio and of Calixto. Finally, we uphold the award of moral damages to the heirs of PO2 Osorio and to the heirs of Calixto, but reduce the amount awarded from ₱200,000.00 to ₱75,000.00 to conform to prevailing jurisprudence.

6. ID.; ID.; ID.; THE COURT AWARDED MORAL DAMAGES TO THE HEIRS OF THE VICTIM DESPITE OMISSION IN THE DISPOSITIVE PORTION OF THE RTC DECISION. — [W]e observed that the dispositive portion of the RTC

decision, as affirmed by the CA, only awarded moral damages to the heirs of PO2 Osorio. "[W]hile the general rule is that the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof, there are recognized exceptions to this rule: (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment, because the dispositive part of a decision must find support from the decision's *ratio decidendi*; and (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision." We find that the second exception applies to the case. The omission to state in the dispositive portion the award of moral damages to the heirs of Calixto was through mere inadvertence. The body of the RTC decision shows the clear intent of the RTC to award moral damages to the heirs of Calixto.

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 Teofilo "Rey" Buyagan (*appellant*), from the decision[1] of the Court of Appeals (*CA*) dated December 19, 2008 in CA-G.R. CR-H.C. No. 01938. The CA decision[2] affirmed with modification the October 30, 2000 decision of the Regional Trial Court (*RTC*), Branch 6, Baguio City, finding the appellant guilty beyond reasonable doubt of the special complex crime of robbery with homicide, and sentencing him to suffer the death penalty.

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[1] *Rollo*, pp. 3-21; penned by Associate Justice Romeo F. Barza, and concurred in by Associate Justice Mariano C. del Castillo and Associate Justice Arcangelita M. Romilla-Lontok.

[2] CA *rollo*, pp. 51-71.

The RTC Ruling

In its October 30, 2000 decision, the RTC found the appellant guilty beyond reasonable doubt of the special complex crime of robbery with homicide. It gave credence to the testimonies of witnesses Cristina Calixto and Melvyn Pastor that they saw the appellant shoot Jun Calixto after the latter grabbed the appellant's companion (herein referred to as John Doe) who had robbed the WT Construction Supply store. The lower court likewise gave credence to the testimonies of witnesses Allan Santiago, Joel Caldito, Jeanie Tugad, Carlos Maniago and Orlando Viray that they saw the appellant shoot Police Officer 2 (*PO2*) Arsenio Osorio while the latter was chasing him. The lower court further added that the gun recovered from the appellant tested positive for the presence of gunpowder nitrates. In its dispositive portion, the RTC ordered the appellant to pay the heirs of Calixto the amounts of ₱50,000.00 as civil indemnity, ₱22,400.00 as actual damages, and ₱592,000.00 as unearned income; and to pay the heirs of PO2 Osorio ₱50,000.00 as civil indemnity, ₱200,000.00 as moral damages, ₱50,690.00 as actual damages, and ₱1,588,600.00 as unearned income.[3]

The CA Decision

On intermediate appellant review, the CA affirmed the RTC decision, but modified the penalty imposed on the appellant from death to *reclusion perpetua*. The CA held that the appellant acted in concert with John Doe in committing the crime; in fact, he shot Calixto to facilitate the escape of John Doe. It explained that in the special complex crime of robbery with homicide, as long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. The appellate court also ruled that the appellant failed to impute any ill motive against the prosecution witnesses who positively identified him as the person who shot Calixto and PO2 Osorio. It also disregarded the appellant's denial for being incredible.[4]

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[3] *Ibid.*

[4] *Supra* note 1.

Our Ruling

In this final review, we **deny** the appeal, but further **modify** the penalty imposed and the awarded indemnities.

Sufficiency of Prosecution Evidence

Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes were committed at the same time.[5] In the present case, we find no compelling reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness accounts of the prosecution witnesses are worthy of belief as they were clear and straightforward and were consistent with the medical findings of Dr. Vladimir Villaseñor. Melvyn Pastor and Cristina Calixto positively identified the appellant as the person who shot Calixto at the back of his head as the latter was grappling with John Doe; Orlando Viray, Jeanie Tugad, Allan Santiago, and Joel Caldito all declared that the appellant shot PO2 Osorio at the market while the latter was chasing him. Significantly, the appellant never imputed any ill motive on the part of these witnesses to falsely testify against him.

The lower courts correctly ruled that the appellant and John Doe acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution.[6]

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[5] See *People v. Aminola*, G.R. No. 178062, September 8, 2010, 630 SCRA 384, 394.

[6] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 440.

The records show that after John Doe robbed the WT Construction Supply store, he casually walked away from the store but Calixto grabbed him. While John Doe and Calixto were grappling with each other, the appellant suddenly appeared from behind and shot Calixto on the head. Immediately after, both the appellant and John Doe ran towards the Hilltop Road going to the direction of the Hangar Market. Clearly, the two accused acted in concert to attain a common purpose. Their respective actions summed up to collective efforts to achieve a common criminal objective.

In *People v. Ebet*,[7] we explained that homicide is committed by reason or on the occasion of robbery if its commission was (a) to facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery.

Under the given facts, the appellant clearly shot Calixto to facilitate the escape of his robber-companion, John Doe, and to preserve the latter's possession of the stolen items.

The Proper Penalty

The special complex crime of robbery with homicide is penalized, under Article 294, paragraph 1 of the Revised Penal Code, with *reclusion perpetua* to death. Since the aggravating circumstance of the use of an unlicensed firearm had been alleged and proven during trial, the lower court correctly sentenced the appellant to suffer the death penalty pursuant to Article 63[8] of the Revised Penal Code, as amended. Nonetheless, we cannot impose the death penalty in view of Republic Act (*R.A.*) No. 9346, entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*." Pursuant to this law, we affirm the CA's reduction of the penalty from death to *reclusion perpetua* for

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[7] G.R. No. 181635, November 15, 2010, 634 SCRA 689, 698.

[8] Article 63. — *Rules for the application of indivisible penalties.*

each count, with the modification that the appellant shall **not be eligible for parole.**

Civil Liabilities

For the deaths of Calixto and PO2 Osorio, we increase the amounts of the awarded civil indemnities from ₱50,000.00 to ₱75,000.00, as the imposable penalty against the appellant would have been death were it not for the enactment of R.A. No. 9346.[9]

We affirm, to be duly supported by evidence, the award of ₱1,588,600.00 as indemnity for loss of earning capacity to PO2 Osorio's heirs. We, however, delete the award for loss of earning capacity to Calixto's heirs because the prosecution failed to establish this claim. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. While there are exceptions to this rule, these exceptions do not apply to Calixto as he was a security guard when he died; he was not a worker earning less than the current minimum wage under current labor laws.

With respect to actual damages, established jurisprudence only allows expenses duly supported by receipts. Out of the ₱50,690.00 awarded by the RTC to PO2 Osorio's heirs, only ₱15,000.00 was supported by receipts. The difference consists of unreceipted amounts claimed by the victim's wife. Considering that the proven amount is less than ₱25,000.00, we award temperate damages in the amount of ₱25,000.00 in lieu of actual damages, pursuant to our ruling in *People v. Villanueva*.[10] For the same reasons, we also award temperate damages in the amount of ₱25,000.00, in lieu of actual damages, to the heirs of Calixto since the proven actual damages amounted to only ₱22,400.00.

The existence of one aggravating circumstance also merits the grant of exemplary damages under Article 2230 of the New

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[9] See *People v. Baron*, G.R. No. 185209, June 28, 2010, 621 SCRA 646, 665.

[10] 456 Phil. 14 (2003).

Civil Code. Pursuant to prevailing jurisprudence, we award exemplary damages of ₱30,000.00, respectively, to the heirs of PO2 Osorio and of Calixto.[11]

Finally, we uphold the award of moral damages to the heirs of PO2 Osorio and to the heirs of Calixto, but reduce the amount awarded from ₱200,000.00 to ₱75,000.00 to conform to prevailing jurisprudence.[12] However, we observed that the dispositive portion of the RTC decision, as affirmed by the CA, only awarded moral damages to the heirs of PO2 Osorio. "[W]hile the general rule is that the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof, there are recognized exceptions to this rule: (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment, because the dispositive part of a decision must find support from the decision's *ratio decidendi*; and (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision."[13]

We find that the second exception applies to the case. The omission to state in the dispositive portion the award of moral damages to the heirs of Calixto was through mere inadvertence. The body of the RTC decision shows the clear intent of the RTC to award moral damages to the heirs of Calixto.

WHEREFORE, the decision of the Court of Appeals dated December 19, 2008 in CA-G.R. CR-H.C. No. 01938 is **AFFIRMED** with **MODIFICATIONS.** Appellant Teofilo "Rey" Buyagan is hereby declared guilty beyond reasonable doubt of the crime of robbery with homicide and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

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[11] See *People of the Philippines v. Ngano Sugan, et al.*, G.R. No. 192789, March 23, 2011; and *People v. Baron*, G.R. No. 185209, June 28, 2010, 621 SCRA 646, 666.

[12] See *People of the Philippines v. Ngano Sugan, et al., supra*.

[13] *Insular Life Assurance Company, Ltd. v. Toyota Bel-Air, Inc.*, G.R. No. 137884, March 28, 2008, 550 SCRA 70, 85.

For the death of Calixto, the appellant is ordered to pay the victim's heirs the following amounts: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages; and ₱25,000.00 as temperate damages, in lieu of actual damages. For the death of PO2 Osorio, the appellant is ordered to pay the victim's heirs the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages; ₱25,000.00 as temperate damages, in lieu of actual damages; and ₱1,588,600.00 as loss of earning capacity.

No costs.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187736. February 8, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORDELIZA ARRIOLA *y* DE LARA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI AND FRAME UP MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE. — Time and again, this Court has ruled that alibi and frame up are weak forms of defense usually resorted to in drug-related cases. In this regard, the Court is careful in appreciating them and giving them probable value because this type of defense is easy to concoct. This Court is, of course, not unaware of instances when our law enforcers would utilize means like planting evidence just to extract information, but then again the Court does realize the disastrous consequences

on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the police officers' alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. Bare denial cannot prevail over the positive identification by SPO4 Taruc of Arriola as the one who sold them the *shabu*. For the defense position to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. This, unfortunately, Arriola failed to supply. What she made was a bare allegation of frame-up without presenting any credible witness that would support her claim.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF DULY ESTABLISHED BY TESTIMONIAL EVIDENCE. — In the prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereof. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place. In the present case, all the elements have been clearly established during the direct and cross-examination of SPO4 Taruc. x x x SPO4 Taruc, as the poseur- buyer, was able to positively identify the seller. He categorically stated that it was Arriola who dealt with their civilian asset who was just beside him. According to him, Arriola was the one who asked "*Magkano*?" when their civilian asset told her that "*Iiscore daw siya*," referring to SPO4 Taruc. She was the one who handed the 4 heat-sealed transparent plastic sachets with white crystalline substance to the civilian asset, which later on tested positive for *methylamphetamine hydrochloride* or *shabu*, in exchange of

the ₱200.00 that she received as payment. He was also able to identify the marked money with serial numbers LE627251 and FP609605 both bearing the initials "AT" as well as the sachets with initials "AT" and "FA" that contained the *shabu*. Clearly, the exchange of the buy-bust money and the four (4) heat-sealed transparent plastic sachets of *shabu* established the fact that Arriola was, without a doubt, engaged in the sale of illegal drugs.

3. ID.; ID.; ID.; DIFFERENT LINKS IN THE CHAIN OF CUSTODY, SUFFICIENTLY PROVEN. — [I]n the case of *People v. Kamad*, the Court enumerated therein the different links that the prosecution must endeavor to establish with respect to the chain of custody in a buy-bust operation, namely: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. Bearing in mind the abovementioned guidelines in the application of the chain of custody rule, the prosecution in the present case adequately proved all the links in the chain. x x x For the first link, SPO4 Taruc testified that after the buy-bust, the civilian asset turned over the sachets to him. From the site, he brought Arriola and the sachets to their police station where he marked the items. He marked the evidence with his initials and the initials of Arriola and all these were done in her presence. As to the second link, he told the court that after he put his markings on the seized items, he turned them over, together with Arriola, to the investigating officer. With respect to the third link, SPO4 Taruc said that the person who brought the specimen to the crime laboratory for examination was his trusted co-police in the investigating section. Forensic chemist, P/Insp. Sta. Maria, examined the specimens submitted to him which tested positive for *shabu* and issued a chemistry report dated December 13, 2002, or within the same day that the buy-bust operation was conducted. Therefore, from the account made by SPO4 Taruc, the RTC did not err in convicting Arriola as there seemed to be no showing that the evidence might have been altered. The position of Arriola that the prosecution failed to discuss in detail the different links in the chain as to the transfer of hands of the

evidence will not necessarily render said evidence to be incompetent to convict Arriola for the crime of sale of illegal drugs. It must be remembered that testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. As such, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. The integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered. Besides, all that Arriola did in her supplemental brief was make a general allegation that prosecution failed to observe the chain of custody rule without pinpointing the exact link or links that may have been compromised to bring doubt to the integrity of the evidence. So, in this case, Arriola has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties. Resultantly, since she failed to discharge such burden, it cannot be disputed that the drugs seized from her were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
C. Kenneth Salinas Tampal for accused-appellant.

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the August 14, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR-HC. No. 02870, which affirmed the April 23, 2007 Decision[2] of the Regional Trial

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlene Gonzales-Sison.

[2] Records, pp. 154-164. Penned by Judge Albert R. Fonacier.

Court, Branch 76, Malolos City, Bulacan *(RTC)*.[3] The RTC convicted accused Flordeliza Arriola *(Arriola)* of having committed a violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

On December 17, 2002, Criminal Case No. 3503-M-2002 was filed with the RTC charging accused Arriola with illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165. The Information reads:

> That on or about the 13th day of December, 2002, in San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law and legal justification, did then and there wilfully, unlawfully and feloniously sell, deliver, dispatch in transit and transport dangerous drug consisting of four (4) heat-sealed transparent plastic sachets having a total weight of 0.186 gram.
>
> Contrary to law.[4]

The evidence for the prosecution would show that a buy-bust operation was conducted on December 13, 2002 based on an information received by Col. Makusi, the Chief of Police of San Jose del Monte, Bulacan, from a *barangay* tanod. On the basis of said report, surveillance was conducted around the house of Arriola located at Phase 1, Section 7 of Pabahay 2000. It was observed that men were going in and out of the house and that Arriola was peddling *shabu* therein.

Subsequently, a buy-bust operation team was formed to act on the intelligence report they had gathered. SPO4 Abelardo Taruc *(SPO4 Taruc)* was designated as the poseur-buyer and he was to be assisted by four (4) police aides and a civilian asset. Before going to the target site, they prepared the marked money that would be used. Two (2) one hundred (₱100) peso bills with serial numbers LE627251 and FP609651 were marked by placing SPO4 Taruc's initial "AT" on the bills.

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[3] In Criminal Case No. 3503-M-2002.

[4] Records, p. 2.

When the team reached Arriola's house, the civilian asset told Arriola that "*Iiscore daw siya,*" referring to SPO4 Taruc who was just beside him. Arriola replied by asking, "*Magkano?"* The asset answered, *"₱200.00 po,"* and then simultaneously handed over the marked money. In exchange for the amount, Arriola gave them four (4) heat-sealed transparent plastic sachets containing crystalline substance. After the exchange of the marked money and the merchandise, SPO4 Taruc arrested Arriola. Upon her arrest, he recovered the marked money that was earlier paid to her. The asset, on the other hand, turned over the four (4) sachets that Arriola gave in exchange for the ₱200.00 paid to her.

After the operation, the buy-bust team brought Arriola and the seized articles to the police station, where the four (4) confiscated sachets of *shabu* were marked "AT" and "FA", the initials, of SPO4 Taruc and that of Flordeliza Arriola, respectively. Thereafter, they reported to the office of the Bulacan provincial police the successful buy-bust operation which resulted in the apprehension of Arriola. Also, a laboratory examination request for the seized articles was prepared and the said four (4) sachets of *shabu* were then brought to the Bulacan Provincial Crime Laboratory Office.

The resident forensic chemical officer, P/Insp. Nelson Cruz Sta. Maria *(P/Insp. Sta. Maria)*, conducted a qualitative examination of the specimen submitted. His findings contained in Chemistry Report No. D-742-2002, showed that the four (4) sachets with markings AT-FA, Exhibits A-1 to A-4, containing white crystalline substance yielded a positive result of the presence of methylamphetamine hydrochloride, a dangerous drug.

Arriola, however, has a different version of what happened on the day of the buy-bust operation. According to her, at around 2:00 o'clock in the afternoon of December 13, 2002, she was at home resting with her child when all of a sudden policemen with firearms kicked the door of her house. She tried to block the door but she was shoved aside by one of the men. She told them not to push because she was pregnant but to no avail since one of them simply said, "*Wala akong pakialam.*" She

also testified that one of the men asked her if she knew the whereabouts of a certain Ogie dela Cruz. When she answered that the man they were looking for was not residing in her house but in the "*kanto*" or corner, she was the one who was brought to the precinct.

Arriola further testified that while at the police station, they entered the office of the Chief of Police, Col. Makusi, where she was asked her name and her address. Then, he brought out a plastic sachet which he took from another room. Later, she was brought outside the office and escorted to a room with a group of men where she was made to point at the plastic sachet. Afterwards, she was brought back to the office of Col. Makusi but this time SPO4 Taruc was already inside. It was at this moment when he asked her, "*Gusto mong makalaya? Pagbigyan mo lang ako ng kahit isang gabi*." Arriola replied by saying that she would not agree to his proposal because, to begin with, she did not commit any crime. This reply angered SPO4 Taruc. In sum, she was saying that there was no valid buy-bust operation as everything was a set-up. The drugs as well as the marked money were all just taken from the table of Col. Makusi and not from her as claimed by the prosecution.

On April 23, 2007, RTC rendered the assailed decision convicting Arriola. The dispositive portion of the decision reads:

> WHEREFORE, accused Flordeliza Arriola *y* Lara is hereby convicted for sale of the dangerous drugs methylamphetamine hydrochloride commonly known as *shabu* in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and is sentenced to suffer life imprisonment and to pay the fine of five hundred thousand pesos (Php500,000.00).
>
> The specimen subject matter of this case which consists of four (4) heat sealed transparent plastic sheets having a total weight of 0.186 gram is hereby confiscated in favor of the government. The Clerk of Court is directed to dispose of said specimen in accordance with the existing procedure, rules and regulations.
>
> Furnish both parties of this judgment and the Provincial Jail Warden.

SO ORDERED.[5]

Aggrieved by the pronouncement of the RTC, Arriola interposed an appeal with the CA. On August 14, 2008, the CA denied the appeal and affirmed the RTC decision based on the testimony of SPO4 Taruc whom the said court considered to be the best witness as he was the poseur-buyer.

According to the CA, the account of SPO4 Taruc, the poseur-buyer, was corroborated in every material detail by the affidavits executed under oath by the buy-bust team, debunking the version of Arriola that what transpired was a set-up. The CA held that denial and frame-up were intrinsically weak defenses as they were viewed with disfavor as they could easily be concocted.

As to the position of Arriola that the buy-bust operation was illegal because of the absence of coordination between the buy-bust team and the Philippine Drug Enforcement Agency *(PDEA)*, the CA debunked it citing *People v. Sta. Maria*[6] where the Court held that there is nothing in R.A. No. 9165 which indicates an intention on the part of the legislature to consider an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible.

Finally, the CA also agreed with the RTC that failure of the operatives to strictly comply with Section 21 of R.A. No. 9165 was not fatal. It did not render the arrest of Arriola illegal and the evidence gathered against her inadmissible. As noted by the CA, the alleged violations of Sections 21 and 86 of R.A. No. 9165 were never raised before the RTC but were brought out for the first time only on appeal. This, according to the CA, was against the ruling in the case of *People v. Uy*[7] where it was held that when a party wants a court to reject the evidence offered, he must so state in the form of objection. In other words, one cannot raise said question for the first time on appeal.

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[5] *Id.* at 163-164.

[6] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 631.

[7] 384 Phil. 70, 93 (2000).

Hence, the present appeal.

From the records, the following are the principal issues raised by the Arriola for our consideration, to wit:

I.

WHETHER OR NOT THERE WAS REALLY A BUY-BUST OPERATION.

II.

WHETHER OR NOT THE CHAIN OF CUSTODY RULE HAS BEEN PROPERLY OBSERVED.

III.

WHETHER OR NOT NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF R.A. NO. 9165 IS DETRIMENTAL TO THE PROSECUTION'S CASE.

The Court finds no merit in the petition.

On the first issue, Arriola argues that no buy-bust operation took place but rather a frame-up with her as the victim. She stuck to her story that when the policemen arrived at her house, they were looking for a certain Ogie Dela Cruz. And when she could not help them, she was brought to the police station where all the evidence against her were produced by Col. Makusi.

Time and again, this Court has ruled that alibi and frame up are weak forms of defense usually resorted to in drug-related cases. In this regard, the Court is careful in appreciating them and giving them probable value because this type of defense is easy to concoct. This Court is, of course, not unaware of instances when our law enforcers would utilize means like planting evidence just to extract information, but then again the Court does realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the police officers' alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists.

Bare denial cannot prevail over the positive identification by SPO4 Taruc of Arriola as the one who sold them the *shabu*.[8] For the defense position to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[9] This, unfortunately, Arriola failed to supply. What she made was a bare allegation of frame-up without presenting any credible witness that would support her claim.

Furthermore, she failed to show any motive on the part of the arresting officers to implicate her in a crime she claimed she did not commit. On this point, it is good to note the case of *People v. Dela Rosa,* where this Court held that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers.[10] In fact, Arriola herself testified that it was the first time she saw SPO4 Taruc and the rest of the arresting team and that she did not know of any motive why SPO4 Taruc or any of the police aides would arrest her.[11] Thus, there could be no reason for SPO4 Taruc or any member of the buy-bust team to begrudge her since they did not know each other. This only goes to show that she was not arrested by reason of any personal vendetta or prejudice on the part of the raiding team as what Arriola was trying to impress. The simple fact was that she was caught *in flagrante delicto* peddling prohibited drugs.

In the prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) identities of the buyer and seller, the object, and the consideration; and (2) the

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[8] *People v. Dela Cruz*, G.R. No. 177324, March 30, 2011.

[9] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 639.

[10] G.R. No. 185166, January 26, 2011, 640 SCRA 635, 657.

[11] TSN, November 21, 2006, pp. 37-38.

delivery of the thing sold and the payment thereof.[12] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[13] In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.

In the present case, all the elements have been clearly established during the direct and cross-examination of SPO4 Taruc:

Fiscal:

Q: What happened when you reached the place?
A: We conducted the buy bust operation, Sir.

Q: How did you carry out the buy bust?
A: After I gave the money to our civilian asset, we proceeded to the house, Sir, of the target.

Q: And when you said you proceeded to the house of Flordeliza together with your civilian asset, what happened next?
A: The civilian asset gave the ₱200.00 to Flordeliza in exchange of what Flordeliza gave him, the 4 sachet of *shabu*, Sir. And after that, I arrested her and introduced myself as a police officer.

Q: Who actually received the 4 pieces of sachet?
A: The civilian asset who is in my company.

Fiscal

Q: How far were you when the exchange was made?
A: Just beside him.

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[12] *People v. Naelga*, G.R. No. 171018, September 11, 2009, 599 SCRA 477, 490.

[13] *People v. Mala*, 458 Phil. 180, 190 (2003).

Fiscal

Q: You said you arrested her, what did you do upon the arrest of Flordeliza?
A: After I have arrested her, I brought her to our police station and marked the evidence with my initials and prepared the request for the laboratory examination for me to bring the items for examination.

Q: What happened to the 4 sachets handed to by Flordeliza to your asset?
A: I marked them with my initials to prepare the request to be brought to the crime laboratory.

Fiscal

Q: Will you be able to identify those 4 sachets [since] you were the one who saw the transaction and [was] the one who prepared the request for laboratory examination?
A: Yes, Sir.

Q: Why?
A: I placed my initial and the initial of Flordeliza Arriola.

Q: Where were you at the time you placed your initials?
A: She was there at the investigating room, Sir.

Fiscal

I am showing to you 4 sachets; please identify the relevance of these 4 sachets to one you referred earlier as the subject of [the] transaction between your asset and Flordeliza.
A: These are the items bought from her and in fact here are the initials I placed. Sachet with initials "AT" and FA 1, 2, 3, 4.

Q: The brown envelope on which these 4 sachets was placed were already marked as Exh. C. And the medium size transparent plastic sachet as Exh. C-1. The 4 sachets in which *shabu* were placed were previously marked as Exh. C-2, 3, 4, 5.
Q: How about the money, what happened to the testimony given to Flordeliza by your asset?
A: In arresting her, I recovered money from her.

Q: In what part of her body were you able to recover that?
A: In her hand, Sir.

Q: Now, will you be able to identify those bills used in that buy bust operation?
A: Yes sir.

Q: I have here a photocopy of the bills, by the way what marking did you place?

A: The initial of my name, "AT", Sir.

Fiscal

Do you remember where you placed the initials "AT"?
A: Yes Sir.

Q: Where?
A: In the collar of the picture depicted in the said bills

Q: I am showing to you 2 photocopies of ₱100 peso bills, please identify if these were the one you used in the operation.
A: These were the bills used, Sir.

Fiscal

Witness is identifying the photocopies the first ₱100 peso bill with serial number LE627251 we request as Exh. D.
Q: In this bill, can you please point to us the initials you mentioned.
A: Here Sir. (Witness pointing to the initial "AT" on the left collar of the person in the bill).

Q: We request likewise for the marking of the initial pointed to by the witness in the collar of Manuel Roxas as Exh. D-1. The second bill with serial number FP609605 earlier identified as Exh. E and E-1 for the initial. Provisional marking your Honor.

Court: Mark them.

Fiscal

You mentioned of the preparation for drug examination, tell us who delivered the request as well as the accompanying specimen to the Crime Laboratory.
A: My entrusted co-police officer in the investigation section, Sir.[14]

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[14] TSN, December 6, 2005, pp. 10-12.

x x x x x x x x x

Atty. Mendoza

Q: Mr. Witness, when you conducted the said buy bust operation and you told this Honorable Court that you were near with the poseur buyer, what happened Mr. Witness?
A: I have seen the transaction Sir while they were talking and when our civilian asset was able to buy.

x x x x x x x x x

Q: What exactly Mr. Witness if you have said any?
A: When we arrived there, our civilian asset told that he will buy.

Q: Can you tell this Honorable Court the phrase that the poseur buyer told the accused?
A: He said that "*iiscore daw siya*."

Q: And what will be the response if the person allegedly selling?
A: *Magkano?*

Q: Then what is the reply?
A: ₱200.00

Q: And then what happened?
A: Our asset immediately gave her the money.

Court

Q: How about the seller, what did she do after the money was paid to her?
A: After giving the money, she took from her pocket 4 sachets and gave it to our asset.[15]

As shown by the above-quoted testimony, SPO4 Taruc, as the poseur- buyer, was able to positively identify the seller. He categorically stated that it was Arriola who dealt with their civilian asset who was just beside him. According to him, Arriola was the one who asked "*Magkano?*" when their civilian asset told her that "*Iiscore daw siya,*" referring to SPO4 Taruc. She was the one who handed the 4 heat-sealed transparent plastic sachets

[15] TSN, February 28, 2006, p. 24.

with white crystalline substance to the civilian asset, which later on tested positive for *methylamphetamine hydrochloride* or *shabu*, in exchange of the ₱200.00 that she received as payment. He was also able to identify the marked money with serial numbers LE627251 and FP609605 both bearing the initials "AT" as well as the sachets with initials "AT" and "FA" that contained the shabu. Clearly, the exchange of the buy-bust money and the four (4) heat-sealed transparent plastic sachets of *shabu* established the fact that Arriola was, without a doubt, engaged in the sale of illegal drugs.

Regarding the second issue, Arriola is of the position that there was no proof that the alleged confiscated *shabu* was taken from her. She adds that there was violation of the chain of custody on the part of the buy-bust team. Specifically, she claims that SPO4 Taruc did not explain how the *corpus delicti* transferred hands from the time it was supposedly confiscated from her to the time it was presented in court as evidence.[16]

In the prosecution of drug related cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. Its existence is a condition *sine qua non*. It is precisely in this regard that central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually the one that was seized from or sold by Arriola.[17] As such, the chain of custody rule has been adopted in order to address this core issue.

Black's Law Dictionary explains chain of custody in this wise:

> In evidence, the one who offers real evidence, such as the narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to weight not to admissibility of evidence. *Com. v. White, 353 Mass. 409, 232 N.E.2d 335.*

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[16] *Rollo,* p. 52.

[17] *People v. Kimura,* 471 Phil. 895, 909 (2004).

Likewise, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Instructive in this issue is the case of *Malilin v. People*[18] which discussed how the chain of custody of the seized items should be established. In said case, the Court said:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Further, in the case of *People v. Kamad,*[19] the Court enumerated therein the different links that the prosecution must endeavor to establish with respect to the chain of custody in a buy-bust operation, namely: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by

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[18] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[19] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

Bearing in mind the abovementioned guidelines in the application of the chain of custody rule, the prosecution in the present case adequately proved all the links in the chain. This could be deduced from the testimony of their lone witness, SPO4 Taruc. Pertinent portions of his testimony are hereafter quoted, to wit:

Q: You said you arrested her, what did you do upon the arrest of Flordeliza?
A: After I have arrested her, I brought her to our police station and marked the evidence with my initials and prepared the request for the laboratory examination for me to bring the items for examination.

Q: What happened to the 4 sachets handed to by Flordeliza to your asset?
A: I marked them with my initials to prepare the request to be brought to the crime laboratory.

Fiscal

Q: Will you be able to identify those 4 sachets [since] you were the one who saw the transaction and [was] the one who prepared the request for laboratory examination?
A: Yes, Sir.

Q: Why?
A: I placed my initial and the initial of Flordeliza Arriola.

Q: Where were you at the time you placed your initials?
A: She was there at the investigating room, Sir.

Fiscal

I am showing to you 4 sachets; please identify the relevance of these 4 sachets to one you referred earlier as the subject of [the] transaction between your asset and Flordeliza.

A: These are the items bought from her and in fact here are the initials I placed. Sachet with initials "AT" and FA 1, 2, 3, 4.

Q: The brown envelope on which these 4 sachets was placed were already marked as Exh. C. And the medium size transparent plastic sachet as Exh. C-1. The 4 sachets in which *shabu* were placed were previously marked as Exh. C-2, 3, 4, 5.[20]

x x x x x x x x x

Fiscal

You mentioned of the preparation for drug examination, tell us after the preparation, who delivered the request as well as the accompanying specimen to the Crime Laboratory?

A: My trusted co-police officer in the investigation section, Sir.

Fiscal

I am showing to you the request for laboratory examination dated December 13, 2002, is this the one you prepared?

A: Yes, Sir.[21]

x x x x x x x x x

ATTY. MENDOZA:

Afterwards you immediately brought her to the police station?

A: Yes, Sir.

Q: In the police [station] what happened next?

A: The statement was taken then at our office and we learned that her full name is Flordeliza Arriola.

Q: Did you bring this case [to] the investigator?

A: Yes, Sir.

Q: Together with the *shabu*?

A: Yes, Sir.

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[20] TSN, December 6, 2005, pp. 86-87.

[21] *Id.* at 88-89.

Q: From the scene of the crime or from the house of the accused, upon arriving at the police station did you immediately turn over the accused and the drug to the police investigator?
A: Yes, Sir.

ATTY. MENDOZA

When you arrived [at] the police station, did you immediately turn over the accused and the drug to the investigator?
A: Before I turned them over Sir, I arranged the evidence and put my marking on it.

Q: So, you only put your marking only when you were at the police station?
A: Yes sir in the presence of the accused.

Q: From the time that you received the said alleged *shabu* or drugs from your asset, where did you put the drugs?
A: In my hand.

ATTY. MENDOZA:

Up to the police station?
A: Yes, Sir.

Q: Who [accompanied] the accused when she [was] brought to the police station?
A: Me and my back-up.

Q: Mr. Witness, who brought the alleged *shabu* to the crime lab?
A: I am not sure but it is our investigator Sir.[22]

For the first link, SPO4 Taruc testified that after the buy-bust, the civilian asset turned over the sachets to him. From the site, he brought Arriola and the sachets to their police station where he marked the items. He marked the evidence with his initials and the initials of Arriola and all these were done in her presence. As to the second link, he told the court that after he put his markings on the seized items, he turned them over, together with Arriola, to the investigating officer. With respect to the third link, SPO4 Taruc said that the person who brought

[22] TSN, February 28, 2006, pp. 26-27.

the specimen to the crime laboratory for examination was his trusted co-police in the investigating section. Forensic chemist, P/Insp. Sta. Maria, examined the specimens submitted to him which tested positive for *shabu* and issued a chemistry report[23] dated December 13, 2002, or within the same day that the buy-bust operation was conducted. Therefore, from the account made by SPO4 Taruc, the RTC did not err in convicting Arriola as there seemed to be no showing that the evidence might have been altered.

The position of Arriola that the prosecution failed to discuss in detail the different links in the chain as to the transfer of hands of the evidence will not necessarily render said evidence to be incompetent to convict Arriola for the crime of sale of illegal drugs. It must be remembered that testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[24] As such, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.[25] The integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered. Besides, all that Arriola did in her supplemental brief was make a general allegation that prosecution failed to observe the chain of custody rule without pinpointing the exact link or links that may have been compromised to bring doubt to the integrity of the evidence.

So, in this case, Arriola has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties.[26] Resultantly, since she failed to discharge

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[23] Records , p. 6.

[24] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 718.

[25] *Id*.

[26] *People v. Castro*, G.R. No. 194836, June 15, 2011, citing *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 562.

such burden, it cannot be disputed that the drugs seized from her were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs.[27]

Finally, Arriola raised the issue of the prosecution's non-compliance with the requirements of Section 21 of R.A. No. 9165, particularly the fact that the buy-bust operation was conducted without the proper coordination or clearance with the PDEA or with the *barangay* authorities of the place where the operation was made. This supposition is misguided.

In the case of *People v. Roa*,[28] the Court explained that the requirement of coordination with the PDEA with respect to a buy-bust operation is not indispensable. In said case, it said:

> In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an in *flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

WHEREFORE, the August 14, 2008 Decision of the Court of Appeals, in CA-G.R. CR-HC. NO. 02870 is **AFFIRMED.**

SO ORDERED.

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

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[27] *Id*.

[28] G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-369.

SECOND DIVISION

[G.R. No. 190375. February 8, 2012]

TAN SHUY, *petitioner, vs.* **SPOUSES GUILLERMO MAULAWIN and PARING CARIÑO-MAULAWIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURTS WHEN AFFIRMED BY THE COURT OF APPEALS; APPLICATION. — We reiterate our ruling in a line of cases that the jurisdiction of this Court, in cases brought before it from the CA, is limited to reviewing or revising errors of law. Factual findings of courts, when adopted and confirmed by the CA, are final and conclusive on this Court except if unsupported by the evidence on record. There is a question of fact when doubt arises as to the truth or falsehood of facts; or when there is a need to calibrate the whole evidence, considering mainly the credibility of the witnesses and the probative weight thereof, the existence and relevancy of specific surrounding circumstances, as well as their relation to one another and to the whole, and the probability of the situation. Here, a finding of fact is required in the ascertainment of the due execution and authenticity of the *pesadas*, as well as the determination of the true intention behind the parties' oral agreement on the application of the net proceeds from the copra deliveries as installment payments for the loan. This function was already exercised by the trial court and affirmed by the CA. x x x We found no clear showing that the trial court and the CA committed reversible errors of law in giving credence and according weight to the *pesadas* presented by respondents.

2. ID.; EVIDENCE; A PARTY IS ESTOPPED FROM QUESTIONING THE DUE EXECUTION AND AUTHENTICITY OF A DOCUMENT IF HE FAILED TO TIMELY OBJECT THERETO. — [P]etitioner is already estopped from questioning the due execution and authenticity of the *pesadas*. As found by the CA, Tan Shuy "could have easily belied the existence of x x x the pesadas or receipts, and the purposes for which they were offered in evidence by simply presenting his daughter,

Elena Tan Shuy, but no effort to do so was actually done by the former given that scenario." The *pesadas* having been admitted in evidence, with petitioner failing to timely object thereto, these documents are already deemed sufficient proof of the facts contained therein. We hereby uphold the factual findings of the RTC, as affirmed by the CA, in that the *pesadas* served as proof that the net proceeds from the copra deliveries were used as installment payments for the debts of respondents.

3. CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT; DATION IN PAYMENT, EXPLAINED; WHERE COPRA DELIVERIES BY THE DEBTOR TO THE CREDITOR CONSTITUTE PARTIAL PAYMENTS.— [P]ursuant to Article 1232 of the Civil Code, an obligation is extinguished by payment or performance. There is payment when there is delivery of money or performance of an obligation. Article 1245 of the Civil Code provides for a special mode of payment called dation in payment (*dación en pago*). There is dation in payment when property is alienated to the creditor in satisfaction of a debt in money. Here, the debtor delivers and transmits to the creditor the former's ownership over a thing as an accepted equivalent of the payment or performance of an outstanding debt. In such cases, Article 1245 provides that the law on sales shall apply, since the undertaking really partakes — in one sense — of the nature of sale; that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's obligation. Dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement — express or implied, or by their silence — consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished. x x x The subsequent arrangement between Tan Shuy and Guillermo can thus be considered as one in the nature of dation in payment. There was partial payment every time Guillermo delivered copra to petitioner, chose not to collect the net proceeds of his copra deliveries, and instead applied the collectible as installment payments for his loan from Tan Shuy. We therefore uphold the findings of the trial court, as affirmed by the CA, that the net proceeds from Guillermo's copra deliveries amounted to ₱378,952.43. With this partial payment, respondent remains liable for the balance totaling ₱41,047.57.

APPEARANCES OF COUNSEL

Leovigildo L. Cerilla for petitioner.
Jose C. Flores, Jr. for respondents.

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 Rules of Court, assailing the 31 July 2009 Decision and 13 November 2009 Resolution of the Court of Appeals (CA).[1]

Facts

Petitioner Tan Shuy is engaged in the business of buying copra and corn in the Fourth District of Quezon Province. According to Vicente Tan (Vicente), son of petitioner, whenever they would buy copra or corn from crop sellers, they would prepare and issue a *pesada* in their favor. A *pesada* is a document containing details of the transaction, including the date of sale, the weight of the crop delivered, the trucking cost, and the net price of the crop. He then explained that when a *pesada* contained the annotation "pd" on the total amount of the purchase price, it meant that the crop delivered had already been paid for by petitioner.[2]

Guillermo Maulawin (Guillermo), respondent in this case, is a farmer-businessman engaged in the buying and selling of copra and corn. On 10 July 1997, Tan Shuy extended a loan to Guillermo in the amount of ₱420,000. In consideration thereof, Guillermo obligated himself to pay the loan and to sell *lucad* or copra to petitioner. Below is a reproduction of the contract:[3]

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[1] Both the Decision and Resolution in CA-G.R. CV No. 90070 were penned by Justice Andres B. Reyes, Jr. and concurred in by Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr.

[2] RTC Decision, p. 4; *rollo*, p. 48.

[3] Petitioner's Complaint, Annex E; *rollo*, p.71.

Nº 2567 Lopez, Quezon July 10, 1997

Tinanggap ko kay G. TAN SHUY ang halagang …… (₱420,000.00) salaping Filipino. Inaako ko na isusulit sa kanya ang aking LUCAD at babayaran ko ang nasabing halaga. Kung hindi ako makasulit ng LUCAD o makabayad bago sumapit ang ……., 19 …… maaari niya akong ibigay sa may kapangyarihan. Kung ang pagsisingilan ay makakarating sa Juzgado ay sinasagutan ko ang lahat ng kaniyang gugol.

[Sgd. by respondent]

P……..... …….....

Lagda

Most of the transactions involving Tan Shuy and Guillermo were coursed through Elena Tan, daughter of petitioner. She served as cashier in the business of Tan Shuy, who primarily prepared and issued the *pesada*. In case of her absence, Vicente would issue the *pesada*. He also helped his father in buying copra and granting loans to customers (copra sellers). According to Vicente, part of their agreement with Guillermo was that they would put the annotation "*sulong*" on the *pesada* when partial payment for the loan was made.

Petitioner alleged that despite repeated demands, Guillermo remitted only ₱23,000 in August 1998 and ₱5,500 in October 1998, or a total of ₱28,500.[4] He claimed that respondent had an outstanding balance of ₱391,500. Thus, convinced that Guillermo no longer had the intention to pay the loan, petitioner brought the controversy to the *Lupon Tagapamayapa*. When no settlement was reached, petitioner filed a Complaint before the Regional Trial Court (RTC).

Respondent Guillermo countered that he had already paid the subject loan in full. According to him, he continuously delivered and sold copra to petitioner from April 1998 to April 1999. Respondent said they had an oral arrangement that the net proceeds thereof shall be applied as installment payments for

[4] Petitioner's Complaint, pp. 1-2; *rollo*, pp. 67-68.

the loan. He alleged that his deliveries amounted to ₱420,537.68 worth of copra. To bolster his claim, he presented copies of *pesadas* issued by Elena and Vicente. He pointed out that the *pesadas* did not contain the notation "pd," which meant that actual payment of the net proceeds from copra deliveries was not given to him, but was instead applied as loan payment. He averred that Tan Shuy filed a case against him, because petitioner got mad at him for selling copra to other copra buyers.

On 27 July 2007, the trial court issued a Decision, ruling that the net proceeds from Guillermo's copra deliveries — represented in the *pesadas*, which did not bear the notation "pd" — should be applied as installment payments for the loan. It gave weight and credence to the *pesadas*, as their due execution and authenticity was established by Elena and Vicente, children of petitioner.[5] However, the court did not credit the net proceeds from 12 *pesadas*, as they were deliveries for corn and not copra. According to the RTC, Guillermo himself testified that it was the net proceeds from the copra deliveries that were to be applied as installment payments for the loan. Thus, it ruled that the total amount of ₱41,585.25, which corresponded to the net proceeds from corn deliveries, should be deducted from the amount of ₱420,537.68 claimed by Guillermo to be the total value of his copra deliveries. Accordingly, the trial court found that respondent had not made a full payment for the loan, as the total creditable copra deliveries merely amounted to ₱378,952.43, leaving a balance of ₱41,047.57 in his loan.[6]

On 31 July 2009, the CA issued its assailed Decision, which affirmed the finding of the trial court. According to the appellate court, petitioner could have easily belied the existence of the *pesadas* and the purpose for which they were offered in evidence by presenting his daughter Elena as witness; however, he failed to do so. Thus, it gave credence to the testimony of respondent

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[5] RTC Decision, pp. 16-17; *rollo*, pp. 60-61.

[6] The RTC found that respondents remained indebted to petitioner for the total balance of ₱41,047.53. However, after a re-computation, this Court finds that a simple mathematical error was committed. Respondents' balance should be reflected as ₱41,047.57.

Guillermo in that the net proceeds from the copra deliveries were applied as installment payments for the loan.[7] On 13 November 2009, the CA issued its assailed Resolution, which denied the Motion for Reconsideration of petitioner.

Petitioner now assails before this Court the aforementioned Decision and Resolution of the CA and presents the following issues:

Issues

1. Whether the *pesadas* require authentication before they can be admitted in evidence, and
2. Whether the delivery of copra amounted to installment payments for the loan obtained by respondents from petitioner.

Discussion

As regards the first issue, petitioner asserts that the *pesadas* should not have been admitted in evidence, since they were private documents that were not duly authenticated.[8] He further contends that the *pesadas* were fabricated in order to show that the goods delivered were copra and not corn. Finally, he argues that five of the *pesadas* mentioned in the Formal Offer of Evidence of respondent were not actually offered.[9]

With regard to the second issue, petitioner argues that respondent undertook two separate obligations — (1) to pay for the loan in cash and (2) to sell the latter's *lucad* or copra. Since their written agreement did not specifically provide for the application of the net proceeds from the deliveries of copra for the loan, petitioner contends that he cannot be compelled to

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[7] CA Decision, pp. 11-12; *rollo*, pp. 27-28.

[8] Petitioner refers to Exhibits "5", "7", "25", "30", "32", "32-A", "33", "34", "38", "43", "45", and "47". *See* Tan Shuy's Petition for Review on *Certiorari*, p. 6; *rollo*, p. 9.

[9] Petitioner refers to Exhibits "65" to "69." *See* Tan Shuy's Petition for Review on *Certiorari*, p. 6; *rollo*, p. 9.

accept copra as payment for the loan. He emphasizes that the *pesadas* did not specifically indicate that the net proceeds from the copra deliveries were to be used as installment payments for the loan. He also claims that respondent's copra deliveries were duly paid for in cash, and that the *pesadas* were in fact documentary receipts for those payments.

We reiterate our ruling in a line of cases that the jurisdiction of this Court, in cases brought before it from the CA, is limited to reviewing or revising errors of law.[10] Factual findings of courts, when adopted and confirmed by the CA, are final and conclusive on this Court except if unsupported by the evidence on record.[11] There is a question of fact when doubt arises as to the truth or falsehood of facts; or when there is a need to calibrate the whole evidence, considering mainly the credibility of the witnesses and the probative weight thereof, the existence and relevancy of specific surrounding circumstances, as well as their relation to one another and to the whole, and the probability of the situation.[12]

Here, a finding of fact is required in the ascertainment of the due execution and authenticity of the *pesadas*, as well as the determination of the true intention behind the parties' oral agreement on the application of the net proceeds from the copra deliveries as installment payments for the loan.[13] This function was already exercised by the trial court and affirmed by the CA. Below is a reproduction of the relevant portion of the trial court's Decision:

x x x The defendant further averred that if in the receipts or "*pesadas*" issued by the plaintiff to those who delivered copras to them there is a notation "pd" on the total amount of purchase price of the copras,

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[10] *Republic v. Regional Trial Court*, G.R. No. 172931, 18 June 2009, 589 SCRA 552.

[11] *Id*.

[12] *Guy v. Court of Appeals*, G.R. No. 165849, 10 December 2007, 539 SCRA 584; *Obando v. People*, G.R. No. 138696, 7 July 2010, 624 SCRA 299.

[13] *See Bernaldez v. Francia*, 446 Phil. 643 (2003)

it means that said amount was actually paid or given by the plaintiff or his daughter Elena Tan Shuy to the seller of the copras. To prove his averments the defendant presented as evidence two (2) receipts or *pesadas* issued by the plaintiff to a certain "Cariño" (Exhibits "1" and "2" — defendant) showing the notation "pd" on the total amount of the purchase price for the copras. Such claim of the defendant was further bolstered by the testimony of Apolinario Cariño which affirmed that he also sell copras to the plaintiff Tan Shuy. He also added that he incurred indebtedness to the plaintiff and whenever he delivered copras the amount of the copras sold were applied as payments to his loan. The witness also pointed out that the plaintiff did not give any official receipts to those who transact business with him (plaintiff). **This Court gave weight and credence to the documents receipts (*pesadas*) (Exhibits "3" to "64") offered as evidence by the defendant which does not bear the notation "pd" or paid on the total amount of the purchase price of copras appearing therein. Although said "*pesadas*" were private instrument their execution and authenticity were established by the plaintiff's daughter Elena Tan and sometimes by plaintiff's son Vicente Tan.** x x x.[14] (Emphasis supplied)

In affirming the finding of the RTC, the CA reasoned thus:

In his last assigned error, **plaintiff-appellant herein impugns the conclusion arrived at by the trial court, particularly with respect to the giving of evidentiary value to Exhs. "3" to "64"** by the latter in order to prove the claim of defendant-appellee *Guillermo* that he had fully paid the subject loan already.

The foregoing deserves scant consideration.

Here, **plaintiff-appellant could have easily belied the existence of Exhs. "3" to "64", the *pesadas* or *receipts*, and the purposes for which they were offered in evidence by simply presenting his daughter, *Elena Tan Shuy*, but no effort to do so was actually done by the former given that scenario.**[15] (Emphasis supplied)

We found no clear showing that the trial court and the CA committed reversible errors of law in giving credence and according

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[14] RTC Decision, pp. 16-17; *rollo*, pp. 60-61.

[15] CA Decision, pp. 10-11; *rollo*, pp. 26-27.

weight to the *pesadas* presented by respondents. According to Rule 132, Section 20 of the Rules of Court, there are two ways of proving the due execution and authenticity of a private document, to wit:

> SEC. 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be. (21a)

As reproduced above, the trial court found that the due execution and authenticity of the *pesadas* were "established by the plaintiff's daughter Elena Tan and sometimes by plaintiff's son Vicente Tan."[16] The RTC said:

> On **cross-examination**, [Vicente] reiterated that he and her [sic] sister Elena Tan who acted as their cashier are helping their father in their business of buying copras and mais. That witness agreed that in the business of buying copra and mais of their father, if a seller is selling copra, a *pesada* is being issued by his sister. The pesada that she is preparing consists of the date when the copra is being sold to the seller. Being familiar with the penmanship of Elena Tan, the witness was shown a sample of the *pesada* issued by his sister Elena Tan. x x x
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> x x x x x x x x x
>
> x x x. He clarified that in the "*pesada*" (Exh. "1") prepared by Elena and also in Exh "2", there appears on the lower right hand portion of the said *pesadas* the letter "pd", the meaning of which is to the effect that the seller of the copra has already been paid during that day. **He also confirmed the penmanship and handwriting of his sister Ate Elena who acted as a cashier in the *pesada* being shown to him. He was even made to compare the xerox copies of the *pesadas* with the original copies presented**

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[16] RTC Decision, p. 17; *rollo*, p. 61.

to him and affirmed that they are faithful reproduction of the originals.[17] (Emphasis supplied)

In any event, petitioner is already estopped from questioning the due execution and authenticity of the *pesadas*. As found by the CA, Tan Shuy "could have easily belied the existence of x x x the *pesadas* or receipts, and the purposes for which they were offered in evidence by simply presenting his daughter, Elena Tan Shuy, but no effort to do so was actually done by the former given that scenario." The *pesadas* having been admitted in evidence, with petitioner failing to timely object thereto, these documents are already deemed sufficient proof of the facts contained therein.[18] We hereby uphold the factual findings of the RTC, as affirmed by the CA, in that the *pesadas* served as proof that the net proceeds from the copra deliveries were used as installment payments for the debts of respondents.[19]

Indeed, pursuant to Article 1232 of the Civil Code, an obligation is extinguished by payment or performance. There is payment when there is delivery of money or performance of an obligation.[20] Article 1245 of the Civil Code provides for a special mode of payment called dation in payment (*dación en pago*). There is dation in payment when property is alienated to the creditor in satisfaction of a debt in money.[21] Here, the debtor delivers and transmits to the creditor the former's ownership over a thing as an accepted equivalent of the payment or performance of an outstanding debt.[22] In such cases, Article 1245 provides that

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[17] RTC Decision, p. 4; *rollo*, p. 48.

[18] *See Obando v. People*, *supra* note 12; *Sy v. Court of Appeals*, 386 Phil. 760 (2000), *citing Son v. Son*, 321 Phil. 951 (1995), *Tison v. CA*, 342 Phil. 550 (1997), and *Quebral v. CA*, 322 Phil. 387 (1996).

[19] RTC Decision, pp. 16-18; *rollo*, pp. 60-62; CA Decision, pp. 10-13; *rollo*, pp. 26-29.

[20] CIVIL CODE, Art. 1232.

[21] CIVIL CODE, Art. 1245.

[22] *Lopez v. Court of Appeals*, 200 Phil. 150 (1982), (*citing* TOLENTINO, COMMENTARIES & JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, VOL. IV, 276-277 (1962); *D. JOSÉ CASTÁN TOBEÑAS,*

the law on sales shall apply, since the undertaking really partakes — in one sense — of the nature of sale; that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's obligation.[23] Dation in payment extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement — express or implied, or by their silence — consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.[24]

The trial court found thus:

x x x [T]he **preponderance of evidence is on the side of the defendant**. x x x The defendant explained that for the receipts (*pesadas*) **from April 1998 to April 1999 he only gets the payments for trucking while the total amount which represent the total purchase price for the copras that he delivered to the plaintiff were all given to Elena Tan Shuy as installments for the loan he owed to plaintiff**. The defendant further averred that if in the receipts or "*pesadas*" issued by the plaintiff to those who delivered copras to them there is a notation "pd" on the total amount of purchase price of the copras, it means that said amount was actually paid or given by the plaintiff or his daughter Elena Tan Shuy to the seller of the copras. To prove his averments the defendant presented as evidence two (2) receipts or *pesadas* issued by the plaintiff to a certain "Cariño" (Exhibits "1" and "2" — defendant) showing the

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DERECHO CIVIL ESPAÑOL, COMÚN Y FORAL, VOL. II 525 (6th ed. 1943); *D. JOSÉ MARÍA MANRESA Y NAVARRO, COMENTARIOS AL CÓDIGO CIVIL ESPAÑOL*, VOL. VIII 324 (1932)); *Aquintey v. Tibong*, G.R. No. 166704, 20 December 2006, 511 SCRA 414, *citing Jayme v. Court of Appeals*, 439 Phil. 192 (2002).

[23] *Aquintey v. Tibong*, G.R. No. 166704, 20 December 2006, 511 SCRA 414, *citing Jayme v. Court of Appeals*, 439 Phil. 192 (2002); CIVIL CODE, Art. 1245.

[24] *Lopez v. Court of Appeals*, L-33157, 29 June 1982, 114 SCRA 671, *citing* TOLENTINO, COMMENTARIES & JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, VOL. IV 276-277 (1962); *D. JOSÉ MARÍA MANRESA Y NAVARRO, COMENTARIOS AL CÓDIGO CIVIL ESPAÑOL, VOL. VIII 324 (1932); CALIXTO VALVERDE Y VALVERDE, TRATADO DE DERECHO CIVIL ESPAÑOL*, VOL. II 174(1935)).

notation "pd" on the total amount of the purchase price for the copras. **Such claim of the defendant was further bolstered by the testimony of Apolinario Cariño which affirmed that he also sell [sic] copras to the plaintiff Tan Shuy. He also added that he incurred indebtedness to the plaintiff and whenever he delivered copras the amount of the copras sold were applied as payments to his loan.** The witness also pointed out that the plaintiff did not give any official receipts to those who transact business with him (plaintiff). x x x

Be that it may, this Court cannot however subscribe to the averments of the defendant that he has fully paid the amount of his loan to the plaintiff from the proceeds of the copras he delivered to the plaintiff as shown in the "*pesadas*" (Exhibits "3" to "64"). Defendant claimed that based on the said "*pesadas*" he has paid the total amount of ₱420,537.68 to the plaintiff. However, this Court keenly noted that **some of the "*pesadas*" offered in evidence by the defendant were not for copras that he delivered to the plaintiff but for "mais" (corn).** The said *pesadas* for *mais* or corn were the following, to wit:

x x x x x x x x x

To the mind of this Court **the aforestated amount (₱41,585.25) which the above listed *pesadas* show as payment for mais or corn delivered by the defendant to the plaintiff cannot be claimed by the defendant to have been applied also as payment to his loan** with the plaintiff because he does not testify on such fact. He even stressed during his testimony that it was the proceeds from the copras that he delivered to the plaintiff which will be applied as payments to his loan. x x x Thus, equity dictates that the **total amount of ₱41,585.25 which corresponds to the payment for "*mais*" (corn) delivered by the plaintiff shall be deducted from the total amount of ₱420,537.68 which according to the defendant based on the *pesadas* (Exhibits "3" to "64") that he presented as evidence, is the total amount of the payment that he made for his loan to the plaintiff.** x x x

x x x x x x x x x

Clearly from the foregoing, since the total amount of defendant's loan to the plaintiff is ₱420,000.00 and the **evidence on record shows that the actual amount of payment made by the defendant from the proceeds of the copras he delivered to the plaintiff is ₱378,952.43, the defendant is still indebted to the plaintiff in**

the amount of ₱41,047.53 (sic) (₱420,000.00-₱378,952.43).[25] (Emphasis supplied)

In affirming this finding of fact by the trial court, the CA cited the above-quoted portion of the RTC's Decision and stated the following:

> In fact, as borne by the records on hand, herein defendant-appellee *Guillermo* was able to describe and spell out the contents of Exhs. "3" to "64" which were then prepared by *Elena Tan Shuy* or sometimes by witness *Vicente Tan*. Herein defendant-appellee *Guillermo* professed that since the release of the subject loan was subject to the condition that he shall sell his copras to the plaintiff-appellant, the former did not already receive any money for the copras he delivered to the latter starting April 1998 to April 1999. Hence, this Court can only express its approval to the apt observation of the trial court on this matter[.]
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> x x x x x x x x x
>
> Notwithstanding the above, however, this Court **fully agrees with the pronouncement of the trial court that not all amounts indicated in Exhs. "3" to "64" should be applied as payments to the subject loan since several of which clearly indicated "mais" deliveries on the part of defendant-appellee *Guillermo* instead of "copras"**[.][26] (Emphasis supplied)

The subsequent arrangement between Tan Shuy and Guillermo can thus be considered as one in the nature of dation in payment. There was partial payment every time Guillermo delivered copra to petitioner, chose not to collect the net proceeds of his copra deliveries, and instead applied the collectible as installment payments for his loan from Tan Shuy. We therefore uphold the findings of the trial court, as affirmed by the CA, that the net proceeds from Guillermo's copra deliveries amounted to ₱378,952.43. With this partial payment, respondent remains liable for the balance totaling ₱41,047.57.[27]

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[25] RTC Decision, pp. 16-18; *rollo*, pp. 60-62.

[26] CA Decision, pp. 11-13; *rollo*, pp. 27-29.

[27] RTC Decision, p. 18; *rollo*, p. 62; CA Decision, p. 14, *rollo*, p. 30.

WHEREFORE, the Petition is **DENIED.** The 31 July 2009 Decision and 13 November 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 90070 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 192274. February 8, 2012]

NORBERTO LEE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and ALLIED BANK,** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; LIBERAL INTERPRETATION OF THE RULES OF PROCEDURE MAY NOT BE ALLOWED WHERE THE PARTY INVOKING IT DID NOT OFFER ANY CONVINCING REASON TO RELAX THE RULES. — Contrary to the claim of Lee, the RTC and the CA did not "ignore" the traditional "doctrine of liberality" but merely relied upon the guidelines as to when it is applicable and, after being so guided, chose not to apply it under the existing circumstances. It is true that rules of procedure may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure for persuasive and weights reasons. Concomitant to a liberal interpretation of the rules of procedure, however, there should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. In this case, however, Lee did not bother to offer any convincing reason for this Court to relax the rules and just plainly sought its liberal interpretation.

2. REMEDIAL LAW; MOTIONS; DENIAL OF AN ACCUSED'S MOTION FOR NBI DOCUMENT AND HANDWRITING

EXAMINATION DOES NOT AMOUNT TO INJUSTICE. — [T]he Court does not perceive any injustice in the denial of Lee's motion. In fact, the RTC wrote that "the accused has the option to utilize the concerned NBI intended witness during the presentation of defense evidence." When his time comes to present evidence, Lee can utilize the NBI by availing of the coercive power of the court.

APPEARANCES OF COUNSEL

Laserna Cueva-Mercader Law Offices for petitioner.
The Solicitor General for public respondent.
Ongkiko Manhit Custodio & Acorda for private respondent.

D E C I S I O N

MENDOZA, *J.*:

Through this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Norberto Lee *(Lee)* assails the October 26, 2009 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 106247, which dismissed his petition for *certiorari* under Rule 65 and affirmed the two (2) questioned interlocutory orders[2] of the public respondent Regional Trial Court, Branch 143, Makati City *(RTC)*, in Criminal Case Nos. 00-1809 to 00-1816.

In the questioned interlocutory orders, the RTC denied Lee's Motion for Document and Handwriting Examination by the National Bureau of Investigation *(NBI)* and his subsequent motion for the reconsideration of the denial.

The Facts

Lee was the New Account Service Representative of Manager's Check and Gift Check Processor at the Cash Department of

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[1] *Rollo*, pp. 41-47. Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Andres B. Reyes, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[2] *Id*. at p. 61-78.

Allied Banking Corporation *(Allied Bank).* The bank filed a complaint against him alleging that, on several occasions, he forged the signatures of responsible bank officers in several manager's checks causing damage and prejudice to it.

After the requisite preliminary investigation, he was charged with Estafa thru Falsification of Commercial Documents which were committed on separate dates involving separate instruments in eight (8) Informations.[3] Except for the details, the Informations were uniformly worded as follows:

> That on or about the 20th day of May 1999, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused [petitioner], being then the New Account Service Representative of Manager's Check and Gift Check Processor at Cash Department of complainant Allied Banking Corporation, herein represented by Ketty Uy and taking advantage of his position, by means of deceit and false pretenses and fraudulent acts, did then and there willfully, unlawfully and feloniously defraud said complainant in the following manner, to wit: the said accused forged and falsified the signatures of Ketty Uy, Tess Chiong, Manuel Fronda, the approving officers of complainant of the Man[a]ger's Check No. MC 0000473205 in the amount of ₱200,500.00 dated May 20, 1999 payable to Noli Baldonado which was issued by complainant-bank in favor of Filway Marketing, Inc., which is a commercial document, by then and there making it appear that the approving officers of complainant-bank had signed and approved the said Manager's Check when in truth and in fact said accused knew, that the approving officers had not participated or intervened in the signing of said manager's check, thereafter the accused encashed the said Manager's Check and represented himself as the payee thereto and received the amount of ₱200,500.00 from complainant-bank and then and there misappropriate, misapply and convert the same to his own personal use and benefit, to the damage and prejudice of complainant Allied Banking Corporation, herein represented by Ketty Uy in the aforesaid amount.
>
> CONTRARY TO LAW.[4]

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[3] Docketed as Criminal Case Nos. 00-1809 to 00-1816.

[4] *Rollo,* pp. 42-43.

On February 12, 2007, after the trial had started, Lee filed his Motion for Document and Handwriting Examination by the NBI.[5] In his motion, he claimed, among others, that:

1. The record of the preliminary investigation of the Office of the City Prosecutor of Makati shows that Document Report No. 065-2000, dated 16 June 2000, prepared by the officials of the Crime Laboratory of the National Headquarters of the Philippine National Police at Camp Came, Quezon City, excluded and failed to examine the questioned and standard signatures of the accused in relation to the questioned and standard documents and signatures of the other signatories of the subject Allied Bank checks, application forms and related documents.

x x x x x x x x x

6. The accused [petitioner] is suspicious of the credibility, neutrality and sincerity of the PNP Crime Laboratory examiners who had submitted the Report because they seemed to have been prevailed upon and influenced by the officers of the Bank to conduct the partial, biased and prejudiced examination without the participation of and said notice to the accused.

7. In the interest of justice and fair play, there is a need for the forensic laboratory of the National Bureau of Investigation (NBI) to conduct a new, confirmatory and independent document and handwriting signature examination of the questioned and standard documents and signatures of the concerned officers and staff of the Bank and the Filway Marketing Inc., on one hand, and of the accused, on the other, in a manner that is complete, comprehensive, fair, neutral, transparent and credible.[6]

On August 22, 2007, the RTC, presided by Judge Tranquil P. Salvador, Jr., denied Lee's motion, stating that:

After due assessment of the assertions of the contending counsels, the Court is disinclined to grant instant motion. First, the trial of the case is already on-going and the accused has the option to utilize the concerned NBI intended witness during the presentation of defense evidence. And second, the Court is called upon to conduct

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[5] *Id*. at 53-57.

[6] *Id*. at 53-55.

its own evaluation of the questioned signature even with the opinion on the matter coming from an NBI expert. For this purpose, the Court may utilize, among others, the provisions of Sections 20 and 22, Rules of Court, on the rules in authentication of private documents [Rule 132].

> "It is also hornbook doctrine that the opinions of handwriting experts, even those from the NBI and the PC, are not binding upon [the] courts.
>
> Handwriting experts are usually helpful in the examination of forged Documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting (*Heirs of Severa P. Gregorio vs. CA*, 300 SCRA, December 1998) A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination on the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. (Boado, 'Notes and Cases on the Revised Penal Code,' 2004 Ed., p. 428)."

Accordingly, defense motion for document and handwriting examination by the NBI is hereby DENIED.[7]

Undaunted, Lee filed his Motion for Reconsideration[8] on September 26, 2007, or two (2) days after the reglementary period of 15 days. For Lee's failure to comply with the rules, the RTC, through Presiding Judge Zenaida T. Galapate-Laguilles, denied his motion for reconsideration.

In his petition before the CA, Lee raised the sole issue of whether or not the two questioned interlocutory orders should be nullified for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction and in the interest of fair play, justice, due process, and equal protection of the law.

Without disputing the late filing of his motion for reconsideration, Lee sought the CA's liberal interpretation of the rules and the

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[7] *Id*. at 61-62.

[8] *Id*. at 63-74.

need to decide his case on the merits. He insisted that it was legally and physically impossible for him to secure an NBI witness without a compulsory judicial process or order.

In the assailed October 26, 2009 decision, the CA dismissed Lee's petition and affirmed the RTC orders. It stated that procedural rules are not stringently applied when an imperative exists and a grave injustice may be committed if applied otherwise. Since, however, no such imperative and grave injustice appeared in the case, the RTC clearly did not gravely abuse its discretion on this point.

The CA further stated that the RTC did not err in denying petitioner's motion for document and handwriting examination by the NBI, as said motion was intended only to dispute the examination of documents and handwritings conducted by the PNP Crime Laboratory, which was a matter that may be exercised during the presentation of defense evidence.

The CA added that Lee could not claim deprivation of his life, liberty and property with the denial of his motion as both Article III, Section 14(2) of the 1987 Constitution and Rule 115(g) of the Rules of Court guarantee his right to the court's compulsory processes to ensure the attendance of his witnesses and the production of evidence in his behalf.

Lastly, the CA stated that the trial court did not err, much less gravely, when it denied Lee's motion for consideration because it was filed out of time.

Persistent, Lee interposed this petition for review on *certiorari* raising the following:

ISSUES[9]

1. Whether or not the RTC and the CA gravely erred in ignoring the traditional "doctrine of liberality" in the interpretation and application of mechanical rules of procedure.

2. Whether or not the petitioner was legally entitled to a new and credible NBI document and handwriting examination of all the relevant

[9] *Id*. at 19.

and material documents relative to the allegedly falsified bank documents and checks with his full participation and submissions, as part of his right to constitutional due process and equal protection rights.

3. Did the RTC and CA gravely err in denying the petitioner's motion for a credible NBI document and handwriting examination?

4. Whether or not the RTC and the CA gravely erred in concluding that the two (2) questioned interlocutory orders had attained "finality," as if they partook of the legal nature of a "final and executory judgment" or of a "final order."

After a thorough review of the records, the Court finds that the RTC did not commit a grave abuse of discretion in denying the subject motion and that the CA was correct in affirming the denial. The RTC did not err either in turning down Lee's motion for reconsideration for being filed two days late.

Contrary to the claim of Lee, the RTC and the CA did not "ignore" the traditional "doctrine of liberality" but merely relied upon the guidelines as to when it is applicable and, after being so guided, chose not to apply it under the existing circumstances. It is true that rules of procedure may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure for persuasive and weights reasons. Concomitant to a liberal interpretation of the rules of procedure, however, there should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[10] In this case, however, Lee did not bother to offer any convincing reason for this Court to relax the rules and just plainly sought its liberal interpretation. The Court, in *Daikoku Electronics Phils., Inc. v. Alberto J. Raza*,[11] stated:

To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit

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[10] *Navarro v. Metropolitan Bank & Trust Company*, 473 Phil. 472, 481(2004), citing *Sebastian v. Morales*, G.R. No. 141116, February 17, 2003, 397 SCRA 549; *Cresenciano Duremdes v. Agustin Duremdes*, 461 Phil. 388 (2003).

[11] G.R. No. 181688, June 5, 2009, 588 SCRA 788, 795.

liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice.[12] Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.[13]

At any rate, the Court does not perceive any injustice in the denial of Lee's motion. In fact, the RTC wrote that "the accused has the option to utilize the concerned NBI intended witness during the presentation of defense evidence."[14] When his time comes to present evidence, Lee can utilize the NBI by availing of the coercive power of the court.

The Court had the occasion to rule on an almost similar issue in *Joey P. Marquez v. Sandiganbayan*,[15] where the Court ordered the Sandiganbayan to act favorably on the motion of the accused therein to cause the NBI to examine the documents already submitted to the court. In said case, the Court wrote:

> In this case, the defense interposed by the accused Marquez was that his signatures in the disbursement vouchers, purchase requests and authorizations were forged. It is hornbook rule that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.
>
> Thus, Marquez bears the burden of submitting evidence to prove the fact that his signatures were indeed forged. In order to be able to discharge his burden, he must be afforded reasonable opportunity to present evidence to support his allegation. This opportunity is the actual examination of the signatures he is questioning by no less than the country's premier investigative force — the NBI. If he

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[12] *United Paragon Mining Corporation v. Court of Appeals*, 529 Phil. 632 (2006); citing *Philippine Valve Mfg. Company v. National Labor Relations Commission*, 485 Phil. 58 (2004).

[13] *Torres v. Abundo*, G.R. No. 174263, January 24, 2007, 512 SCRA 556, 565; citing *Castillo v. Court of Appeals*, G.R. No. 159971, March 25, 2004, 426 SCRA 369, 375.

[14] *Rollo*, p. 61.

[15] G.R. Nos. 187912-14, January 31, 2011, 641 SCRA 175, 182.

is denied such opportunity, his only evidence on this matter is negative testimonial evidence which is generally considered as weak. And, he cannot submit any other examination result because the signatures are on the original documents which are in the control of either the prosecution or the graft court.

At any rate, any finding of the NBI will not be binding on the graft court. It will still be subject to its scrutiny and evaluation in line with Section 22 of Rule 132. Nevertheless, Marquez should not be deprived of his right to present his own defense. How the prosecution, or even the court, perceives his defense to be is irrelevant. To them, his defense may seem feeble and his strategy frivolous, but he should be allowed to adduce evidence of his own choice. The court should not control how he will defend himself as long as the steps to be taken will not be in violation of the rules.

The *Marquez* ruling, however, cannot be applied in this case. In *Marquez,* the accused had requested for the examination of the disbursement vouchers, purchase requests and authorization requests by the NBI from the beginning. Records of the case showed that right upon his alleged discovery of the forged signatures, while the case was still with the Office of the Special Prosecutor *(OSP),* the accused already sought referral of the disbursement vouchers, purchase requests and authorization requests to the NBI for examination. At that stage, OSP denied his plea. In the case at bench, the trial had already started and, worse, the accused's motion for reconsideration was filed beyond the reglementary period.

At any rate, as earlier pointed out, the denial of his motion was without prejudice as the RTC stated that he could utilize the concerned NBI intended witness during the presentation of defense evidence.

WHEREFORE, the petition is **DENIED.** The October 26, 2009 Decision of the Court of Appeals in CA G.R. SP No. 106247 is **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194653. February 8, 2012]

ANTONIO MENDOZA, *petitioner, vs.* **FIL-HOMES REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; EXECUTION OF; WHERE EXECUTION OF A JUDGMENT CANNOT BE EFFECTED DUE TO CIRCUMSTANCES THAT TRANSPIRED AFTER ITS FINALITY RENDERING THE EXECUTION OF THE SAME UNJUST AND INEQUITABLE. — Here, the March 22, 2005 Decision of the CA ordering, *inter alia*, the respondent to pay the petitioner actual and compensatory damages in the event that the latter is constrained to demolish the said portion of his house, is already final. Pursuant to the doctrine of finality of judgment, the said decision may not be modified in any respect. Nevertheless, we are loath to apply the doctrine of finality of judgment with regard to the payment of actual and compensatory damages in favor of the petitioner. There are circumstances in the instant case which transpired after the finality of the March 22, 2005 Decision of the CA and which rendered the execution of the same unjust and inequitable with respect to the award of actual and compensatory damages in favor of the petitioner. After the March 22, 2005 CA Decision had attained finality, the respondent had fully satisfied the judgment in favor of Spouses Beltran by conveying a parcel of land it owned in exchange for the lot encroached upon by the petitioner's house. It bears stressing that the petitioner has been informed of the fact of the satisfaction of the judgment in favor of Spouses Beltran. Fil-Homes, then, had become the registered owners of the property encroached upon. Accordingly, the petitioner, in view of the foregoing, could reasonably expect that Spouses Beltran would no longer demand from him the payment of the value of the latter's lot and, as a practical consequence, there would be no need for the former to cause the demolition of his house. There being no necessity for the demolition of the petitioner's house, there would likewise be no need for the order directing the respondent to pay the

> petitioner actual and compensatory damages. x x x Indeed, it would be the height of inequity if the respondent would still be required to pay the petitioner actual and compensatory damages in the amount of ₱1,323,554.30 after it had fully satisfied the judgment in favor of Spouses Beltran. Moreover, we agree with the CA that there was evident bad faith on the part of the petitioner when he caused the demolition of his house. The petitioner, despite knowing that the respondent had fully satisfied the judgment in favor of Spouses Beltran, still proceeded with the demolition of his house. Thus, whatever injury that may have been incurred by the petitioner when his house was demolished could only be attributed to him.

APPEARANCES OF COUNSEL

Socrates M. Hermoso for petitioner.
Emmanuel O. Sales for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Antonio Mendoza (Mendoza) assailing the Decision[1] dated July 30, 2010 and Resolution[2] dated November 24, 2010 issued by the Court of Appeals (CA) in CA-G.R. SP No. 104394 entitled "*Fil-Homes Realty Development Corporation v. Regional Trial Court of Lipa, Branch 12 and Antonio Mendoza*."

On June 13, 2000, the spouses Roberto and Rebecca Beltran (Spouses Beltran) filed a complaint for specific performance, demolition of improvements with damages, docketed as Civil Case No. 2000-0272, with the Regional Trial Court (RTC) of Lipa City against Mendoza, alleging that the latter constructed a residential house which encroached on their property identified

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Danton Q. Bueser, concurring; *rollo*, pp. 22-39.

[2] *Id.* at 41-42.

as Lot Nos. 37 and 7, Block 12 of the City Park Subdivision, *Barangay* Maraouy, Lipa City.

Thereupon, Mendoza filed a third-party complaint for subrogation, indemnity and damages against Fil-Homes Realty Development Corporation (Fil-Homes), claiming that it was the latter which caused him to wrongfully construct a big portion of his house on Spouses Beltran's property. Trial proper ensued thereafter.

On July 17, 2003, the RTC rendered a Decision ordering Mendoza to compensate Spouses Beltran for the value of the lot the petitioner had encroached upon and, should he fail to do so, to demolish the portion of his house which encroached upon the lot owned by Spouses Beltran. On the third-party complaint, the RTC ordered Fil-Homes to reimburse Mendoza the amount of the expenses which the latter may incur in the removal or demolition of the portion of the latter's house which encroached upon the lot of Spouses Beltran. Fil-Homes was likewise ordered to pay the petitioner ₱100,000.00 as attorney's fees, ₱500,000.00 as moral damages and ₱60,000.00 as cost of litigation.

On appeal, the CA, in its Decision dated March 22, 2005, affirmed the July 17, 2003 Decision of the RTC albeit with the following modifications: (1) Fil-Homes was ordered to pay Mendoza actual and compensatory damages in the amount of ₱1,323,554.30 upon the demolition of the latter's house; and (2) the amount of moral damages was reduced to ₱100,000.00. The foregoing disposition of the CA became final as the parties therein did not interpose an appeal therefrom.

Herein petitioner then moved for the partial execution of the March 22, 2005 CA Decision with regard to the payment of attorney's fees, moral damages and the cost of litigation. On April 16, 2007, the RTC issued an Order directing the issuance of a writ of execution against herein respondent. Accordingly, on May 2, 2007, the Branch Clerk of Court of the RTC issued the corresponding writ of execution.

On August 30, 2007, the respondent paid the petitioner the amount of ₱260,000.00 corresponding to the attorney's fees,

moral damages and the cost of litigation awarded to the latter. On September 3, 2007, the Sheriff which implemented the writ, submitted to the RTC a Sheriff's Return stating that the writ of execution had been fully satisfied insofar as the award for attorney's fees, moral damages and the cost of litigation.

On March 31, 2008, the respondent filed a Manifestation with the RTC informing the said court that, on August 30, 2007, Spouses Beltran had executed a declaration and acknowledgment attesting that the judgment in their favor had already been fully settled and paid. Apparently, the respondent gave Spouses Beltran a parcel of land they owned in exchange for the lot encroached upon by the petitioner's house.

On April 22, 2008, the petitioner, having demolished the portion of his house which encroached upon the Spouses Beltran's lot, moved for the issuance of a writ of execution against the respondent for the payment of actual and compensatory damages in the amount of ₱1,323,554.30. The respondent opposed the said motion, alleging that the petitioner had been informed, through the former's March 31, 2008 Manifestation, that it had fully settled the judgment in favor of Spouses Beltran.

On May 14, 2008, Spouses Beltran, through their counsel, confirmed that they indeed executed the August 30, 2007 declaration and acknowledgment which attested to the satisfaction of the judgment in their favor.

On June 10, 2008, the RTC issued an Order in favor of the petitioner, directing the deputy sheriff to enforce the judgment against the respondent for the payment of actual and compensatory damages in the amount of ₱1,323,554.30. The respondent sought a reconsideration of the said June 10, 2008 Order but it was denied by the RTC in its Order dated July 8, 2008.

Thus, the respondent filed a petition for *certiorari* under Rule 65 with the CA, claiming that the RTC gravely abused its discretion in issuing the orders dated June 10, 2008 and July 8, 2008.

The Ruling of the CA

On July 30, 2010, the CA rendered the herein assailed Decision,[3] the decretal portion of which reads:

> **WHEREFORE,** in view of the foregoing, the petition is **GRANTED**. The RTC Orders dated June 1[0], 2008 and July 8, 2008, respectively, are **SET ASIDE** for having been issued with grave abuse of discretion. The RTC decision in Civil Case No. 2000-0272 dated July 17, 2003, as affirmed with modification by this Court's 15th Division in CA G.R. CV No. 80817 on March 22, 2005, is hereby declared fully satisfied and the case is deemed **closed and terminated.**
>
> **SO ORDERED.**[4]

The CA held that, although execution of a final decision is merely ministerial, to allow the execution of the judgment for the payment of actual and compensatory damages against the respondent would be inequitable since the petitioner caused the demolition of the said portion of his house in bad faith. The CA explained that actual and compensatory damages may only be awarded to the petitioner in the event that the latter is ordered to demolish the said portion of his house.

In turn, the demolition of the said portion of the petitioner's house is contingent upon the event that the petitioner fails to pay the value of the portion of the Spouses Beltran's lot which is encroached by the petitioner's house. The CA pointed out that Spouses Beltran made no demand for the payment of the value of the said portion of their lot and, thus, there was no reason for the petitioner to cause the said demolition.

Further, the CA intimated that, when the petitioner commenced the demolition of the portion of his house on April 2, 2008, he had already been informed by the respondent that it had already fully satisfied the judgment in favor of the Spouses Beltran on August 30, 2007.

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[3] *Supra* note 1.

[4] *Rollo*, p. 38.

The petitioner sought a reconsideration[5] of the said July 30, 2010 Decision but it was denied by the CA in its November 24, 2010 Resolution.[6]

The Present Petition

Undaunted, the petitioner instituted the instant petition for review on *certiorari* asserting the following arguments: (1) the CA committed reversible error in its application of the law and committed grave error in its appreciation of facts; (2) the CA committed reversible error in holding that the petitioner was in bad faith when he demolished his house; (3) the CA erred in holding that the payment made by the respondent in favor of the Spouses Beltran made the enforcement of the writ of execution no longer feasible; and (4) the CA erred in ruling that the RTC issued its orders dated June 10, 2008 and July 8, 2008 with grave abuse of discretion.[7]

In its Comment,[8] the respondent asserted that the instant petition ought to be denied as it merely raised factual questions. In any case, the respondent claimed that the petitioner caused the demolition of his house in bad faith and an order directing Fil-Homes to pay actual and compensatory damages to the petitioner would be unjust and inequitable.

In sum, the issue for this Court's resolution is whether the CA erred in denying the execution of the judgment for the payment of actual and compensatory damages in favor of the petitioner.

This Court's Ruling

The petition is denied.

The issue presented by the instant case is not novel. In *FGU Insurance Corporation v. Regional Trial Court of Makati City,*

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[5] *Id.* at 43-46.

[6] *Supra* note 2.

[7] *Rollo,* pp. 13-14.

[8] *Id.* at 59-65.

Branch 66,[9] we explained that, although a decision that has acquired finality becomes immutable, unalterable, and may no longer be modified in any respect, still there are exceptions to the said rule. Thus:

> Fundamental is the rule that where the judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the writ of execution. In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty. The lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution; much less may it review the same upon any matter decided on appeal or error apparent; nor intermeddle with it further than to settle so much as has been demanded.
>
> Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.
>
> But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. The early case of *City of Butuan vs. Ortiz* is one where the Court held as follows:
>
> > Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (Section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire

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[9] G.R. No. 161282, February 23, 2011.

> which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (*Molina vs. De la Riva*, 8 Phil. 569; *Behn, Meyer & Co. vs. McMicking*, 11 Phil. 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil. 4; *Espiritu vs. Crossfield and Guash*, 14 Phil. 588; *Flor Mata vs. Lichauco and Salinas*, 36 Phil. 809). In the instant case the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of ₱995, but in a lesser amount. Sto. Domingo had no right to an execution for the amount claimed by him.' (*De la Costa vs. Cleofas*, 67 Phil. 686-693).

Shortly after *City of Butuan v. Ortiz,* the case of *Candelario v. Cañizares* was promulgated, where it was written that:

> After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend execution thereof and grant relief as the new facts and circumstances warrant. We, therefore, find that the ruling of the court declaring that the order for the payment of ₱40,000.00 is final and may not be reversed, is erroneous as above explained.

These rulings were reiterated in the cases of *Abellana vs. Dosdos, The City of Cebu vs. Mendoza* and *PCI Leasing and Finance, Inc. v. Antonio Milan.* In these cases, there were compelling circumstances which clearly warranted the exercise of the Court's equity jurisdiction.[10] (citations omitted)

Here, the March 22, 2005 Decision of the CA ordering, *inter alia*, the respondent to pay the petitioner actual and compensatory damages in the event that the latter is constrained to demolish the said portion of his house, is already final. Pursuant to the doctrine of finality of judgment, the said decision may not be modified in any respect.

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[10] *Id*.

Nevertheless, we are loath to apply the doctrine of finality of judgment with regard to the payment of actual and compensatory damages in favor of the petitioner. There are circumstances in the instant case which transpired after the finality of the March 22, 2005 Decision of the CA and which rendered the execution of the same unjust and inequitable with respect to the award of actual and compensatory damages in favor of the petitioner.

After the March 22, 2005 CA Decision had attained finality, the respondent had fully satisfied the judgment in favor of Spouses Beltran by conveying a parcel of land it owned in exchange for the lot encroached upon by the petitioner's house. It bears stressing that the petitioner has been informed of the fact of the satisfaction of the judgment in favor of Spouses Beltran. Fil-Homes, then, had become the registered owners of the property encroached upon.

Accordingly, the petitioner, in view of the foregoing, could reasonably expect that Spouses Beltran would no longer demand from him the payment of the value of the latter's lot and, as a practical consequence, there would be no need for the former to cause the demolition of his house. There being no necessity for the demolition of the petitioner's house, there would likewise be no need for the order directing the respondent to pay the petitioner actual and compensatory damages.

On this point, the CA aptly ruled that:

> The foregoing ratiocination failed to take into consideration that the [Spouses Beltran] had lost whatever interest they may have in the case as adjudged in their favor. Their position as party-plaintiffs entitled to a writ of execution enforced against the owner of the structure erected on the subject lots has been transferred to the [respondent]. They have, for all intents and purposes, been considered to have received payment for the value of the lot. Thus, after taking into consideration the subsequent events that transpired, this Court finds and so holds that it will now be unjust to enforce to enforce paragraphs 6 and 7 of the decision. By receiving payment over the value of the lot, [Spouses Beltran] clearly lost their right to alternatively order the demolition of the portions of the Mendoza's house that encroached on their former property. Since [Spouses

Beltran] can no longer cause actual damage to Mendoza's house, the latter cannot be entitled to reimbursement from the [respondent], for it is clear under CA G.R. CV No. 80817 that Mendoza "will suffer an injury which is attributable to Fil-Homes if and when his house will be demolished."[11] (citation omitted)

Indeed, it would be the height of inequity if the respondent would still be required to pay the petitioner actual and compensatory damages in the amount of ₱1,323,554.30 after it had fully satisfied the judgment in favor of Spouses Beltran.

Moreover, we agree with the CA that there was evident bad faith on the part of the petitioner when he caused the demolition of his house. The petitioner, despite knowing that the respondent had fully satisfied the judgment in favor of Spouses Beltran, still proceeded with the demolition of his house. Thus, whatever injury that may have been incurred by the petitioner when his house was demolished could only be attributed to him. Thus, the CA stressed that:

What Mendoza did, to the mind of this Court, is a clear case of abuse of right, contrary to the intention of the RTC Decision. He made a mockery of the dispositive portion of the said decision when he demolished his house despite not being ordered to do so by the lot owner. The records will further reveal that Mendoza was notified of the fact that Fil-Homes had become the owner of the said lots, and despite the foregoing, on April 1, 2008, Mendoza, on the pretext of complying with the RTC decision, entered into a contract with A.A. Angeles Concrete Products and Construction Supply for the demolition of his house, and a day after, commenced its demolition. x x x.[12] (citations omitted)

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The assailed Decision dated July 30, 2010 and Resolution dated November 24, 2010 issued by the Court of Appeals in CA-G.R. SP No. 104394 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.,* concur.

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[11] *Rollo,* p. 36.

[12] *Id.* at 34-35.

SECOND DIVISION

[G.R. No. 197815. February 8, 2012]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JULIETO SANCHEZ @ "OMPONG",** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES IN RESOLVING THE ISSUE OF CREDIBILITY OF WITNESSES ON APPEAL; APPLICATION. — The Court is guided by the following jurisprudence when confronted with the issue of credibility of witnesses on appeal: **First**, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. **Second**, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. **And third**, the rule is even more stringently applied if the CA concurred with the RTC. In this case, both the RTC and the CA found AAA and her testimony credible. Our own independent examination of the records leads us to arrive at the same conclusion. AAA's testimony relating to the identity of the appellant as the perpetrator was firm and categorical. Her testimony on the details of the rape which established all its elements — namely, the carnal knowledge, the force and intimidation employed by the appellant, and AAA's young age — was clear and unequivocal. AAA's credibility is further strengthened by her clear lack of ill-motive to falsify.

2. ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF A WITNESS DOES NOT DISCREDIT HER CREDIBILITY. — The inconsistencies found in AAA's testimony did not discredit her credibility. The pointed inconsistencies —

whether AAA's lower garments were first removed before she was tied up — are too trivial in character and have no bearing in the determination of the appellant's guilt or innocence. The sequential order of the acts which immediately preceded the commission of the sexual assault by the appellant did not negate AAA's testimony on the material details of the rape. We note, too, that AAA's testimony was corroborated by physical evidence.

3. ID.; EVIDENCE; ALIBI; ACCUSED FAILED TO PROVE THE REQUIREMENT OF PHYSICAL IMPOSSIBILITY. — [I]t is a settled rule that the defense of alibi cannot prevail over the positive identification of the accused by a credible witness. Under the circumstances, the alibi of the appellant is weak. The alibi was not corroborated; it also failed to satisfy the requirement of physical impossibility and the lack of facility to access the two places. The records, in this regard, show that the place of the wake of the appellant's grandfather and the place of the rape were located in the same *barangay*.

4. CRIMINAL LAW; RAPE; PENALTY AND CIVIL LIABILITY. — [W]e find that the appellant's guilt has been proven beyond reasonable doubt. Accordingly, we uphold the penalty of *reclusion perpetua* imposed by the RTC and the CA. We, likewise, uphold the awards by the CA of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. However, we modify the CA's decision by additionally awarding to AAA the amount of ₱30,000.00 as exemplary damages to conform to the prevailing jurisprudence. The award of exemplary damages is justified under the circumstances to serve as a deterrent to serious wrongdoings, to vindicate the undue suffering and wanton invasion of AAA's rights and to punish the highly reprehensible and outrageous conduct of the appellant.

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.*:

On appeal is the decision[1] dated December 22, 2010 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 03954, which affirmed with modification the decision[2] of the Regional Trial Court (*RTC*), Branch 40, City of Calapan, Oriental Mindoro, in Criminal Case No. C-02-6879. The RTC found Julieto Sanchez @ "Ompong" (*appellant*) guilty beyond reasonable doubt of rape[3] committed on June 20, 2002 against a ten-year old girl, AAA.[4]

The Facts

The records show that the 26-year-old appellant accosted AAA while she was on her way home from school. The appellant (who was with a 14-year old co-accused)[5] gave chase, grabbed AAA, covered her mouth with a handkerchief, and dragged her to a bamboo grove. He then tied AAA's hands and feet with a wire, removed her lower garments, and kicked her hard on her back, causing her to stoop down with her buttocks protruding backward and her hands and knees on the ground.[6] While AAA

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[1] Penned by CA Associate Justice Mariflor P. Punzalan Castillo, and concurred in by CA Associate Justice Josefina Guevara-Salonga and CA Associate Justice Franchito N. Diamante; *rollo*, pp. 2-22.

[2] Dated April 30, 2008; CA *rollo*, pp. 43-51.

[3] Penalized under Article 266-A of the Revised Penal Code, as amended.

[4] The names of the private complainant and the members of her immediate family are withheld per Republic Act No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act* of 2004) and pursuant to the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Per order dated April 18, 2007, the RTC dismissed the charges pursuant to the provisions of Section 64 of Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*).

[6] CA *rollo*, p. 44.

was in that position, the appellant removed his lower garments and inserted his private organ into AAA's private organ, causing her pain; thereafter and in the same manner, the minor co-accused likewise had sexual coitus with AAA. With the rape done, the two untied AAA, threatening and warning her at the same time not to disclose the incident.

The next day, AAA confided the sexual assault to her mother when the latter inquired about the bloodstains found on AAA's panty and shorts. Her parents, in turn, reported the incident to the police. AAA was thereafter subjected to physical examination, revealing the presence of several lacerations in her vagina.

In the investigation that followed, AAA positively identified the appellant and his minor co-accused as the perpetrators of the sexual assault. The appellant denied the charge and even denied knowing AAA. He claimed that at the time of the incident, he was at the wake of his grandfather where he spent the night. He disclaimed knowing why AAA filed the case against him.

The RTC found the accused-appellant guilty beyond reasonable doubt of rape. It found AAA's straightforward testimony more credible than the denial and alibi propounded by the accused-appellant. The RTC decreed:

> ACCORDINGLY, finding herein accused Julieto Sanchez *y* Elveza @ "Ompong" guilty beyond reasonable doubt of the crime of Rape punishable under the first paragraph of Article 266-A of the Revised Penal Code, said accused is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA*** with all the accessory penalties as provided for by law.
>
> Said accused is hereby sentenced to indemnify the private complainant [AAA] the amount of ₱100,000.00 as civil indemnity and the amount of ₱75,000.00 as moral and exemplary damages.
>
> SO ORDERED.[7] (emphasis supplied)

The appellant appealed his conviction to the CA which agreed with the RTC on the appellant's guilt of the crime charged.

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

However, the CA modified the RTC's decision by reducing the amounts of civil indemnity and moral damages to ₱50,000.00 each, and deleting the award of exemplary damages.[8]

The Issue

The sole issue is whether the guilt of the appellant has been proven beyond reasonable doubt.[9] The appellant argues that: (1) AAA's testimony suffered from serious flaws and contradictions, rendering it doubtful; (2) there was evidence that another person committed the crime; and (3) he has a strong alibi.

The Court's Ruling

We find no reason to reverse the conviction of the appellant.

The Court is guided by the following jurisprudence when confronted with the issue of credibility of witnesses on appeal:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[10]

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.[11]

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[8] *Rollo,* p. 21.

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

[10] *People of the Philippines v. Conrado Laog y Ramin,* G.R. No. 178321, October 5, 2011.

[11] *Ibid.*

And third, the rule is even more stringently applied if the CA concurred with the RTC.[12]

In this case, both the RTC and the CA found AAA and her testimony credible. Our own independent examination of the records leads us to arrive at the same conclusion. AAA's testimony relating to the identity of the appellant as the perpetrator was firm and categorical. Her testimony on the details of the rape which established all its elements – namely, the carnal knowledge, the force and intimidation employed by the appellant, and AAA's young age — was clear and unequivocal.[13] AAA's credibility is further strengthened by her clear lack of ill-motive to falsify.

The inconsistencies found in AAA's testimony did not discredit her credibility. The pointed inconsistencies — whether AAA's lower garments were first removed before she was tied up - are too trivial in character and have no bearing in the determination of the appellant's guilt or innocence. The sequential order of the acts which immediately preceded the commission of the sexual assault by the appellant did not negate AAA's testimony on the material details of the rape. We note, too, that AAA's testimony was corroborated by physical evidence.

Similarly, the appellant's imputation that another person might have committed the crime was not supported by the evidence on record. What is clear is AAA's unwavering identification of the appellant as the perpetrator of the rape. In addition, AAA denied that a person known as "*Pogi*" was her rapist. She also explained that the notion that one "*Pogi*" raped her was merely concocted by the mother of the minor co-accused.

Lastly, it is a settled rule that the defense of alibi cannot prevail over the positive identification of the accused by a credible witness.[14] Under the circumstances, the alibi of the appellant is

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[12] *Ibid.*

[13] *People of the Philippines v. Marcelo Perez,* G.R. No. 191265, September 14, 2011.

[14] *People v. Atadero,* G.R. No. 183455, October 20, 2010, 634 SCRA 327, 345.

weak. The alibi was not corroborated; it also failed to satisfy the requirement of physical impossibility and the lack of facility to access the two places.[15] The records, in this regard, show that the place of the wake of the appellant's grandfather and the place of the rape were located in the same *barangay*.[16]

Given these considerations, we find that the appellant's guilt has been proven beyond reasonable doubt. Accordingly, we uphold the penalty of *reclusion perpetua* imposed by the RTC and the CA. We, likewise, uphold the awards by the CA of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. However, we modify the CA's decision by additionally awarding to AAA the amount of ₱30,000.00 as exemplary damages to conform to the prevailing jurisprudence.[17] The award of exemplary damages is justified under the circumstances to serve as a deterrent to serious wrongdoings, to vindicate the undue suffering and wanton invasion of AAA's rights and to punish the highly reprehensible and outrageous conduct of the appellant.[18]

WHEREFORE, premises considered, we **DISMISS** the appeal and **AFFIRM with MODIFICATION** the decision dated December 22, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03954. Appellant Julieto Sanchez @ "Ompong" is additionally ordered to pay the private complainant ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[15] *Id.* at 345-346.

[16] *Rollo*, p. 19.

[17] *People of the Philippines v. Marcelo Perez, supra* note 13.

[18] *People v. Alfredo*, G.R. No. 188560, December 15, 2010, 638 SCRA 749, 767-768, citing *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807.

EN BANC

[A.M. No. 11-10-7-SC. February 14, 2012]

Re: Request of Justice JOSEFINA GUEVARA-SALONGA, Court of Appeals, that her services as Assistant Provincial Fiscal of Laguna be credited as part of her services in the Judiciary for purposes of her retirement.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; RETIREMENT LAW; REPUBLIC ACT NO. 10071; PROVISION ON RETROACTIVITY, CONSTRUED AND APPLIED. — The OAS apparently misinterpreted the import and meaning of Section 24 of Republic Act No. 10071. It interpreted the section to mean that the law applied only to those who retired prior to its effectivity. A law, as a general rule, is applicable prospectively; thus, it should apply only to those who are presently in the service, who had rendered service and who will retire in the Judiciary after the effectivity of the law. By its express provision, however, it made itself applicable even to those who retired prior to its effectivity; thus, they should also benefit from the upgrading mandated by the law. From this perspective, the law should clearly apply to the case of Justice Guevara-Salonga who rendered service as Assistant Provincial Fiscal of Laguna and who is yet to retire as Associate Justice of the CA. The law likewise validates the recognition of the services of *Justice Emilio A. Gancayco*, whom we credited for his service as Chief Prosecuting Attorney (Chief State Prosecutor), based on *Republic Act No. 4140* which likewise grants his office (as Chief Prosecuting Attorney) the rank, qualification and salary of a Judge of the Court of First Instance. In the same manner, the current law also validates the crediting of past service to *Justice Buenaventura dela Fuente* who was the Chief Legal Counsel of the Department of Justice.

D E C I S I O N

***PER CURIAM*:**

For our consideration is the letter dated October 12, 2011 of Court of Appeals (*CA*) Justice Josefina Guevara-Salonga, indorsed to us on October 14, 2011 by CA Presiding Justice Andres B. Reyes, Jr. Justice Guevara-Salonga requests that her services as Assistant Provincial Fiscal of Laguna be credited as part of her services in the Judiciary, in line with her retirement on February 14, 2012.

By Resolution dated October 18, 2011, the Court noted the indorsement of CA Presiding Justice Reyes and the letter of Justice Guevara-Salonga. We referred the letter to the Office of Administrative Services (*OAS*) for evaluation, report and recommendation. The OAS reported:

Records show that prior to her appointment to the Court of Appeals on August 2, 2002, Justice Guevara-Salonga held the following positions:

Service Exclusive Dates		**Position**	**Station/ Place of Assignment**
FROM	**TO**		
03-27-1972	03-31-1974	Legal Researcher	CFI-Laguna
04-01-1974	09-11-1975	Special Counsel	
09-12-1975	08-06-1980	Acting Assistant Provincial Fiscal	Office of the Provincial Fiscal Laguna
08-07-1980	02-02-1987	3rd Assistant Provincial Fiscal	
02-03-1987	07-01-1989	RTC Judge	RTC, Br. 32 San Pablo City
11-07-1991	08-21-2000	RTC Judge	RTC, Br. 149 Makati City

On April 8, 2010[,] Republic Act No. 10071[,] otherwise known as "*An Act Strengthening and Rationalizing the National Prosecution Service*[,]" was signed into law. It took effect fifteen (15) days after its publication in the Philippine Star on May 13, 2010. Under Section 16 thereof, it provides the qualifications, ranks and appointments of prosecutors and other prosecution offices, as follows:

> "*Sec. 16. Qualifications, Ranks and Appointments of Prosecutors and other Prosecution Officers. — x x x*
>
> *Prosecutors with the rank of Prosecutor IV shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions, and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Regional Trial Court.*
>
> *Prosecutors with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Metropolitan Trial Court.*
>
> *Prosecutors with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in cities.*
>
> *Prosecutors with the rank of Prosecutor I shall have the same qualifications for appointment, rank, category, privileges, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in municipalities.*"

In relation to the above, Section 24 of the aforesaid Law reads:

> *"Sec. 24. Retroactivity — The benefits mentioned in Section[s] 14 and 16 hereof shall be granted to those who retired prior to the effectivity of this Act."*(underscoring supplied)

Prior to the enactment of R.A. No. 10071, Assistant Provincial Fiscals do not enjoy the same qualifications for appointment, rank and privileges as those of a Judge. While the law provided for a retroactive application specifically for the benefits under Sections 14 and 16 as mentioned above, the same are granted only to those who retired prior to the effectivity of R.A. [No.] 10071, which does not apply to the case of Justice [Guevara]-Salonga.

In Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco, the Court it its Resolution dated July 25, 1991, said

> *"The Court approved the request of Justice Emilio A. Gancayco for the adjustment of his longevity pay not only for purposes of his retirement but also for his entire judicial service by including as part thereof his period of service from August 9, 1963 to September 1, 1972 as Chief Prosecuting Attorney (Chief State Prosecutor) considering that under Republic Act No. 4140, the Chief State Prosecutor is given the same rank, qualification and salary of a Judge of the Court of First Instance."*

Further, the Court *En Banc* in its Resolution dated November 19, 1992 further resolved that:

> *"Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente. — This refers to the letter of former Associate Justice Buenaventura S. dela Fuente, dated September 27, 1992, requesting a recomputation of his longevity pay. It appears that former Justice dela Fuente had been the Chief Legal Counsel, Department of Justice, since June 22, 1963 until his promotion to the Court of Appeals in 1974, the qualifications for the appointment to which position as well as its rank and salary, pursuant to R.A. 2705, as amended by R.A. 4152, shall be the same as those prescribed for the first and next ranking assistant solicitors general. Accordingly, in line with the rulings of this Court in Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco, dated July 25, 1991 and*

> *Administrative Matter No. 85-8-8334-RTC. — Request of Judge Fernando Santiago for the inclusion of his services as Agrarian Counsel in the computation of his longevity pay, dated September 12, 1985, the Court Resolved to (a) APPROVE the aforesaid request of former Associate Justice Buenaventura S. dela Fuente[, and] (b) AUTHORIZE the recomputation of his longevity pay from June 22, 1963, when he assumed office and began discharging the functions of Chief Legal Counsel."* [emphases supplied]

For lack of supporting legal basis, the OAS recommended the denial of Justice Guevara-Salonga's request. The OAS explained:

> CA Justice Guevara-Salonga has more than twenty-four (24) years of judicial service which qualify her for purposes of retirement. Her request to consider her service as Assistant Provincial [Fiscal] of Laguna as judicial service can be construed as intended to increase her longevity pay. In the aforecited cases of Justices Gancayco and dela Fuente, the adjustments of their longevity pay were allowed by the Court because their previous positions as Chief Prosecuting Attorney and Chief Legal Counsel, respectively, are given the same rank, qualification and salary of a Judge. No such legal basis exists in the case of Justice [Guevara]-Salonga.
>
> In view of the foregoing, this Office respectfully recommends the denial of the request of Court of Appeals Justice Josefina [Guevara]-Salonga, to consider her services as Assistant Provincial Fiscal of Laguna as judicial service.

The Court's Ruling

We do not agree with the findings and recommendation of the OAS.

The OAS apparently misinterpreted the import and meaning of Section 24 of Republic Act No. 10071. It interpreted the section to mean that the law applied only to those who retired prior to its effectivity.

A law, as a general rule, is applicable prospectively; thus, it should apply only to those who are presently in the service, who had rendered service and who will retire in the Judiciary

after the effectivity of the law. By its express provision, however, it made itself applicable even to those who retired prior to its effectivity; thus, they should also benefit from the upgrading mandated by the law.

From this perspective, the law should clearly apply to the case of Justice Guevara-Salonga who rendered service as Assistant Provincial Fiscal of Laguna and who is yet to retire as Associate Justice of the CA. The law likewise validates the recognition of the services of *Justice Emilio A. Gancayco,* whom we credited for his service as Chief Prosecuting Attorney (Chief State Prosecutor), based on *Republic Act No. 4140* which likewise grants his office (as Chief Prosecuting Attorney) the rank, qualification and salary of a Judge of the Court of First Instance.[1] In the same manner, the current law also validates the crediting of past service to *Justice Buenaventura dela Fuente* who was the Chief Legal Counsel of the Department of Justice.[2]

ACCORDINGLY, premises considered, we **GRANT** the letter- request dated October 12, 2011 of Court of Appeals Justice Josefina Guevara-Salonga that her services as Assistant Provincial Fiscal of Laguna be credited as part of her services in the Judiciary for retirement purposes.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Sereno, and *Reyes, JJ.,* concur.

Velasco, Jr. and *Perlas-Bernabe, JJ.,* on official leave.

Abad, J., no part.

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[1] Resolution dated July 25, 1991.

[2] Resolution dated November 19, 1992.

EN BANC

[G.R. No. 194710. February 14, 2012]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6758; SIGNING BONUS; NOT A TRULY REASONABLE COMPENSATION. — There is no dispute that the grant of a signing bonus had been previously disallowed by the express mandate of then President Gloria Macapagal-Arroyo (President Arroyo). x x x Shortly thereafter, on July 22, 2002, this Court declared in *SSS v. COA* that Social Services Commission's authority to fix the compensation of its employees under its charter, Republic Act (R.A.) No. 1161 as amended, is subject to the provisions of R.A. No. 6758, which provides for the consolidation of allowances and compensation in the prescribed standardized salary rates. While there are exceptions provided under Sections 12 and 17 of R.A. No. 6758 in observance of the policy on non-diminution of pay, the signing bonus is not one of the benefits contemplated. This Court also ruled that the signing bonus is "not a truly reasonable compensation" since conduct of peaceful collective negotiations "should not come with a price tag."

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE BURDEN IS ON THE PART OF THE PETITIONER TO PROVE NOT MERELY REVERSIBLE ERROR, BUT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE PUBLIC RESPONDENT ISSUING THE IMPUGNED ORDER. — In a petition for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIGNING BONUS; THE GRANT THEREOF IS DULY ESTABLISHED IN CASE AT BAR. — MIAA's claim that the amount of ₱30,000.00 given to each employee, rank-and-file or otherwise, and member of the Board of Directors, Board Secretariat and ExeCom is a CNA Incentive and not a signing bonus, deserves scant consideration. MIAA's claim that its Board of Directors labelled the subject benefit as a signing bonus by mistake or inadvertence in good faith fails to convince. Indeed, claims of well-meaning negligence, blunder or oversight can be self-serving and easily contrived. That MIAA's Board of Directors did not make a mistake and their real intention was to reward the successful conclusion of collective negotiations by some pecuniary means is belied by simultaneous approval of the grant and the CNA between SMPP and MIAA betrays their real intention. Moreover, prior to the issuance of AOM No. JPA 03-35 declaring the subject benefit illegal, there was no effort on the part of its Board of Directors to rectify the alleged mistake in nomenclature. It was only after then Corporate Auditor Manalo and Director Nacion called MIAA's attention as to the illegality of a signing bonus that MIAA alleged that the subject benefit is a CNA Incentive. Easily, such is a mere afterthought. That the subject benefit is a CNA Incentive as MIAA's supposed purpose was to recognize the contributions of its officers and employees in the achievement of performance targets and success of austerity measures hardly inspires belief. At the time MIAA's Board of Directors approved the subject benefit, or on July 30, 2003, it cannot be truthfully claimed that MIAA had already determined that its compliance with the conditions imposed by PSLMC Resolution No. 2 is certain such that: (a) its actual operating income equalled or surpassed the target operating income as provided in its COB; (b) its actual operating expenses are less than the approved amount of operating expenses in the COB; and (c) there exists enough savings to provide the necessary funding. Indeed, it is plain common sense that it is only by the end of the year that the exact amount of savings is known and whether it is sufficient to cover the CNA Incentive.

4. ID.; ID.; ID.; COLLECTIVE NEGOTIATION AGREEMENT INCENTIVE; REQUIREMENTS AUTHORIZING THE

GRANT THEREOF, NOT COMPLIED WITH IN CASE AT BAR. — MIAA claimed that the subject benefit is a CNA Incentive but refused to comply with DBM Budget Circular No. 2006-1, raising the unconstitutionality thereof as the reason for its non-submission of its COB for the DBM's approval and the release of the benefit prior to the end of 2003. Allegedly, there is a conflict between DBM Budget Circular No. 2006-1 and A.O. No. 135 as there is nothing in the latter, which requires the COB to be submitted for DBM's validation and the payment of the CNA Incentive at the end of the year. However, the said conflict is more imagined than real. A cursory reading of DBM Budget Circular No. 2006-1 shows that its provisions are consistent with those of PSLMC Resolution No. 2 and A.O. No. 135. There is no clear showing that the former secretary of DBM transcended the demarcations fixed by A.O. No. 135 in the exercise of her rule-making power. x x x MIAA had placed itself in a rather curious position by taking what is clearly a piece-meal approach. It cited PSLMC Resolution No. 2 and A.O. No. 135 to justify the subject grant and conveniently claim that DBM Circular No. 2006-1 suffers from infirmities, hence, should not be complied with. However, MIAA failed to sustain its claim of an existing conflict, which more than suggests that it is merely grasping at straws. Truly, there is nothing that can legitimize MIAA's non-observance thereof. Prior to any declaration by a competent authority that such circular is unconstitutional, it possesses no discretion to withhold compliance. It was therefore incumbent upon the Board of Directors of MIAA to ensure that the requirements of such circular, which merely implements A.O. No. 135 and PSLMC Resolution No. 2, are met before authorizing the grant of the subject benefit. Specifically, MIAA was duty-bound to: (a) submit its COB for the approval of the President, through the DBM; (b) release the benefit after the end of the year and not after the signing and ratification of the CNA; and (c) fund the benefit from its savings from its approved COB and released MOOE allotments. These, MIAA failed to do, thus, giving COA ample basis to issue the assailed decision.

5. ID.; ID.; ID.; BENEFITS; DISALLOWED BENEFITS RECEIVED IN GOOD FAITH NEED NOT BE REFUNDED; CASE AT BAR. — This Court finds no reason to deviate from prevailing jurisprudence, stating that disallowed benefits

> received in good faith need not be refunded. x x x Clearly, good faith is anchored on an honest belief that one is legally entitled to the benefit. In this case, the MIAA employees who had no participation in the approval and release of the disallowed benefit accepted the same on the assumption that Resolution No. 2003-067 was issued in the valid exercise of the power vested in the Board of Directors under the MIAA charter. As they were not privy as to reason and motivation of the Board of Directors, they can properly rely on the presumption that the former acted regularly in the performance of their official duties in accepting the subject benefit. Furthermore, their acceptance of the disallowed grant, in the absence of any competent proof of bad faith on their part, will not suffice to render liable for a refund. The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are duty-bound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their duty. The presumptions of "good faith" or "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

APPEARANCES OF COUNSEL

Pastor M. Dalmacion, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for *certiorari* under Rule 64 of the Revised Rules of Procedure filed by Manila International Airport Authority (MIAA) from the Commission on Audit (COA) Decision

No. 2010-118[1] dated November 19, 2010, the dispositive portion of which states:

> WHEREFORE, all premises considered, the herein appeal is **DENIED** and ND No. MIAA-2006-001 dated August 31, 2006 in the total amount of ₱44,790,000.00 is hereby AFFIRMED. Accordingly, LAO-Corporate Decision No. 2008-006 dated February 18, 2008 is hereby AFFIRMED.[2]

Factual Antecedents

On July 30, 2003, the Board of Directors of MIAA issued Resolution No. 2003-067,[3] which approved the Collective Negotiation Agreement (CNA) between MIAA and Samahang Manggagawa sa Paliparan ng Pilipinas (SMPP) and authorized the grant of ₱30,000.00 to all MIAA officials and employees as "contract signing bonus." Specifically:

> "RESOLVED, That, the authority of MIAA General Manager to sign the renewal of the Collective Negotiation Agreement (CNA) between Manila International Airport Authority (MIAA) and Samahang Manggagawa sa Paliparan ng Pilipinas (SMPP), the duly accredited employee union at MIAA, be approved, as it is hereby approved."
>
> "RESOLVED, FURTHER, That, the AUTHORITY shall grant all MIAA officials and employees the amount of ₱30,000.00 each as contract Signing Bonus to be sourced from the savings of personal services, following the provision of Article XII of the CNA."[4]

On post-audit, Mr. Ireneo B. Manalo (Manalo), the then Corporate Auditor, issued Audit Observation Memorandum (AOM) No. JPA 03-35[5] dated November 4, 2003, stating that the payment of the said contract signing bonus had been previously

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[1] *Rollo*, pp. 27-32.

[2] *Id.* at 32.

[3] *Id.* at 97.

[4] *Id.*

[5] *Id.* at 33-34.

declared improper by this Court in *Social Security System v. Commission on Audit*.[6] Thus:

> In your letter dated October 7, 2003, it was explained that the grant of signing bonus was sanctioned by Resolution No. 2, Series of 2003, known as Grant of Collective Negotiation Agreement (CNA) Incentive for Government-Owned and/or Controlled Corporation (GOCCs) and Government Financial Institution (GFIs). The same explanation, the gratuity emanated from CNA executed after the effectivity of RA 6758, was invoked by the petitioner in *SSS vs. COA*. In its decision, the Supreme Court affirmed the COA decision disallowing the payment of signing bonus to each employee and officer of the SSS. (Please refer to the attached Supreme Court Decision)
>
> The payment of signing bonus made by MIAA, therefore, was improper and has no legal basis.[7]

The COA's Legal and Adjudication Office-Corporate (LAO-Corporate) reviewed AOM No. JPA 03-35 and in a Notice of Disallowance (N.D.) No. MIAA-2006-001[8] dated August 31, 2006, Director IV Janet D. Nacion (Director Nacion) disallowed the subject disbursement in the total amount of ₱44,790,000.00 for being contrary to Section 1 of Public Sector Labor Management Council (PSLMC) Resolution No. 2, Series of 2003 and the May 2, 2002 letter of Emilia T. Boncodin (Boncodin), the former Secretary of the Department of Budget and Management (DBM), to Guillermo N. Carague (Carague), the former Chairman of the COA. The relevant portions thereof state:

> Please be informed that the payment for the year 2003 of Collective Negotiation Agreement (CNA)/Signing Bonus of ₱30,000.00 each to the officials and employees of the MIAA granted under Board Resolution No. 2003-067 passed on July 30, 2003 has been disallowed in audit being in (sic) contrary to Section 1 of Public Sector Labor Management Council (PSLMC) Resolution No. 02 dated May 19, 2003 which states that "***x x x a CNA Incentive may be provided in the CNA to be granted to the rank-and-file.***" The

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[6] 433 Phil. 946 (2002).

[7] *Supra* note 5.

[8] *Rollo*, pp. 35-40.

MIAA CNA/Signing Bonus included not only the rank-and-file but all officers and employees, MIAA Board of Directors, Board Secretariat and EXECOM.

It was also noted that although the MIAA General Manager, in his memorandum dated January 28, 2003 stated categorically that "***x x x all the requirements under Section 3 of the Public Sector Labor Management Council (PSLMC) Resolution No. 2 has been complied with x x x***", there were no documents submitted to support this statement.

Moreover, the grant/payment of CNA Signing Bonus has been stopped/discontinued per letter dated May 15, 2002 of the former DBM Secretary Emilia T. Boncodin to COA Chairman Guillermo N. Carague.[9]

Furthermore, Director Nacion directed the members of the Board of Directors who approved Resolution No. 2003-067, the employees who approved and signed the request for payment and those who certified that the disbursement is lawful and supported by necessary documents, to refund and all recipients to refund the disallowed benefit.[10]

MIAA, through its Assistant General Manager for Finance and Administration, Herminia D. Castillo (Castillo), appealed N.D. No. MIAA-2006-01 stating that: (a) the CNA Incentive was granted to all officers and employees of MIAA, including those who do not occupy rank-and-file positions, since the achievement of MIAA's performance targets and the success of its fiscal reforms is a collaborative effort; and (b) MIAA's performance in 2003 justified the grant of the CNA Incentive. In her letter dated December 19, 2006,[11] Castillo alleged that:

On the basis of the foregoing, hereunder is an assessment of MIAA's financial performance for CY 2003 as justification in the grant of [Collective] Negotiation Agreement (CNA)/Signing Bonus pursuant to PSLMC Resolution No. 2, s. 2003.

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[9] *Id.* at 35-36.

[10] *Id.* at 36-40.

[11] *Id.* at 41-42.

1. Actual corporate operating income of Php 4.567 billion surpassed income projection of Php 4.371 billion. Favorable variance is Php 196 million.

2. Actual cash operating expenses of Php 2.034 billion is less than what was appropriated at Php 2.210 billion in the board-approved COB. Favorable variance is Php 176.57 million.

3. Of the total excess in operating expense budget of Php 176.57 million, only Php 118.70 million may be considered savings that are attributable to cost-saving measures and unutilized allocation for Personal Services pertaining to vacant positions.

4. Under PSLMC Resolution No. 2, s. 2003, the Php 118.70 million savings may be granted as CNA Incentive. Amount paid in CY 2003 subject of the Notice of Disallowance totalled Php 44.79 million.

5. Dividends totaling (sic) Php 231.489 million representing 50% of MIAA's Net Income for CY 2003 was remitted to the Bureau of Treasury on June 1 & 9, 2004. (Copy of disbursement vouchers hereto attached as *Annex F & G*)

The CNA Incentive was granted to all officers and employees including those who do not belong to the rank-and-file since MIAA's financial reforms and performance beyond expected targets CY 2003 were due to the collaborative effort of the whole organization as a corporate body exercising powers thru the MIAA Board pursuant to Executive 903 otherwise known as MIAA's Charter.[12]

In its Decision No. 2008-006[13] dated February 18, 2008, the LAO-Corporate, thru Director Nacion, denied MIAA's appeal, the dispositive portion of which states:

WHEREFORE, foregoing premises considered, the instant request for reconsideration of the disallowed CNA Signing Bonus paid in 2003 in the total amount of ₱44,790,000.00 is hereby **DENIED.** Accordingly, N.D. No. MIAA-2006-001 dated August 31, 2006 is hereby **AFFIRMED.**[14]

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[12] *Id*.

[13] *Id.* at 43-47.

[14] *Id*. at 46.

According to Director Nacion, the President's decision to disallow the grant of signing bonus is clear from former DBM Secretary Boncodin's May 15, 2002 letter to former COA Chairman Caragué. Contrary to MIAA's claim, the grant is actually a signing bonus and cannot be considered a CNA Incentive since it was released on August and October, or immediately after the approval of the CNA between MIAA and SMPP and before MIAA had determined its savings from Maintenance and Other Operating Expenses (MOOE). Under DBM Budget Circular No. 2006-01 dated February 1, 2006, the CNA Incentive is a one-time benefit, the payment of which is subject to the successful implementation of projects and achievement of performance targets, and should be exclusively sourced from the MOOE based on the cost-cutting measures specified in the CNA.

Even assuming that the subject grant was a CNA Incentive, MIAA violated Section 1 of PSLMC Resolution No. 2 as implemented by DBM Budget Circular No. 2006-01, limiting the grant of the CNA Incentive to rank-and-file employees. MIAA also failed to comply with Section 3 of PSLMC Resolution No. 2 when it failed to submit its Corporate Operating Budget (COB) to the DBM and the Office of the President (OP) for approval. To quote:

> It must be emphasized however, that the grant of the CNA Signing bonus is no longer allowed. The President of the Philippines had set a moratorium on the grant of the said signing bonus due to some problems raised on the payment and fund source thereof. This is clear from the letter dated May 15, 2002 of the former Department of Budget and Management (DBM) Secretary Emilia T. Boncodin addressed to the Commission on Audit Chairman, Guillermo N. Carague. Said letter further stated that the PSLMC considered the grant of incentives instead of the CNA Signing Bonus in order to resolve the issue. Thus, on December 27, 2005, the Office of the President (OP) issued Administrative Order (A.O.) No. 135 authorizing the grant of CNA Incentive to Employees in Government Agencies. The AO confirmed the grant of the CNA Incentive in strict compliance with PSLMC Resolution No. 02, series of 2003. The moratorium, however, on the grant of CNA Signing Bonus was not lifted under the said AO.

Granting *arguendo* that the MIAA treated the subject incentive as a CNA Incentive instead of Signing Bonus since they used as their basis PSLMC Resolution No. 02, series of 2003, which was approved on May 19, 2003, still, their argument is untenable. Under Section 1 of the aforesaid PSLMC Resolution as implemented by DBM Budget Circular No. 2006-1 dated February 1, 2006, a CNA Incentive may be provided in the CNA to be granted to the rank and file employees. In the instant case, however, the CNA incentive was paid not only to the rank and file employees but also to the officials of the MIAA *i.e.*, Board of Directors, Board Secretariat and EXCOM Members including those occupying the position of Assistant Department Manager (ADM)/Division Chief, who are not considered rank-and-file employees per opinion of the Civil Service Commission-COA Field Office, contrary to Section 1 of the aforesaid resolution.

Moreover, while it is true that in said PSLMC Resolution, the CNA incentive may be granted to the rank-and-file employees, the grant thereof is not absolute or automatic as the conditions set forth under Section 3 thereof have to be complied with by the MIAA before it can grant the CNA incentive bonus, which states:

> "Section 3. The CNA Incentive may be granted if the following conditions are met by the GOCC/GFI:
>
> a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/ Office of the President for the year; x x x"
>
> b) Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and
>
> c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993.
>
> x x x x x x x x x

However, a careful scrutiny of the COB submitted by the MIAA as basis for the grant of the CNA Incentive would show that the

same was just approved by the MIAA Board of Directors. There is no indication that the same was approved by the DBM/OP as required by the said PSLMC Resolution. Hence, the grant/payment of the CNA Incentive to its officials and employees may be considered as an irregular expenditure.

In addition, as provided under the aforesaid DBM Budget Circular No. 2006-1, the CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year. This is so, since it shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review. Such savings should be generated out of the cost-cutting measures identified in the CNAs and supplements thereto. In the case at bar, however, the subject CNA Incentive was paid in August and October, 2003, four (4) or two (2) months before the end of the year, thus, as of that time it can be deduced that management has not yet determined its savings from MOOE. Such being the case, indeed said payment cannot be considered as an Incentive Bonus, but in reality a Signing Bonus, which is no longer allowed to be given to rank-and-file employees of MIAA, much more to its officials.[15]

Consequently, the MIAA filed with the COA a petition for review, which was denied on the following grounds: (a) the subject grant is not a CNA Incentive but a signing bonus as it was paid on August 1, 2003 or immediately after the CNA between MIAA and SMPP was approved on July 30, 2003 and it was paid before any savings from MOOE could be generated from the programs, projects and activities under the CNA; (b) the signing bonus is prohibited under Administrative Order (A.O.) No. 135 and Section 5.6.2 of DBM Budget Circular No. 2006-1; (c) assuming that the grant is a CNA Incentive, still, it is invalid as it was paid upon renewal of the CNA, which is contrary to the provisions of Section 1 of PSLMC Resolution No. 2; (d) payment of the CNA Incentive to MIAA's officers, Board of Directors, Board Secretariat and Executive Committee (ExeCom) violated PSLMC Resolution No. 2, Section 2 of A.O. No. 135

[15] *Id.* at 44-46.

and DBM Budget Circular No. 2006-01; and (e) the grant was without the prior approval of the OP and/or the DBM. Thus:

> Whether or not the disallowed payment was a CNA Incentive or a signing bonus ultimately depends on the nature and timing of the payment, not on its nomenclature. In this case, the amount was paid upon the renewal of the CNA. Particularly, it was paid on August 1, 2003, one day after the approval of the CNA between the MIAA and SMPP on July 30, 2003. It was paid before any savings from MOOE could be generated out of the planned program/projects/activities under the CNA. It was therefore, a sort of a signing bonus. By naming it as a contract signing bonus, MIAA Board Resolution No. 2003-067 merely formalized its real identity as a signing bonus. The payment of CNA Signing Bonus however, is prohibited. A.O. No. 135 authorizing the payment of the CNA Incentive subject to Section 5.6.2 of DBM Budget Circular No. 2006-1 dated February 1, 2006, clearly disallows payment of any CNA Incentive upon signing or ratification of the CNA or supplements thereto, as this gives the CNA Incentive the character of a CNA Signing Bonus, which is not a truly reasonable compensation as held in *SSS vs. COA,* G.R. No. 149240, 384 SCRA 548, July 11, 2002.
>
> Granting *arguendo* that the herein payment by MIAA is a CNA Incentive and not a signing bonus, the payment of such CNA Incentive was still not valid since it was paid upon the renewal of the CNA. The second sentence of Section 1 of PSLMC Resolution No. 4 provides: "To ensure that funds are available and still all planned targets, programs and services approved in the budget of the agency are achieved, only savings generated after the signing of the CNA may be used for the CNA Incentive." By paying the purported CNA Incentive upon renewal of the CNA, MIAA could not honestly declare that the funding thereof was taken from savings generated after the signing of the CNA. To stress, the requirement to pay the CNA Incentive at year end is precisely because it is only at the end of the year that the amount of savings generated from MOOE could be determined and could be used as funding of the intended CNA Incentive.
>
> Moreover, payment of the CNA Incentive to include all MIAA officers, members of the Board of Directors, Board Secretariat and Executive Committee (EXCOM) directly violated the limitation imposed by the aforesaid PSLMC Resolution No. 02, Series of 2003, Section 2 of A.O. No. 135, and DBM Budget Circular No. 2006-1

that a CNA Incentive can be granted only to the rank-and-file employees excluding managerial, co-terminus and highly confidential employees.

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Petitioner's reliance on the recommendation of the PSLMC during its meeting on March 29, 2007 to include management personnel as grantees of the incentive is unavailing. That recommendation has remained, as it is, a mere recommendation. It has not reached the stage of an official pronouncement of the President or of the DBM.

Petitioner's third argument is also without merit. It is clear from the provisions provided for in said PSLMC Resolution No. 02, Series of 2003 and Section 5 of Presidential Decree (PD) No. 1597 as reiterated in A.O. No. 135 that allowances, honoraria and other fringe benefits which may be granted to government employees shall be subject to Presidential approval. MIAA is not exempted from these directives.[16]

The Petitioner's Case

In its Petition, MIAA claimed that: (a) its real intention was to grant a CNA Incentive pursuant to PSLMC Resolution No. 2 and A.O. No. 135 and the fact that the ₱30,000.00 paid to its officers and employees was denominated as a "contract signing bonus" is a mistake or a mere inadvertence committed in good faith; (b) DBM Circular No. 2006-1, which provides that the CNA Incentive should be paid at the end of the year, cannot prevail over A.O. No. 135, which does not specify any period; (c) the CNA Incentive may be released any time as A.O. No. 135 is a form of social legislation, which should be liberally construed in favor of its beneficiaries; (d) pursuant to the minutes of the March 29, 2007 meeting of the PSLMC, the CNA Incentive can be given not only to rank-and-file employees as the successful implementation of financial reforms and achievement of performance targets cannot be solely attributed to them; (e) there is no compulsion for MIAA to secure the approval of the OP and/or the DBM before it can authorize the payment of the CNA Incentive as it is not asking for any budgetary support as

[16] *Id.* at 30-31.

provided in Book IV, Chapter 3, Section 19 of Executive Order (E.O.) No. 292; (f) MIAA's duty to submit its COB for the approval of the DBM and/or the OP is only for information and notification purposes; (g) under E.O. No. 778, or the MIAA's charter, the approval of its Board of Directors suffice for the grant of the CNA Incentive; (h) even assuming that the subject disbursement is found to be without legal basis, the recipients thereof are under no obligation to return or refund for having acted in good faith and of the honest belief that they are entitled thereto; and (i) the members of MIAA's Board of Directors cannot be held personally liable for the approval and release of the CNA Incentive as they merely acted in the performance of their public duties.

The Respondent's Case

In its Comment[17] dated February 18, 2011, the COA claimed that: (a) MIAA's alleged inadvertence in naming the grant as a contract signing bonus was conveniently raised to legitimize what is otherwise prohibited; (b) the benefit being a signing bonus and not a CNA Incentive is demonstrated by the time it was granted, which is simultaneous with the approval of the CNA; (c) the benefit cannot be considered a CNA Incentive because it was paid before any savings from the MOOE was generated; (d) it is at the end of the year that savings can be said to exist as it is only at such time when the difference between the approved COB and the actual expenses incurred can be computed with finality; (e) under DBM Budget Circular No. 2006-1, which implements A.O. No. 135, the CNA Incentive shall be paid after the end of the year; (f) the said DBM Circular enjoys the presumption of regularity and it does not conflict with A.O. No. 135; (g) even for the sake of argument that the subject disbursement is a CNA Incentive, still, it is invalid in view of MIAA's failure to submit its COB to the OP and/or DBM; (h) the refund of amounts received by mistake is in accordance with the principle of *solutio indebiti* under Articles 2154 to 2163 of the Civil Code; (i) MIAA's Board of

[17] *Id.* at 65-78.

Directors' description of the grant as a contract signing bonus despite the OP's earlier directive disallowing the payment of a signing bonus and this Court's pronouncements in *SSS v. COA* is gross negligence tantamount to bad faith; (j) alternatively, their bad faith is shown by their misleading attempt to make it appear that the amounts released were CNA Incentives; and (k) the bad faith of MIAA's Board of Directors renders them liable not only for refund but also for damages.

Issues

With this petition, this Court is confronted with the task of ascertaining the real nature of the subject benefit. Indeed, the resolution of this issue is indispensable to determining whether the COA was correct in holding the beneficiaries of this disallowed benefit liable for a refund and for attributing bad faith on the part of the members of MIAA's Board of Director who authorized the same. If the subject allotment is a signing bonus, then there is no question as to its illegality, which the individuals who approved and/or benefited therefrom cannot feign ignorance of and pretend to have acted in good faith.

Our Ruling

There is no dispute that the grant of a signing bonus had been previously disallowed by the express mandate of then President Gloria Macapagal-Arroyo (President Arroyo). In her May 2, 2002 letter, former DBM Secretary Boncodin expressed former President Arroyo's directive as follows:

> On the other hand, the President has set a moratorium on the grant of CNA signing bonus due to some problems raised on the payment and fund source. The moratorium will be in effect until such time that the problems are resolved and a policy is issued on the matter.[18]

The PSLMC, of which we are a member, is already looking at options on how the issues can be resolved expeditiously. The Council

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[18] *Id.* at 96.

is considering the grant of incentives instead of the CNA Signing Bonus.[19]

Shortly thereafter, on July 22, 2002, this Court declared in *SSS v. COA*[20] that Social Services Commission's authority to fix the compensation of its employees under its charter, Republic Act (R.A.) No. 1161 as amended, is subject to the provisions of R.A. No. 6758, which provides for the consolidation of allowances and compensation in the prescribed standardized salary rates. While there are exceptions provided under Sections 12 and 17 of R.A. No. 6758 in observance of the policy on non-diminution of pay, the signing bonus is not one of the benefits contemplated. This Court also ruled that the signing bonus is "not a truly reasonable compensation" since conduct of peaceful collective negotiations "should not come with a price tag."

> We have no doubt that *RA 6758* modified, if not repealed, Sec. 3, par. (c), of *RA 1161* as amended, at least insofar as it concerned the authority of SSC to fix the compensation of SSS employees and officers. This means that whatever salaries and other financial and non-financial inducements that the SSC was minded to fix for them, the compensation must comply with the terms of *RA 6758*. Consequently, only the remuneration which was being offered as of 1 July 1989, and which was then being enjoyed by incumbent SSS employees and officers, could be availed of exclusively by the same employees and officers separate from and independent of the prescribed standardized salary rates. Unfortunately, however, the signing bonus in question did not qualify under Secs. 12 and 17 of *RA 6758*. It was non-existent as of 1 July 1989 as it accrued only in 1996 when the CNA was entered into by and between SSC and ACCESS. The signing bonus could not have been included in the salutary provisions of the statute nor would it be legal to disburse to the intended recipients.
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On the basis of the foregoing pronouncement, we do not find the signing bonus to be a truly reasonable compensation. The gratuity was of course the SSC's gesture of good will and benevolence for

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[19] *Id.* at 98.

[20] *Supra* note 6.

the conclusion of collective negotiations between SSC and ACCESS, as the CNA would itself state, but for what objective? Agitation and propaganda which are so commonly practiced in private sector labor-management relations have no place in the bureaucracy and that only a peaceful collective negotiation which is concluded within a reasonable time must be the standard for interaction in the public sector. This desired conduct among civil servants should not come, we must stress, with a price tag which is what the signing bonus appears to be.[21]

With the abolition of the signing bonus, the PSLMC issued Resolution No. 2, Series of 2003, authorizing the grant of the CNA Incentive, the primary purpose of which is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budgets of government-owned or controlled corporations (GOCCs) and government financial institutions (GFIs) at lesser cost.[22] The clear objective is to encourage, promote and reward productivity, efficiency and use of austerity measures as specified in the CNA.

To guarantee that the CNA Incentive would be exclusively funded by the savings generated from the implementation of cost-cutting measures, PSLMC imposed the following conditions:

a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/Office of the President for the year. For GOCCs/GFIs, which by the nature of their functions consistently incur operating losses, the correct year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;

b) Actual operating expenses are less than the DBM-approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and

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[21] *Id.* at 959-963.

[22] *See* 2nd Whereas Clause of A.O. No. 135 and DBM Circular No. 2006-1.

c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with provisions of Republic Act No. 7656 dated November 9, 1993.[23]

The COB is the budget of a GOCC or GFI, which consists of estimates of revenues, expenditures and borrowings and prepared prior to the beginning of the fiscal year and recommended by the governing board. The COB must be submitted for the consideration and final approval of the President through the DBM.[24]

Subsequently, on December 27, 2005, former President Arroyo issued A.O. No. 135, which confirmed the grant of the CNA to rank-and-file employees under PSLMC Resolution No. 2, Series of 2003.[25] Grants of the CNA Incentive authorized after PSLMC Resolution No. 2 took effect and in strict compliance with its provisions prior to the effectivity of A.O. No. 135 were likewise confirmed.[26] A.O. No. 135 also required that the frugality schemes be identified in the CNA and that the CNA Incentive be exclusively sourced from the savings that may be generated during the term of the CNA.[27]

As DBM was directed to issue the policy and procedural guidelines to implement A.O. No. 135, it issued Budget Circular No. 2006-1 on February 1, 2006, which provides the following limitations on the grant of the CNA Incentive:

5.6 The amount/rate of the individual CNA Incentive:

5.6.1 Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

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[23] Section 2, PSLMC Resolution No. 2, Series of 2003.

[24] Section 4 (a), *id.*

[25] Section 1, *id.*

[26] *Id*.

[27] Section 3, *id.*

5.6.2 Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (*Social Security System vs. Commission on Audit*, 384 SCRA 548, July 11, 2002);

5.6.3 May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA; and

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5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

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7.0 **Funding Source**

7.1 The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated out of cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x x x x x x

7.2 GOCCs/GFIs and LGUs may pay the CNA Incentive from savings in their respective approved corporate operating budgets or local budgets.

Considering the foregoing in conjunction with the respective submissions of both parties, this Court finds no compelling reason to reverse the assailed decision of the COA. Essentially, the

conclusion reached by this Court is anchored on the following: (a) the benefit in question is, in fact, a signing bonus, which is an illegal disbursement; (b) even assuming that the subject benefit is a CNA Incentive, MIAA's non-compliance with the requirements under PSLMC Resolution No. 2 and DBM Budget Circular No. 2006-1 rendered the same illegal; and (c) MIAA's Board of Directors' decision to authorize the grant of a signing bonus and its officers' act of approving the release thereof and certifying its validity notwithstanding former President Arroyo's mandate, PSLMC Resolution No. 2, and this Court's ruling in *SSS v. COA* is an error so gross that is tantamount to bad faith, thus, rendering them personally liable.

In a petition for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[28] In this case, MIAA's allegations of COA's grave abuse of discretion failed to muster, leading to the inevitable dismissal of this petition.

Facts indubitably demonstrate that the grant in question is a signing bonus.

MIAA's claim that the amount of ₱30,000.00 given to each employee, rank-and-file or otherwise, and member of the Board of Directors, Board Secretariat and ExeCom is a CNA Incentive and not a signing bonus, deserves scant consideration. MIAA's claim that its Board of Directors labelled the subject benefit as a signing bonus by mistake or inadvertence in good faith fails to convince. Indeed, claims of well-meaning negligence, blunder or oversight can be self-serving and easily contrived.

That MIAA's Board of Directors did not make a mistake and their real intention was to reward the successful conclusion of collective negotiations by some pecuniary means is belied by simultaneous approval of the grant and the CNA between SMPP

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[28] *Tan v. Spouses Antazo*, G.R. No. 187208, February 23, 2011.

and MIAA betrays their real intention. Moreover, prior to the issuance of AOM No. JPA 03-35 declaring the subject benefit illegal, there was no effort on the part of its Board of Directors to rectify the alleged mistake in nomenclature. It was only after then Corporate Auditor Manalo and Director Nacion called MIAA's attention as to the illegality of a signing bonus that MIAA alleged that the subject benefit is a CNA Incentive. Easily, such is a mere afterthought.

That the subject benefit is a CNA Incentive as MIAA's supposed purpose was to recognize the contributions of its officers and employees in the achievement of performance targets and success of austerity measures hardly inspires belief. At the time MIAA's Board of Directors approved the subject benefit, or on July 30, 2003, it cannot be truthfully claimed that MIAA had already determined that its compliance with the conditions imposed by PSLMC Resolution No. 2 is certain such that: (a) its actual operating income equalled or surpassed the target operating income as provided in its COB; (b) its actual operating expenses are less than the approved amount of operating expenses in the COB; and (c) there exists enough savings to provide the necessary funding. Indeed, it is plain common sense that it is only by the end of the year that the exact amount of savings is known and whether it is sufficient to cover the CNA Incentive.

Thus, it cannot be gainsaid that the COA acted with grave abuse of discretion amounting to lack of jurisdiction. To the contrary, COA acted in accordance with its duty by observing the provisions of PSLMC Resolution No. 2, A.O. No. 135 and DBM Budget Circular No. 2006-1 in its decision to disallow the benefit in question. In fact, it was the Board of Directors of MIAA who acted beyond their jurisdiction and abused their authority to approve the benefits of MIAA officers and employees[29] when they authorized the payment of a benefit that has already been abrogated.

The grant of a signing bonus, of course, is contrary to this Court's ruling in *SSS v. COA*, which effectively illegalized the

[29] Section 8 (c), E.O. No. 778 as amended by E.O. No. 993.

signing bonus for being inconsistent with the objectives of R.A. No. 6758 of standardizing the salaries and compensation of civil servants. Moreover, the signing bonus is inherently unnecessary since orderly behavior and conciliatory approach to collective negotiations are expected of members of the public sector, the performance of which is not subject to their whims or conditioned on their receipt of a monetary award. Similarly, this contravened then President Arroyo's order to discontinue the grant of signing bonus and PSLMC Resolution No. 2, which was issued to provide a reasonable substitute for the signing bonus.

Apparently, the members of MIAA's Board of Directors were either oblivious of the foregoing or they simply had the temerity to believe that their authority to approve the salaries and compensation of MIAA officers and employees under MIAA's charter is plenary to the point of being unbridled. However, as will be discussed below, departure from prevailing rules and regulations, whether by reason of ignorance or audacity, is inexcusable.

Granting that the subject benefit is a CNA Incentive, COA's disallowance thereof is warranted given MIAA's failure to comply with DBM Budget Circular No. 2006-1.

Contrary to MIAA's claim, the provisions of DBM Budget Circular No. 2006-1 are germane to the objectives of A.O. No. 135, which affirmed PSLMC Resolution No. 2.

Interestingly, MIAA claimed that the subject benefit is a CNA Incentive but refused to comply with DBM Budget Circular No. 2006-1, raising the unconstitutionality thereof as the reason for its non-submission of its COB for the DBM's approval and the release of the benefit prior to the end of 2003. Allegedly, there is a conflict between DBM Budget Circular No. 2006-1

and A.O. No. 135 as there is nothing in the latter, which requires the COB to be submitted for DBM's validation and the payment of the CNA Incentive at the end of the year.

However, the said conflict is more imagined than real. A cursory reading of DBM Budget Circular No. 2006-1 shows that its provisions are consistent with those of PSLMC Resolution No. 2 and A.O. No. 135. There is no clear showing that the former secretary of DBM transcended the demarcations fixed by A.O. No. 135 in the exercise of her rule-making power.

Particularly, the requirement that the COB should be submitted to the President through the DBM for approval is already a pre-existing requirement under Section 4, PSLMC Resolution No. 2. Such requirement is likewise consistent with Section 5, Presidential Decree No. 1597 and Memorandum Order No. 20 dated June 25, 2001 mentioned in the 5th and 6th Whereas Clauses[30] of A.O. No. 135. With respect to the requirement that the CNA Incentive be released after the end of the year, this does not contravene any provision of A.O. No. 135 and PSLMC Resolution No. 2. By specifying the time when the CNA Incentive may be released to the rank-and-file employees, the former DBM Secretary was merely supplying a detail necessary for the proper implementation of A.O. No. 135. The assailed provisions of DBM Budget Circular No. 2006-1 are germane to the purposes and objectives of A.O. No. 135 and PSLMC Resolution No. 2 and not much is required to appreciate its rationale: to ensure that the CNA Incentive will be paid only if the actual operating income meets or exceeds the target fixed in COB and will be funded by the savings generated from cost-reducing measures and no other. Without further extrapolation, these amounts remain to be mere approximations until the end of the year.

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[30] WHEREAS, Section 5 of Presidential Decree No. 1597 provides that allowances, honoraria and other fringe benefits which may be granted to government employees shall be subject to Presidential approval;

WHEREAS, Memorandum Order No. 20 dated June 25, 2001 requires the approval of the President for any increase in salary or compensation of GOCCs and GFIs that are not in accordance with Republic Act No. 6758 (the Salary Standardization Law);

This Court's pronouncements in *Miners Association of the Philippines, Inc. v. Hon. Factoran, Jr., et al.*[31] apply:

> We reiterate the principle that the power of administrative officials to promulgate rules and regulations in the implementation of a statute is necessarily limited only to carrying into effect what is provided in the legislative enactment. The principle was enunciated as early as 1908 in the case of *United States v. Barrias*. The scope of the exercise of such rule-making power was clearly expressed in the case of *United States v. Tupasi Molina*, decided in 1914, thus: "Of course, the regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself can not be extended. So long, however, as the regulations relate solely to carrying into effect the provision of the law, they are valid."[32] (citations omitted)

MIAA had placed itself in a rather curious position by taking what is clearly a piece-meal approach. It cited PSLMC Resolution No. 2 and A.O. No. 135 to justify the subject grant and conveniently claim that DBM Circular No. 2006-1 suffers from infirmities, hence, should not be complied with. However, MIAA failed to sustain its claim of an existing conflict, which more than suggests that it is merely grasping at straws. Truly, there is nothing that can legitimize MIAA's non-observance thereof. Prior to any declaration by a competent authority that such circular is unconstitutional, it possesses no discretion to withhold compliance.

It was therefore incumbent upon the Board of Directors of MIAA to ensure that the requirements of such circular, which merely implements A.O. No. 135 and PSLMC Resolution No. 2, are met before authorizing the grant of the subject benefit. Specifically, MIAA was duty-bound to: (a) submit its COB for the approval of the President, through the DBM; (b) release the benefit after the end of the year and not after the signing

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[31] 310 Phil. 113 (1995).

[32] *Id.* at 128.

and ratification of the CNA; and (c) fund the benefit from its savings from its approved COB and released MOOE allotments. These, MIAA failed to do, thus, giving COA ample basis to issue the assailed decision.

Refund by the MIAA's Board of Directors and the officers who approved the release of funds of the amounts they received are warranted in view of their evident bad faith.

Since the illegality of the disallowed benefit has been settled, this Court now proceeds to resolve the issue of whether the members of MIAA's Board of Directors, other responsible officers and the recipients thereof should be held accountable and be ordered to effectuate a refund.

This Court partially agrees with the COA.

This Court finds no reason to deviate from prevailing jurisprudence, stating that disallowed benefits received in good faith need not be refunded. As stated in *Lumayna v. Commission on Audit*:[33]

> While we sustain the disallowance of the above benefits by respondent COA, however, we find that the MCWD *affected personnel who received the above mentioned benefits and privileges acted in good faith under the honest belief that the CBA authorized such payment. Consequently, they need not refund them.*

In *Querubin vs. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City, citing, De Jesus vs. Commission on Audit,* this Court held:

> "Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and

[33] G.R. No. 185001, September 25, 2009, 601 SCRA 163.

> chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accept the same with gratitude, confident that they richly deserve such benefits.
>
> Petitioners here received the additional allowances and bonuses in good faith under the honest belief that the LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District*. Petitioners had no knowledge that such payment was without legal basis. **Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.**"[34]

Clearly, good faith is anchored on an honest belief that one is legally entitled to the benefit. In this case, the MIAA employees who had no participation in the approval and release of the disallowed benefit accepted the same on the assumption that Resolution No. 2003-067 was issued in the valid exercise of the power vested in the Board of Directors under the MIAA charter. As they were not privy as to reason and motivation of the Board of Directors, they can properly rely on the presumption that the former acted regularly in the performance of their official duties in accepting the subject benefit. Furthermore, their acceptance of the disallowed grant, in the absence of any competent proof of bad faith on their part, will not suffice to render liable for a refund.

The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are duty-bound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their

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[34] *Id.* at 178-179, citing *Abanilla v. Commission on Audit*, 505 Phil. 202, 207-208 (2005).

duty. The presumptions of "good faith" or "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.[35]

Granting that the benefit in question is a CNA Incentive, MIAA's Board of Directors has no authority to include its members, the members of the Board Secretariat, ExeCom and other employees not occupying rank-and-file positions in the grant. Indeed, this is an open and contumacious violation of PSLMC Resolution No. 2 and A.O. No. 135, which were unequivocal in stating that only rank-and-file employees are entitled to the CNA Incentive. Given their repeated invocation of these rules to justify the disallowed benefit, they cannot feign ignorance of these rules. That they deliberately ignored provisions of PSLMC Resolution No. 2 and A.O. No. 135 that they failed to observe bolsters the finding of bad faith against them.

The same is true as far as the concerned officers of MIAA are concerned. They cannot approve the release of funds and certify as to the legality of the subject disbursement knowing that it is a signing bonus. Alternatively, if they acted on the belief that the benefit is a CNA Incentive, they were in no position to approve its funding without assuring themselves that the conditions imposed by PSLMC Resolution No. 2 are complied with. They were also not in the position to release payment to the members of the Board of Directors, ExeCom and employees who do not occupy rank-and-file positions considering the express language of PSLMC Resolution No. 2.

Simply put, these individuals cannot honestly claim that they have no knowledge of the illegality of their acts. Thus, this Court finds that a refund of the amount of ₱30,000.00 received by each of the responsible officers and members of MIAA's Board of Directors is in order.

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[35] *Philippine Agila Satellite, Inc. v. Usec. Trinidad Lichauco*, 522 Phil. 565, 585 (2006).

WHEREFORE, premises considered, this Petition is hereby **PARTIALLY GRANTED.** Accordingly, only the directors responsible for the passage of Resolution No. 2003-067 and the officers who authorized the release of funds and certified the expense as necessary and lawful are hereby ordered to refund the amount of Thirty Thousand Pesos (₱30,000.00) each.

SO ORDERED.

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

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